



Northern Ireland
Assembly

Examiner of Statutory Rules

Report of the Examiner of Statutory Rules to the Assembly and the Appropriate Committees

Session 2015/2016 Second Report

18 September 2015

NIA 262/11-16

Committee for Agriculture and Rural Development	S.R. 2015 No. 318
Committee for Enterprise, Trade and Investment	Draft S.R.: The Renewables Obligation Closure Order (Northern Ireland) 2015 S.R. 2015 No. 325
Committee for the Environment	S.R. 2015 No. 327
Committee for Finance and Personnel	S.R. 2015 No. 328
Committee for Justice	Draft S.R.: The Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015

1. In accordance with the delegations in respect of the technical scrutiny of statutory rules under Standing Order 43(4)(b) given to the Examiner of Statutory Rules by the appropriate Committees on 25, 26 and 31 May and 1 June 2011 for this mandate of the Assembly, I submit my report on the statutory rules listed in the Appendix.
2. My terms of reference are essentially set out in Standing Order 43(6) (taken with the delegations under Standing Order 43(4)(b)). They are as follows:

“(6) In scrutinising an instrument the appropriate Committee shall inter alia consider the instrument with a view to determining and reporting on whether it requires to be drawn to the special attention of the Assembly on any of the following grounds, namely, that –

- (a) it imposes a charge on the public revenues or prescribes the amount of any such charge;
- (b) it contains provisions requiring any payment to be made to any Northern Ireland department or public body in respect of any approval, authorisation, licence or consent or of any service provided or to be provided by that department or body or prescribes the amount of any such payment;
- (c) the parent legislation excludes it from challenge in the courts;
- (d) it purports to have retrospective effect where the parent legislation confers no express authority so to provide;
- (e) there appears to have been unjustifiable delay in the publication of it or in the laying of it before the Assembly;
- (f) there appears to be a doubt whether it is intra vires or it appears to make some unusual or unexpected use of the powers conferred by the parent legislation;
- (g) it calls for elucidation;
- (h) it appears to have defects in its drafting;

or on any other ground which does not impinge on its merits or the policy behind it.”.

Statutory rules to which attention is drawn in this report

The Common Agricultural Policy (Review of Decisions) Regulations (Northern Ireland) 2015 (S.R. 2015/318)

3. I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the **Common Agricultural Policy (Review of Decisions) Regulations (Northern Ireland) 2015 (S.R. 2015/318)** on the ground that they were laid in breach of the 21-day rule (that is to say, the well-established rule of practice whereby a rule-making authority, in the case of a statutory rule that is subject to negative resolution, should allow at least 21 days between the date of its laying and its coming into operation). The Regulations were made on 21 July 2015 and came into operation on 7 August 2015, so that even if they had been laid on the day of making there would have been a breach of the 21-day rule (albeit a fairly

marginal breach). As it happened, the Regulations were not laid until 28 August 2015, some three weeks after they had come into operation. I had noticed them online and asked where they were. I asked the Department of Agriculture and Regional Development for an explanation – both as to the laying after the Regulations had come into operation and as to the breach which would have inevitably occurred even if the Regulations had been laid soon after making. The very late laying was an oversight, for which the Department has apologised and indicated that future statutory rules will be laid promptly. The breach of the 21-day rule which would have inevitably occurred in this case was “due to pressures of work and the need to have statutory cover for other work about to commence within” the Department. I report the breach of the 21-day rule accordingly.

4. I also raised with the Department a couple of other points (neither drafting defects nor vires points, but nevertheless worthy of mention).
5. First, the Regulations, made under section 2(2) of the European Communities Act 1972, leave most of the detail to the administrative discretion of the Department. That is *intra vires* (or within the powers) because of the width of section 2(4) of the 1972 Act, so that in this case, subject to express exceptions, section 2(2) regulations allow the Department to do what it could do in primary legislation: it could not of course make further regulations under these Regulations; but it could set out much of the detail on the face of these Regulations. The Department has indicated that it had considered this approach but wanted more flexibility to adjust procedures to business demands, especially at a time when procedures are under review in the light of civil service staff reductions. I report that accordingly, and would commend consideration of a more detailed approach for the future. As I understand it, there are broadly similar regulations in Scotland which set out the procedures in more detail.
6. Second, I make the comment that the Regulations still refer to the common agricultural policy of the European Community (preamble) and the “Community instruments” (regulation 3 and the heading to the Schedule): all the EU instruments in question are in fact so labelled. It is nearly five years (1 December 2010) since the European Community ceased to exist as such. The Department has noted my comment on the outdated terminology.

W G Nabney

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Appendix

(The attention of the appropriate Committees and the Assembly is drawn to those statutory rules marked in bold)

Draft statutory rule requiring the approval of the Assembly

Draft S.R.: The Renewables Obligation Closure Order (Northern Ireland) 2015

Draft S.R.: The Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015

Statutory rules subject to negative resolution

The Common Agricultural Policy (Review of Decisions) Regulations (Northern Ireland) 2015 (S.R. 2015/318)

The Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. 2015/325)

The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015 (S.R. 2015/327)

The Unfunded Public Service Defined Benefits Schemes (Transfers) Regulations (Northern Ireland) 2015 S.R. 2015/328)



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