

Department for
Business, Energy
& Industrial Strategy

THE PACKAGE TRAVEL AND LINKED TRAVEL ARRANGEMENTS REGULATIONS 2018

Guidance for Businesses

July 2018

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Introduction

Holidays are usually a major expense for the average consumer. Households spend on average £23.10 per week on package holidays which constitutes 34% of total spending on recreation and culture (ONS 2014 Living Costs and Food Survey). The UK government and travel industry has a long history of providing protection to holidaymakers. The 2018 Package Travel and Linked Travel Arrangements Regulations (2018 PTRs) build upon this history to make the legislation fit for the modern travel market.

Package holidays are unique as they are often complex combinations of travel services which typically include transport and accommodation, and may also include other services, such as excursions and vehicle hire. As various service providers are often involved, a problem with the delivery of one service may affect the delivery of others. The traveller may find it difficult to deal with subcontractors (e.g. due to language barriers) and in such cases may not even have a contract with the various service providers.

Typically, consumers pay large sums, often long in advance of the service being provided, which makes them vulnerable to insolvency. Consumers are generally unaware of the financial stability of holiday providers and can face considerable difficulty in getting a refund from an insolvent company. There is also a risk that holidaymakers will be stranded abroad should their travel organiser collapse.

2018 PTRs implement the 2015 European Package Travel Directive[1] (PTD 2015) and provide important protection for consumers to cover the unique characteristics of package holidays. Key protections include:

- Making the organiser liable for the performance of the travel services making up the package (even if performed by third parties).
- Protection against the insolvency of package organisers, ensuring travellers are refunded, or where applicable, repatriated should the organiser go bust.
- Detailed information requirements that make it clear what product the traveller is buying and the associated protections.

This document provides guidance only and does not substitute reading the 2018 PTRs. The guidance seeks to explain the government's intentions in making the 2018 PTRs, but interpretation of the 2018 PTRs is for the courts. We have included a number of hypothetical case studies to help illustrate the intention, however we would emphasise that traders should consider the application of the 2018 PTRs in the circumstances of each specific case. This guidance does not provide legal or other advice and, if in doubt as to your obligations, you are strongly recommended to obtain legal advice.

[1] EU 2015/2302.

Scope

1. The 2018 PTRs apply, throughout the UK, to the sale of **packages** and **linked travel arrangements (LTAs)**.

2. Under the 2018 PTRs, a **traveller** can be any individual, and can include some business travellers (subject to the exemption for general agreements explained below). The definition of traveller is therefore wider than that of "consumer" in other consumer legislation.

3. We explain the concepts of "package" and "linked travel arrangement" in more detail [later in this guidance]. However, the 2018 PTRs **do not apply** to the following packages or LTAs (regulation 3(2)):

    a) Packages and LTAs that last less than 24 hours unless there was overnight accommodation included.

    b) Packages and LTAs that are organised occasionally **and** on a not for profit basis **and** for a limited group of travellers, such as a one-off trip arranged by a church for its members. We would consider occasionally to mean no more than a few times a year. This would apply to the not for profit organisation itself and not to an organiser serving that group or market on a commercial basis

    c) Packages and LTAs purchased on the basis of a general agreement. We consider that this exemption applies where companies make bookings through framework contracts with business travel agencies. In contrast, small businesses and professionals often use the same booking channels as holidaymakers and require a similar level of protection. Business travellers who choose to make their travel arrangements via consumer facing service providers where no general agreement for the booking of business travel is in place will continue to benefit from protections.

What is a package holiday?

4. A package holiday is generally the combination of **two or more different types of travel services** which are **combined** for the purpose of the same trip.

Travel Services

5. There are four types of travel service (regulation 2(1)):

    i. **Carriage of passengers**
    This includes flights, trains and coaches.

    ii. **Accommodation**
    It is important to note that accommodation that is intrinsically part of carriage of passengers is not in scope. For instance, a ticket on a sleeper train where the purpose is to get from A to B, and staying on board is a necessary part of that journey, would not constitute a package.

    Accommodation for residential purposes, including for long-term language courses, should not be considered as travel services (Recital (17) of PTD 2015).

    iii. **Motor Vehicle Hire**
    This includes car and motorcycle hire.

    iv. **Any other tourist service**
    These are services that are ***not*** intrinsically part of the carriage of passengers, accommodation or motor vehicle hire but make up a significant part of the package. Examples of other tourist services given by PTD 2015 (Recital (18)) include admission to concerts, sports events, excursions or event parks, guided tours, ski passes and rental of sports equipment such as skiing equipment, or spa treatments.

6. When only one of carriage of passengers, accommodation or motor vehicle hire services are combined with an 'other tourist service' this only leads to the creation of a package (or LTA) if the 'other tourist service' is either (regulation 2(6)):
    i. Advertised as an essential feature of the combination, or;
    ii. Accounts for a significant proportion of the value of the combination. Recital (18) of PTD 2015 states that if the 'other tourist service'

accounts for 25% or more of the value of the package then this should be indicative of it forming a significant proportion of the value of the package. “Value” is not defined in the 2018 PTRs although it will often coincide with the purchase price. In order to prevent circumvention, the intrinsic value may have to be considered where the price of the main service is artificially high, and the price of other tourist services is artificially low in order to bring the other tourist service below the significance threshold.

7. Whether on-site facilities such as swimming pool, sauna or gym included for hotel guests would be considered an intrinsic part of accommodation would depend on a case by case basis. Our intention is that if access to these on-site facilities is part of the room rate, it should not count as a travel service in its own right and thus would not (if combined with one of the other types of travel services above) constitute a package. However, if access is available at an additional charge, particularly if the relevant facility is open to persons other than the hotel guests, it could constitute an additional service and if a significant proportion of the value of the holiday then in our view the combination would likely constitute a package.

