

Department for Business and Trade

Call for Evidence – Package Travel Legislation: Updating the Framework

A response by the Association of Personal Injury Lawyers

December 2023



Introduction

APIL welcomes the opportunity to respond to the Department for Business and Trade consultation on proposals to reform the Package Travel and Linked Travel Arrangements Regulations 2018.

APIL is concerned that the focus of the proposals seems to be on enhancing flexibility and supporting businesses to innovate and grow. While we recognise that it is important to ensure that the travel industry recovers from the consequences of the pandemic on international and domestic travel, the reforms should not aim to do this at the expense of consumer rights and protections.

We do not support the proposals concerning **UK-only package holidays**. We believe that removing UK-only arrangements from the scope of the Regulations would be detrimental to consumers as they would lose the protections included in the Regulations, namely information requirements, insolvency protection, and the protections concerning the proper performance of the travel services in the package. Having two separate regimes will cause wider issues in practice and for injury victims.

We also argue against setting a **minimum cost threshold** for rules to apply to packages. We believe that non-flight packages priced below a minimum price should not be exempt from the Regulations. This would add unnecessary complexity to the application of the Regulations and create inequalities between consumers buying the more expensive packages and those buying the cheapest packages. This proposal also fails to acknowledge that those buying at the lower end of the market need equal protection.

APIL believes that the definition of **linked travel arrangements (LTAs)** should be simplified. The introduction of LTAs in the scope of the Regulations has caused confusion amongst tour organisers and consumers. Consumers do not understand the limited nature of the protection these arrangements afford and, as a result, are taking unprotected or less protected holidays, whilst believing that they have the full protection of the Regulations. The new definition must make it clearer to consumers whether they are booking unprotected, partially protected or fully protected holidays.

We believe that there is a need for enhanced transparency within the travel industry concerning the differentiation between a package and a linked travel arrangement, as well as the clear delineation of what qualifies as each type of travel arrangement to the consumer before purchase. We recommend that **an independent regulating body** is created with robust mechanisms to enforce compliance and impose sanctions upon tour operators who fail to provide clear and accurate information to consumers, and who fail to otherwise meet their obligations to consumers under the Regulations.

We also argue that **'other tourist services'** should continue to be in the scope of the Regulations, given that these services can potentially pose similar risks of harm as any other component included in a package. The criteria surrounding what constitutes a 'significant

proportion' or an 'essential feature' can be difficult to understand, but how this is determined should align with the consumer's perception of what constitutes a 'significant proportion' or an 'essential feature' of the package, rather than solely relying on the tour operator's interpretation.

APIL strongly argues **against removing business travellers** from the definition of traveller in the Regulations. The rights and protections for individuals travelling for business purposes must be the same as for those travelling for personal reasons. Any distinction would be arbitrary and may exclude individuals from the scope of the protections offered by the Regulations in circumstances where they do not necessarily have an alternative effective means of redress.

We have only responded to the questions within our remit.

How rules should apply to UK-only package holidays

1. What consumer protections are particularly important for those holidaying in the UK and why?

APIL believes that most of the protections included in the Package Travel and Linked Travel Arrangements Regulations 2018 are important for those holidaying in the UK. The COVID-19 pandemic demonstrated the significance of the insolvency protection requirements in Part 5 of the Regulations. This financial protection ensures that if the organiser becomes insolvent, consumers are either refunded or supported in completing their holiday through alternative means.

We believe that the transparency and information provisions in Part 2 of the Regulations also play an important role in protecting consumers. This empowers consumers to make informed decisions when booking a holiday. Moreover, Part 4 makes the organiser of the package responsible for the proper performance of that package even if the services comprised within it are performed by third parties and gives rights to price reductions and compensation in cases where the package travel contract is not complied with. The Regulations provide additional flexibility for consumers where there is a lack of conformity, whilst also providing the domestic travel industry more opportunities in relation to how holidays are sold. The fact that domestic holidays are in the scope of the Regulations is beneficial to tour organisers in terms of marketing given that they can emphasize to consumers that by buying a package holiday, the additional protections afforded by the Regulations will apply.

