



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Forty-sixth Report  
of Session 2017–19**

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**Drawing special attention to:**

*Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018 (S.I. 2018/1340)*

*Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1342)*

*Single Source Contract (Amendment) (No. 2) Regulations 2018 (S.I. 2018/1350)*

*Agency Workers Amendment Regulations 2019 (Draft S.I.)*

*Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378)*

*Licensing Act 2003 (Personal and Premises Licences) (Forms) (Amendment) Regulations 2018 (S.I. 2018/1381)*

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to be printed 30 January 2019*

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## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

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[Lord Lexden](#) (*Conservative*)

[Baroness Meacher](#) (*Crossbench*)

[Lord Morris of Handsworth](#) (*Labour*)

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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](http://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**

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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](http://www.parliament.uk/jcsi).

### **Committee staff**

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

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# Contents

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<b>Instruments reported</b>	<b>3</b>
1 S.I. 2018/1340: Reported for failure to comply with proper legislative practice	3
Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018	3
2 S.I. 2018/1342: Reported for defective drafting	3
Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018	3
3 S.I. 2018/1350: Reported for defective drafting	4
Single Source Contract (Amendment) (No. 2) Regulations 2018	4
4 Draft S.I. and S.I. 2018/1378: Reported for requiring elucidation	5
Agency Workers Amendment Regulations 2019; Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018	5
5 S.I. 2018/1381: Reported for defective drafting	6
Licensing Act 2003 (Personal and Premises Licences) (Forms) (Amendment) Regulations 2018	6
<b>Instruments not reported</b>	<b>7</b>
<b>Annex</b>	<b>7</b>
<b>Appendix 1</b>	<b>10</b>
S.I. 2018/1340	10
Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018	10
<b>Appendix 2</b>	<b>11</b>
S.I. 2018/1342	11
Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018	11
<b>Appendix 3</b>	<b>13</b>
S.I. 2018/1350	13
Single Source Contract (Amendment) (No. 2) Regulations 2018	13
<b>Appendix 4</b>	<b>14</b>
Draft S.I. and S.I. 2018/1378	14
Agency Workers Amendment Regulations 2019; Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018	14
<b>Appendix 5</b>	<b>15</b>
S.I. 2018/1381	15
Licensing Act 2003 (Personal and Premises Licences) (Forms) (Amendment) Regulations 2018	15



# Instruments reported

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At its meeting on 30 January 2019 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 six 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. 2018/1340: Reported for failure to comply with proper legislative practice

### *Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018*

1.1 **The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.**

1.2 The Order makes provision for the checks to be conducted by employers to prevent illegal working and brings into force a revised “Code of practice on preventing illegal working: Civil penalty scheme for employers”. The Committee asked the Home Office to explain why availability details for electronic and hard copies of the code of practice are not given in the instrument.

1.3 In a memorandum printed at Appendix 1, the Department accepts that the instrument should have contained details of where electronic and hard copies of the revised code of practice are available. Departments should generally include availability details in Explanatory Notes (see First Special Report of Session 2017–19, Transparency and Accountability in Subordinate Legislation at paragraph 4.8). The Committee is content that this can be done by correction slip (see paragraph 3.13 of the Special Report).

1.4 **The Committee accordingly reports this Order for failure to comply with proper legislative practice, acknowledged by the Department.**

## 2 S.I. 2018/1342: Reported for defective drafting

### *Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018*

2.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

2.2 The Regulations amend the Energy Savings Opportunity Scheme Regulations 2014 to address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

2.3 Regulation 3(3)(a) inserts (into Schedule 1 of the 2014 Regulations) new financial thresholds, expressed in pounds sterling, for determining whether an undertaking is a large undertaking or small or medium undertaking for the purpose of the Energy Savings

Opportunity Scheme. The instrument provides for these thresholds to be in pounds sterling for qualification dates after exit day, but retains euro amounts where the qualification date is before exit day.

2.4 Regulation 3(3)(c) omits paragraph 3 of Schedule 1 to the 2014 Regulations which specifies the conversion rate to be used to determine whether thresholds expressed in euros have been met. The Committee asked the Department for Business, Energy and Industrial Strategy to explain why paragraph 3 is not retained to cover situations where the financial threshold continues to be expressed in euros.

