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Annex 1: The Package Travel, Package Holidays & Package Tours Regulations 1992

Introduction

- 1 This document refers to the Package Travel, Package Holidays, and Package Tours Regulations 1992 (the 'Regulations') and such reference to 'organiser' is as defined in the Regulations. GTOs concerned about the Regulations should refer to the original legislation, Statutory Instrument 1992 Number 3288 Consumer Protection The Package Travel, Package Holidays, and Package Tours Regulations 1992 (obtainable from HMSO, tel 0870 600 5522 or fax 0870 600 5533 and www.opsi.gov.uk). They should also consult the Department for Business Innovation and Skills (BIS) guide, "Package Travel Quick Facts" (obtainable from the BIS; tel 0207 215 5000 or fax 0207 215 0105) (www.bis.gov.uk).
2. The Regulations are designed to protect consumers and are enforced by weights and measures authorities in Great Britain (i.e. Trading Standards Departments), and by the Department of Enterprise, Trade and Investment in Northern Ireland.
3. **These notes seek to present a general introduction to the Regulations. The AGTO cannot offer specific legal advice on this subject. GTOs wishing to know more should consult the AGTO's Legal Helpline (tel 01132 580033 quoting your AGTO membership number), the primary legislation as above, contact the weights and measures authorities, and/or seek independent professional advice.**

Key elements of the legislation

4. The Regulations apply to package holidays sold in the UK. Packages are defined in Regulation 2 as the pre-arranged combination of transport, accommodation and other tourist services, for example the provision of holidays which are sold or offered for sale at an inclusive price, and where the service covers a period of more than 24 hours and includes overnight accommodation.
5. The Regulations set out what information must be given to the consumer before the sales contract is made and at the time of booking, as well as additional information that must be given before the package starts.
6. The Regulations lay down terms that must be included in the contract with the consumer and prescribe circumstances in which price revisions may be made.
7. The Regulations state that the other party to the contract, i.e. the holiday organiser or retailer, is liable to the consumer or ensuring that inclusions under the contract are carried out as detailed, regardless of who supplies those inclusions.
8. The Regulations state that the holiday organiser or retailer must provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.
9. The BIS guidelines say that the Regulations do not apply to those who organise holidays 'occasionally'. However, the Regulations do not define 'occasionally' and the BIS suggests that regularity is probably more important in this respect than frequency. Hence a GTO who organises a holiday every year may be more likely to come under the Regulations than one that organises three holidays one year and none for five years.

10. The guidelines say that the Regulations apply to those who organise holidays as a business and to those who organise holidays as voluntary groups. However, the BIS advises that if members of a voluntary organisation share the cost of a holiday they have agreed to take together, if only members are involved, and if they have asked one of their members to arrange it on their behalf, they are unlikely to be considered as 'offering it for sale' and may come outside the Regulations. This remains so, even if they make a small financial surplus that is disposed of as the members think fit. This 'exemption' specifically relates only to members and it is possible that inclusion of a friend or spouse who is not a member may invalidate this.
11. GTOs might possibly remain outside the scope of the Regulations by ensuring that holidays are arranged in the spirit of paragraph 10 above. However, holidays arranged for members will usually be promoted via a newsletter or notice, which would be considered as 'offering for sale', bringing them back into the scope of the Regulations.
12. Whilst there are therefore indications that there may be ways to avoid having to comply with the Regulations, it is a woolly area and Trading Standards Departments say that it cannot be determined whether the Regulations apply to voluntary groups until there is a legal test case. There are substantial penalties for non-compliance should a case successfully be brought to Court.

