



Department for
Business, Energy
& Industrial Strategy

UPDATING CONSUMER PROTECTION IN THE PACKAGE TRAVEL SECTOR

Government Response



April 2018

UPDATING CONSUMER PROTECTION IN THE PACKAGE TRAVEL SECTOR

The consultation document and Impact Assessment can be found on the BEIS section of GOV.UK:

<https://www.gov.uk/government/consultations/updating-consumer-protection-in-the-package-travel-sector>

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Executive Summary

The Consultation

What we consulted on

1. The UK has one of the most innovative and advanced leisure travel sectors in the world and is one of the biggest markets for leisure travel products in the European Union (EU). However, as a consequence of this innovation, regulation has failed to keep pace with new dynamic business models and modern methods of buying package holidays, leaving the potential for gaps in consumer protection.
2. The Package Travel Directive (PTD 2015) updates the previous Directive which dated from 1990. PTD 2015 extends the scope of protection to include “dynamic” online models (including those where consumers put together the elements of a package themselves via a website) and provides additional contractual rights and information for consumers. Implementing it will ensure that UK travellers are better protected when buying different travel combinations.
3. On 14 August 2017, the Department for Business, Energy and Industrial Strategy (BEIS) launched a consultation on proposals to update and extend consumer protection in the package travel sector focusing on implementation. This followed the Department for Transport’s (DfT) consultation in October 2016 on updating the Air Travel Organiser’s Licence (ATOL) scheme to bring ATOL in line with PTD 2015.
4. Our consultation closed on 25 September 2017. In total, we received 49 responses from a range of stakeholders across the UK, including leisure travel companies, trade associations, local government, aviation and financial bodies. We also acknowledge receipt of 98 letters and emails from Tourism Alliance members. From this wide range of respondents, we have gained a comprehensive and rounded perspective on the proposals set out in the consultation, which have informed the way we have developed the UK legislation.
5. In June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the EU. However, until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. Future negotiations on the UK’s future economic partnership with the EU will determine what arrangements apply to cross border transactions once the UK has left the EU.
6. This document provides a summary of respondents’ views and sets out the Government’s response, including our next steps for implementing PTD 2015. Our Impact Assessment has been published alongside this document.

What we proposed

7. In our consultation document, we set out our intention for a light-touch approach to implementation that will impose minimal additional burdens on business, whilst enabling the UK to comply with the requirements of PTD 2015.
8. As most components of the PTD 2015 are maximum harmonisation, the UK does not have flexibility on how it implements the majority of provisions. However, we invited views on our proposals for certain areas where we do have a level of flexibility on how to implement, which included:
 - a) Non-flight package insolvency regime – we proposed to continue the current regime, although with the broadened scope of PTD 2015.
 - b) Non-flight Linked Travel Arrangements (LTA) insolvency regime – we proposed to extend the same regime to cover non-flight LTAs.
 - c) Central contact points – we sought views on how this should be set up in the UK.
 - d) Minimum harmonisation provisions – we proposed not to go beyond the minimum standards of the Directive.
 - e) Timing – we proposed that the changes will apply to any sales made from the coming into force date, which will be 1 July 2018.

Conducting the consultation

9. BEIS and DfT are working together to implement PTD 2015, which has involved a three-step approach to the consultation:

Step 1 – DfT launched the first stage of Government consultation in October 2016, which focused on the specific changes to the ATOL scheme that are required to make the scheme fully compliant with PTD 2015.

Their response to this consultation set out how DfT will align the ATOL scheme with the new definition of “package” in PTD 2015, and update the scope of the ATOL scheme and levy so that it is focused on sales by UK-established businesses. These changes will extend ATOL protection to a broader range of holidays and make it easier for UK businesses to trade across borders. The full response has been published on the www.gov.uk website.

The Air Travel Organisers’ Licensing Act (2017) gained Royal Assent in November 2017. This Act updated the ATOL primary powers to ensure the scheme can be aligned with the new scope of PTD 2015.

Step 2 –BEIS launched the second stage of consultation in August 2017. This consultation discussed the over-arching proposals for implementing PTD 2015 as a whole and focused on the overall insolvency arrangements for both flight (ATOL) and non-flight packages. This document responds to the points made following that consultation.

Step 3 – DfT and the Civil Aviation Authority have recently launched a final linked consultation on 23 February 2018 inviting views on proposals to update the regulations and terms which govern the ATOL scheme. This is the final stage of consultation on the implementation of PTD 2015. This consultation includes proposals to bring flight led LTAs under the BEIS led insolvency regime rather than the ATOL scheme. The ATOL Regulations consultation can be found on the www.gov.uk website, and the ATOL Standard Terms consultation can be found on the www.caa.co.uk website.

10. The formal consultation and workshops held with business and consumer groups highlighted some complex concerns that required further consideration, including the new definition of a package and the new concept of Linked Travel Arrangements. Our engagement with stakeholders has informed our proposals for implementation.
11. The Government will continue to engage with stakeholders in advance of laying the regulations formally to help the industry adjust, including engaging with stakeholders to develop guidance that will support the regulations. This will help to protect consumers and support industry to comply.

Government Decision

12. Stakeholders broadly agreed with the proposals set out in our consultation and that implementing the Directive will bring about positive developments in the travel industry: it will improve the functioning of the market for package travel in Europe and strengthen consumer protections for UK holidaymakers. However, the consultation also highlighted some key issues.

New definitions

13. In particular, respondents highlighted the need for greater clarity around the new definition of package and the new concept of LTAs in order for businesses to fully comply with the new regulations when they come into force, as well as to avoid confusion amongst consumers. Following the close of this consultation, BEIS considered whether it was possible to simplify the new definitions given the concerns raised. We tested alternative draft definitions with stakeholders to gain greater insight into how they might work in practice. It became clear from this exercise that our attempts to simplify the definitions risked creating unintended consequences that could be detrimental for consumers and businesses alike.
14. Having carefully considered the responses received to our formal consultation and additional stakeholder engagement, we can confirm that we will replicate in full (“copy-out”) the new definition of package and LTAs from the Directive. This will avoid any inconsistency which may have arisen between any alternative wording and that in the Directive, which could create further legal uncertainty. In addition, the Government will publish guidance to support the Regulations which will address the key points raised in the consultation responses. This will help to protect consumers and support industry to comply particularly with the newly introduced provisions.

