



Northern Ireland  
Assembly

# **Independent Commission on UK Public Health Emergency Powers Call for Evidence**

## **Response by the Northern Ireland Assembly**

### **Introduction**

The COVID-19 pandemic presented unprecedented challenges to individuals and communities, and to governments, lawmakers and legislatures.

The Northern Ireland Assembly (the Assembly) carried out legislative scrutiny of some 300 pieces of legislation related to the pandemic response, including both subordinate legislation (statutory rules) and Bills, in addition to acting to ensure the transparency and accountability of government in its response.

This paper outlines that legislation and sets out some of the actions taken by the Assembly to address the particular challenges of its urgency, volume, and complexity; actions undertaken to ensure robust legislative scrutiny, to improve the accessibility of the law, and to increase transparency around the pandemic response of government.

The focus of this response is on 'Topic 5: Parliamentary scrutiny process' and 'Topic 6: The adaptation of parliamentary procedures'.

### **Background**

The Assembly is the legislature for Northern Ireland. It has 90 members and three main roles, a legislative role, a scrutiny role and a representation role.

The nine Statutory Committees of the Assembly<sup>1</sup> fulfil an important scrutiny role examining the work of government Departments and its impacts. Further, these Committees carry out scrutiny of primary legislation and of statutory rules which are laid before the Assembly.<sup>2</sup>

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<sup>1</sup> Section 29 Northern Ireland Act 1998, Assembly Standing Order 48, The Standing Orders of the Assembly are published on the [Assembly website](#)

<sup>2</sup> Assembly Standing Order 43

Each Committee may delegate to the Examiner of Statutory Rules any of its functions in relation to the technical scrutiny of the statutory rules which are not related to policy.<sup>3</sup>

The devolved legislatures have power to legislate within their respective devolved fields in accordance with their respective settlements. However, the United Kingdom (UK) Parliament at Westminster retains the ability to legislate in these areas. The Coronavirus Act 2020 was such legislation.

### **The Coronavirus Act 2020 and the legislative consent motion**

The Coronavirus Act 2020 made provision in relation to Northern Ireland across a number of devolved areas, including making amendments and temporary modifications in relation to education, criminal justice, inquests, and in health and social care.

Where the UK Parliament in Westminster seeks to pass a Bill which makes provision in a devolved field it seeks the consent of the devolved legislature. It will not normally legislate with regard to devolved matters except with the agreement of that devolved legislature. A legislative consent motion is the means by which a devolved legislature indicates that it is content for the Parliament at Westminster to pass a law on a devolved matter.

The Coronavirus Bill (the Bill) was introduced to Parliament on 19 March 2020. As the Bill included provisions which extended and applied to Northern Ireland and which were within the competence of the Assembly, the legislative consent of the Assembly was sought by the UK Government.<sup>4</sup>

On 19 March 2020 the Northern Ireland Minister of Health laid a legislative consent memorandum seeking the Assembly's agreement to Parliament legislating on these matters. The legislative consent motion for debate was tabled by the Minister for Health on the same day.

Details of the motion, tabled amendments, and debate may be found on the Assembly's website [here](#).

It is usually the case that a legislative consent memorandum is referred to the relevant Assembly Committee for scrutiny in order that the Committee may Report to the Assembly and its Report inform debate.

However, it is noted that as the Bill was scheduled to have all its final stages in Parliament on 25 March 2020, it was not possible for Assembly Committee scrutiny to be carried out in this case.

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<sup>3</sup> Assembly Standing Order 43(4)

<sup>4</sup> Assembly Standing Order 42A

The debate on the legislative consent motion was held on 24 March 2020.

