House of Lords
House of Commons

Joint Committee on Statutory Instruments

Nineteenth Report of Session 2017–19

Drawing special attention to:

Social Security and Child Support (Regulation and Inspection of Social Care (Wales) Act 2016) (Consequential Provision) Regulations 2018 **(S.I. 2018/228)**

Public Regulated Service (Galileo) Regulations 2018 **(S.I. 2018/230)**

Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018 **(S.I. 2018/233)**

Motorcycles (Type-Approval) Regulations 2018 **(S.I. 2018/235)**

Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018 **(S.I. 2018/236)**

Merchant Shipping (Maritime Labour Convention) (Miscellaneous Amendments) Regulations 2018 **(S.I. 2018/242)**

Bolton College (Designated Institution in Further Education) Order 2018 **(S.I. 2018/247)**

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Joint Committee on Statutory Instruments

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;

ii that its parent legislation says that it cannot be challenged in the courts;

iii that it appears to have retrospective effect without the express authority of the parent legislation;

iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;

vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;

vii that its form or meaning needs to be explained;

viii that its drafting appears to be defective;

ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Mike Winter (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

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Instruments reported

At its meeting on 18 April 2018 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to seven of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as appendices to this report.

1 S.I. 2018/228: Reported for requiring elucidation

Social Security and Child Support (Regulation and Inspection of Social Care (Wales) Act 2016) (Consequential Provision) Regulations 2018

1.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

1.2 These Regulations update various definitions in subordinate legislation about social security and child support as a result of the commencement of relevant parts of the Regulation and Inspection of Social Care (Wales) Act 2016. Regulation 2(2)(b) amends the definition of "care home" in the Income Support (General) Regulations 1987 so that it reads ""*care home*" in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000, in Wales means a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 which is provided wholly or mainly to persons aged 18 or over and in Scotland means a care home service within the meaning assigned to it by paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010". The Committee asked the Department for Work and Pensions to explain the intention behind the minor changes in phraseology italicised in the passages quoted.

1.3 In a memorandum printed at Appendix 1, the Department explains that in each of the amendments made by these Regulations the policy effect is identical and that the minor changes in phraseology reflect existing inconsistencies in the legislation being amended. It is a principle of legislative drafting relied on by the courts and other readers in legislative interpretation that a change of language should signal a change of meaning: in this case, however, the Department had no choice but to reflect the inconsistencies in the amended legislation and the Committee accepts that no confusion is likely to be caused as a result. **The Committee accordingly reports the Regulations for requiring the elucidation provided by the Department's memorandum.**

2 S.I. 2018/230: Reported for requiring elucidation and for doubtful *vires*

Public Regulated Service (Galileo) Regulations 2018

2.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation in one respect and that there is a doubt as to whether they are intra *vires* in one respect.**

2.2 This instrument implements Decision No. 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 ("the PRS Decision") which sets out the rules for the access to the public regulated service provided by the global navigation satellite system established under the Galileo programme. The public regulated service is restricted to licensed government users.

2.3 Regulation 10(1)(c) allows a compliance authority to serve directions on a person to secure, among other things, "compliance with these Regulations". This appears to go beyond regulation 7(1) which states that a compliance authority can serve directions under regulation 10(1) in two circumstances: if it considers that a person is in breach of regulation 4 (prohibition of unlicensed activities) or is in breach of a licence condition. The Committee asked the Department for Business, Energy and Industrial Strategy to give examples of what is intended to be covered by regulation 10(1)(c). In a memorandum printed at Appendix [], the Department explains that there may be circumstances where Security Accreditation Board authorisation (required by the PRS Decision) or compliance with Security Accreditation Board decisions do not form part of the licensing conditions. In such cases, the compliance authority may want to verify this information before taking further action by issuing directions under regulation 10(1)(c). The Department further explains that there may be cases where the compliance authority may not want to direct the manufacturer to cease production under regulation 10(1)(a) for breach of regulation 4 but may prefer instead to issue directions under regulation 10(1)(c). **The Committee accordingly reports regulation 10(1)(c) for requiring the elucidation provided by the Department's memorandum.**

2.4 Regulation 14(2) deals with the service of documents under the regulations. Paragraphs (1) and (2) provide as follows—

> "(1) Any document required to be served on a person by virtue of these Regulations may be so served—
>
> a) by delivering it to that person or leaving it at the proper address of that person, by sending it by post to that person at that address, or by sending it to that person by fax or other electronic means, or
>
> b) if the person is a company, partnership, limited liability partnership or unincorporated association, by serving it in accordance with sub-paragraph (a) above on an official of that body.
>
> (2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served is the person's last known address except that in the case of service on—
>
> a) a company, it is the address of the registered or principal office of the company, or any place of business of the company,
>
> b) a partnership, it is the principal office of the partnership, or any place of business of the partnership,

c) a limited liability partnership, it is the registered office of the limited liability partnership, and

d) an unincorporated association, it is the principal office of the association, or any place where the association carries out its activities."