2.5 In a memorandum printed at Appendix 2, the Department acknowledges that it has created an anomaly in omitting the conversion rule, though the omission only affects conversions relevant to the 2018 qualification date which have not been concluded before exit day. The Department undertakes to consider remedying this anomaly should an appropriate opportunity become available. **The Committee accordingly reports regulation 3(3)(c) for defective drafting, acknowledged by the Department.**

### **3 S.I. 2018/1350: Reported for defective drafting**

#### ***Single Source Contract (Amendment) (No. 2) Regulations 2018***

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in three respects.**

3.2 These Regulations amend the Single Source Contract Regulations 2014, which apply to Ministry of Defence contracts awarded with no competitive tender process. The amendments change the way the price payable under a qualifying defence contract is re-determined during the life of the contract. That is now done under regulation 14 of the 2014 Regulations; from 1 April 2019 it will be done under the new Schedule to the 2014 Regulations, inserted by this instrument.

3.3 Regulation 14 makes transitional provision for contracts re-determined before 1 April 2019, including by modifying the meaning of “the time of agreement” in provisions that specify what the Secretary of State must have regard to when making a determination relating to the contract. Although this includes both information available to the parties at the time of agreement and the statutory guidance in place at the time of agreement, the modification does not apply to the latter. The Committee asked the Ministry of Defence to explain why. In a memorandum printed at Appendix 3, the Department agrees that the transitional provisions in regulation 14(2) should also apply to the statutory guidance and undertakes to correct the error at the earliest opportunity. **The Committee accordingly reports regulation 14(2) for defective drafting, acknowledged by the Department.**

3.4 The term “pricing amendment” is defined in paragraph 1(1) of the Schedule as an amendment that would affect the original contract price. Some provisions in the Schedule refer simply to “the amendment” rather than using the defined term. The Committee asked the Department to confirm whether, except for the reference to “any other amendment to the contract” in paragraph 3(2), all references in the Schedule to “the amendment” are intended to be references to “the pricing amendment” as defined in paragraph 1(1). In its memorandum, the Department confirms that they are. Given the Department’s confirmed intention and bearing in mind the principle that a change in language implies a change

in meaning, to which the Committee has drawn attention in a number of recent reports, the defined term should have been used consistently, and **the Committee accordingly reports the Schedule for defective drafting.**

3.5 Paragraph 2 of the Schedule also creates the defined term “contract profit rate for an amendment”, but the term used in context differs from the defined term. The Committee asked the Department to confirm that the term “contract profit rate for an amendment” defined in paragraph 2(1) of the Schedule ought to be “contract profit rate for the amendment”. In its memorandum, the Department accepts that the defined term may initially seem misleading and undertakes to make an appropriate amendment at the earliest opportunity. **The Committee accordingly reports paragraph 2(1) of the Schedule for defective drafting, acknowledged by the Department.**

#### **4 Draft S.I. and S.I. 2018/1378: Reported for requiring elucidation**

##### ***Agency Workers Amendment Regulations 2019; Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018***

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

4.2 These instruments amend the Agency Workers Regulations 2010 (SI 2010/93). The draft affirmative instrument revokes provisions of the 2010 Regulations that allow agency workers to opt out of equal pay entitlements that become available after twelve weeks in the same assignment. The negative instrument changes the way a week’s pay is determined for the purposes of leave payments for workers whose remuneration varies.

4.3 Each instrument is made, wholly or partly, under section 2(2) of the European Communities Act 1972; but they do not come into force until 6 April 2020. The Committee asked the Department for Business, Energy and Industrial Strategy to explain how the regulations made under section 2(2) of the 1972 Act will survive its repeal on exit day, in the light of section 2(1) of the European Union (Withdrawal) Act 2018. That section saves legislation made under section 2(2) of the 1972 Act “as it has effect in domestic law immediately before exit day”. Although both sets of Regulations will have been made before exit day, none of the provisions made under section 2(2) will have come into force by that date, and therefore those provisions will not have effect immediately before exit day.

4.4 In a memorandum printed at Appendix 4, the Department explains that the effect of these instruments immediately before exit day will be that they are made, and in accordance with their provisions, they will enter in force on a future date after exit day. This is the effect that is preserved by section 2(1), so that the SIs will still enter into force on the future date they provide for. The Committee accepts that this is one possible interpretation of section 2(1), and, on the basis that the Department’s memorandum confirms that this is the interpretation being applied by the Government (presumably consistently across Departments), **reports these instruments for requiring elucidation, provided by the Department.**

## 5 S.I. 2018/1381: Reported for defective drafting

### ***Licensing Act 2003 (Personal and Premises Licences) (Forms) (Amendment) Regulations 2018***

5.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that there appears to have been an unjustifiable delay in laying them before Parliament and that they are defectively drafted in one respect.**

5.2 The Regulations make consequential amendments to licensing forms in regulations made under the Licensing Act 2003, as a result of the new provision for online “right to work” checks carried out using the online service.

