
DRAFT STATUTORY INSTRUMENTS

2018 No.

**The Package Travel and Linked Travel
Arrangements Regulations 2018**

PART 5

Insolvency protection

Insolvency protection for packages

19.—(1) The organiser of a package who is established in the United Kingdom must provide effective security to cover, in the event of the organiser's insolvency, the reasonably foreseeable costs of—

- (a) refunding all payments made by or on behalf of travellers for any travel service not performed as a consequence of the insolvency, taking into account the length of the period between down payments and final payments and the completion of the packages; and
 - (b) if the carriage of passengers is included in the packages, and the performance of any package is affected by the insolvency, repatriating the traveller and, if necessary, financing the traveller's accommodation prior to the repatriation.
- (2) The organiser must provide the security under paragraph (1) to benefit travellers—
- (a) regardless of their place of residence, their place of departure or where the package is sold;
 - (b) irrespective of the member State where the entity in charge of the insolvency protection is located.
- (3) The organiser must provide the security—
- (a) under paragraph (1)(a), without undue delay after the traveller's request;
 - (b) under paragraph (1)(b), free of charge.
- (4) The organiser of a package who—
- (a) is not established in the United Kingdom or in any other member State, and
 - (b) sells or offers for sale a package in the United Kingdom, or by any means directs such activities to the United Kingdom,

must provide security in accordance with this Part.

(5) Without prejudice to paragraphs (1) to (4), and subject to paragraphs (6) to (8), the organiser must at least ensure that arrangements as described in—

- (a) regulation 20,
- (b) regulation 21,
- (c) regulation 22, or
- (d) regulations 23 and 24,

are in force.

- (6) Paragraph (5) does not apply to a package to the extent that—

- (a) the package is covered by measures adopted or retained by the member State where the organiser is established for the purpose of Article 17 of the Directive; or
 - (b) the package is one—
 - (i) in respect of which the organiser is required to hold a licence under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012(1); or
 - (ii) that is covered by the arrangements the organiser has entered into for the purposes of those Regulations.
- (7) For the purposes of regulations 20 to 24, a contract is to be treated as having been fully performed if the package or, as the case may be, the part of the package, has been completed.
- (8) For the purposes of paragraph (7), a package is to be deemed to have been completed whether or not there has been a lack of conformity.
- (9) An organiser who fails to comply with any provision of paragraphs (1) to (5) commits an offence and is liable—
- (a) on summary conviction, to a fine in England and Wales, or in Scotland and Northern Ireland to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (10) In the event of the organiser's insolvency, travellers may agree to continue the package where—
- (a) it is possible to do so; and
 - (b) a person, other than that organiser, agrees to carry out the responsibilities of the organiser under the package travel contract.
- (11) The Civil Aviation Authority is designated as a central contact point for the purposes of Article 18(2) and (3) of the Directive and may perform the duties imposed on central contact points by that Article.

Bonding

- 20.—**(1) Where an organiser, for the purpose of regulation 19(5), relies on the arrangements under this regulation, the organiser must ensure that a bond is entered into by an authorised institution under which the institution, in the event of the insolvency of the organiser, binds itself to pay to an approved body of which that organiser is a member—
- (a) a sum calculated in accordance with paragraphs (3) and (4); or
 - (b) a sum calculated in accordance with paragraph (5), if the carriage of passengers is included in the packages and the performance of the packages is affected by the insolvency.
- (2) Any bond entered into pursuant to paragraph (1) must not be in force for a period exceeding 18 months.
- (3) The sum referred to in paragraph (1)(a) must be such sum as may reasonably be expected to enable all monies paid by or on behalf of travellers under or in contemplation of package travel contracts which have not been fully performed to be repaid and must not in any event be a sum which is less than the minimum sum calculated in accordance with paragraph (4).
- (4) The minimum sum for the purposes of paragraph (3) must be a sum which represents—
- (a) not less than 25% of all the payments which the organiser estimates that the organiser will receive under or in contemplation of package travel contracts in the 12-month period from the date of entry into force of the bond referred to in paragraph (1), or

(1) [S.I. 2012/1017](#), amended by [S.I. 2012/1134](#).

(b) the maximum amount of all the payments which the organiser expects to hold at any one time, in respect of contracts which have not been fully performed,

whichever sum is the smaller.

(5) The sum referred to in paragraph (1)(b) must be no less than—

- (a) the minimum sum calculated in accordance with paragraph (4); and
- (b) such additional sum as the organiser may reasonably expect to be required to cover the reasonably foreseeable costs of repatriating the travellers and, if necessary, financing the travellers' accommodation prior to the repatriation.

