

## 10-step guide

# The Package Travel and Linked Travel Arrangements Regulations 2018

This 10-step guide is intended to give you a good start in understanding the enforcement of the new PTRs 2018

The Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs 2018) apply to holidays and travel arrangements sold after July 1, 2018.

Many of the PTR 2018 requirements will be familiar to those used to enforcing the 1992 Regulations. However, the definitions and scope of the requirements mean that it is likely that many more travel companies will have to ensure that their business systems and practices take account of the PTRs 2018.

Organisers may need to put in place processes and procedures which might have financial and IT implications. They may need to provide security for the money that they take from travellers (no longer consumers) by holding an ATOL or by providing a bond or insurance policy, or by holding the money in a trust account.

Perhaps the first point to make is that the new PTRs recognise two enforcement bodies: Trading Standards and the Civil Aviation Authority. The CAA is holding a "moratorium" and not enforcing the new PTRs (regarding flight-inclusive packages) for a three-month period

following implementation on 1st July.

It may also be relevant at this early stage to mention the flexibility of enforcement in the new PTRs. The Consumer Rights Act came into force on October 1, 2015, meaning greater flexibility for public enforcers, such as Trading Standards, to respond to breaches of consumer law, such as seeking redress for consumers who have suffered harm.

### **Step 1: The definition of 'package' has changed in the new PTRs**

If traders organise packages they will have responsibilities to provide the traveller with specific information about their holiday; a liability for the proper performance of the travel services; and responsibilities to protect the monies paid by the traveller for the travel services and, if relevant, for their repatriation by holding an ATOL or by providing a bond or insurance policy or by holding the money in a trust account.

The definitions of a package and a package organiser under PTR 2018 mean that many companies and the holidays

they sell will come within the scope of the definitions even if they sell holidays to customers on a dynamic or tailor-made basis as a travel agent. Many holidays that might previously have been sold as "Flight-Plus holidays" will now be classed as packages.

The PTRs 2018 do not apply to the following packages:

- Packages covering a period of less than 24 hours unless overnight accommodation is included;
- Packages offered occasionally and on a not for profit basis and only for a limited group of travellers;
- Packages purchased based on a general agreement between a travel company and another person acting for a trade business craft or profession for the purpose of booking travel arrangements in connection with that trade, business, craft or profession.

You will be an organiser under PTRs 2018 if you sell travel services that you have combined in any of the ways described under the new definition. This means that:

*1) If a trader combines and sells travel services (transport and/or accommodation and/or car hire and/or other tourist services) for the purpose of the same trip or holiday so that the customer has a single contract for all the services, this will be a package.* (Think of this as the original definition in the 1992 Regs, when the packages were usually sold through brochures).

A package will also be created if those travel services are:

*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. This is a 'Shopping Basket' model where the point of sale could be a retail premises, website or telephone sale. For example:

- They have put together an offer that includes all the services for the traveller before they pay for the services.
- They arrange with the traveller which

services they want before they settle on a particular offer and pay for them.

- They operate a shopping basket model on a website, high street or over the telephone.

3) *Sold at an inclusive or total price for all the services, or charge the customer an inclusive or total price for all the services.* For example:

- They have put the offer of travel services together for the traveller with a total price shown for all the services.
- They have arranged with the traveller which services they want before they settle on a particular offer at a total price.
- The traveller chooses a range of services for which there is only one price.

4) *Sold as a package or similar term (e.g. all-inclusive).* For example:

- They offer a range of travel services as a package holiday.
- They tell the customer that, if they book certain travel services, they will have bought a package holiday or an all-inclusive holiday or some similar phrase.

5) *Combined after the sale of the package allowing subsequent choice (gift-box style holidays).* These are arrangements where a trader sells a package that allows a traveller to pick and choose different travel services after they have concluded the contract. For example:

- They sell the traveller a 'gift box' containing a selection of different travel services from which the customer can choose to create a holiday. This is not a particularly common concept in the UK.

6) *Sold through a "linked online booking process" (website click-through).* These are 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.

For example:

- The traveller books a hotel with a

company on their website and they then pass that traveller's name, payment details and email address to a car hire company which contacts the traveller and with whom the traveller books car hire within 24 hours of confirmation of booking the hotel.

### Step 2: Other tourist services

When transport, 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)):

- Advertised as an essential feature of the combination, or;
- 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.

c) On-site facilities such as a swimming pool, sauna or gym included for hotel guests would be considered an intrinsic part of accommodation would not be a package. 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 the combination would likely constitute a package.

### Step 3: Linked Travel Arrangement

The PTRs 2018 introduce a further type

of regulated holiday or trip: the Linked Travel Arrangement (LTA). If traders facilitate the creation of an LTA, they will have to provide information to the travellers and, in some cases, provide financial protection by providing a bond or insurance policy or by holding the money in a trust account. The traveller's rights when they purchase an LTA are not the same as when they buy a package.

They are NOT packages and do not provide the same protection.

So what are they?

