HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

30th Report of Session 2017–19

Correspondence: Draft Breaching of Limits on Ticket Sales Regulations 2018

Includes 2 Information Paragraphs on 2 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 Chartres
Lord Faulkner of Worcester
Baroness Finn
Lord Goddard of Stockport
Lord Haskel
Rt Hon. Lord Janvrin
Lord Kirkwood of Kirkhope
Baroness O'Loan
Lord Sherbourne of Didsbury
Rt Hon. Lord Trefgarne (Chairman)

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

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 hlseclegscrutiny@parliament.uk.

Thirtieth report

CORRESPONDENCE

Draft Breaching of Limits on Ticket Sales Regulations 2018

1. There is evidence that specialised software ("bots") which automates the ticket purchasing process is being used to circumvent limits on the maximum number of tickets that can be bought for recreational, sporting and cultural events, leading to a situation where tickets very quickly become unavailable on the primary ticketing market, only to be put up for resale almost immediately at greatly inflated prices on the secondary market. The Department for Digital, Culture, Media and Sport (DCMS) explains that a number of statutory measures are already in place to protect consumers from "ticket touting", and that there is an expectation that ticket sellers should adopt strategies to prevent automated ticket purchasing by "bots". There has been uncertainty, however, about the existing legal position regarding the use of "bots". These draft Regulations aim to clarify the law in this area. They would make it a criminal offence to purchase more tickets than the maximum permitted, where the purchase has been undertaken electronically, using software designed to purchase the tickets and where the intent is to obtain financial gain. While the level of fine for an offence under the draft Regulations would be unlimited in England and Wales, DCMS has capped the maximum level in Scotland to an exceptional summary maximum of £50,000 because Magistrates' courts in Scotland do not have the power to issue an unlimited fine.

2. We sought clarification from DCMS on four points, which the Department has addressed. In particular, we asked DCMS about the extent to which the instrument deals with concerns that the Delegated Powers and Regulatory Reform Committee raised on the use of very wide powers when it considered section 106 of the Digital Economy Act 2017, under which the draft Regulations have been laid. We are publishing our letter to DCMS and the Department's response at Appendix 1.

INSTRUMENTS OF INTEREST

Draft Nursing and Midwifery (Amendment) Order 2018

3. This instrument would introduce a statutory framework for the professional regulation of nursing associates (NAs) in England. NAs are a new role which, according to the Department of Health and Social Care (DHSC), are to act as a bridge between unregulated care assistants and registered nurses or midwives. Under the draft Order, supervision by the Nursing and Midwifery Council (NMC) would apply to the NA profession in the same way as it does to nurses and midwives, with some exceptions in areas such as registration appeals and emergency prescription rights. Supervision will include a separate, NMC-managed register for NAs. The DHSC explains that the new framework will address current uncertainty regarding the level of regulatory oversight of NAs by ensuring that their professional standards are aligned with those for nurses and midwives. The DHSC says that the first cohort of NAs will complete training by January 2019, with the number of training places expected to increase from 2,000 in 2017, when the training was launched, to 5,000 in 2018 and 7,500 in 2020. According to DHSC, many of the new NAs will have been employed already in the NHS as care assistants and will have qualified through the apprenticeship route where they received a salary. The DHSC therefore does not expect the requirement to register with the NMC and pay an annual registration fee to deter people from wanting to become an NA.