Implementation of new Regulations

15. We plan to lay the implementing Regulations in draft before Parliament in April 2018 and for them to come into force on 1 July 2018, in line with the deadline for implementation. We appreciate the concerns expressed by respondents that a short timeframe for industry to comply with the new Regulations may be difficult and costly to businesses. Government is committed to working closely with trade associations, businesses and enforcement bodies, to assist as far as possible with the implementation of the Regulations.
16. The new provisions of the Directive will apply to all bookings made on or after 1 July 2018 when the implementing Regulations come into force. The Regulations will not be applied retrospectively to bookings made prior to this date to avoid placing additional burdens on business. The 1992 Regulations will continue to apply to package holidays booked prior to that date (if the holidays in question fall within the scope of those Regulations).

Central Contact Point

17. As part of PTD 2015, the UK must designate central contact points to supervise UK-established package organisers that are selling into other EU Member States. This is due to

the new mutual recognition principle within the Directive that allows organisers to obtain insolvency protection in the Member States where they are established, rather than in each Member State where they do business.

18. After careful consideration we have agreed that the Civil Aviation Authority (CAA) will be the lead central contact point for the UK from 1 July 2018. They will be able to draw upon their extensive experience and oversight within the sector to co-operate with contact points across Europe in the supervision of organisers operating in different Member States. Any non-flight cases reported to the CAA will be referred to BEIS. This relationship will be kept under review while the new mutual recognition principle beds in.
19. We also have the option of creating a UK register listing the insolvency arrangements of package organisers to help the UK central contact point comply with the 15 working day response deadline. The CAA has an existing register for package organisers that have an ATOL licence which is publicly accessible and will continue. However, the register for non-flight package organisers would require funding to be set up and maintained and has the potential to increase burdens on business, going against our light touch implementation approach for the Directive as a whole.
20. Although some stakeholders were in favour of introducing such a register, on balance we do not think it is necessary to introduce a register for non-flight package organisers at this stage. We do not expect a high volume of non-flight cases for the contact point to manage. However we propose keeping this under review.

Insolvency provisions

21. The 1992 Regulations required the counterparties to package travel contracts (other than those including a flight, which fall under the ATOL regime) to provide security to cover refund of money and repatriation in the case of insolvency: the counterparty was required to choose between one of three options for doing so; these options being bonding, trust accounts, and insurance. There was overall support for the existing insolvency regime for package travel, including the current BEIS framework and the ATOL scheme. However, in response to concerns expressed by respondents we plan to reform the trust account option. In particular, we will require package organisers who use the trust account option for insolvency cover to purchase additional insurance if there is a risk that repatriation may need to be provided in relation to the packages they sell to consumers. This will ensure consumers who are protected under this option get home safely if their holiday provider goes bust. We also plan to give organisers the flexibility to hold a lesser amount of money on trust where necessary on the condition that it is replaced by equivalent insurance cover. This will allow operators to release some money prematurely if needed, whilst still complying with the Regulations.

Domestic packages

22. The trade association the Tourism Alliance, along with a number of their members, expressed concerns that the current Regulations impose unnecessary burdens on the UK's domestic tourism industry. They suggested the addition of a clause to our Regulations to reduce these burdens once the UK has left the EU. We recognise the importance of the issues the Tourism Alliance has raised; wherever possible we have sought to minimise the burdens imposed on business, balancing this against the need to ensure sufficient

consumer protections. We are not able to include such a clause within the scope of the Directive. However, BEIS, alongside the Department for Digital, Culture, Media and Sport will keep the issue under review, taking stock after six and twelve months of the Regulations' operation. We remain open to discussion with the Tourism Alliance and its members on ways to ensure that costs to them are kept as low as possible.

Flight-only sales

23. We also appreciate the views expressed by several respondents regarding flight-only sales, however it is not government policy for airline sales of seat-only services to be included within the ATOL scheme. This is on the basis that airlines selling such seats are already regulated under the EU air services operator licensing regime¹. The Government will consider the protection of airline passengers as part of the Airline Insolvency Review, announced in the Autumn Budget 2017, which is expected to report by the end of 2018.
24. Following this consultation, the Government is confident that by updating the current laws on package travel in line with the proposals confirmed in this document, we will be able to ensure comprehensive protection for consumers when purchasing holidays and improve the regulatory environment for businesses selling package holidays, especially those using online or more flexible sales methods.

¹ Regulation (EC) 1008/2008 on common rules for the operation of air services in the Community.

Summary of Consultation Responses and Government Position

25. We asked 25 questions relating to the Government's proposals for implementing the requirements of the 2015 Package Travel Directive. The questions were organised under 6 themes:

- Scope and Information Requirements (Q1-8)
- Changes and Cancellations (Q9-11)
- Liability for Performance (Q12)
- Consumer Protection Against Insolvency (Q13-16)
- Mutual Recognition (Q17-23)
- Coming into Force (Q24-25)

26. For each question asked in the consultation, we have summarised responses from stakeholders and provided a Government response to groupings of related questions.

Scope and Information Requirements

27. One of the principal changes introduced by PTD 2015 is a broadening of the definition of package holidays to include new, commonly used dynamic packaging arrangements as it has become clear that these arrangements often fall out of scope of the current Regulations. It is not always clear what is and isn't protected. As a result, many consumers are confused as to the level of protection, if any, which their chosen method of booking travel arrangements attracts.

