



Northern Ireland  
Assembly

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

**Sixth Report of Session 2016-2017**

**NIA 10/16-21**

**21 October 2016**

Committee for Agriculture, Environment and Rural Affairs	S.R. 2016/346: The Carlingford Area (Definition of the Mouth of the Clanrye River) Regulations 2016
Committee for Communities	Draft S.R.: The Welfare Supplementary Payment (Benefit Cap) Regulations (Northern Ireland) 2016
Committee for the Economy	Draft S.R.: The Insolvency (Monetary Limits) (Amendment) Order (Northern Ireland) 2016  S.R. 2016/354: The Student Fees (Amounts) (Amendment) Regulations (Northern Ireland) 2016  S.R. 2016/364: The Gas (Designation of Pipelines) Order (Northern Ireland) 2016  S.R. 2016/369: The Insolvency (Northern Ireland) Order 1989 (Amendment) Order (Northern Ireland) 2016

Committee for Health	<p>Draft S.R.: The Food Hygiene Rating (Fee and Fixed Penalty Amount) Order (Northern Ireland) 2016</p> <p>S.R. 2016/365: The Remuneration of the Chairman of the Northern Ireland Medical and Dental Training Agency Regulations (Northern Ireland) 2016</p>
Committee for Infrastructure	<p>S.R. 2016/370: The Derriaghy Road, Lisburn (Abandonment) Order (Northern Ireland) 2016</p> <p>S.R. 2016/371: The A1 Hillsborough Road (between Hillsborough Roundabout and Pantridge Link), Hillsborough (Stopping-Up) Order (Northern Ireland) 2016</p> <p>S.R. 2016/372: The Route F1403 Footpath between Ashdene Park, Taghnevan and Tullygally East Road, Craigavon (Abandonment) Order (Northern Ireland) 2016</p>
Committee for Justice	<p>S.R. 2016/366: The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016</p>

## 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 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 Rule.

3. **S.R. 2016/346: The Carlingford Area (Definition of the Mouth of the Clanrye River) Regulations 2016**

- 3.1 I draw the attention of the Committee for Agriculture, Environment and Rural Affairs and the Assembly to S.R. 2016/346: The Carlingford Area (Definition of the Mouth of the Clanrye River) Regulations 2016 ('the Regulations') in relation to a peculiarity in its drafting. The Regulations make provision for the definition of the mouth of the Clanrye River for the purposes of the Foyle Fisheries Act (Northern Ireland) 1952. The Regulations are, however, drafted in a manner which could be construed as purporting to make provision for the definition of the mouth of the Clanrye River under the Foyle Fisheries Act 1952, legislation of the Republic of Ireland, within that jurisdiction.
- 3.2 I am advised by the Department of Agriculture, Environment and Rural Affairs ('the Department') that this drafting infelicity does not reflect the intention of the Department or of the Foyle, Carlingford and Irish Lights Commission which is to reference the mirroring legislation of the Republic of Ireland rather than to purport to make provision for interpretation within that jurisdiction. The Department correctly notes that the expression used in the Regulations was previously used in the Foyle Area (Definition of the Mouth of the River Roe) Regulations 1983. However, the Department has agreed that, to avoid ambiguity, it will seek the amendment of the Regulations at the earliest opportunity. That will be after the North South Ministerial Council next meet in Aquaculture and Marine Format, in Spring 2017. I concur with this approach and I am content that the Regulations are not fatally flawed at present.

**Angela Kelly**

Examiner of Statutory Rules

21 October 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. 2016/346: The Carlingford Area (Definition of the Mouth of the Clanrye River) Regulations 2016**

S.R. 2016/354: The Student Fees (Amounts) (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016/364: The Gas (Designation of Pipelines) Order (Northern Ireland) 2016

S.R. 2016/365: the Remuneration of the Chairman of the Northern Ireland Medical and Dental Training Agency Regulations (Northern Ireland) 2016

S.R. 2016/366: The Making Available on the Market and Supervision of Transfers of Explosives Regulations (Northern Ireland) 2016

S.R. 2016/369: The Insolvency (Northern Ireland) Order 1989 (Amendment) Order (Northern Ireland) 2016

S.R. 2016/370: The Derriaghy Road, Lisburn (Abandonment) Order (Northern Ireland) 2016

S.R. 2016/371: The A1 Hillsborough Road (between Hillsborough Roundabout and Pantridge Link), Hillsborough (Stopping-Up) Order (Northern Ireland) 2016

S.R. 2016/372: The Route F1403 Footpath between Ashdene Park, Taghnevan and Tullygally East Road, Craigavon (Abandonment) Order (Northern Ireland) 2016

### **STATUTORY RULES SUBJECT TO DRAFT AFFIRMATIVE RESOLUTION**

Draft S.R.: The Welfare Supplementary Payment (Benefit Cap) Regulations (Northern Ireland) 2016

Draft S.R.: The Insolvency (Monetary Limits) (Amendment) Order (Northern Ireland) 2016

Draft S.R.: The Food Hygiene Rating (Fee and Fixed Penalty Amount) Order (Northern Ireland) 2016



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