Draft Occupational Pension Schemes (Master Trusts) Regulations 2018

4. These draft Regulations will commence the authorisation and supervision regime for Master Trust pension schemes under the Pension Schemes Act 2017 (the 2017 Act). Master Trusts are a form of multi-employer occupational pension scheme. Their importance has increased significantly since the Pensions Act 2008 made it compulsory for employers to automatically enrol eligible staff in a qualifying workplace pension scheme. The majority of employers has opted to enrol staff into a Master Trust scheme rather than setting up their own pension scheme. As a result, the membership of Master Trusts has grown from around 0.2 million employees in 2010 to more than 9.9 million in January 2018. There are now 81 Master Trusts in the UK with assets of over £16 billion. The Department for Work and Pensions (DWP) says that a new authorisation and supervision regime for Master Trusts is needed to address a number of potential risk factors that are specific to Master Trusts and that are not covered by current legislation. According to DWP, not taking action could result in members of Master Trust schemes having less protection than members of other pension schemes. The new regulatory regime will include compulsory authorisation and subsequent supervision by the Pensions Regulator, using statutory criteria specified in the 2017 Act. The draft Regulations will also give the Pensions Regulator greater powers to intervene if a Master Trust is in danger of failing to meet the criteria and its financial resilience or viability are at risk.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Breaching of Limits on Ticket Sales Regulations 2018

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018

Nursing and Midwifery (Amendment) Order 2018

Occupational Pension Schemes (Master Trusts) Regulations 2018

Instruments subject to annulment

Cm 9594	Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania supplementing the European Convention on Extradition 1957
Cm 9614	Protocol to Eliminate Illicit Trade in Tobacco Products
Cm 9615	Treaty between the United Kingdom of Great Britain and Northern Ireland and the Republic of Poland on Defence and Security Cooperation
SI 2018/560	Fire and Rescue Authorities (National Framework) (England) Order 2018
SI 2018/566	Town and Country Planning (Pre-commencement Conditions) Regulations 2018
SI 2018/575	Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018
SI 2018/587	Criminal Legal Aid (Amendment) Regulations 2018

APPENDIX 1: CORRESPONDENCE ON DRAFT BREACHING OF LIMITS ON TICKET SALES REGULATIONS 2018

Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Lord Ashton of Hyde, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport

I am writing as Chairman of the Secondary Legislation Committee which considered these draft Regulations at its most recent meeting.

The draft Regulations have been laid under section 106 of the Digital Economy Act 2017 (power to create offence of breaching limits on internet and other ticket sales). The Delegated Powers and Regulatory Reform Committee (DPRRC) reported on that provision when it was introduced during the passage of the Bill (21st Report, Session 2016-17, HL Paper 139). It concluded that the power to create the new offence was too wide, and that the offence, together with appropriate exceptions and defences, and the penalty should be set out on the face of the Bill. The Committee suggested that the proposal was "really quite straightforward" since the Government simply wanted "to make it an offence for a person to purchase excess tickets for a recreational, sporting or cultural event with a view to commercial gain by using special computer software". The Committee also said that it could not see "any need for the legislation to contain technical detail about the software".

The Government's justification for the width of the power included the following: that the proposed offence was "by its nature ... intricately bound up with behaviour driven by technology" and that "the way in which the ticketing market operates is constantly changing and as technology evolves it may be necessary to revisit the details of the offence in terms of how it can be committed and what it comprises". In their response to the report of the DPRRC, the Government reiterated the argument that the power was necessary to ensure that "the terms of the offence remain relevant in light of technological changes ... ", but stressed that it was intended only to create a criminal offence for the "use of bots" to purchase tickets in excess of a limit (24th Report, Session 2016-17, HL Paper 149).

The Government also raised a second argument, namely that there was a strong possibility that the new offence would be subject to procedures under the Technical Standards and Regulations Directive which required the European Commission to be given at least three months' notice of measures which might create new technical barriers to trade. We note that the Explanatory Note accompanying the draft Regulations states that the Commission was notified about the draft Regulations, in accordance with the Directive, on 12 December 2017.

The draft Regulations appear to have addressed to some extent points made by the DPRRC. Whereas section 106 of the Act captures "an act ... using anything that enables or facilitates" a relevant purchase, the draft Regulations refer to it being an offence for a person to "use software that is designed to enable or facilitate" a relevant purchase. They also include, as an ingredient of the offence, an "intent to obtain tickets in excess of the sales limit, with a view to any person obtaining financial gain".

