



PACKAGE TRAVEL LEGISLATION:

Updating the Framework

TA Consultation Response

Consultation URL:

<https://www.gov.uk/government/calls-for-evidence/package-travel-legislation-updating-the-framework>

How rules should apply to UK-only package holidays

1. What consumer protections are particularly important for those holidaying in the UK and why?

Existing consumer protection on distance-selling, unfair trading, contract law, advertising standards, and health and safety protections are all crucial consumer protections which are not subject to reform under this consultation and which we do not seek to change. Additionally, we believe that consumers who make bookings which include transport enjoy important consumer protection under the package travel regulations as explained below, and as such, we do not propose to remove those from scope, subject to the other changes we propose to the Package Travel and Linked Travel Arrangement Regulations 2018 ("PTRs") below.

2. Do you think that:

- a. All domestic-only arrangements should be exempt from the Regulations; or**
- b. Domestic-only arrangements that do not include travel should be exempt from the Regulations; or**
- c. Domestic-only arrangements should continue to be in scope of the Regulations as they are now?**

Please provide an explanation for your answer, citing any relevant data where possible.

We support option b). We believe this is the fundamental change that is needed in respect of package travel.

The effect of the 'any two of four' rule in the PTRs can be dramatic. If, for instance, a B&B, guesthouse or hotel in the UK offers a product to their customers that combines a weekend stay with tickets to a local attraction, a meal in a local pub, or an activity off-site such as a round of golf or watercolour lessons, this could be deemed to be selling "package travel". This is the case when the "Other Tourist Service" forms a "significant proportion of the value" (defined as 25% of the value) or where the other tourism service is deemed to be an "essential feature" of the booking.

Bringing these types of arrangements into the scope of the regulations causes two significant problems for the 180,000 micro-businesses and SMEs that comprise the UK domestic tourism industry.

Taking a small accommodation business as an example, they would be required to be bonded or have insolvency insurance, which is either prohibitively expensive, or in many cases simply not available, especially to small businesses. Alternatively, businesses can put customers' funds into a trust account but this is hugely detrimental to the cashflow of small businesses and again prohibitive.

It is important to note that, when the Package Travel Directive was being developed in the EU, the UK Government's position was precisely the same as that which we are now advocating - that the definition of a package had to include transport.

We do not believe these benefits would come at significant cost to the customer in terms of protection.

The two main consumer benefits of the PTRs are that they ensure that UK tourists are not stranded overseas with no way of getting home and to ensure that, if legal redress were required, the customer would be able to pursue this through the UK courts. However, for value-added products, neither of these two protections is needed. As the customer already likely lives in the UK and has generally driven to the accommodation premises, or has made their own travel arrangements, they do not need to be repatriated and any transport arrangements remain unaffected.

Second, if value-added products are removed from the scope of the PTRs, other elements of UK consumer law would still apply and give significant protection to consumers as currently exists for the selling and delivery of all kinds of services.

For these reasons support option b) in the consultation.

We recognise the fact that other actors in the tourism industry – especially those who focus on international inbound and outbound travel – take a different view on this proposed reform, seeing it as potentially giving domestic travel an unfair competitive advantage, or providing consumers booking domestic holidays less consumer protection. However, on balance, and taking these views into account, we believe there is good justification for making this change as outlined in the rest of this consultation response.

3. If you offer or have considered offering domestic packages, what impact does the current regulatory regime have on your decisions to put together domestic packages?

As a trade association we do not provide these services but we have data from businesses who do which are set forth below.

4. Would removing domestic packages from the scope of the regulations support businesses to:

a) offer more choice?

b) offer lower cost options?

- c) both?
- d) neither?
- e) something else?

Please explain your response, setting out how and to what extent this reform could lead to benefits or detriment to business.

c) both.

The Tourism Alliance has undertaken a survey of domestic tourism businesses regarding the impact of the PTRs. The results of this survey support previous findings that the PTRs have a detrimental impact on domestic tourism in the UK.

