



Northern Ireland
Assembly

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

Twenty-third Report
4 October 2024

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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. 2024/171: The Hops Certification (Amendment) Regulations (Northern Ireland) 2024

1.2 Committee for Communities

Subject to the negative resolution procedure

S.R. 2024/159: The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2024

S.R. 2024/160: The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2024

S.R. 2024/163: The Social Security (Genuine and Sufficient Link to the United Kingdom) (Amendment) Regulations (Northern Ireland) 2024

1.3 Committee for the Economy

Subject to the negative resolution procedure

S.R. 2024/146: The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2024

S.R. 2024/161: The Personal Protective Equipment at Work (Amendment) Regulations (Northern Ireland) 2024

1.4 Committee for the Executive Office

Subject to the draft affirmative resolution procedure

Draft SR: The Period Products (the Executive Office Specified Public Service Bodies) Regulations (Northern Ireland) 2024

1.5 Committee for Finance

Subject to the confirmatory resolution procedure

S.R. 2024/172: The Coronavirus Act 2020 (Registration of Deaths and Still-Births) (Extension) (No.3) Order (Northern Ireland) 2024

1.6 Committee for Health

Subject to the negative resolution procedure

S.R. 2024/162: The Recovery of Health Services Charges (Amounts) (Amendment No. 2) Regulations (Northern Ireland) 2024

1.7 Committee for Infrastructure

Subject to the negative resolution procedure

S.R. 2024/165: The Armagh Road, Moy (Abandonment) Order (Northern Ireland) 2024

S.R. 2024/166: The Moyraverty Centre, Craigavon (Abandonment) Order (Northern Ireland) 2024

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 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 in order 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.

The purpose of the rule is to ensure transparency and accessibility. Breach of the 21 day rule by Departments and other rule making bodies undermines the transparency and accessibility of the law.

Breach of the 21 day rule by Departments and other rule making bodies negatively impacts the opportunity for effective scrutiny by the Assembly.

Departments and other rule making bodies should expect to meet the 21 day limit as a minimum. Where the 21 day rule is breached, a full explanation should be provided. This full explanation for breach of this important convention should, where possible, be given in the Explanatory Memorandum to the statutory rule.

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, if possible, in the Explanatory memorandum to the statutory rule.

I draw the attention of the Assembly to each of the following statutory rules on the ground that the Rules were laid in breach of the 21 day rule.

S.R. 2024/159: The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2024

The Regulations were made on 28 August 2024, were laid on 28 August 2024, and came into force on 31 August 2024.

The Department acknowledged in the Explanatory Memorandum to the Regulations that the Regulations were laid in breach of the 21 day rule providing its explanation for the breach.

The 21-day rule acts to ensure that those affected by changes in the law may have an opportunity to understand those changes and to act, if necessary to mitigate its impacts.

The purpose of the Regulations is to amend the Local Government Pension Scheme (Northern Ireland) to remove the requirement to include details of the McCloud Remedy in Annual Benefit Statements for 2023/24 and potentially 2024/25. The Department has advised that such details remain available on request; it is noted that the Explanatory Memorandum to the Regulations details the consultation undertaken. I am content that the Department has provided a satisfactory explanation for the breach on this occasion.

S.R. 2024/160: The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2024

The Regulations were made on 9 September 2024, were laid on 9 September 2024, and came into force on 16 September 2024.

The Department acknowledged in the Explanatory Memorandum to the Regulations that the Regulations were laid in breach of the 21 day rule providing its explanation for the breach. The Department states that it would be unable to honour the 21-day rule in order to maintain parity of timing with Great Britain.

Further, the Department has in correspondence advised that it regrets the breach. The Department states:

“Given the nature of the Regulations and the impact they will have on a large number of pensioners in Northern Ireland it would have been ideal to provide the Northern Ireland Assembly with ample opportunity to scrutinise the Regulations under the 21-day rule. Regrettably, the department found itself under significant pressure to ensure that the Regulations would be operative by 16 September. In doing so, the department felt compelled to breach the 21-day rule.”

The Department advises that as the announcement of the change to the winter fuel payment, and the subsequent decision to maintain parity, was close to the rollout of winter fuel payments for winter 2024/25, the Department was unable to honour the 21-day rule. The Department further advises that the Regulations were required to be operative by 16 September 2024 in line with Department of Work and Pension regulations and associated I.T. requirements in processing claims, so as to ensure that payments could be successfully made on time to eligible claimants in Northern Ireland.

The 21-day rule acts to ensure that those affected by changes in the law may have an opportunity to understand those changes and to act, if necessary, to mitigate its impacts. The Department in correspondence has set out those steps taken by the Department to mitigate the impact of the breach of the 21 day rule, citing in particular targeted advertising campaigns to publicise qualifying benefits and support access to those benefits.

Notwithstanding the above, it is important to note the reason for, and importance of, adherence to the 21 day rule. The 21 day rule protects those affected by changes in the law made by subordinate legislation from being subject to the effect of the changes before they have had a reasonable opportunity to understand the effects and what they must do to satisfy any requirements.

The 21 day rule also provides time for consideration by the individual, by Members, and by the Assembly. It should be breached only in exceptional cases. I am not content that the breach of the 21 day rule was appropriate in this case.

S.R. 2024/162: The Recovery of Health Services Charges (Amounts) (Amendment No. 2) Regulations (Northern Ireland) 2024

The Regulations were made on 12 September 2024, were laid on 13 September 2024, and came into force on 1 October 2024.

The purpose of the rule is to increase the charges recovered from persons who pay compensation in cases where an injured person receives health services, hospital treatment, or ambulance services from 1 October 2024.

The Department, in correspondence of 28 August 2024, advised the Examiner that the relevant tariff rates were received by the Department in mid-August and of the likelihood of breach of the 21 day rule, providing a draft of the Regulations. I am content that the Department has provided a satisfactory explanation for the breach on this occasion. It is noted that the Department has not included its explanation for the breach in the Explanatory Memorandum to the Regulations as is best practice.

4.2 Drafting matter

S.R. 2024/160: The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2024

The special attention of the Assembly is drawn to S.R. 2024/160, The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2024 (the Regulations), in relation to an error in its drafting.

The Department has noted a drafting error in Regulation 5(2) of the Regulations, advising that this will be amended by further regulations. This is the omission of a reference to the *‘Social Security Commissioners.’*

I am content with the Department’s proposed approach to correcting this error.

Angela Kelly

Examiner of Statutory Rules

4 October 2024

Appendix - Reported Statutory Rules by Procedure

Subject to the draft affirmative resolution procedure

Draft S.R.: The Period Products (the Executive Office Specified Public Service Bodies) Regulations (Northern Ireland) 2024

Subject to the confirmatory resolution procedure

S.R. 2024/172: The Coronavirus Act 2020 (Registration of Deaths and Still-Births) (Extension) (No.3) Order (Northern Ireland) 2024

Subject to the negative resolution procedure

S.R. 2024/146: The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2024

S.R. 2024/159: The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2024

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S.R. 2024/171: The Hops Certification (Amendment) Regulations (Northern Ireland) 2024



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