

# Introducing the **NEW** Package Travel Regulations

by Touchstone Underwriting



# What is a Package?

## The Package Travel, Package Holidays and Package Tours Regulations 1992



### What was a package ?

“Package” meant the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than 24 hours or includes overnight accommodation –

- a) Transport
- b) Accommodation
- c) Other tourist service not ancillary to transport or accommodation and accounting for a significant proportion of the package

Q; Who did the 1992 regulations apply to?

A; An organiser

“organiser” meant the person who - otherwise than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer;

Tour organisers therefore included an incredibly diverse trades list.



# In its true form the “*packaged*” arrangement was very easy to spot.

They were bundled arrangements that consumers bought at the same time.



Even in 1992 “packages” were not always bought from brochures.



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They were not always immediately obvious as packages either



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# Charity fund raising events .....



Hotels offering weekend breaks including pre-booked golf or theatre tickets – were they packages ?



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Incentive companies, motivational specialists, churches, coach operators, tourist trusts, event companies, GAP years, volunteering services all combine



Transport

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Accommodation > 24 hrs



Offered for sale at an inclusive price

Packaged arrangements were being formed by offering for sale 2 or more of:

**Transport**

- the regulations are not prescriptive what constitutes Transport

**Overnight Accommodation**

- the regulations are not prescriptive what constitutes Accommodation

**Another travel service**

- Which is helpfully defined in the Regulations as “other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package

at an inclusive price and the submission of separate accounts for different components shall not cause the arrangements to be other than a package

# A lot has moved on since 1992?

- Travel firms have evolved
- The web became the “go to” place to find travel info
- Technology we have now simply hadn't been contemplated in 1992

The Package Travel Regulations 1992 were out dated !

# The Package Travel and Linked Travel Arrangements Regulations 2018



Effective sales from 1<sup>st</sup> July 2018 and similarly equivalently applicable to all EU Members (in their local form)

New definitions to be acquainted with :-

**Organiser** – business that arranges all elements of a package. *They could organise all the individual elements of a package themselves (pre-arranged package) or allow the traveller to customise the package (one-trader & dynamic package).*

**Retailer** – a business other than the organiser who sells or offers for sale packages combined by an organiser.

**Traveller** – individual that purchases a package.

## more new definitions

**Linked travel arrangements** - created when a **trader** \* facilitates either:

- a) the selection and payment of two or more services for the same trip, **under separate contracts** with individual providers, upon a single contact with a point of sale, or,
- b) the separate **selection and payment** of two or more **travel services** for the same trip through targeted linked booking processes within 24 hours without transferring the travellers payment details.

**Trader** - means any person who is acting, including through any other person acting in their name or on their behalf, for purposes relating to their trade, business, craft or profession in relation to contracts covered by these Regulations, whether acting in the capacity of organiser,

## and more new definitions

**Travel service” means—**

- (a) the carriage of passengers;
- (b) the provision of accommodation which is not intrinsically part of the carriage of passengers and is not for residential purposes;
- (c) the rental of—
  - (i) cars;
  - (ii) other motor vehicles
  - (iii) Motorcycles

and .....

and this **new** definition (2)

(d) any other **tourist service** not intrinsically part of a travel service within the meaning of paragraph (a), (b) or (c);

*Examples of other tourist services given by PTD 2015 (Recital (18)) include admission to concerts, sports events, excursions or event parks, guided tours, ski passes and rental of sports equipment such as skiing equipment, or spa treatments.*

# Tourist Service could be anything !

(d) any other **tourist service** not intrinsically part of a travel service within the meaning of paragraph (a), (b) or (c);

*There is guidance :-*

- 1 Advertised as an essential feature of the combination,
- 2 Accounts for 25% or more of the value of the package
- 3 On site facilities – eg: swimming pool ?

*Our intention is that if access to these onsite facilities is part of the room rate, it should not count as a travel service in its own right and thus would not (if combined with one of the other types of travel services above) constitute a package. However, if access is available at an additional charge, particularly if the relevant facility is open to persons other than the hotel guests, it could constitute an additional service and if a significant proportion of the value of the holiday then in our view the combination would likely constitute a package.*

# Scenario “Other Tourist Services”

## Case Study 1

A traveller books a hotel room at the Disneyland Paris hotel with access to the amusement park (i.e. park tickets) included as part of the booking.

