

# businesscompanion

## trading standards law explained

### Package tours & holidays (before 1 July 2018)

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#### **This guidance is for England, Scotland & Wales**

Legislation defines what a package holiday is, and outlines the responsibilities and obligations of holiday organisers, suppliers and retailers with regard to holiday descriptions, prices and financial security arrangements. It also covers aspects of the package-holiday industry relating to advertising, brochure content, contract requirements, surcharges, compensation, etc.

#### **What is a package holiday?**

The Package Travel, Package Holidays and Package Tours Regulations 1992 state that a 'package holiday' is one that:

- is sold at an inclusive price
- includes at least two of the following three components:

- transport
- accommodation
- other tourist services that form a significant proportion of the package
- lasts at least 24 hours or involves overnight accommodation

**Note:**

- 'transport' includes flights, trains, coaches and ferries but not free transfers from an airport to a hotel
- 'accommodation' provided must be significant; a berth on a cruise ship would be included but not one on a cross-channel ferry
- 'other tourist services' include car hire, sports and entertainment events, organised activities, etc that are paid for in advance. If additional charges are made for the use of facilities, services, etc during the holiday they are not considered as being part of the holiday package

The Regulations apply to all holidays that meet the above criteria and relate to British and foreign holidays as well as holidays on cruise ships etc. They apply to 'off-the-peg' holidays provided as one complete package as well as tailor-made packages where two or more relevant holiday components are combined from separate sources into a holiday package and paid for as one complete contract.

A combination of relevant holiday components may not be a package holiday under the legislation if the retailer books them for the consumer but each component is subject to separate contracts payable to individual suppliers. For example, if airline seats, transfer to the resort and hotel accommodation are arranged by the retailer but are paid for in three separate payments this would not be a package holiday. It is important that in these circumstances the holiday supplier ensures the consumer is aware that the combination of holiday components is not a package holiday and that the consumer will not be able to benefit from the requirements and safeguards provided in the legislation.

This guidance refers to package holiday 'organisers', 'retailers' and 'suppliers', all of which have to ensure that they comply with the various responsibilities and requirements placed on them by the legislation:

- an 'organiser' organises package holidays on a regular basis and sells or offers them for sale, whether directly or through a retailer
- a 'retailer' sells or offers for sale package holidays put together by an organiser
- a 'supplier' (referred to in the legislation as "*the other party to the contract*") is whoever the consumer pays for the holiday; they may be the organiser, the retailer or, in some circumstances, both

## Pre-holiday requirements

### Misleading descriptions

Consumers must not be given any misleading information regarding:

- any description of the holiday
- the price of the holiday
- any other conditions concerning the holiday

If an organiser or retailer supplies misleading information they will be liable to compensate the consumer for any loss suffered as a consequence.

## **Holiday brochures**

Package holidays offered in brochures must include all of the following information, where relevant:

- the total price of the holiday
- the resort or destination
- transport details:
  - type
  - characteristics
  - category
- accommodation details:
  - type
  - location
  - category or degree of comfort
  - main features
  - approval or tourist classification (European Union Member State destinations only)
- the meals that are included in the package
- the itinerary
- passport and visa requirements information for British citizens
- health formalities required for the journey and the stay
- amount or percentage required to be paid as a deposit
- the timetable for payment of the balance of the price
- the minimum number of people required to book the holiday for it to take place
- the deadline for informing consumers in the event of cancellation due to lack of bookings
- the arrangements if holidaymakers are delayed at the outward or homeward points of departure
- the arrangements for the security of money paid by consumers
- the arrangements for the repatriation of holidaymakers in the event of insolvency by any of the holiday component providers

The above information must be published in a legible, comprehensible and accurate manner.

Details provided in brochures are deemed to be contract conditions unless the consumer is informed of any change before the contract is made or there is agreement with the consumer that some particulars in the brochure do not form part of the contract. This does not apply to information provided regarding the arrangements for security of money paid over and for the repatriation of the consumer in the case of insolvency.

It is an offence for organisers to publish brochures that do not comply with the above requirements and retailers must not make brochures available to consumers that they know, or have reasonable cause to believe, do not comply with these requirements.

## **Pre-contract information**

The consumer must be provided with the following information before they agree to take the holiday:

- passport and visa requirements that apply to British citizens
- the length of time it is likely to take to obtain appropriate passports and visas
- health formality requirements for the journey and the stay
- the arrangements for the security of money paid by the consumer
- the arrangements for the repatriation of holidaymakers in the event of insolvency by any of the holiday component providers

The above information must be given in writing or in some other appropriate form.

It is an offence if the holiday supplier does not provide the consumer with the above information.

## **Pre-holiday information**

Before they take their holiday, consumers must be provided with the following information:

- the times and places of any intermediate stops
- transport connections for the journey
- travel accommodation particulars - for example, cabins or berths on a ship, sleeper compartments on trains, etc
- the name, address and telephone number of the holiday supplier's representative or agent in the resort who the holidaymaker can contact in case of any difficulties
- the telephone number or other relevant information the holidaymaker can use to contact the holiday supplier if they do not have a representative or agent in the resort
- where children under 16 are travelling alone, details of how direct contact can be made with them or the person responsible for them in the resort
- information about any insurance policies the consumer may take out to cover costs incurred if they have to cancel the holiday, or the costs of assistance (including repatriation) in the event of accident or illness whilst on holiday. This information does not need to be provided if the holiday contract requires the consumer to take out such an insurance policy

It is an offence if the supplier does not provide the consumer with the above information in good time before the start of their journey, either in writing or another appropriate form.

