

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

---

34th Report of Session 2017–19

# **Draft Companies (Miscellaneous Reporting) Regulations 2018**

**Correspondence: Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018 and Civil Aviation (Air Travel Organisers' Licensing) (Amendment) Regulations 2018**

Includes 3 Information Paragraphs on 3 Instruments

---

Ordered to be printed 26 June 2018 and published 28 June 2018

---

Published by the Authority of the House of Lords

### *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*

Lord Chartres

Lord Goddard of Stockport

Baroness O'Loan

Lord Cunningham of Felling

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

### *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).

# Thirty Fourth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

---

### Draft Companies (Miscellaneous Reporting) Regulations 2018

*Date laid: 11 June 2018*

*Parliamentary procedure: affirmative*

*Summary: These draft Regulations propose the introduction of new reporting requirements for companies in relation to executive pay, corporate governance arrangements and how directors promote, and have regard to, the long-term success and the interests of their company and employees. The Department for Business, Energy and Industrial Strategy says that the aim of the Regulations is to build confidence in the way that large private and quoted companies are run, and to form part of the Government's wider work of enhancing public trust in business.*

**These draft Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations with an Explanatory Memorandum (EM) and Impact Assessment (IA). BEIS says that the purpose of the Regulations is to introduce new requirements on companies to report on executive pay, corporate governance arrangements and how company directors are meeting their obligations under section 172(1) of the Companies Act 2006 (the 2006 Act).<sup>1</sup> The 2006 Act requires directors to act in a way that they consider, in good faith, promotes the success of their company as a whole, and to have regard to, amongst other things, the long-term consequences of their decisions and the interests of their employees.

#### *Background*

2. BEIS explains in the IA of the draft Regulations that “[d]isquiet about executive pay has become more acute in recent years in the context of the economic downturn and relatively weak overall pay growth during the recovery”, adding that “there is strong concern that executive pay is often excessive, and that success is not shared fairly”.<sup>2</sup> The IA sets out that executive pay levels in the largest companies have increased significantly from an annual average of £1 million in 1998 to £4.3 million in 2015. According to BEIS, this four-fold increase has not been reflected in pay levels in the wider economy where wages have grown at significantly lower rates, leading to a situation where the gap between executive remuneration and the pay for the wider workforce has widened significantly in many companies.

---

<sup>1</sup> Companies Act 2006, [section 172](#).

<sup>2</sup> See page 8 of the Impact Assessment: [http://www.legislation.gov.uk/ukia/2018/96/pdfs/ukia\\_20180096\\_en.pdf](http://www.legislation.gov.uk/ukia/2018/96/pdfs/ukia_20180096_en.pdf).

3. Against this background, the Government published a Green Paper on Corporate Governance Reform<sup>3</sup> on 29 November 2016 which, according to the Prime Minister, was concerned with “establishing the best corporate governance of any major economy, ensuring employees’ voices are properly represented in board deliberations, and that business maintains and—where necessary—regains the trust of the public”.<sup>4</sup> BEIS says that the Green Paper’s main focus was on increasing shareholder scrutiny of executive pay, strengthening boardroom engagement with employees, customers and other stakeholders and strengthening corporate governance in large privately-held businesses.
4. Some 375 responses were received during a 13-week consultation on the Green Paper, and BEIS says that Ministers and officials participated in a large number of meetings and discussions with stakeholders. The EM highlights that there was support for the Government’s proposals on pay ratio reporting, with 53% of respondents agreeing with the plans, including a small majority of institutional and other investors. Those who raised objections expressed concerns that it could result in misleading comparisons between companies in different sectors, and that it might encourage companies to off-shore or outsource work to achieve a more balanced pay ratio. BEIS also says that 85% of respondents agreed that there was a need to strengthen the corporate governance framework for the UK’s largest privately-held businesses.
5. The Government’s response to the Green Paper consultation, published on 29 August 2017, set out in more detail how they intend to address public concerns about executive pay and corporate governance more widely.<sup>5</sup> BEIS explains in the EM that the reforms will be delivered through a combination of new statutory reporting requirements, changes to the UK Corporate Governance Code and a number of industry-led measures. These draft Regulations introduce the new statutory reporting requirements. According to BEIS, they form “part of the wider work to enhance public trust in business as a force for good” and are “specifically targeted at addressing corporate excesses and short-term thinking”.<sup>6</sup>