Complying with the main requirements of the Regulations

13. In essence there are two main requirements in the Regulations. The first is in relation to liability towards customers, which is dealt with in more detail later on, and the second is financial protection.
14. There are three ways to provide adequate financial protection and repatriation for consumers in the event of insolvency:
 - a) **By being bonded** to an approved body such as ABTA (Association of British Travel Agents) or the CPT (Confederation of Passenger Transport). This option is likely to be too expensive for GTOs to enter into themselves, but they could adhere to this principle by using only bonded tour operator/tour wholesaler to organise holidays on their behalf. The tour operator/tour wholesaler must agree to become "the organiser" and all monies must be paid directly to "the organiser"
 - b) By taking out **insurance against insolvency**; This would involve taking out insurance against insolvency, commonly known as "tour operator failure insurance". Firms offering this usually cater for small and medium size tour operators. Some will offer cover to voluntary groups, though there may be an additional administration fee and there is always a requirement to exchange financial and other information.
 - c) By operating a **trust bank account** by which all monies for the payment of holidays are held in trust and monies are only released to suppliers of the individual parts of the package when the holiday has been completed. Most banks allow such accounts in the name of an organisation. If a GTO does open a trust bank account, the BIS advises: **"Any trustee should be a third party, not connected with the other party to the contract. Consumers must be given a clear statement of the**

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trustee's name and appropriate contact details. A trust deed does not have to be drawn up by a solicitor; a simple request to a person to act and agreement by that person to do so is sufficient. However, the usual provisions of trust law will apply and any trustee should be aware of what his duties will be before agreeing to act."

- 15 Using a trust bank account means that holiday payments are paid into the designated trust fund and are only released with the consent of the trustees after the holiday has been completed, which can cause difficulties. The BIS offers additional advice:

"Money held on trust may not be used by the operator to make pre payments to suppliers of services to him unless he is operating other than by way of business... For non-businesses (such as schools and voluntary groups) the trustee only requires written information from the non-business organiser that monies are needed to book accommodation or transport etc prior to the completion of the contract."

16. The BIS advises that small amounts left in the trust bank account after all bills have been paid can be used for the benefit of the group and do not have to be paid back to participants.'
17. **AGTO believes that it is best practice for GTOs to arrange, book and purchase holidays through a tour operator/tour wholesaler which is fully bonded or has insurance or other trust arrangements.** This should reduce any possibility that the GTO could be interpreted as being an organiser and therefore be liable for the obligations and liabilities under the Regulations. The tour operator/tour wholesaler must agree to become "the organiser" and all monies must be paid directly to "the organiser"

NOTE: Tour wholesalers, acting as the organiser, arranging a tour for a GTO, will be subject to the Passenger Travel Regulations and therefore provide the required financial security. However, if instead, a GTO chooses to act as the organiser, the tours booked for that GTO by wholesalers would be booked on a wholesale basis, and the wholesaler would not then be liable under the Regulations.

Complying with the other requirements of the Regulations

18. There are additional requirements with which organisers under the Regulations should comply and some of these are summarised below. These are useful to know even if the GTO is a consumer.

Information to be supplied to a consumer

19. Under the Regulations, the overriding objective is that any descriptive matter concerning a package, price of a package or any other conditions applying to the contract must not contain any misleading information. Further, if a brochure is to be supplied it should indicate in a legible, comprehensible and accurate manner the price. In addition, promotional material must contain certain information (to the extent that it is relevant to the package) which is made available to members. Such information includes:

a) Destination and the means, characteristics and categories of transport used

b) Type of accommodation, its location, category or degree of comfort and its main features and, where the accommodation is to be provided by a EU member State, its approval or tourist classification under the rules of that member State

c) Meals which are included in the package

d) The itinerary

e) General information about passport and visa requirements which apply for nationals of the member State or States in which the brochure is made available and health formalities required for the journey and the stay

f) Either the monetary amount or the percentage of the price which is to be paid on account and the timetable for payment of the balance.

g) Whether a minimum number of person is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation

h) The arrangements, if any, which apply if consumers are delayed at the outward or homeward points of departure

i) The arrangements for security of money paid over and for the repatriation of the consumer in the event of insolvency.

20. In addition, the Regulations provide for other information to be supplied before the contract is concluded, in good time and in the contract itself. Such information is referred to as regulations 7, 8 and 9 and includes:

a) Times and places of stops and connections

b) Contact details of the representative of the other party in the locality where the consumer is to stay or, if there is no such representative, the contact details for an agency in the locality on whose assistance a consumer in difficulty would be able to call.

c) Information about an insurance policy which the consumer may, if he wishes, take out.

d) Special requirements which the consumer has communicated to the organiser/retailer when making the booking and which have been accepted.

e) Periods within which the consumer must make any complaint about the failure to perform or the inadequate performance of the contract.

f) Information about health formalities for nationals of the member State or States concerned required for the journey and the stay.

g) Arrangements for security for the money paid over and (where applicable) for the repatriation of the consumer in the event of insolvency.

h) General information about passport and visa requirements including information about the length of time it is likely to take to obtain the appropriate passports and visas. It is also reasonable to refer members to the Foreign & Commonwealth Office (FCO) in this regard.



