



House of Lords  
House of Commons  
Joint Committee on Statutory  
Instruments

---

**Forty-Eighth Report of  
Session 2019–21**

---

**Drawing special attention to:**

**Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (S.I. 2021/455)**

**Libya (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/1665)**

**Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (S.I. 2021/197)**

**Public Sector Apprenticeship Targets (Amendment) Regulations 2021 (S.I. 2021/278) Health Protection (Coronavirus, International Travel) (England) (Amendment) (No10) Regulations 2021 (S.I. 2021/348)**

**Health Protection (Coronavirus, International Travel) (England) (Amendment) (No10) Regulations 2021 (S.I. 2021/348)**

*Ordered by the House of Lords to be  
printed 27 April 2021*

*Ordered by the House of Commons  
to be printed 27 April 2021*

**HL 277  
HC 75-xlviii**

Published on 30 April 2021  
by authority of the House of Lords  
and the House of Commons

## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

[Baroness D'Souza](#) (*Crossbench*)

[Baroness Gale](#) (*Labour*)

[Lord Haskel](#) (*Labour*)

[Baroness Newlove](#) (*Conservative*)

[Lord Rowe-Beddoe](#) (*Crossbench*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

[Lord Smith of Hindhead](#) (*Conservative*)

#### House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dr James Davies MP](#) (*Conservative, Vale of Clwyd*)

[Paul Holmes MP](#) (*Conservative, Eastleigh*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[Liz Twist MP](#) (*Labour, Blaydon*)

### 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](#), relating to Public Business.

### 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**

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at <https://www.parliament.uk/site-information/copyright-parliament/>.

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 Sue Beeby (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Officer), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

### **Contacts**

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 7599; the Committee's email address is: [jcsi@parliament.uk](mailto:jcsi@parliament.uk).



# Contents

---

<b>Instruments reported</b>	<b>2</b>
1 S.I. 2021/455: Reported for requiring elucidation	2
Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021	2
2 S.I. 2020/1665: Reported for requiring elucidation	2
Libya (Sanctions) (EU Exit) Regulations 2020	2
3 S.I. 2021/197: Reported for requiring elucidation and for defective drafting	3
Restriction of Public Sector Exit Payments (Revocation) Regulations 2021	3
4 S.I. 2021/278: Reported for defective drafting	4
Public Sector Apprenticeship Targets (Amendment) Regulations 2021	4
5 S.I. 2021/348: Reported for defective drafting	4
Health Protection (Coronavirus, International Travel) (England) (Amendment) (No10) Regulations 2021	4
<b>Instruments not reported</b>	<b>5</b>
<b>Annex</b>	<b>5</b>
<b>Appendix 1</b>	<b>8</b>
S.I. 2021/455	8
Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021	8
<b>Appendix 2</b>	<b>9</b>
S.I. 2020/1665	9
Libya (Sanctions) (EU Exit) Regulations 2020	9
<b>Appendix 3</b>	<b>11</b>
S.I. 2021/197	11
Restriction of Public Sector Exit Payments (Revocation) Regulations 2021	11
<b>Appendix 4</b>	<b>12</b>
S.I. 2021/278	12
Public Sector Apprenticeship Targets (Amendment) Regulations 2021	12
<b>Appendix 5</b>	<b>13</b>
S.I. 2021/348	13
Health Protection (Coronavirus, International Travel) (England) (Amendment) (No10) Regulations 2021	13

## Instruments reported

---

At its meeting on 28 April 2021 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 five 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. 2021/455: Reported for requiring elucidation

#### *Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021*

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, which are subject to the made affirmative resolution procedure, amend S.I. 2021/364 (“the Steps Regulations”) and S.I. 2021/1375 (“the Enforcement Regulations”). Each of those instruments includes a statement, as required by section 45D(1) of the Public Health (Control of Disease) Act 1984, that the Minister considers the restrictions or requirements it imposes under section 45C(3)(c) of that Act to be proportionate to what they seek to achieve. The preamble to these Regulations contains a statutory proportionality statement in respect of the Steps Regulations but not in respect of the Enforcement Regulations. The Committee asked the Department of Health and Social Care to explain the omission. In a memorandum printed at Appendix 1, the Department asserts that no statement is required for the amendment of the Enforcement Regulations made by regulation 3, because it does not impose a restriction or requirement under section 45C(3)(c). The Committee believes there are arguments either way, based in part on the difference between imposing a restriction or requirement and enabling a restriction or requirement to be imposed and in part on construction of Part 2 of the Enforcement Regulations. But the Committee notes the Department’s approach **and accordingly reports regulation 3 for requiring elucidation, provided in the Department’s memorandum.**

