



# Package Travel Legislation: Updating the framework

*December 2023*

## Introduction

Our response is presented on behalf of our group of companies, which assist travel businesses in solving regulatory, financial and strategic problems.

The Travel Vault is our insurance brokerage offering bonds and financial failure insurance to travel companies to comply with the Package Travel Regulations and ATOL Regulations.

Stonecot Trustees offers tailor-made trust and escrow services for travel businesses to support their compliance with regulatory requirements or commercial needs.

Travel Trade Consultancy (TTC) provides consultancy services and supports UK travel companies with advice and guidance on a range of regulatory, financial and strategic issues.

Our team has over 100 years collective experience working with and advising on the UK and European travel regulatory framework, including more than 50 years working for the Civil Aviation Authority (CAA).

Our portfolio of travel clients is broad and diverse, covering a range of sizes, product offerings and business operating models. All our clients will be impacted in some way by any changes to the Package Travel Regulations. Our response represents our own views but in forming them, we have held discussions with our clients.

The 2018 Package Travel and Linked Travel Arrangements Regulations (PTRs) perform an essential role in protecting consumers, but they are complex and can be difficult for the industry and consumers to easily understand. However, over the last five years, the industry has adapted to operate within the PTRs and in many ways, they achieve a good balance between the needs of consumers and travel businesses. It is, therefore, imperative that any reform does not complicate matters further and is targeted and proportionate to avoid unnecessary costs to travel businesses.

We have concerns that some of the proposals would create a significant disparity with ATOL Regulations, which may cause increased confusion for travellers. It would be a more valuable exercise to use this opportunity to take a holistic view with the aim of a more radical approach to align both the PTRs and ATOL Regulations and resolve issues involving airlines. This could ease bureaucracy for businesses and improve clarity for both businesses and consumers, thus delivering on the wider principles of balancing consumer protection and business freedom.

## Questions

### How rules should apply to UK-only package holidays?

The PTRs exist due to the risks faced by consumers when booking package holidays, which include the payment of large sums of money well in advance of travel, the complex combination of services provided by overseas suppliers and the possibility of being stranded abroad. Consumers are not only vulnerable to insolvency but also to the fulfilment of the services. Therefore, the PTRs provide the consumer with one point of contact for complete peace of mind.

When considering UK holidays, many of the risks still exist as the costs of UK packages can be as much or exceed overseas packages, and repatriation issues remain for those who are either vulnerable or may be travelling to the outskirts of the UK or across the water, for example to Northern Ireland. However, for some UK packages the risks may be considered lower with the UK transport network being easier to navigate and refunds potentially being easier to pursue from suppliers, if based in the UK.

It could, therefore, be argued that amending the definition of packages to exclude some domestic packages, for example, those not including travel, would be a more proportionate approach, levelling the playing field between accommodation-only providers and package operators, where costs can be similar. It is likely to have the added benefit of increasing choice and lowering costs for consumers as accommodation-only providers may be more inclined to offer additional services without fearing the need to comply with the PTRs.

For those that want to continue offering financial protection, they could choose to join specialist trade bodies who require members to protect sales over and above what the law requires. This was demonstrated in Australia, where the industry was deregulated, and the protection fund was disbanded, but a voluntary code has since been developed by the industry, which many travel businesses have joined to provide their customers with peace of mind.

However, is this reform necessary? Views vary across the industry and many UK package operators are happy to offer their consumers protection and would not want to see this removed. Furthermore, removing a level of consumer protection could cause unnecessary confusion for customers who may not realise they are unprotected and therefore at odds with the aims of the reform.

It should also be recognised that many UK operators offer inbound packages to EU consumers. These consumers need to be protected under the European Package Travel Directive; thus, it could result in a situation where consumers sold the same package have different levels of protection, with UK residents losing out.

### Setting a minimum cost threshold for rules to apply.

Setting a minimum cost threshold could offer a more proportionate approach and there is already a precedent within the Consumer Credit Act 1974 (CCA) whereby additional financial protection is only offered to purchases costing more than £100.00. However, the PTRs offer a wider range of protection through placing responsibilities upon package operators for the performance of their suppliers. Introducing a limit could create unfair and confusing disparity between consumers who may be offered the same package but who bought it at different prices, due to a sale or offer when purchasing. This not only relates to financial protection upon the operator's insolvency but also performance of the package.

It also creates a repatriation risk, as if the customer's unprotected package includes travel, they may not be able to repatriate themselves either due to availability or because the costs of arranging travel at short notice will be considerably higher than the original price they paid.

Setting a minimum threshold will introduce complexity for the industry and consumers and could create a two-tier system, leaving the most vulnerable at risk. There are many complications around booking fees, additional charges, low deposit schemes and buy now pay later, which could result in confusion on how the limit is applied. It is likely to be difficult to implement and enforce and could potentially create a loophole if businesses choose to artificially price packages to avoid the Regulations.

### **Regulation of Linked Travel Arrangements**

Whilst there is no data publicly available, we do not believe that Linked Travel Arrangements (LTA) are widely used by many travel businesses as the nature of the transactions can be difficult to track. They are most common with airlines, who regularly offer additional services through partners after a consumer has booked a flight and who, therefore, have to provide financial protection against their own insolvency. However, in our experience, instead of pursuing the LTA option, many other travel businesses choose to offer the arrangements as a package instead to avoid breaching the regulations to simplify the process and offer full financial protection to their customers.

