



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

Second Report of Session 2020 – 2021*

11 September 2020

<p>Committee for Agriculture, Environment and Rural Affairs</p>	<p>Subject to the negative resolution procedure:</p> <p>S.R. 2020/94: The Direct Payments to Farmers (Penalty Simplification) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/152: The Edible Crabs (Conservation) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/153: The Edible Crabs (Undersized) Order (Northern Ireland) 2020</p>
<p>Committee for Communities</p>	<p>Subject to the confirmatory resolution procedure:</p> <p>S.R. 2020/162: The Pension Protection Fund (Moratorium and Arrangements for Companies in Financial Difficulty) Regulations (Northern Ireland) 2020</p>
<p>Committee for the Economy</p>	<p>Subject to the affirmative resolution procedure:</p> <p>S.R. 2020/117: The Northern Ireland Screen Commission (Funding) Order (Northern Ireland) 2020</p>

<p>Committee for Health</p>	<p>Subject to the negative resolution procedure:</p> <p>S.R. 2020/142: The Mental Health (1986 Order) (Amendment No. 2) Order (Northern Ireland) 2020</p> <p>S.R. 2020/154: The Health Protection (Coronavirus, International Travel) (Amendment No. 3) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/155: The Health Protection (Coronavirus, International Travel) (Amendment No. 4) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/163: The Health Protection (Coronavirus, International Travel) (Amendment No. 5) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/168: The Health Protection (Coronavirus, International Travel) (Amendment No. 6) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/179: The Health Protection (Coronavirus, International Travel and Public Health Advice for Persons Travelling to Northern Ireland) (Amendment) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/185: The Health Protection (Coronavirus, International Travel) (Amendment No. 7) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/189: The Health Protection (Coronavirus, International Travel) (Amendment No. 8) Regulations (Northern Ireland) 2020</p> <p>Subject to the confirmatory resolution procedure:</p> <p>S.R. 2020/164: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) Regulations (Northern Ireland) 2020</p> <p>S.R. 2020/170: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment) Regulations (Northern Ireland) 2020</p>
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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'.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 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. 2020/154: The Health Protection (Coronavirus, International Travel) (Amendment No. 3) Regulations (Northern Ireland) 2020

The Regulations were made on 25 July 2020, laid on 27 July 2020, and came into operation on 26 July 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

S.R. 2020/155: The Health Protection (Coronavirus, International Travel) (Amendment No. 4) Regulations (Northern Ireland) 2020

The Regulations were made on 27 July 2020, laid on 27 July 2020, and came into operation on 28 July 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

S.R. 2020/163: The Health Protection (Coronavirus, International Travel) (Amendment No. 5) Regulations (Northern Ireland) 2020

The Regulations were made on 30 July 2020, laid on 30 July 2020, and came into operation on 31 July 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

S.R. 2020/168: The Health Protection (Coronavirus, International Travel) (Amendment No. 6) Regulations (Northern Ireland) 2020

The Regulations were made on 7 August 2020, laid on 7 August 2020, and came into operation on 8 August 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

S.R. 2020/179: The Health Protection (Coronavirus, International Travel and Public Health Advice for Persons Travelling to Northern Ireland) (Amendment) Regulations (Northern Ireland) 2020

The Regulations were made on 14 August 2020, laid on 14 August 2020, and came into operation on 15 August 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

S.R. 2020/185: The Health Protection (Coronavirus, International Travel) (Amendment No. 7) Regulations (Northern Ireland) 2020

The Regulations were made on 21 August 2020, laid on 21 August 2020, and came into operation on 22 August 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

S.R. 2020/189: The Health Protection (Coronavirus, International Travel) (Amendment No. 8) Regulations (Northern Ireland) 2020

The Regulations were made on 28 August 2020, laid on 28 August 2020, and came into operation on 29 August 2020.

The Department has acknowledged, in the Explanatory Memorandum to the Regulations, that the Regulations were laid in breach of the 21 day rule. The Department has explained that it considered the breach necessary to introduce the requirements contained within the Regulations at the same time as the other UK regions in order to have consistency of approach. I am content that the Department has provided a satisfactory reason for the breach on this occasion.

4. Drafting error

S.R. 2020/152: The Edible Crabs (Conservation) Regulations (Northern Ireland) 2020

Attention is drawn to S.R. 2020/152, The Edible Crabs (Conservation) Regulations (Northern Ireland) 2020, in relation to an error in drafting, that is, the placement of a definition in a footnote instead of in the body of the Regulations.