2. Do you think that:

- a. All domestic-only arrangements should be exempt from the Regulations; or**
- b. Domestic-only arrangements that do not include travel should be exempt from the Regulations; or**
- c. Domestic-only arrangements should continue to be in scope of the Regulations as they are now?**

Please provide an explanation for your answer, citing any relevant data where possible.

APIL believes that domestic-only arrangements should continue to be in scope of the Regulations. Maintaining two distinct regimes could lead to practical issues and consumer confusion. We do not understand the rationale for this proposal and believe there is no

reason for holidaymakers opting for domestic travel to be afforded less protection compared to those travelling abroad. Equal protections should extend to both international and domestic holidays to ensure fairness and security for all travellers.

We are concerned that this question fails to acknowledge that there are three distinct legal jurisdictions in the United Kingdom. Overlooking that suggests that the Government failed to acknowledge the different characteristics of the justice systems in England and Wales, Scotland, and Northern Ireland. We query what would happen to someone who lives in England but goes on holiday, for example, in Scotland and is injured. The differences in the legal cost regime and proceedings would require the instruction of a Scottish lawyer if the claimant had to pursue their claim there.

APIL believes that this ambiguity could lead to confusion among consumers on where to bring their claims. APIL is concerned that such discrepancies might disrupt the harmonization of legal protections for holidaymakers within the UK. We believe that the claimant must have the choice of where to bring proceedings and whether to avail themselves of the Regulations or not.

4. Would removing domestic packages from the scope of the regulations support businesses to:

- a) offer more choice?
- b) offer lower cost options?
- c) both?
- d) neither?
- e) something else?

Please explain your response, setting out how and to what extent this reform could lead to benefits or detriment to business.

None of the above. APIL believes that removing domestic packages from the scope of the Regulations would not make a difference given that most consumers do not make decisions concerning their holiday on that basis. Moreover, domestic packages often represent a better price option for the consumer as the combination of accommodation with transport or some other travel service will often result in a discounted price.

The proposal to remove domestic or UK packages from the Regulations would not benefit consumers.

A further observation we have is that the path the consumer is forced to take in the absence of the protections under the Regulations may end up being inconsistent with the contractual arrangements between the tour operator and their suppliers on the question of where liability should rest, indemnities and contributions in the event of a claim.

Please refer to our responses to questions 1 and 2 above.

Setting a minimum cost threshold for rules to apply

6. Do you think that a minimum cost threshold should be set below which package travel rules should not apply? Please explain why and what impact you think these proposals could have on businesses and consumers. Please cite any evidence that informed your position.

APIL strongly disagrees with this proposal. We believe that creating a minimum cost threshold would add unnecessary complexity to the application of the Regulations. It would be unfair for those who buy cheaper packages not to be protected by the Regulations in the same way as those who can afford more expensive packages. This proposal also does not acknowledge that it is likely that consumers buying cheaper packages cannot afford to pay for legal representation and may be the ones more in need of the protections in the Regulations. Our members have reported that things can often go wrong in the cheaper packages. Even if someone paid £50 for a package holiday, there is still scope for them to be catastrophically injured. Put simply: the price of the package does not dictate the likelihood of the consumer needing to rely on the Regulations.

We are concerned that this proposal would only benefit businesses at the expense of consumers' rights. The price at which the package is being sold does not inform the ability of the travel organiser to meet the claim, be that through their own pocket or through insurance. Tour operators in the market selling a high number of the cheapest packages appear to be operating profitably/using a financial model that enables them to keep trading just as much profit as tour operators at the higher end of the market. There have been instances where tour operators have used strategies, such as dynamic packaging, and tried to take themselves outside the Regulations by 'unpackaging packages'. Therefore, APIL is concerned that tour operators would start pricing packages below the minimum cost threshold simply to avoid the protections in the Regulations. There is a risk that health and safety standards will be compromised in respect of the cheapest holidays sold as well as to cut costs to ensure that a holiday that would otherwise be a package falls below any minimum cost threshold.