*What is being done*

6. The draft Regulations propose four key changes:
  - (a) A new statutory requirement on quoted companies<sup>7</sup> with more than 250 UK employees to disclose in their directors’ remuneration report the ratio of their CEO’s total annual remuneration to the average (median) remuneration of their UK employees, as well to the 25th and 75th percentiles of their UK employees. BEIS says that this new requirement will provide shareholders with a tool to question boards

---

3 Department for Business, Energy & Industrial Strategy, *Corporate Governance Reform: Green Paper*, (November 2016): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584013/corporate-governance-reform-green-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584013/corporate-governance-reform-green-paper.pdf) [accessed 26 June 2018].

4 Prime Minister Theresa May, CBI annual conference 2016: Prime Minister’s speech, 21 November 2016: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584013/corporate-governance-reform-green-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584013/corporate-governance-reform-green-paper.pdf) [accessed 26 June 2018].

5 Department for Business, Energy & Industrial Strategy, *Corporate Governance Reform - the Government response to the green paper consultation*, August 2017: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/640470/corporate-governance-reform-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/640470/corporate-governance-reform-government-response.pdf) [accessed 26 June 2018].

6 See page 1 of the [Impact Assessment](#).

7 BEIS defines quoted companies as “UK-registered companies with a listing on the UK Official List, NASDAQ, the New York Stock Exchange or a regulated exchange in the EEA”.

more effectively about levels of pay and reward within the company. BEIS expects the additional cost of this measure to be £4.05 million in the first year of operation and £2.56 million annually thereafter.

- (b) A new statutory requirement on quoted companies to report on the impact of share price growth on share-based executive pay, with the aim of providing shareholders and others with a better understanding of how future share price changes may affect executive pay. BEIS intends this new requirement to enable remuneration committees to be more informed in their scrutiny and approval of share-based remuneration. BEIS estimates that this measure will mean an additional annual cost of £1.18 million for business.
  - (c) A new statutory duty on companies to prepare a statement in their annual strategic report on how directors have met the requirements under section 172(1) of the 2006 Act. BEIS says that this is intended to encourage company directors to consider more carefully how they are meeting these requirements, encourage better boardroom engagement with employees and other stakeholders, and provide shareholders with more and better information with which to hold boards to account. BEIS estimates that the cost of this new requirement will be £11.41 million in the first year of operation and £5.46 million per year thereafter.
  - (d) A new statutory requirement for large private companies to prepare a statement on their corporate governance arrangements. This is to apply to all private UK companies that have more than 2,000 employees or have a global turnover of more than £200 million and a balance sheet total of more than £2 billion. According to BEIS, this is intended to address the fact that the UK's current corporate governance and reporting standards are focused on listed public companies. BEIS also intends this new requirement to encourage the uptake of a new set of voluntary corporate governance principles for large private companies that is being developed in parallel by industry and other relevant stakeholders as a separate part of the corporate governance reforms. BEIS estimates that the cost of this new requirement will be £1.23 million in the first year of operation and £0.59 million per year thereafter.
7. In addition to the changes set out above, Part 4 of the draft Regulations proposes to correct a gap in current legislation in relation to Community Interest Companies (CICs)<sup>8</sup> to ensure that CICs of all sizes continue to report on their directors' remuneration. BEIS explains that this legislative change is not a part of the Government's programme of corporate governance reform.