2.5 The Committee asked the Department to explain the intended effect of the reference to section 7 of the Interpretation Act 1978. In its memorandum, the Department says "Where an Act authorises or requires any document to be served by post, section 7 of the Interpretation Act 1978 deems the service to be effected by properly addressing, pre-paying and posting a letter containing the document and contains a presumption of when such service has been effected. … Regulation 14(2) ensures that the provisions of section 7 apply only where the service by post has been effected to the proper address as set out in Regulation 14(2). Accordingly, regulation 14(2) is merely specifying what the proper address is for the purposes of section 7."

2.6 Of the thousands of legislative provisions dealing with service of documents, the Committee has found that only a very small minority make provision of this kind in relation to section 7 of the Interpretation Act. The Committee suspects that it is either needed much more generally, or not at all; and the more likely answer is not at all. In particular, the Committee suspects that where this proposition appears it reflects a misunderstanding of the effect of section 7. That section provides that where legislation "authorises or requires any document to be served by post … then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post." The Department appears to be assuming that "properly addressing" is a reference to the notion of a "proper address" for service, as in a particular address that is to be selected where there is a choice. The Committee is not convinced, not least because were that the case one would expect to find provision specifying the proper address for the purposes of section 7 in almost all provisions dealing with service to which section 7 applies. In the Committee's view the most likely meaning of the term "properly addressing" in section 7 is as a reference to addressing in a manner that can reasonably be processed by the postal system, and not to the selection of which address to use. In so far as the Department asserts that this provision restricts the application of section 7 to cases where a particular address is chosen, the Committee is not satisfied that in the absence of express ***vires*** it is open to subordinate legislation to impose a limitation on the effect of a provision of an Act in this way, and **the Committee accordingly reports regulation 14(2) on the ground that there is a doubt as to whether it is intra *vires*.**

2.7 Section 7 is a provision of regular practical importance which has been considered by the courts on a number of occasions, and it is undesirable to have its effect apparently understood in different ways in different places in legislation. In the interests of consistency across the statute book the Committee invites the Statutory Instrument Hub of the Government Legal Department to consider this provision, in consultation with the Office of the Parliamentary Counsel, to determine whether it is required in relation to the application of section 7 at all (and, if it is, what express enabling powers are required to permit it in each place).

3 S.I. 2018/233: Reported for requiring elucidation

Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

3.2 These Regulations make amendments to occupational pensions legislation in order to fulfil the statutory duty of the Secretary of State to make regulations to require trustees or managers of money purchase schemes that are occupational pension schemes to publish scheme transaction costs and administration charges. Regulation 3(6) inserts a new regulation 29A(1) into the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (the "Disclosure Regulations") which requires certain information in respect of relevant schemes to "be made publicly available free of charge on a website". Another provision of the Disclosure Regulations (regulation 26(2)(b)(ii)) refers to making information "available on a website". The Committee asked the Department for Work and Pensions to explain the intended difference between these two phrases.

3.3 In a memorandum printed at Appendix 3, the Department explains that the difference in wording reflects material differences in the context and purposes of the relevant provisions of the Disclosure Regulations. The Disclosure Regulations are primarily concerned with the provision of information about a pension scheme, within specified time periods, to specified categories of individuals who have an interest in that information, such as members and prospective members of the scheme. If a website is used to make such information available, access may be restricted by requiring an individual username and password (but not by requiring a separate charge to be paid). The context and purpose of new regulation 29A(1) is different, in that it requires relevant schemes to make certain information available to the public as a whole. The Department considered that it was important to specify that and also that access is free of charge for all those who wish to view the information. **The Committee accordingly reports regulation 3(6) for requiring the elucidation provided by the Department's memorandum.**

4 S.I. 2018/235: Reported for doubtful *vires* and for making an unexpected use of the enabling power

Motorcycles (Type-Approval) Regulations 2018

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there is doubt as to whether they are intra *vires* in one respect and that they make an unexpected use of the enabling power in another respect.**

4.2 These Regulations are made under section 2(2) of the European Communities Act 1972 to implement revised EU Regulations for type approval of motorcycles. They create domestic penalties for non-compliance with the requirements or for misconduct during the type approval process. Paragraph 3 of Part 2 of Schedule 1 states that a person guilty of an offence under the regulations is punishable on summary conviction by imprisonment for a term not exceeding 6 months (in England and Wales, Scotland and Northern

Ireland). The Committee asked the Department for Transport to explain the reason for the selection of the maximum periods of imprisonment specified in paragraph 3 and the source of the power relied on for the selection of those periods.