Consumer awareness of Linked Travel Arrangements is minimal and even among the industry and travel legal advisers, they are difficult to understand and explain and the financial protection offered under the arrangement is limited in comparison with packages. A recent CTSI poll indicated that 1 in 5 incorrectly thought they had full protection when booking a LTA and although the PTRs require certain information to be issued to consumers to provide clarity on their booking, the same CTSI poll revealed that almost three-quarters of respondents said that they only skim read their T&Cs or don't read them at all, hence the confusion.

However, we believe that the concept of LTAs acts as a deterrent to those who may attempt to avoid the PTRs through delaying the sales process or selling through separate companies. Consequently, removing them could lead to an unintended consequence of a loophole being created, thus reducing consumer protection wider than anticipated. It may, therefore, be better for consumers if they are not removed but are simplified in some way.

### **Flexibility over how insolvency protection is provided.**

We welcome increased flexibility for operators on insolvency protection requirements but there are important points that need to be considered:

1. An adequate level of protection to cover the costs of refunding and repatriating consumers in full needs to be assured.
2. Consumers must have clarity on how to obtain a refund or repatriation in the event of insolvency.

Where there are multiple methods of protection, this could present greater risks to consumers; therefore, it needs to be clear on how the above points are achieved.

Other ways that could benefit travel businesses would be to allow one method of protection for both ATOL and non-air packages. There are already ATOL franchise schemes who provide this, and it benefits both the business in lowering costs and administration but also the consumer in giving one clear message in the event of a travel business ceasing to trade. Combining protection for all packages would be welcome across the wider industry and could provide a simpler solution for both businesses and consumers.

One of the most significant issues on financial protection for travel businesses is the overlap of consumer protection, for example, where consumers use a credit or debit card. Many operators are faced with double protection costs due to the uncertainty on the responsibility in the event of insolvency. If there was greater clarity and formal rules on apportionment, it would reduce costs significantly for many businesses and ultimately provide a better experience for consumers at a time of distress.

### **How “other tourist services” form part of the rules.?**

We receive a significant amount of queries both from established tour operators and new travel businesses who are unclear as to whether a component is classed as an “other tourist service”. However, it is often due to a lack of knowledge on the two defining rules rather than this being an issue with the definition itself.

It may help to simplify the definition but removing the “significant proportion” rule may not be the answer as it removes the one quantifiable element, whereas “essential feature” can be open to interpretation. Instead of amending the definition, it may be more effective to retain both options and provide more supporting guidance and examples for clarification.

### **To which travellers should package travel rules apply.**

We are not aware that the application of the PTRs for business travel is a significant issue, as many businesses are happy to put a General Agreement in place in order to meet the current definition. However, there are no guidelines on the form or content of a General Agreement and thus this tends to favour larger businesses with a larger corporate structure. For small businesses, it potentially causes unnecessary complications and disproportionate bureaucracy to put in place the agreements. Consequently, amending the definition in line with other consumer regulations may help to simplify the implementation for smaller businesses.

### **Further technical changes**

#### ***Redress from third parties***

During the pandemic, seeking redress from third parties was a significant challenge for the industry, particularly with regards to airlines and there have been some notable cases in the public domain recently.

Many of our clients were required to refund their customers within specific timescales with little or no clarity on whether they would have any redress from their airline suppliers. As a large proportion of tour operators did not have the funds to do this, it caused delays and confusion for consumers. Consequently, it is encouraging to see that the EU’s proposals to reform the Package Travel Directive (PTD) include a requirement for suppliers to refund operators in seven days, although admittedly these timescales seem optimistic.

It is clear the entire industry requires greater clarity on their responsibilities to remove ambiguity on refunds. However, this must be practical so as to manage consumer expectations and ultimately, we acknowledge that terms and conditions between suppliers and operators will still be an important tool for redress and should not be overlooked.

### ***Whether rules should allow for extenuating circumstances***

The impact of the Covid-19 pandemic was unprecedented and significantly affected the travel industry's ability to meet their responsibilities under the PTRs. The issuing of Refund Credit Notes instead of refunds provided many tour operators with the flexibility and time to cope with the situation and without this, many businesses would have ceased trading. This has been recognised by the EU, with their proposals to amend the PTD including an option for vouchers to be issued, instead of a refund, where accepted by the consumer.

It is, therefore, vital that the UK's refund obligations either include similar flexibility or allow for extenuating circumstances, but these must be clearly defined so that consumers and the industry understand them easily and to ensure that they are not exploited. This may be achieved best if it is applicable to circumstances affecting the industry as a whole or a large number operating in a specific sector, rather than being applied in individual cases, where the risk of ambiguity is higher.

### ***Territorial restrictions on insurance cover***

As an insurance broker, we recognise the need for increased capacity in the insurance market for the travel industry. However, we recommend caution on extending this too widely as businesses and consumers still need confidence that the cover will be adequate and the ability to obtain a refund will be simple. We believe that this is achievable within the UK, Crown Dependencies, and the EU but beyond that, it could cause issues with a limited ability to resolve them. Although permitting insurance from other territories may lower costs for the industry and ultimately consumers, this could be on the basis of a false assumption if less reliable policies come into the market that do not provide adequate cover.