### *Conclusion*

8. As the Government acknowledge, there is considerable public concern about excessive levels of executive pay and a widening gap between executive pay and pay levels in the wider economy. The Government say that the draft Regulations are a key element of a programme of reform to address these concerns. We draw the draft Regulations to the special attention of the House, as they give rise to issues of public policy likely to be of interest to the House.

---

8 The Government defines a Community Interest Company as a "special type of limited company which exists to benefit the community rather than private shareholders": <https://www.gov.uk/set-up-a-social-enterprise> [accessed 27 June 2018]

## CORRESPONDENCE

---

### Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018 (SI 2018/667)

9. In its 20th Report of this session,<sup>9</sup> this Committee expressed concern about the Department for Transport’s (DfT) backlog in implementing international maritime legislation. In a letter to the Committee, the Minister acknowledged the delays but assured the Committee that the DfT was taking measures to address the problem.<sup>10</sup> The letter, published in our 21st Report, set out a list of Statutory Instruments that would be needed to be made in order to remedy the backlog. This instrument —SI 2018/667—was not on the list, but implements another strand of maritime legislation, dealing with the insolvency of employers, well after the date on which it was due. We therefore wrote to the Minister again and her response is published at Appendix 1: but it does not leave us convinced that the DfT has a secure grasp on the extent of its legislative backlog or an effective plan to deal with it.
10. Our scrutiny task was made harder by the very limited information given in the Explanatory Memorandum (EM) provided with the instrument. A submission from a member of the public, Richard Greenhill (published on our website),<sup>11</sup> points out that the implementation date was 18 January 2017. No explanation is offered in the EM for the delay in producing these Regulations, despite our previous interest in the matter. Nor is any scale or context given to make clear that actually only a small number of mariners are likely to be affected by this legislation. **We feel that the House has not been well served by this Department and the EM is to be replaced.**

### Civil Aviation (Air Travel Organisers’ Licensing) (Amendment) Regulations 2018 (SI 2018/670)

11. Paragraph 2 of the Explanatory Memorandum (EM) describes the purpose of these Regulations as “to increase the range of flight-inclusive package holidays that are protected by the Air Travel Organisers’ Licence (ATOL) consumer protection scheme.” Although this description is technically correct, as the Regulations extend the types of packages covered, we were surprised to learn from answers to supplementary questions that the legislation’s net effect will be to reduce the number of trips covered by ATOL by approximately 287,000.
12. Under the insolvency protection requirements of the updated EU Package Travel Directive, some alternative protection will be provided but no indication was given in the EM about how the protection offered by those schemes compares to that offered by the ATOL scheme. We wrote to the Minister in the Department for Transport to express our disappointment that the current documentation fails to make clear the effect of the legislation on passengers. The Minister’s response is included at Appendix 2 and **the EM will also be replaced to ensure that this additional information is available to all readers.**

---

9 [20th Report](#), Session 2017–19 (HL Paper 82).

10 [21st Report](#), Session 2017–19 (HL Paper 88).

11 Secondary Legislation Scrutiny Committee, *Letter from Mr Richard Greenhill*, (June 2018): <https://www.parliament.uk/documents/lords-secondary-legislation-scrutiny-committee/Submissions/2017-19/Mr%20Greenhill%20submission.pdf> [accessed 27 June 2018].

## **INSTRUMENTS OF INTEREST**

---

### **Draft Warm Home Discount (Miscellaneous Amendments) Regulations 2018**

13. These draft Regulations, laid by the Department for Business, Energy and Industrial Strategy (BEIS), propose to extend the Warm Home Discount (WHD) scheme for three years until 2020–21. WHD was first launched in 2011 and, according to BEIS, currently provides help with energy costs to more than 2.2 million households in Great Britain, including 1.3 million lower income pensioners and 900,000 other low income and vulnerable households. Under the WHD scheme, those who qualify for support receive a discount of £140 off their electricity bill. The scheme is funded through the bills of customers of energy suppliers that participate in WHD. In addition to extending the WHD, the draft Regulations propose a number of modifications, including a gradual reduction in the size of the customer threshold above which participation in WHS is compulsory for electricity suppliers. BEIS says that it will introduce further legislation in due course to make more significant changes to the WHD scheme for the payment years 2019–20 and 2020–21. This is to include changes to the eligibility criteria, with the aim of improving the targeting of support through WHD.

