

Department for Business and Trade (DBT)
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Consultation Response

Which? response to the Department for Business and Trade (DBT)'s call for evidence on *Package Travel Legislation: Updating the Framework*

Consultation deadline: 13/12/2023
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Summary

Which? welcomes the opportunity to respond to the Department for Business and Trade (DBT) call for evidence on Package Travel Legislation: Updating the Framework. This review of the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs) presents a good opportunity to enhance the current framework governing package holidays and strengthen its enforcement mechanisms. It is fundamental that the government ensures that any changes to these important protections build on their primary objective to provide a high level of consumer protection, and effectively safeguard and empower UK travellers. For these reasons, we urge the government to strengthen and underpin package travel rights for consumers with separate statutory measures rather than make deregulatory changes through the use of its powers under the Retained EU Law (Revocation and Reform) Act.

- The government must deliver adequate and effective public enforcement mechanisms for driving compliance with the PTRs, and strengthen the private enforcement framework with a reform of the Alternative Dispute Resolution system in this sector and the establishment of opt-out collective redress procedures.
- Given the focus of this call for evidence on the non-flight package sector, clarity is needed with regards to the government's plans to review the rules governing flight-inclusive packages and flight Linked Travel Arrangements (LTAs). In light of the overlap with the CAA's ATOL reform, we urge the Department for Business and Trade (DBT) and Department for Transport (DfT) to work together on a comprehensive and coherent set of reforms for the flight-inclusive and non-flight inclusive package sectors.
- The introduction of exemptions for non-flight domestic packages and packages under a certain value would be financially damaging to UK consumers whose current protections would be significantly reduced. The government itself estimates that in the worst case scenario these proposals would respectively add £8m and £26m in annual costs to

consumers. These exemptions to the rules governing the framework would dilute existing consumer rights and create more complexity, confusion and legal uncertainty for consumers, businesses and regulators.

- Linked travel arrangements should provide appropriate levels of consumer protection in the form of liability rules for the performance of the travel services and enhanced insolvency protection. This could be achieved by including these travel arrangements under the package rules, which would provide greater clarity to consumers and consistent application of the protections for those businesses that sell them.

Introduction

The Package Travel Regulations, which implemented the EU Package Travel Directive (PTD) 2015 in the UK, and building on previous legislation dating from the early 1990s, provide for important legal and financial protections. As such, they are fundamental to holidaymakers; and the travel industry itself recognises how “the protections afforded by these regulations are essential to maintaining consumer confidence”.¹

Package holidays are one of the most popular ways of booking a holiday. During the pandemic and in a climate of cost of living pressures, package holidays proved to be a popular choice for travellers seeking convenience, value for money, legal clarity and reassurance. The consumer rights granted under the Regulations have been effective in giving travellers clear and strong cancellation rights, and the security that their money would be protected in the event of the package organiser’s insolvency.

For these reasons, it is important that the current definition of packages and their scope is retained in accordance with the legislation’s primary objective to provide a high level of consumer protection. With this in mind, it is crucial the government includes a clause in the updated legal framework setting out that its objective is to secure a high level of consumer protection. In addition, the government must ensure it maintains the principle set out in Regulation 8 of the PTRs which establishes that the burden of proving compliance with the information requirements rests with the package organiser or the retailer as they would be in a much better position to have access to the evidence to do so.

In the context of soaring living costs, and amidst the multitude of booking options available in the market, there’s a need to empower consumers with the tools to make informed decisions when making these big purchases and to ensure the regulatory framework adequately protects consumers from potential harm and can be effectively enforced.

Improving compliance and enforcement of the Regulations:

- The government must deliver adequate and effective enforcement mechanisms for driving compliance with the insolvency and information requirements contained in the

¹ ‘Mark Tanzer address to ABTA Travel Matters conference’, ABTA, December 2022. Link:

<https://www.abta.com/news/mark-tanzer-address-abta-travel-matters-conference-tuesday-6-december-2022>

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Regulations, with a recent international study pointing to low levels of compliance with the information requirements for packages among holiday websites.²

- In its 2019 review of the PTRs, BEIS stated that it would “continue to work with the CAA and Trading Standards in order to support compliance and enforcement”³. The government must ensure both the CAA and local authority Trading Standards are adequately resourced and have access to effective powers to monitor business practices and undertake prosecutions.
- The relevant enforcers of the Regulations have previously pointed out the need to address non compliance issues in the holiday sector. The Civil Aviation Authority (CAA) raised concerns about third party sales from some online businesses who “appear to have limited appreciation of the legal framework in place, thereby delaying or preventing refunds being made as well as potentially denying the consumer other important legal protections”.⁴ The Chartered Trading Standards Institute (CTSI) also called for enhanced enforcement provisions and sanctions for breaches of the PTRs and for the establishment of “a sector-specific offence for providing incorrect/false/misleading information to consumers” as in the 1992 Package Travel Regulations.⁵
- The government should also work towards establishing opt-out collective redress procedures enabling groups of consumers to seek redress through the courts, and reform the Alternative Dispute Resolution framework in the package holiday sector to ensure more travellers have access to alternative means of resolving complaints other than the courts.
- Furthermore, to better protect consumer payments and improve compliance with refund obligations, it should consider the benefits of establishing a default position on basic packages limiting prepayments for bookings made significantly in advance of the holiday to a maximum proportion of the total price.

Need for joined up consumer reforms:

- It is crucial that government departments work together to ensure that the multiple reviews of consumer regulations in aviation and travel that are currently underway or planned are effectively joined-up. The CAA has been working on a reform of the ATOL scheme for a few years “looking at changes which the CAA is able to make through its own regulatory powers”.⁶ The scope of this reform is limited to the financial regime

² IMCO (2023) The performance of the Package Travel Directive and broader consumer protection issues in the implementation of passenger rights, September 2023. The analysis of travel organisers websites found that the majority of businesses do not comply with all the information obligations set out in Article 5 of the Package Travel Directive.