APIL reiterates the need for **compulsory liability insurance for travel organisers**, regardless of the type of packages that they offer. Currently, there is no requirement for travel organisers to have a minimum level of liability insurance in place to cover claims made by customers who are seriously injured or impacted by a fatal accident on a package holiday. This lack of regulation is concerning, as it can leave many injured people uncompensated and with no effective means of redress.

In September 2019, when Thomas Cook collapsed, many holidaymakers who had suffered an injury while on a package holiday learned that the tour operator did not have public liability insurance to cover their claims. Thomas Cook only held liability insurance for severe cases, where damages could be millions of pounds. Therefore, the vast majority of claimants at the time/after the collapse were left without compensation, including financial losses that can endure on a lifetime basis as a result of the injury suffered on holiday.

Despite the Regulations providing a wider scope for travel agents and tour operators to be held liable to a consumer when things go wrong, there is currently no provision for travel organisers to have compulsory liability insurance. This undermines the protections for consumers if the tour operator runs into financial difficulty and is under-insured or completely uninsured for its liability in a claim for serious injury. The concerning nature of this situation was recognised by the UK Government in 2019. Andrea Leadsom, then-Secretary of State for Business, Energy and Industrial Strategy said that it was unacceptable that Thomas Cook customers were left uncompensated and that this type of situation should never have arisen in the first place and made a commitment that the government would take steps to ensure it would not be repeated.¹ Notwithstanding this undertaking, nothing has been done to ensure that the same situation would not happen again.

¹Statement on the government actions to support customers of Thomas Cook –

We strongly believe that tour operators should be legally compelled to have a minimum level of liability insurance to cover claims from consumers who have been seriously injured, suffered an illness, or suffered a fatal accident as part of a package travel contract with no limits². There should also be a requirement that such policies do not carry prohibitive self-insured excess levels. The protections provided to consumers by the Regulations are illusory if a tour operator runs into financial difficulty and is under-insured or completely uninsured for its liability in a claim for serious injury. Compulsory insurance will help to create and maintain customer confidence in the package travel industry and ensure that consumers have a viable route to redress if the worst happens, giving meaningful effect to the provisions in Part 4 of the Package Travel and Linked Travel Arrangements Regulations 2018 on the organiser's responsibility for the performance of the package.

Regulation of Linked Travel Arrangements

8. Do you think the regulatory position on linked travel arrangements should be

- a. kept as it is; or**
- b. simplified; or**
- a. incorporated into the definition of a package; or**
- b. removed from the Regulations?**

Please explain your answer, outlining potential impacts on businesses and consumers and any evidence that informed your position.

APIL believes that the definition of linked travel arrangements (LTAs) should be simplified. There needs to be clear information about peoples' rights when booking holidays generally. In particular, when someone is not buying a package holiday, they must be fully informed of the protections that they will not receive.

Consumers are currently confused about the protection they receive when booking a holiday. Despite the information requirements in the Regulations, consumers do not seem to understand the difference between packages and LTAs or the different levels of protection afforded. As a result, a significant number of holidaymakers are taking unprotected or less protected holidays, whilst believing that they have the full protection of the Regulations.

The recent public poll conducted on behalf of the Chartered Trading Standards Institute (CTSI)³ found that even after being given a definition of a linked travel arrangement, just over 73% of respondents said that they still found the difference between a linked travel arrangement and a package holiday a bit confusing or that they did not understand at all. The CTSI's poll also showed that even travel organisers may not realise that they have created an LTA or understand the obligations that fall on them to make the customer aware of what is (and is not) protected.⁴

Business Secretary Andrea Leadsom <https://www.gov.uk/government/speeches/statement-on-the-government-actions-to-support-customers-of-thomas-cook>

² See "Lessons learned from Thomas Cook – Why tour operators should have public liability insurance" Chris Deacon, Partner, International Injury, Stewarts, 22 March 2021: <https://www.stewartslaw.com/news/lessons-learned-from-thomas-cook-why-tour-operators-should-have-public-liability-insurance/>