### **Statement of changes to the Immigration Rules (HC 1154)**

14. In this instrument the Home Office has, among other things, made a number of changes that relate to high profile media stories. In particular they clarify the Windrush policy in distinguishing those who have been absent from the UK for less than two years and so retain their indefinite leave status, from those whose indefinite leave has lapsed due to an absence of more than two years. The changes also take doctors and nurses out of the annual limit on skilled workers under Tier 2 General in order to address shortages in the NHS. The changes create a new form of leave for unaccompanied children relocated under the Immigration Act 2016 (“the Dubs amendment”) who do not qualify for leave as refugees. They will have the right to study, work, access public funds and healthcare, and apply for indefinite leave to remain without paying a fee after five years. The Statement of Changes also extends by six years the *ex gratia* redundancy scheme for Afghan locally-engaged staff who have served at least a year with the UK forces and have been made redundant by the UK military drawdown. It also extends the scheme for those former Afghan staff who have been granted temporary leave to remain in the UK under the Intimidation Scheme and creates a route for them to apply for permanent settlement in the UK.

### **Control of Trade in Endangered Species Regulations 2018 (SI 2018/703)**

15. These Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra), consolidate and update the legislative framework for tackling the illegal trade in wildlife. According to Defra, the aim is to make the law clearer and easier to use and facilitate effective enforcement, for example, by providing police and wildlife inspectors with powers of entry and allowing enforcement bodies to make test purchases of specimens where such purchases would normally be illegal. The Regulations will also introduce new civil sanctions as required under EU and international law, including in relation to advertising specimens for sale. Defra says that the

Regulations are needed to maintain the effectiveness of the UK's regime for the Control of Trade in Endangered Species (COTES) which is central to the Government's commitment to tackling illegal wildlife trade, protecting endangered species and protecting the welfare of traded animals.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

---

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

Oil and Gas Authority (Offshore Petroleum) (Disclosure of Protected Material after Specified Period) Regulations 2018

Warm Home Discount (Miscellaneous Amendments) Regulations 2018

### **Instruments subject to annulment**

- |             |   |
|-------------|---|
| Cm 9622     | Comprehensive Economic and Trade Agreement between Canada, on the one part, and the European Union and its Member States, of the other part |
| HC 1154     | Statement of Changes to the Immigration Rules   |
| SI 2018/667 | Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018                                 |
| SI 2018/670 | Civil Aviation (Air Travel Organisers' Licensing) (Amendment) Regulations 2018  |
| SI 2018/698 | Money Market Funds Regulations 2018   |
| SI 2018/703 | Control of Trade in Endangered Species Regulations 2018   |
| SI 2018/709 | Civil Registration Fees (Data-Sharing) Regulations 2018   |
| SI 2018/717 | M6 Motorway (Junctions 16 to 19) (Variable Speed Limits) Regulations 2018   |
| SI 2018/719 | Housing Administration (England and Wales) Rules 2018   |

## APPENDIX 1: CORRESPONDENCE ON THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (COMPULSORY FINANCIAL SECURITY) (AMENDMENT) REGULATIONS 2018

---

### Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Ms Nusrat Ghani, MP, Parliamentary Under Secretary of State at the Department for Transport

I wrote to you on behalf of this Committee on 27 February 2018 enquiring about the extent of the current backlog of maritime legislation that needs implementation. Your response of 5 March explaining your plans did not appear to refer to the instrument currently before us, which is also being implemented some 18 months after its due date of 1 January 2017 and over four years after the relevant amendments to the Maritime Labour Convention were agreed. We are therefore concerned about the full extent of the backlog in this area of legislation.

