

## Package Travel Regulation 1992 are dead, long live the 2018 Package Travel & Linked Travel Arrangement Regulations



On 24th May 2018, the House of Parliament passed Statutory Instrument 2018 No: 634 the much anticipated Package Travel and Linked Travel Arrangements Regulations 2018, they revoke the old directive apply to all package travel contracts and linked travel arrangements sold, or offered for sale, in the United Kingdom from the 1<sup>st</sup> July 2018.

The new regulations were brought about following EU recognition that the way travel products have been sold have evolved massively since the early 90's. Back then, models such as online booking models and online travel agents simply did not exist.

Firms have exploited gaps in the PTD 1992 leading to an uneven regulatory environment where traditional package organisers are subject to a level of regulation which many of their competitors are not, even though to the consumer they are providing essentially the same service. This has also resulted in the confusion of many consumers as to the level of protection they should receive.

From 1<sup>st</sup> July the new Directive seeks to redress that imbalance and offer consumers the same level of protection for their package travel arrangements, regardless of how they purchase the individual components. The new Directive clarifies this by broadening the definition of a package to encompass new ways of purchasing package holidays online

The new Directive also creates the new concept of Linked Travel Arrangements (LTAs), which are looser combinations of "packaged travel services", that require "traders" (firms / individuals creating packages) making an LTA put in place insolvency cover to protect passengers in the case of travel services "not performed" as a consequence of that trader's insolvency.

Tour Organisers will also be required to provide clearer information for travellers on what travel product they are buying and the corresponding level of financial protection.

Liability for the "performance of the package" (a phrase we are familiar with from the old PTD) is also placed explicitly on the organiser (a trader who combines and sells packages), regardless of whether the services are performed by third parties.

As package holidays are often complex combinations of travel services, including multiple services and various providers, a problem with the delivery of one service may affect the delivery of others. By making the organiser responsible for the whole package, this avoids the consumer having to deal with multiple parties if something goes wrong.

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### Detail, who do the 2018 Regulation apply to and who they don't

1. The new Regulations apply to
  - a. packages offered for sale or sold by traders to travellers, and
  - b. linked travel arrangements,which are concluded on or after the 1<sup>st</sup> July 2018.
  
2. The Regulations **do not** apply to
  - a. packages and linked travel arrangements covering a period of less than 24 hours, unless overnight accommodation is included;
  - b. packages offered, and linked travel arrangements facilitated, occasionally on a "not for profit basis" for a limited group of travellers
  - c. packages and linked travel arrangements purchased on the basis of a general agreement
    - (i)

### Information duties and content of the package travel contract

Part 2 of the Directive sets out who (the organiser and/or the retailer) must supply the traveller a defined list of information about the package arrangements. Failure to accurately detail this information in the prescribed forms (Schedules 1 and 2 of the Act) are a criminal act, punishable (on conviction) to both the retailer and the organiser by monetary fines !

UK Government kindly add that *"in case of dispute about the organiser or the retailer's compliance with any provision of this Part, it is for the organiser or the retailer, as appropriate, to show that the provision was complied with."*

Certainly, clients Directors and Officers insurances really should be integrated to their public / tour operators liability and professional indemnity policies to avoid any potential cover gaps in the event of a claim.

### Changes to the package travel contract before the start of the package

The new Regulations next dictate in Part 3, how variations to bookings must be handled, what passengers rights are and what costs can and can not be passed on when changes are made.

In the whole, these are risk and costs faced entirely by the organiser – he would be well advised to be supported with robust contractual terms with his suppliers to protect his financial position.

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### Performance of the package

Part 4 is where we see familiar phrases, and neatly, still regulation clause 15. (2) *“The organiser is liable to the traveller for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers.”*

If it's in the itinerary, the organiser is liable for the “proper performance” – this is where we see Public Liability and Professional Indemnity claims being presented. Passengers (pax) on the package do not have a contract with the providers of the services / facilities being provided. If they suffer injury or damages, loss of enjoyment or offered elements simply are not available – they (the pax) have rights under Part 4. 15. 2 (c) to assistance from the organiser and damages as a consequence of the wrongdoing or negligence of the supplier.

Passengers can bring those claims against the retailer of the package or the organiser, importantly – *“for the purpose of compliance with time-limits or limitation periods, receipt of the messages, requests or complaints referred to in this regulation by the retailer are to be considered as receipt by the organiser”* so agency agreements between agents and organisers need to fully address protocols for notifications.

The organiser is also responsible to ensure travellers safe return as agreed in the package, even if matters are completely outside of their control eg: ash cloud. Normally up to 3 nights, but much more if the passengers are of reduce mobility. Clients are going to need to work out how they will fund these costs if their supplier agreements do not have the circumstances and remedies fully detailed.

### Insolvency protection is covered in Part 5

The organiser of a package who is established in the United Kingdom must provide effective security to cover, in the event of the organiser's insolvency.

Linked Travel Arrangements are explored and how passenger financial protection has to be met. Detail about the consequences of not buying a packaged arrangement are to be passed to consumers.



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### General provisions in Part 6

Confirms exactly who is liable to the pax for booking errors and omissions.

### PART 7 = Enforcement

Explains in detail which Government body will be responsible for enforcing these Regulations and bringing prosecutions for “non-compliance”.

The Schedules attaching to the Regulation explain exactly what information has to be provided to the customer:-

1. Facts about the holiday, where when what, meals excursions etc all have to be detailed
2. Linked Travel Arrangements passengers rights for information to be supplied
3. Passengers Rights – Packages
4. Passengers Rights – Linked Travel Arrangements
5. Special requests handling and requirements to provide assistance
6. Passengers Notice insolvency – Linked Travel Arrangements
7. Passengers Notice insolvency – Linked Travel Arrangements (no return tickets)

For the full Regulations:

Guidance notes from BEIS have been issued

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*Note (i) (2) (c), a “general agreement” means an agreement, which is concluded between a trader 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.*