1. *The consumer can, through a facilitator (e.g. Travel Agent), combine separate travel services paying the trader SEPARATELY for each service.*

2. *Or the consumer can make bookings within 24 hours from 'multiple traders', via a facilitator, where the consumer is passed to other traders in a 'TARGETTED' manner but without their payment data being passed on (e.g. airline websites where consumers purchase a flight and are 'linked' to other websites for e.g. accommodation or car hire )*

Consumers buying Linked Travel Arrangements, will ONLY benefit from financial protection from the person who 'facilitates' the arrangement.

### Step 4: The offences

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

- Failure to provide pre-contractual information (regulation 5 (5)).
- Failure to 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.

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

### **Step 5: Insolvency protection**

*1. Package organisers must obtain security that covers reasonably foreseeable costs 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.*

*2. 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.

*3. The 2018 PTRs require businesses selling package holidays in the UK to have insolvency protection through ATOL for the flight sector, or a bond, insurance or trust fund for packages in the non-flight sector. The Civil Aviation Authority administer the flight sector, or ATOL scheme. More information is available at: <https://www.caa.co.uk/atol-protection/>*

*4. There are four insolvency protection options which 2018 PTRs permit organisers to use. Whatever option used*

*must of course meet the criteria set out at the beginning of this section 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  
List of current approved bodies:

- Association of British Travel Agents (ABTA)
- 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.

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 returns the money to the organiser when they provide evidence that the contract has been fulfilled.

iv) Trust Account combined with Insurance (regulation 24): Organisers may alternatively choose to provide cover for the refund of payments partly by using a trust account and by covering the remainder by using insurance. Again, this insurance should recognise the traveller as the insured person and therefore pay direct to the traveller in the event of insolvency.

### **Step 6: Standard Information Form**

Before a package holiday or a Linked Travel Arrangement is sold, the Organiser or Retailer (of the Organisers package) or the "facilitator of the LTA" must provide travellers with specific information before selling them a package or LTA.

The Package Travel Standard

Information form includes (but is not limited to): the main characteristics of the package; total price of the package; name and details of the organiser; the insolvency protection 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.

The LTA Standard Information form states what the traveller has agreed to purchase BUT it must state clearly, that it is not a package holiday and there is limited protection.

Once a sale has been concluded the traveller must be provided 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.

### **Step 7: Proper performance (liability)**

A package holiday organiser is responsible for providing assistance to travellers and for the performance of the package services. There should be systems in place to deal with incidents and complaints that arise that affect their travellers.

Even if they are acting as an agent for each of the travel service suppliers, they will be will no longer be able to simply pass complaints to their suppliers to deal with.

Where they are unable to bring travellers home at the end of their holiday due to unavoidable and extraordinary circumstances, such as bad weather or an ash cloud affecting flights, they must bear the cost of any necessary additional accommodation for up to three nights. The limitation to three nights does not apply to persons with reduced mobility and any person accompanying them; pregnant women and unaccompanied minors; or persons in need of specific medical assistance where the customer

notified you at least 48 hours before departure of their particular needs; or where longer periods are provided for under any relevant passenger rights legislation such as EU 261 on Denied Boarding or Cancellation of Flights.

If an organiser sells a package through a retailer (agent) the traveller has the right to address all enquiries and complaints through that retailer. For the purposes of any time limits or limitation periods, receipt by the retailer is deemed to be receipt by the organiser.

### Step 8: Pricing

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. VAT or tourist taxes.
- Exchange rates changes relevant to the package.

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 (the old rules were 30 days before departure), and appropriate justification of this change is provided. The extent of any price increase is capped at 8% of the price of the package. Prices over 8% (was over 10%) 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.

This is the new element, which seems to penalise a genuine organiser! If an organiser has no choice but to significantly alter the main characteristics of the package, e.g. increasing 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. A reasonable period within which the traveller has to respond should also be communicated.

If, however, 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.

### Step 9: Cancellation by the traveller

The traveller may terminate a package any time before the start of the package and be required to pay an appropriate and justifiable termination fee to the organiser, considering expected cost savings and income from reselling of the travel services.

Organisers may also specify reasonable termination fees in the contract based on the savings they may make (whatever that means!) If the traveller does terminate the organiser must refund the traveller with the amount of the payments made minus the termination fee; that refund must be made without undue delay and in any event no later than 14 days after termination.

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. There is no mention in the Regulations of ensuring the traveller contacts the Foreign and Commonwealth Office (FCO)

for an update upon their destination.

The Directive stated that this could 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. This we highlighted was a failure in the PTD as there was no mention of reference to the relevant Member States equivalent of the FCO.

### Step 10: Organisers established outside the EEA but targeting UK consumers

I thought I'd leave this unrealistic enforcement duty till last!

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)).

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 PTR 2018 (regulation 27).

So what advice can we give these kinds of traders? The only time we will really be involved is if UK Travel Agents sell package holidays for organisers established outside the EEA, where they will have to ensure that the organiser accepts responsibility for all the services to be delivered under the contract and that they provide necessary financial protection and protection for repatriation where relevant. If the organiser does not comply with those requirements, the Travel Agent themselves will be subject to the obligations set out in PTR 2018 as if they were the organiser of the package! ■

### ABOUT THE AUTHOR

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