‘Other Tourist Services’ Case Studies[2]

Case Study 1: A traveller books a hotel room at the Disneyland Paris hotel with access to the amusement park (i.e. park tickets) included as part of the booking. This would be considered a package as entry to the amusement park could not be argued to simply be an intrinsic part of accommodation. Entry to the amusement park is the main reason for staying at the hotel and it is possible to visit Disneyland Paris without staying at the hotel. It is not comparable to access to a hotel swimming pool or sauna. Entry to the amusement park will constitute a significant proportion of the package and represent an essential feature of the combination.

Case Study 2: A traveller rents a holiday house in a resort which automatically gives access to a waterpark situated in the resort. The access to the waterpark is included in the rent for the holiday house and it is not possible to deselect access and it is not priced separately. In this example, access to the waterpark could be considered to be an intrinsic part of accommodation, which would be different from the Disneyland example.

Case Study 3: A traveller books a golf break with a hotel or travel organiser that includes a pre-booking for round(s) of golf, as well as the accommodation. This could be a package. However, a hotel booking for accommodation at a hotel that happens to have a golf course as a facility is not in itself a package. The golf course is simply a facility.

[2] These two case studies were discussed at a Transposition Workshop on 25 October 2016 arranged by the European Commission. Minutes of these meetings are available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324.

8. It is also important to note that services which **are intrinsically part of another travel service** should not be considered as travel services in their own right. Recital (17) of PTD 2015 provides some examples such as the transport of luggage provided as part of a carriage of passengers and minor transport services such as carriage of passengers as part of a guided tour or transfers between a hotel and airport or a railway station.

Combining Travel Services

9. Traditionally a package holiday was considered to be a pre-arranged combination of two or more travel services. However, the way that holidays are sold has changed dramatically in the past decade. For instance, 'dynamic packaging' where travellers put together their own holidays, by mixing and matching the various elements themselves, as opposed to buying a traditional pre-defined package are now common in the marketplace. The 2018 PTRs therefore have a broad scope intended to cover modern methods of buying package holidays.

10. There are now six different categories governing the circumstances in which travel services combine to create a package (set out in regulation 2(5)). Please note that although the categories are alternative they are not necessarily discrete and there will often be cases where multiple categories apply:

    i. **Package Category 1: single contract**
    A package is created when travel services are combined by one trader and sold under a single contract. This includes packages that are put together by the trader at the request of the traveller and then sold under a single contract. These types of packages are already in scope of PTD 1990 and include traditional packages sold by high street travel agents. Bespoke customised packages put together by travel agents will also fall under this definition.

    The wording "including at the request of or in accordance with the selection of the traveller", means that, unlike the previous Regulations, it is not required that the packages have to be "pre-arranged".

11. Package Categories 2-6 apply even if **multiple contracts** are concluded with one or more travel service providers to create the package:

    ii. **Package Category 2: sold in single booking process**

A package is created when a traveller has selected from the same point of sale two or more travel services and then agrees to pay for them within the same booking process. For instance, websites where the traveller can select a range of travel products related to a single trip to create a package (e.g. 'shopping basket' model). "Agreement to pay" can coincide with the actual payment or it can be the agreement to pay for a selected service later.

"Point of sale" is defined as:

- any retail premises, whether movable or immovable;
- a telephone service; or
- a retail website or similar online sales facility, including where retail websites or online sales facilities are presented to travellers as a single facility. Facilities (including websites) that are presented as a single point of sale will constitute a single point of sale.

iii. Package Category 3: sold at an inclusive / total price

If a selection of travel services for the same trip are sold at an inclusive or total price, then a package is created. For example, a travel agent puts together a selection of travel services for the same trip under different contracts and sells it to the traveller for a total price

iv. Package Category 4: sold as a "package" (or under a similar term)

If a combination of travel services is advertised or sold under the term 'package' or a similar term this will be classified as a package. Similar terms are terms that would indicate a close connection between the travel services concerned. For instance, 'combined-deal', 'all-inclusive' or 'all-in arrangement'.

v. Package Category 5: contract allows subsequent choice

Arrangements where a trader sells a product that allows a traveller to pick and choose different travel services after they have concluded the contract will also count as packages. Package holiday gift boxes fall within this definition. For example, a 'Tastes of the Region' package that allows you to choose your accommodation and a meal at a gourmet restaurant after you have purchased.

vi. Package Category 6: sold through linked online booking process

Situations where a traveller purchases different travel services for the same trip through a linked online booking process where the traveller's name, payment details *and* email address are sent from the first trader they purchase from to the second and a contract is concluded with the

second trader no longer than 24 hours after the first service was purchased will now be packages.

Example: after a traveller purchases a flight online, they receive an email from a car hire company offering car hire. Upon following this link, the traveller is able to book car hire without having to re-enter their credit card details. If the traveller purchased the car hire through the link within 24 hours of purchasing their flight a package would be created. This is because the traveller's name, email and payment details will have been passed on by the airline.

Performance of the Package

12. 2018 PTRs explicitly places liability for the performance of the travel services included in the package on the **organiser** (regulation 15) irrespective of whether the travel services are performed by third parties.

The Organiser and the Retailer

13. The 2018 PTRs distinguish between organisers and retailers. To clarify the distinction, organiser and retailer are defined (in regulation 2) as:

    - Organiser: this is the trader who combines and sells packages. In the case of Package Category 6, the organiser is the trader who passes on the traveller's name, payment details and email address to another trader to create a package.

    - Retailer: this is a trader other than the organiser who sells or offers for sale packages combined by an organiser, i.e. an organiser's agent.

14. In some cases, the person with whom the traveller immediately deals in purchasing a package will be the organiser. In other cases, the traveller will be dealing with a retailer selling on behalf of an organiser.

15. When considering whether a trader is an organiser, it should make no difference whether that trader is acting on the supply side or presents himself as an agent acting for the traveller. Any trader who ultimately combines a package will be the organiser for the purposes of the 2018 PTRs.

Lack of conformity

16. The organiser is required to remedy any lack of conformity with the contract (regulation 15), unless it is impossible to do so, or costs would be disproportionate taking into account the lack of conformity and the value of the travel services affected. If the organiser is unable to address a lack of conformity that substantially affects the performance of the package then the traveller may terminate without paying a termination fee and will be entitled to an appropriate price reduction, and compensation if appropriate.