The main findings of the survey are:

- **47% of tourism businesses stated that they never offered packaged or value-added products to their customers.**
- **61% of the respondents stated that complying with the PTRs was the reason why they did not sell packaged products**
- **74% of business said that they either “definitely would” (36%) or “probably would” (38%) supply value-added products to customers if these products were removed from the scope of the Package Travel Regulations. Only 2% said that they “definitely wouldn’t”**
- **On average, businesses thought that being able to provide value-added products would boost their income by 9%, with 15% thinking that it would increase their revenue by over 20%**

The survey also found considerable agreement among the respondents that improving the ability to provide customers with value-added products would generate a range of other benefits:

Making this change would:

- **Grow the domestic tourism market as a whole – 91% agreed**
- **Increase competition between businesses – 59% agreed (only 7% disagreed)**
- **Make the UK a more attractive destination for overseas visitors – 82% agreed**
- **Increase visitor satisfaction – 74% agreed (only 4% disagreed)**
- **Boost the productivity of the UK tourism industry – 68% agreed**
- **Improve seasonal spread – 66% agreed**

Note in particular the finding that businesses estimated that removing value-added products from the scope of the PTRs would, on average, increase their revenue by 9%. UK domestic tourism generates £24.7bn per annum. A 9% increase would therefore equate to an additional £2.2bn per annum in domestic tourism expenditure.

Research by Deloitte and Oxford Economics for VisitBritain on the economic contribution of tourism to the UK economy, Tourism: Jobs and Growth, found that an additional FTE job in the tourism sector was created for every £54,000 increase in expenditure by visitors.

Using this Government-accepted figure indicates that the £2.2bn increase in domestic tourism expenditure would therefore create an additional 40,000 jobs.

Additionally, the Tourism Alliance surveyed a number of Destination Management Organisations (tourists boards; including newly accredited Local Visitor Economy Partnerships (LVEPs)) in England to see if a) they

were supportive of this proposal, b) to ask if they believed that tourism businesses in their area were being hampered by the regulations as currently written and c) to ask if they believed the DMO itself would benefit from the change by being better able to promote and sell combined services in their destination.

- **90% of DMOs surveyed agreed with our policy proposal. A total of 85% strongly agreed.**
- **90% of DMOs said the current rules are hampering the ability of businesses in their area to offer value-added products to consumers. 45% said it was hampering it a great deal.**
- **90% of DMOs said our proposal would benefit their DMO in being able to market products and services in their area. 55% said it would benefit them a great deal.**

5. What impact do you think the pandemic has had on demand for domestic holidays? What attitudes and behaviours do you think consumers might have towards domestic packages going forward? Please cite any evidence.

The long-run impact on domestic holidays of the pandemic is still playing out and to be determined. Clearly Covid had a huge disruptive impact on people's holidays during 2020, 2021 and even into 2022. In 2023 tourism as a whole has still not recovered to its 2019 peak. On the one hand being largely unable to travel abroad during the pandemic has meant that there was significant pent-up demand for international travel. On the other hand, this also meant that people were more likely to look at domestic holiday options of all kinds, and may have recognised the benefits of holidaying in the UK. The long-run Covid impacts have also been mixed up with the effects of Brexit and – crucially – of the cost-of-living crisis.

We will have more of an understanding of this when the final data for 2023 has been produced and analysed by VisitBritain. The latest full-year data for domestic overnight stays are for 2022. In 2022 GB residents made 106.9m trips and spent £27.6bn. Unfortunately, these data cannot be directly compared to 2019 due to methodological changes. However, there are some useful data points¹.

The latest quarter results are from Q2 2023. If we compare that quarter with the same quarter in 2022 we see the following:

Period	Number of overnight trips (m)	Value of overnight trips (£bn)
Q2 2022	23.5	6.0
Q2 2023	25.1	6.7

We understand VisitBritain are looking into acquiring some analysis in order to allow comparison between these data and pre-2020 data. We would welcome this as comparison to 2019 – the high water mark for tourism – is crucial to understand the long-run impact on domestic tourism.

The VisitEngland-commissioned, and BVA BDRC-run Domestic Sentiment Tracker has been hugely helpful to the industry in understanding holidaymakers' attitudes and intentions². The latest wave of data was published on 21st November 2023. There are some key data in this report.

The impacts of the cost-of-living crisis have been tracked month-by-month. The rising cost of living is still cited as the top barrier to taking an overnight trip in the next six months (36%), even though this figure has dropped since its high in September 2022. When asked how the cost-of-living crisis is likely to influence their decision to take a UK short break or holiday in the next six months, 27% say they intend to reduce the number of UK overnight trips, 32% said they would look for cheaper accommodation, and 29% said they would look to spend less on eating out.

¹ <https://www.visitbritain.org/research-insights/great-britain-domestic-overnight-trips-latest-results>

² <https://www.visitbritain.org/research-insights/domestic-sentiment-tracker>

It is clear from the data that people are looking to keep their spending in check and are looking for value propositions as they navigate the cost-of-living crisis - 47% of people still believe the worst is still to come. Innovative, value-added, consumer-focussed packages are an ideal way for businesses to meet this consumer need.

