

## **Legislation Committee**

**Date:** 21 March 2006  
**Time:** 9.30am  
**Venue:** National Assembly for Wales, Cardiff Bay  
**Title:** Scrutiny of Legislation in the Assembly

## **Scrutiny by the Examiner of Statutory Rules (Northern Ireland Assembly)**

**Brief Introductory Note by Gordon Nabney**  
Examiner of Statutory Rules

### **While Assembly is functioning**

The role of the Examiner of Statutory Rules, who is an officer of the Northern Ireland Assembly, is to assist the Assembly and its Committees in the technical scrutiny of subordinate legislation.

By way of brief historical background, the office of Examiner of Statutory Rules has its origins in a 1974 resolution of the former Assembly (established under the Northern Ireland Constitution Act 1973): the then Assembly (which sat between January and June 1974) preferred to leave technical scrutiny to an officer of the Assembly rather than establish a committee for that purpose. That essentially continued through the “interim period” (Northern Ireland Act 1974) of (colloquially) direct rule from July 1974 until December 1999, and appeared again in the standing orders of the Assembly established under the Northern Ireland Act 1998). The Assembly’s standing orders and practices have since been revised slightly, but the role of the Examiner of Statutory rules remains essentially the same: the Assembly’s Committee on Procedures revisited the matter when it considered legislative procedures generally in January 2002 and recommended no change in the basic structures for scrutiny of subordinate legislation<sup>1</sup>.

Standing Order 41(6), appended to this note, sets out the broad terms of reference of the Examiner.

In October 2001, the Committees delegated technical scrutiny functions under Standing Order 41 to the Examiner so that he reported direct to the Assembly and to

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<sup>1</sup> *Review of the Legislative Process in the Northern Ireland Assembly* (Report of the Committee on Procedures) 16 January 2002, paragraph 4.25:

“4.25 The Committee considered a recommendation from a Statutory Committee that consideration should be given to the establishment of a separate Committee to scrutinise all subordinate legislation as is the practice in Scotland. The Committee, in its consideration of the recommendation, noted that the current procedure, where Statutory Committees delegated technical scrutiny to the Examiner of Statutory Rules, appeared to be working effectively. Indeed, the Committee noted the view from another Committee that a separate Committee should not be created as the relevant Statutory Committee is best placed to scrutinise proposed legislation. The Committee therefore agreed that it was not necessary to establish a separate committee to consider subordinate legislation.”

the appropriate Committees on a more or less continuous basis as the need arose (generally at least a two weeks before the end of the statutory period in section 41 of the Interpretation Act (Northern Ireland) 1954 (negative resolution) or at least two weeks before the Minister moves the motion for the approval of the statutory rule (affirmative resolution or confirmatory procedures).

The Examiner performed most, if not all, of the technical scrutiny of Statutory Rules (that is, vires issues including compatibility with the Convention rights and Community law as set out in section 24 of the Northern Ireland Act 1998 (c. 47)), drafting issues, delay in laying, and so on), whereas the Committees were concerned primarily with the merits and policy: indeed under the structures arising out of the Belfast/Good Friday Agreement and Northern Ireland Act 1998, the Assembly's statutory (departmental) Committees were given role in contributing to policy development, including consideration of the policy behind proposed subordinate legislation.

### **During the suspension of the Assembly**

The Examiner carries out a broadly similar technical scrutiny role and reports from time to time to the Secretary of State for Northern Ireland (who during suspension has the overall of direction and control of Northern Ireland Departments) on subordinate legislation that is laid before the Assembly (generally, during suspension, statutory rules that are "subject to negative resolution" (Interpretation Act (Northern Ireland) 1954, section 41(6)) or statutory rules which would, were it not for the suspension of the Assembly, be subject to confirmation by resolution of the Assembly); statutory rules that are "subject to affirmative resolution" (Interpretation Act (Northern Ireland) 1954, section 41(4)), or subject to a requirement for their laying in draft for approval by the Assembly before they are made, are during suspension laid before Parliament at Westminster and are subject to annulment by a resolution of either House (Northern Ireland Act 2000, Schedule, paragraph 7).

## APPENDIX: STANDING ORDER 41(6)

Standing Order 41(6) is in the following terms—

“(6) In scrutinising an instrument the appropriate Committee [in practice the Examiner of Statutory Rules under delegations from the Committees under Standing Order 41(4)(b) — words added by the Examiner] 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 an 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.”.