### 2 S.I. 2020/1665: Reported for requiring elucidation

#### *Libya (Sanctions) (EU Exit) Regulations 2020*

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

2.2 These Regulations, which are subject to the negative resolution procedure, impose a domestic sanctions regime in respect of Libya to replace the equivalent EU regime that applied while the United Kingdom was an EU member State. Regulation 42 sets out powers and prohibitions relating to aircraft being used to transport military goods or armed personnel to Libya. Paragraph (2) prohibits such aircraft from taking off from, overflying or landing in the United Kingdom. Paragraphs (3) to (5) allow air traffic control to refuse such aircraft permission to enter, or require them to leave, UK airspace, and to issue related instructions. Paragraph (6) requires airport operators to prohibit such aircraft from taking off from or landing at the airport. Paragraph (8) creates offences in

relation to paragraphs (2) and (6). The Committee asked the Foreign, Commonwealth and Development Office to explain how contravention of a prohibition, or failure to comply with a requirement or instruction, under paragraphs (3) to (5) will be enforced. In a helpful memorandum printed at Appendix 2, the Department provides that explanation. **The Committee accordingly reports regulation 42 for requiring elucidation, provided in the Department’s memorandum.**

### **3 S.I. 2021/197: Reported for requiring elucidation and for defective drafting**

#### ***Restriction of Public Sector Exit Payments (Revocation) Regulations 2021***

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

3.2 These Regulations, which are subject to the negative resolution procedure, remove the cap (imposed by the Restriction of Public Sector Exit Payments Regulations 2020) which restricted prescribed public sector bodies from making exit payments above £95,000 in connection with a person leaving employment or vacating office. Regulation 4(3) provides for a person who has been paid an exit payment which was capped by the 2020 Regulations to receive an additional payment representing the difference between the amount of the payment made and the amount that would have been payable had the 2020 Regulations never applied plus interest. It appeared to the Committee that HM Treasury were relying on the power in section 161(2)(e) of the Small Business, Enterprise and Employment Act 2015 for this retrospective effect. That power allows regulations to make “incidental, supplementary, consequential, transitional or transitory provision or savings”. The Committee asked the Department to justify making retrospective provision in reliance on such a general provision. In a memorandum printed at Appendix 3, the Department argues that the Regulations do not have retrospective effect. But the Department asserts that “the obligation to pay the additional payment enables the individual to receive what she would have been entitled to receive as a result of any contractual or statutory entitlement had the cap not applied thereby achieving fairness and legal certainty for individuals and authorities in consequence of those court proceedings”. The Committee sees that as a clear case of changing legal rights and obligations with effect from a time before the Regulations were made, which is the essence of retrospective legislation. As a general principle, retrospective provision requires express cover in the enabling powers. In some contexts, making retrospective provision in reliance on general words would raise a significant doubt as to vires; in this context, however, the Committee is satisfied that the provision made falls within the reasonable contemplation of the power to make transitional provision, **and is content to report regulation 4 for requiring elucidation.**

3.3 The Committee also asked the Department to confirm that in regulation 4(3) the cross-reference should be to the greater amount referred to in paragraph 2(b) (rather than to paragraph 3(b)). In its memorandum, the Department confirms the error **and the Committee accordingly reports regulation 4(3) for defective drafting, acknowledged by the Department.**