³ The Package Travel and Linked Travel Arrangements Regulations 2018, Review July 2018-March 2019, BEIS, July 2019. See para 71.

⁴ CAA Response to 2021 Government Consultation Reforming Competition and Consumer Policy. Driving growth and delivering competitive markets that work for consumers, CAP 2269.

⁵ CTSI (2023) Wish you were clear! Giving clearer information and greater protection to consumers when they book holidays, p.7. Findings from CTSI’s stakeholder poll highlight that 72% of respondents agree this sector specific offence should be created.

⁶ CAA ATOL Reform: assessment of funding arrangements and the protection of customer money, CAP 2151, April 2021. See para 1.5.

regulating ATOL holders' insolvency protections, which is just one aspect of the PTRs rules.

- With this call for evidence focusing on the non-flight package sector, it is unclear what the government plans are with regards to reviewing the rules governing flight-inclusive packages and flight Linked Travel Arrangements (LTAs). Following the implementation of the PTRs in 2018, the government had committed to a review of flight LTAs within a year⁷; however, this review has not taken place yet. As such, and given the overlap with the CAA's ATOL reform, we would urge the Department for Business and Trade (DBT) and Department for Transport (DfT) to work together on a comprehensive and coherent set of reforms with a coordinated set of proposals that span both the flight-inclusive and non-flight inclusive package sectors.

Full response

How rules should apply to UK-only package holidays

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

The Package Travel Regulations apply to all package holidays and linked travel arrangements sold by UK businesses whether they take place in the UK or abroad. With regards to packages, this has been the case since consumer protections were first introduced with the Package Travel, Package Holidays and Package Tours Regulations 1992. Consumers value the protections provided by package bookings as these rules give them confidence that their money will be protected, and in case of problems, they are safe in the knowledge that their package organiser will make sure the holiday can go ahead as planned.

Which? recently conducted a mixed methods research project with qualitative focus group interviews and a quantitative nationally representative survey to explore consumers' knowledge and perception of their rights when booking different types of holidays, looking at key consumer protections against insolvency, cancellations and inadequate performance of the travel services when booking package holidays, linked travel arrangements and standalone services.⁸ The research showed that consumers were well versed in identifying the specific protections that package holiday bookings provide and were aware that the package organiser is responsible for addressing problems that arise in the delivery of the holiday services. In addition, the research showcases the high value consumers place on package holidays

⁷ Explanatory Memorandum to the Package Travel And Linked Travel Arrangements Regulations 2018, 2018 No. 634.

⁸ Which? (2023), "It's all so confusing, why is nothing simple": Consumer difficulty navigating the complicated landscape of holiday protections. Link: <https://www.which.co.uk/policy-and-insight/article/consumer-difficulty-navigating-the-complicated-landscape-of-holiday-protections-anXu65o9DZ1P#citation>

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protections, especially when contrasted with different ways of booking holidays that offer lesser levels of protection.

As packages can be complex products involving different suppliers of travel services, it is important for consumers to benefit from the unique protections offered by the Regulations in case something goes wrong with their holiday.

While we found that some consumers feel that they should be offered greater protections when travelling abroad as they are likely to find themselves in more vulnerable situations when problems arise, the majority of consumers feel the protections should be the same for multiple reasons which were reflected in focus group discussions. In particular, consumers feel that the same problems can arise on holidays in the UK as those that take place abroad, and that the package organiser's responsibility towards consumers should not change depending on the holiday location, with some raising concerns that this would create more confusion for travellers. In addition, some respondents pointed out that UK holidays can be just as expensive as foreign holidays, therefore it is important to have specific protections in place to safeguard these bookings.

We have included below a sample of verbatims from the focus group discussions:

"Because holidays abroad and holidays in the UK require the same cover, for example cancellations of transport, especially trains; accidents; accommodation cover being unfit for purpose, etc."

"Because regardless of where you are, you can still have issues in travel that may need compensating"

"Whoever is providing the travel has a duty to care to protect their customers from harm. It should be the same whether it be in the UK or abroad."

"The costs involved for holidays in the UK and abroad can be similar so why shouldn't you get the same protection."

"Because one shouldn't offer more protection than the other - I want to know that regardless of where I am, I get the same treatment."

"I just feel it just confuses people and they feel cheated if it's not the same."

"To avoid confusion, to have [a] clear sense of understanding, to feel confident knowing it's been looked after, to enjoy [your] holiday without worrying about protection."

The DBT suggests that the introduction of this exemption for people choosing to book packages in the UK would not have a detrimental effect on consumers as there is less need for insolvency protections and repatriation cover. However, the protections afforded by the Regulations are

much broader than insolvency and repatriation cover; there are no equivalent consumer protections in legislation that impose strict liability rules on organisers for ensuring the proper performance of the package or that provide rights to the traveller to terminate the contract if significant changes are made to the package or in the event of unavoidable and extraordinary circumstances. As such, there is a risk of reducing the value consumers place on package holiday protections which could also negatively impact consumers' trust in the market. Indeed, the government itself estimates that in the worst case scenario exempting domestic packages from the PTRs would add £8m in annual costs to consumers.⁹

Which? has spoken to Citizens Advice whose data shows that the number of consumer complaints for domestic package holidays was higher in 2021 and 2022 than before the pandemic. It is worth noting that the majority of domestic package holiday cases Citizens Advice receives are for substandard services issues; in these cases, consumers can rely on the PTRs unique protections for the performance of the package.

