

The Package Travel Regulations - the Law Relating to Package Travel

The marketing, sale and performance of package holidays sold or offered for sale in the United Kingdom are regulated by [The Package Travel, Package Holidays and Package Tours Regulations 1992](#) (SI 1992 No 3288). **The Regulations apply to anyone who organises packages whether they are for profit or not, and whether they are for business or club purposes.**

Copies of the Package Travel, Package Holidays and Package Tours Regulations can be ordered from <http://www.tso.co.uk/bookshop/>

Question & Answer Guidance on the Law Relating to Package Travel for Organisers and Retailers

Please note this is simply advice, and the law remains the Regulations as interpreted by the courts.

◆ 1. What is a Package?

Question 1: From time to time I put together a holiday which I sell to a few friends and acquaintances. Am I caught?

Answer: Not if you do so only occasionally. The Regulations do not define what constitutes "occasionally", but it would be prudent to assume you are subject to the Regulations if you organised the package on a regular basis, even if it is done infrequently. (See definition of an "organiser" in regulation 2(1).)

Question 2: I am just putting together a holiday for members of my social club. Am I caught?

Answer: The Regulations apply to selling and offering for sale. If the members of the social group have agreed to share the cost of a package they have decided to organise themselves, and they have merely appointed you to organise the details, then you are unlikely to be selling or offering for sale the package - even though a surplus may be retained by the organisation to be disposed of as the members may decide. (See definition of a "package" in regulation 2(1).)

Question 3: I have been approached by a friend to let out his villa in the South of France to holidaymakers during the summer. Is this a package?

Answer: Not if you provide only the accommodation. To create a package at least two of the following three components must be present: transport; accommodation; or other tourist service accounting for a significant proportion of the package. (See definition of a "package" in regulation 2(1).)

Question 4: I organise day trips to stately homes and book charge a single price for the bus and entry. Is this a package?

Answer: No. For a package to be created the service must cover a period of more than twenty-four hours or include overnight accommodation. (See definition of a "package" in regulation 2(1).)

Question 5: The consumer tells me exactly what he wants and I book it. Is this a package?

Answer: To fall within the scope of the Regulations the elements must also be "pre-arranged". If the elements are identified by the consumer and not more generally on offer as a possible package, they are not pre-arranged. For example, if the consumer specifies his own flight and where he wants to stay and the travel agent arranges this, the total service is not a package, even though the components are invoiced together. (See definition of a package in regulation 2(1).)

Question 6: I give the consumer a completely free choice from the options in my brochure. From these options he chooses where he stays and how he gets there. Is this a package?

Answer: In this case a package is likely to be created. To be "pre-arranged" the combination has to be put together by the organiser in advance of the conclusion of the contract. It does not however require the combination to be arranged before the consumer makes an enquiry. Tailor made packages can fall within the scope of the Regulations where the consumer relies on the skill and expertise of the organisers in

combining two or more components to make a package. (See definition of a "package" in regulation 2(1).)

Question 7: A customer asks me to book travel and accommodation for him under arrangements where the customer pays me for the transport but pays the hotel direct at the end of his stay. Is this a package?

Answer: No. To create a package the elements must be "sold at an inclusive price". But invoicing separately for the individual elements does not, by itself, unmake a package if the other criteria are in place. (See definition of a "package" in regulation 2(1).)

Question 8: Can I escape the Regulations by giving separate invoices for the travel and accommodation?

Answer: No. Invoicing separately for the individual components does not, by itself, unmake a package if the other criteria are in place. (See definition of a "package" in regulation 2(1).)

Question 9: Would putting on special Christmas entertainment for the guests in my hotel mean I am selling a package?

Answer: If the entertainment would be available to everybody who stayed at the hotel it would be regarded as a facility for all guests and not a tourist service. (See definition of a package in regulation 2(1).)

Question 10: I am thinking of putting on murder or similar 'theme' weekends. Would these be packages?

Answer: These are likely to be packages. Where a facility such as a theme weekend is restricted to only a few who book or pay in advance then it becomes a tourist service and may create a package. "Other tourist services" would form a significant proportion of the package if their presence or absence determined its nature and therefore influenced its purchase. (See definition of a "package" in regulation 2(1).)

Question 11: Apart from providing accommodation all I do is collect people from the local railway station. Is this transport for the purpose of the Regulations?

Answer: Where guests have arranged their own transport by air, rail, etc., the provision of free transport to take hotel guests from the local airport or railway station to the hotel is unlikely to be a transport component which goes to create a package. This would probably be considered a facility offered by the hotel. (See definition of a "package" in regulation 2(1).)