Question 1

We invited views on the scope of application of PTD 2015. As the Directive gives Member States the option to apply its provisions to areas outside its scope, such as school trips or stand-alone contracts for single elements, we asked whether the UK should apply the Directive to any additional areas and if so, to provide supporting evidence.

Summary of responses

28. There was broad support for the Government's light touch approach to implementation that aims to keep additional burdens on businesses to a minimum and avoid gold-plating.

29. The majority of responses expressed the view that the UK should not apply the provisions to any additional areas or stand-alone contracts as doing so would impose unnecessary extra burdens on travel businesses, without significant further prevention of consumer harm. However, a small number of respondents disputed the need for this distinction and asked for school trips to be included.

30. Several responses also raised concerns regarding the Government's current approach to flight-only sales, where some sales are protected through ATOL and others are not. Some

respondents argued that insolvency protection requirements should be extended to cover all sales including a flight to give greater clarity to consumers and a more consistent regulatory approach. Other respondents suggested that flight-only should be removed from the ATOL scheme as single travel services do not need to be protected under PTD 2015, so the current approach could put UK businesses at a disadvantage to their European counterparts once mutual recognition comes into force.

Question 2

PTD 2015 significantly broadens the definition of package holidays to include new dynamic packaging arrangements, particularly those online which are now common in the current market.

We asked whether any particular elements of the new definitions for package holidays are difficult to interpret.

31. The majority of respondents indicated that the new definitions for package holidays are difficult to understand, and that the difference between a package and a Linked Travel Arrangement (LTA) is unclear. Many emphasised that consumers may not realise which packages are in scope, resulting in confusion over their rights and the levels of protection provided.
32. Respondents also expressed concern over the potential ease in circumventing certain clauses to avoid liability, such as the 24 hour time period allotted for the transfer of consumer details to a second trader, which was widely viewed as arbitrary. In addition, some suggested that the 25% threshold for “other tourist services” would be difficult for travel companies to calculate.
33. It was also suggested in several responses that an unreasonable level of liability could fall on the retailer if they simply process the sale of a car hire or other minor transport alongside an existing package. Respondents felt that no further package should be created in such circumstances and that this could lead to duplicated financial protection and liability arrangements, which would be confusing for both consumers and industry.
34. Some respondents highlighted a potential data protection issue arising from the package definition relating to online click-through sales involving the transfer of consumer data between traders. Some argued this definition would be largely ineffective as currently drafted because the practical processes for this model (whilst complying with the UK-EU data protection laws) would be an unattractive commercial sales model for traders.
35. Overall, there was broad agreement that further guidance would be essential to clarify the definitions and the meaning of certain phrases (such as “linked online booking service”). Respondents requested further examples to illustrate which business models would fall within scope.
36. In addition, some respondents suggested that further government action may be necessary to avoid confusion over the new regulations, including a government-funded education programme so that both consumers and industry may be sufficiently informed on the changes.

Question 3

We asked whether respondents envisaged any issues with being able to comply with the new definitions of a package.

37. A large proportion of respondents indicated that they would have issues complying with the new definitions of a package. A few respondents expressed concern that they would not have enough time to implement the necessary system changes within the 6 months allotted by the Directive. A number of responses to this question also indicated the high cost of making such changes; however, these comments are more relevant to Question 4 and have been included below.
38. For many, their concerns around complying related to their uncertainty regarding the meaning and application of the new definitions. Some respondents suggested that the 25% threshold for “other tourist services” would not only create inconsistencies in the protection of consumers, but that it would also make it difficult for businesses to determine how many trips had been sold as packages, and therefore disrupt risk management and the calculation of bonding levels.
39. One respondent suggested that for some business models it may be impossible to meet some of the obligations of PTD 2015, due to the difficulty in tracking the consumer’s future interactions with the travel supplier.

Question 4

We asked stakeholders what the costs of complying with the new Directive will be, and to provide accompanying evidence.

40. A large number of respondents indicated that compliance with the new Directive would be costly. Multiple respondents suggested they would face a cost of over £100,000 (and one respondent substantially more) to comply, largely due to the cost of IT changes and further staff training amongst others. Many suggested there would be larger costs for companies newly in scope, who would face new payments including for insolvency protection, public liability insurance, increased customer relations and staff training. Others suggested that these additional costs would be exacerbated by a short timeframe for implementation.
41. A few respondents indicated that taking on package liability will require substantial financial investment for Online Travel Agents (OTAs) in particular, who may be lacking in the necessary infrastructure and resources. They felt that, for some OTAs, this could threaten the financial viability of their business models or put them at a competitive disadvantage.
42. One respondent also highlighted the large increase in gastric illness claims, and urged the Government to address the issue of fraudulent compensation claims in light of the new liability for companies now in scope of the regulations.

Government response to questions 1-4

43. We appreciate the views expressed by several respondents regarding flight-only sales; however it is not government policy for airline sales of seat-only services to be included within the ATOL scheme. This is on the basis that airlines selling such seats are already

regulated under the EU air services operator licensing regime². The Government will consider the protection of airline passengers as part of the Airline Insolvency Review, announced in the Autumn Budget 2017, which is expected to report by the end of 2018.