## **Contract requirements**

Package holiday contracts must contain the following information, where applicable:

- the travel destination(s)
- the dates and period of stay
- transport details:
  - type
  - characteristics
  - category
- accommodation details:
  - type
  - location
  - category or degree of comfort
  - main features
  - approval or tourist classification (EU Member State destinations only)
- the meals that are included in the package
- the minimum number of people required to book the holiday for it to take place
- the deadline for informing consumers in the event of cancellation due to lack of bookings
- the itinerary
- inclusive visits, excursions or other services provided
- the name and address of the holiday organiser, retailer and insurer
- the total price of the holiday package
- an indication of any price revisions that may be possible
- details of all non-inclusive dues, taxes or fees for services such as landing, embarkation or disembarkation at ports and airports, and tourist taxes
- the payment schedule

- the required method of payment
- special requirements agreed to be supplied by the holiday supplier
- the time period in which the consumer would be required to make any complaints about the holiday package

Package holiday contracts must contain all the information above (where applicable). If any of the information is missing the consumer can cancel the contract.

The consumer must be informed in writing or other appropriate form of all the terms of the holiday contract before they accept it (unless it is impractical to do so due to lack of time between the holiday being booked and the departure date). In all cases the consumer must, at some point, be given a written copy of the contract terms.

### **Transfer of bookings**

If the consumer is unable to take their holiday they may transfer it to another eligible person as long as reasonable notice is given to the holiday supplier.

When a holiday is transferred the original and new consumer are both legally liable for the cost of the holiday and both are responsible for ensuring that the holiday and any additional costs arising from the transfer are paid for.

### **Price revisions**

Holiday suppliers cannot vary the price of the holiday except for changes in:

- transportation costs
- the cost of fuel
- dues, taxes or fees chargeable for services such as landing taxes or embarkation / disembarkation fees at ports and airports
- exchange rates applied to the holiday

In these circumstances the holiday contract must state precisely how the revised price is to be calculated.

Holiday suppliers must not apply price increases to holidays:

- of less than 2% (excluding non-eligible price variations stipulated in the contract)
- less than 30 days before the departure date or a longer period stipulated in the contract

### **Significant alterations or cancellations of holidays**

If an organiser makes a significant alteration to a holiday before the departure date they must notify the consumer as quickly as possible. This is required so that the consumer is given enough time to decide if they still want to take the holiday, accepting the alterations made and any effect on the price. The consumer must inform the organiser or the retailer of their decision as soon as possible.

If a consumer decides not to take a holiday because of a significant alteration made, or where it has been cancelled by the organiser before the departure date, they are entitled to one of the following:

- take a holiday of equivalent or superior quality if one is available from the supplier
- take a holiday of lower quality if one is available from the supplier and be refunded the price difference
- accept the cancellation and be refunded with the amount already paid

In appropriate cases the consumer is also entitled to be compensated by the organiser where they are unable to provide the agreed holiday. There are exceptions to this, however, if either:

- the holiday is cancelled because insufficient people have booked it and the consumer is informed of the cancellation in writing within the required period  
... or
- the holiday is cancelled because of unusual, unforeseeable and unavoidable circumstances beyond the control of the organiser or supplier. This does not include overbooking of the holiday

### **Significant proportion of services not provided**

Where, after departure, significant holiday services are not able to be provided, the organiser must make suitable alternative arrangements at no extra cost to the consumer and, where appropriate, compensate the consumer for the difference in services provided.

If it is not possible to make acceptable alternative arrangements the organiser must provide the consumer with equivalent transport back to the place of departure or to another agreeable place; the consumer must be compensated as appropriate.

### **Liabilities for incomplete provision of holiday components**

The holiday supplier is liable to the consumer for:

- providing all aspects of the booked holiday irrespective of who is supplying the various services included; this requirement does not affect any remedy or right of action the supplier might have against those other parties
- damages caused by failing to provide all of the booked services unless the failure is not the fault of the supplier because the failures were:
  - caused by the consumer
  - unforeseeable or unavoidable failures caused by another unconnected party
  - due to unusual and unforeseeable circumstances beyond the control of the supplier or other involved parties, and could not be prevented, nor could the consequences of the failure have been avoided even if all due care had been taken

Compensation paid for any damages liable, due to the failure to provide all booked services, may be limited in the holiday contract in accordance with relevant international conventions; any such limitation must not be unreasonable. This limitation does not include personal injury claims.

The above liabilities must not be excluded by any term of the holiday contract.