(6) Before a bond is entered into pursuant to paragraph (1)—

- (a) the organiser must inform the approved body of which the organiser is a member of the minimum sum which the organiser proposes for the purposes of paragraph (3) or, where relevant, paragraph (5);
- (b) the approved body must consider whether such sum is sufficient for those purposes; and
- (c) if the approved body does not consider that the sum is sufficient for those purposes, the approved body must—
 - (i) inform the organiser that this is the case, and
 - (ii) state the sum which, in the opinion of the approved body, is sufficient for those purposes.

(7) Where an approved body states a sum pursuant to paragraph (6)(c)(ii), the minimum sum for the purposes of paragraph (3) or, where relevant, paragraph (5), is to be that sum.

(8) In this regulation—

“approved body” means a body which is for the time being approved by the Secretary of State for the purposes of this regulation;

“authorised institution” means a person authorised under the law of the United Kingdom or of a member State, the Channel Islands or the Isle of Man to carry on the business of entering into bonds of the kind required by this regulation.

Bonding where approved body has reserve fund or insurance

21.—(1) Where an organiser, for the purpose of regulation 19(5), relies on the arrangements under this regulation, the organiser must ensure that a bond is entered into by an authorised institution, under which the institution, in the event of the organiser's insolvency, agrees to pay to an approved body of which the organiser is a member a sum calculated in accordance with —

- (a) paragraphs (3) and (4);
- (b) paragraph (5), if the carriage of passengers is included in the packages and the performance of the packages is affected by the insolvency.

(2) Any bond entered into pursuant to paragraph (1) must not be in force for a period exceeding 18 months.

(3) The sum referred to in paragraph (1)(a) must be such sum as may be specified by the approved body as representing the lesser of—

- (a) the maximum amount of all the payments which the organiser expects to hold at any one time in respect of contracts which have not been fully performed; or
- (b) the minimum sum calculated in accordance with paragraph (4).

(4) The minimum sum for the purposes of paragraph (3) must be a sum which represents not less than 10% of all the payments which the organiser estimates that the organiser will receive under

or in contemplation of package travel contracts in the 12-month period from the date of entry into force of the bond referred to in paragraph (1).

- (5) The sum referred to in paragraph (1)(b) must be no less than—
- (a) the minimum sum calculated in accordance with paragraph (4); and
 - (b) such additional sum as may be specified by the approved body as representing the amount required to cover the costs of repatriating the travellers and, if necessary, financing the travellers' accommodation prior to the repatriation.
- (6) In this regulation, “approved body” means a body which is for the time being approved by the Secretary of State for the purposes of this regulation and no such approval is to be given unless the conditions mentioned in paragraph (7) are satisfied in relation to it.
- (7) A body may not be approved for the purposes of this regulation unless—
- (a) it has a reserve fund or insurance cover with an insurer authorised in respect of such business in the United Kingdom, a member State, the Channel Islands or the Isle of Man of an amount in each case which is designed to enable—
 - (i) in the event of the insolvency of the member, the refund of all payments made by or on behalf of travellers for any travel service not fully performed as a consequence of the insolvency; and
 - (ii) the costs of repatriating the travellers and, if necessary, financing the travellers' accommodation prior to the repatriation to be covered, where the carriage of passengers is included in the packages and the performance of the packages is affected by the insolvency; and
 - (b) where it has a reserve fund, it agrees that the fund will be held by persons and in a manner approved by the Secretary of State.
- (8) In this regulation, “authorised institution” has the meaning given in regulation 20(8).

Insurance

22.—(1) Where an organiser, for the purpose of regulation 19(5), relies on the arrangements under this regulation, the organiser must have insurance under one or more appropriate policies with an insurer authorised in respect of such business in the United Kingdom, a member State, the Channel Islands or the Isle of Man, under which the insurer agrees to indemnify travellers in the event of the insolvency of the organiser.

(2) The organiser must ensure that travellers are insured persons under the policy required under paragraph (1) in respect of the costs referred to in paragraph (4)(b).

(3) The organiser must ensure that it is a term of every package travel contract that the traveller acquires the benefit of a policy of a kind mentioned in paragraph (1) in the event of the organiser's insolvency.

- (4) In this regulation, “appropriate policy” means one which—
- (a) does not contain a condition which provides (in whatever terms) that no liability arises under the policy, or that any liability so arising ceases—
 - (i) in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy;
 - (ii) in the event of the policy holder not making payments under or in connection with other policies; or
 - (iii) unless the policy holder keeps specified records or makes available to, or provides the insurer with, information from those records; and
 - (b) covers the costs of—

- (i) refunding all payments made by or on behalf of travellers for any travel service not fully performed as a consequence of the insolvency, taking into account the length of the period between down payments and final payments and the completion of the packages; and
- (ii) if the carriage of passengers is included in the package, and the performance of the package is affected by the insolvency, repatriating the traveller and, if necessary, financing the traveller's accommodation prior to the repatriation.