#### **4 S.I. 2021/278: Reported for defective drafting**

##### ***Public Sector Apprenticeship Targets (Amendment) Regulations 2021***

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

4.2 These Regulations, which are subject to the negative resolution procedure, set the public sector apprenticeships target for specified public sector bodies. Regulation 6 amends the Public Sector Apprenticeship Targets Regulations 2017 (S.I. 2017/513) to omit the definition of “active period” and wording referring to that phrase. As one reference to “active period” remains in the regulation, the Committee asked the Department to explain the omission of the definition. In a memorandum printed at Appendix 4, the Department acknowledges that the remaining reference to “active period” should also have been omitted. The Department asserts that the erroneous reference does not affect the calculation of the apprenticeship target. The Committee does not agree. The 2017 Regulations as amended include a target figure that is arrived at by reference to a phrase that is not defined and which has no natural meaning (which is why it was formerly defined). **The Committee accordingly reports regulation 6 for defective drafting, acknowledged by the Department.**

#### **5 S.I. 2021/348: Reported for defective drafting**

##### ***Health Protection (Coronavirus, International Travel) (England) (Amendment) (No10) Regulations 2021***

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

5.2 These Regulations, which are subject to the negative resolution procedure, provide exemptions from managed self-isolation for severe medical and vulnerable cases and for those who have travelled to visit a severely ill or dying relative. In both cases four conditions are set out in paragraphs (a) to (d) of the exemption (paragraphs 18(3A) and 18(3C) of Schedule B1A (inserted by regulation 5(3)). The Committee was unclear whether these conditions were intended to be cumulative as the word “and” does not appear before the respective sub-paragraphs (d) and, in particular, because an existing similar exemption in paragraph 18(3) of Schedule B1A (children attending boarding school) does contain the word “and” before sub-paragraph (d) of that paragraph. The Committee asked the Department of Health and Social Care to confirm whether the conditions in paragraphs (a) to (d) of new paragraphs 18(3A) and (3C) are intended to be cumulative. In a memorandum printed at Appendix 5, the Department gives the required confirmation and accepts that it would have been preferable for paragraph (d) in sub-paragraphs (3A) and (3C) to have been preceded by “and”. **The Committee accordingly reports regulation 5(3) for defective drafting, acknowledged by the Department.**

# Instruments not reported

---

At its meeting on 28 April 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

## Annex

---

### Draft Instruments requiring affirmative approval

**Draft S.I.** UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Consequential Provisions and Modifications) Order 2021

**Draft S.I.** Coronavirus Act 2020 (Early Expiry) Regulations 2021

### Instruments subject to annulment

**S.I. 2021/262** Non-Domestic Rating (Transitional Protection Payments and Rates Retention) (Coronavirus) (Amendment) Regulations 2021

**S.I. 2021/265** Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2021

**S.I. 2021/287** Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2021

**S.I. 2021/300** Taking Control of Goods (Amendment) (Coronavirus) Regulations 2021

**S.I. 2021/304** Higher Education (Registration Fees) (England) (Amendment) Regulations 2021

**S.I. 2021/308** Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2021

**S.I. 2021/312** Social Security Benefits Up-rating Regulations 2021

**S.I. 2021/313** Universal Credit (Extension of Coronavirus Measures) Regulations 2021

- S.I. 2021/318** Industrial Training (Film Industry Training Board for England and Wales) (Revocation) Order 2021
- S.I. 2021/326** Civil Liability (Specification of Authorised Persons) Regulations 2021
- S.I. 2021/330** Compulsory Electronic Monitoring Licence Condition Order 2021
- S.I. 2021/346** Renewable Heat Incentive Scheme (Temporary Modification) Regulations 2021
- S.I. 2021/385** Education (Coronavirus) (School Teachers' Qualifications, Induction, Inspection Arrangements, Etc) (Amendment) Regulations 2021
- S.I. 2021/387** Football Spectators (2020 UEFA European Championship Control Period) Order 2021
- S.I. 2021/398** Valuation for Rating (Coronavirus) (England) Regulations 2021
- S.I. 2021/420** Bee Diseases and Pests Control (England) (Amendment) Order 2021
- S.I. 2021/422** Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2021
- S.I. 2021/447** Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 12) Regulations 2021
- S.I. 2021/452** Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) (No. 2) Regulations 2021