4.3 In a memorandum printed at Appendix 4, the Department acknowledges that the inclusion of a maximum period of imprisonment 6 months as regards Northern Ireland was an error, and beyond the ***vires*** provided by the European Communities Act 1972. That Act originally set a maximum period of imprisonment on summary conviction for an offence created under section 2(2) of 3 months for England and Wales, Scotland and Northern Ireland, though that maximum has been raised to 12 months for Scotland by section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The Committee therefore believes that the inclusion of a maximum period of imprisonment of 6 months as regards England and Wales is also beyond the ***vires*** of provided by the 1972 Act. The Department is of the view that penalties under the Regulations should be consistent across all jurisdictions of the United Kingdom and undertakes to amend both limbs of paragraph 3(1) to refer to a maximum period of 3 months at the earliest appropriate opportunity. **The Committee accordingly reports paragraph 3 of Part 2 of Schedule 1 for doubt as to whether it is intra *vires*, acknowledged by the Department.**

4.4 Paragraph 6 of Part 2 of Schedule 1 allows the recipient of a penalty notice to object to the notice by giving a notice of objection to the enforcement authority. The enforcement authority must decide to cancel, reduce, increase or determine not to alter the penalty and notify the recipient in writing of its decision. Paragraph 6(6) requires the enforcement authority to state its reasons for the decision in all cases except for cancellation of the penalty. The Committee asked the Department for an explanation.

4.5 In its memorandum, the Department explains that where a penalty is cancelled it will invariably be because the reasons for the objection are accepted and that no further explanation is necessary. Where further elaboration is necessary, the enforcement authority would normally voluntarily include that information in the notification.

4.6 The Committee is clear that the requirement of administrative law to give reasons is now a fundamental principle of the law of the United Kingdom: see, for example, "The legal principles relating to the adequacy of reasons are well known. In short, the reasons must show that the decision maker successfully came to grips with the main contentions advanced by the parties, and must tell the parties in broad terms why they lost or, as the case may be, won. Reasons must be both adequate and intelligible. They must therefore both rationally relate to the evidence in the case, and be comprehensible in themselves." (Davies v Bar Standards Board [2015] EWHC 2927 (Admin).) The Committee does not believe that a decision-maker is relieved from the obligation to provide a clear audit trail of its reasons simply because it believes that a particular class of citizens will be able to guess what that reason was. In this case, although cancellation probably means that the stated objections have been accepted, it is possible that some but not all of the grounds were approved in which case the citizen has a right to know for the purpose of the conduct of future transactions with the enforcement authority; and it is also possible that the enforcement authority took procedural or other objections of its own, in which case again citizens have a right to know. **The Committee accordingly reports paragraph 6 of Part 2 of Schedule 1 for an unexpected use of the enabling power.**

5 S.I. 2018/236: Reported for doubtful *vires* and for making an unexpected use of the enabling power

Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018

5.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there is doubt as to whether they are intra *vires* in one respect and that they make an unexpected use of the enabling power in another respect.**

5.2 These Regulations are made under section 2(2) of the European Communities Act 1972 and implement revised EU regulations for type approval of agricultural vehicles and create domestic penalties for non-compliance with the requirements or for misconduct during the type approval process. They are in the same form as S.I. 2018/235 above and the Committee asked the same two questions as for that instrument. In a memorandum printed at Appendix 5, the Department for Transport gave the same answers as for S.I. 2018/235 to which the Committee has the same response.

5.3 **The Committee accordingly reports paragraph 3 of Part 2 of Schedule 1 for doubt as to whether it is intra *vires*, acknowledged by the Department, and it reports paragraph 6 of Part 2 of Schedule 1 for an unexpected use of the enabling power.**

6 S.I. 2018/242: Reported for requiring elucidation

Merchant Shipping (Maritime Labour Convention) (Miscellaneous Amendments) Regulations 2018

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

6.2 These Regulations make amendments to various Merchant Shipping statutory instruments which implement the Maritime Labour Convention 2006. Paragraph 7.1 of the Explanatory Memorandum states that "The objective of this instrument is to correct some anomalies in the original implementing legislation". The Committee asked the Department for Transport to explain why the free issue procedure was not used since the instrument is being used to correct errors in earlier legislation. In a memorandum printed at Appendix 6, the Department explains that although it took the opportunity to correct errors in existing legislation, most of the changes make substantive changes to legislation. The Committee refers to paragraph 4.7.6 of Statutory Instrument Practice (5th Edition, November 2017) which states that where a Department uses a statutory instrument to introduce new provisions as well as correcting an existing instrument, the Department should agree with the Statutory Instrument Registrar whether or not to provide free replacement copies. The Committee assumes that these consultations were held on this occasion, and does not dissent from the conclusion reached in this context. **The Committee accordingly reports these Regulations as requiring elucidation, provided by the Department.**

