

EXPLANATORY MEMORANDUM TO
THE PACKAGE TRAVEL AND LINKED TRAVEL ARRANGEMENTS
REGULATIONS 2018

2018 No. 634

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument implements the EU's 2015 Package Travel Directive and replaces the existing Package Travel Regulations (S.I. 1992/3288), which were derived from the 1990 Package Travel Directive (90/314/EEC).
- 2.2 The instrument expands the definition of a package to ensure that it encompasses modern methods of purchasing package holidays, particularly online. It also creates the new concept of linked travel arrangements (LTAs), which are looser combinations of travel services, and introduces a limited level of protection for consumers who purchase them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The deadline for the implementation of the Directive is 1 July 2018 and this instrument is subject to the affirmative procedure.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 This instrument is being made to implement the 2015 Package Travel Directive (EU) 2015/2302¹, under section 2(2) of the European Communities Act 1972. The attached Transposition Note explains the Department's approach to transposing this Directive.
- 4.2 This instrument replaces the 1992 Package Travel, Package Holidays and Package Tours Regulations (1992 No. 3288).
- 4.3 The Proposal for the Directive was considered and cleared by the House of Commons European Scrutiny Committee on 21 July 2015 (published in Report No.1, Session 15/16). The House of Lords' Select Committee on the European Union cleared it from scrutiny on 2 December 2014 (Sift No.1516, Session 13/14).

¹ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p1).

- 4.4 To protect consumers from the risk of travel retailer insolvency, the Air Travel Organisers' Licence (ATOL) was introduced in 1972. This required organisers selling holidays involving a flight to hold a licence from the Civil Aviation Authority (CAA), which insured consumers would be refunded and if necessary, repatriated. For other forms of holiday not including a flight (such as packages by coach, rail or sea), a number of trade bodies in the 1960s set up protection schemes on a voluntary basis. When the 1990 Directive was introduced (which did not distinguish between flight and non-flight holidays), the Government at the time decided to build on the schemes already in place. This has resulted in a combination of schemes which distinguishes not only between package and non-package holidays, but also between those involving flights and those that do not.
- 4.5 The Department for Transport (DfT) leads on flight-inclusive holidays and the ATOL insolvency scheme (which is managed by the CAA, on behalf of the Secretary of State for Transport). BEIS is responsible for package holidays and for regulating the non-flight package sector. Therefore, the implementation of the 2015 Package Travel Directive has been similarly split between the two departments.
- 4.6 The Air Travel Organisers' Licensing Act 2017, which gained Royal Assent in November 2017, updates the ATOL primary powers to ensure the scheme is aligned with the new scope of the new Directive. DfT is expected to lay a negative instrument in the spring to come into force by 1 July 2018, which will update the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012. DfT's instrument will work in parallel with this instrument to transpose the provisions of the Directive.

5. Extent and Territorial Application

- 5.1 This instrument extends throughout the United Kingdom. Although consumer protection policy is devolved to the Northern Ireland Assembly, the Northern Ireland Department for the Economy has agreed that implementation of the Directive can be carried forward on a UK basis.
- 5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

- 6.1 Minister for Consumers, Andrew Griffiths MP, has made the following statement regarding Human Rights:

In my view the provisions of the 2018 Package Travel and Linked Travel Arrangement Regulations are compatible with the Convention rights.

7. Policy background

What the Directive does

- 7.1 The 2015 European Package Travel Directive replaces the previous Directive (90/314/EEC). The 2015 Directive updates and expands protections for consumers buying package holidays to reflect modern travel booking methods.
- 7.2 As new online booking models and online travel agents have emerged, it has not been clear what falls in scope of the Package Travel Regulations. This has led 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.

- 7.3 The new Directive clarifies this by broadening the definition of a package to encompass new ways of purchasing package holidays online. It also creates the new concept of linked travel arrangements (LTAs), which are looser combinations of travel services, and requires that traders facilitating 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. Organisers will also be required to provide clearer information for travellers on what travel product they are buying and the corresponding level of protection.
- 7.4 Liability for the performance of the package 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.
- 7.5 The new Directive also introduces a mutual recognition requirement. Under this requirement, the UK must accept the insolvency protection arrangements entered into by organisers established in another Member State, under the rules of that Member State. Likewise, other Member States are required to accept the insolvency protection put in place by UK-based organisers, in accordance with the rules set out in this instrument. This new requirement aims to stimulate cross-border trade by enabling organisers to comply with just one insolvency regime of the Member State where they are established, rather than complying with the insolvency regime in the place of sale (as was previously the case). The Directive also requires the establishment of Central Contact Points in each Member State to supervise organisers' compliance with this new mutual recognition principle in different Member States. The Central Contact Points will provide a dedicated channel for clarification on what insolvency protection specific organisers have in place.
- 7.6 The Directive set out a deadline for bringing its provisions into force by 1 July 2018.

The UK's approach to implementation

- 7.7 Our approach to implementation is light-touch in order to impose minimal additional burdens on business, whilst enabling the UK to comply with the requirements of the Directive. Where possible the provisions of the Directive have been transposed using a copy-out approach. This means that in general provisions appear in this instrument as they were set out in the Directive.
- 7.8 In accordance with the Directive, this instrument requires that travellers are provided with specified information as to the package holiday and their rights before entering into a package travel contract and the contents of the package travel contract (Part 2 of the instrument); it restricts the changes that may be made to a package travel contract once agreed and regulates both parties' termination rights (Part 3); it 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 (Part 4); and it requires that organisers put in place adequate security

so that travellers can be refunded and, if necessary, repatriated if the organiser becomes insolvent (Part 5).