### **Instruments not subject to parliamentary proceedings laid before Parliament**

- S.I. 2021/275** Pensions Increase (Review) Order 2021

## **Instruments not subject to parliamentary proceedings not laid before Parliament**

**S.I. 2021/282** Policing and Crime Act 2017 (Commencement No. 11 and Transitional Provisions) Regulations 2021

**S.I. 2021/288** Russia (Sanctions) (Overseas Territories) (Amendment) Order 2021

# Appendix 1

---

## S.I. 2021/455

### ***Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021***

1. In its letter to the Department of 14 April 2021, the Committee requested a memorandum on the following point:

*Explain why the preamble does not include a proportionality statement in relation to S.I. 2020/1375.*

2. The Department's response to the Committee's point is as follows.

3. Under section 45D of the Public Health (Control of Disease) Act 1984, the restrictions relating to proportionality (in relation to the power to make regulations and so far as relevant) apply in relation to provisions which impose a restriction or requirement by virtue of section 45C(3)(c) of that Act.

4. The amendment made to S.I. 2020/1375 by the instrument does not impose any such restriction or requirement.

5. Notwithstanding the above, the Department confirms that the Secretary of State considers that amendment to be proportionate to what it seeks to achieve, which is a public health response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England.

**Department of Health and Social Care**

**20 April 2021**

## Appendix 2

---

### S.I. 2020/1665

#### ***Libya (Sanctions) (EU Exit) Regulations 2020***

1. On 14 April, the Committee requested that the Foreign, Commonwealth and Development Office (“FCDO”) submit a memorandum on the following point:

*In relation to regulation 42, explain how contravention of a prohibition, or failure to comply with a requirement or instruction, under paragraphs (3) to (5) will be enforced, given that these are not offences under paragraph (8).*

2. We are grateful for the Committee’s consideration of this instrument and apologise for our delay in replying. We understand that the request relates to the compliance by an aircraft with a requirement or instruction issued by air traffic control pursuant to paragraphs (3) to (5) of Regulation 42 and not to the arrangements under which air traffic control complies with the requirements imposed on it under paragraph (3). The FCDO, together with input from the Department for Transport which implements transport sanctions and provided policy instructions on the drafting of regulation 42 of the Libya (Sanctions) (EU Exit) Regulation 2020 (S.I. 2020/1665) (the “Libya Regulations”), respond to the Committee’s request as follows.

3. Failure to comply with instructions issued by air traffic control, including those issued under paragraphs (3) to (5) of regulation 42, will, or could, constitute offences under the following legislation:

- (a) Air traffic control clearances are covered by paragraph 8015 of the Standardised European Rules of the Air (“SERA”). This is the annex to the Standardised European Rules of the Air Regulation (EU Regulation 923/2012) which forms part of retained EU law. A failure to comply with paragraph 8015 of SERA is a breach of paragraph 2005 of SERA which requires the operation of an aircraft in flight to be in compliance with the general rules of the air. Where a flight contravenes paragraph 2005 of SERA, article 265(6) and Chapter 6 of Part 2 of Schedule 13 of the Air Navigation Order 2016 (“ANO”) makes it an offence and sets out the penalty for the offence.
- (b) Under Article 68 of the ANO 2016, a pilot is responsible for the safety of the plane and its passengers. By ignoring instructions issued by air traffic control, the pilot is also likely to be endangering the aircraft and those on board and be in contravention of articles 240 and 241 of the ANO 2016. Article 240 of the ANO provides that a person must not recklessly or negligently act in a manner likely to endanger an aircraft or any person in an aircraft. Article 241 of the ANO provides that a person must not recklessly or negligently cause or permit an aircraft to endanger any person or property. Article 265(7) and Part 3 of Schedule 13 of the ANO 2016 (in respect Article 241) and Article 265(8) and Part 4 of Schedule 13 of the ANO 2016 (in respect of Article 240) makes the breach of these Articles an offence and sets out the penalties for the offences.

4. In addition, were the operator or pilot of the aircraft to enter or remain in UK airspace,

disregarding any refusal of permission to enter or overfly, or requirement to leave, UK airspace issued under paragraphs (3) to (5) of regulation 42, they would also be in breach of the prohibition not to overfly the UK under paragraph 2(b) of regulation 42. This would be enforced by the offence under paragraph 8 of regulation 42.