7 S.I. 2018/247: Reported for defective drafting

Bolton College (Designated Institution in Further Education) Order 2018

7.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

7.2 This Order designates, under section 28 of the Further and Higher Education Act 1992, the institution of Bolton College as falling within the further education sector. Article 2 describes the entity being designated as "Bolton College, Bolton BL3". The Committee asked the Department for Education to explain why Bolton College is not identified by a unique identifier such as its company number and why the full address is not given. In a memorandum printed at Appendix 7, the Department asserts that there was no suitable unique identifier available for Bolton College: Bolton College is not itself incorporated but the body that conducts the institution will, once the Order comes in to force be a registered company. The Committee does not accept that a unique identifier could not have been found (for example, the college's Ofsted Unique Reference Number in combination with the full postal address). Even where the likelihood of confusion is small, as a matter of good drafting practice where a private person is referred to it should be identified in such a way as to produce a certain legislative effect. **The Committee accordingly reports article 2 for defective drafting.**

Instruments not reported

At its meeting on 18 April 2018 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Draft instrument requiring affirmative approval

Draft S.I.	Licensing Act 2003 (Royal Wedding Licensing Hours) Order 2018

Instruments subject to annulment

S.I. 2018/287	Marine Works (Environmental Impact Assessment) and Marine Strategy (Amendment) Regulations 2018
S.I. 2018/293	Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2018
S.I. 2018/311	Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Amendment) Regulations 2018
S.I. 2018/313	Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2018
S.I. 2018/318	Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) (England and Wales) Order 2018
S.I. 2018/320	Plant Health (England) (Amendment) (No. 2) Order 2018
S.I. 2018/332	Social Security Benefits Up-rating Regulations 2018
S.I. 2018/333	Pensions Increase (Review) Order 2018
S.I. 2018/339	Communications (Television Licensing) (Amendment) (No. 2) Regulations 2018
S.I. 2018/343	Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018
S.I. 2018/345	Branded Health Service Medicines (Costs) Regulations 2018
S.I. 2018/371	Guardian's Allowance Up-rating Regulations 2018
S.I. 2018/383	Early Years Foundation Stage (Exemption from Learning and Development Requirements) and Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2018
S.I. 2018/385	Mandatory Travel Concession (England) (Amendment) Regulations 2018
S.I. 2018/408	Nuclear Security (Secretary of State Security Directions) Regulations 2018
S.I. 2018/412	Police Super-complaints (Criteria for the Making and Revocation of Designations) Regulations 2018

S.I. 2018/425 Non-Domestic Rating (Telecommunications Infrastructure Relief) (England) Regulations 2018

S.I. 2018/445 Electronic Communications (Universal Service) (Broadband) Order 2018

S.I. 2018/447 Sexual Offences Act 2003 (Prescribed Police Stations) (England and Wales) Regulations 2018

Instrument subject to annulment (Northern Ireland)

S.R. 2018/36 Universal Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2018

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2018/341 Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018

S.I. 2018/357 Crime and Courts Act 2013 (Commencement No. 17, Transitional and Savings Provisions) (Amendment) Order 2018

S.I. 2018/393 Housing and Planning Act 2016 (Commencement No. 8) Regulations 2018

S.I. 2018/399 Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018

S.I. 2018/402 Pharmacy (Preparation and Dispensing Errors – Registered Pharmacies) Order 2018 (Commencement) Order of Council 2018

Appendix 1

S.I. 2018/228

Social Security and Child Support (Regulation and Inspection of Social Care (Wales) Act 2016) (Consequential Provision) Regulations 2018

1. In its letter to the Department of 21st March 2018, the Committee requested a memorandum on the following point:

> *Explain the intended difference between the phrase "within the meaning of" in regulation 2(2)(b) and the phrase "has the meaning assigned to it by" used, for example, in the definition of "care home" in regulation 2 of the Income Support (General) Regulations 1987.*

2. The Department's response to the Committee's point is set out below.

3. These Regulations make amendments to social security and child support Regulations resulting from the coming into force of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), which introduces a new system of regulation and inspection of social and health care services in Wales, replacing the system established in England and Wales by the Care Standards Act 2000 (c.14). In particular, the definitions relating to care homes in those Regulations had to be amended in consequence of that Act.