Question 12: I hire out my canal boat. People sleep on it and travel around on it. Is this a package?

Answer: The hire of a canal boat or motorised caravan by itself is simply the hire of goods by the customer for his private use. However, if you hire out bicycles, provide maps, book hotels at which participants will stay, this is a package if sold at an inclusive price. (See definition of a "package" in regulation 2(1).)

Question 13: I take people sailing on my yacht and skipper it for them. Is this a package?

Answer: Yes. Where goods are provided as part of an offer of a combination which has been pre-arranged, such as a skippered tour by a yacht to named destinations, then this is likely to be a package. (See definition of a "package" in regulation 2(1).)

Question 14: Are fly drive holidays packages?

Answer: Yes. The hire of a car, when offered in a pre-arranged combination with transport or accommodation, may constitute a tourist service and thus create a package. (See definition of a "package" in regulation 2(1).)

Question 15: Is a berth on a cross-channel ferry accommodation?

Answer: No. The berth on a cross-channel ferry or sleeping accommodation on an overnight train is a facility. For "accommodation" to be an element in the creation of a package it needs to represent more than a facility which is ancillary to other aspects of an arrangement. (See definition of a "package" in regulation 2(1).)

Question 16: I sell packages to consumers in France. Do I need to comply with the Regulations?

Answer: The Regulations do not apply to packages sold in other countries by operators established in the UK. However the Regulations implement a European Directive which binds all member States. Similar provisions usually apply in France, Germany, Italy, the Netherlands, Belgium, Luxembourg, Ireland, Greece, Denmark, Spain, Portugal, Sweden, Finland and Austria. Norway and Iceland are also signatories. (See geographical coverage in regulation 3(1).)

Question 17: I sell packages to consumers in America. Do I need to comply.

Answer: The Regulations apply only to packages sold or offered for sale in the United Kingdom. If those things are done outside the United Kingdom the Regulations do not apply. It is not necessarily the case that, where the consumer who is buying the package is outside the United Kingdom, the package will necessarily be sold or offered for sale outside the United Kingdom. Individual cases will turn on their own facts. (See geographical coverage in regulation 3(1).)

Question 18: I sell packages to consumers in America but consumers add to their holidays when they are here.

Answer: If an organiser of incoming tours does sell a package to someone he has already brought into the country then that package will fall within the scope of the Regulations. (See geographical coverage in regulation 3(1).)

2. Before You Sell

Question 19: What happens if I mislead the consumer?

Answer: Any retailer or tour operator who provides misleading information concerning a package would be liable to compensate the consumer for any loss which the consumer consequently suffers. Any compensation awarded could include consequential loss for disappointment, etc., as well as direct financial loss. (See regulation 4.)

Question 20: Must I issue a brochure?

Answer: No. The Regulations do not impose an obligation on tour operators to provide brochures to prospective customers, merely, that if one is produced it must contain certain specified information.

Question 21: If I issue a brochure what must be in it?

Answer: If a brochure is produced it must indicate in a legible, comprehensive and accurate manner the price and adequate information about the following matters to the extent that they are relevant to the packages offered:

- the destination and the means, characteristics and categories of transport used;
- the type of accommodation, its location, category or degree of comfort and its main features and, where the accommodation is to be provided in a Member State, its approval or tourist classification under the rules of that Member State;
- the meals which are to be included in the package;
- the itinerary;
- general information about passport and visa requirements which apply to the nationals of the member State(s) in which the brochure is made available and health formalities required for the journey and the stay;
- either the monetary amount or the percentage of the price which is to be paid on account and the timetable for payment of the balance;
- whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation;
- the arrangements (if any) which apply if consumers are delayed at the outward or homeward points of departure; and

- the arrangements for security for money paid over and for the repatriation of the consumer in the event of insolvency.

(See regulation 4 and Schedule 1 to the Regulations.)

Question 22: Must I tell the consumer anything before he buys his holiday?

Answer: Yes. Before a contract is concluded the consumer must be provided in writing or in some other appropriate form (which could include communication over the telephone or projection on a visual display unit) the following information:

- general information about passport and visa requirements which apply to the nationals of the member State(s) concerned who purchase the package in question, including information about the length of time it is likely to take to obtain the appropriate passports and visas;
- information about health formalities required for the journey and the stay; and
- the arrangements for security for the money paid over and (where applicable) for the repatriation of the consumer in the event of insolvency.

(See regulation 7.)

