



Northern Ireland  
Assembly

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

Twenty-first Report of Session 2021 - 2022

18 March 2022

**NIA 206/17-22**

<p><b>Committee for Communities</b></p>	<p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2022/98: The Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations (Northern Ireland) 2022</p> <p>S.R. 2022/99: The Registration of Clubs (Accounts) Regulations (Northern Ireland) 2022</p> <p>S.R. 2022/111: The Guaranteed Minimum Pensions Increase Order (Northern Ireland) 2022</p>
<p><b>Committee for the Economy</b></p>	<p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2022/75: The Education (Student Support, etc.) (Amendment) Regulations (Northern Ireland) 2022</p> <p>S.R. 2022/101: The Employer's Liability (Compulsory Insurance) (Amendment) Regulations (Northern Ireland) 2022</p>
<p><b>Committee for Finance</b></p>	<p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2022/67: The Public Service (Civil Servants and Others) Pensions (Amendment) Regulations (Northern Ireland) 2022</p> <p>S.R. 2022/90: The Rate Relief (Lone Pensioner Allowance) (Amendment) Regulations (Northern Ireland) 2022</p> <p>S.R. 2022/92: The Rate Relief (Qualifying Age) (Amendment) Regulations (Northern Ireland) 2022</p> <p>S.R. 2022/105: The Superannuation (Victims of Crime Commissioner Designate) Order (Northern Ireland) 2022</p>
<p><b>Committee for Health</b></p>	<p><b>Subject to the confirmatory resolution procedure:</b></p> <p>S.R. 2022/108: The Coronavirus Act 2020 (Extension of Provisions Relating to Local Authority Meetings) Order (Northern Ireland) 2022</p> <p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2022/100: The Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2022</p>

<b>Committee for Infrastructure</b>	<p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2022/113: The A6 Castledawson By-Pass (Abandonment and Stopping-Up) Order (Northern Ireland) 2022</p>
<b>Committee for Justice</b>	<p><b>Subject to the negative resolution procedure:</b></p> <p>S.R. 2022/74: The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2022</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 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'.<sup>1</sup> 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.<sup>2</sup>

### **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.

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

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<sup>1</sup> Section 41(6) [Interpretation Act \(Northern Ireland\) 1954](#)

<sup>2</sup> Section 41(2) [Interpretation Act \(Northern Ireland\) 1954](#)

### 3.1 Drafting

#### **S.R. 2022/74: The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2022**

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2022 (the 2022 Order) is drawn to the special attention of the Assembly in relation to its drafting.

The 2022 Order makes amendments to the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 (the 2016 Order). These amendments are to correct minor drafting errors relating to the modification of the Police and Criminal Evidence (Northern Ireland) Order 1989 (the 1989 Order).

The 2022 Order also contains a Schedule which purports to set out, for ease of reference, how certain provisions of the modified 1989 Order are to be applied. The purported re-statement of provisions of existing legislation may give rise to a risk of a lack of clarity and certainty. Further, it is noted that the Schedule has not been given effect in the 2022 Order. The Department has advised that it will amend the 2022 Order at its earliest opportunity to remove the Schedule. I am satisfied with the Department's assurances and approach in this instance.

#### **S.R. 2022/75: The Education (Student Support, etc.) (Amendment) Regulations (Northern Ireland) 2022**

The Education (Student Support, etc.) (Amendment) Regulations (Northern Ireland) 2022 (the Regulations) are drawn to the special attention of the Assembly in relation to their drafting.

Reference is made in the Regulations to the '*EU withdrawal agreement*' which is not defined. The Department has confirmed that, at its earliest opportunity, it will make the appropriate amendment to provide for the interpretation of this term. I am satisfied with the Department's assurances and approach in this instance.

Angela Kelly

Examiner of Statutory Rules

18 March 2022

## **Appendix:**

### **STATUTORY RULES SUBJECT TO NORTHERN IRELAND ASSEMBLY PROCEDURE**

#### **Subject to the confirmatory resolution procedure:**

S.R. 2022/108: The Coronavirus Act 2020 (Extension of Provisions Relating to Local Authority Meetings) Order (Northern Ireland) 2022

#### **Subject to the negative resolution procedure:**

S.R. 2022/67: The Public Service (Civil Servants and Others) Pensions (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/74: The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2022

S.R. 2022/75: The Education (Student Support, etc.) (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/90: The Rate Relief (Lone Pensioner Allowance) (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/92: The Rate Relief (Qualifying Age) (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/98: The Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/99: The Registration of Clubs (Accounts) Regulations (Northern Ireland) 2022

S.R. 2022/100: The Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/101: The Employer's Liability (Compulsory Insurance) (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022/105: The Superannuation (Victims of Crime Commissioner Designate) Order (Northern Ireland) 2022

S.R. 2022/111: The Guaranteed Minimum Pensions Increase Order (Northern Ireland) 2022

S.R. 2022/113: The A6 Castledawson By-Pass (Abandonment and Stopping-Up) Order (Northern Ireland) 2022



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