On 24 March 2020, following [debate](#), the Northern Ireland Assembly resolved:

*“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Coronavirus Bill dealing with emergency registration of health professionals in clauses 2 and 4 and schedules 1 and 3; emergency volunteers in clauses 7 and 8 and schedule 6; mental health and mental capacity in clause 9 and schedules 9 and 10; health service indemnification in clause 12; registration of deaths and stillbirths etc in clauses 17 and 20 and schedule 12 (Part 3); food supply in clauses 23 to 27 and schedule 14; inquests in clauses 29 and 30; schools, childcare providers, etc in clauses 35 and 36 and schedules 15 (Part 3) and 16 (Part 3); statutory sick pay in clauses 40 to 42; pensions in clause 45; protection of public health in clause 46 and schedule 17; powers relating to potentially infectious persons in clause 49 and schedule 20 (Part 5); powers relating to events, gatherings and premises in clause 50 and schedule 21 (Part 5); courts and tribunals: use of video and audio technology in clause 55 and schedule 26; powers in relation to bodies in clause 56 and schedule 27; commencement in clause 73; power to suspend and revive provisions in clause 74; expiry in clause 75; power to alter expiry date in clause 76; power to amend Act in consequence of amendments to subordinate legislation in clause 77; power to make consequential modifications in clause 78 and procedure for certain orders made by a Northern Ireland Department in clause 82 as introduced to Parliament on 19 March 2020; and those provisions made by amendment during the passage of the Bill as they extend to Northern Ireland.”*

The Coronavirus Act 2020 received Royal Assent and became law on 25 March 2020.

### **The emergency procedure under section 25Q of the Public Health Act (Northern Ireland) 1967**

The Coronavirus Act 2020 made provision in relation to Northern Ireland in a number of areas including by making temporary modifications to the Public Health Act (Northern Ireland) 1967 (the PHA).<sup>5</sup>

These modifications made to the PHA created significant law making powers for the Northern Ireland Department of Health (the Department). The modification of the PHA also provided for an emergency procedure for the exercise of these law making powers and their scrutiny by the Assembly.

### **Assembly Scrutiny Procedures**

Statutory rules which are laid before the Assembly are typically subject to one of

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<sup>5</sup> Coronavirus Act 2020, section 48, Schedule 18

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

A statutory rule subject to the negative resolution procedure is made by the rule making body 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>6</sup> It is then void from the date of that annulment.

A statutory rule subject to the confirmatory resolution procedure is made by the rule making body 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.

A statutory rule which is subject to the affirmative resolution procedure is made by the rule making body and laid before the Assembly. It shall not come into operation unless and until affirmed by a resolution the Assembly.

A statutory rule which is subject to the draft affirmative procedure is laid in draft before the Assembly by the rule making body. It may not be made, and will have no effect, unless and until affirmed by a resolution the Assembly.

### **The emergency procedure under the PHA**

Section 25Q of the modified PHA provided that certain regulations (Northern Ireland statutory rules) made under the PHA, which would otherwise be subject to a draft affirmative procedure, could be made under a confirmatory procedure.

Section 25Q of the PHA provided that regulations could be made without a draft having been laid and approved if the relevant regulations contained a declaration that the Department was of the opinion that, by reason of urgency, it was necessary to make the regulations without a draft being so laid and approved.

Such regulations were required to be laid before the Assembly when made and would cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations were approved by a resolution of the Assembly. On any day during that period, on a motion that (or to the effect that) the regulations be approved, if the Assembly was to decide to reject the regulations, they would cease to have effect at the end of that day instead.

Some 86 statutory rules were made using this emergency procedure, under a declaration of urgency by the Department.

For example, S.R. 2020/55, [the Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#) were made by the Department at 9.15 pm on

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<sup>6</sup> 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.

28 March 2020, were laid before the Assembly at 10.00 pm on 28 March 2020, and came into operation at 11.00 pm on 28 March 2020.

The Committee for Health, which would typically have an opportunity to be consulted on policy proposals and to scrutinise draft or proposed regulations before they take effect, did not have an opportunity to be briefed by the Department on these regulations until 2 April 2020. The Committee meeting may be viewed [here](#).

