



Northern Ireland
Assembly

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

Third Report of Session 2016-2017

NIA 7/16 - 21

9 September 2016

Committee for the Executive Office	S.R.: 2016/269: The Fair Employment (Specification of Public Authorities) (Amendment) Order (Northern Ireland) 2016
Committee for Agriculture, Environment and Rural Affairs	S.R. 2016/259: The Plant Health (Amendment) Order (Northern Ireland) 2016 S.R. 2016/309: The Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2016
Committee for Communities	S.R. 2016/255: The Registered Rents (Increase) Order (Northern Ireland) 2016 S.R. 2016/294: The Licensing (Designation of Outdoor Stadia) Regulations (Northern Ireland) 2016

	<p>S.R. 2016/295: The Licensing (Form of Licence) (Amendment) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/296: The Licensing (Designation of Outdoor Stadia) (No. 2) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/316: The Employers' Duties (Implementation) (Amendment) Regulations (Northern Ireland) 2016</p>
Committee for the Economy	<p>S.R. 2016/266: The Control of Electromagnetic Fields at Work Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/243: The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2016</p>
Committee for Infrastructure	<p>S.R. 2016/267: The Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/291: The Donaghadee (Harbour Area) Order (Northern Ireland) 2016</p>
Committee for Justice	<p>S.R. 2016/245: The Proceeds of Crime Act (Appeals under Part 4) (Amendment) Order (Northern Ireland) 2016</p> <p>S.R. 2016/268: The Juries (Amendment) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/274: The Care Tribunal (Amendment) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/297: The Crown Court (Amendment) Rules (Northern Ireland) 2016</p> <p>S.R. 2016/298: The Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) (Amendment) Rules (Northern Ireland) 2016</p> <p>S.R. 2016/299: The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2016</p> <p>S.R. 2016/300: The County Court (Miscellaneous Amendments) Rules (Northern Ireland) 2016</p> <p>S.R. 2016/301: The Family Proceedings (Amendment) Rules (Northern Ireland) 2016</p> <p>S.R. 2016/302: The County Court (Amendment) Rules (Northern Ireland) 2016</p> <p>S.R. 2016/303: The Magistrates' Courts (Miscellaneous Amendments) Rules (Northern Ireland) 2016</p>

	<p>S.R. 2016/304: The Magistrates' Courts (Amendment No.2) Rules (Northern Ireland) 2016</p>
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	<p>S.R. 2016/317: The Justice Act (Northern Ireland) 2015 (Single Jurisdiction) (Consequential Amendments and Revocations) Order (Northern Ireland) 2016</p>
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1. Remit of the Examiner of Statutory Rules

1.1 Standing Order 43 provides that every statutory rule or draft statutory rule which is laid before the Assembly and is subject to Assembly proceedings shall stand referred to the appropriate Committee of the Assembly for scrutiny. The Standing Orders of the Assembly are published on the Northern Ireland Assembly [website](#).

1.2 To assist Committees of the Assembly in the scrutiny of such rules under Standing Order 43, the Examiner of Statutory Rules (the Examiner) shall carry out those functions delegated to the Examiner in relation to technical scrutiny.

1.3 The terms of reference of the Examiner, under delegation from the appropriate Committee, are as set out in Standing Order 43(6) as follows:

“In scrutinising an instrument the appropriate committee shall among other things 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.”

2. In accordance with Standing Orders, in this report I draw the attention of the appropriate Committees and the Assembly to the following Rules.

3. **S.R. 2016/259 – Reported for breach of the 21 day rule**

The Plant Health (Amendment) Order (Northern Ireland) 2016

- 3.1 I draw the attention of the Committee for Agriculture, Environment and Rural Affairs and the Assembly to the S.R. 2016/259, The Plant Health (Amendment) Order (Northern Ireland) 2016, on the ground that it was laid in breach of the 21 day rule. The 21 day rule is the established rule of practice whereby a Department or other rule-making body should, in the case of a statutory rule that is subject to negative resolution, allow at least 21 days between its laying and its coming into operation. The Rule, which is subject to negative resolution, was made on 30 June 2016, laid on 1 July 2016, and came into operation on 5 July 2016.
- 3.2 This breach of the 21 day rule was anticipated by the Department which apologised and expressed regret at the breach.
- 3.3 On 16 May 2016 the Department advised:

“I would like to make you aware of a potential breach of the 21 day rule. We intend to make the Plant Health (Amendment) Order (Northern Ireland) 2016 in June, in time for the main thrust of the potato import season. The Order will implement Commission Implementing Decisions 2012/270 and 2014/679 on Epitrix and 2015/789 and 2015/2417 on Xylella and, in advance of further EU protection, provide increased protection for potatoes imported from areas of Spain where Epitrix has been detected outwith the demarcated areas as set down in Decision 2012/270. The delay in implementing the Epitrix Decisions was due to a temporary loss of key skills and experience in the area of Plant Health legislation during organisational restructuring. The draft Order is with the DSO for final clearance and as soon as the new Assembly sets out its Departmental Committees etc we will arrange for a date for consideration of SL1 and, as new penalties and offences are introduced, a date for clearance by the Executive. However, due to the tight schedule, it is possible that we may breach the 21 day rule. We will of course do everything we can to mitigate this...”

- 3.4 I am content that the Department has provided a reasonable explanation for the breach in this instance.

Angela Kelly

Examiner of Statutory Rules

9 September 2016

Appendix:

The attention of the appropriate Committees and the Assembly is drawn to those statutory rules which are set out in bold.

STATUTORY RULES SUBJECT TO NEGATIVE RESOLUTION

S.R. 2016/243: The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2016

S.R. 2016/245: The Proceeds of Crime Act (Appeals under Part 4) (Amendment) Order (Northern Ireland) 2016

S.R. 2016/255: The Registered Rents (Increase) Order (Northern Ireland) 2016

S.R. 2016/259: The Plant Health (Amendment) Order (Northern Ireland) 2016

S.R. 2016/266: The Control of Electromagnetic Fields at Work Regulations (Northern Ireland) 2016

S.R. 2016/267: The Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016/268: The Juries (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016/269: The Fair Employment (Specification of Public Authorities) (Amendment) Order (Northern Ireland) 2016

S.R. 2016/274: The Care Tribunal (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016/291: The Donaghadee (Harbour Area) Order (Northern Ireland) 2016

S.R. 2016/294: The Licensing (Designation of Outdoor Stadia) Regulations (Northern Ireland) 2016

S.R. 2016/295: The Licensing (Form of Licence) (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016/296: The Licensing (Designation of Outdoor Stadia) (No. 2) Regulations (Northern Ireland) 2016

S.R. 2016/297: The Crown Court (Amendment) Rules (Northern Ireland) 2016

S.R. 2016/298: The Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) (Amendment) Rules (Northern Ireland) 2016

S.R. 2016/299: The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2016

S.R. 2016/300: The County Court (Miscellaneous Amendments) Rules (Northern Ireland) 2016

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