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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**The Package Travel and Linked Travel  
Arrangements Regulations 2018**

**PART 7**

**Enforcement**

**Enforcement authority**

**31.**—(1) Every local weights and measures authority in Great Britain is to be an enforcement authority for the purposes of regulations 5, 7, 19, 25 and 26 (“the relevant regulations”), and it is the duty of each such authority to enforce those provisions within their area.

(2) The Civil Aviation Authority is to be an enforcement authority for the purposes of the relevant regulations.

(3) The Department for the Economy in Northern Ireland is to be an enforcement authority for the purposes of the relevant regulations, and it is the duty of the Department to enforce those provisions within Northern Ireland.

**Due diligence defence**

**32.**—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 5(5), 7(12), 19(9), 25 or 26(10), it is a defence for that person to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person is not, without the leave of the court, entitled to rely on the defence unless, at least 7 clear days before the hearing of the proceedings, or, in Scotland, the trial diet, the person has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time the person serves it.

(4) A person is not entitled to rely on the defence provided by paragraph (1) by reason of the person’s reliance on information supplied by another, unless the person shows that it was reasonable in all the circumstances for the person to have relied on the information, having regard in particular to—

- (a) the steps which the person took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether the person had any reason to disbelieve the information.

### **Liability of persons other than the principal offender**

**33.**—(1) Where the commission by any person of an offence under regulation 5(5), 7(12), 19(9), 25 or 26(10) is due to an act or default committed by some other person in the course of any business of that person, the other commits the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate commits an offence under any of the provisions mentioned in paragraph (1) (including where it is so committed by virtue of that paragraph) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, both that person and the body corporate commit that offence and are liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate.

(4) Where an offence under any of the provisions mentioned in paragraph (1) committed in Scotland by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, the partner (as well as the partnership) commits the offence and liable to be proceeded against and punished accordingly.

### **Prosecution time limit**

**34.**—(1) No proceedings for an offence under regulation 5(5), 7(12), 19(9), 25 or 26(10) is to be commenced after—

- (a) the end of the period of 3 years beginning within the date of the commission of the offence, or
- (b) the end of the period of 1 year beginning with the date of the discovery of the offence by the prosecutor,

whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by the prosecutor is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved.

(3) In relation to proceedings in Scotland, subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975(1) applies for the purposes of this regulation as it applies for the purposes of that section.

### **Saving for civil consequences**

**35.** No contract is void or unenforceable, and no right of action in civil proceedings in respect of any loss arises, by reason only of the commission of an offence under regulations 5(5), 7(12), 19(9), 25 or 26(10).

### **Terms implied in contract**

**36.** Where it is provided in these Regulations that a term or condition is implied in the contract it is so implied irrespective of the law which governs the contract.

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(1) 1975 c. 21.

