



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

Tenth Report of Session 2016-2017

NIA 20/16-21

13 January 2017

Committee for Communities	<p>S.R. 2016/409: The Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/423: The Occupational Pensions (Revaluation) Order (Northern Ireland) 2016</p>
Committee for the Economy	<p>S.R. 2016/406: The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations (Northern Ireland) 2016</p> <p>S.R. 2016/427: The Mines Regulations (Northern Ireland) 2016</p>

Committee for Finance	S.R. 2016/412: The Building (Amendment) Regulations (Northern Ireland) 2016
Committee for Infrastructure	<p>S.R. 2016/420: The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016</p> <p>Draft S.R.: The Grants to Water and Sewerage Undertakers Order (Northern Ireland) 2017</p>
Committee for Justice	Draft S.R.: The Justice Act (Northern Ireland) 2015 (Single Jurisdiction) (Consequential Amendments) Order (Northern Ireland) 2017

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 Rule.

3. S.R. 2016/412

- 3.1 I draw the attention of the Committee for Finance and the Assembly to The Building (Amendment) Regulations (Northern Ireland) 2016, S.R. 2016/412, ('the Regulations') on the ground that the Regulations were 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 Regulations, which are subject to negative resolution, were made on 23 November 2016, laid on 25 November 2016, and came into operation on 28 November 2016.
- 3.2 The Department had advised me on 25 October 2016 of its concern that it would breach the 21 day rule and of its efforts to avoid such a breach. The Department has now expressed regret at the breach of the 21 day rule and has set out the background to and reasons for this breach.
- 3.3 The Department advises:

"The amending legislation, The Building (Amendment) Regulations (Northern Ireland) 2016, was necessary to respond to issued raises by the EU Commission in relation to two Directives—

- a. **Directive 2010/31/EU; The Energy Performance of Buildings Directive;** *two very minor amendments were made to Part F (Conservation of fuel and power) of the regulations in response to an Article 258 letter of infringement 2015-2126. These reflected similar amendments made by England in April to partially assuage some concerns raised in the Commission's letter and to avoid potential further action on these points.*
- b. **Directive 2014/61/EU on measures to reduce the cost of deploying high speed electronic communications networks;** *A new Part M (Physical infrastructure for high-speed communications networks) to the building regulations was introduced which implements the requirements of Article 8 of this directive. This Article seeks the provision of ductwork or other suitable "in-building physical infrastructure", when major building work is being carried out. This 'infrastructure' should support the installation of future broadband cabling into each premises within a building.*

The Department was advised by the UK Department of Culture Media and Sport (DCMS) of the receipt of a notice of Reasoned Opinion (RO) from the Commission in relation to non-implementation of Directive 2014/61/EU Article 8 requirements. DCMS intimated that the sole issue raised by the RO relates to the transposition of Article 8 in Northern Ireland and that any penalties resulting from legal action in CJEU may accrue entirely to NI in such circumstances. We understand that any such penalty could be applied from 28th November 2016, the date of response to the RO. DCMS declined our request to seek an extension to the RO. Hence the need to meet this deadline in order to mitigate against potential further action. This subsequently led to a breach of the 21-day rule.

In the run up to this, whilst awaiting clarification on England's proposals (in line with the McConnell Report), delays were encountered as a result of Assembly elections in May 2016 and new ministerial approval required prior to going to Public Consultation.

The Northern Ireland Building Regulations Committee was consulted on the proposals along with a Public Consultation from 15 August to 07 October 2016.

The coming into operation date of 28 November 2016 for the Part F amendment relating to Directive 2010/31/EU; The Energy Performance of Buildings Directive, had no impact on industry. This amendment was for clarification purposes only.

The coming into operation date of 01 January 2017 for the Part M amendment relating to Directive 2014/61/EU on measures to reduce the cost of deploying high speed electronic communications networks, was determined by the EU Directive and could not be extended.

To publicise the 'coming into effect', letters were sent to the industry in December 2016 and a meeting held with representatives of Building Control across the eleven Council Areas, who have responsibility for enforcement. Information was also placed on the DoF Building Regulations website..."

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

Angela Kelly

Examiner of Statutory Rules

13 January 2017

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. 2016/406: The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations (Northern Ireland) 2016

S.R. 2016/409: The Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2016

S.R. 2016/412: The Building (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016/420: The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016

S.R. 2016/423: The Occupational Pensions (Revaluation) Order (Northern Ireland) 2016

S.R. 2016/427: The Mines Regulations (Northern Ireland) 2016

STATUTORY RULES SUBJECT TO DRAFT AFFIRMATIVE RESOLUTION

Draft S.R.: The Grants to Water and Sewerage Undertakers Order (Northern Ireland) 2017

Draft S.R.: The Justice Act (Northern Ireland) 2015 (Single Jurisdiction) (Consequential Amendments) Order (Northern Ireland) 2017



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ISBN: 978-1-78619-283-7