We note that consultation on this legislation occurred towards the end of 2016 and even though only four replies were received the Department for Transport (DfT) took a further two and a half years to lay these Regulations. Despite our recent interest in the management of maritime legislation, the Explanatory Memorandum makes no reference to the deadline or delays and **we would ask that the EM be revised to explain this and also to include a clearer statement of the (admittedly small) number of mariners likely to be affected by this legislation.**

In response to supplementary questions, your department told us: “It has taken longer to implement the measures proposed by this instrument than anticipated in part because of time delays caused by purdah restrictions associated with general elections in the development stage. The introduction of financial security liability requirements of this type are new to this area and we have spent time working in detail with our stakeholders to develop the proposal to be workable for the industry. There was also a concern about the implementation powers for the SI which has now been resolved.” The latter two points are matters of planning and project management, and, given the DfT’s extensive backlog, we would welcome assurances that any deficiencies in this respect are being remedied as a matter of urgency. We are concerned that these items should not fall further behind while you deal with the Brexit workload.

On the matter of purdah the Committee has been clear that we would not usually find this, typically six week period, an acceptable reason for delay. We corresponded with the Cabinet Office on this matter at the start of 2018 and the extract from our 23rd Report is attached for your information. We would be grateful for a response to our concerns by 10am on Monday 25 June.

**19 June 2018**

### Letter from Ms Nusrat Ghani, MP, to Lord Trefgarne

Thank you for your letter dated 19 June 2018. My Department sincerely regrets the time it has taken to make these Regulations and is taking every possible step to address this.

The response I gave in March to your letter dated 27 February 2018 centred on the work my Department commissioned ChartCo Training & Consultancy to undertake and our response to the result of the gap analysis comparing

International Maritime Organization (IMO) conventions and amendments with that of UK domestic legislation to identify where UK legislation is out of step with international obligations.

I outlined in my earlier letter to you the timetable my Department is working to remedy this situation and moving forward our proposed use of ambulatory reference to allow for incorporation of future amendments.

The International Labour Organization Maritime Labour Convention 2006 (“MLC”) was not part of the commissioned work. The 2014 amendments to the MLC are the first amendments to the MLC and their implementation through the Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018 will render the United Kingdom fully compliant with the MLC. The 2014 amendments to the MLC are not suitable for transposition by cross-referencing the Convention requirements because the amendments are not generally of a technical nature and before implementation in a ratifying State they must be agreed by the social partners of that State. For the same reason, the use of ambulatory referencing is not an appropriate way of incorporating future amendments.

My Department’s original intention was to transpose these amendments close to the international coming into force date of 1 January 2017. There were however issues of substance raised by the social partners that delayed the timetable. The public consultation raised further questions of policy and it was recognised that it would not be possible to have draft legislation that could be considered for the April 2017 Common Commencement Date.

As a responsible regulator my Department felt that it was very important to take seriously the opinions expressed by our stakeholders during consultation in order to ensure that our legislation implemented the intended protections for the seafarers in a practical and enforceable way for the shipping industry. The ILO also requires Governments to demonstrate that they have worked in a tripartite fashion with shipowners and seafarers to implement MLC requirements. Our main industry stakeholders were prepared to continue to work with us and with each other to continue to refine our policy to this end. In particular, my Department worked with the Chamber of Shipping representing ship owners, Nautilus International and the RMT representing seafarers and the International Group of P and I Clubs (IGP&I) representing the financial security providers.

In April 2017, as an interim measure, the Maritime and Coastguard Agency issued Merchant Shipping Notice (MSN) 1848 Amendment 1 which updated an existing MSN to include the requirements relating to abandonment and shipowners’ liability financial security<sup>12</sup>.

MSN 1848 Amendment 1 was given effect by the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785) and required owners and operators of UK registered ships to demonstrate that their financial security arrangements met the standards of the MLC 2014 amendments before a certificate of compliance with the MLC could be issued or endorsed.