4. The Department has achieved this by inserting a new definition within the existing definitions of "care home" or, as the case may be, "care home service" in each set of Regulations, to deal with the new situation in Wales. In each of the amendments made by these Regulations, the identical phrase has been used to define the reference to care homes in Wales: "within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016".

5. The legislation being amended already contained inconsistent terminology. For example, the definition of "care home" in regulation 2 of the Income Support (General) Regulations 1987 (S.I. 1987/1967) referred to in the Committee's letter uses different wording in defining care homes in England and Wales ("has the meaning assigned to it") and in Scotland ("within the meaning assigned to it"). Further, care homes in Scotland are defined by reference to what is termed "a care home service".

6. By way of further example, regulation 3 of these Regulations amends regulation 1A of the Social Fund Cold Weather Payments (General) Regulations 1988 (S.I.1988/1724), which also contains an existing inconsistency as between the definition of care homes in England and Wales (again "has the meaning assigned to it") and in Scotland ("a care home service as defined by").

7. In this context, the Department decided on balance that it was preferable to make minimal and (as far as possible) consistent changes in consequence of the new Act of the National Assembly of Wales, under the powers in section 150 of the Government of Wales Act 2006 (c.32), without seeking to address pre-existing inconsistencies in relation to England and Scotland. It did this by inserting in each set of Regulations a new definition which was identical in every case.

8. In conclusion, the Department did not intend any particular different legal effect by drafting the amendments in this way. It sought to define a new term, as clearly and consistently as it could across the statute book. The Department recognises that consistency is an important principle but, in this case, it was not possible to be absolutely consistent. In the Department's view, neither the existing inconsistency nor the new drafting create any uncertainty or confusion for the reader as each phrase has a clear and obvious meaning.

Department for Work and Pensions

27 March 2018

Appendix 2

S.I. 2018/230

Public Regulated Service (Galileo) Regulations 2018

1. By a letter dated 21 March 2018, the Committee requested a memorandum on the following points:

> *(i) Give examples of what is intended to be covered by regulation 10(1)(c).*
>
> *(ii) Explain what the effect of the reference to section 7 of the Interpretation Act 1978 is intended to be in regulation 14(2), and how effect is given to that intention.*

Regulation 10(1)(c)

2. Under regulation 3(2), the compliance authority has a duty to monitor compliance with the Regulations in accordance with the requirements of Decision (EU) No 1104/2011 ("the PRS Decision"). Under regulation 5, the compliance authority may grant licences if it is satisfied that it is appropriate to do so having regard to the requirements of the PRS Decision. Directions may be needed to ascertain whether a person who has been granted a licence continues to comply with the requirements of the PRS Decision.

3. For example, bodies established in the UK to develop or manufacture PRS products must be authorised by the Security Accreditation Board (SAB) under Article 5(5)(a) of the PRS Decision. This is one of the facts of which the compliance authority needs to be satisfied before it may grant a licence. The SAB authorisations are time limited. The requirement for a SAB authorisation may or may not form part of the licensing conditions. Nevertheless, if the factual basis for the grant of the licence no longer exists, the manufacturer may no longer be operating under the authority of the licence and may therefore be in breach of regulation 4.

4. In circumstances where the licence did not contain a condition on the licensee to ensure it continued to have SAB authorisation, the compliance authority may need to have recourse to the power to issue directions under regulation 10(1)(c). For example, the compliance authority may receive information that a manufacturer it has licensed no longer has SAB authorisation. The compliance authority may want to verify this information before taking further action by issuing directions requiring the manufacturer to show that it continues to have SAB authorisation. Although there is a power to require the production of information in regulation 15, the power to issue directions under regulation 10(1)(c) to require information provides a speedier and more flexible route which may be needed in cases of compliance as regards security authorisation.

5. The same situation may arise as regards compliance with SAB decisions under Article 5(5)(b) of the PRS Decision. The compliance authority, before it grants a licence, needs to be satisfied that the manufacturer complies with the SAB decisions on development and manufacture of PRS products. Again this may or may not form part of the licensing conditions. Nevertheless, if the facts upon which the licence is granted no longer exist, the manufacturer may be operating in breach of regulation 4.

6. In circumstances where the licence did not contain a condition as regards compliance with SAB decisions, the same position as that set out in paragraph 4 above would apply. The compliance authority may receive information that a manufacturer it has licensed no longer complies with SAB decisions. The compliance authority may want to verify this information before taking further action by issuing directions requiring the manufacturer to show that it continues to comply with SAB decisions.