17. If the organiser does not address the lack of conformity within a reasonable period set by the traveller, the traveller may do so him / herself if he / she

thinks it is necessary and request reimbursement of the necessary expenses unless the lack of conformity is impossible to address. Reasonable period is not defined, however we would expect the traveller to take account of the extent of the lack of conformity, the impact on their enjoyment and practicalities involved in addressing it when setting a reasonable period. In certain cases there should not be a need to specify a time-limit, in particular if immediate remedy is required. This would apply, for instance, when, due to the delay of a bus provided by the organiser, the traveller has to take a taxi to catch his flight on time.

18. Travellers need to inform the organiser without undue delay, taking into account the circumstances of the case, of any lack of conformity they perceive during the performance of a travel service included in the package travel contract. Failure to do so may be taken into account when determining the appropriate price reduction or compensation for damages where such notice would have avoided or reduced the damage.

19. In cases of non-conformity where the package includes carriage of passengers back to their place of departure, the organiser must arrange for repatriation using equivalent transport if the lack of conformity is not remedied except where the lack of conformity is for the reasons set out in para 20. Below.

20. Travellers will not be entitled to compensation for damages (regulation 16) if the organiser can prove that lack of conformity is:
    - attributable to the traveller;
    - attributable to unforeseeable or unavoidable actions of a third party not connected to any of the travel services included in the package; or
    - due to unavoidable and extraordinary circumstances.

21. Recital (24) of PTD 2015 makes clear that the intention of PTD 2015 is that compensation should also cover non-material damage, such as compensation for loss of enjoyment of the trip or holiday because of substantial problems in the performance of the relevant travel services.

Significant part of package cannot be performed

22. Where, following commencement of the package, significant proportions of the package cannot be performed, alternatives offered should be at no extra cost and should, where possible, be of equivalent or higher quality than those specified in the original contract. If the organiser is constrained to propose alternative arrangements of a lower quality, the organiser must grant an

appropriate price reduction. Travellers may choose to reject alternative arrangements only if they are not comparable with those originally agreed, or the price reduction offered is inadequate. If a traveller chooses to reject for either of these reasons, or the organiser is unable to make alternative arrangements, the traveller will be entitled to a price reduction, and compensation if appropriate.

23. In cases where the organiser is either unable to offer alternative arrangements, or the traveller rejects them as they are unsuitable, and the package includes carriage of passengers back to the place of departure, the organiser must arrange for repatriation using equivalent transport.

24. Where it is impossible to ensure the traveller's timely return to the place of departure because of unavoidable and extraordinary circumstances, the organiser should bear the cost of the traveller's necessary accommodation for a period not exceeding three nights per traveller. The 2018 PTRs do not affect rights to compensation under the Union passenger rights legislation and international conventions referred to in regulation 16 although travellers are not entitled to double compensation for the same loss.

Obligation to provide assistance

25. If a traveller is in difficulty during his / her package holiday, the organiser is obliged to give appropriate assistance without delay (regulation 18). Such assistance should consist mainly of providing, where appropriate, information on aspects such as health services, local authorities and consular assistance, as well as practical help, for instance with regard to distance communications and finding alterative travel arrangements.

26. The organiser can charge a reasonable fee for such assistance if the difficulty is caused intentionally by the traveller or through the traveller's negligence. That fee shall not in any event exceed the actual costs incurred by the organiser.

Possibility of contacting the organiser via the retailer

27. If the traveller chooses, they may treat the retailers as a point of contact for travellers in respect of messages, complaints or claims relating to packages they have sold on behalf of organisers (regulation 17).

Changes and Cancellations (Part 3 of the 2018 PTRs)

Transfer of the package travel contract to another traveller (regulation 9)

28. Travellers have the option to transfer a package travel contract to another traveller who satisfies all the necessary condition for the holiday if they give the organiser reasonable notice on a durable medium[3]. At least seven days is considered a reasonable period. The transferor and transferee are both liable for the costs of any changes and payment of the balance of the package. However, the cost of any changes should not exceed the actual costs incurred by the organiser. The organiser must provide the transferor with evidence of these costs.

Changes to the price (regulation 10)

29. Organisers may only alter the price of a package travel contract (regulation 10) if that possibility has been reserved in the contract, and the change is a consequence of one of the following specific reasons:
    - Increase in transport costs due to changes in fuel prices or other power sources.
    - Changes in taxes or fees on travel services imposed by third parties not involved in performance of the package, e.g. tourist taxes.
    - Exchange rates relevant to the package.

30. If a right is reserved to change the price for the reasons above, the contract must also allow for a price reduction if the same factors lead to cost reductions for the organiser. Furthermore, the price cannot be changed unless the organiser notifies the traveller on a durable medium no less than 20 days before the start of the package, and appropriate justification of this change is provided. Price increases over 8% of the original package price are considered a significant change to the main characteristics of the package and (inter alia) trigger the traveller's right to terminate the contract without a termination fee.

[3] 'Durable medium' means any instrument which enables the traveller or the trader to store information addressed to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Changes to the main characteristics of a package (regulation 11)

31. Organisers must not unilaterally change the terms of the contract before the start of the package (other than price, in accordance with the section above), except for insignificant changes permitted by the contract and communicated to the traveller.

32. If an organiser has no choice but to significantly alter the main characteristics of the package, or cannot fulfil any special requirements of the traveller which the organiser has previously accepted (paragraph 1 of Schedule 5), or (being permitted to do so by the package travel contract) increases the price by more than 8%, then the organiser must inform the traveller without undue delay and provide the traveller with the option to terminate the contract without paying a termination fee. These proposed changes must be communicated to the traveller in a clear, comprehensible and prominent manner on a durable medium. A reasonable period within which the traveller has to respond should also be communicated.