MSN 1848 Amendment 1 provided a mechanism that since April 2017 has enabled the Government to require UK registered ships to comply with the requirements

---

<sup>12</sup> Maritime and Coastguard Agency ‘MSN 1848 Amendment 1 seafarers working and living conditions’ (16 October 2017): <https://www.gov.uk/government/publications/msn-1848-amendment-1-seafarers-working-living-conditions-on-uk-ships> [accessed 27 June 2018]

for financial security. This, however, was not sufficient to implement the MLC 2014 amendments in their entirety and did not give the Government powers to enforce the requirements on non-UK flagged ships when in UK Ports.

In addition to the issues surrounding policy, the delay in properly transposing these regulations has in part been due to issues relating to our use of the primary powers. My Department originally considered an alternative approach to the approach ultimately taken and was a considerable way down that path before changing direction. Due to this, and the issues of substance discussed above, it was not until the first quarter of 2018 that the way forward was settled.

I note your comments about the Explanatory Memorandum and my Department will update this. I would like to reiterate that in implementing the Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018 the United Kingdom will be fully compliant with the MLC.

I am copying this to Mr Oliver Dowden, Minister for Implementation at the Cabinet Office.

**26 June 2018**

## **APPENDIX 2: CORRESPONDENCE ON THE CIVIL AVIATION (AIR TRAVEL ORGANISERS' LICENSING) (AMENDMENT) REGULATIONS 2018**

---

### **Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport**

I am writing as Chairman of the Secondary Legislation Scrutiny Committee which considered these Regulations at its meeting yesterday. It seemed to the Committee that the Explanatory Memorandum (EM) accompanying this instrument fails adequately to explain the effect of the legislation and it has postponed consideration of the Regulations until the EM is revised.

Paragraph 2 of the EM describes the purpose of these Regulations as “to increase the range of flight-inclusive package holidays that are protected by the Air Travel Organisers’ Licence (ATOL) consumer protection scheme. This is being done to improve holiday consumer protection in the UK and align the legal framework with the requirements of the updated EU Package Travel Directive.”

The documentation explains that a wider range of booking methods will be included and the Impact Assessment covers the financial impact on travel businesses and regulators in some detail. However, we discovered in response to supplementary questions that the net effect of these changes will be an overall reduction in the number of trips covered by ATOL by approximately 287,000.

Although your Department explained to us that those travellers not covered by ATOL would benefit from other insolvency schemes either in the UK or abroad, no indication was given in the EM whether the protection offered by them will be equivalent to that offered by the familiar ATOL scheme.

We are disappointed that the current documentation fails to explain the impact on passengers and would ask that you provide a more complete description of the effects of these Regulations so that we can judge whether the net effect of the legislation will indeed be to improve holiday consumer protection. We would be grateful for a response to our concerns by 10am on Monday 25 June.

**20 June 2018**

### **Letter from to Baroness Sugg to Lord Trefgarne**

Thank you for your letter dated 20 June 2018 on the Civil Aviation Air Travel Organisers’ Licensing (ATOL) Regulations 2018.

As you may be aware the UK agreed to adopt the new EU Package Travel Directive (PTD 2015) in December 2015 and implement it into UK law by 1 July 2018. PTD 2015 is a “maximum harmonisation” Directive. It aims to improve consumer protection for holiday makers in 3 key ways:

- protect more holidays with a new definition of a package holiday,
- make it easier for holiday businesses to trade across the EEA and;
- have clearer information provisions for consumers.

The Department for Business, Energy and Industrial Strategy is leading the transposition through the overarching Package Travel and Linked Travel

Arrangements Regulations 2018. The Department for Transport as you will be aware is responsible for the ATOL legislation and we have in parallel updated our regulations.

It is correct that the updated ATOL scheme will see a reduction in the amount of trips, by approximately 240,000. However this reduction is not due to amendments made to the legislation which underpins the ATOL scheme.