The Assembly did not have the opportunity to approve these regulations until the motion to approve the regulations was moved on 21 April 2020.

At this point, the significant restrictions provided for by the regulations had been in effect for over three weeks.

### **Statutory rules related to COVID-19 laid before the Assembly**

As set out below, an extremely high number of statutory rules were made by Northern Ireland government departments in response to the COVID-19 pandemic.

It is important to note that these related to a wide range of policy areas.

Further, not all of the statutory rules made in response to the pandemic, and which were subject to scrutiny by the Assembly, were made using powers granted in the Coronavirus Act 2020 or in legislation, such as the PHA, which was modified or amended by the Coronavirus Act 2020.

For example, a number of statutory rules were made under the Financial Assistance Act (Northern Ireland) 2009 including S.R. 2020/249, The Taxi Driver (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2020.

In order to increase the accessibility of the voluminous pandemic related legislation which was laid before the Assembly and to aid engagement with the Assembly's procedures, a COVID-19 legislation tracker was created on the Assembly's website.

The '*COVID-19 related Statutory Rules Tracking page*' (the tracker), which is available [here](#), details those pandemic related regulations made by Northern Ireland government departments which were subject to Assembly procedures. Statutory rules were identified for inclusion in the tracker where reference was made, in the statutory rule title or in the text of any accompanying Explanatory Memorandum, to terms such as "Health Protection", "Coronavirus Act 2020", "COVID-19" or "Coronavirus".

This tracker includes information on the laying authority, the coming into force date, and provides links to relevant debates and Committee meetings and links to the relevant Assembly debate.

The tracker incorporates Statutory Rules FAQ and other contextualising information to increase public understanding of Assembly procedures.

The Assembly Research and Information Service (RaISe) also produced articles and research publications in response to the pandemic and these were made available to the public on the Assembly website. These may be accessed [here](#).

Set out below is a summary of the COVID-19-related Statutory Rules included on the tracker on the Assembly website.

Type of Procedure	Number of SRs
<b>Emergency Procedure</b> (Regulations made by the Department of Health and laid before the Assembly under section 25Q (Emergency procedure) of the Public Health Act (Northern Ireland) 1967, for approval of the Assembly before the expiration of 28 days beginning with the day on which they are made)	86
Other confirmatory procedure	22
Draft affirmative resolution procedure	4 <sup>7</sup>
Affirmative resolution procedure	1
Negative resolution procedure	176
Not subject to procedure	3
<b>Total</b>	<b>292</b>

### The Committee for Health

The Assembly's Committee for Health (the Committee) took steps to maximise its accessibility and engagement with those impacted by the pandemic and by the pandemic response. The Committee met virtually and sought to support the virtual engagement of stakeholders. The Committee expressed particular concern about the impact of the pandemic on the most vulnerable, including the elderly and the disabled.

The Committee produced a number of Reports concerning the pandemic response. These include its report on the impact of COVID-19 in care homes, which may be accessed [here](#).

In its Legacy Report<sup>8</sup>, which may be accessed [here](#), the Committee noted:

<sup>7</sup> This includes two Statutory Rules subject to draft affirmative procedure laid in March 2022 (towards the end of the 2017-2022 Assembly Mandate) which have not yet been subject to debate in plenary.

<sup>8</sup> Health Committee, Legacy Report, Report: NIA 187/17-22

*“The emergence of Covid-19 and its impact on the health service dominated the Committee’s workload from the early days of the mandate. The Committee agreed to add COVID-19 as a standing agenda item in the early stages of the pandemic, and to give priority to COVID related issues, including COVID-related subordinate legislation. The Department’s handling of the pandemic was scrutinised by the Committee through regular briefings from the Minister, the Chief Medical Officer and Chief Scientific Adviser. The Committee heard evidence from Departmental officials, the Health and Social Care Trusts, the Public Health Agency, Business Services Organisation and the Regulation and Quality Improvement Authority (RQIA) on aspects of the pandemic. In addition, the Committee heard from a wide range of stakeholder organisations.*