Monies in trust

23.—(1) Where an organiser, for the purpose of regulation 19(5), relies on the arrangements under this regulation, the organiser must ensure that—

- (a) all monies, or
- (b) where regulation 24(3) applies, a lesser sum in accordance with that regulation,

paid by or on behalf of a traveller under or in contemplation of a package travel contract are held in the United Kingdom or a member State by a person as trustee for the traveller.

(2) The monies are to be held under paragraph (1) until—

- (a) the contract has been fully performed; or
- (b) any sum of money paid by or on behalf of the traveller in respect of the contract—
 - (i) has been repaid to the traveller; or
 - (ii) has been forfeited on cancellation by the traveller.

(3) The person appointed as trustee for the purposes of paragraph (1) must be independent of the organiser.

(4) The costs of administering the trust mentioned in paragraph (1) must be paid for by the organiser.

(5) Any interest which is earned on the monies held by the trustee pursuant to paragraph (1) must be held for the organiser and must be payable to the organiser on demand.

(6) Where there is produced to the trustee a statement signed by the organiser to the effect that—

- (a) a package travel contract, the price of which is specified in that statement, has been fully performed,
- (b) the organiser has repaid to the traveller a sum of money specified in that statement which the traveller had paid in respect of a package travel contract, or
- (c) the traveller has on cancellation forfeited a sum of money specified in that statement which the traveller had paid in respect of a package travel contract,

the trustee must release to the organiser the sum specified in the statement.

(7) Where the trustee considers it appropriate to do so, the trustee may require the organiser to provide further information or evidence of the matters mentioned in sub-paragraph (a), (b) or (c) of paragraph (6) before the trustee releases any sum to the organiser pursuant to that paragraph.

(8) In the event of the organiser's insolvency, the monies held in trust by the trustee pursuant to paragraph (1) of this regulation must be applied to meet the claims of travellers who are creditors of that organiser in respect of package travel contracts in respect of which the trust mentioned in paragraph (1) has been established and which have not been fully performed.

(9) If there is a surplus after those claims have been met, it is to form part of the estate of the organiser for the purposes of insolvency law.

Insurance where monies are held in trust

24.—(1) This regulation applies to any organiser who, for the purpose of regulation 19(5), makes arrangements under regulation 23.

(2) Where the organiser offers packages which include the carriage of passengers, the organiser must have insurance under one or more appropriate policies with an insurer authorised in respect of such business in accordance with regulation 22(1), under which, in the event of the insolvency of the organiser, the insurer agrees to cover the costs of—

- (a) repatriating the traveller who has purchased a relevant package; and
- (b) if necessary, financing the traveller’s accommodation prior to the repatriation.

(3) Where paragraph (4) applies, an organiser—

- (a) is not required, under regulation 23(1)(a), to ensure that all monies paid by a traveller under or in contemplation of a package travel contract are held in accordance with regulation 23; and
- (b) may, instead, ensure that a part of those monies only (the “lesser sum”) is held in accordance with regulation 23, as the case may be.

(4) This paragraph applies if the organiser has insurance under one or more appropriate policies with an insurer authorised in respect of such business in accordance with regulation 22(1), under which, in the event of the insolvency of the organiser, the insurer agrees to cover the relevant amount.

(5) Where paragraph (2) or (4) applies, the organiser must ensure that it is a term of the relevant package travel contract that the traveller acquires the benefit of a policy of a kind mentioned in paragraph (2) or (3) in the event of the organiser’s insolvency.

(6) In this regulation, an “appropriate policy” means one which does not contain a condition which provides (in whatever terms) that no liability arises under the policy, or that any liability so arising ceases—

- (a) in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy;
- (b) in the event of the policy holder not making payments under or in connection with other policies; or
- (c) unless the policy holder keeps specified records or provides the insurer with, or makes available to, the insurer information from those records.

(7) In paragraph (4), “the relevant amount” means such amount in excess of the lesser sum, as may be required to cover the costs of refunding the traveller for any travel service not fully performed as a consequence of the insolvency, taking into account the length of the period between down payments and final payments and the completion of the package.