One of the key themes that came to light from our research on holiday booking behaviours is that travel insurance is the first thought that comes to mind when consumers think of ways to protect their holidays. From the focus group discussions it also emerged that those who book domestic holidays do not consider the need to purchase a travel insurance policy as they perceive there are fewer risks involved (e.g. no need for medical cover), even though unexpected problems, such as lost luggage or travel delays, can still arise. As such, the protections afforded by the PTRs become all the more important for the consumers when things go wrong.

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.

Which? strongly believes that all domestic package holidays, including those that do not include a travel component, should remain in the scope of statutory package travel protections for consumers. As the research findings above illustrate, the majority of UK consumers believe that domestic package holidays should benefit from the same protections as foreign package holidays. Keeping these packages in scope would not only ensure UK consumers continue to benefit from the unique protections afforded by the PTRs, but it would also be beneficial to those package organisers and agents that offer both domestic and international holidays as it would provide clear and consistent application of the rules.

It is important to recognise that some groups of consumers may be disproportionately affected by these proposals. For example, domestic coach packages are a particularly popular option

⁹ See p.12 of the impact assessment.

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among senior citizens and vulnerable groups. Removing this type of holiday packages from scope would significantly impact these groups and leave them at risk of financial and emotional detriment in the event that things go wrong with their holiday or the organiser becomes insolvent. From time to time Which? receives requests for legal assistance from consumers who experienced poor hotel service with their UK coach packages. If domestic packages are exempted from the legislative framework, consumers would no longer benefit from the clear liability rules on package organisers and as such they could find it difficult to seek a resolution or redress from individual service suppliers given how these types of holidays can involve several suppliers across different locations.

When the owner of Shearings Holidays, the largest UK coach holiday provider, went into administration in 2020, it put around 64,000 holiday bookings at risk, the vast majority of which were coach package holidays.¹⁰ These bookings benefited from the PTRs insolvency protection rules with customer prepayments protected by the Confederation for Passenger Transport under the Bonded Coach Holidays scheme.

In addition, consumers who live in Northern Ireland or remote parts of the country might still benefit from assistance and alternative travel arrangements if there is a problem affecting the transport element of the holiday. Likewise, with industrial strikes in the transport sector increasing in frequency in 2022 and 2023,¹¹ it is important that consumers holidaying in the UK have protections in place in case of cancellations affecting their journeys.

The impact assessment accompanying the consultation document states that “as domestic packages are lower-value, the pre-payments are likely to be smaller”.¹² However, some domestic holiday packages, such as cruises or rail tours, can be as expensive as holidays abroad or even more costly. Which? research has previously shown that UK holidays can be more expensive than holidays to popular destinations in Europe even before the pandemic.¹³

It is important to stress that consumers cannot rely on other consumer protections for problems related to their holiday packages in the same way. It is therefore important to maintain domestic packages to ensure the applicability of relevant consumer laws that are specific to purchases of package holidays.

For example, consumers may not be able to rely on the protections under the Consumer Rights Act as those buying a package may not have entered direct contracts with the individual suppliers of the travel services, but only with the package organiser, so what they should be

¹⁰ ‘Specialist Leisure Group which includes leading coach companies Shearings and National Holidays goes into administration with thousands of job losses and cancelled bookings’, ABTA, 2020. Link: <https://www.abta.com/news/specialist-leisure-group-which-includes-leading-coach-companies-shearings-and-national>

¹¹ House of Commons (2023) “Tourism: Statistics and Policy” research briefing, November 2023. Link: <https://researchbriefings.files.parliament.uk/documents/SN06022/SN06022.pdf>

¹² See paragraph 73.

¹³ “Rip-off Britain: UK holidays almost always more expensive than similar European getaways, Which? research finds?”, Which?, August 2021. Link: <https://press.which.co.uk/whichpressreleases/rip-off-britain-uk-holidays-almost-always-more-expensive-than-similar-european-getaways-which-research-finds/>

relying on as suggested by the DBT in the consultation will not apply because of the third party organising and selling the package.

Similarly, there is uncertainty around the scope and application of Section 75 under the Consumer Credit Act 1974 when payments for bookings are made to intermediaries that are acting as agents of the suppliers. In these instances, consumers may not have rights to seek refunds or payments for consequential losses (which can be significant in cases where consumers might need to book alternative travel and accommodation at short notice) under Section 75 when payments are made to third parties that do not provide the services as the direct transactional relationship between the debtor, creditor and supplier may not exist.¹⁴ Furthermore, the latest figures from the Financial Conduct Authority (FCA) point out that 36% of UK adults do not hold a credit card.¹⁵ The protections contained in the Package Travel Regulations ensure that all consumers who book packages can be protected.

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?

No response.

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.

There is a risk that removing protections from domestic packages would impact the package holiday market as a whole due to the legal uncertainty and confusion it would create for consumers. As mentioned above, consumers highly value the protections that come with package holiday bookings and believe that the applicability of these should not vary depending on the location of the holiday.

We have discussed these proposals with stakeholders in the package holiday sector and understand there is no appetite to exempt domestic holidays and to create a tiered system for the application of package travel rules. We have also heard concerns from industry that such an exemption would put pressure on the banks and credit card companies, which could result in increased merchant acquirers costs for businesses.

¹⁴ Information on how Consumer Credit Act 1974 s.75 applies to travel services payments - September 2021. FCA FOI Release, September 2021. Link: <https://fca.org.uk/freedom-information/information-how-consumer-credit-act-1974-s75-applies-travel-services-payments-september-2021>

¹⁵ Figures refer to ownership in the past 12 months. FCA (2023) Financial Lives 2022, p.51.