7. Further examples where regulation 10(1)(c) may need to be relied upon are where the compliance authority has information, which it has verified, to the effect that SAB authorisation has expired or, as the case may be, that SAB decisions are no longer being complied with. Again the factual basis for the licence would no longer apply rendering the manufacturer in breach of regulation 4. In circumstances where the need for SAB authorisation or compliance with SAB decisions did not form part of the licensing conditions, the compliance authority may not want to direct the manufacturer to cease production under regulation 10(1)(a) but may prefer instead to issue directions under regulation 10(1)(c) requiring the manufacturer to renew the SAB authorisation or to comply with SAB decisions within a specified period.

Regulation 14(2)

8. Regulation 14(1) provides that where the Regulations require a document to be served, such service may be effected in a number of ways, including by sending the document by post to the proper address of the person in question. Regulation 14(2) then sets out what the proper address is.

9. Where an Act authorises or requires any document to be served by post, section 7 of the Interpretation Act 1978 deems the service to be effected by properly addressing, pre-paying and posting a letter containing the document and contains a presumption of when such service has been effected. Section 7 applies to the Regulations by virtue of section 23 of the Interpretation Act 1978.

10. Where the method of sending by post to the proper address is chosen as the method of service under regulation 14(1), then the provisions of section 7 (deeming service to have been effected and containing a presumption of when such service has been effected) will apply. Regulation 14(2) ensures that the provisions of section 7 apply only where the service by post has been effected to the proper address as set out in Regulation 14(2). Accordingly regulation 14(2) is merely specifying what the proper address is for the purposes of section 7. Nothing in regulation 14 contains a contrary intention which would disapply section 7.

Department for Business, Energy and Industrial Strategy

27 March 2018

Appendix 3

S.I. 2018/233

Occupational Pension Schemes (Administration and Disclosure) Amendment) Regulations 2018

1. In its letter to the Department of 21st March 2018, the Committee requested a memorandum on the following point:

> *Explain the intended difference between the phrase "publicly available free of charge on a website" in regulation 3(6) (inserted regulation 29A(1)) and the phrase "making it available on a website" used in regulation 26(2)(b)(ii) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013), and how effect is given to that intention?*

2. The Department's response to the Committee's point is set out below.

3. The difference in wording identified by the Committee reflects material differences in the context and purposes of the relevant provisions of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 ("the Disclosure Regulations"), as amended by the present instrument.

4. The Disclosure Regulations are primarily concerned with the provision of information about a pension scheme to specified categories of individuals who have a particular interest in that information, such as members and prospective members of the scheme, their spouses or civil partners, other individuals entitled to payment of benefits under the scheme and relevant trade unions (see the definition of "relevant person" in regulation 2(1)). In some cases information must be provided on request, in some cases on the occurrence of a specified event (such as a material change in the key information about the scheme), and in others, periodically (for instance, within 12 months of the end of each scheme year). In each case it must be provided within a specified timeframe.

5. Most of those provisions do not themselves set out how the required information is to be communicated to its intended recipients. Where that is the case, the permitted methods of communication are set out in regulation 26. Generally, the information may be provided either by post, or (if certain conditions are satisfied) by electronic mail or by making it available on a website. It need only be provided to the specified individual, or category of individuals, rather than to the public in general. Therefore, if a website is used to make the information available, access could be restricted by requiring an individual username and password. There is nothing to permit schemes to withhold the required information subject to payment of a charge (although, of course, the costs of providing information to members, whether by post or electronically, will form part of the scheme's administrative costs which are ultimately borne by the membership as a whole).

6. The context and purpose of new regulation 29A(1) (as inserted by regulation 3(6) of the present instrument) is different, in that it requires relevant schemes to make certain information available to the world at large, as opposed to requiring it to be provided to specified individuals or categories of individuals within specified time periods. This reflects the underlying policy, to improve transparency about costs and charges across the

occupational pension scheme industry, and enable greater public comparison of charges (see paragraphs 7.9 to 7.12 of the Explanatory Memorandum to the present instrument). For this purpose it was considered important to specify both that the information must be available to the public as a whole, not just to the scheme's membership (or relevant persons more broadly), and also that access must be free of charge for all those who wish to view the information.

7. The Department therefore used different wording in new regulation 29A(1) from that in regulation 26(2)(b)(ii) of the Disclosure Regulations in light of the distinct purposes served by those provisions. In particular, the Department considers that the wording used in new regulation 29A(1) accurately implements the new underlying policy which that regulation delivers.

Department for Work and Pensions

27 March 2018

Appendix 4

S.I. 2018/235

Motorcycles (Type-Approval) Regulations 2018

1. By letter dated 21st March, the Joint Committee on Statutory Instruments has requested a memorandum on two points. These are set out in turn below, together with the Department's response.