5.3 There was a delay of 12 days between the making of this instrument and laying it before Parliament and the Committee asked the Home Office to explain. In a memorandum printed at Appendix 5, the Department apologises for the delay and explains that it was attributable to administrative delays within the Department. As the Committee has repeatedly noted, administrative difficulties are not an acceptable excuse for significant delay in such a simple administrative step as laying before Parliament (see the Committee’s First Special Report of Session 2017–19 (Transparency and Accountability in Subordinate Legislation (paragraphs 2.2 to 2.14)). **The Committee accordingly reports these Regulations for unjustifiable delay in laying before Parliament, acknowledged by the Department.**

5.4 Schedule 4 to the Regulations is an interim authority notice under the Licensing Act 2003. An interim authority notice may be given to the relevant licensing authority by a person acting for a former licence holder (who lacks capacity to hold the licence) under an enduring power of attorney or a lasting power of attorney registered under the Mental Capacity Act 2005 (section 47(5)(b) of the Licensing Act 2003). The Committee asked the Department to explain why there is no reference to a lasting power of attorney registered under the Mental Capacity Act 2005 in the interim authority notice.

5.5 In its memorandum, the Department acknowledges that the relevant part of the form in Schedule 4 should refer to a lasting power of attorney registered under the Mental Capacity Act 2005 and that it fails to reflect amendments made to section 47 of the Licensing Act 2003. The Department undertakes to correct this error at the next suitable opportunity. **The Committee accordingly reports Schedule 4 for defective drafting, acknowledged by the Department.**

# Instruments not reported

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At its meeting on 30 January 2019 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

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### Draft instruments requiring affirmative approval

- Draft S.I.** Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019
- Draft S.I.** Northern Ireland (Ministerial Appointment Functions) Regulations 2019
- Draft S.I.** Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019
- Draft S.I.** Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019
- Draft S.I.** Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2019
- Draft S.I.** Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2019
- Draft S.I.** Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019
- Draft S.I.** Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2019
- Draft S.I.** Guaranteed Minimum Pensions Increase Order 2019
- Draft S.I.** Local Government (Structural and Boundary Changes) (Supplementary Provision and Miscellaneous Amendments) Order 2019
- Draft S.I.** Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2019
- Draft S.I.** Tax Credits and Guardian's Allowance Up-rating Regulations 2019
- Draft S.I.** Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019
- Draft S.I.** Uncertificated Securities (Amendment and EU Exit) Regulations 2019
- Draft S.I.** Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019
- Draft S.I.** Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019

<b>Draft S.I.</b>	Shipments of Radioactive Substances (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	State Aid (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

### **Instruments subject to annulment**

<b>S.I. 2018/1385</b>	Radio Spectrum (EU Exit) Regulations 2018
<b>S.I. 2019/1</b>	International Driving Permits (Fees) (EU Exit) Regulations 2019
<b>S.I. 2019/5</b>	Weights and Measures etc. (Miscellaneous) (Amendment) Regulations 2019
<b>S.I. 2019/6</b>	Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2019
<b>S.I. 2019/10</b>	Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019
<b>S.I. 2019/15</b>	Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019
<b>S.I. 2019/16</b>	Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2019
<b>S.I. 2019/21</b>	Horizon 2020 Framework Programme for Research and Innovation (EU Exit) Regulations 2019
<b>S.I. 2019/24</b>	Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2019
<b>S.I. 2019/26</b>	Sanctions (Amendment) (EU Exit) Regulations 2019
<b>S.I. 2019/27</b>	Universal Credit (Restriction on Amounts for Children and Qualifying Young Persons) (Transitional Provisions) Amendment Regulations 2019

### **Instrument subject to annulment (Northern Ireland)**

<b>S.R. 2019/3</b>	Universal Credit (Restriction on Amounts for Children and Qualifying Young Persons) (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2019
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### **Instruments not subject to Parliamentary proceedings not laid before Parliament**

<b>S.I. 2018/1362</b>	Taxation (Cross-border Trade) Act 2018 (Appointed day No. 1) (EU Exit) Regulations 2018
<b>S.I. 2018/1369</b>	Local Audit and Accountability Act 2014 (Commencement No. 7, Transitional Provisions and Savings) (Amendment) Order 2018

