



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

Tenth Report of Session 2020 – 2021\*

11 November 2020

<p><b>Committee for Agriculture, Environment and Rural Affairs</b></p>	<p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2020/219: The Ornamental Horticulture Industry (Coronavirus, Financial Assistance) Scheme Regulations (Northern Ireland) 2020</p>
<p><b>Committee for Health</b></p>	<p><b>Subject to the confirmatory resolution procedure:</b></p> <p>S.R. 2020/232: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 11) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/233: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment No. 3) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/239: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 12) Regulations (Northern Ireland) 2020</p> <p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2020/228: The Health Protection (Coronavirus, International Travel) (Amendment No. 16) Regulations (Northern Ireland) 2020</p>

## 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 Breach of the 21 day rule**

The 21 day rule is the established rule of parliamentary practice whereby a Department or other rule-making body should, in the case of a statutory rule that is subject to negative resolution, allow a minimum of 21 days between the laying of the statutory rule and its coming into operation.

The 21 day rule acts to protect those who may be affected by changes in the law from being subject to those changes before they have had a reasonable opportunity to understand the effect of the changes and what they must do to satisfy any requirements.

Accordingly, a statutory rule should be laid at least 21 calendar days before it is due to come into force (including the date of laying) and only be brought into force on the twenty-second day at the very earliest.

The 21 day rule also operates to ensure that the Assembly may carry out scrutiny of a statutory rule before it comes into force. A Department or other rule-making body should not breach the 21 day rule unless there exists a compelling need for urgency which it should set out fully at the time of laying of the statutory rule in question.

Only in the most exceptional circumstances should a statutory rule that is subject to negative resolution be laid after it has come into operation and, where it is so laid, a full explanation of the circumstances giving rise to that should be given.

I draw the attention of the Assembly to the following statutory rules on the ground that, in each case, the Rule was laid in breach of the 21 day rule.

#### **S.R. 2020/219: The Ornamental Horticulture Industry (Coronavirus, Financial Assistance) Scheme Regulations (Northern Ireland) 2020**

The Regulations were made on 13 October 2020, laid on 14 October 2020, and came into operation on 14 October 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule and has apologised and explained the reason for the breach.

The Department advises that the Department considered the breach necessary given the urgent need to provide financial assistance as soon as possible. I am content that the Department has, on this occasion, provided a satisfactory reason for the breach, which has occurred in the context of the Department's urgent response to the coronavirus pandemic.

**S.R. 2020/228: The Health Protection (Coronavirus, International Travel) (Amendment No. 16) Regulations (Northern Ireland) 2020**

The Regulations were made on 23 October 2020, laid on 23 October 2020, and came into operation on 25 October 2020.

In the Explanatory Memorandum to the Regulations, the Department has acknowledged that the Regulations were laid in breach of the 21 day rule and has explained the reason for the breach.

The Department advises that it considers that the breach was necessary in order to introduce the requirement at the same time as the other UK regions so as to have consistency of approach. I am content that the Department has, on this occasion, provided a satisfactory reason for the breach which occurred in the context of the Department's urgent response to the coronavirus pandemic.

Angela Kelly

Examiner of Statutory Rules

11 November 2020

## **Appendix:**

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

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

S.R. 2020/232: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 11) Regulations (Northern Ireland) 2020

S.R. 2020/233: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment No. 3) Regulations (Northern Ireland) 2020

S.R. 2020/239: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 12) 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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