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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 international travel restrictions and requirements for tests, quarantine and vaccine certificates imposed during the pandemic had a significant impact on the demand for domestic holidays in the UK as consumers chose to opt for destinations closer to home. However, this increased demand led to significant price increases to domestic travel services over the course of the pandemic as well as a rise in the number of domestic holiday packages advice cases reported by Citizens Advice during this period compared to pre-pandemic levels, as mentioned in our response to Questions 1 and 2.

While it has been suggested that many holidaymakers continued to opt for domestic holidays after the end of the coronavirus pandemic,¹⁶ industry reports and market data point to pent-up consumer demand for holidays abroad, a surge in flight bookings in 2023 and consumer behaviour returning to pre-pandemic levels with an expected decrease in domestic travel bookings in coming years.¹⁷

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.

Which? is strongly opposed to proposals to exempt low-value packages from the scope of the legislative framework which, as we understand, would apply to all non-flight package holidays both domestic and international. The government should commit to making sure that all consumers benefit from these protections, regardless of the price of the holiday, ensuring that those on lower incomes who are more likely to purchase cheaper holiday packages are not financially penalised or discriminated against.

The call for evidence implies that consumers who book low-cost holidays have less to lose financially and therefore do not need to be financially protected. If implemented, this policy would remove financial protection to those who are arguably less likely to be in a position to lose money if the trader becomes insolvent, if there is an issue with one service in the package affecting the performance of the other services, or if they are stranded abroad and need repatriation, or need to book alternative travel or accommodation at the last minute. This last point is of particular importance given that having to buy a replacement holiday at the last minute in case of the organiser's insolvency can be significantly more expensive, as evidenced

¹⁶ 'Britons stick with staycations even as flight bookings surge', FT.com, June 2023. Link: <https://www.ft.com/content/c8a4b998-fd25-482d-aa37-80bb343f1a20>

¹⁷ Mintel (2023) *Consumer Attitudes to Staycations vs Holidays Abroad, UK 2023*.

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by recent Which? research.¹⁸ According to the impact assessment, in the worst case scenario this proposal would cost consumers £26m per year.¹⁹

There is also a risk that package organisers find creative ways to market or set prices for their packages below the minimum threshold so as not to comply with the law. With cost of living considerations impacting booking behaviour, businesses might be incentivised to create pricing tactics that are harmful and confusing for consumers. For example, a recent Which? investigation found that consumers who book holidays with “low” and “no” deposit options are at risk of losing large sums of money in the event they need to cancel their plans as businesses do not clearly signpost cancellation policies in their marketing material at the point of sale.²⁰

Moreover, the prevalence of dynamic pricing in this market could create a situation where a consumer buying a package today at a certain price below the threshold would not benefit from the protections, but a different consumer buying the same package at a higher price later would. Restricting the scope of legal protection for package travel contracts and introducing limitations based on pricing risks creating more confusion and uncertainty for consumers and could negatively impact their confidence in this market. Similarly, this policy could lead to package holiday prices rising to account for the additional protection, or consumers selecting extras to reach the minimum threshold and benefit from the PTRs protections.

We also note concerns from the industry regarding the practicalities and operational difficulties that would stem from implementing this and other exemptions to the applications of the rules.

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.

We do not consider it either appropriate or fair to consumers to exempt packages under a certain value from the scope of specific legislative package travel protections and believe there is a risk of causing unnecessary consumer detriment, legal uncertainty and confusion. Please see more details in our response to Question 6 above.

Regulation of Linked Travel Arrangements

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

¹⁸ ‘Are last-minute holidays cheaper?’, Which?, August 2023. Link:

<https://www.which.co.uk/news/article/are-last-minute-holidays-cheaper-azFZA2M1UM10>

¹⁹ See p.20 of the impact assessment.

²⁰ “Holidaymakers who cancel low-deposit trips risk being stung for thousands of pounds”, Which?, October 2023. Link: <https://www.which.co.uk/news/article/low-deposit-holiday-warning-a30jH1b6Pz72>

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- 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.

This review offers a good opportunity to reform the rules governing LTAs and their definitions and ensure consumers continue to benefit from high levels of protection as the market develops and new business models emerge.

Which? research on consumers' understanding of holiday bookings protections found that consumers are very confused by the concept of LTAs and are not aware of the protections this type of booking affords.²¹ In particular, we found that consumers:

- Do not know what LTAs are. Almost none of the focus group participants had ever heard of the term 'linked travel arrangement'. This lack of awareness also came across in the survey in which the majority (63%) of UK adults said they had not heard of the term 'linked travel arrangement' before (13% had and 24% were not sure if they had).
- Are unsure whether these types of bookings count as a package holiday. Through the focus group discussions it emerged that participants struggle to distinguish between LTAs and package holidays. Consumers might believe that they have booked a package holiday when in fact they have booked an LTA, leaving them less protected than they would think they were.
- Are unsure what protections are provided. 31% of consumers who took part in the online survey thought that the Type A LTA holiday they were presented with offered protection against airline insolvency and 1 in 4 (24%) incorrectly thought it offered protection against hotel insolvency. In addition, almost half of consumers felt that the protections provided under the Type A were unfair (47%), while only one in five (21%) thought they were fair.
- Do not know who they would go to if something went wrong. Some of the focus group participants felt they would be best placed to contact the website they made the payment through, while another participant thought that they "would be looking at ATOL".