That said, the SLSC would welcome your response to the following questions:

- Why was the wording of the draft Regulations - in particular, the reference in regulation 3(a) to using "software designed" to purchase electronically tickets in excess of a limit - not used in the Bill which, in section I 06(3), refers to the very broad concept of using "anything"?
- The Government said that the way in which the ticketing market operates was constantly changing and "as technology evolves it may be necessary to revisit the details of the offence". We note that the offence, as set out in the draft Regulations, contains no technical detail and is drafted in very broad terms. What has led the Government to adopt this approach given their original reference to having to revisit the details of the offence?
- The Government said that there was a "strong possibility" that the EU Technical Standards and Regulations Directive might apply. How did this impact the development of the draft Regulations?
- Finally, please can you explain why the level of fine is unlimited in England and Wales but capped at £50,000 in Scotland?

The Committee would be grateful to receive your response to these questions by Friday 18 May 2018. I have no doubt that the DPRRC will also be interested in your answers. I will therefore copy this letter to Lord Blencathra, who chairs the Committee, and send him a copy of your reply. We will also publish both letters.

9 May 2018

Letter from Lord Ashton of Hyde to Lord Trefgarne

Thank you for your letter on behalf of the Secondary Legislation Scrutiny Committee following your consideration of these draft regulations.

I am pleased that the Committee recognises that the draft regulations have sought to address the points raised by the Delegated Powers and Regulatory Reform Committee (DPRRC) during the passage of the Digital Economy Act last year, specifically in relation to the wording in the offence to describe the mechanism to facilitate a relevant purchase and the addition of financial gain as an ingredient of the offence.

You have invited a response on four points raised by the Committee, which I will address in the order given in your letter.

- At the time that the Digital Economy Act was going through Parliament, we were very conscious of the need to ensure that the proposed offence did not contain loopholes which could be abused. Given the rapid evolution of technology we thought that we would need to include technical detail in the regulations, which could be updated if necessary to avoid abuse and to deal with new situations. Despite carrying out a consultation we found it difficult to come up with wording that would limit the commission of the offence to the use of bots but which would not allow abuse by operators. When drafting the regulations we eventually concluded that using the concept of 'software designed' to purchase tickets electronically was most apt to cover the mischief which the Bill provision was designed to cover, without making the offence too wide or uncertain.

- As set out in the memorandum and in the parliamentary debates during the passage of the Bill, we intend to revisit this once the Regulations have been in force for a period of time, in order to ensure that the behaviour at which the measure is directed continues to be targeted most effectively. At that point in time we may need to amend the Regulations to include further technical detail.
- As you state in your letter, the draft offence was subject to procedures under the Technical Standards and Regulations Directive and the Government notified the European Commission on 12th December 2017. No responses were received from either the Commission or Member States.
- Finally, the Committee asked why the level of fine is unlimited in England and Wales but capped at £50,000 in Scotland. This is because magistrates' courts in Scotland do not have the power to issue an unlimited fine and so we have had to set an exceptional summary maximum of £50,000.

I hope this addresses your Committee's questions satisfactorily. I believe these regulations will be a valuable tool in our drive to crack down on unacceptable behaviour in the ticketing market and improve consumers' opportunities to purchase tickets at a fair price.

17 May 2018

APPENDIX 2: INTERESTS AND ATTENDANCE

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 22 May 2018, Members declared the following interests:

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018

Lord Janvrin
Senior Adviser, HSBC Private Bank (UK) Ltd

Criminal Legal Aid (Amendment) Regulations 2018 (SI 2018/587)

Lord Trefgarne
Close relative a barrister at the Criminal Bar
Baroness Blackstone
Chair of the Bar Standards Board

Attendance

The meeting was attended by Baroness Blackstone, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Lord Sherbourne of Didsbury and Lord Trefgarne.