Question 23: What must be in my contract with the consumer?

Answer: Depending on the nature of the package being purchased the contract must include at least the elements specified below:

- the travel destination(s) and, where periods of stay are involved, the relevant periods with dates;
- the means, characteristics and categories of transport to be used and the dates, times and points of departure and return;
- where the package includes accommodation, its location, its tourist category or degree of comfort and its main features and, where the accommodation is to be provided in a Member State, its compliance with the rules of that Member State;
- the meals which are included in the package;
- whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation;
- the itinerary;
- visits, excursions or other services which are included in the total price agreed for the package;
- the name and address of the organiser, the retailer and, where appropriate, the insurer;
- the price of the package, if the price may be revised an indication of the possibility of such price revisions, and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at ports and airports and tourist taxes) where such costs are not included in the package;
- the payment schedule and method of payment;
- special requirements which the consumer has communicated to the organiser or retailer when making the booking and which both have accepted; and
- the periods within which the consumer must make any complaint about the failure to perform or the inadequate performance of the contract.

(See regulation 9 and Schedule 2 to the Regulations.)

Question 24: What if the consumer asks me for special requirements?

Answer: Any special requirements such as specific dietary needs agreed with the consumer when making the booking must be included in the contract.

(See item 11 of Schedule 2 to the Regulations.)

Question 25: Can I sell the consumer insurance?

Answer: There is nothing in the regulations to prevent organisers making it a condition of the contract that the consumer take out their travel insurance. The only obligations imposed by the Regulations are that he must provide the consumer with information about an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including emergency repatriation, in the event of illness which the consumer may, if he wishes, take out in respect of the risk of those costs being incurred. (See regulation 8 (2) (d).)

Question 26: Must I give the consumer a written copy of the contract?

Answer: Yes. The consumer must always be given a written copy of the contract, but the Regulations do not specify when this should be done. (See regulation 9 (1) (c).)

3. You Have Sold the Holiday. What Then?

Question 27: Can I change the contract once it has been agreed?

Answer: Where, before departure, the organiser wishes to alter significantly an essential term of the contract he must notify the consumer as quickly as possible. The consumer must then be given the choice either to agree to the amended terms or to withdraw from the contract without penalty.

If the consumer decides to withdraw from the contract, or if the contract is cancelled by the tour operator, the consumer is entitled to take a substitute package of equivalent or superior quality if the tour operator is able to offer him such a substitute, or take a substitute package of lower quality and to recover from the organiser the difference in price between the package purchased and that of the substitute package, or to have repaid to him as soon as possible all monies paid by him under the contract. The consumer may also be entitled to be compensated by the organiser for the non-performance of the original package. (See regulations 12 and 13.)

Question 28: Can I apply surcharges if my costs go up?

Answer: Surcharges may be applied solely to allow for variations in transportation costs, taxes or fees for certain services, and exchange rates. The contract would need to say that a price increase may be made in these limited circumstances and state how the surcharge is calculated and what part of the increase (expressed as a proportion of the cost of the package, excluding insurance and amendment charges) will be absorbed by the operator.

If the price increase amounts to less than 2% of the original cost of the package, it must in all circumstances be absorbed. If it amounts to more than 2%, the operator must absorb the first 2%. If the operator says that he will absorb a greater amount, then he must do so. No price increase can be passed on in the period 30 days before departure. (See regulation 11.)

Question 29: Is there anything else I need to tell the consumer?

Answer: Yes. The pre-contract information and contract content requirements of the Regulations are supplemented by the requirement to supply certain information to the consumer in good time before the holiday is due to start. This information is:

- the times and places of intermediate stops and transport connections and particulars of the place to be occupied by the traveller (for example, cabin or berth on ship, sleeper compartment on train);
- the name, address and telephone number -
 - i. of the representative of the other party to the contract in the locality where the consumer is to stay,
or, if there is no such representative,
 - ii. of an agency in that locality on whose assistance a consumer in difficulty would be able to call,
or, if there is no such representative or agency, a telephone number or other information which will enable the consumer to contact the other party during the stay;
- in the case of a journey or stay abroad by a child under the age of 16, information enabling direct contact to be made with the child or the person responsible at the place where he is to stay; and
- except where insurance cover is required as a term of the contract, information about an insurance policy which the consumer may, if he wishes, take out to cover the risks of cancellation or assistance, including emergency repatriation in the event of accident or illness.

(See regulation 8.)

Question 30: The consumer has been called on jury service and cannot proceed with the package. Must I accept his request to transfer the booking to another person?

