



**Report of the Examiner of Statutory Rules
to the Assembly and the Appropriate Committees
Fifty-fifth Report
4 February 2026**

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1. Statutory Rules before Committees

1.1 Committee for Agriculture, Environment and Rural Affairs

Subject to the negative resolution procedure

S.R. 2026/1: The Shellfish Gathering (Conservation) Regulations (Northern Ireland) 2026

2. Remit of the Examiner of Statutory Rules

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 Assembly website.

To assist Committees of the Assembly in this scrutiny under Standing Order 43, the Examiner of Statutory Rules (the Examiner) shall carry out those technical scrutiny functions delegated to the Examiner by the relevant Committee. The terms of reference of the Examiner, under delegation, are 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.”

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.

3. Assembly procedures in relation to Statutory Rules

The procedure to which any statutory rule is subject will be set out in its parent legislation. These may include the following Assembly procedures.

The Negative Resolution Procedure

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

The Confirmatory Resolution Procedure

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.

The Affirmative Resolution Procedure

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 of the Assembly.

The Draft Affirmative Resolution Procedure

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 of the Assembly.

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

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

4. Statutory Rules drawn to the special attention of the Assembly

4.1 S.R. 2026/1: The Shellfish Gathering (Conservation) Regulations (Northern Ireland) 2026

I draw the attention of the Committee for Agriculture, Environment and Rural Affairs (the Committee) and the Assembly to S.R. 2026/1, the Shellfish Gathering (Conservation) Regulations (Northern Ireland) 2026 (the Regulations), in relation to Standing Order 43(6)(f).

The Regulations are subject to the negative resolution procedure and are to come into effect on 6 February 2026.

Standing Order 43(6)(f) provides that, in scrutinising an instrument, the appropriate Committee, or the Examiner having been so delegated, shall 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 the ground that there appears to be a doubt as to whether it is *intra vires*.

Consideration of an instrument under Standing Order 43(6)(f) requires consideration of the application of section 24 of the Northern Ireland Act 1998 (the 1998 Act). Section 24 of the 1998 Act provides that a Minister or Northern Ireland Department has no power to make, confirm or approve any subordinate legislation in so far as the legislation is incompatible with any of the rights secured under the European Convention on Human Rights (the Convention).

Accordingly, the attention of the Committee and the Assembly is drawn to the Regulations in relation to those rights secured under Article 1, Protocol 1 to the Convention. Article 1 of Protocol 1 to the Convention states:

“Every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

It is noted that the rights secured by Article 1, Protocol 1 are not absolute and that the state may interfere with these rights in so far as that interference is proportionate to the legitimate public interest objective.

It is noted that 'possessions' within the meaning of Article 1, Protocol 1 to the Convention can be either existing possessions or assets or claims in respect of which there is a 'legitimate expectation' that they will be realised. This may include situations where there exists a legitimate expectation that a certain state of affairs will apply or a reasonably justified reliance on a legal act which had a sound legal basis and which bore on property rights.

The Committee and the Assembly may consider whether and how the Regulations may interfere with any such rights which may be established. That is, whether any person will be deprived of their 'possessions', whether any interference is according to law, whether there is a justification in the public interest for any such interference, and whether the Regulations maintain a reasonable relationship of proportionality, a fair balance, between the means employed and the aim sought to be realised. The individual must not be required to bear an individual and excessive burden. Further, consideration may also be given to the opportunities for preparedness afforded to persons affected.

It is noted that the Department has advised that it intends to revoke the Regulations at its earliest opportunity.

Angela Kelly

Examiner of Statutory Rules

4 February 2026

Appendix - Reported Statutory Rules by Procedure

Subject to the negative resolution procedure

S.R. 2026/1: The Shellfish Gathering (Conservation) Regulations (Northern Ireland) 2026



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