



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

Sixth Report of Session 2020 – 2021\*

9 October 2020

<b>Committee for Health</b>	<b>Subject to the confirmatory resolution procedure:</b>  2020/198: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 4) Regulations (Northern Ireland) 2020
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## 1. Remit of the Examiner of Statutory Rules

- 1.1 Assembly 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 appropriate Committee may also scrutinise any statutory rule which deals with a transferred matter, within the meaning of the Northern Ireland Act 1998, which is not subject to Assembly proceedings. 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 statutory 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.”*

- 1.4 Standing Order 43(7) provides that the Examiner shall, where practicable, report on a statutory rule or draft statutory rule before any resolution or motion relating to that statutory rule or draft statutory rule is moved in the Assembly.

## **2. Assembly procedure in relation to statutory rules**

Statutory rules which are laid before the Assembly may be subject to one of the following Assembly procedures. The procedure to which any statutory rule is subject will be set out in the parent legislation.

### **Rules Subject to Negative Resolution**

A statutory rule that is subject to the negative resolution procedure is made by the rule making body, often a Department, and laid before the Assembly. It is law when its 'comes into force' date is reached.

It can be annulled by resolution of the Assembly within the 'statutory period'.<sup>1</sup> It is then void from the date of that annulment.

The statutory period is set out in the Interpretation Act (Northern Ireland) 1954. It is 30 calendar days or ten days on which the Assembly has sat after the date on which the statutory rule was laid before the Assembly, whichever is the longer.<sup>2</sup>

### **Rules Subject to Confirmatory Resolution**

A statutory rule which is subject to confirmatory procedure is made by the rule making body, often a Department, and laid before the Assembly.

It ceases to have effect within a specified period provided for in the parent legislation unless approved by a resolution of the Assembly within that time.

### **Rules Subject to Affirmative Resolution**

A statutory rule which is subject to the affirmative resolution procedure is made by the rule making body, often a Department, and laid before the Assembly.

It shall not come into operation unless and until affirmed by a resolution the Assembly.

### **Rules Subject to Draft Affirmative Resolution**

A statutory rule which is subject to the draft affirmative procedure is laid in draft before the Assembly by the rule making body, often a Department. It may not be made unless and until affirmed by a resolution the Assembly.

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<sup>1</sup> Section 41(6) [Interpretation Act \(Northern Ireland\) 1954](#)

<sup>2</sup> Section 41(2) [Interpretation Act \(Northern Ireland\) 1954](#)

### **3. Statutory rules to which attention is drawn in this report**

#### **3.1 2020/198: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 4) Regulations (Northern Ireland) 2020**

The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 4) Regulations (Northern Ireland) 2020 (S.R 2020/198) are brought to the attention of the Assembly in relation to a lack of clarity in their drafting as set out below.

The Regulations amend the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 (S.R 2020/150) by inserting a new Schedule 2 which provides for restrictions in the emergency period and protected area as defined.

Paragraph 2(1)(b) of the inserted Schedule 2, as set out in regulation 2 of S.R. 2020/198, provides that during the emergency period, subject to exceptions set out in subparagraph 2(2) of the Schedule, *“no person may participate in a gathering outdoors at a private dwelling in the protected area which consists of more than six persons or which consists of persons from more than two households”*.

It is noted that paragraph 2(1)(b) of Schedule 2 was subsequently amended by the Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 5) Regulations (Northern Ireland) 2020 (S.R. 2020/202) to insert, after *“six persons”*, *“(not including children aged 12 or under)”*.

The provision may be interpreted as prohibiting the members of a single household, comprised of more than six persons, from gathering together outdoors at a private dwelling. The Department has confirmed that this does not reflect the legislative intent and that it will make an amendment to this provision at the earliest opportunity.

Angela Kelly

Examiner of Statutory Rules

9 October 2020

## **Appendix:**

### **STATUTORY RULE SUBJECT TO NORTHERN IRELAND ASSEMBLY PROCEDURE**

#### **Subject to the confirmatory resolution procedure:**

2020/198: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 4) Regulations (Northern Ireland) 2020

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\* The numbering of this Report has been amended to align with the Northern Ireland Assembly's parliamentary calendar.



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