Northern Ireland Assembly

Education Service

Examples of delegated powers in primary legislation

Primary legislation

Primary legislation means legislation that has been passed by the legislature itself e.g. Acts passed by the Northern Ireland Assembly, by Parliament, by the Scottish Parliament, by Senedd Cymru.

Delegated powers

Primary legislation sometimes includes provisions which delegate the power to make further legislation. This further legislation is often used to fill in detail which is not included in the primary legislation or to allow for changes over time.

Accordingly, the Assembly can use primary legislation to delegate power to make law to another body, for example, to a government department. Such a body is called a rule-making authority. Rule-making authorities in Northern Ireland are listed in the Statutory Rules (Northern Ireland) Order 1979.

This further legislation made by a rule-making authority is called 'delegated' legislation, and is sometimes called secondary legislation or subordinate legislation. These names are often used interchangeably.

Delegated legislation in Northern Ireland takes the form of a Statutory Rule.

The introductory text in each Statutory Rule must state the delegated power in the relevant primary legislation which the rule-making authority is using to make that Statutory Rule.

Scrutiny of delegated legislation

The power of the rule-making authority to make delegated legislation is often subject to an Assembly scrutiny procedure.

The scrutiny procedure is a way to ensure that the Assembly still has oversight of the delegated legislation made by the rule-making authority.

The type of Assembly scrutiny procedure is set out in the primary legislation.

The most common Assembly scrutiny procedures are the negative resolution procedure, the confirmatory resolution procedure, the affirmative resolution procedure, and the draft affirmative resolution procedure.

Some delegated legislation is subject only to a requirement to be laid before the Assembly. This will also be stated in the primary legislation.

Examples

Below are two examples of Acts of the Assembly which contain delegated powers, together with delegated legislation which has been made under these powers.

Example 1 is the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.

Example 2 is the Climate Change Act (Northern Ireland) 2022.

Example 1: The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (the 2021 Act) was made by the Assembly and received Royal Assent (became law) on 1st March 2021.

The 2021 Act contains a number of powers to make delegated legislation, these are called 'delegated powers'.

One of these delegated powers is set out in section 26 of 2021 Act.

Power:

Section 26 sub-section (1) states:

'26—(1) The Department of Justice may by regulations make provision—

(a) enabling or requiring a relevant person to inform a designated person in relation to an education provider of an incident of domestic abuse concerning a child who is a pupil or a student of the education provider,

(b) for the purpose of or in connection with functions exercisable by a relevant person or a designated person accordingly'.

This is a power to make delegated legislation.

The power is delegated to the Department of Justice which is a rule-making authority.

Accordingly, under section 26 of the 2021 Act, the Department of Justice may make Statutory Rules about sharing information in relation to domestic abuse concerning a child.

The exercise of this power is subject to an Assembly scrutiny procedure.

Scrutiny procedure:

The relevant Assembly scrutiny procedure is also set out in section 26 of the 2021 Act.

Section 26 subsection (7) states:

'(7) Regulations under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.'

This Assembly scrutiny procedure is called the draft affirmative resolution procedure.

The delegated legislation that was made:

The Domestic Abuse Information-sharing with Schools etc. Regulations (Northern Ireland) 2022 (S.R. 2020/146) were made by the Department using this delegated power.

This delegated legislation aims to help ensure that children are safe, supported, and that their privacy is respected.

Example 2: The Climate Change Act (Northern Ireland) 2022

The Climate Change Act (Northern Ireland) 2022 (the 2022 Act) was made by the Assembly and received Royal Assent (became law) on 6th June 2022.

The 2022 Act contains a number of powers to make delegated legislation, these are called 'delegated powers'.

Power:

One of these delegated powers is set out in section 42 of 2021 Act.

Section 42 sub-section (1) states:

'42.— (1) The Department must make regulations that impose, on specified public bodies, specified climate change reporting duties.

"Specified" means specified in the regulations.'

In this case '*the Department*' means the Department of Agriculture, Environment and Rural Affairs. This is set out in section 63 of the 2022 Act (definitions).

This Department is a rule-making authority.

Accordingly, this power to make delegated legislation has been given to the Department of Agriculture, Environment and Rural Affairs.

This delegated power is to make Statutory Rules which will specify that certain public bodies will have climate change reporting duties.

The exercise of this power is subject to an Assembly scrutiny procedure.

Scrutiny procedure:

The relevant Assembly scrutiny procedure is set out in section 53 of the 2022 Act.

Section 53 sub-section 3 of the 2022 Act states:

'(3) Regulations may not be made under any provision of this Act unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly….'

This Assembly scrutiny procedure is called the draft affirmative resolution procedure.

The delegated legislation that was made:

The Climate Change (Reporting Bodies) Regulations (Northern Ireland) 2024 (S.R. 2024/93) were made by the Department using this delegated power.

This delegated legislation places climate change reporting duties on specified public bodies which it lists.

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