> *(1) Having regard to the matters set out in the Committee's 27th Report of Session 2016–17 in relation to S.I. 2017/193, explain the reason for the selection of the maximum periods of imprisonment specified in paragraph 3 of Part 2 of Schedule 1 and the source of the power relied on for the selection of those periods.*

2. The Department knows from experience with the previous regulations that offences under the Regulations will arise relatively infrequently. However when they do, and this leads to a criminal conviction, the nature of the offence is expected to be particularly egregious. Given that offences are punishable summarily only, the Department wants magistrates to be able to use up to the maximum of their sentencing powers where this is appropriate.

3. In preparing the Regulations, the Department considered the appropriateness of the penalties to be imposed and was of the view that—

> (1) having regard to the nature of the activities being penalised, the selection of a maximum of six months' imprisonment was an appropriate level of penalty for the summary offences being created; and
>
> (2) the same penalty should apply throughout the United Kingdom.

4. The Department acknowledges that the inclusion of a reference to six months in paragraph 3(1)(b) as regards Northern Ireland was an error, and beyond the ***vires*** of provided by the European Communities Act 1972.

5. The Department remains of the view that penalties under the Regulations should be consistent across all jurisdictions of the United Kingdom, so that their deterrent value is the same and there is no perverse incentive for type approvals to take place in one jurisdiction over another because of the likely penalty. The Department will therefore amend both limbs of paragraph 3(1) to refer to a maximum period of three months, and do this at the earliest appropriate opportunity.

> *(2) In a case where an enforcement authority cancels a penalty after receiving a notice of objection, explain why the written notification to the recipient of the decision does not need to include the enforcement authority's reasons for the decision (paragraph 6 of Part 2 of Schedule 1).*

6. The provisions impose a number of obligations on the enforcement authority once it has made a decision about any objections to a penalty notice particularly in cases where an objection to a penalty is lodged and not accepted (because the penalty remains

or is increased), or is only partially accepted (because the penalty is reduced). In these circumstances natural justice demands a full explanation of the reasons for rejecting the objection, and other practical information may also be needed, for example, on how a penalty may be paid or on how an appeal may be lodged.

7. In the case where the enforcement authority decides that the objection is justified, the matter is closed and the recipient will be notified in writing. In almost all cases it will simply be the case that the reasons for the objection are accepted and no further explanation is necessary. Requiring the enforcement authority to re-state the reasons given by the objector seems superfluous as the matter will not proceed any further. On those rare occasions where further elaboration would be helpful, such as when information comes to light from another source which contributes to the decision to cancel the penalty, the enforcement authority would normally provide some further information in the notice. The Department would not want to be prescriptive in legislation about the precise contents of the decision notice the enforcement authority is expected to give, not least because it may vary on the particular circumstances of the case.

Department for Transport

27 March 2018

Appendix 5

S.I. 2018/236

Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018

1. By letter dated 21st March, the Joint Committee on Statutory Instruments has requested a memorandum on two points. These are set out in turn below, together with the Department's response.

> *(1) Having regard to the matters set out in the Committee's 27th Report of Session 2016–17 in relation to S.I. 2017/193, explain the reason for the selection of the maximum periods of imprisonment specified in paragraph 3 of Part 2 of Schedule 1 and the source of the power relied on for the selection of those periods.*

2. The Department knows from experience with the previous regulations that offences under the Regulations will arise relatively infrequently. However when they do, and this leads to a criminal conviction, the nature of the offence is expected to be particularly egregious. Given that offences are punishable summarily only, the Department wants magistrates to be able to use up to the maximum of their sentencing powers where this is appropriate.

3. In preparing the Regulations, the Department considered the appropriateness of the penalties to be imposed and was of the view that—

> (1) having regard to the nature of the activities being penalised, the selection of a maximum of six months' imprisonment was an appropriate level of penalty for the summary offences being created; and
>
> (2) the same penalty should apply throughout the United Kingdom.

4. The Department acknowledges that the inclusion of a reference to six months in paragraph 3(1)(b) as regards Northern Ireland was an error, and beyond the ***vires*** of provided by the European Communities Act 1972.

5. The Department remains of the view that penalties under the Regulations should be consistent across all jurisdictions of the United Kingdom, so that their deterrent value is the same and there is no perverse incentive for type approvals to take place in one jurisdiction over another because of the likely penalty. The Department will therefore amend both limbs of paragraph 3(1) to refer to a maximum period of three months, and do this at the earliest appropriate opportunity.

