

MANCHESTER 2017

BREXIT AND PACKAGE TRAVEL CLAIMS

Sarah Prager
1 Chancery Lane

The starting point: the Package Travel, Package Holidays and Package Tours Regulations 1992 are *domestic* Regulations. They are in force in England and Wales by reason of a freestanding statutory instrument.

The Regulations were enacted in order to give effect to Council Directive 90/314/EEC of 13th June 1990.

However, the introductory text states that “... *the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972.*”

The 1992 Regulations are therefore enacted by reason of the powers vested in the Secretary of State by that Act.

What happens if the Act is repealed?

What happens if the Act is replaced?

On 25th November 2015 the new Package Travel Directive 2015/2302/EU was adopted. It came into force on 31st December 2015 and must be transposed into Member States' law by 1st January 2018. It will be applicable within the EU by 1st July 2018.

But will the new Directive be brought into law following the referendum result?

As of October 2016 the Department for Trade confirmed that “*our obligation to transpose EU law, including the PTD 2015, will remain in place*” - at least, during the Article 50 process.

What happens when (if) the new Directive does come into force?

Will the Regulations follow the scheme of the Directive?
How will the Directive be interpreted?

Will the decisions of the Court of Justice of the European Union continue to be binding, relevant or citable?

What happens if the CJEU makes a decision based on a purposive approach which the English courts would not have made?

Sarah Prager
1 Chancery Lane
sprager@1chancerylane.com