*This **would** be considered a package as entry to the amusement park could not be argued to simply be an intrinsic part of accommodation. Entry to the amusement park is the main reason for staying at the hotel and it is possible to visit Disneyland Paris without staying at the hotel. It is not comparable to access to a hotel swimming pool or sauna. Entry to the amusement park will constitute a significant proportion of the package and represent an essential feature of the combination.*

*Case Study 2: A traveller rents a holiday house in a resort which automatically gives access to a waterpark situated in the resort. The access to the waterpark is included in the rent for the holiday house and it is not possible to deselect access and it is not priced separately. In this example, access to the waterpark could be considered to be an intrinsic part of accommodation, which would be different from the Disneyland example.*

# Scenario “Other Tourist Services”

## Case Study 2

*A traveller rents a holiday house in a resort which automatically gives access to a waterpark situated in the resort. The access to the waterpark is included in the rent for the holiday house and it is not possible to deselect access and it is not priced separately*

*In this example, access to the waterpark could be considered to be an intrinsic part of accommodation, which would be different from the Disneyland example, so not a Travels Service*

Case Study 2:

Case Study 3: This could be a package. However, a hotel booking for accommodation at a hotel that happens to have a golf course as a facility is not in itself a package. The golf course is simply a facility.

## Scenario “Other Tourist Services”

### Case Study 3

*A traveller books a golf break with a hotel or travel organiser that includes a pre-booking for round(s) of golf, as well as the accommodation.*

*This could be a package. However, a hotel booking for accommodation at a hotel that happens to have a golf course as a facility is not in itself a package. The golf course is simply a facility.*

# How the new law affects you ?

## Part 4: Performance of the Package

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**”.

Liable to the “**traveller**” for the **performance** means organisers

1. must immediately remedy any lack of performance
2. can be sued if damages are sustained in any component of the package for incidents that were foreseeable / preventable.

It closed all “loop holes” exploited by firms circumventing the 1992 PTRS but in doing so brings more firms into scope

# Q; What risks are faced ?

## **Misrepresentation**

- Actual or alleged misstatement or misrepresentation of the package or any of its component parts

## **Error or Omission**

- Actual or alleged error or omission in arranging the package or components as required

## **Injury / damage**

- The organiser is liable for the proper performance of the contract and all component parts therein. If damages are sustained that were foreseeable and preventable, the organiser is liable

Must also provide "Assistance"

# Potential Liability

- Civil Liability – English Courts
- Regulatory Liability – English Courts
- Criminal Liability – English Courts
- Overseas Liability – Local Jurisdiction



PTR are NOT strict liability



# So break the Regulations – sell components separately ?

The law-makers thought of that too

Linked Travel Arrangements (LTAs) are travel combinations that have looser commercial connections than that of a package. This type of arrangement, where a trader has **facilitated** the combination of travel services but where the ties between the businesses concerned do not fully constitute a package.

Information from one trader has been passed to another trader.

- At least two different travel services are purchased for the same trip or holiday;
- That purchase does not constitute a package so that it does not fall within any of the package categories (e.g. two travel services are not purchased in a single booking process or at a total price);
  - The traveller has separate contracts with the service providers;

# Information requirements for LTAs

Traders who facilitate LTAs are required to give **clear** information\* to travellers specifying that what they are buying is **not** a package and that only the individual service providers are responsible for the individual travel services.

Traders must state this in a clear, comprehensible and prominent manner, along with details on the insolvency protection arranged.

\* standard information forms to be used

# LTA Insolvency Protection Case Study

After arranging a room for a traveller, a hotel facilitates an LTA via a targeted link for several rounds at a golf course not connected to the hotel.

**Example A:** What is the protection if the hotel that facilitated the reservation of a golf course and received payment for all services goes insolvent?

- The traveller's money is protected also for the golf arrangement - as long as the hotel has not passed on the money. If the hotel passed on the money before going insolvent, the traveller can still take advantage of the golf course anyway.

# LTA Insolvency Protection Case Study

After arranging a room for a traveller, a hotel facilitates an LTA via a targeted link for several rounds at a golf course not connected to the hotel.

**Example B:** What happens if the golf club goes insolvent?

If the hotel has passed the money on to the golf club, that money will be lost, as there is no insolvency protection for service providers who do not facilitate an LTA.

# LTA Insolvency Protection Case Study

After arranging a room for a traveller, a hotel facilitates an LTA via a targeted link for several rounds at a golf course not connected to the hotel.

**Example C:** What happens if the traveller pays only the amount for the hotel room to the hotel and pays directly to the golf club for the golf arrangement in case the hotel goes insolvent?

Insolvency protection covers only the payments made to the hotel. In the example, the traveller suffers no damage regarding the golf arrangement as a consequence of the hotel's insolvency.

# Penalties if you get it wrong !

PTRs contain a number of criminal offences in relation to:

- Failure to satisfactorily provide pre-contractual information (regulation 5 (5)).
- Failure to satisfactorily provide a contract or confirmation of contract and prescribed information (regulation 7 (12)).
- Failure to put in place compliant insolvency cover (regulation 19(9)).
- Obtaining release of monies held on trust for insolvency cover by false statement (regulation 25).
- Failure to put in place compliant insolvency cover or provide precontractual information for LTAs (regulation 26 (10)).

# Action Points !

1. Its not what you do it's the way that you do it !
1. If you are Packaging
  - Get the right Public Liability insurance cover to include liability for ALL elements of the package
  - Get Financial Protection for the packages
2. If you are selling LTAs follow the guidance to the letter !