

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 27th Report of Session 2017–19

Includes 3 Information Paragraphs on 3 Instruments

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### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Baroness Blackstone

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

Lord Kirkwood of Kirkhope

Baroness Watkins of Tavistock

Lord Goddard of Stockport

Baroness O'Loan

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# Twenty Seventh Report

## INSTRUMENTS OF INTEREST

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### Draft Package Travel and Linked Travel Arrangements Regulations 2018

1. As new package holiday booking models and online travel agents have emerged, it has not been clear what falls within the scope of current consumer protection regulations. According to the Department for Business, Energy and Industrial Strategy (BEIS), this has led to an uneven regulatory environment where traditional package holiday organisers are subject to a level of regulation which many of their competitors are not, even though they are providing essentially the same service to the consumer. BEIS says that this has also resulted in confusion amongst many consumers as to the level of protection they should receive. The draft Regulations implement the EU's 2015 Package Travel Directive. They expand the definition of a package to ensure that it covers modern methods of purchasing package holidays, particularly online. They also create the new concept of linked travel arrangements (LTAs), which are looser combinations of travel services, and introduce a limited level of protection for consumers who purchase them. These are, in the Committee's view, sensible measures that aim to level the regulatory landscape and provide better protection for consumers when booking holidays.

### Civil Procedure (Amendment No. 2) Rules 2018 (SI 2018/479)

2. Amongst other things, this instrument amends the Rules which apply to civil proceedings in Court of Appeal, the High Court and the County Court to introduce a fixed recoverable costs regime in package travel claims, specifically claims for gastric illness suffered abroad. Because the amount of legal costs that a representative can recover is not set in advance, unlike the case where the injury occurs in England and Wales, the travel industry has been concerned that some sections of the claimant representative industry have been targeting package holidaymakers to bring personal injury claims against their tour operator. This has implications for the travel industry in terms of both increased costs and reputational damage with overseas providers (hoteliers etc). The Association of British Travel Agents reported that there has been a 500% increase in the number of claims since 2013, rising to around 41,000 gastric illness claims in 2016. This amendment will make such claims subject to a fixed recoverable costs regime, corresponding to their domestic equivalent. The amendments are supported by a new bespoke pre-action protocol<sup>1</sup> (which sets out the steps the court would normally expect parties to take before commencing proceedings), which is specifically limited to gastric illness claims, and will come into force at the same time as the amending Rules. **As with the previous instrument, we take the view that this appears to be a sensible measure, we are, however, disappointed that the Ministry of Justice has failed to publish the outcome of its public consultation, which ended in November 2017, in time for us to use it in our scrutiny of this instrument.**

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<sup>1</sup> Ministry of Justice, *Pre-action protocol for resolution of package travel claims*: <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-resolution-of-package-travel-claims> [accessed 2 May 2018].

**Network and Information Systems Regulations 2018 (SI 2018/506)**

3. These Regulations implement the EU's Directive on Security of Network and Information Systems with the aim of increasing the UK's security and resilience in relation to cyber attacks. The Regulations establish a legal framework to ensure that essential services and certain digital service providers<sup>2</sup> within the UK put in place adequate measures to improve the security of their network and information systems. The legislation focuses on those services which, if disrupted, could potentially cause significant damage to the UK's economy and society, such as energy, transport, healthcare, drinking water supply and distribution and digital infrastructure. The Regulations require incidents to be reported promptly to the relevant Secretary of State, Department or Regulator as the competent authority, and set out the role of the National Cyber Security Centre (part of the Government Communications Headquarters) in responding to any cyber security incidents.

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2 These are specified in the Regulations as providers of online marketplaces, online search engines and cloud computing services.

## **APPENDIX 1: INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Cash Ratio Deposits (Value Bands and Ratios) Order 2018  
Package Travel and Linked Travel Arrangements Regulations 2018  
Restriction on the Preparation of Adoption Reports (Amendment) Regulations 2018

### **Instruments subject to annulment**

SI 2018/479 Civil Procedure (Amendment No. 2) Rules 2018  
SI 2018/482 Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018  
SI 2018/488 Civil Enforcement of Traffic Contraventions (Consequential Amendments) (England) Regulations 2018  
SI 2018/489 Local Land Charges Fees (England) Rules 2018  
SI 2018/493 Local Government Pension Scheme (Amendment) Regulations 2018  
SI 2018/498 Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment No.2) Regulations 2018  
SI 2018/506 Network and Information Systems Regulations 2018  
SR 2018/92 Universal Credit (Persons Required to Provide Information, Miscellaneous Amendments and Saving and Transitional Provision) Regulations (Northern Ireland) 2018

## **APPENDIX 2: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 1 May 2018, Members declared no interests.

### **Attendance:**

The meeting was attended by Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Kirkwood of Kirkhope, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.