*Initially, the Committee focussed on issues such as the supply of personal protective equipment (PPE), testing, track and trace arrangements, the supply of ventilators and oxygen and workforce. As the situation developed, the Committee received regular briefings on the roll out of the vaccination programme, as well as the Department’s plans to deal with surges of the virus and the rebuilding of services, post pandemic.*

*The Committee tabled a motion in the Assembly, acknowledging the impact of COVID-19, and called on the Minister to bring forward a robust find, test, trace, isolate and support (FTTIS) strategy based on international best practice, as part of a wider Executive strategy to help avoid a cycle of lockdowns and the particular negative impacts on mental health and well-being. The motion was agreed by the Assembly on 23 November 2020.*

*To inform its scrutiny of the pandemic, the Committee held a number of evidence sessions with international academic and experts in epidemiology and global public health, some of whom had experience with the SARS outbreak in Hong Kong.*

*The Committee was particularly concerned about the impact of the pandemic on the most vulnerable, including the elderly and the disabled. The Committee heard evidence from stakeholders on the impact of COVID-19 on care homes, and agreed to hold an inquiry on the matter. In addition, the Committee sought clarity from the Department on the provision of guidance to those deemed to be clinically extremely vulnerable, and continued to press the Department on the restoration of day care and respite services, which closed in the early days of the pandemic. A Committee motion calling for the rebuilding of respite services and financial support for carers was agreed by the Assembly on 15 June 2021.*

*The Committee recommends that the incoming Committee continues to scrutinise the Department’s handling of the pandemic, and any subsequent*



*virus surges, as well as the rebuilding of services post pandemic and the application of lessons learned for future planning.”*

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.

Accordingly, the Committee carried out scrutiny of a very significant number of statutory rules, with profound impacts on individuals, and at pace. In its Legacy Report<sup>9</sup> the Committee stated:

*“The Committee considered a significant volume of statutory rules during the reporting period, the majority of which brought into operation public health measures to protect against the incidence and spread of Coronavirus infection in Northern Ireland. Despite the volume and pace at which these rules were made by the Department, the Committee endeavoured to undertake its scrutiny role and requested briefing from the Department on each one of these rules. At all times the Committee challenged the Department to provide the rationale and evidence base to support both the introduction and later, the removal of what were significant restrictions on people’s lives.*

*The Committee was particularly concerned that coronavirus response regulations to make temporary modifications to the provision of children’s social care services should only remain in place for the shortest amount of time possible. After consultation with the key children’s advocacy stakeholders on this matter, the Committee sought assurances from the Department to put in place monthly monitoring arrangements on the extent to which the modifications provided by the Regulations were being applied and to share these monthly monitoring reports with the Committee. The Committee also sought reassurances that the regulations would be revoked at the earliest opportunity.*

*One of the final SRs that the Committee considered in this mandate was to agree the extension of the emergency powers within the Coronavirus Act 2020 until 24 September 2022 to ensure that measures can continue to be introduced, amended or withdrawn in response to the latest risk assessment associated with the incidence and spread of the coronavirus disease albeit for a time limited period.”*

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<sup>9</sup> Health Committee, Legacy Report, Report: NIA 187/17-22



## **The Examiner of Statutory Rules**

The Committee delegated the technical scrutiny of statutory rules to the Examiner of Statutory Rules (the Examiner).<sup>10</sup> The Examiner considered each statutory rule which was laid before the Assembly and subject to procedure with a view to determining whether it required to be drawn to the attention of the Assembly under any of those grounds set out in Assembly Standing Order 43(6). These grounds include whether there is a doubt as to whether a rule is *intra vires*.