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i) Travel destinations and, where periods of stay are involved, the relevant periods, with dates.

j) The means, characteristics and categories of transport to be used and the date, times and points of departure.

k) Where the package includes accommodation, its location, its tourist category or degree of comfort, its main features and, where the accommodation is to be provided in a EU member State, its compliance with the rules of that member State.

l) The meals which are included in the package.

m) Where a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation.

n) The itinerary.

o) Visits, excursions or other services which are included in the total price agreed for the package.

p) The name and address of the organiser, the retailer and, where appropriate, the insurer.

q) The price of the package, if the price may be reviewed in accordance with the term which may be included in the contract under regulation 11, an indication of the possibility of such price revisions, and an indication of any dues, taxes or fees chargeable for certain services where such costs are not included in the package.

r) The payment schedule and method of payment.

21. The itinerary should include details of the activities and visits that are planned as part of the package, as well as details of the accommodation, so that, for example, members with a disability can judge whether they can fully participate in the holiday.

22. Even if not defined as an organiser, the GTO should pass on to its members any information received from the organiser in relation to the holiday.

Transfer of booking/Price Revision

23. According to the Regulations, the consumer may transfer the booking to another person who satisfies the conditions of booking.

24. The Regulations say that price revision is only possible if the booking contract states how this will be calculated, or if revisions are made solely for variations in transport costs, exchange rates, or fees for services such as landing or disembarkation fees. If the price is revised, consumers should be allowed to withdraw from the contract without penalty.

Cancellation and Non-Provision of Services

25. If a 'significant proportion of the package' as promoted and bought is not provided, the Regulations state that suitable alternative arrangements must be made at no extra cost to the consumer. Where appropriate the organiser must compensate the consumer for the difference between the service supplied and that provided for under the booking contract.

26. The Regulations set out strict controls over cancellation of the package. If the organiser cancels, for example because of a failure to achieve the minimum number of people required, they must write to the consumer and either:

a) Offer a substitute package of equivalent or superior quality;

or

b) Offer a substitute package of inferior quality and pay the consumer the difference in price: or

c) Repay all monies paid by the consumer.

Liability of the Organiser

27. The Regulations state that the organiser is liable for all services provided as part of the package. In this context "holiday organiser" means the person/organisation with whom the contract is made. Therefore if the GTO arranges the trip through a tour operator/tour wholesaler who invoices it direct, the contract, and thus the liability as "holiday organiser" would be with the tour operator/tour wholesaler with the GTO acting as consumer. The consumer may therefore be able to claim damages from the organiser for the failure to perform or the improper performance of any service included in the holiday. This includes any failings on the part of the supplier which injures the consumer, where the consumer can show negligence on the part of the supplier resulting in said injury.

28. Awareness of health and safety issues and the need to comply with legal requirements to protect the public have increased significantly in recent years. The organiser is therefore responsible for ensuring that the suppliers of the various components that make up the package are chosen with reasonable skill and care, for example by checking that suppliers have appropriate insurance cover in place or that the correct licences are held. However whilst it may be advisable for the GTO to carry out a risk assessment as part of their planning - unfortunately, it is not often practical for this to take place particularly if the holiday will be abroad.

29. The Regulations add that holiday organisers cannot avoid this liability by making any statement to this effect in the terms and conditions of booking. However, holiday organisers may subsequently take action against service suppliers. Holiday organisers should make clear in booking terms and conditions that the consumer is obliged to 'communicate at the earliest opportunity' to the service supplier and to the holiday organiser any failure which he or she perceives 'at the place where the services concerned are supplied'.

30. The liabilities imposed by the Regulations highlight the importance of organisers having appropriate tour operator liability insurance in place and that all suppliers to the package have public liability insurance in place.

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