As evidenced in the research findings above, LTAs in their current form can create a landscape of confusion, burden and vulnerability to consumers, leaving them at risk of consumer harm. Similar conclusions were drawn from recent research from the CTSI which also found that the vast majority of consumers view the LTA concept as confusing, and that their definition is

²¹ Which? (2023), "It's all so confusing, why is nothing simple": Consumer difficulty navigating the complicated landscape of holiday protections. Link: <https://www.which.co.uk/policy-and-insight/article/consumer-difficulty-navigating-the-complicated-landscape-of-holiday-protections-anXu65o9DZ1P#citation>

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problematic for the travel industry and regulators, with holiday companies not always realising if they have facilitated an LTA and what protections should apply to the traveller.²² Indeed, it is difficult for both consumers and enforcers to demonstrate that the different services selected as part of these arrangements are in fact linked and ‘facilitated’ in a ‘targeted manner’, the meaning of which is not always clear.²³

While Which? agrees that LTAs are confusing for consumers, businesses and enforcers, we believe that removing these arrangements from the scope of the legislative framework would not be beneficial to consumers. As explained further below, LTAs constitute an important anti-avoidance mechanism as part of the overall effectiveness of the legal framework. The consultation states that LTAs are “rarely used”; however, there is no recent data available on the number of bookings that fall under the LTA definition nor information on how these are being marketed and presented to consumers. In fact, the only estimate available comes from a European Commission’s impact assessment which estimated that 3% of holiday bookings are LTAs; BEIS’ own impact assessment from 2018 assumed that the figure would be similar in the UK.²⁴

It is worth noting that in its review of the Regulations in 2019, when BEIS asked about the use of LTAs among businesses it found that 68% of respondents said they did not facilitate LTAs, suggesting that over 30% did.²⁵ Also, while it is argued that the tracking of these linked sales is not possible or easy for the industry, when the updated PTD 2015 was introduced it was thought that it would be relatively easy for some businesses, such as airlines, that already track commissions from third party affiliates.²⁶

In view of the lack of up to date information on the state of the market, the government should conduct an assessment of business practices compiling data from businesses and relevant authorities on the prevalence of this type of bookings, including among airlines and online travel businesses, before proceeding with any changes to the rules and definitions governing LTAs.

We are concerned that the removal of LTAs would exacerbate existing practices where some businesses circumvent the more protective regime of package travel contracts, leaving consumers with little or no protection.²⁷ The market should be closely examined as it may be possible that some businesses avoid the more stringent package requirements by selling a

²² CTSI (2023) *Wish you were clear! Giving clearer information and greater protection to consumers when they book holidays*.

²³ EC (2021) *Report on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements*, COM/2021/90 final. Link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN#footnoteref26>

²⁴ BEIS Impact Assessment on the Package Travel Directive, March 2018.

²⁵ BEIS (2019) *The Package Travel and Linked Travel Arrangements Regulations 2018*, Review July 2018-March 2019. See para 4a.

²⁶ ‘Package travel regulations: One year in, what did we learn?’, Fox Williams, July 2019. Link:

<https://www.foxwilliams.com/2019/07/08/package-travel-regulations-one-year-in-what-did-we-learn/>

²⁷ BEUC (2021) *The Package Travel Directive: BEUC’s Position on how to regain consumers’ trust in the tourism sector*. Link:

<https://www.beuc.eu/position-papers/package-travel-directive-beucs-views-how-regain-consumer-trust-tourism-sector>

combination of services that may appear as LTAs when in fact they are packages (over the years Which? and other consumer organisations have come across such examples of flight-inclusive combinations of travel services)²⁸.

LTAs were first introduced to address market developments where travel businesses, largely online, and airlines facilitate separate contracts with individual travel service providers for the purpose of the same trip within a short period of time. It is important to recognise that the introduction of LTAs was a strategic move to safeguard against businesses finding creative ways to avoid complying with the package obligations. By incorporating LTAs into the framework, it served as a countermeasure to ensure consumers enjoyed a certain level of protection.

The prospect of removing LTAs from the scope of the Regulations in their entirety and stripping away any consumer protection opens the door to businesses that may potentially exploit this gap to avoid the more robust requirements that package organisers are subject to. Any changes to the Regulations should ensure that consumers do not lose out and holiday businesses are not encouraged to take advantage of this gap to avoid consumer protection obligations.

Ultimately, the rules governing LTAs should be reformed in such a way as to ensure these alternative arrangements provide appropriate levels of consumer protection in the form of liability rules for the performance of the travel services and enhanced insolvency protection. This could be achieved by including these travel arrangements under the package rules, which would provide greater clarity to consumers and consistent application of the protections for those businesses that sell them.

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

As mentioned in our response to Question 8, we believe it would be beneficial for consumers if LTAs are incorporated under packages and be subject to the same regulatory requirements. As such, there is scope for simplifying their definitions when considering amendments to packages under Regulation 2(5).

It would be beneficial to amend or remove the term “Single visit or a contact with a point of sale” (Type A LTA) which can be subject to interpretation and will “need to be considered on a case-by-case basis”.²⁹ Consideration should be given towards bringing the Type A LTA under the package definition by amending the definition of “click-through bookings” to contain the sale of linked travel services where the payment details and contact information of the person making the booking are not automatically transferred.

The concept “in a targeted manner” (Type B) is not clearly defined and can be confusing for businesses and difficult for regulators to monitor so could be removed. However, LTA Type B transactions should still be regulated within package travel protections because they are based on a commercial link between the businesses concerned.

²⁸ Ibid.

²⁹ BEIS (2022) The Package Travel and Linked Travel Arrangements Regulations 2018, Guidance for businesses.

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Information Requirements for Linked Travel Arrangements

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

Our consumer research on holiday protections highlighted how the lack of clear information during the booking process can drive confusion amongst consumers and lead to misconceptions about the level of statutory protections associated with their booking. Participants in the focus groups called for greater transparency regarding lack of protections:

“There should be more transparency on websites. Even if it is just bullet points saying that ‘are you aware if you book this you are only covered for x,y,z’.”

“It is difficult to know when things have insurance policies or protections within them or if you need to get them separately.”