44. We also note the concerns expressed by respondents regarding the lack of clarity around the package definitions and their view that the Directive currently leaves too much open to interpretation.
45. In view of the strength of concern expressed by respondents, BEIS considered whether it was possible to simplify the definitions. Officials tested alternative draft definitions with stakeholders following the close of this consultation to assess how they might work in practice when applied to various business models. It became clear from this exercise that our attempts to simplify the definitions risked creating unintended consequences or further points of ambiguity that could be detrimental for consumers and businesses alike.
46. After reviewing all the consultation responses and following this further engagement with stakeholders, the Government has decided to pursue a copy-out approach to the Directive in relation to the new definitions of a package. This will help to avoid any inconsistency between the UK's regulations and the text of PTD 2015, reducing the potential for confusion amongst consumers and businesses. This approach will also avoid gold-plating, which is not generally permitted by PTD 2015.
47. We will publish comprehensive guidance to accompany the Regulations, which will aim to explain the new definitions. In this guidance, we will address specific holiday products and business models and, clarify whether they fall in scope. We are committed to working closely where possible with industry to develop and test this guidance.
48. In regard to the issue of gastric illness claims, the travel industry reports a 500% increase in gastric illness claims since 2013, and urged the Government to address the issue of fraudulent compensation claims in light of the new liability for companies now in scope of the Regulations. This has implications for the travel industry in terms of both increased costs and reputational damage with overseas providers. On 9 July 2017 the then Secretary of State for Justice announced a package of measures to address this issue which included a Call for Evidence which ran from 13 October to 10 November. The Civil Procedure Rule Committee considered a new Pre-Action Protocol and amendments to the Civil Procedure Rules in order to bring package holiday sickness claims within the existing fixed recoverable costs regime. It is intended for the changes to come into effect in spring 2018.

Linked Travel Arrangements

49. Also introduced by PTD 2015 is the new concept of Linked Travel Arrangements (LTAs). LTAs are looser commercial connections than that of a package and consequentially have fewer requirements compared to a package. LTAs must have insolvency protection in place that will provide the traveler with a refund if a travel service that is part of the LTA that they

² Regulation (EC) 1008/2008 on common rules for the operation of air services in the Community.

facilitated is not performed as a consequence of their insolvency. Insolvency protection for repatriation is only needed if they are responsible for the carriage of passengers.

Question 5

We invited views on whether there are any particular elements of LTAs that stakeholders find difficult to interpret.

50. The majority of respondents indicated that they remain unclear as to what constitutes an LTA and were concerned that consumers would not understand the distinction between an LTA and a package, nor the significant differences in the level of protection provided.
51. Many highlighted their difficulty understanding certain terms within the definition, including “in a targeted manner”, “single visit” and “separate selection”, and emphasised that detailed guidance would be required to carefully define these concepts and help industry to comply.
52. Others raised concerns regarding the need for facilitators to provide information to consumers before they book an LTA, when there is no guarantee that the customer will complete the second purchase (and thus create an LTA). Respondents indicated it may be impossible for the facilitator to know whether or not an LTA is going to be completed. Several suggested that the regulation of LTAs may be difficult in practice as the transactions between trader A and B would be hard to track and it may not be clear where the responsibility for tracking and notifying traders would lie. In addition, many responses emphasised that the financial protection of LTAs may be temporary, with liability ending once the LTA facilitator has passed on the money they receive, and that consumers may not fully understand this.
53. A number of respondents argued that LTAs should be excluded from the scope of the ATOL scheme due to the ambiguity of the definitions, which risks distorting competition in the travel market.

Question 6

We asked whether respondents currently facilitate travel arrangements that are likely to fall into the scope as a LTA, and for any examples.

54. Only a small proportion of respondents asserted that the travel arrangements they currently facilitate are likely to be classed as LTAs. However, across the board, there was an overarching uncertainty as to the boundaries of the current definition and which holiday products or business models would fall into scope.
55. A number of respondents suggested they would avoid facilitating LTAs altogether, due to the ambiguity of definitions, the confusion they are likely to create in the market, and the lesser quality of protection attached for consumers.

Question 7

We asked respondents what they anticipated the cost of complying with the new definition for LTAs would be.

56. Although several respondents emphasised the difficulty in estimating the cost, many respondents highlighted the cost of complying with the new definition of an LTA, including the additional costs for insolvency, IT changes and extensive training that would be required. Estimations ranged from £150,000 to £1m, exacerbated by the short timeframe for implementation but no concrete evidence-based estimates were provided.
57. It was also suggested that the cost of complying could be potentially damaging to future growth and development of Online Travel Agents (OTAs), and may be significantly disproportionate to any commercial return gained from facilitating LTAs.

Question 8

We asked respondents what issues they envisaged with complying with the new definition of an LTA.

58. Overall, one of the main issues raised by respondents was the ability to identify when an LTA has been created and the risk of confusion amongst consumers as a result, particularly if a business offers both LTAs and packages. A few respondents reiterated the need for a consumer education programme or information campaign so that consumers could understand their rights and protections better.
59. Several responses envisaged a significant difficulty for industry to track, monitor and enforce compliance with the LTA provisions. In particular, identifying and tracking transactions, particularly the second booking in an LTA, was highlighted as problematic in practice. Multiple respondents suggested that compliance and tracking would be cost-prohibitive and may be technically impossible in their business models. It was suggested that technology will need to be developed to enable the tracking of LTAs, and the restricted timeline will make this an issue for businesses to be ready for when the Regulations come into force.
60. Some responses also reiterated that the 24 hour time limit appeared arbitrary and easily circumvented.
61. A small number of respondents indicated LTA provisions were too focused on insolvency, allowing tour operators to avoid liability for proper performance. Some raised questions as to whether the LTA provisions were made in the best interests of consumers and that there would be a reluctance to sell LTAs, with a knock on effect across the holiday market (such as brochures being taken out of hotels). Some warned that the LTA scope may be too wide and that they could become the norm instead of package, and that businesses may begin to adopt LTAs due to the limited liability and protection requirements attached to them.
62. One respondent emphasised the need for a compulsory register of LTA providers and an effective contact point.

Government response to questions 5-8

63. As mentioned above, the Government is committed to working with industry to develop detailed guidance, which will be issued alongside the implementing Regulations. Such guidance should help to clarify what constitutes an LTA in practice.
64. Once the Regulations come into force from July 2018, we will work closely with trade associations, businesses and enforcement bodies to assist as far as possible with the implementation of the Regulations and any compliance issues.