33. If a traveller fails to respond to notification of the relevant changes in the first instance, the organiser should send a further notice. If the traveller fails to respond within a reasonable deadline set by that further notice the contract will terminate but the organiser must refund all payments without undue delay and in any event no later than 14 days after the contract is terminated.

Termination by the traveller (regulations 12 and 14)

34. The traveller may terminate a package any time before the start of the package but, if he / she does so, he / she may be required to pay an appropriate and justifiable termination fee to the organiser, taking into account expected cost savings and income from alternative deployment of travel services. Cost savings are costs that the organiser saves due to termination, e.g. costs that he / she no longer has to pay to a third party. Alternative deployment means that the organiser has been able to use the freed capacity otherwise, e.g. by selling the package or parts thereof to another traveller. In some instances, the organiser may not be able to redeploy a travel service and it could be justifiable to not reimburse the corresponding value of that service, although this should be assessed on a case by case basis. For example, if the organiser cannot cancel an air ticket (common with economy class tickets) and, therefore cannot redeploy it, it would be justifiable to not reimburse the price of the ticket. Organisers may also specify standardised

termination fees in the contract based on reasonably anticipated savings and income and the amount of time between termination and the date the package was due to start. The organiser must provide a justification for the level of termination fee if the traveller so requests. If the traveller does terminate, the organiser must refund the traveller with the amount of the payments he / she has made minus the termination fee; that refund must be made without undue delay and in any event no later than 14 days after termination.

35. Travellers also have the right to terminate the package travel contract without paying a termination fee if unavoidable and extraordinary circumstances occur at the place of destination or its immediate vicinity which significantly affect the performance of the package or the carriage of passengers to the destination. If the traveller does terminate then the organiser must provide a full refund without undue delay and in any event no later than 14 days after termination.

36. Unavoidable and extraordinary circumstances are defined as a situation beyond the control of the party who seeks to rely on such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken. Examples given in recital (31) of the Directive include warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract.

37. There will occasionally be borderline situations in relation to unavoidable and extraordinary circumstances that need to be considered on a case by case basis and may ultimately have to be decided by the courts.

Termination by the organiser (regulation 13)

38. There are certain scenarios where an organiser may terminate without paying a termination fee and / or being liable for additional compensation.

39. This would be either:

    i. The minimum number of participants is not reached. For the organiser to be able to terminate on this ground, the minimum number must be stated in the package travel contract and the organiser must notify travellers of termination within the period fixed in the contract. In any event this should be no later than

i. 20 days before the start of the package for trips lasting more than 6 days;
ii. 7 days for trips lasting between 2 and 6 days;
iii. 48 hours for trips lasting less than 2 days.

b) The organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances, such as the examples above. If this is the case the organiser must notify the traveller as soon as possible.

Insolvency Protection (Part 5 of the 2018 PTRs)

40. Package organisers must obtain security that covers the reasonably foreseeable costs of and delivers effective and prompt return of all payments made by the traveller for services not performed, and for the travellers' effective and prompt repatriation in the event of the organiser's insolvency.

41. The insolvency protection provided should cover (regulation 19):

    - any payments made for packages, taking into account the period between any down payments and when the final payment is made and when the holiday is completed.

    - the estimated cost for repatriations in the event of insolvency and also to pay for any necessary accommodation prior to repatriation if necessary.

42. Traders need to ensure that the insolvency protection in place satisfies the following conditions:

    - In the event of insolvency, the protection becomes available as soon as travel services are not being performed fully, or it becomes evident that they will not be fully performed, or the travellers have to pay for the services themselves.

    - The protection should be available free of charge to the traveller when insolvency has impacted on the performance of the package so that they are able to get home.

    - The protection should refund travellers without undue delay if travel services are not performed as a result of insolvency.

    - The protection should benefit travellers regardless of their place of residence, the place of departure or where the package is sold within the EEA and irrespective of the Member State where the operator or body providing the protection is established.

43. 2018 PTRs also allow the possibility for insolvency protection to offer a continuation of the package.

Insolvency Protection for Flight Packages

44. 2018 PTRs require businesses selling package holidays in the UK to have insolvency protection through ATOL for Flight Packages.

45. The Civil Aviation Authority administer the ATOL scheme. More information is available at: https://www.caa.co.uk/atol-protection/.

Insolvency Protection for Non-Flight Packages

46. There are three insolvency protection options which 2018 PTRs permit organisers to use for non-Flight Packages. Whatever option used must of course meet the category set out at the beginning of this chapter to be compliant.

i. **Bonding** (regulations 20 and 21): To use the bonding option a trader must be a member of an approved body (approved by Department for Business, Energy and Industrial Strategy) which oversees the bonding process to ensure that the bond is at an adequate level to meet insolvency requirements. The approved body monitors trader activity and manages the bond calling process to ensure the travellers are refunded. The bonds must not exceed a period of 18 months, and must be a sum that: covers the maximum amount of payments the organiser expects to hold at one time for travel packages still to be performed; or is not less than 25% of all payments the organiser expects for travel packages in the 12 month period from the start of the bond, whichever sum is the smaller. Alternatively, if the approved body has a reserve fund or insurance to cover any shortfall in bond cover the sum must cover: no less than 10% of such payments; or the maximum amount of payments the organiser expects to hold at one time for travel packages still to be performed, whichever is the smaller. In the case of packages which might involve repatriation costs, the bond must also incorporate such additional sum as the organiser may reasonably be expected to cover and, if necessary, accommodation for the traveller prior to repatriation.