Offences arising from breach of regulation 23

25. If the organiser makes a false statement under regulation 23(6), the organiser commits an offence and is liable—

- (a) on summary conviction, to a fine in England and Wales, or in Scotland and Northern Ireland to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

Insolvency protection and information requirements for linked travel arrangements

26.—(1) Any trader who facilitates a linked travel arrangement and is established in the United Kingdom must provide effective security to cover, in the event of the trader’s insolvency, the reasonably foreseeable costs of—

- (a) refunding all payments the trader receives from travellers for any travel service which is part of the linked arrangement and is not performed as a consequence of the trader's insolvency, taking into account the length of the period between down payments and final payments and the completion of the linked travel arrangements; and
 - (b) if the trader is the party responsible for the carriage of passengers, and the performance of the linked travel arrangement is affected by the insolvency, the traveller's repatriation and, if necessary, financing the traveller's accommodation prior to the repatriation.
- (2) The trader must provide the security under paragraph (1) to benefit travellers—
- (a) regardless of their place of residence, their place of departure or where the package is sold; and
 - (b) irrespective of the member State where the entity in charge of the insolvency protection is located.
- (3) The trader must provide the security—
- (a) under paragraph (1)(a), without undue delay; and
 - (b) under paragraph (1)(b), free of charge.
- (4) Any trader who—
- (a) is not established in the United Kingdom or in any other member State, and
 - (b) sells or offers for sale a linked travel arrangement in the United Kingdom, or by any means directs such activities to the United Kingdom,
- must provide security in accordance with this regulation in respect of those arrangements.
- (5) Without prejudice to paragraphs (1) to (4) and subject to paragraph (6), the trader must at least ensure that arrangements as described in—
- (a) regulation 20,
 - (b) regulation 21,
 - (c) regulation 22, or
 - (d) regulations 23 and 24,
- are in force and, for that purpose, a reference in those regulations to “organiser” is to be read as a reference to “trader”, a reference to “package” or “package travel contract” is to be read as a reference to “linked travel arrangement” and a reference to regulation 19(5) is to be read as a reference to this paragraph.
- (6) Paragraph (5) does not apply to a linked travel arrangement to the extent that the linked travel arrangement—
- (a) is one which is covered by measures adopted or retained by the member State where the trader is established for the purpose of Article 17 of the Directive; or
 - (b) includes a travel service —
 - (i) in respect of which the trader is required to hold a licence under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012; or
 - (ii) which is covered by the arrangements the trader has entered into for the purposes of those Regulations.
- (7) Before the traveller is bound by any contract leading to the creation of a linked travel arrangement, the trader facilitating linked travel arrangements, including where the trader is not established in a member State but, by any means directs such activities to a member State, must—
- (a) state in a clear, comprehensible and prominent manner that the traveller—

- (i) will not benefit from any of the rights applying exclusively to packages under these Regulations and that each service provider will be solely responsible for the proper contractual performance of the service;
 - (ii) will benefit from insolvency protection in accordance with paragraphs (1) to (5); and
 - (b) provide the traveller with a copy of these Regulations.
- (8) In order to comply with paragraph (7), the trader facilitating a linked travel arrangement must provide the traveller with the information referred to in that paragraph—
- (a) using the form and wording set out in Schedule 6, where the trader facilitates an online linked travel arrangement within the meaning of regulation 2(3)(a) and the trader is a carrier selling a return ticket;
 - (b) using the form and wording set out in Schedule 7, where the trader facilitates an online linked travel arrangement within the meaning of regulation 2(3)(a) and the trader is not a carrier selling a return ticket;
 - (c) using the form and wording set out in Schedule 8, where the linked travel arrangement is an arrangement within the meaning of regulation 2(3)(a) and the contract is concluded in the simultaneous physical presence of the trader (other than a carrier selling a return ticket) and the traveller;
 - (d) using the form and wording set out in Schedule 9, where the trader facilitates an online linked travel arrangement within the meaning of regulation 2(3)(b) and the trader is a carrier selling a return ticket; and
 - (e) using the form and wording set out in Schedule 10, where the trader facilitates an online linked travel arrangement within the meaning of regulation 2(3)(b) and the trader not a carrier selling a return ticket.
- (9) Where a linked travel arrangement is not an arrangement of the kind described in subparagraphs (a) to (e) of paragraph (8), the trader must provide the information referred to in paragraph (7)—
- (a) in any form set out in Schedule 6, 7, 8, 9 or 10 which the trader considers is most appropriate for the purposes of providing the information, taking into account the particular circumstances of the linked travel arrangement being facilitated; and
 - (b) if necessary, making such amendments to that form as are reasonably required to provide the information clearly.
- (10) A trader who fails to comply with any provision of paragraphs (1) to (9) commits an offence and is liable—
- (a) on summary conviction, to a fine in England and Wales, or in Scotland and Northern Ireland to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (11) Where the trader facilitating a linked travel arrangement does not comply with the requirements set out in this regulation, the rights and obligations specified in regulations 9 and 12 to 14 and in Part 4 apply in relation to the travel services included in the linked travel arrangement.
- (12) Where a linked travel arrangement is the result of the conclusion of a contract between a traveller and a trader who does not facilitate the linked travel arrangement, that trader must inform the trader facilitating the linked travel arrangement of the conclusion of the relevant contract.