**S.I. 2018/1420** Public Record Office (Fees) Regulations 2018

**S.I. 2019/29** Finance Act 2004 (Standard Lifetime Allowance) Regulations 2019

# Appendix 1

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## S.I. 2018/1340

### ***Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018***

1. On 16 January 2019, the Committee requested that the Home Office submit a memorandum on the following point:

*Explain why details of where electronic and hard copies of the revised code of practice referred to in article 4 are available are not given. (See the Committee's First Special Report of Session 2017–19 at paragraphs 4.1 to 4.8).*

2. The Department accepts that S.I. 2018/1340 should have contained details of where electronic and hard copies of the revised code of practice are available. The Department apologises for the omission.

3. Electronic copies are accessible on the gov.uk website at <https://www.gov.uk/government/publications/illegal-working-penalties-codes-of-practice-for-employers-2018> and hard copies may be obtained from the Home Office at 2 Marsham Street, London SW1P 4DF.

**Home Office**

**22 January 2019**

## Appendix 2

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### S.I. 2018/1342

#### ***Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018***

1. Regulation 3 of the Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (‘the 2018 Regulations’), which comes into force on exit day, is made in order to address failures in the Energy Savings Opportunity Scheme Regulations 2014 (‘the 2014 Regulations’) to operate effectively arising from the withdrawal of the UK from the European Union. In particular, regulation 3 inserts into Schedule 1 new financial thresholds, expressed in pounds sterling, for determining whether an undertaking is a large undertaking or a small or medium undertaking for the purposes of the 2014 Regulations. These new thresholds are added to Schedule 1 alongside existing thresholds that are expressed in euros; and in order to restate the law in a clearer and more accessible way the existing thresholds are restated to make clear the position before and after exit day (and to highlight to the reader that the position will differ after exit day). However, regulation 3(3)(c) of the 2018 Regulations omits paragraph 3 of Schedule 1 which specifies the conversion rate to be used to determine whether the thresholds expressed in euros have been met.

2. In the 2014 Regulations, the determination of whether an undertaking is a large undertaking or a small or medium undertaking is relevant to whether the undertaking is a “relevant undertaking”. The determination of whether an undertaking is a relevant undertaking is done once for each compliance period under the 2014 Regulations by reference to the qualification date for the period. Regulation 4 of the 2014 Regulations provides that the qualification dates are 31 December 2014, 31 December 2018, 31 December 2022 and so on. The amendments described in paragraph 1 above apply only in relation to qualification dates after exit day. In practice, therefore, the omission of the conversion rate from Schedule 1 identified by the Committee will affect only conversions relevant to the 2018 qualification date which have not been concluded before exit day.

3. In light of the Committee’s question, we consider that the better approach to drafting the 2018 Regulations would have been to preserve paragraph 3 of Schedule 1 to the 2014 Regulations so that it continued to operate for conversions carried out after exit day but where the qualification date was before exit day; or alternatively to have removed the financial thresholds expressed in euros entirely, with appropriate transitional provisions.

4. In omitting only the conversion rule in paragraph 3 we have created an anomaly in the drafting of Schedule 1. However, we do not consider that this renders the 2014 Regulations defective because the last qualification date before exit day has now passed and the effect of the omission will be limited. Where the omission is relevant to a case, users of the legislation will in practice be able to continue to apply the conversion rule in the usual way, particularly as the rule was still in place on the 2018 qualification date itself.

5. As such, we do not consider that there is any immediate need for an amending instrument. The Department will however consider making further amendments to Schedule 1 to the 2014 Regulations to remedy the anomaly should an appropriate opportunity become available.

**Department for Business, Energy and Industrial Strategy**

**21 January 2019**

# Appendix 3

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## S.I. 2018/1350

### ***Single Source Contract (Amendment) (No. 2) Regulations 2018***

1. The Joint Committee on Statutory Instruments (JCSI) requested a memorandum in response to the following points in relation to the above mentioned instrument:

*1. Explain why the transitional provisions in regulation 14(2) do not apply to the statutory guidance in place at the time of agreement.*

2. Thank you for raising this point. We agree that the transitional provisions in regulation 14(2) should also apply to the relevant statutory guidance. The Department will take steps to correct this error at the earliest possible opportunity.