List of current approved bodies:

- ABTA – The Travel Association
- Association of Bonded Travel Organisers Trust (ABTOT)
- Bonded Coach Holidays (BCH)

ii. **Insurance** (regulation 22): The organiser can take out one or more insurance policies which recognises the travellers as the insured persons and therefore pays direct to the travellers in the event of insolvency. Organisers should ensure that any insurance policy that they secure is not voided due to negligence or a breach of condition on their part. For instance, we are aware that ABTA – The Travel Association makes it a condition for any underwriters on their approved list not to reject any claim made by customers or withhold payment under the Policy to any customers (who can prove a loss) due to any breach of the terms, conditions or covenants of the Policy by the relevant Package Organiser or facilitator of a Linked Travel Arrangement. We consider this to be good practice. A policy of insurance may be written so that an Approved Body administers claims for the insurer and / or deals with repatriation arrangements for consumers.

iii. **Trust Account** (regulation 23): This option requires all money paid by the traveller to be held by an independent trustee until the contract has been performed. The independent trustee can pass the money to the organiser only when they provide evidence that the contract has been fulfilled or if evidence is provided that the organiser has repaid a portion of the money to the traveller or the money has been forfeited on cancellation by the traveller.

The costs of administering the Trust must be paid for by the organiser. This includes all costs of operating the trust and in the event of an insolvency, including the costs of administering claims. Costs must not be a drain on the trust, resulting in there being insufficient funds to reimburse travellers in full.

If the organiser is providing a package that includes the carriage of passengers then they must have insurance in place to cover repatriation, and if necessary, accommodation for the traveller prior to repatriation. As above, the insurance should recognise the traveller as the insured person and therefore pay direct to the traveller in the event of insolvency.

The organiser may however combine the trust fund with insurance that is compliant with regulation 24. In that case, the organiser is only required to hold on trust sufficient funds to reach liabilities which are

not covered by its insurance policy, any such insurance will be additional to the insurance that the organiser is required to put in place to cover repatriation costs (if applicable).

Mutual Recognition

47. Compliant insolvency cover as outlined above acquired by UK established traders will be recognised across all EEA Member States as complying with the PTD 2015. In practice this will mean that a trader established here in the UK will be able to sell to customers in other Member States, but only have to comply with the UK insolvency regime. Equally, the UK recognises the protection that traders established in other EU Member States put in place under the package travel laws of the relevant state.

Central Contact Point

48. To help the mutual recognition principle function, EEA States must designate central contact points. These central contact points facilitate administrative cooperation and supervision of organisers operating in different Member States in accordance with the mutual recognition principle on insolvency arrangements.

49. The CAA has been designated the lead central contact point for the UK. They will be able to draw upon their extensive experience and oversight within the sector to co-operate with contact points across Europe in the supervision of organisers operating in different Member States. Any non-flight cases reported to the CAA will be referred to BEIS.

50. The CAA contact point can be contacted at packagetraveldirective.ccp@caa.co.uk.

Third Country Traders

51. Traders not established in the UK or another EEA Member States who are selling or offering for sale packages in the UK, or by any means directing such activities to the UK must comply with the UK insolvency regime outlined above (regulation 19 (4)).

52. UK established retailers who sell packages combined by organisers outside of the EEA are required to take on responsibility for the performance of the package and providing insolvency cover, unless they can show that the organiser already complies with these elements of 2018 PTRs (regulation 27).

Information requirements (Part 2 of the 2018 PTRs)

Information duties for the Organiser and the Retailer (regulation 4)

53. When a package is sold through a retailer, the organiser and the retailer must ensure that the required information, both before and after a package is sold, is provided to the traveller. To avoid duplication, they may decide between themselves who will provide this information but must ensure that it is provided.

54. Where a package is not sold through a retailer it is the organiser's responsibility to provide the information.

55. The party responsible for discharging the information will be referred to as the relevant person in this chapter.

Before the sale (regulations 5 and 6)

56. The relevant person must provide travellers with specific information before selling them a package. This information includes (but is not limited to): the main characteristics of the package; total price of the package; name and details of the organiser; and, information on their cancellation policy. This information is listed at Schedule 1 in 2018 PTRs. This key pre-contractual information is binding and must not be altered unless the traveller expressly agrees. Any changes must be communicated in a clear, comprehensible and prominent manner before the conclusion of the contract.

57. If information in Schedule 1 is not applicable, then it does not have to be included. For example, if there are no meals included in the package and it is clear from the context that no meals are included and there is no suggestion anywhere that meals are included, the explicit information "no meal" would not have to be given.

58. This information has to be accompanied by standard information forms that intend to make travellers aware of the key protections they are being provided when buying a package holiday. These standard information forms vary depending on how the package is sold.

59. The standard information forms are set out in the Schedules of the 2018 PTRs:

    - Schedule 2 – standard information form where you are able to use hyperlinks (e.g. you are selling on a website).

    - Schedule 3 – standard information form to be used when hyperlinks are not available or the package travel contract is to be concluded by telephone.

60. Where a trader has created a package through linked online booking processes as described in Package Category 6, both that trader and the trader they are transmitting data to must provide any information in Schedule 1 that is relevant to the service they are providing. The trader creating the package must also use the standard information form at Schedule 4.

61. All of the information provided to travellers before they purchase a package must be provided in a clear, comprehensible and prominent manner. If the information is provided in writing then it must be legible.

After the sale (regulation 7)

62. Once a sale has been concluded the relevant person must provide the traveller with a copy or confirmation of the contract. The contract should be in plain language and be legible if in writing. If the contract is concluded face to face the relevant person must provide a paper copy of the contract if the traveller requests one. If a contract is concluded off-premises, the relevant person must provide a copy of the contract on paper, or on another durable medium if the traveller agrees.

63. This contract should contain the key information listed in Schedule 1 of 2018 PTRs alongside additional important information listed in Schedule 5. This includes information on the entity in charge of insolvency protection and contact details for the traveller should they encounter any issues, including who the traveller should contact in the event of a lack of conformity issue.

64. Where a package is created through linked online booking processes as described in Package Category 6, the second trader, whose data is transmitted to, should inform the first trader when a sale has been concluded leading to the creation of a package. The second trader must provide the first

trader with the necessary information so that they can provide the traveller with the information listed in Schedule 5.

65. The relevant person must, in good time before the start of the package, provide the traveller with necessary receipts, vouchers and tickets, information on the scheduled times of departure and check-in where applicable, as well as the scheduled times for intermediate stops, transport connections and arrival.