Therefore, consideration should be given towards improving communication at the point of booking, in regard to both the presence and the absence of financial protection and cancellations provisions. Better communication would support consumers’ understanding of their protections and help them make informed decisions when choosing the type of holiday to book and when considering secondary protections such as travel insurance. Information on insolvency protection and cancellation is particularly important in the context of rising costs of living.

The information requirements for packages and LTAs contained in Schedules 1-10 of the Regulations contain complex conditions presented in technical terms that can be difficult to comprehend. This is often compounded by pre-contractual information being placed at the bottom of the booking page (when booking online) and in small font. As mentioned previously, a recent international analysis of holiday websites found that the majority of businesses do not comply with the information requirements for packages.³⁰ This points to an urgent need to drive compliance and enhance the enforcement of the information requirement rules, while also working on improving the quality of information presented to consumers. For example, consumers could benefit from the introduction of “key and essential information” documents, similar to those that are used in the financial services sector, with the objective of making the information more easily understandable and accessible through the use of visual aids and infographics.³¹

It should be noted that the limited insolvency protection afforded to LTAs can be difficult to understand given how insolvency protection only applies to the facilitator of the LTA, for payments it directly receives from the consumer and only during the time it is holding the

³⁰ IMCO (2023) The performance of the Package Travel Directive and broader consumer protection issues in the implementation of passenger rights, September 2023. Link: <https://www.europarl.europa.eu/committees/en/performance-of-the-package-travel-direct/product-details/20231116CAN72106>

³¹ Ibid.

customers' money before it is passed to suppliers. Therefore, it is not possible for the consumer to know whether and at what stage their money is protected as it depends on whether and when the facilitator passes their payments to the service provider. For this reason, consideration should be given towards bringing the protections assigned to LTAs in line with those of packages to provide clarity and greater reassurance to consumers.

Finally, it is important to ensure that consumer information requirements continue to remain in the scope of legislative protection for package travel and are not downgraded to guidance.

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

See response to Question 10.

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

See response to Question 10.

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?

Which? believes that consumers should be effectively protected against the risk of the package organiser's insolvency, and any changes to financial requirements on businesses as set out in the Regulations should have no negative impact on choice and value to consumers.

It is important that there is alignment between the insolvency rules for non-flight packages and those that apply to ATOL holders. The CAA is currently considering options to reform the ATOL scheme with the aim of strengthening consumer protections with a risk-based approach that boosts the sector's financial resilience. It is expected that the CAA will allow a degree of flexibility with regards to the different options available to businesses for meeting the financial requirements for an ATOL licence. Therefore, allowing package organisers to continue to select the insolvency protection that best suits their needs, and to have the option to choose between insurance or a bond when selecting a trust account form of insolvency protection, appears to be a sensible approach. This is provided there are effective mechanisms in place for the enforcers to monitor compliance with the rules.

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

Which? has previously urged the CAA to strengthen eligibility criteria for ATOL holders to ensure trusts and their trustees are fully independent and operating legitimately.³² In addition, it must ensure a robust and effective system of monitoring and reporting, particularly in cases where the trust is managed by the ATOL holder internally. This would be in addition to requiring ATOL holders to obtain insurance to cover the risk of fraudulent use of the ring-fenced monies. We therefore urge the DBT to ensure Trading Standards authorities have the resources and means to monitor businesses compliance with the insolvency requirements.

In a market such as package holidays that is characterised by a fragmented regulatory framework where different regulators share responsibilities over consumer protections, it is crucial for the Trading Standards authorities and the CAA, as the relevant enforcers, to collaborate closely and play a leading role in establishing effective monitoring mechanisms to drive compliance.

In addition, we suggest that the DBT considers the role of Primary Authority Partnerships making sure consumers are at the heart of their work, and evaluates their effectiveness and outcomes in driving compliance with the Regulations and in guiding enforcement work.

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

No response.

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

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

Yes, as it ensures that consumers booking services that are essential to the purpose of their holiday benefit from the protections afforded by the PTRs.

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

The combination of one service between transport, accommodation or vehicle hire with an ‘other tourist services’ can only constitute a package when the ‘other tourist service’ is:

- a. Advertised as an essential feature of the holiday; or
- b. It constitutes a significant proportion of the value of the package which, under the EU directive, is defined as having to be 25% or more of the total travel services.

³² Which? Response to CAA’s ATOL consultation, Which?, August 2021.

<https://www.which.co.uk/policy/travel/7352/consultation-responses>

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In addition, the ‘other tourist service’ should be selected and purchased during the booking process and not after the performance of one of the travel services. Services that are ‘an intrinsic part of the travel services, such as transport, accommodation or vehicle rental, should also be disregarded.

Whether the consumer views the additional services as essential, and the way in which they are advertised, would determine their selection during the booking process. However, this qualitative measure alone can be subjective and open to interpretation and, potentially, to litigation. As such, it is helpful that the Regulations contain the alternative ‘significant proportion’ test.

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

The ‘significant proportion’ criterion provides a tangible and more objective measure for determining whether the service forms part of a package. As such, we believe that rather than removing it, the definition could be improved by replacing ‘significant proportion’ with the wording ‘at least 25%’ in the legislation to reflect well-established existing practice and understanding.

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

We believe the word ‘essential’ needs to be looked at from the perspective of the consumer. Perhaps it would be helpful to follow the precedent of section 28 of the Consumer Rights Act 2015 on this (which deals with making time for delivery ‘essential’). In other words, it is an ‘essential’ feature of the combination of services where all the relevant circumstances are properly taken into account or if the consumer has told the trader when entering into the contract(s) that they regard it as ‘essential’.

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?

See response to Question 21.

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

The PTRs currently define travellers as “any individual who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of these Regulations”.³³ This definition can include some business travellers when their travel

³³ Package Travel and Linked Travel Arrangements Regulations 2018, Part 1.

