



Northern Ireland
Assembly

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

Fifth Report of Session 2019 - 2020

25 March 2020

<p>Committee for Communities</p>	<p>Subject to the negative resolution procedure:</p> <p>S.R. 2020/27: The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2020</p> <p>S.R. 2020/28: The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order (Northern Ireland) 2020</p> <p>S.R. 2020/30: The Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations (Northern Ireland) 2020</p> <p>Subject to the draft affirmative procedure:</p> <p>Draft S.R.: The Discretionary Support (Amendment) (COVID-19) Regulations (NI) 2020</p>
<p>Committee for Finance</p>	<p>Subject to the negative resolution procedure:</p> <p>S.R. 2020/29: The Public Service Pensions Revaluation Order (Northern Ireland) 2020</p> <p>S.R. 2020/43: Whole of Government Accounts (Designation of Bodies) Order (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 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.

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 Draft S.R.: The Discretionary Support (Amendment) (COVID-19) Regulations (NI) 2020

The draft Discretionary Support (Amendment) (COVID-19) Regulations (NI) 2020 are brought to the attention of the Assembly in relation to a drafting infelicity.

These Regulations amend the Discretionary Support Regulations (Northern Ireland) 2016 (the 2016 Regulations) which provide for discretionary loans or grants to be awarded to claimants who meet certain defined criteria.

The Regulations make provision for discretionary grants to be available to claimants who are impacted by COVID-19.

The Department has confirmed that the amendment to the 2016 Regulations is intended to provide that the relevant criteria is satisfied, for an individual claimant, if any member of his or her immediate family, as defined in the 2016 Regulations, is diagnosed with COVID-19 or is advised to self-isolate.

The Department recognises that the drafting of regulation 2, inserting a new regulation 12(2)(e) in the 2016 Regulations, would better reflect the legislative intent if the language was more precise. The wording of the amendment in regulation 2 of the draft regulations may be clarified with the addition of words such as *'a member of'* before *'their immediate family'*.

I have advised the Department that I am content that a correction slip may be used to make the appropriate addition on this occasion. The addition, although minor, will add to the clarity of the provision.

Angela Kelly
Examiner of Statutory Rules
25 March 2020

Appendix:

STATUTORY RULES SUBJECT TO NORTHERN IRELAND ASSEMBLY PROCEDURE

Subject to the negative resolution procedure:

S.R. 2020/27: The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2020

S.R. 2020/28: The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order (Northern Ireland) 2020

S.R. 2020/29: The Public Service Pensions Revaluation Order (Northern Ireland) 2020
S.R. 2020/30: The Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations (Northern Ireland) 2020

S.R. 2020/43: Whole of Government Accounts (Designation of Bodies) Order (Northern Ireland) 2020

Subject to the draft affirmative procedure:

Draft S.R.: The Discretionary Support (Amendment) (COVID-19) Regulations (NI) 2020



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