³ Chartered Trading Standards Institute (CTSI) 'Wish you were clear' accessed online at <https://www.tradingstandards.uk/media/3178912/ctsi-wish-you-were-clear-policy-paper.pdf>

⁴ <https://www.tradingstandards.uk/media/3178912/ctsi-wish-you-were-clear-policy-paper.pdf>

We suspect that generally, consumers are far more concerned about booking a holiday that includes insolvency protection and provides them with a means of being repatriated should their tour operator go bankrupt during their holiday, than they are with choosing a holiday which allows them to sue their tour operator if they are injured during their stay. We suspect that most people do not consider who they would sue in the event that something goes wrong, or they may assume that ATOL protection means that they can sue the organiser in those circumstances. LTAs are an attractive way for tour operators to offer holidays which appeal to consumers who are worried about insolvency, whilst avoiding liability for the performance of the contract. A simpler definition should make it clearer to consumers whether they are booking unprotected, partially protected or fully protected holidays. However, the definition of LTA should not be allowed to become too broad so that the trend becomes offering only LTAs in place of and as a substitute for packages and the enhanced consumer protection they provide.

Information Requirements for Linked Travel Arrangements

10. Which information requirements are particularly important? Please explain why you think this.

12. What would be the impact on businesses and consumers of simplifying the information provision requirements for linked travel arrangements?

APIL believes that there is a need for enhanced transparency within the travel industry concerning the differentiation between a package and a LTA, as well as the clear delineation of what qualifies as each type to the consumer before purchase. We recommend that **an independent regulating body** is established with robust mechanisms to enforce compliance and impose sanctions upon tour operators who fail to provide clear and accurate information to consumers. This could enhance transparency in the industry and improve the effectiveness of the objective behind information sharing, furthering consumer protection. Currently, there appears to be a lack of enforcement regarding this part of the Regulations.

Consumers often do not fully engage with the extensive information provided to them or do not fully read the terms and conditions. The CTSI's survey referred to above also suggests that legislators need to make the law as simple as possible for consumers to understand so that they are protected from being misled or losing money. The top five reasons provided by consumers in the poll for either not reading the terms and conditions, or only skim-reading them when booking a holiday, included:

- too much information – consumers are demotivated to read it;
- the information provided was too complicated;
- not having time to read the information;
- consumers perceive all terms and conditions as similar;
- consumers believe that they do not need to read it as they have been on other holidays without needing to read the terms and conditions.

The amount of information provided is leading to decreased motivation for customers to read it. APIL believes that to address this issue, the information requirements should be reviewed and become more consumer-focused. There should be a requirement for operators to clearly outline the protections associated with booking a package compared to not booking one. This distinction should be communicated explicitly as those not opting for a package will not receive the same level of protection. This specific information could influence many

individuals to choose a package if they understand the additional safeguarding it offers, absent in LTAs or other alternatives.

Further, the information requirements should explain clearly that should anything go wrong, the consumer has a right to sue the local provider directly should they wish to bring a claim. This information should be provided in a way that gives the consumer a genuine choice whether to proceed with booking a holiday which falls outside the Regulation's scope and the protections it provides for improper performance. Consumers need to know their rights and who they can go to for redress should something go wrong under the holiday contract.

How "other tourist services" form part of the rules

16. Does the inclusion of 'other tourist services' in the Regulations serve an important purpose?

17. Is there sufficient clarity about when an 'other tourist service' will form part of a package?

Yes. It is important to note that these 'other tourist services' services can potentially pose similar risks of harm as any other component included in a package. For instance, our members report that many serious injuries are sustained during excursions such as jet skiing, skidooing and quad biking. Often these tourist services are less thoroughly audited than accommodation and flight services.

Further, when a tour organiser decides to incorporate 'other tourist services' into a package, they should assume responsibility for the associated outcomes. The inclusion of such services is often a strategy to enhance the appeal of the package, thereby securing the booking and generating profits for tour operators. Consequently, organisers should bear accountability for both the advantages and disadvantages resulting from this inclusion.

