

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT PACKAGE TRAVEL AND LINKED TRAVEL
ARRANGEMENTS (AMENDMENT) (EU EXIT)
REGULATIONS 2018

Tuesday 4 December 2018

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Onwurah, Chi (<i>Newcastle upon Tyne Central</i>) (Lab) |
| † Chishti, Rehman (<i>Gillingham and Rainham</i>) (Con) | † Rashid, Faisal (<i>Warrington South</i>) (Lab) |
| † Cooper, Rosie (<i>West Lancashire</i>) (Lab) | † Rowley, Lee (<i>North East Derbyshire</i>) (Con) |
| † Gibson, Patricia (<i>North Ayrshire and Arran</i>) (SNP) | Shuker, Mr Gavin (<i>Luton South</i>) (Lab/Co-op) |
| † Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Hayes, Sir John (<i>South Holland and The Deepings</i>) (Con) | † Sturdy, Julian (<i>York Outer</i>) (Con) |
| † Jones, Darren (<i>Bristol North West</i>) (Lab) | † Swire, Sir Hugo (<i>East Devon</i>) (Con) |
| McKinnell, Catherine (<i>Newcastle upon Tyne North</i>) (Lab) | † Tolhurst, Kelly (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † O'Brien, Neil (<i>Harborough</i>) (Con) | Bradley Albrow, <i>Committee Clerk</i> |
| | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 4 December 2018

[STEWART HOSIE *in the Chair*]

Draft Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kelly Tolhurst): I beg to move,

That the Committee has considered the draft Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018.

It is a pleasure to serve under your chairmanship, Mr Hosie. The draft regulations, which were laid before the House on 29 October, will be made under the powers conferred by the European Union (Withdrawal) Act 2018. They form part of the wider programme of work to adjust our legislative framework in readiness for leaving the European Union.

If a withdrawal agreement is reached between the UK and the EU, the implementation date of this draft statutory instrument could be changed by any Bill that the Government introduce to implement the withdrawal agreement in UK law. However, it is sensible to prepare for all scenarios, and that is what we are doing by bringing this instrument before the Committee today.

The Package Travel and Linked Travel Arrangements Regulations 2018 came into force in the UK on 1 July this year. They implemented the European Union's 2015 package travel directive, and expanded the definition of "package" to ensure that it encompasses modern methods of purchasing package holidays, online in particular. They also created the new concept of linked travel arrangements, which are looser combinations of travel services, and introduced limited protection for consumers who purchase them.

The 2018 regulations require the provision of information to travellers, so that they have clear information about their package holiday or linked travel arrangements and their statutory rights. They also require that organisers put in place adequate insolvency protection to cover the refund of payments made by passengers and, if necessary, their repatriation.

If approved, the draft instrument will make amendments to deal with deficiencies that arise from a possible UK withdrawal from the EU on a no-deal basis. The 2018 regulations implemented the mutual recognition requirement of the EU directive. That requires member states to recognise the insolvency protection put in place by traders under the law of the member state in which they are established. In consequence, the 2018 regulations exempt traders established in other member states from having to comply with UK insolvency protection rules. Upon EU exit, the UK will become a third country, and so will no longer benefit from the mutual recognition provisions of the directive. In consequence, member states will no longer recognise the UK's insolvency protection under the 2018 regulations.

The draft instrument will remove the exemption that allows European economic area traders to sell in the UK as long as they meet the insolvency protection of the member state in which they are established. If they sell or offer for sale package holidays or linked travel arrangements in the UK, they will be required to comply with UK insolvency protection rules on the same basis as UK traders—and, indeed, traders established anywhere else in the world. That change is necessary, first, to ensure that UK travellers are fully protected by the 2018 regulations if they purchase a package from EU traders that choose to trade within the UK market; and, secondly, to ensure fairness for UK-based traders. EU-based competitors should not have the advantage of an exemption that is no longer reciprocal.

The 2018 regulations also required member states to establish central contact points, the main purpose of which is to facilitate information sharing between member states in relation to insolvency protection. The Civil Aviation Authority is the lead central contact point in the UK. Should the UK leave the EU without a deal, the role of the central contact point would become redundant. The draft instrument will revoke the function of the central contact point to reflect that. It does not affect the Civil Aviation Authority's other enforcement functions in relation to the 2018 regulations.