Information requirements

65. Although we did not ask any specific questions on the information requirements introduced by PTD 2015 a number of responses highlighted issues which we will summarise in this section.
66. A number of responses highlighted that the information requirements were not practical in many scenarios. For instance, the requirements would pose significant issues for face to face and over the phone sales.
67. Responses also raised issues with the standard information forms for LTAs. It was argued that these forms may be misleading at times, particularly in scenarios where money is passed on straight away by the LTA facilitator, so no insolvency protection is in place. It was also highlighted that the forms would not be easily compatible with some sales methods such as on mobile phones.

Government response to information requirements

68. We recognise some of the issues highlighted with the new information requirements and concerns that standard information requirements could be misleading to consumers. We are committed to working with the industry to find practical solutions where possible. We would however like to emphasise that these information requirements are being introduced to ensure that consumers are appropriately informed when buying combined travel arrangements. We will cover this in the guidance that will be issued alongside the Regulations.

Changes and Cancellations

69. PTD 2015 retains many of the rights with regard to changes and cancellations that were included in the current Directive.
70. If the organiser has no choice but to significantly alter the main characteristics of the package, including increasing the price by more than 8%, then the traveller must be given the option to terminate the contract without a termination fee. These proposed changes must be communicated to the traveller in a clear, comprehensible and prominent manner on a durable medium. PTD 2015 provides for the consequences of a failure by the traveller to respond to be dealt with in accordance with national law.

71. In the consultation the Government stated a preference for the contract to remain in place unless the traveller opts for termination, rather than deeming a failure by the traveller to respond as a termination of contract. Our view is that holidays should not be automatically terminated simply because the traveller has failed to respond.
72. The current Package Travel Regulations allow for tour operators to cancel a holiday without compensation when “unusual and unforeseeable circumstances” significantly affect the performance of the package. This right will be retained under PTD 2015 although the term “unavoidable and extraordinary circumstances” will now apply.
73. Member States may also provide for the traveller to have a right to withdraw from a contract entered into off-premises within 14 days, without giving a reason. The Government is proposing not to implement this provision, in line with our light touch approach.

Question 9

We asked respondents whether they agreed that the contract should remain in place unless the traveller requests termination.

74. The majority of responses to this question agreed with the Government’s proposals that the contract should remain in place unless the traveller opts for termination and that holidays should not be automatically terminated because the traveller has failed to respond.
75. Many responses highlighted that any change to the current regime in this regard would cause unnecessary confusion and emphasised that consumers should be given choice and flexibility without penalty. A few respondents suggested that if the communication to consumers is adequately clear then this should prompt their response effectively. However, a number of respondents suggested that it is unfair for tour operators to suffer the consequences of a client failing to respond.

Question 10

We asked whether respondents envisaged significant issues arising from travellers being given the option to terminate in “unavoidable and extraordinary” circumstances.

76. A significant proportion of responses expressed concern that the Directive appears to give consumers inflated rights to terminate packages, and requested further clarity on the scope of these new terms.
77. However, some respondents referenced the incident of Hurricane Irma (when consumers were not given the right to cancel until the hurricane had actually hit) as an example of when traders did not make decisions in the best interest of the consumer. They suggested that this case illustrates the potential for differences between a consumer and a tour operator’s conception of what constitutes a significant issue.
78. A large proportion of respondents emphasised that advice from the Foreign and Commonwealth Office should remain the objective benchmark in these situations and that

the question of whether circumstances warrant cancellation without charge should not be left to the individual perception of traders or consumers.

Question 11

We asked respondents whether they agreed that we should not implement the right for a traveller to withdraw from an off-premises package travel contract within 14 days without giving a reason, and for evidence if they disagreed.

79. The overwhelming majority of responses to this question strongly agreed with the Government's approach not to implement this right due to the additional burdens it would put on tour operators. Some suggested that this proposal would be highly detrimental to their businesses and could result in a substantial increase in the cost of all packages to allow for losses incurred when customers withdrew free of charge.

Government response to questions 9-11

80. The Government's position remains that the traveller should not be disproportionately punished if they fail to respond to proposed changes from the organiser (where the organiser is entitled to make those changes) indicating whether they accept the changes or wish to terminate the contract. Accordingly, we do not consider that a package travel contract should automatically terminate if the traveller fails to reply within the organiser's first deadline. However, the Government is also keen to avoid the possibility of an impasse. The Government therefore considers that if a traveller fails to respond to the relevant changes, the organiser should be able to send a further notice. If the traveller fails to respond within a reasonable deadline set by that further notice the contract will terminate but the organiser must refund all payments without undue delay and in any event no later than 14 days after the contract is terminated. We would emphasise that the organiser can only make changes to the main characteristics of a package holiday if they are constrained to do so or they have reserved the right to do so in the contract (with agreement of the traveller).

81. As set out in our consultation document, the Government believes that the new term "unavoidable and extraordinary circumstances" introduced by PTD 2015 will not in practice provoke a significant change from the current regime. We would like to emphasise that the circumstances would only apply in situations significantly affecting the performance of the package.

82. The purpose of Foreign and Commonwealth Office (FCO) travel advice is to give objective information and advice to help individuals make better-informed decisions about their travel. It does not dictate whether or not travel takes place. Any decision to cancel or reschedule travel plans can only be taken by a travel company and/or those travelling.

83. We know that travel companies often take FCO travel advice into account and it is encouraging that many respondents consider it to be a useful and objective benchmark. However, we would like to emphasise that we advise against all or all but essential travel only when we judge there to be a significant risk to the safety and/or security of British

nationals. Therefore, travel advice may not cover all issues that could be considered by a customer or travel company to significantly affect the performance of a travel package.

84. Following the strength of agreement from respondents, we will not implement the option in the Directive to give travellers a right to withdraw from an off-premises package travel contract within 14 days without giving a reason.