Setting a minimum cost threshold for rules to apply

6. Do you think that a minimum cost threshold should be set below which package travel rules should not apply? Please explain why and what impact you think these proposals could have on businesses and consumers. Please cite any evidence that informed your position.

We do not support this as a method of reforming the regulations. A cost threshold would arbitrarily place some packages into scope, and others out, would create geographic and seasonal differences such that some identical packages would be in-scope in London, but out-of-scope in other parts of the country, for instance, or would be in-scope in summer and out-of-scope in winter, and an absolute cost value would need to be updated every year to maintain relevance.

7. If there were to be a minimum threshold, do you think it would be most appropriate for the threshold to be set at:

- a. the price of the package over all travellers; or**
- b. the average cost per person; or**
- c. another measure of value (if so, please describe).**

Please explain.

n/a

Regulation of Linked Travel Arrangements

8. Do you think the regulatory position on linked travel arrangements should be

- a. kept as it is; or**
- b. simplified; or**
- c. incorporated into the definition of a package; or**
- d. removed from the Regulations?**

Please explain your answer, outlining potential impacts on businesses and consumers and any evidence that informed your position.

The regulations around Linked Travel Arrangements (LTAs) are confusing, complex and in some cases little-used. While we believe removing LTAs from the regulations entirely would therefore make sense, the question follows as set out in the consultation as to whether arrangements which would currently fall under LTAs should instead fall under PTRs, or fall out-of-scope completely.

Given that neither of these scenarios is especially desirable, and could give rise to loopholes or additional burdens on businesses and complexity for consumers, it may be advisable to reform the operation of LTAs as set out below.

In any case, it is important that the reform to domestic arrangements we outlined above also be applied to any changes in respect of LTAs, as is proposed on page 15 of the consultation document.

9. If you think the definition should be simplified, what would you consider the best way to do this and why?

Experience with LTAs is limited as most business do not provide arrangements which fall into scope.

We would not be opposed to the simple removal of LTAs from the regulations, but on balance we believe that retaining but simplifying the definition of LTAs would be the best course of action to make sure that consumers are adequately protected, that loopholes are not created, and that businesses and consumers can have more clarity over when an LTA is created.

To do this we would support the proposal on page 15 of the consultation document to remove Type B LTAs and amend the definition of Type A LTAs.

Type B LTAs may be created by use of targeted linked booking processes within 24 hours.

The definition is:

A trader facilitates in a targeted manner the procurement of one or more additional service(s) from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

As is noted in the consultation, the industry makes little use of these LTAs as the definition is quite a narrow one. If businesses target consumers after 24 hours, or if they use general rather than targeted methods, an LTA is not created. Note that Type B LTAs do not require that the second contract be with the same trader, nor in fact that there be a commercial relationship between the first and second trader.

At the same time, 'facilitation' is drawn broadly, and 'includes the idea of "enabling", "making it possible to", "encouraging" and similar ideas. This should be considered in conjunction with "in a targeted manner."

Targeted vs general methods can also give rise to confusion. When does a general method become a targeted one? Is it targeted if the offer is tailored to a particular time or year, as opposed to the specific trip, for instance?

This is clearly a confusing and complex set of regulations and therefore it is of little surprised that it is not very often utilised by industry. Given that the consumer concludes contracts with different traders, and that there is little difference to the consumer between booking inside or outside 24 hours, we believe it makes sense to simplify by removing Type B LTAs entirely so that these types of bookings fall entirely out of scope. We do not believe that consumers would consider two contracts entered into with two different traders would form a package or an LTA.

On balance we would support the retention of Type A LTAs, although we would support small changes to simplify and clarify their operation. In particular, the definition should be altered to be clear that an LTA is only created when the additional service is booked with the same trader, not with linked traders with a separate contract.

Information Requirements for Linked Travel Arrangements

10. Which information requirements are particularly important? Please explain why you think this.

It is important for consumers to know when a package or LTA has been created under the regulations so consumers are aware of their rights.

11. Which information requirements do you think could be removed or reduced whilst still ensuring consumers receive the information they need?

It is unusual that there is an obligation on traders to explicitly inform consumers that the booking is not a package under the regulations. This may well give rise to concern and confusion amongst consumers who choose to engage with the information provided. It would be better, more logical, and simpler to inform the consumer what it is rather than what it is not, i.e. it is a Linked Travel Arrangement.