The draft instrument will also change the obligations on UK retailers that sell packages put together by a non-UK organiser. Regulation 27 of the 2018 regulations requires UK-established traders selling a package put together by an organiser outside the European economic area to be responsible for the performance of the package. They must meet the insolvency protection obligations of the 2018 regulations, unless they can provide evidence that the organiser complies with those requirements. The draft instrument changes regulation 27, so that this responsibility is placed on UK-established retailers when selling a package put together by any organiser established outside the UK, including organisers established in the EEA. This change is important to ensure that UK travellers purchasing packages combined by EEA established organisers can continue to be confident that they would be protected by adequate insolvency cover in the event of the organiser's insolvency.

Sir John Hayes (South Holland and The Deepings) (Con): The Minister may be familiar with the role that I played when I was Transport Minister in doing exactly the sort of work and supporting the kinds of businesses that she is talking about. As she will know from the explanatory notes, one of the principal objectives will be to get those kinds of businesses, voluntary bodies and charities, to understand the changes. She is a competent and extremely diligent Minister, so I know that she will want to find means by which the Government can support that growing understanding. Will she agree to make provisions to get the word out among those kinds of businesses about what the changes mean?

Kelly Tolhurst: I thank my right hon. Friend for that point. If the draft statutory instrument is agreed to, and we move into a no-deal situation in which this piece of legislation is required, the Government are committed, as we have always made clear, to ensuring that consumers' rights are protected. We are and will continue working with the industry, and with consumer representative bodies, to make sure that consumers are aware of what

they need to be looking at, and that businesses operating in this area make sure that people are fully aware of the consequences of the draft instrument.

Finally, the draft instrument makes other technical changes to deal with references to EU legislation, for instance replacing references to EU directives with references to the relevant saved domestic legislation. Importantly, the instrument does not otherwise change the 2018 regulations, so that after EU exit, travellers will continue to benefit from all the protections in those regulations. Officials from the Department have undertaken the appropriate assessment of the impacts of the draft instrument. That has shown that there is likely to be a small impact on business in cases where UK businesses have to provide the relevant insolvency insurance.

The draft instrument is a sensible and necessary use of the powers of the European Union (Withdrawal) Act 2018 that will ensure that our consumer law continues to function effectively on exit day. I commend the regulations to the Committee.

2.39 pm

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a pleasure to serve under your chairmanship for the first time, Mr Hosie. As the Minister indicated, with the rise of the internet and the boom in low-cost airlines, the way we book our holidays has changed significantly. Last year, 38% of all holidays abroad by UK residents—17.5 million holidays—were package holidays. Holidays to the European Union made up 79% of all holidays, and 74% of package holidays, by UK residents. Consumers often buy packaged holidays a long time in advance. They often spend a considerable amount of money—a very significant proportion of their income—on a holiday, including on flights, hotels and car rental.

As the popularity of package holidays rises, so do the risks, including the risk of trader insolvency leaving consumers stranded, the risk of accommodation providers going bust, and the risk of difficulties with access to information, help or redress, to name just a few. That is why the EU directive was an important step forward in protecting consumers in both the UK and the EU.

As the Minister outlined, this statutory instrument amends EU-derived regulations that protect consumers buying package holidays or linked travel arrangements to ensure that these protections continue to operate effectively after the UK's departure from the European Union. It proposes a new obligation on UK businesses that sell package holidays put together by a European Union business. Those UK businesses will be required to comply with UK insolvency protection requirements, unless they can demonstrate that the EU business has taken out appropriate insolvency protection.

Clearly it is vital that insolvency protection schemes work. To give just one example, in 2016, Lowcostholidays failed, which left 140,000 UK consumers at risk of losing the money they had paid for their holiday, and some stranded overseas. At the time of the failure, the company, which sold primarily to the UK market, was based in the Spanish Balearic islands, following a controversial move in 2013, and its insolvency arrangements were held there. The UK regulator, the CAA, was powerless to prevent the company selling to UK consumers, or to obtain information on its insolvency arrangements. Fortunately, in that case, the majority of UK consumers

ended up receiving refunds through the Consumer Credit Act 1974, which covers refunds of credit card payments. However, it has since emerged that the company's insolvency protection came nowhere near to covering the sales it had made. That illustrates the potential risks of insolvency protection schemes not working in a joined up manner. It is not enough to have a scheme; it needs to work in a joined up way.

The intention behind the mutual recognition rules is to prevent this type of scenario occurring, but without those rules, the only way to do that is to require UK sales to be protected here. As a result of the regulations, the mutual recognition of insolvency protection with EU member states will end. As part of the withdrawal negotiations, have the Government attempted to negotiate continued mutual recognition of this? If not, do they intend to?