The ATOL Act 2017 extended the powers underpinning the ATOL scheme to enable ATOL protection to be provided by UK established businesses in relation to packages sold within the EEA. This reflects the requirement under the EU Directive for insolvency protection to be based on the place of establishment rather than the place of sale. This means an EEA established business would need to obtain insolvency protection under measures implemented in their respective member state as opposed to the member state they sell in.

This measure was brought in to open the market and to make it easier for holiday businesses to trade across the EEA without needing to comply with different insolvency protection regimes. In the UK, EEA established businesses are already exempt from the ATOL scheme. However, some EEA established businesses were granted ATOL licences by the CAA on a voluntary basis.

The CAA has issued a voluntary licence to 21 EU-based travel companies. Those licences were not necessary under UK law because the sales were exempt from the ATOL scheme, under Regulation 10(d) of the ATOL Regulations 2012. Granting licences to such businesses is an inadequate regulatory position because it is not possible for the CAA to insist on and enforce the same regulatory standards for non-UK established business that are voluntarily participating in the ATOL scheme given that the business does not in fact require the licence to conduct the sales.

The figures provided to the Committee reflect the fact that the CAA will no longer consider granting voluntary ATOLs to non-UK businesses established in the EEA. Such businesses will either need to sell into the UK on the basis of the protection arrangements in their country of establishment, or rearrange their business so they have a place of establishment in the UK and the sales hence become licensable under ATOL. This change and the resulting projected reduction in ATOL protected trips is not an effect of the amendments to the ATOL Regulations 2012.

In addition, we have removed the requirement for business to business sales made under a general agreement to be covered by an ATOL License. This will see a reduction up to 80,000 trips per annum. Businesses that make travel arrangements on the basis of a general agreement, often used for numerous travel arrangements for a specified period, do not require the level of protection designed for consumers. Therefore, the Package Travel Directive 2015 (and by extension, these Regulations) does not apply to business travellers where they make travel arrangements on the basis of a general agreement. These passengers would be covered under any contingency arrangements agreed between the two businesses. This exemption has no impact on typical consumer or leisure packages.

The concept of Linked Travel Arrangements (LTAs) is implemented under the Package Travel and Linked Travel Arrangements Regulations 2018. Flight only protection under ATOL where it applies, will continue to be required in relation to arrangements that fall into this category. In our impact assessment we envisage

growth in the number of LTAs sold; we estimate an additional 33,000 holiday arrangements sold as LTAs per annum, and covered under ATOL.

Putting all this together, there are approximately 26 million ATOL protected passengers, these changes would be around 0.2% when looking at the increase in seat-only LTAs and a reduction from business passengers.

In your letter, you highlight that our EM describes the purpose of these regulations as “to increase the range of flight-inclusive package holidays that are protected by the Air Travel Organisers’ Licence (ATOL) consumer protection scheme. This is being done to improve holiday consumer protection in the UK and align the legal framework with the requirements of the updated EU Package Travel Directive”. This statement was intended to highlight that the amended regulations will see an increase in the type of flight inclusive holidays being covered to adhere to modern trade practices.

I hope this is helpful in addressing your concerns in the meantime as requested we will be revising the explanatory memorandum to make clear the points above.

**21 June 2018**

### **APPENDIX 3: 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 26 June 2018, Members declared the following interests:

#### **Draft Oil and Gas Authority (Offshore Petroleum) (Disclosure of Protected Material after Specified Period) Regulations 2018**

Lord Goddard of Stockport

*Consultant, Managed Field Development Company (MFDevCo) Ltd  
(formerly Marginal Field Development Company) (oil and gas)*

#### **Money Market Funds Regulations 2018 (SI 2018/698)**

Lord Janvrin

*Senior Adviser, HSBC Private Bank (UK) Ltd*

#### **Attendance:**

The meeting was attended by Lord Cunningham of Felling, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.