18. Should the 'significant proportion' criterion be removed from the definition of other tourist services?

19. Is it clear what forms an 'essential feature' of the package, so consumers and businesses understand when a package has been created?

The criteria surrounding what constitutes a 'significant proportion' or an 'essential feature' can be difficult to understand. APIL believes that how this is determined should align with the consumer's perception of what constitutes a 'significant proportion' or an 'essential feature' of the package, rather than solely relying on the tour operator's interpretation.

Tour organisers must be held accountable even if the service in question represents a smaller portion of the overall package cost. The reality of package holiday sales extends beyond flights and accommodation and these other elements might be the reason why a consumer chooses to book a package over another. The possible consequences resulting from these services cannot be dismissed merely because of the value of that element of the package.

We believe there needs to be enhanced transparency in the industry. If there is clarity on what constitutes an essential feature, both consumers and businesses will understand when a package is being created.

To which travellers should package travel rules apply

20. Do you think the definition of traveller should be changed? If so, how and what impact would this have?

We do not think the definition of traveller should be changed. We suggest that the focus should revolve around ensuring clarity in understanding the existing definition rather than changing it. Clarifying the existing definition rather than overhauling it could contribute to a greater understanding for all involved parties.

21. What do you think would be the impact of removing all business travellers from the definition of traveller?

APIL believes that business travellers should not be removed from the definition of travellers.

The distinction between contracting as a consumer versus contracting on behalf of a business is evident in various scenarios. However, when booking a package or other travel arrangement, a business traveller and a holidaymaker are on an equal footing.

We believe it is unfair to divide travellers this way. The rights and protections for individuals travelling for business purposes must be the same as for those travelling for personal reasons. The notion that business travellers might have fewer rights or protections seems unfair and unjustifiable.

Business travellers should not be subject to diminished rights merely due to the nature of their travel. The consultation's suggestion that business travellers are better protected and therefore should not be the focal point of package travel protection seems misleading. In reality, workplace insurance might provide specific benefits related to medical care but may not necessarily secure compensation for injuries sustained while travelling and/or abroad. Further, it is important to note that during the course of business travel, a traveller will not always be working. If an accident occurs after working hours on a business trip, the traveller may not have any protection or be able to bring a claim against any domestic entity. A distinction between travellers based on what they are travelling overseas for would be arbitrary and may exclude individuals from the scope of the protections offered by the Regulations in circumstances where they do not necessarily have an alternative effective means of redress.

Overall, APIL believes that the removal of business travellers from the traveller definition would create discrepancies in rights and protections, leading to potential inequities in compensation, especially when injuries occur during business-related travel.

Further Technical Changes

Whether rules should allow for extenuating circumstances

26. What are your views on how well the Regulations operated during the COVID-19 pandemic?

The pandemic has highlighted that the Regulation's provisions surrounding cancellation have not worked as well as would have been hoped, and there must be clarity and certainty around this issue. The 2018 Regulations provide cancellation rights to consumers. Following

a termination under 14(2), the organiser must reimburse any payments made by or on behalf of the traveller, having deducted any termination fee. From our members' experience, there have been disputes since the pandemic on the application and interpretation of these rights. There needs to be clarity about the circumstances in which a consumer can cancel and get a full refund, and the circumstances where a travel operator can deny the full refund. There have also been issues with the provision of vouchers to travellers who requested a cash refund but were unable to access it. We believe that the enforcement around refunds has been disappointing.

Territorial restrictions on insurance cover

30. What are your views on relaxing territorial restrictions on insurance cover for insolvency protection providers to allow supply by those regulated outside the UK?

Please see our comments regarding compulsory insurance for all travel organisers in question 6.

Making it easier for the Government to update the information requirements

32. Are there any parts of the information requirements where you think flexibility is particularly needed to ensure the requirements stay up to date?

Please see our answer to questions 10 and 12 above.

Any queries about this response should be, in the first instance, directed to:

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