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arrangements are purchased through consumer facing providers. An exemption applies when bookings for business purposes are made on the basis of a general agreement between the company and the travel supplier, which we understand applies to most large businesses.

As noted in the government guidance, this broad definition of traveller ensures that those professionals and small businesses who tend to use consumer facing providers for their bookings have the same level of protection as regular consumers.³⁴ These clarifications were introduced in 2018 when the updated European Directive was implemented in the UK, and at the time the government acknowledged broad support for “packages and LTAs purchased on the basis of a business travel agency agreement being exempt”.³⁵

By removing all business travellers from the scope of the legislative framework those professionals and small businesses that make bookings via consumer facing service providers would lose out the important financial safeguards that come with these bookings. Given that business travel can already be exempt from the current Regulations when general agreements are in place, it might be counterproductive (and contrary to the aims of this call for evidence to support UK businesses) to expose small businesses and working professionals to the financial risks associated with package holiday bookings.

In addition, the holiday providers may face the unnecessary burden of having to get information regarding the purpose of the booking at the point of sale. Arguably, it may not be that simple in some cases to make a distinction between business and leisure travel in the context of remote work arrangements for example.

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?

No response.

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

No response.

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

³⁴ BEIS (2022) The Package Travel and Linked Travel Arrangements Regulations 2018, Guidance for businesses.

³⁵ BEIS (2017) Updating Consumer Protection In The Package Travel Sector consultation. See para. 25.

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In 2021, Which? surveyed ATOL holders and found that most respondents were still waiting to receive substantial refund payments from airlines, with some refund requests going back to March 2020. Several of these businesses chose to pay full refunds to their customers using their own cash reserves despite not having received refunds from suppliers. This put significant pressures on their working capital, while others had to acquire additional financing to cope and meet the legal requirements of the PTRs, with millions of pounds still to be refunded to package holiday businesses and consumers since the pandemic started.

It is important that package organisers have the right to seek and obtain redress from third party suppliers when services cannot be provided or performed, triggering compensation payments to the consumer. Regulation 29, as currently drafted, does not set a sufficiently clear legal obligation on service providers to refund package organisers for cancelled services. As a result, a number of firms have had to enter costly litigation to seek redress.

The recent High Court ruling in the *On The Beach v Ryanair* case has set an important legal precedent in relation to package organisers' right to redress. The case, which saw the online travel agent bringing a legal claim against Ryanair to recover refund payments for flights cancelled during the pandemic, has provided much needed clarity on this aspect of the Regulations with the judge ruling that "Regulation 29 does, as a matter of principle, provide a statutory right of redress to the organiser".³⁶ While this is a positive first step for the industry and consumers, which has since led to a settlement from Ryanair on a separate case with Travel Republic³⁷, it is important that the government takes the opportunity to strengthen these provisions in the law.

We believe that Regulation 29 of the PTRs should be amended by setting a clear, mandatory refund obligation on third party suppliers to the package organisers. In addition, a timeframe for making the payment to the package organiser should be included to provide greater legal clarity to industry and reassurance to consumers. To allow the prompt payment of refunds to consumers within the 14 days established in the Regulations, we recommend setting an obligation on suppliers to pay refunds to package organisers within 7 days from the cancellation.

It is essential that the relevant regulators have access to effective enforcement powers to deter non-compliance and take action when businesses fail to act in accordance with the law.

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

In light of the problems package organisers experienced during the pandemic, and the recent High Court ruling on Regulation 29, we do not believe it would be appropriate to remove Regulation 29 from the PTRs. Instead, as recommended above, the Regulation needs to be strengthened, clarified and effectively enforced.

³⁶ https://assets.caselaw.nationalarchives.gov.uk/ewhc/comm/2023/2694/ewhc_comm_2023_2694.pdf

³⁷ 'Ryanair settles with second firm after court refund ruling', *Travel Weekly*, November 2023. Link: <https://travelweekly.co.uk/news/air/ryanair-pays-out-to-second-firm-after-court-refund-ruling>

Whether rules should allow for extenuating circumstances**26. What are your views on how well the Regulations operated during the COVID-19 pandemic?**

During the pandemic, the travel industry faced unprecedented financial strain which left many businesses unable to refund their customers for holiday cancellations on such a large scale without risking going out of business. In April 2020, Which? reported that many holiday providers ignored their obligations under the Regulations imposing vouchers, Refund Credit Notes (RCNs) or the option to rebook at a later date instead of offering cash refunds.³⁸ Later that year, we found that over £1 billion in refunds were still to be paid to consumers with nearly four in ten (37%) people who had a package holiday cancelled saying the experience had a negative impact on their confidence in the travel industry.³⁹ In the summer of 2021 as some people returned to travel, Which? carried out an extensive assessment of holiday providers policies with regards to refunds and cancellations and set up a freely available tool to help consumers check which companies were more likely to refund their customers in case of package holiday cancellations.⁴⁰ Throughout this time, Which? always advised consumers to book a package holiday where possible, instead of individual travel services, to ensure they would benefit from the PTRs protections.

The CMA's Covid-19 Taskforce responded to the unfair practices relating to package holiday cancellations and refunds, investigating non-compliant behaviour and taking action to secure refunds for those who had been affected.⁴¹ The PTRs proved effective in ensuring the CMA could effectively protect consumers, securing undertakings from businesses and ensuring refunds would be paid out. This is unlike Regulation EC261, which the CMA found does not provide passengers with a sufficiently clear right to a refund when they are legally unable to travel.

However, the pandemic exposed structural problems with regards to the industry's handling of their customers' prepayments and lack of clarity on the refund obligations of suppliers, in particular the airlines, towards package organisers.

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?