Liability for Performance

85. PTD 2015 explicitly places liability for the performance of the package on the organiser (a trader who combines and sells packages), regardless of whether they are performed by third parties.
86. PTD 2015 also places a new obligation on retailers to act as a point of contact for travellers in respect of messages, complaints or claims relating to packages they have sold on behalf of organisers.
87. Member States have the option to make the retailer responsible for the performance of the package as well as the organiser. We are not proposing to implement this provision as we wish to provide greater clarity as to who carries responsibilities compared to the current regime.

Question 12

We asked respondents whether they agreed that we should not introduce legislation that would make the retailer responsible as well as the organiser, and for evidence if they disagreed.

88. The majority of responses agreed with our proposal that we do not make the retailer responsible for the performance of the package as well as the organiser, as long as the definition of organiser is sufficiently clear. Several respondents suggested that to do otherwise would not provide additional protections for consumers and would present a fundamental change in the way the UK travel industry operates. Some indicated that it could also have a detrimental impact upon smaller retailers if implemented.
89. However, a few respondents suggested that joint liability would help avoid travel agents taking on responsibility when they add elements to pre-combined packages.

Government response to question 12

90. As set out in our consultation document and due to the strength of response, the Government will not introduce legislation that would make the retailer responsible, as well as the organiser, for the performance of a package.
91. We plan to provide more detailed information on the roles of organiser and retailer in the guidance which will accompany the Regulations.

Consumer Protection Against Insolvency

92. Although PTD 2015 is more specific on the insolvency arrangements required, for organisers this requirement is essentially the same as the current regime. The provisions in PTD 2015 require organisers to obtain security for the effective and prompt return of all payments made by travellers for services not performed and for the travellers' effective and prompt repatriation in the event of the organiser's insolvency.
93. Three options listed under the current regulations are bonding, trust accounts and insurance.

Question 13

We asked stakeholders whether they agreed that we should not introduce a requirement for insolvency certificates to be provided with non-flight packages.

94. The majority of respondents to this question agreed with our proposal that we do not introduce insolvency certificates for non-flight packages. Many responses suggested that the new information requirements should be sufficient to make the consumer aware of their protections and rights, and that such certificates would create additional costs and administrative burden for businesses. One response suggested that requiring new certificates for non-flight packages, so soon after establishing ATOL certificates in the market, may be confusing for consumers.
95. However, a few respondents were in favour of introducing certificates for non-flight packages, as they increase consumer awareness about financial protection in the industry. A key enforcement body suggested that ATOL certificates had been very effective and such a system should be available for all packages. Introducing certificates for non-flight packages would give clarity to consumers about what they have purchased and provide continuity for consumers.
96. One respondent highlighted the current inconsistency in the market in relation to financial protection of consumers, noting, for example, that a traveller could have an ATOL certificate for a flight to Paris but not for Eurostar.

Question 14

We asked whether respondents agreed with our proposal to broaden the scope of the non-flight insolvency regime to cover the new definition of a package.

97. Respondents that answered this question unanimously agreed with the Government's proposal to include the Directive's new definition of a package within the scope of the non-flight insolvency regime. A different approach would add confusion to an already complex framework.
98. Several responses highlighted issues with the options for insolvency arrangements available, which have been detailed under the following question.

Question 15

We invited views on whether there were any issues with the current regime that need to be addressed, and for any examples.

99. Although there was general agreement that the three current options for insolvency cover (bonding, trust accounts and insurance) should continue, a large number of responses expressed their concerns with the current operation of trust accounts, including the absence of any requirement for the independence of the trustee which was also alluded to in the consultation. Other issues highlighted were:
- Partial refunds:** it was argued that the 1992 Package Travel Regulations allowed the possibility of consumers receiving partial refunds.
 - Repatriation:** a number of responses highlighted that the trust account option currently has no provision for repatriation. Trust accounts in theory should allow for consumers to be refunded. However if repatriation is necessary this would often require additional funds above the payments received from consumers. Some responses said that there should be an additional layer of insurance on top of trust accounts that would ensure consumers could be repatriated if necessary.
 - Releasing money prematurely:** some responses highlighted a current issue in the market where trusts are paying out to traders before holidays have been completed.
100. Several respondents indicated that the trust account option should be reformed through the Package Travel Regulations to ensure there are independent professional trustees, ring-fenced customer pre-payments, and sufficient insurance to cover repatriation. To this end, some responses requested that the new Regulations should set minimum requirements to improve the trust accounts option.
101. However, a number of respondents considered that trust accounts provided a viable option for insolvency protection when administered effectively, particularly for smaller traders.
102. Regarding the other insolvency options, respondents were particularly supportive of bonding, whilst a small number highlighted some issues with the insurance option.
103. A couple of responses suggested the need for an online register that enforcers and consumers could use to check what insolvency protection arrangements an operator has in place, whether a bond, trust account or insurance, and that there should be fixed penalties for not providing these details. They suggested that this would improve transparency and enable proactive enforcement.

Government response to questions 13-15

104. After careful consideration of responses to these questions, particularly stakeholder concerns regarding the current operation of trust accounts, the Government has decided to make a minor amendment to the current insolvency regime under the new Regulations in order to improve the options available and to ensure that sufficient recompense for consumers is available in all appropriate cases.
105. The Government wishes to ensure that trust accounts provide sufficient cover in the case of insolvency to fulfil all insolvency requirements including refund and, if necessary,

repatriation. We will therefore require organisers who use the trust option to obtain additional insurance if there is a risk of repatriation. We will also make clear that partial refunds will not be acceptable, and that the bonding option must also cover the risk of repatriation.

106. Furthermore, having considered the needs of businesses, and that some small traders may need to pay traders upfront, we propose to amend the rules on trust to allow traders to release a proportion of monies that would otherwise be required to be held on trust if they obtain a commensurate degree of insurance protection instead. This will allow operators to release some money early if needed, whilst still complying with the Regulations, and ensuring the same of level of insolvency protection for consumers.

Question 16

We invited views on the proposal to cover non-flight LTA insolvency protection under the same regime as non-flight packages, and whether respondents envisaged any issues with this approach.