As UK individuals and businesses will no longer benefit from mutual recognition of insolvency protection, they could see a reduction in their consumer rights. Is that compatible with the Prime Minister's statement in October 2017 that she wanted a partnership with the European Union based on strong consumer rights?

Furthermore, the Minister will know when this SI came to the Committee in May, an impact assessment was undertaken, as it was recognised that businesses offering packages that would be newly within the scope of the package travel directive of 2015 would face costs of £21 million in ensuring proper performance of the package. Does she not agree that an impact assessment should have been prepared prior to this debate? The right hon. Member for South Holland and The Deepings asked how businesses could be made more aware of these changes; should that not have been costed as part of an impact assessment? Will she estimate what exactly the cost will be to businesses?

The Minister did talk about an impact assessment. What assessment has she and her Department made of the number of travel companies that may move away from the UK market as a result of the new changes in insolvency protection? Finally, what discussions has she had with British trading standards on the impact these amendments will have on its workload? We know British trading standards has, unfortunately, been underfunded. Will this add to its workload without adding resources? My final question: given the 56% reduction in staffing for trading standards due to Government cuts, has the Minister any assurance to make?

Sir Hugo Swire (East Devon) (Con): How much more money would the hon. Lady's party give to the trading standards body?

Chi Onwurah: I thank the right hon. Gentleman for his intervention, even though it is a little mischievous in nature. As he knows, we would have undertaken these negotiations in an entirely different and more effective way. To ask questions on the detail of what we would do—

Sir Hugo Swire: Will the hon. Lady give way?

Chi Onwurah: I will finish answering the right hon. Gentleman's first point before I give way a second time. Asking how we would mitigate the negative consequences of agreements that are part of the Government's deal—we

[Chi Onwurah]

will see whether it will be approved by the House in a week's time—is taking hypothetical questions to the extreme.

Sir Hugo Swire: For the sake of the *Hansard* reporters, let me state that I would never want to be accused of saying that the Opposition were strong on detail, but the hon. Lady has just accused the Government of cuts, and of reducing the amount payable to a body, which suggests that her party would commit more funds. It is not hypothetical; we need to know what she means by this.

Chi Onwurah: It is entirely wrong to say that I am making an accusation against the Government by simply stating that there was a 56% reduction in staff numbers. How is that an accusation? That is a statement of fact, a statement of the consequence of this Government's and the preceding Government's austerity agenda, which has led to our consumer protection services being decimated. The right hon. Gentleman was looking for more detail on this point, and I am happy to give it to him. Our services have been decimated as a consequence of the Government's austerity agenda. His Prime Minister has said that austerity has ended, but his Chancellor has in no way committed the funds to make that real.

Sir Hugo Swire: Will the hon. Lady give way?

Chi Onwurah: Again, I would like to answer the right hon. Gentleman's first point before giving way another time. A Labour Government will ensure that our public services are properly funded. We need to see exactly what mess this Government leaves for us before we can say exactly how much that will cost.

Sir Hugo Swire: Hopefully it will not be as great a mess as the one we inherited from her Government in 2010. People are beginning to rumble the Opposition for being opportunistic. The hon. Lady has talked about cuts and decimation; she has accused the Government of decimating this particular body. It is entirely right that, as parliamentarians, we should know what her counter-proposals are. It is no good trying to lose the room in blandishments and vague promises. We need to know, if she has looked at this, how she would better resource it.

Chi Onwurah: Our commitments are to comprehensive investment in our public services and our infrastructure, and to strengthening consumer rights and protections. I will not go through every line of funding in our first Budget as a Labour Government, because I am not in a position to do that. However, I am in a position to say categorically that we would not have indulged in the failed economic policy of austerity, which has cut our public services while also giving us the lowest economic growth within the Organisation for Economic Co-operation and Development, and the second lowest within the European Union. If that is successful economic investment, then I think the right hon. Gentleman has a lot to learn about a successful economic policy.

Sir John Hayes: Might I be helpful? I realise that I cannot match the assertiveness of my right hon. Friend the Member for East Devon, but this seems to be less about trading standards than about the way in which people book holidays. When I looked at these matters

as a Minister, as I mentioned earlier, it became clear that the regime that has prevailed for some time was based on the fact that most people booked their holiday through a supplier, as a package. Increasingly, people construct their holiday by a variety of means, including through the internet. There is a reasonable point to be made about this being a dynamic sector that requires a moving regulatory environment.