³⁸ 'UK's biggest travel operators and airlines openly breaking the law on refunds for cancelled holidays', Which?, April 2020. Link:

<https://press.which.co.uk/whichpressreleases/uks-biggest-travel-operators-and-airlines-openly-breaking-the-law-on-refunds-for-cancelled-holidays/>

³⁹ 'More than £1 billion in refunds being illegally withheld for cancelled holidays', Which?, November 2020. Link:

<https://press.which.co.uk/whichpressreleases/more-than-1-billion-in-refunds-being-illegally-withheld-for-cancelled-holidays/>

⁴⁰ 'Angry holidaymakers won't book with Love Holidays, Teletext or Ryanair again', Which?, August 2021. Link:

<https://www.which.co.uk/news/article/angry-holidaymakers-wont-book-with-love-holidays-teletext-or-ryanair-again-aHtH6u7c85S>

⁴¹ CMA case on Covid-19 cancellations: package holidays.

<https://www.gov.uk/cma-cases/covid-19-cancellations-package-holidays?=#investigation-launch>

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Regulation 12, 14 and 15 of the PTRs provide legal clarity to consumers regarding the liability of holiday organisers for the performance of the package and termination of the contract by the traveller in the event of extraordinary circumstances. As pointed out in the High Court ruling in the *CMA v Truly Holdings* case, the refund obligation contained in Regulation 14 in the Package Travel Regulations is strict and does not allow for any exemptions or relaxations.

It is important to note that during the pandemic, many consumers chose the option to accept vouchers or RCNs to reduce financial pressures on businesses and offer them support in the interim.

Attempts to dilute these protections and introduce flexibility to the conditions set in these regulations should be rejected in the consumer interest. Any flexibility or leniency in these rules, and attempts to reduce business obligations in the event of “extreme” circumstances, would defeat the very purpose of these consumer protections.

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

See response to Question 27.

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

During the pandemic, many consumers were denied the right to a refund within 14 days from the termination of the package holiday contract by the organiser, and some businesses imposed vouchers or Refund Credit Notes (RCNs) on their customers in clear contravention of the PTRs rules.⁴² Given the extensive use of these alternatives to cash refunds during the pandemic, and their lack of legal basis which contributed to significant confusion and potential financial risk for consumers,⁴³ there is now an opportunity to set out provisions on their use with the objective of ensuring holiday payments are protected in extraordinary circumstances.

Therefore, we recommend that the DBT considers setting clear rules and guidelines on the use of vouchers and RCNs ensuring they come with insolvency protection, minimum validity periods and continue to remain a voluntary option for consumers during times of crisis.⁴⁴ Proposals are

⁴² ‘UK’s biggest travel operators and airlines openly breaking the law on refunds for cancelled holidays’, Which?, April 2020. Link: <https://press.which.co.uk/whichpressreleases/uks-biggest-travel-operators-and-airlines-openly-breaking-the-law-on-refunds-for-cancelled-holidays/>

⁴³ ‘Should I accept a holiday company refund credit note or airline voucher? Do I have to?’, Which?, May 2020. Link: <https://www.which.co.uk/news/article/should-i-accept-a-holiday-company-or-airline-voucher-do-i-have-to-anFpS0H68dXk>

⁴⁴ BEUC (2022) *The Package Travel Directive: BEUC’s position on how to regain consumers’ trust in the tourism sector*.

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underway to formalise their use in the new PTD⁴⁵, while similar recommendations have also been made by the CAA's ATIPAC in the UK.⁴⁶

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?

Following the UK's exit from the European Union, the territorial restrictions on insurance cover contained in Regulation 22 of the PTRs were amended so that package organisers were no longer able to obtain insurance policies against their insolvency from providers authorised in member states of the EU.⁴⁷ As a result, insurance policies can only be obtained from insurers authorised in the UK, Channel Islands, or the Isle of Man.

A key benefit of this restriction is that financial failure insurance providers in the UK are subject to the Financial Conduct Authority (FCA) standards and oversight. This makes it easier for enforcers of the Regulations to check the status of these providers and ensure they are reliable and effectively providing cover for UK consumers as opposed to foreign businesses. As part of these, the FCA's Consumer Duty holds firms into account for being capable of demonstrating they have acted to deliver 'good customer outcomes' in the design of their products, pricing, communications and service/support'. In addition, the existing rules on territorial restriction allow consumers to have recourse to the Financial Ombudsman Service (FOS) if there is a dispute which provides an important layer of protection.

Therefore it is important to consider whether UK consumers can rely on the FCA standards being applied if the insurer is regulated outside the UK and also whether the consumer would be able to raise a complaint to the FOS and whether the insurer would have to comply with FOS rulings.

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

As mentioned above, allowing businesses to seek insurance cover from providers outside the UK could impact the quality of cover, the ability of the regulator to check their finances easily and to ensure their services are compliant with the standards set in the new FCA's Consumer Duty.

Making it easier for the Government to update the information requirements.

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

⁴⁵ Improved rights and better information for travellers, European Commission, November 2023. Link: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6110

⁴⁶ ATIPAC (2023) *Air Travel Insolvency Protection Advisory Committee Annual Report 2022-2023*. Link: <https://www.caa.co.uk/media/yhwarghu/2023-atipac-annual-report.pdf>

⁴⁷ The words "member states" were omitted from the Regulations on 31/12/2020.

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As mentioned in our response to Question 10, the information requirements for packages and LTAs contained in Schedules 1-10 of the Regulations contain complex conditions presented in technical terms that can be difficult for consumers to understand. It is particularly important that improvements are made to ensure the information presented before the conclusion of the booking is clear, prominent and effectively helps consumers understand the protections they will be entitled to. Ultimately, with respect to LTAs, if the business fails to comply with the information requirements contained in Schedule 6-10, they will become responsible for the holiday as if it were a package.

About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

December 2023