*2. Confirm whether, except for the reference to “any other amendment to the contract” in paragraph 3(2), all references in the Schedule to “the amendment” are intended to be references to “the pricing amendment” as defined in paragraph 1(1), in particular those in paragraphs 2(3) and 10.*

3. All references to an “amendment” in the Schedule, with the exception of the references to “any other amendment” in paragraph 3(2), are references to a “pricing amendment” (within the meaning of paragraph 1(1) of the Schedule). The references to “amendments” in paragraphs 2(3) and 10 are, therefore, to pricing amendments.

4. As the Schedule itself only applies where at least one pricing amendment is to be made to a qualifying defence contract, it is the Department’s view that the effect of the references is sufficiently clear.

*3. Confirm that the term “contract profit rate for an amendment” defined in paragraph 2(1) of the Schedule ought to be “contract profit rate for the amendment” in light of the term actually used in context (e.g. in regulations 4(1)(a) and 5(2)(a)).*

5. Paragraph 2(1) and (2) of the Schedule sets out the method for calculating the contract profit rate for any of the pricing amendments within the scope of the Schedule.

6. When a provision of the Schedule, such as paragraph 4(1)(a) or 5(2)(a), requires the contract profit rate for the amendment to which that provision applies to be calculated it is clear that the rate is to be determined as generally provided for in paragraph 2 of the Schedule.

7. The Department, however, accepts that the defined term in paragraph 2(1) may initially seem misleading. The Department will take steps to make an appropriate amendment to paragraph 2 of the Schedule at the earliest possible opportunity.

**Ministry of Defence**

**22 January 2019**

## Appendix 4

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### Draft S.I. and S.I. 2018/1378

#### ***Agency Workers Amendment Regulations 2019; Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018***

1. The Committee asked for a memorandum addressing the following question:

*Explain how regulations made under section 2(2) of the European Communities Act 1972 will survive the repeal of that Act on exit day if they do not come into force until after exit day, in light of section 2(1) of the European Union (Withdrawal) Act 2018.*

2. The Agency Workers Amendment Regulations relies on section 2(2) European Communities Act 1972 and the S.I. 2018/1378 Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 relies in part on section 2(2) European Communities Act 1972. Both regulations will come into force in April 2020.

3. Section 2(1) of the European Union (Withdrawal) Act 2018 provides that “EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day”.

4. In accordance with s.2(2)(a) European Union (Withdrawal) Act 2018 “EU-derived domestic legislation includes any enactment made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972.

5. Section 2(1) preserves the effect that such legislation has immediately before exit day. If approved, these instruments’ effect immediately before exit day will be that they are made, and in accordance with their provisions, they will enter in force on a future date after exit day. That is the effect that is preserved by section 2(1), so that the SIs will still enter into force on the future date they provide for. This is also supported by the explanatory notes to this section:

*“76 Subsection (1) provides that EU-derived domestic legislation will remain in place and continue to have effect on and after exit day, as it has effect before exit day. This will include legislation that has been passed or made but is not yet in force. This will also include amendments to EU-derived domestic legislation made under the ECA.*

6. There is a comparison here with section 3 of the European Union (Withdrawal) Act 2018 (direct EU legislation) where only provisions which are “operative” immediately before exit day form part of domestic law on and after exit day.

7. We are therefore satisfied that in accordance with s.2(1) of the European Union (Withdrawal) Act 2018 that the regulations referred to above and made under section 2(2) of the European Communities Act 1972 will survive the repeal of that Act on exit day if they do not come into force until after exit day.

**Department for Business, Energy and Industrial Strategy**

**21 January 2019**

# Appendix 5

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## S.I. 2018/1381

### ***Licensing Act 2003 (Personal and Premises Licences) (Forms) (Amendment) Regulations 2018***

1. By a letter dated 16 January 2019, the Committee sought a memorandum on the following points:

*Explain the significant delay between the making and laying of this instrument.*

*Where the date of the lapsing of the licence is requested (in Part 2 of the form of an interim authority notice in Schedule 4), explain why there is no reference to a lasting power of attorney registered under the Mental Capacity Act 2005 in addition to the reference to a power of attorney registered under the Enduring Powers of Attorney Act 1985.*

2. In respect of the first point, the delay in the laying of the instrument was purely attributable to administrative delays within the Department. The Department apologises for the delay.

3. In respect of the second point, the Department acknowledges that the relevant part of the form in Schedule 4 fails to reflect amendments made to section 47 of the Licensing Act 2003, and should refer to a lasting power of attorney registered under the Mental Capacity Act 2005. The Department is grateful to the Committee for identifying this error, which will be corrected at the next suitable opportunity.

**Home Office**

**22 January 2019**