Linked Travel Arrangements (LTAs)

66. Linked Travel Arrangements (LTAs) are travel combinations that have looser commercial connections than that of a package. This type of arrangement, where a trader has facilitated the combination of travel services (travel services defined in para 5), but where the ties between the businesses concerned do not fully constitute a package that is sold or offered for sale, should also be subject to some level of regulation.

67. Travellers who purchase LTAs will receive some protection although they will not benefit from the same rights that they would do if they bought a package. For instance, there is no requirement for any one party (such as the trader that facilitates the LTA) to be liable for the performance of all the travel services that are part of an LTA. There is a requirement for some insolvency protection, but this is limited when compared to a package (this is explained further down).

68. In addition to additional (limited) consumer protection, the introduction of LTAs aims to level the playing field amongst travel providers. While LTAs do not constitute packages within the meaning of 2018 PTRs, they constitute an alternative business model that often competes closely with packages.

69. Before considering whether you are selling an LTA you should first consider whether the combination of travel services fall within any of the package criteria. If they don't then the combination would be considered an LTA if it fits the categories for either LTA A or LTA B below. In order to avoid a package there has to be a **clear separation of the booking and selection processes**, i.e. one booking is fully concluded before the next service is selected.

70. To summarise, the main characteristics of an LTA are that:
    - At least two different travel services are purchased for the same trip or holiday;
    - That purchase does not constitute a package so that it does not fall within any of the package categories (e.g. two travel services are not purchased in a single booking process or at a total price);
    - The traveller has separate contracts with the service providers; and
    - The trader facilitates the sale in one of the ways described for either LTA A or LTA B below.

LTA Type A:

A trader facilitates the separate selection of and separate payment for bookings for the same trip through a single point of sale (online or offline) on the occasion of a single visit or contact by the traveller with that point of sale.

71. The terms used in the definition of LTA Type A are elaborated on below:

- Facilitation of Type A:
    - The concept of facilitation is broad and includes the idea of "enabling", "making it possible to", "encouraging" and similar ideas. This should be considered in conjunction with "single visit or contact".[4]
- Separate selection *and* separate payment:
    - there is a clear separation of the booking processes – one booking is completed (e.g. the flight has been booked and paid for and subsequently a second service is selected). The separate payments need not be made at the time of booking as long as there is an agreement to pay ie a confirmed booking for the first service before the selection of the second service.
- Single visit or a contact with a point of sale:
    - We would expect there has to be a **clear interruption** to not be considered a single visit or a contact with a point of sale, however this would need to be considered on a case by case basis.

LTA Type A Case Studies

Case Study 1: a traveller visits a travel agent and purchases a plane ticket, making payment and concluding the contract. Then, without leaving the travel agency, he wishes to also buy accommodation for the purpose of the same trip. He concludes a contract for the accommodation and then pays separately for this second service either at the agency or on checking out of the hotel. **This would be an LTA**.

Case Study 2: after a traveller books and pays for a flight on an online travel agent's website they are invited to book car hire for their holiday on the booking confirmation page. The traveller subsequently selects and pays for car hire for the same trip under a separate contract though the same website during the same single visit. **This would be an LTA** as the online travel agent has facilitated the traveller's separate selection and payment of two travel services for the purposes of the same trip during a single visit to their website.

[4] Although facilitation is not defined in PTD 2015, the European Commission said that the concept should be considered broad as described in a Transposition Workshop on 25 February 2016. Minutes of this meeting are available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324.

LTA Type B:

A trader facilitates in a targeted manner the procurement of one or more additional service(s) from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

72. The terms used in the definition of LTA Type B are elaborated on below:

    - Facilitation of LTA Type B:
        - The concept of facilitation is broad and includes the idea of "enabling", "making it possible to", "encouraging" and similar ideas. This should be considered in conjunction with "in a targeted manner". Facilitation of Type B must be targeted and related to the booking of travel services.[5]
    - In a targeted manner:
        - The concept of targeting distinguishes LTAs from mere information or advertising not linked to a booking. Furthermore, 'additional services' would suggest that facilitation has to take place in connection with the booking of a first travel service.

73. Recital (12) of PTD 2015 clarifies that LTA Type B should be distinguished from linked websites which do not have the objective of concluding a contract with the traveller and from links through which travellers are simply informed about further travel services in a general way. This could be for instance where a hotel or an organisation of an event includes on its website a list of all operators offering transport services to its location independently of any booking. Advertising generated by cookies or meta data would similarly be considered informing in a general way.

74. Arrangements in scope of LTA Type B will often be based on a commercial link involving remuneration between the trader who facilitates the procurement of additional travel services and the other trader, such as a commission on the number of click throughs.

75. Please note that offline arrangements are also in scope for LTA Type B.

[5] Although facilitation is not defined in PTD 2015, the European Commission said that the concept should be considered broad as described in a Transposition Workshop on 25 February 2016. Minutes of this meeting are available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324.

LTA Type B Case Study[6]

A traveller has purchased a return flight to New York from an airline and when the booking was confirmed, the airline sent them an invitation to book a hotel room in New York through a link to a hotel booking site. As the traveller booked a hotel room on the linked website within 24 hours of purchasing their flight, an LTA was created. This means that if the airline became insolvent while the traveller was in New York, and the return flight cancelled as a result, their repatriation would be covered by insolvency protection that the airline would be obliged to have in place as an LTA facilitator. In addition, the airline would have to ensure that when the traveller receives the link for the hotel reservation they are clearly and prominently informed that the flight and hotel will not constitute a package.