Answer: Where the consumer cannot use the package due to circumstances beyond his control he may transfer his booking to a person who satisfies all the conditions applicable to the package, provided the consumer gives reasonable notice of his intention to transfer before the date when departure is due to take place. (See regulation 10.)

However, if a condition of the package is that it should be offered to the person at the head of a waiting list in the event of cancellation, then it need not generally be transferred to a person of the consumer's choice.

◆ 4. The Consumer Has Gone Away. Is It All Over?

Question 31: What happens if something goes wrong with the holiday?

Answer: Where, after departure, a significant proportion of the services contracted for are not provided or the organiser becomes aware he will be unable to procure a significant proportion of the services to be provided, he must make suitable alternative arrangements, at no extra cost to the consumer, and possibly compensate the consumer

Question 32: Am I responsible for the hotel in Spain/Tunisia?

Answer: Yes. The Regulations make the tour operator liable for the proper performance of the obligations under the contract, irrespective of whether such obligations are performed by the tour operator himself, or by another supplier of services such as the hotel. (See regulation 15 especially 15 (1).)

Question 33: Am I responsible if something happens to the consumer when he is on holiday?

Answer: The tour operator is liable to the consumer for any damage caused to him by the failure to perform the contract or the improper performance of the contract unless the failure or improper performance is due neither to any fault of the tour operator nor to another supplier of the package services, because, for example, it was the fault of the consumer or a third party unconnected with the provision of the services contracted for, or was due to unusual or unforeseeable circumstances which could not have been avoided even if all due care had been exercised. For example, if the conditions are primitive the tour operator needs to warn prospective customers. Similarly if tourists tend to get harassed, etc... (See regulation 15 especially 15 (2).)

Question 34: Can I limit my liability?

Answer: A tour operator cannot limit his liability for death or personal injury. He can limit his liability for other loss or damage resulting from the non-performance or improper performance of the services involved in the package provided that limitation is not unreasonable. (See regulations 15 especially 15 (3) and (4).)

◆ 5. Protecting Prepayments

Question 35: Just because I sell a few packages must I protect all the money I receive in respect of the packages?

Answer: Yes. The Regulations require the organiser of a package to at all times be able to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency. (See regulation 16.)

Question 36: I am selling safari holidays as the agent for a principal established in Kenya. Am I responsible for protecting prepayments?

Answer: If the principal has no place of establishment or branch in the UK you could be responsible for protecting consumer pre-payments. (See regulation 16.)

Question 37: We are a school under local authority control. Do we need to protect prepayments?

Answer: No. A number of bodies in the public sector, such as schools and colleges run by local authorities, cannot become insolvent. Bodies in this position will comply automatically with the requirement of regulation 16 and further action on their part is unnecessary.

Question 38: Do I need to be bonded?

Answer: No. The Regulations specify three ways of protecting pre-payments. These are by bonding to a body approved for this purpose by the Secretary of State for Trade and Industry; by taking out appropriate insurance; or by ensuring that all monies paid over by a customer are held in a trust account from which they may only be withdrawn on completion of the relevant contract. Packages covered by an ATOL are exempted from this requirement. (See regulation 16 (2), 17-21.)

Question 39: I book the flight element of a package combining transport and accommodation as the agent for an ATOL holder. Do I still need to protect all pre-payments?

Answer: Yes. It is not sufficient for you to protect only pre-payments for the accommodation. This is because ATOL provides protection against the insolvency of the ATOL holder whereas the Regulations require protection against the insolvency of the organiser/retailer. If you protected only the accommodation and then became insolvent the consumer would be reimbursed for this element but could be left holding a valid air ticket which he may not be able to use.

Question 40: How do I become bonded?

Answer: You would need to become a member of one of the seven bodies approved for this purpose by the Secretary of State for Trade and Industry.

Question 41: Who are the approved bodies?

Answer: The following seven bodies have been approved by the Secretary of State for bonding purposes under the Regulations:

The Association of British Travel Agents Ltd (ABTA)

68-71 Newman Street
London
W1P 4AH
Tel: Information Department
General Enquiries: 020: 637 2444

FTO Trust Fund Ltd (Large Tour Operators only)

170 High Street
Lewes
East Sussex
BN7 1YE
Tel: 01273 477722

Association of Independent Tour Operators Trust Ltd (AITOT)

Contact: Christine Kelly
c/o Travel and General Insurance Company Limited
86 Jermyn Street
London
SW1Y 6JD
Tel: 0207 930 7714

Passenger Shipping Association Ltd (PSA)