When I challenged the Minister on this, she very helpfully committed—I thought she would—to providing information to all those bodies associated with that highly dynamic part of the market, as the explanatory note implied that we should. I am not putting words into the mouth of the hon. Member for Newcastle upon Tyne Central, but a more telling critique would be about that, rather than taking this more conventional approach around trading standards.

Chi Onwurah: I hesitate to disagree with the right hon. Gentleman, who is so well informed in many areas, but as I said in my opening remarks, while it is absolutely true that consumer behaviour has changed in terms of how holidays are booked, that does not mean that the need for protection and for trading standards has reduced. For example, if we look at how crime has moved from the high street to the virtual high street, then some might argue that there was a greater need for trading standards and for protection of consumers. While I take the point that any consumer protection regime needs to reflect consumer behaviours, I do not think that that in any way reduces the need for trading standards bodies to have the proper resources.

Sir John Hayes *rose*—

The Chair: Order. Before the hon. Gentleman makes another intervention, the statutory instrument is very narrow; it is about package travel and linked travel arrangements, not about trading standards. If you stuck to the statutory instrument, I would be very grateful indeed.

Sir John Hayes: I am always guided by your wisdom, Mr Hosie. The point is that this is a complex area. The hon. Member for Newcastle upon Tyne Central is right that trading standards matter, but that is not all that matters. The Minister has made it clear that she is determined to make sure that information is provided to the businesses, voluntary organisations and charities that are likely to be affected, in exactly the way that I requested.

Chi Onwurah: Thank you for your advice, Mr Hosie. Let me reflect the right hon. Gentleman's point and ask the Minister specifically what assurance she will make to resource British trading standards adequately to reflect additional workload. Assurances are very well, but it takes resource and funding to make them into reality. What resources will she put behind the information and communication campaign that she has apparently committed to in this debate?

2.53 pm

Patricia Gibson (North Ayrshire and Arran) (SNP): Thank you, Mr Hosie; it is a pleasure to see you in your place. My remarks will be brief.

The statutory instrument brings welcome consumer protections, but the Minister will be aware that it does nothing to reverse the loss of income that Brexit has meant and will continue to mean for holidaymakers, should it go ahead, which is becoming less clear with every day that passes. I say that at the risk of raising the ire of Government Members. It seems to me that the only thing that is clear is that Brexit is unclear.

Mark Carney, the Governor of the Bank of England, told the Treasury Committee that

“real household incomes are about £900...lower than...forecast in...2016.”

The question is why, and what drove that difference. Some of it, according to Mark Carney, is ascribed to Brexit. I crave your indulgence for just a brief second, Mr Hosie. Alongside what Mark Carney notes, there has been a decline in real wage growth since the Brexit referendum, largely fuelled by persistent inflation, which has been above the 2% target each month since February 2017, one of the key drivers being the weak pound as a result of the market's dim view of the UK Government's Brexit plans. That is the context in which we are thinking about consumers booking future holidays.

It is extremely important that the UK Government give assurances that they will seek to ensure a future partnership framework, and will retain the consumer benefits of the 2018 regulations. I agree that it is important that protection be expanded for consumers buying package holidays, to reflect modern travel booking methods, such as online booking, and that we broaden the definition of “package” to encompass new ways of purchasing package holidays.

This statutory instrument shows the importance of EU member states working together, but I fear—perhaps the Minister will seek to reassure me—that over time, Brexit will inevitably dilute and damage the consumer rights that are currently protected by EU member states working together. This will be at the expense of general consumer protection measures. As the right hon. Member for South Holland and The Deepings said, the package holiday sector is a moving and dynamic environment, so any UK Government have to be on their game to ensure that there is no unnecessary and damaging divergence in the kind of protection that we seek in this dynamic and innovative environment, to use the right hon. Gentleman's words.

The new directive introduced a requirement for insolvency protection arrangements that were mutually recognised by EU member states and the UK, backed up by a central contact point that should, I hope, reassure consumers of package travel. As we have heard, this insolvency protection must work for all consumers who need it. I am sure that the Minister will agree that travel businesses need to be made fully aware of consumer rights and protections, as others have indicated.

