



Northern Ireland
Assembly

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

Tenth Report of Session 2021 - 2022

25 January 2022

Committee for Health	Subject to the confirmatory resolution procedure: S.R. 2021/348: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) (No.8) Regulations (Northern Ireland) 2021 S.R. 2022/11: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) Regulations (Northern Ireland) 2022
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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 has effect when its 'comes into force' date is reached.

It can be annulled by resolution of the Assembly within the 'statutory period'.¹ 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.²

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.

¹ Section 41(6) [Interpretation Act \(Northern Ireland\) 1954](#)

² Section 41(2) [Interpretation Act \(Northern Ireland\) 1954](#)

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

3.1 S.R. 2021/348: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) (No.8) Regulations (Northern Ireland) 2021

The special attention of the Assembly is drawn to S.R. 2021/348, The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) (No.8) Regulations (Northern Ireland) 2021 (“S.R. 2021/348”) in relation to their amendment of S.R. 2020/151, The Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020 (“the principal Regulations”).

Regulation 5(d) of the principal Regulations makes provision in relation to reasonable excuse for non-compliance with regulations 4(1), 4A(1), 4B(1) or 4C of the principal Regulations relating to the wearing of face coverings.

Regulation 6 of S.R. 2021/348 substituted regulation 5(d) of the principal Regulations to provide that a reasonable excuse included:

“where the person cannot put on, wear or remove a face covering by reason of any disability (within the meaning of the Disability Discrimination Act 1995), in which case the person must provide, on request from a relevant person or a person acting in the course of their employment, proof of exemption on medical grounds”.

It is noted that the requirement to provide *“proof of exemption on medical grounds”* did not apply in relation to those other grounds set out in regulation 5 of the principal Regulations, which include, at regulation 5(c), the *“reasonable excuse”* of *“the need to avoid injury, illness or to escape a risk of harm”*.

The particular requirement for proof of exemption on medical grounds, only where the reasonable excuse is grounded in the individual’s disability, gave rise to concern that this provision could be considered to discriminate on the basis of disability. This issue was raised with the Department.

The Department has now replaced the amendment made to regulation 5(d) of the principal Regulations by S.R. 2021/348, with a further amendment made by S.R. 2022/11.

S.R. 2022/11, made and laid before the Assembly on 21 January 2022, further amends the principal Regulations. Regulation 3 of S.R. 2022/11 substitutes regulation 5(d) in the principal Regulations to now provide that a reasonable excuse includes:

“(d)where the person cannot put on, wear or remove a face covering—

(i)because of any disability (within the meaning of the Disability Discrimination Act 1995; or

(ii)without severe distress”.

Accordingly, the requirement for proof of exemption on medical grounds discussed above has now been removed from the principal Regulations.

Angela Kelly

Examiner of Statutory Rules

25 January 2022

Appendix:

STATUTORY RULES SUBJECT TO NORTHERN IRELAND ASSEMBLY PROCEDURE

Subject to the confirmatory resolution procedure:

S.R. 2021/348: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) (No.8) Regulations (Northern Ireland) 2021

S.R. 2022/11: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) Regulations (Northern Ireland) 2022



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