Insolvency protection for LTAs

76. LTAs will not provide travellers with the same level of insolvency protection that is offered when purchasing a package, and there are therefore fewer obligations on traders who provide them. In summary, the key insolvency requirements are:

- **Refunds** – The LTA facilitator must provide insolvency cover for the refund of payments they have actually received from travellers to the extent that a travel service is not performed due to their (the LTA facilitator's) insolvency. This would not cover all payments, for example it would not cover a payment made by a traveller directly to a provider of travel services other than the facilitator such as cases where the provider of the travel service directly charges the credit card of the traveller and where the first trader does not in fact receive the payment himself. However, if an LTA facilitator receives money for an additional travel service that they are not providing and they become insolvent before passing this money on, their insolvency protection would be expected to cover that additional travel service. This is because the additional travel service (which hasn't been paid for) would not have been performed as a consequence of the LTA facilitator's insolvency. Insolvency protection to cover refunds is not needed if the facilitator does not receive any money from the traveller. Moreover, as soon as the facilitator has passed on the money to the service provider, the facilitator's insolvency can no longer affect the services, so that there is no longer a need for insolvency protection.

[6] The case study of LTA Type B is taken from a fact sheet published by the European Commission: https://ec.europa.eu/info/files/factsheet-stronger-eu-protection-package-holidays_en.

- **Repatriation** – this cover is only required where the LTA facilitator is also responsible for the carriage of the traveller (e.g. a coach operator or airline).

77. 2018 PTRs require insolvency protection for all LTAs (including where a flight is involved) to be covered using the options that are available for non-flight packages. These are detailed in the insolvency chapter for packages (page 18). It is consistent with the Regulations that a trader may utilise a Regulation 22 Insurance compliance solution in respect of, for example, their Package sales and separately utilise, for example, a Regulation 20 or 21 Bonding solution in relation to their Linked Travel Arrangement sales.

78. If a travel service that should receive insolvency protection under an LTA has already been covered by ATOL protection (e.g. ATOL seat only), that travel service does not also have to be covered using one of the insolvency options specified in 2018 PTRs (regulation 26 (6)).

LTA Insolvency Protection Case Study

After arranging a room for a traveller, a hotel facilitates an LTA via a targeted link for several rounds at a golf course not connected to the hotel.

Example A: What is the protection if the hotel that facilitated the reservation of a golf course and received payment for all services goes insolvent?

- The traveller's money is protected also for the golf arrangement - as long as the hotel has not passed on the money. If the hotel passed on the money before going insolvent, the traveller can still take advantage of the golf course anyway.

Example B: What happens if the golf club goes insolvent?

- If the hotel has passed the money on to the golf club, that money will be lost, as there is no insolvency protection for service providers who do not facilitate an LTA.

Example C: What happens if the traveller pays only the amount for the hotel room to the hotel and pays directly to the golf club for the golf arrangement in case the hotel goes insolvent?

- Insolvency protection covers only the payments made to the hotel. In the example, the traveller suffers no damage regarding the golf arrangement as a consequence of the hotel's insolvency.

Information requirements for LTAs

79. Traders who facilitate LTAs are required to give clear information to travellers specifying that what they are buying is not a package and that only the individual service providers are responsible for the individual travel services. Traders must state this in a clear, comprehensible and prominent manner, along with details on the insolvency protection.

80. 2018 PTRs set out a number of standard information forms that should be used to comply with this information requirement in different scenarios. These are set out in the Schedules:

- Schedule 6 – to be used for LTA Type A where the facilitator is a carrier selling a return ticket (e.g. an airline).
- Schedule 7 – to be used for LTA Type A where the facilitator is not a carrier selling a return ticket.
- Schedule 8 – to be used for LTA Type A where the contract is concluded face to face (other than with a carrier selling a return ticket).
- Schedule 9 – to be used for LTA Type B where the facilitator is a carrier selling a return ticket (e.g. an airline).
- Schedule 10 – to be used with LTA Type B where the facilitator is not a carrier selling a return ticket.

81. A trader who facilitates an LTA which does not align with any of the forms set out in the Annexes above is permitted to make amendments to one of these forms so as to provide clear and accurate information. For instance, we are aware that there will often be situations where an LTA facilitator passes on money to the travel service provider(s) almost instantaneously so there would not be any insolvency protection making the forms above misleading. For example, the form at schedule 7 could be adjusted as set out in the box below.

If, after selecting and paying for one travel service, you book additional travel services for your trip or holiday via our company/XY, you will NOT benefit from rights applying to packages under the Package Travel and Linked Travel Arrangements Regulations 2018.

Therefore, our company/XY will not be responsible for the proper performance of those additional travel services. In case of problems please contact the relevant service provider.

However, if you book any additional travel services during the same visit to our company's/XY's booking website, the travel services will become part of a linked travel arrangement.

Please note that, since your payments go directly to the relevant travel service providers, our company/XY has not taken out any protection to refund you, in the unlikely event it becomes insolvent

82. The standard information should be provided to the traveller before they are bound to any contract leading to the creation of an LTA.

Penalties

83. 2018 PTRs contain a number of criminal offences in relation to:

- Failure to satisfactorily provide pre-contractual information (regulation 5 (5)).
- Failure to satisfactorily provide a contract or confirmation of contract and prescribed information (regulation 7 (12)).
- Failure to put in place compliant insolvency cover (regulation 19(9)).
- Obtaining release of monies held on trust for insolvency cover by false statement (regulation 25).
- Failure to put in place compliant insolvency cover or provide pre-contractual information for LTAs (regulation 26 (10)).
- Enforcement authorities for those regulations are local authority trading standards departments in Great Britain, the Department for the Economy in Northern Ireland and the Civil Aviation Authority.

84. Persons convicted of a criminal offence are liable to fines only (there are no custodial penalties), for which there is no maximum in England and Wales.

85. Otherwise, rights and obligations under 2018 PTRs are mainly to be enforced on a civil basis, as implied terms of the package travel contracts.

86. Part 8 of the Enterprise Act 2002 will also apply to the Regulations so that enforcers under that Act can seek enforcement orders under Part 8 against traders whose acts or omissions harm the collective interest of consumers.

FAQs

Scope

Q. Are organisers of social tourism, who do not make a profit, in scope of 2018 PTRs?
A. Not-for-profit packages are in scope of the regulations unless they are offered only occasionally and only to a limited group of travellers. Therefore packages (or LTAs) organised regularly by charities would have to be considered as covered by the Directive. Commercial organisers of packages or facilitators of LTAs acting for a not-for-profit group will always be in scope.