The list of information requirements in the schedules – five different scenarios – demonstrates the complexity of the current PTR and LTA arrangements.

12. What would be the impact on businesses and consumers of simplifying the information provision requirements for linked travel arrangements?

Simplifying the regulation would be of benefit to both consumers and traders. Changing the requirements so that consumers are aware of when their booking as become a package or a linked travel arrangement would stop possible confusion arising by being told what their booking is not. Removing the associated red tape will also end this particular regulatory burden on businesses and free them to offer additional services to consumers and help them generate growth.

Flexibility over how insolvency protection is provided

13. To what extent would increased flexibility in insolvency protection help businesses to meet their obligations under the Regulations?

Additional flexibility over how insolvency protection is provided is of course helpful, and could assist business in providing some value-added services and products to consumers, but this is largely an academic issue, as large numbers of business in the tourism industry will continue to be excluded from being able to access the kind of protection needed to operate under the PTRs. Even where businesses may be able to get some kind of insolvency protection the cost of doing so would likely completely outweigh any commercial benefit in doing so.

One large insurance provider will only provide cover for business with a minimum turnover of £45,000. Given the preponderance of micro-businesses in the tourism accommodation sector a large proportion would fall outside of this. Even if they passed this threshold the provider would also include capital reserves and the 'nature of the management team' as factors in deciding whether to provide cover and at what premium. It is extremely unlikely that the vast majority of small and micro-businesses in this sector would be able to get cover, and even if they did, that it would be commercially beneficial to do so.

14. Would there be any challenges associated with increased flexibility in insolvency protection, particularly for compliance and enforcement?

n/a

15. In what other ways could the cost to package travel businesses of securing insolvency protection be reduced without compromising consumer protections?

n/a

How “other tourist services” form part of the rules.

16. Does the inclusion of ‘other tourist services’ in the Regulations serve an important purpose?

Domestically, only where transport is an included element in the package for reasons set out above. For international travel we believe that a continuation of the current ‘2 in 4’ rule, including ‘other tourist services’ makes sense, where there is much more jeopardy on the traveller, where the additional protections may be needed, and where the difficulty of dealing with any issues that might arise with the other service providers would likely be harder.

17. Is there sufficient clarity about when an ‘other tourist service’ will form part of a package?

There is broad clarity about what an ‘other tourist service’ is, but less so about under what circumstances it forms a package. This is further explained below in Q19.

18. Should the ‘significant proportion’ criterion be removed from the definition of other tourist services?

Both the ‘significant proportion’ and ‘essential feature’ criteria present their own problems.

On balance we are supportive of the proposal to move only to essential feature. If the Government is not minded to enact the key change to domestic bookings outlined above this would at least be an improvement on the current situation.

Changing to an ‘essential feature’ only definition would give businesses more flexibility to sell value-added products and services where it can be confident that they are not an essential feature of the booking and where the consumer would not believe they were either.

The current definition of 25% requires significant administration and monitoring by business which, on top of the other barriers referred to above, reduce any potential benefits to zero. Take for instance the example of an accommodation provider also offering a meal in a local restaurant. He or she may suddenly find that a certain booking has been brought into PTR scope because the consumer included an optional extra course at dinner, or because there were three guests rather than two, or because it was an off-season mid-week booking which the accommodation provider’s dynamic pricing engine had discounted without their intervention or knowledge, or if the consumer chooses to book a pre-pay rate rather than a flexible one. All

these elements could trip a booking into PTR scope regardless of whether the additional service is an essential element or not.

Moving to a definition relying only on 'essential feature' would remove all these calculations and anomalies: a tourist service is either an essential feature of the booking or it is not regardless of its relative value to the package.

This change would be of especial benefit in dealing with seasonality and regional disparities as the value of one element of the arrangement compared to the overall value would no longer be the operative criterion. Instead the criterion apply uniformly depending only on whether the other tourist service was an essential feature of the booking or not.

However, if this change were to work it would need significant guidance from Government which would be apt for further engagement with industry. This change would only prove beneficial if businesses end up with more clarity rather than less about when something may fall under the PTRs.

Although the Government is not consulting on this additional point, it is nevertheless important to say that there must be some threshold in order for arrangements to fall into scope. Neither the 25%, not 'essential feature' is ideal, and both are to some extent blunt tools, but on balance removing the arbitrary 25% threshold is a sensible way forward and will mean that consumers are adequately protected while freeing businesses to offer additional value products and services.

19. Is it clear what forms an 'essential feature' of the package, so consumers and businesses understand when a package has been created?