- 7.9 As this is a maximum harmonisation Directive, the UK does not have flexibility on how it implements the majority of provisions. However, there are a few areas where the UK has been able to choose how to implement that we have summarised in paragraphs 7.10 to 7.12.
- 7.10 Non-flight package insolvency regime. We will continue the current insolvency regime for packages that do not include a flight as established in the previous Package Travel Regulations (1992). Amendments have been made to the three insolvency arrangements set out in this instrument, which are bonding, trust accounts and insurance including, where organisers of packages use trust arrangements, to require them to obtain top-up insurance for packages in which there is a risk of repatriation liabilities and to allow them to combine trust and insurance arrangements.
- 7.11 Non-flight LTA insolvency regime. Where an LTA does not include a flight, facilitators will be allowed the same three options for providing insolvency protection as set out above.
- 7.12 Central Contact Point. This instrument designates the Civil Aviation Authority (CAA) as a central contact point for the UK under Article 18 of the Directive to supervise UK-established package organisers that are selling into other EU Member States. This involves responding to the concerns of other Member States regarding the insolvency protection of organisers established in their jurisdiction.

Enforcement

- 7.13 The Regulations contain a number of criminal offences in relation to failure to provide pre-contractual information; failure to provide a contract and prescribed information; failure to put in place compliant insolvency cover for packages; obtaining release of monies held on trust for insolvency cover by false statement; failure to put in place compliant insolvency cover for linked travel arrangements. Enforcement authorities for those regulations are the local weights and measures authorities in Great Britain (local authority trading standards departments), the Department for the Economy in Northern Ireland and the Civil Aviation Authority
- 7.14 Otherwise, rights and obligations under the Regulations are mainly to be enforced on a civil basis, as implied terms of 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 interests of consumers.

Consolidation

- 7.15 There are no current plans to consolidate the legislation amended by this instrument.

8. Consultation outcome

- 8.1 A formal public consultation was conducted from 14 August to 25 September 2017, which sought views on the Government's proposals for implementing the Directive. This included questions on the scope of application, the functioning of new concepts introduced by the Directive, such as LTAs, and the operation of the new Central Contact Point.

- 8.2 49 responses were received from a range of stakeholders across the UK, including leisure travel companies, trade associations, local government, aviation and financial bodies. Respondents broadly agreed that implementing the Directive will bring about positive developments in the travel industry, though they also highlighted some issues to be addressed. This information has been used to inform and finalise this instrument, and some issues will be further addressed in guidance. The Government's full response to this consultation can be found at the following link:
<https://www.gov.uk/government/consultations/updating-consumer-protection-in-the-package-travel-sector>.
- 8.3 In addition, a number of stakeholder meetings were held to discuss implementation of the Directive further, including key trade associations and enforcement bodies, which have also informed the shape of the Regulations.

9. Guidance

- 9.1 The Department for Business, Energy and Industrial Strategy will issue non-statutory guidance for business on their responsibilities under the new Regulations at the same time this instrument is laid.

10. Impact

- 10.1 An Impact Assessment for this instrument was validated as fit for purpose by the Regulatory Policy Committee on 6 March 2018. This Impact Assessment has now been published on the legislation.gov.uk website and is submitted alongside this memorandum.
- 10.2 This instrument is expected to result in a benefit to consumers and businesses covered by the previous Regulations, estimated at £50.6 million per year, whilst businesses in the travel industry may face an estimated cost of £48.0 million per year for complying with the new Regulations. These costs will mainly fall on businesses that were not covered by the previous regulations and reflect the additional protections to consumers that these businesses will now have to provide to align with the requirements for more traditional package operators. There will also be a one-off administrative cost to businesses to update their IT systems and websites to reflect the information requirements of the new Regulations. This one-off cost is estimated to total £620.6 million across the whole travel industry.
- 10.3 There is no impact on the public sector. This instrument is not expected to fall disproportionately on any of the protected groups.
- 10.4 These Regulations are out of scope of One-In, Three-Out and the Business Impact Target as they originate from the EU.

11. Regulating small business

- 11.1 There is no flexibility to vary implementation of the Directive according to the size of firms.

12. Monitoring & review

- 12.1 A review provision is included in this instrument, setting out that the Secretary of State must carry out a review of the regulatory provision contained in these Regulations and publish a report setting out the conclusion of the review. The first

report must be published before 1 January 2023 and subsequent reports must be published at intervals not exceeding 5 years.

- 12.2 The Directive commits the European Commission to a review 6 months after implementation. As this may not be sufficient time to make informed decisions on how the Directive is working in practice, the UK Government has committed to a review of Flight LTAs and wider implementation issues 12 months after this instrument comes into force.

13. Contact

- 13.1 Abimbola Nathan at the Department for Business, Energy and Industrial Strategy (tel: 020 7215 0798 or email: abimbola.nathan@beis.gov.uk) can answer any queries regarding the instrument.