Q: Do the regulations apply to organisers who are not established in the UK or EU?
A: Yes. The regulations apply to package travel contracts and linked travel arrangements sold, or offered for sale, in the UK no matter where the seller is established. Apart from distinctions made in relation to insolvency protection, no distinction is made between traders based in the UK, elsewhere in the EU, or outside the EU.

Note that insolvency protection is also required for non-EU organisers who direct the sale or offer for sale to the UK. An example of this would be an organiser who uses a marketing partner to promote its packages to the UK.

Note also that the regulations imply the same terms and conditions into all booking contacts, including those that select a law other than UK law. An example of this would be a trader based outside the UK whose booking contract selects the law of its own country.

Package definition

Q. Are cruises in scope of 2018 PTRs?
A. 2018 PTRs generally applies to cruises, as they are a combination of carriage of passengers and accommodation and sometimes additional travel services, unless they are shorter than 24 hours and do not include overnight accommodation.

Q. Are overnight ferries and sleeper trains in scope of 2018 PTRs?
A. A trip in an overnight ferry or an overnight train/coach where the main component is clearly transport, does not constitute a package, which is different from the situation with cruises. Where the purpose is to get from point A to point B and staying on board overnight is a necessary part of that journey, such trip would not be

a package. However, if staying on board is sold as a touristic value in itself, it could be a package, as is usually the case with a cruise. We would again emphasise that 2018 PTRs should be considered on a case by case basis.

Q. Are financial services such as travel insurance considered travel services?
A. No they are not.

Q. If a traveller purchases two or more travel services for a trip from a trader but pays for them separately (e.g. a flight and a hotel) would this be a package?
A. This would depend on the booking process. If the traveller has selected the travel services before agreeing to pay for them this would be a package, regardless of whether payment was done through separate transactions.

Performance of the Package

Q. Who is the organiser in cases where separate contracts with individual travel service providers are concluded as suggested under Package Category 2?
A. The organiser is the trader that enables the combinations and purchase of the relevant travel services within a single booking process (i.e. who organises the booking process).

Changes/Cancellations

Q. Should the traveller's personal circumstances ever be taken into account in determining "unavoidable and extraordinary circumstances" in relation to cancellations?
A. The Regulations say that "unavoidable and extraordinary circumstances" are circumstances beyond the control of the party seeking to rely on the relevant situation. As a result, we consider that personal circumstances which are unrelated to events at the travel destination should not give a termination right with a full refund. However, certain personal circumstances might be relevant when assessing the impact of "unavoidable and extraordinary circumstances" occurring at the travel destination on the performance of the package, e.g. the fact that pregnant women may be seriously affected by the outbreak of the Zika virus.

Insolvency Protection

Q. What is the difference between the new Package Travel Regulations being introduced and the Air Travel Organiser's Licence (ATOL) regulations?
A. The Package Travel Regulations are the overarching regulations that provide consumer protection for travellers purchasing package holidays. This includes the requirement that organisers of packages obtain adequate insolvency protection so that consumers are refunded, and, where appropriate, repatriated, if the organiser becomes insolvent. The ATOL scheme is the mechanism, administered by the Civil Aviation Authority, which provides this insolvency protection for packages that include a flight – organisers of packages not involving flights have to obtain protection under one of the arrangements specified in the 2018 PTRs.

Information Requirement

Q. Why do I have to provide the traveller with a lot of the same information after the sale if I have already provided this before they purchase?
A. The Regulations ensure that pre-contractual information is accurate and has not changed, unless the parties expressly agree otherwise in the contract, and that it becomes part of the contract. The Regulations then also ensure that all the relevant information is included in the package travel contract, even if the information was previously provided elsewhere (e.g. in a brochure).

Q. Can organisers (or retailers) include a standard line outlining that the arrangements are generally suitable for persons with reduced mobility but to contact the organiser for further details.
A. As set out in paragraph 10 of Schedule 1, information must be provided on whether the holiday is generally suitable for persons with reduced mobility, however more specific information must be provided at the traveller's request taking their needs into account. Therefore, if a standard line outlining that the arrangements are generally suitable for persons with reduced mobility is accurate, that can be included as long as more specific information must be provided at the traveller's request taking their needs into account.

Q. If I sell a package over the phone can I provide the standard information form in Schedule 2 in an email rather than relaying Schedule 2 verbally?
A. This would need to be established on a case by case basis, although should be acceptable as long as the traveller gets the information before the traveller agrees to the contract.

Q. What is an off-premises contract?
A. We consider that the concept of “off-premises contract” will be interpreted in accordance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. There are four types of these contracts:

1. A contract made where a consumer and trader are together and agree the contract in a place that is not the trader's business premises - for example, in a consumer's home or place of work.
2. A contract made where a consumer and trader are together and an offer is made by the consumer in a place that is not the trader's business premises - for example, where a consumer signs an order form during a visit to their home and the trader agrees the contract later.
3. A contract that is agreed on a trader's business premises or through any means of distance communication immediately after a meeting with a consumer in a place that is not the trader's business premises. For example, a salesperson meets a consumer in the high street and convinces them of the benefits of buying a water filter; the consumer is then taken to the local office of the trader to sign the contract for the equipment. An example of this scenario using distance communication would be if the salesperson in the high street meets the consumer and immediately enters into a contract with them using a tablet computer.
4. A contract made with the consumer during an excursion organised by the trader with the aim of selling or promoting goods or services to the consumer. we consider that this will cover a situation where a trader meets a consumer on holiday and invites them to travel with the trader to a different venue to be sold goods or services

LTA

Q. If a trader facilitates an LTA but does not transfer any data in the process would this still be an LTA?
A. Yes. No transfer of booking data, such as the destination, departure or arrival times and number of travellers, is required under LTA Type A or B. However, in order to “facilitate in a targeted manner” the transfer of data on destination and travel dates is one of the factors that might be relevant when determining if an LTA Type B exists.





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