The Edible Crabs (Conservation) Regulations (Northern Ireland) 2020 make provision in relation to the conservation of edible crabs and places restrictions on the removal and retention of undersized and berried crabs. An exemption is made in relation to 'foreign' boats or any person operating under the authority of, and in accordance with a permit granted under section 14 of the Fisheries Act (Northern Ireland) 1966. Regulation 2 defines '*foreign fishing boat*' and part of that definition is that the boat *is 'not British owned'*.

'*British owned*' is not defined in the body of the Regulations but rather in a footnote to the Regulations by reference to section 22(1) of the Sea Fish (Conservation) Act 1967.

This is an error in drafting as the definition should appear in the body of the Regulations.

The term is not defined in the empowering legislation (the Fisheries Act (Northern Ireland) 1966) and so section 33 of the Interpretation Act (Northern Ireland) 1954 does not apply.

The view of the Department was sought as to the placement of the definition and rectification of the error and the Department confirms that the definition would be better placed in the body of the Regulation.

The Department further advises that the definition relates to the exemption provided in regulation 5 for foreign fishing boats. It is the intention of the Department that this exemption, along with similar exemptions in existing Northern Ireland inshore fishery conservation regulations, will be revoked from the end of the Transition Period ensuring that all fish conservation measures can be enforced against any foreign vessel that has been granted access to the Northern Ireland zone.

The Department advises that the UK Fisheries Bill will remove this foreign fishing boat exemption and the definition of foreign fishing boat and consequently the need to define 'British owned'.

The Department advises that it does not consider that the error in drafting will give rise to any operational uncertainty in the interim. It advises that the intention of the Regulations is to ensure that UK boats operating in the Northern Ireland zone do not land undersized or berried crabs. The Department advises that the exemption indicates to the Sea Fisheries Inspectorate that enforcement of the legislation is not required for foreign vessels and that, in practice, there is no uncertainty in relation to enforcement because fishing vessels are clearly identified by registration number and a Port Letter and Numbers system.

Angela Kelly

Examiner of Statutory Rules

11 September 2020

Appendix:

STATUTORY RULE SUBJECT TO NORTHERN IRELAND ASSEMBLY PROCEDURE

Subject to the negative resolution procedure:

S.R. 2020/94: The Direct Payments to Farmers (Penalty Simplification) Regulations (Northern Ireland) 2020

S.R. 2020/152: The Edible Crabs (Conservation) Regulations (Northern Ireland) 2020

S.R. 2020/153: The Edible Crabs (Undersized) Order (Northern Ireland) 2020

S.R. 2020/142: The Mental Health (1986 Order) (Amendment No. 2) Order (Northern Ireland) 2020

S.R. 2020/154: The Health Protection (Coronavirus, International Travel) (Amendment No. 3) Regulations (Northern Ireland) 2020

S.R. 2020/155: The Health Protection (Coronavirus, International Travel) (Amendment No. 4) Regulations (Northern Ireland) 2020

S.R. 2020/163: The Health Protection (Coronavirus, International Travel) (Amendment No. 5) Regulations (Northern Ireland) 2020

S.R. 2020/168: The Health Protection (Coronavirus, International Travel) (Amendment No. 6) Regulations (Northern Ireland) 2020

S.R. 2020/179: The Health Protection (Coronavirus, International Travel and Public Health Advice for Persons Travelling to Northern Ireland) (Amendment) Regulations (Northern Ireland) 2020

S.R. 2020/185: The Health Protection (Coronavirus, International Travel) (Amendment No. 7) Regulations (Northern Ireland) 2020

S.R. 2020/189: The Health Protection (Coronavirus, International Travel) (Amendment No. 8) Regulations (Northern Ireland) 2020

Subject to the confirmatory resolution procedure:

S.R. 2020/162: The Pension Protection Fund (Moratorium and Arrangements for Companies in Financial Difficulty) Regulations (Northern Ireland) 2020

S.R. 2020/164: The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) Regulations (Northern Ireland) 2020

S.R. 2020/170: The Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment) Regulations (Northern Ireland) 2020

Subject to the affirmative resolution procedure:

S.R. 2020/117: The Northern Ireland Screen Commission (Funding) Order (Northern Ireland) 2020

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



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For more information please contact:

Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 521137
Textphone: 028 90 521209

E-mail: info@niassembly.gov.uk

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