



Legal update — October 2018

Travel, Tourism and Insurance The Package Travel Regulations 2018

Pioneering — Bahrain — Construction — Public sector — Energy — Real estate — London — Tax — IT — Dubai — Manchester — Connecting — Knowledge — Pragmatic — Malaysia — Exeter — Thought leadership — Housing — Agile — Creative — Connecting — Priv — Local government — Manchester — Environment — Focused — Islamic finance — Projects — Abu Dhabi — Corporate finance — Passionate — Employment — Regulation — Procurement — Expertise — Specialist — Planning — Investment — Committed — Delivery — IT — Go — IP — Corporate — Infrastructure — Value — Development — Private wealth — Oman — Governance — Birmingham — Corporate finance — Dynamic — Pensions — Dispute resolution — Insight — Banking and finance — Arbitration — Diverse — Regeneration — Care — Communic

On 1 July 2018, The Package Travel and Linked Travel Arrangements Regulations 2018 (PTR 2018) came in to force and replaced the Package Travel, Package Holidays and Package Tours Regulations 1992 (PTR 1992).

Both pieces of legislation are designed to give protection to holidaymakers and redress for when things go wrong, but PTR 1992 had grown increasingly outdated owing to the way in which holidays have been sold in recent years. PTR 2018 is certainly to be welcomed as giving greater protection to consumers.

Background

PTR 1992 came in to force at a time when holidays were not sold via the internet, for example. It applied to package holidays (which comprise any two of flights, overnight accommodation, and/or 'other tourist services') for an all-inclusive price. It gave tourists an ability to seek compensation from their tour operator in circumstances where the holiday supplied was not as advertised or when a tourist was injured whilst on holiday. The tour operator could be held responsible for the negligent acts or omissions of its agents or sub-contractors - for example the hotel at which an accident might have occurred.

Case law has developed over time on various questions surrounding liability and the law is fairly settled in that the safety standards applicable were those of the country in which the accident occurred.

With internet holiday sales increasing, tour operators and travel agents had sought to avoid the provisions of PTR 1992 in many ways such as through creative terms and conditions and 'dynamic' creation of customisable holidays, matching suppliers of holiday components and itemising the cost, thus avoiding the 'all-inclusive price' requirement of a package.

PTR 2018

The PTR 2018 gives effect to the Package Travel Directive issued by the European Union. The scope of what constitutes a package holiday is now much wider

and reflects the way in which holidays are bought and sold. 'Package' is given a lengthy, wide definition.

It includes a combination of at least two different types of travel service for the purpose of the same trip if the services are provided by one trader or purchased from a single point of sale (e.g. a website), advertised as a package, sold at an inclusive or total price or combined after the conclusion of a contract where the trader gives the traveller a selection of different types of travel services.

Travel service includes transport, accommodation, car rental and other tourist services which are an essential feature of the combination.

Implied into every package holiday contract is a term that the services provided will be performed properly because the provider of the package holiday will be held liable for any 'lack of conformity' which means a failure to perform or improper performance of travel services included within the package. This means that the organiser of the holiday is liable to compensate where the holiday is sub-standard, advertised facilities are not available, or injury or illness is sustained as a result of the holiday supplied.

There is, in all practical reality, no great change in the liability regime - it is the widening of the type of holiday 'caught' by the regulation, that makes the regulation wider in its effect.

The PTR 2018 also gives financial protection to travellers in the event of a supplier failure. It also allows for cancellation without termination fees where an essential part of the holiday booking changes. This could comprise the actual accommodation, the standard of accommodation or facilities, the place of departure and destination, the type and standard of transport or a service or facility advertised as prompted as forming part of the package.

The PTR 2018 does allow suppliers to change prices for holiday in certain circumstances, provided the right to do so is reserved within any holiday terms and conditions and price increases are a direct

Published by
Trowers & Hamblins

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

www.trowers.com

Trowers & Hamblins LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamblins LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamblins LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamblins LLP's affiliated undertakings. A list of the members of Trowers & Hamblins LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamblins LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive. Trowers & Hamblins LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

consequence of exchange rate changes, taxes or fuel or power charges. Any increase of more than 8% of the total cost of the holiday will allow a traveller to cancel without termination fees.

Linked Travel Arrangements (LTA)

It is important to note that the PTR 2018 define LTA's and confirm that they are not package holidays and therefore do not come with the same protection discussed above. An LTA is where a person buys one part of a holiday with one retailer and then may follow a link ('click-through') and purchases another element from another retailer. These will constitute two separate transactions and therefore are not a package.

Conclusion

The implementation of PTR 2018 is to be welcomed by tourists because not only does it provide protection when things go wrong (as its predecessor did), but it reflects the way in which modern day holidays are sold and seeks to prevent avoidance of the provisions through creative drafting of terms and conditions or clever website engineering.

October 2018 © Trowers & Hamlins

For more information please contact

Ian Brown

Partner

t +44 (0)1392 612522

e ibrown@trowers.com