



## **Package Travel Legislation:**

### **Updating the Framework**

#### **Analysis and briefing for Tourism Alliance members**

**November 2023**

#### **Consultation URL:**

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

#### **Background**

The Tourism Alliance's position for some time has been to push for reform to the Package Travel Regulations framework as it related to domestic tourism. The Department for Business and Trade (DBT) has recognised that there is a desire from many to see reform in this area, and that there is a potential opportunity for sector growth if changes are made to the regulations, and are consulting on some proposed changes and how they may be made.

The call for evidence closes at 2359 on 13 December 2023.

The consultation is split into a number of chapters with a number of specific questions asked in each one. In this Analysis and Briefing document we will give some high level comments in each of those chapter areas. Our more developed consultation response, answering each question in turn, will follow in due course. This is designed to guide members in the development of their own submission, and also to provide an opportunity for feedback into the TA to inform our final submission.

This work has been guided by the PTR Policy Working Group. Please note that the views outlined in this paper do not necessarily reflect the views of all members of the Tourism Alliance.

There is further background to the regulations provided in the Government's consultation document as well as in the [Tourism Alliance White Paper on Package Travel Regulations \(v3\)](#) so we will not repeat that here.

## How rules should apply to UK-only package holidays

### The fundamental change that is needed

We support option b): *Domestic-only arrangements that do not include travel should be exempt from the Regulations.*

This is the fundamental reform that we believe is needed and all the other areas covered in the consultation are supplementary to this.

As a reminder, any two of four elements constitute a package under the regulations.

The four elements are:

- “**Carriage of passengers**” (including flights, trains and coaches)
- “**Accommodation**”
- “**Motor vehicle hire**” and
- “**Any other tourist service**”.

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” and the B&B operator deemed to be a tour operator. This is the case when the “Other Tourism 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.

### The problem

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.

It is important to note that, when the Package Travel Directive was being developed in Europe, 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.

### The impact of making this change

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

Businesses surveyed 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.

### DMO support

The Tourism Alliance surveyed a number of Destination Management Organisations (tourists boards) 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% 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% 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.

### Consumer protection will not be significantly affected

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 was required, the customer is 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 we are strongly in favour of option b) in the consultation.

## **Setting a minimum cost threshold for rules to apply**

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 the North West 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.

## **Regulation of Linked Travel Arrangements**

The regulations around Linked Travel Arrangements (LTAs) are confusing and little-used. While we believe removing LTAs from the regulations entirely would therefore make sense, the question follows 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, it may be better to leave the LTAs in the regulation, but if possible, to simplify them. 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.

## **Flexibility over how insolvency protection is provided**

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.

## How other tourist services form part of the rules

The main issue here how to define 'significant proportion' and/or 'essential feature' of the package, which is the current threshold for an arrangement to form a package under the PTRs. Under retained EU law, 'significant proportion' is defined as 25% of the value of the package, whereas 'essential feature' is not further defined (although some case studies are provided in Government guidance).

The Government is consulting on whether to remove the 'significant proportion' element and simply rely on 'essential feature'.

On balance we are supportive of this proposal. If the Government is not minded to enact the key change to domestic bookings outlined above this would at least be a significant 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.

However, for this change to be as productive as possible, more Government guidance would be needed on how business should apply the 'essential feature' 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.

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.

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%, nor '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.

## To which travellers should package travel rules apply

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.

## **Further technical changes**

### **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.

### **Whether rules should allow for extenuating circumstances**

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 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.

### **Territorial restrictions on insurance cover**

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.

### **Making it easier for the Government to update the information requirements**

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.