107. Respondents that answered this question unanimously agreed with the Government's proposal on non-flight LTA insolvency protection as a sensible approach to avoid any additional confusion.

108. Some responses did highlight, however, that they would prefer one scheme for the whole market rather than the current split between ATOL and non-flight classifications.

109. Several responses reiterated their concerns over the limited protections afforded to consumers when purchasing LTAs, and emphasised that consumers must be aware of the arrangement they are purchasing.

Government response to question 16

110. The response to the consultation highlighted a clear preference for the inclusion of non-flight LTAs under the same regime as non-flight packages. The Government will reflect this preference in the Regulation.

Mutual Recognition

111. PTD 2015 aims to harmonise laws across Member States to stimulate cross border trade and make consumer rights consistent. The new Directive explicitly obliges mutual recognition of national insolvency protection schemes, changing the basis for insolvency protection from 'place of sale' to 'place of establishment'.

Question 17

We asked respondents whether they agreed with the proposal to update non-flight insolvency options so that they can be used for EU sales.

112. There was broad agreement amongst respondents with this approach to non-flight insolvency options.

Question 18

We invited views on what benefits respondents could envisage from being able to trade across the EU under the UK insolvency regime, and whether they are likely to take advantage of these.

113. The majority of respondents indicated that this change will provide a significant commercial opportunity, especially in relation to online sales. It will enable significant cost and infrastructure savings as businesses will no longer need to participate in multiple insolvency protection schemes across EU Member States. They considered that it would boost traders' confidence and open up new markets across the EU for UK traders.

114. Some respondents highlighted that all Member States will need to implement the Directive effectively if UK consumers are to be exposed to non-UK regulated EU traders selling into the UK with their own insolvency schemes.

115. Some respondents asked specifically about the future of this provision once the UK leaves the EU and requested further clarity on this point to inform their future investment decisions. One respondent suggested that the Government should review this change to "place of establishment" at the first available opportunity.

Question 19

We invited views on what issues respondents could envisage as a result of this new principle, and to explain their reasoning.

116. A large number of respondents expressed concern that, depending on the way it is implemented in other Member States, the new principle could create an inconsistent standard of protection for consumers across the EU. Several respondents reiterated their concerns regarding a repeat of the Lowcost Holidays incident³ and argued that this new principle should not present an opportunity for traders from countries with less stringent insolvency regimes to target UK consumers, or for UK traders to move abroad for the same reasons.
117. A few responses highlighted the risk of confusion amongst UK consumers as to the level and source of protection available to them if they purchase from a company based in another EU Member State. They noted that consumers may also face language barriers in accessing foreign insolvency protection systems. These respondents felt that there would be a need to educate travellers in respect of their rights.
118. A key enforcement body emphasised the need for an effective contact point to monitor and address issues arising from this new principle. Another respondent considered that an up-to-date database would be required so that the consumers could check the insolvency provisions of traders.
119. Multiple respondents asked how mutual recognition might be treated after the UK leaves the EU. They suggested that if the UK does not receive reciprocal recognition after we leave the EU, this could lead to other EU Member States not recognising the UK's system of insolvency protection, which would limit UK businesses trading across borders unless they complied with the regulatory regime in their chosen market.

Question 20

We asked respondents for their suggestions on possible mechanisms that the UK could introduce to ensure compliance of third country traders.

120. A large proportion of respondents emphasised the difficulty in regulating and enforcing against third country traders, especially when they operate online. They noted the importance of effective cross-border regulation to preserve a level playing field.

³ Lowcost Holidays were a budget tour operator based in Spain that ceased trading on 15 July 2016. When the company went bust it became clear that the insolvency protection they had in place was inadequate and could only pay back consumers around £8 each. Around 140,000 customers were affected, with 27,000 on holiday at the time of insolvency. It was estimated that upwards of £50m was spent by these 140,000 customers of whom around 55% were estimated to be British.

121. Other respondents called for action to address the increases in online targeting of UK consumers. There was the suggestion that third country traders must establish an entity in the UK (or another EU Member State) to carry out their UK business, with sufficient capital and bonds provided against insolvency.
122. An easily-accessible central online register was suggested by several respondents, though some indicated it is difficult to see how it would work in practice and may not be enough to protect UK consumers sufficiently. Many responses suggested an information campaign to inform consumers about the risks of buying from third countries, particularly online.
123. One respondent suggested that the Regulations should apply direct liability to the UK-based intermediaries which provide third country traders with routes into the UK market. As we indicated in the consultation any UK retailers that sell packages put together by organisers established outside of the EU will take on many of the liabilities of the organiser (including insolvency protection) unless they can provide evidence that the organiser has complied with these requirements

Government response to questions 17-20

124. The Government supports the adoption of mutual recognition as a means to simplify the process of businesses purchasing insolvency protection and encouraging cross-border trade.
125. However, we appreciate the concerns raised by several respondents regarding the potential risk to consumers from EU traders offering packages with a lower level of protection to UK buyers. The new Directive should raise the level of consumer protection, including insolvency protection, across the EU. Whereas the current Directive simply required sufficient evidence of insolvency cover, PTD 2015 requires that this ‘security shall be effective and shall cover reasonably foreseeable costs’. This is further underpinned by a number of specific requirements that should result in broadly equivalent cover across EU Member States. The central contact points detailed below should also provide mechanisms to identify and deter traders who may potentially be selling into the UK with insufficient insolvency protection.

Central Contact Point

126. Member States are required to designate central contact points to facilitate the administrative cooperation and supervision of organisers operating in different Member States.

Question 21

We invited views on the creation of a central contact point(s) in the UK.

127. The majority of respondents considered that a central contact point was essential. Responses suggested that it must be cost-effective, efficient and should not impose additional burdens on business (though some respondents were not averse to the possibility of paying a reasonable registration fee).