> *(2) In a case where an enforcement authority cancels a penalty after receiving a notice of objection, explain why the written notification to the recipient of the decision does not need to include the enforcement authority's reasons for the decision (paragraph 6 of Part 2 of Schedule 1).*

6. The provisions impose a number of obligations on the enforcement authority once it has made a decision about any objections to a penalty notice particularly in cases where an objection to a penalty is lodged and not accepted (because the penalty remains

or is increased), or is only partially accepted (because the penalty is reduced). In these circumstances natural justice demands a full explanation of the reasons for rejecting the objection, and other practical information may also be needed, for example, on how a penalty may be paid or on how an appeal may be lodged.

7. In the case where the enforcement authority decides that the objection is justified, the matter is closed and the recipient will be notified in writing. In almost all cases it will simply be the case that the reasons for the objection are accepted and no further explanation is necessary. Requiring the enforcement authority to re-state the reasons given by the objector seems superfluous as the matter will not proceed any further. On those rare occasions where further elaboration would be helpful, such as when information comes to light from another source which contributes to the decision to cancel the penalty, the enforcement authority would normally provide some further information in the notice. The Department would not want to be prescriptive in legislation about the precise contents of the decision notice the enforcement authority is expected to give, not least because it may vary on the particular circumstances of the case.

Department for Transport

27 March 2018

Appendix 6

S.I. 2018/242

Merchant Shipping (Maritime Labour Convention) (Miscellaneous Amendments) Regulations 2018

1. In its letter of 21st March 2018 the Committee requested a memorandum on the following point:

> *Given that this instrument corrects anomalies in the original implementing legislation, explain why the free issue procedure was not used.*

2. These Regulations amend various instruments that regulate merchant shipping. The majority of the provisions in the Regulations make substantive changes to the legislation.

3. The Department decided that, at the same time as making these substantive changes, it would take the opportunity to make a small number of minor changes to tidy up existing legislation. These were:

a) to alter the structure of a definition in three places. Regulations 4(2)(a), 5(2)(a) and 6(2)(a) reorganise provisions in the definition of "pleasure vessel" in S.I. 2013/1785, 2014/1613 and 2014/1615 so that the sub-paragraph construction "(a)(i)" is replaced by an individual sub-paragraph "(a)" and an individual paragraph "(b)". The "(a)(i)" is not defective in law (although it does not comply with usual legislative practice) and reorganising the provisions has not resulted in any change to the effect of the provisions.

b) to alter the grammar to change a singular to a plural in two places. Regulations 4(2)(b) and 6(2)(b) amend the definition of "pleasure vessel" in S.I. 2014/1613 and 2014/1615, replacing "paragraphs" with "paragraph". These changes could have been made by correction slip, or left uncorrected without any consequences for the law, but the opportunity arose to make the changes by way of amendment, thus ensuring that the legislation is grammatically accurate and so as clear as possible for the user.

c) to align a definition in one set of regulations with the equivalent definition elsewhere in legislation. Regulation 7(2) makes a very minor change, to the definition of "pleasure vessel" in S.I. 2018/58, to change "family and friends" to "family or friends", so that the definition is internally consistent and aligned with the definition in other legislation.

4. The Department has taken a legislative opportunity which arose independently of these changes to improve the legislation for the reader. Given that the Regulations largely make substantive amendments, and given the exceptionally minor nature of the improvements above, the Department took the view that the free issue procedure was not appropriate.

Department for Transport

27 March 2018

Appendix 7

S.I. 2018/247

Bolton College (Designated Institution in Further Education) Order 2018

1. In its letter to the Department for Education of 21 March 2018 the Joint Committee requested a memorandum on the following point:

> *Explain why Bolton College is not identified by a unique identifier such as its company number (and why in giving the address the full address has not been used).*

2. This memorandum has been prepared by the Department for Education.

3. It was not possible to provide a unique identifier for Bolton College. Under section 28 of the Further and Higher Education Act 1992, it is the educational institution that falls to be designated (Bolton College, in this case). Such educational institutions are not themselves incorporated, so there is no company number for the institution. This contrasts with the body that conducts the institution (which, once the Order comes into force, will in the case of Bolton College be a registered company). In addition, there was no other suitable unique identifier available. The Department therefore considers it was appropriate in the circumstances to identify the designated institution only by reference to its name and address.

4. The Department considers that the citation of the name of the institution together with the address details provided is sufficient for the purpose of identifying it as the institution being designated under section 28 of the Further and Higher Education Act 1992. The Department agrees however that it would have been clearer to include the full address. The Department is grateful to the Committee for raising this and will ensure that fuller address information is included in relevant future instruments (and, wherever possible, a unique identifier).

Department for Education

26 March 2018