4th Floor
Walmar House
288-292 Regent Street
London
W1R 5HE
Tel: 020 7436 2449

The Confederation of Passenger Transport

Imperial House
15-19 Kingsway
London
WC2B 6UN
Tel: 020 7240 3131

The Association of Bonded Travel Organisers Trust Ltd (ABTOT)

Contact: Christine Kelly
c/o Travel and General Insurance Company Limited
86 Jermyn Street
London
SW1Y 6JD
Tel: 0207 930 7714

Yacht Charter Association

Building 2
Shamrock Quay
William Street
Northam
Southampton
Hants
SO14 5QL
Tel: 023 80338400

Question 42: How do I find out about insolvency insurance?

Answer: The DTI does not approve insurance policies designed to comply with the requirement in the Regulations to protect consumer pre-payments. It cannot therefore advise on companies who may be able to provide such policies. Advice should be sought from the Association of British Insurers (ABI) at 51 Gresham Street, London EC2V 7HQ (tel: 020 7600 3333).

Question 43: How do I hold money on trust?

Answer: All monies paid over by the consumer must be held in the United Kingdom by a person as trustee for the consumer until the contract has been fully performed or any sum of money paid by the consumer in respect of the contract has been repaid to him or has been forfeited on cancellation by the consumer. (See regulation 20.)

Question 44: Who can be trustee?

Answer: There are no requirements laid down in the Regulations about the appointment of a trustee. Good practice would be for the trustee to be a third party, not connected with the tour operator.

A trust deed does not have to be drawn up by a solicitor; a simple request to a person to act, and agreement by that person to do so, is sufficient. However, the usual provisions of trust law will apply, and any trustee should be aware what his duties will be before agreeing to act. There is no requirement for a bank which holds the trust account to act as trustee, or to have any additional responsibilities towards the trust.

Question 45: Can I hold a sum of money on trust not to have to move every transaction in and out of the trust as it occurs?

Answer: Yes, provided that the sum of money at all times exceeds any prepayments taken on packages yet to be taken. Some banks may be willing to provide such a sum secured on assets such as property. The trustee would have to be assured that at all times the cash sum held on trust was sufficient to reimburse all consumers in the event of insolvency.

Question 46: Can I use the money on trust to pay my suppliers?

Answer: Money held on trust may **not** be used by the operator to make pre-payments to suppliers of services to him unless he is operating other than by way of business. (See regulations 20 and 21.)

Question 47: We are a bank. A customer has asked to open a trust account to meet the requirements of the Package Travel Regulations. What are our liabilities?

Answer: A bank which is not acting as the trustee but which holds a trust account established under regulation 20 cannot be held liable as a constructive trustee, in the event of the trust account funds being misappropriated, unless it has knowledge (or in the particular circumstances should have known) of the misappropriation and takes no action.

Question 48: What about repatriation?

Answer: The Regulations require operators to be able to provide sufficient evidence against the costs of repatriation, but do not specify how such protection should be arranged. The method of ensuring repatriation is left open because there is a variety of ways this might be done, and to attempt to regulate for all possible circumstances could be over-prescriptive. (See regulation 16.)

Question 49: What if I fail to fulfil my obligations under the Regulations?

Answer: Failure to comply with the provisions the Regulations will result in potential liability to pay compensation to the consumer for breach of contract or the commission of a criminal offence punishable with a fine of up to £5,000 in the magistrates' court or by an unlimited fine in the Crown court. Failure to protect consumers' prepayments is a criminal offence.

6. Still Need More Help?

Question 50: I am considering offering packages with a flight element. Is there any other specific legislation with which I would need to comply?

Answer: Whether you are selling seats only on a charter or scheduled airline or packages involving a flight element you may need to hold an Air Travel Organisers' Licence. For further information contact the Civil Aviation Authority at:

Civil Aviation Authority
ATOL Section
CAA House
45-59 Kingsway
London WC2B 6TE
Tel: 020 7832 5620/6600

Question 51: Where can I go for more help about the Package Travel Regulations?

Answer: Local authority trading standards departments are responsible for enforcing those provisions of the Regulations which carry criminal sanctions and will be able to provide advice and guidance on how to comply with the Regulations.

Question 52: Where can the consumer obtain further advice if he believes there has been a breach of contract?

Answer: If a consumer believes he has a claim against the tour operator for breach of contract he may wish to contact his local Citizens Advice Bureau which is listed in the telephone directory. Staff at the Bureau are trained to deal with all types of consumer problems and will be able to offer free advice on how to proceed.