128. A small number of responses highlighted that Trading Standards would be best placed to take up the role, though they would need more resources to do so. One respondent emphasised that an existing body should take up the role, as the change was not significant enough to create a new body.

Question 22

We asked respondents whether the CAA should act as a central contact point for queries related to ATOL alongside a designated body for all other queries.

129. The majority of responses agreed that the CAA should act as the central contact point for queries related to ATOL as this body is already well-equipped for the role

Question 23

We asked whether the UK should set up a register for all UK established organisers to help comply with the 15 working day response requirement.

130. The majority of responses indicated that they supported the introduction of a register listing the insolvency arrangements for all UK-established organisers. Respondents suggested that such a register would assist the work of the Central Contact Point and allow enforcers to become more proactive in tackling non-compliance.

131. Several respondents also highlighted the benefits an online register could bring to consumers, giving them greater clarity over the insolvency arrangements of the companies they use.

132. A few respondents suggested that there should be fixed penalties for non-compliance and that such a register should be compulsory. However, others indicated that such an approach would be burdensome to business and create costly, additional bureaucracy, which may not be proportionate.

Government response to questions 21-23

133. From 1 July 2018, the Government will establish a new central contact point to act as a dedicated channel for clarifying what insolvency protection specific organisers have in place across EU Member States.

134. Due to the strong support expressed by consultation responses, we have agreed that the Civil Aviation Authority (CAA) will be the lead central contact body for the UK. They will be able to draw upon their extensive experience and oversight within the sector, to cooperate with contacts points across Europe in the supervision of organisers operating in different Member States. Any non-flight cases reported to the CAA will be referred to BEIS. This relationship will be kept under review while the new mutual recognition principle beds in.

135. We appreciate that a number respondents expressed support for introducing a register of non-flight package organisers. However, on balance we do not think that introducing such a register is proportionate as we do not expect a high volume of cross-border non-flight cases for the contact points to deal with. We expect considerable overlap with the CAA's existing register for package organisers that have an ATOL licence. This is publicly available and will continue. We will keep this arrangement under review.

Coming into Force

Question 24

We asked respondents whether they agreed that the measures should be brought into force on 1 July 2018, and to explain their reasoning.

136. The majority of respondents agreed that the measures should be brought into force on 1 July 2018. However a large proportion of these responses from industry highlighted the challenges of complying by this deadline and that they would need more time to prepare. A couple of respondents requested a transition period to allow more time to adjust to the new provisions.
137. A few respondents also noted that July is travel companies' busiest period and will mean that customers may be travelling on different terms and protections during peak season. A small number of respondents questioned the need to implement the Directive given the UK's departure from the EU.

Question 25

We asked whether respondents agreed with our proposal that the incoming measures should only apply to any sales made from the coming into force date, and to explain their reasoning.

138. Respondents that answered this question unanimously agreed that the forthcoming measures should only apply to sales made from the coming into force date (not holidays taken from that date). Many responses expressed concern that a transitional period could create further complication and the potential for an inconsistent approach across the EU.

Government response to questions 24-25

139. The Regulations will apply to sales made from 1 July 2018. There will be no a requirement to apply them retrospectively to bookings made prior to this date, to avoid placing additional burdens on business.
140. As set out above, the Government plans to lay the implementing regulations in April 2018, to come into force on 1 July 2018, in line with our obligations to the EU timeline for implementation. We appreciate the concern expressed by respondents to the consultation regarding the short timeframe for compliance. We will issue comprehensive guidance alongside the new Regulations to support industry to prepare effectively for the new provisions introduced by the Directive. Government is also committed to working closely with trade associations, businesses and enforcement bodies, to assist as far as possible with the implementation of the Regulations.

Next Steps

We would like to thank stakeholders for their responses to the consultation. The consultation and workshops held with business and consumer groups highlighted some complex concerns that required further in-depth consideration. This included concerns around the new definition of a package and the new concept of Linked Travel Arrangements.

Following the further work since the consultation, we are now aiming to lay the regulations after Easter. We recognise the concerns that have been raised with the implementation timetable. Therefore, we plan to engage intensively in advance of laying the Regulations to help the industry adjust, including engaging with stakeholders to develop guidance that will support the regulations. This will help to protect consumers and support industry to comply. We will also continue to engage proactively beyond the laying of the regulations and the 1 July 2018 coming into force date while the changes bed in.

List of Respondents

- Association of British Travel Agents (ABTA)
- Advantage Travel Centres Ltd
- Air BnB
- Air Travel Insolvency Protection Advisory Committee (ATIPAC)
- Association of Independent Tour Operators (AITO)
- Alfa Leisureplex Group Ltd
- Ann Paterson
- Association of ATOL Companies
- Association of Personal Injury Lawyers
- Avios
- Barrhead Travel
- Bourne Leisure
- British Airways Holidays
- Chartered Trading Standards Institute (CTSI)
- Citizens Advice
- Confederation of Passenger Transport (CPT)
- Consumer Codes Approval Board
- David Grant
- Devon Trading Standards
- dnata Travel UK
- eDreams ODIGEO
- European Technology & Travel Services Association (ETTSA)
- Hosanna House and Children's Pilgrimage Trust (HCPT)
- Historic Houses Association
- La Concordia
- Mundy Cruising
- Norfolk Trading Standards
- North East Trading Standards Association
- On The Beach Group plc
- Parkdean Resorts Limited
- Protected Trust Services
- Roberts Travel Group
- Royal Borough of Kensington and Chelsea and the London Borough of Hammersmith and Fulham Trading Standards
- Scottish Passenger Agents Association (SPAA)
- Secret Escapes
- Serenity Trusts

- Skyscanner
- Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
- Stewarts Law
- Sunderland City Council
- The Consumer Council
- The Forum of Complex Injury Solicitors
- The Travel Network Group
- Thomas Cook Group
- Tourism Alliance
- Travel Focus Group (Trading Standards)
- Travlaw LLP
- TUI Group
- UK Finance