Even if not in writing, there is a legal implication that all holiday contracts include terms that require the:

- supplier to:
  - give prompt assistance to holidaymakers in difficulty
  - make prompt efforts to find appropriate solutions where booked services cannot be provided
- holidaymaker to inform the holiday supplier (or other involved party) if any booked services have failed to

be provided at the place where those services are supplied; the holidaymaker must do this as soon as possible

## **Security requirements**

### **Security in the event of insolvency**

Holiday suppliers must be able to provide evidence of security measures taken to enable the refund of money paid over and repatriation of holidaymakers in the event of insolvency. There are exceptions to this if:

- the holiday is covered by measures adopted by the EU Member State where the supplier is based
- the holiday is one where the supplier is required to hold a licence under, or is one that is covered by arrangements entered into under, the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1972

If the above exceptions do not apply, the holiday supplier must demonstrate the security of consumers' prepayments and their ability to repatriate holidaymakers in the event of insolvency by, as a minimum, implementing one of the three types of measures prescribed by the Regulations. These measures are bonding, insurance and monies held in trust.

It is an offence for holiday suppliers to not comply with the above requirements.

### **Bonding**

Holiday suppliers must take out a bond with a body approved by the Secretary of State of which the supplier is a member (ABTA for example). This bond must be sufficient to ensure that the consumer can be repaid for booked elements of holidays not provided in the event of the insolvency of any involved party.

Such bonds must not be capable of being held by the approved body for more than 18 months.

Bonds taken out by holiday suppliers must be sufficient to cover one of the following, whichever is the smaller:

- 25% of payments normally received by the holiday supplier from consumers in a year
- the maximum amount of payments from consumers a supplier expects to hold at any time for holidays that have not yet been completed

Before a bond is taken out the holiday supplier must inform the approved body which of the above amounts they wish to be covered. The approved body must either agree that the amount is sufficient or else inform the supplier the amount they consider would be required to ensure obligations to consumers are sufficiently covered.

Where the approved body providing the bond has reserve funds or insurance the minimum amount provided by the bond may cover 10% of payments normally received by the holiday supplier from consumers in a year where this would be appropriate.

## Insurance

Holiday suppliers must have appropriate insurance with an authorised insurer that indemnifies consumers against the loss of money paid for holidays in the event of the insolvency of the supplier.

Holiday suppliers must ensure that holiday contracts contain a term stating that the consumer would acquire benefits from the insurance policy in the event of the insolvency of the supplier.

## Money in trust

Holiday suppliers must ensure that all money paid by consumers for holidays is held in trust in the United Kingdom until the holiday has been completed or, if the holiday is cancelled by the consumer, money is repaid or forfeited, as appropriate.

It is an offence for holiday suppliers to obtain money from the trust under false pretences or for holiday suppliers to use money obtained from the trust for purposes for which the trust is not intended.

## Restrictions on payment charges

Businesses cannot impose any surcharge for using the following methods of payment:

- consumer credit cards, debit cards or charge cards
- similar payment methods that are not card-based - for example, mobile phone-based payment methods
- electronic payment services - for example, PayPal

Businesses are allowed to make a charge for accepting a payment by any other method - for example, cash, cheques, standing orders and direct debits. However, if the customer has to pay a surcharge for using a particular method of payment, then that surcharge must not be more than it costs the business to process that method of payment. The Regulations do not specify any maximum amounts as the costs should reflect the actual cost to the individual business of processing the payment.

Please see '[Payment surcharges](#)' for detailed information.

## Other relevant legislation

Contracts between traders and consumers, including package tours and holidays, are controlled by the Consumer Rights Act 2015; please see '[The supply of services](#)' for detailed information.

The Consumer Rights Act 2015 requires that services provided by traders to consumers should be performed in accordance with the contract, with reasonable care and skill, at a reasonable price, etc. It provides consumers with remedies they can require from the trader if the service provided does not meet the terms of the contract - for example, a reduction in the price paid.

As a general rule, if something goes wrong with the supply of goods and services, consumers can claim their direct losses but they cannot claim compensation for distress and inconvenience. However, the law makes an exception for some types of contract, including contracts for holidays and package travel. Therefore, as the purpose of a holiday is usually to provide enjoyment and relaxation, a consumer may be able to claim compensation for inconvenience and distress, on top of a refund and any other losses, if things go wrong.

However, where specific legal requirements, such as those detailed in this document, impose stricter duties



and requirements on traders they take precedence and must be complied with.

## Penalties

The maximum penalty for an offence under the Package Travel, Package Holidays and Package Tours Regulations 1992 is a fine.

The Enterprise Act 2002 creates the ability for enforcement bodies such as trading standards services to seek a court order preventing the failure to comply with the civil and criminal provisions of various pieces of consumer protection legislation, including the Consumer Rights Act 2015. Failure to comply with such a court order can lead to a maximum penalty of a fine and two years' imprisonment.

## Key legislation

[Package Travel, Package Holidays and Package Tours Regulations 1992](#)

[Enterprise Act 2002](#)

[Consumer Protection from Unfair Trading Regulations 2008](#)

[Consumer Rights \(Payment Surcharges\) Regulations 2012](#)

[Consumer Rights Act 2015](#)

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## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to UK legislation can be found on each link's 'More Resources' tab; amendments to EU legislation are usually incorporated into the text.



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