No, not under current Government guidance. Other than reference to the wording in the regulations, the only other guidance is provided in case studies with wording such as '...unlikely to be...', "...it might be different if...", and "...arguably not an essential feature." This kind of woolly guidance is of very limited use to businesses.

Further clarity on this is needed in any case, but certainly if it were to be the main or sole criterion. Many small businesses will be conscious of the risk of falling into scope of the PTRs for reasons outlined above, and would need significant assurances that they were proceeding lawfully.

To which travellers should package travel rules apply?

20. Do you think the definition of traveller should be changed? If so, how and what impact would this have?

We do not support removing business travel from scope for two main reasons. Firstly, this would probably mean tracking whether a consumer was a business or leisure traveller during the booking journey for every business in the sector which would require significant alterations to platforms and websites. Secondly the clear lines between the two types of travel are becoming increasingly blurred as blended travel ('bleisure') becomes an ever-more-important type of booking.

21. What do you think would be the impact of removing all business travellers from the definition of traveller?

n/a

Further Technical Changes

Redress from Third Parties

22. If you are an organiser of package travel, have you been able to obtain effective redress from third parties?

We don't have much insight into this issue given that the restrictive nature of PTRs means that few companies make themselves subject to its provisions.

23. Have you had any particular or recurring problems in obtaining redress? If so, please provide details.

n/a

24. What would improve package travel organisers' ability to obtain timely and effective redress from suppliers?

n/a

25. What would be the impact of removing Regulation 29 from the Regulations?

n/a

Whether rules should allow for extenuating circumstances

26. What are your views on how well the Regulations operated during the COVID-19 pandemic?

The Competition and Markets Authority (CMA) undertook an investigation into businesses allegedly failing to respect cancellation rights during the pandemic, including some in the domestic holiday sector³. The CMA's work in this area demonstrated that in most cases the PTRs were not the most relevant operative law that supported consumer rights in this area. In fact, the Consumer Rights Act 2015 was relied upon much more heavily. The PTRs were only referenced in respect of cancelled holidays in light of FCO travel advice, thereby limiting their relevance to international bookings⁴.

27. Do you think any changes should be made to the Regulations to account for extreme extenuating circumstances impacting the ability to pay refunds quickly?

The travel and tourism sector was extremely badly affected by Covid and is still very much feeling the effects. While we want to make sure that consumers are appropriately protected, we agree that including reference to extenuating circumstances in the rules would give flexibility in handling situations that might arise in future. It

³ <https://www.gov.uk/government/news/covid-19-cma-to-investigate-cancellation-policy-concerns>

⁴ <https://www.gov.uk/government/publications/cma-to-investigate-concerns-about-cancellation-policies-during-the-coronavirus-covid-19-pandemic/the-coronavirus-covid-19-pandemic-consumer-contracts-cancellation-and-refunds>

is hard to be precise about how this could work in practice, and could be subject to Government guidance at the time of such circumstances, but using this opportunity to include such wording in the regulations seems sensible.

28. If so, what factors do you think should be considered as part of a definition of extreme extenuating circumstances?

Where businesses are forced to close or restrict their operations as a result of Government regulations or instructions, this at the least should be considered extenuating circumstances. While, per above, the PTRs may well continue to be less important in the protection and enforcement of consumer rights compared to other laws and regulations in these circumstances, nevertheless, for clarity and assurance, including such a reference would be sensible.

29. Are there other changes that should be made to the Regulations considering the pandemic and if yes, what are they?

n/a

Territorial restrictions on insurance cover

30. What are your views on relaxing territorial restrictions on insurance cover for insolvency protection providers to allow supply by those regulated outside the UK?

Again, for the above-referenced reasons this is mostly an academic issue. However, we would support the additional flexibility that this would bring as long as businesses ensured that the protection they were buying was appropriate and regulated we think relaxing the territorial restrictions may provide some marginal benefit.

31. What impact would doing so have on the cost and quality of cover?

While this is likely to have some impact on the cost of cover, it is unlikely to have enough of an impact to enable businesses to offer value add products and services where they are currently unable to do so.

Making it easier for the Government to update the information requirements

32. Are there any parts of the information requirements where you think flexibility is particularly needed to ensure the requirements stay up to date?

We oppose this change as we would be concerned about any changes that may be made to requirements without sufficient consultation with industry and consumer groups. Businesses need certainty in the long-term about what they are required to do and what information they must provide. Ministers changing those requirements should happen sparingly, only where justified, and following consultation.