This examination of *vires* requires consideration, as per section 24 of the Northern Ireland Act 1998, of whether the statutory rule is incompatible with any of the Convention rights.<sup>11</sup>

The Reports of the Examiner to the Assembly are publicly available and may be found on the Assembly's website [here](#).

## **Other Statutory Committees**

As may be seen via the COVID-19 related Statutory Rules Tracking [page](#), statutory rules have been made in relation to the pandemic or under pandemic related powers by Departments other than the Department for Health and in areas from criminal justice to agriculture, social security to rates. These are each subject to scrutiny by the Assembly and by the relevant statutory committee.

For example, S.R. 2022/24, The Coronavirus Act 2020 (Extension of Provisions Related to Courts, Tribunals and Inquests) Order (Northern Ireland) 2022 was made by the Department of Justice; S.R. 2022/80, The Rates (Coronavirus) (Emergency Relief) Regulations (Northern Ireland) 2022 was made by the Department of Finance; S.R. 2022/108, The Coronavirus Act 2020 (Extension of Provisions Relating to Local Authority Meetings) Order (Northern Ireland) 2022 was made by the Department for Communities.

## **Present limits on legislative scrutiny**

It may be noted that, as may be seen via the COVID-19 related Statutory Rules Tracking [page](#), statutory rules have continued to be made, in relation to the pandemic or under pandemic related powers, during the period when normal Assembly business is not being carried out and the relevant legislative scrutiny procedures are not taking place.

## **The Ad Hoc Committee on the COVID 19 Response**

On 31 March 2020, further to a motion tabled by the party whips and the representative of the smaller parties and independent Members, the Assembly

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<sup>10</sup> Under Assembly Standing Order 43(4)

<sup>11</sup> As defined in the Human Rights Act 1998 (as per section 98 Northern Ireland Act 1998)

resolved to appoint an Ad Hoc Committee<sup>12</sup> to receive oral statements from Ministers on matters relating to the COVID-19 response and to question Ministers on such statements.

The Ad Hoc Committee on the COVID-19 Response (the Ad Hoc Committee) was a Committee comprised of all Members of the Assembly and sat in the Assembly Chamber. The Chairperson of the Committee is the Speaker or, in his absence, a Deputy Speaker.

The establishment of the Ad Hoc Committee enabled all Members of the Assembly to receive statements from Ministers on days when the Assembly was not sitting in plenary session. The Assembly was already able to receive statements from Ministers on days on which it was sitting.

This meant that, in advance of exercising the Department's power to make regulations using the emergency procedure, the Minister of Health could update the Assembly on how it was intended that this power would be exercised – either at a scheduled sitting of the Assembly or at a meeting of the Ad Hoc Committee.

For example, on 21 December 2020, the Ad Hoc Committee met at which meeting the Minister of Health made a statement, and answered Members' questions, on the Northern Ireland Executive's intended introduction of further restrictions over the Christmas holiday period. Further to this the Minister then made [The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2021 \(Amendment No.21\) Regulations \(Northern Ireland\) 2021](#) on 24 December 2021, which came into effect on 26 December 2021.

The Report of the Ad Hoc Committee sets out details of each of its meetings, including minutes of proceedings and minutes of evidence. It is published on the Assembly website and is available [here](#).

### **Primary legislation containing provision related to the pandemic**

A number of Acts of the Northern Ireland Assembly were made containing provision related to the pandemic and these may be accessed on the Assembly website as set out below.

The passage of the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020 is available [here](#).

The passage of the Non-domestic Rates Valuations (Coronavirus) Act (Northern Ireland) 2022 is available [here](#).

The passage of the Local Government (Meetings and Performance) Act (Northern Ireland) 2021 is available [here](#).

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<sup>12</sup> As per Assembly Standing Order 53(1)

The passage of the Health and Social Care Act (Northern Ireland) 2022 is available [here](#).

**Lesley Hogg**  
**Clerk/Chief Executive**  
**4 May 2023**