I welcome the protections offered in this statutory instrument, but I have to say again that it will not put back into holidaymakers' and householders' pockets the income that has been lost since this Brexit episode started. People's income is an estimated £900 less than the Bank of England forecast it would be in 2016. That comes alongside a decline in real wage growth since the Brexit referendum. I fear that consumers will be taking fewer holidays and therefore, sadly, will need fewer protections, but those who do take holidays rely very heavily on the kind of protections set out today.

2.57 pm

Kelly Tolhurst: First, I reassure the hon. Lady that the 2018 regulations were implemented in July; we are making an amendment today based on a no-deal scenario. I thank her for her comments about the SI and the protections that we are trying to establish.

I will try to answer the questions raised by the hon. Member for Newcastle upon Tyne Central about the SI. As she will know, if a deal is agreed by this House, the Government will enter into a future economic partnership with the EU. This Government have been clear in their technical notices that consumer protection is at the forefront of what we are doing. Particularly in my role in the Department for Business, Energy and Industrial Strategy, consumer protection and what we are doing to support consumers is always at the forefront of our mind. I said it twice in two debates last week, and I say it again today: we are committed to continuing to deliver the highest consumer protections possible for the people of the United Kingdom.

The hon. Lady talked about consumer rights and different mechanisms as we move this statutory instrument forward. I alert her to the fact that in future weeks we will lay before the House an SI about mechanisms that we are working on for cross-border co-operation and redress in the event of no deal.

The hon. Lady talked about the impact assessment and mentioned a figure of £21 million. I am afraid I do not recognise that figure. Our assessment is that the potential cost to business is between £1.4 million and £1.8 million. As that falls below £5 million, a full impact assessment was not undertaken. I may need to make the Committee aware that the impact had already been established prior to 1 July, when the 2018 regulations came in, because UK businesses already had to provide protection for other holiday packages sold in the UK. We are pretty sure that our estimate of the burden on business will be at that level. In actual fact, we estimate that even if 70% of retailers currently supplying package holidays or linked travels arrangements in the United Kingdom were affected, it would still fall below the £5 million mark. More than 70% of retailers would need to be affected for that amount to be larger, and we think that the burden and the number of businesses affected will be reduced.

The hon. Lady also spoke about trading standards and enforcement. I take issue with her saying that trading standards have been decimated, and that the Government have not wanted to fund and have not taken seriously the enforcement of consumer rights. That is quite simply untrue. The priority given to trading standards locally is decided on at local level. Trading standards already enforce current regulations. We are committed to enforcement. We have National Trading Standards, and this year we put in the Office for Product Safety and Standards, which works very closely with National Trading Standards, and which obviously shows our commitment to delivering on product safety. We will continue, as ever, to maintain our trading standards capability.

As the hon. Lady knows, there was a Green Paper on consumer protections and enforcement. The Government are looking at that, and at how we can better our consumer protection and enforcement. I assure her that, as the Minister with responsibility for this area,

[*Kelly Tolhurst*]

I am committed to that. I reiterate that commitment, as I have in previous such Committees when consumer protections and enforcement have been raised.

I also highlight to the hon. Lady that, under the draft regulation, the CAA is still responsible for enforcement when flights are included. The Department for Transport is confident that even with the increased workload, it will be able to discharge its responsibilities under the draft regulation sufficiently well.

The hon. Lady also asked about the campaign that I agreed to. I did not agree to a marketing campaign; I do not think I spoke about a marketing campaign. I said that we will continue to work with consumer protection groups such as Which? and stakeholders. We have roundtables. We will also make sure that if there is a change and we are in a no-deal situation, the Government will work with our stakeholders, industry representatives, Citizens Advice, trading standards and all our usual stakeholders to make sure that the information is out there as prominently as possible. My right hon. Friend the Member for South Holland and The Deepings made the point that we have already had significant discussions with the industry and with stakeholders prior to laying this SI before Parliament.

We remain confident that we will reach a deal with the EU. However, it is of course important that we prepare the legislative framework to protect consumers and businesses in case we leave the EU with no deal. That is what this draft instrument will do. It does not make any substantial change to the regime for the protection of consumers purchasing package holidays or linked travel arrangements, or to the standards that travel operators are already expected to meet.

The draft regulations are essential to ensuring that the retained EU legislation that sets out those requirements continues to work effectively in the UK immediately after exit day. That is what they are designed to do. We need to make sure that we have the right regulatory and legislative framework to provide travellers with adequate protections, irrespective of the outcome of the negotiations. I therefore hope that the Committee approves the draft regulations.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018.

3.5 pm

Committee rose.