**Foreign, Commonwealth and Development Office**

**20 April 2021**

# Appendix 3

---

## S.I. 2021/197

### ***Restriction of Public Sector Exit Payments (Revocation) Regulations 2021***

1. In a letter dated 14 April 2021, the Joint Committee on Statutory Instruments (the “Committee”) sought:

*(a) an explanation of the principles by reference to which it was concluded that the general words of the kind found in the relevant enabling power in section 161(2)(e) of the Small Business, Enterprise and Employment Act 2015 are sufficient to rebut the presumption against retrospection of regulation 4(3) of the Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (“the Regulations”);*

*(b) confirmation that in regulation 4(3) of the Regulations, the cross-reference should be to paragraph 2(b).*

2. HM Treasury is of the view regulation 4(3) of the Regulations is to be construed so as not to have retrospective operation. The obligation on a relevant authority to pay the amount described in regulation 4(3) (“the additional payment”) applies where it has in the past paid a capped payment to an individual. It provides for the future consequences resulting from the making of that past payment which have been rendered necessary following the outcome of recent court proceedings concerning the Regulations previously made under the enabling power but does not alter adversely the nature of that past payment and neither does it impose a penalty upon the authority for making that past payment. The obligation to pay the additional payment enables the individual to receive what she would have been entitled to receive as a result of any contractual or statutory entitlement had the cap not applied thereby achieving fairness and legal certainty for individuals and authorities in consequence of those court proceedings.

3. HM Treasury can confirm the cross-reference in regulation 4(3) should be to paragraph 2(b). A [correction slip](#) has been published to confirm.

4. HM Treasury trusts that this memorandum is helpful to the Committee and would thank the Committee for bringing the matters to the department’s attention.

**HM Treasury**

**20 April 2021**

## Appendix 4

---

### S.I. 2021/278

#### ***Public Sector Apprenticeship Targets (Amendment) Regulations 2021***

1. In its letter to the Department for Education of 14 April 2021, the Joint Committee requested a memorandum on the following point:

*Explain the omission of the definition of “active period” in regulation 6 given that the term remains in use in that regulation.*

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

3. The Department acknowledges that there has been an error in the drafting of regulation 6 of these Regulations (the 2021 Regulations). The omission of the definition of “active period” in regulation 6 of S.I. 2017/513 (the 2017 Regulations) was intentional. As the public sector apprenticeship target is, by virtue of the amendments made by the 2021 Regulations, in place for one year only, the concept of an “active period” is no longer necessary. The 2021 Regulations amend the 2017 Regulations to omit all other references to “active period”, and the remaining reference to that term in regulation 6(2)(a) of the 2017 Regulations should also have been omitted. The Department apologises for this error.

4. In the Department’s view, the erroneous reference to an “active period” does not affect the calculation of the apprenticeship target in respect of those public bodies in question. The concept of an “active period” (a period of 12 months falling within the target period) can have no effect now that the target period itself is also a period of 12 months (formerly it was four years). Accordingly, the Department does not intend to take any immediate action and will ensure that the error is not repeated should similar Regulations be made in the future.

# Appendix 5

---

## S.I. 2021/348

### ***Health Protection (Coronavirus, International Travel) (England) (Amendment) (No10) Regulations 2021***

1. In its letter to the Department of 14 April 2021, the Committee requested a memorandum on the following point:

*Confirm whether the conditions in sub-paragraphs (a) to (d) in each of new paragraphs 18(3A) and (3C) of Schedule B1A (inserted by regulation 5(3)) are intended to be cumulative, especially given that those paragraphs do not contain “and” before sub-paragraph (d) and the existing paragraph 18(3) of that Schedule does contain “and” before sub-paragraph (d).*

2. The Department’s response to the Committee’s point is as follows.

3. The Department confirms that the conditions in paragraphs (a) to (d) in new paragraph 18(3A) and (3C) of Schedule B1A are intended to be cumulative; the Department considers that those conditions can only reasonably be interpreted as being cumulative (for example, the reference to the Secretary of State providing written confirmation is only intelligible if the list is cumulative).

4. However the Department accepts that it would have been preferable for paragraph (d) in sub-paragraphs (3A) and (3C) to have been preceded by “and” for consistency with paragraph 18(3) of Schedule B1A. The Department will bear this in mind when consolidating the Regulations in the future.

**Department of Health and Social Care**

**20 April 2021**