



Note for Travel Agents, Tour Operators, Retailers, Organisers and Facilitators of Linked Travel Arrangements¹

Directive (EU) 2015/2302

1. Member States were required to implement Directive (EU) 2015/2302 on package travel and linked travel arrangements by 1st July 2018. The Minister for Transport, Tourism and Sport has made Statutory Instruments 80 and 105 of 2019, signed on 11th March 2019 and 26th March 2019, respectively, to give effect to the Directive. This note sets out the Commission's current understanding of the changes, brought about by that legislation, that need to be made to the existing licensing and insolvency protection arrangements that apply in Ireland.
2. At present the Commission issues most licences to tour operators and travel agents in May and November of each year. The Commission has, until now, received applications from entities that are established (a) in Ireland; (b) in another Member State and trading in Ireland; or (c) outside the European Union and trading in Ireland.
3. Under the Directive, from 1st July 2018, entities established in other Member States, who organise packages and/or facilitate Linked Travel Arrangements, have been regulated by the Member State in which they are established.

Transitional arrangement

4. As a transitional arrangement, all tour operators and/or travel agents that have been provided with a licence by the Commission before 11th March 2019 can remain licensed for sales in respect of travel out of Ireland until the end date of their licence. However, these entities must ensure that they have the relevant insolvency protection arrangements in place generally.
5. If a licensed entity wishes to terminate its licence after 11th March 2019, it should make a formal request to the Commission at the earliest opportunity. Existing insolvency protection arrangements relating to its licence will remain in place for a period of six months. Where the entity then intends to continue to sell out of Ireland, it needs to provide the Commission with evidence of the security it has provided for these sales, before carrying on such business in Ireland. The Commission will notify the entity when it has assessed and verified the information provided.

¹ This note sets out the Commission's current understanding of the implications of Statutory Instruments 80 and 105 of 2019. It does not constitute legal advice on same.

What does not need to be covered by insolvency protection?

6. Certain types of business do not need to be covered by insolvency protection. These are:
 - a. Packages and Linked Travel Arrangements covering a period of less than 24 hours unless overnight accommodation is included;
 - b. Packages offered for sale, and Linked Travel Arrangements facilitated, occasionally and on a not-for-profit basis, and only to/for a limited group of travellers; and
 - c. Packages and Linked Travel Arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession.
7. If a licensed entity wishes to exclude such sales from its current licensable turnover after 11th March 2019, it should make a formal request to the Commission at the earliest opportunity.

Entities established² in Ireland

8. Tour operators and travel agents established in Ireland who are organisers of overseas travel packages or traders facilitating linked travel arrangements with transport commencing in Ireland to destinations outside Ireland or Northern Ireland, are not obliged, but may choose, to be licensed by the Commission for their ex-Ireland tour operator or travel agency business.
9. Tour operators and travel agents established in Ireland who are organisers of packages or traders facilitating linked travel arrangements with transport offered for sale/sold in other Member States, cannot obtain a licence from the Commission for that element of their business.
10. This means that a tour operator or travel agent established in Ireland who organises packages or facilitates linked travel arrangements can (a) remain licensed for its ex-Ireland tour operator or travel agency business but not licensed for its ex other Member State business; or (b) choose to be unlicensed for all of its business (except travel only ex Ireland), provided it complies with the applicable insolvency protection arrangements (see point 12 below)³.
11. Tour operators and travel agents that continue to be licensed by the Commission will be required to put in place insolvency protection arrangements for their ex-Ireland business in the normal fashion (pursuant to section 13 of the Transport (Tour Operators And Travel Agents) Act, 1982, as amended, and Statutory Instrument 102/1983 (Tour Operator and Travel Agents (Bonding) Regulations, 1983)). If a licensed entity becomes insolvent, the bond in place will be used to provide protection to passengers who commence their travel package in Ireland. Where the bond

² The 1995 Act now defines “establishment”, which is to be construed in accordance with Article 49 of the Treaty on the Functioning of the European Union (“TFEU”). Accordingly, it means the actual pursuit of an economic activity, as referred to in that Article, by the provider, for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out.

³ Note that, where a licensed tour operator or travel agent enters into contracts for ex-Ireland travel, and the contracts are packages or linked travel arrangements, the tour operator or travel agent must arrange security for those contracts over and above the bond it has put in place as a condition of being licensed. However, that requirement does not apply where the bond concerned offers equivalent protection for travellers to the additional security referred to above as otherwise being required.

is insufficient to cover all relevant losses or liabilities incurred by customers of tour operators or travel agents, recourse may be had to the available resources of the Travellers' Protection Fund.

12. If a tour operator or travel agent established in Ireland is not licensed by the Commission, it must have effective security in place in respect of all travel packages offered for sale/sold in any Member State (irrespective of the traveller's place of residence, place of departure or where the package is sold). Security options are set out in Sections 23 to 25 of the Package Holidays and Travel Trade Act, 1995, as amended (including by Statutory Instruments 80 and 105 of 2019, and in particular, Regulations 20 to 22 of Statutory Instrument 80 of 2019).
13. It must notify the Commission before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information. If an insolvency occurs, the security in place will be used to protect all affected passengers. The Travellers' Protection Fund **cannot** be accessed, as recourse may only be had to it by customers of licensed tour operators or travel agents established in Ireland.
14. The requirement for Irish established entities to obtain a licence for travel only sales for ex Ireland departures remains in place. This is as per the Transport (Tour Operators And Travel Agents) Act, 1982.

Entities established in another Member State

15. An entity which is established in another Member State (which is not, in the view of the Commission, "established" in Ireland) but is carrying on business in Ireland cannot obtain an Irish tour operator or travel agent's licence. Instead, the organiser must provide evidence of security (from the country in which it is established) for all packages offered for sale/sold (including those commencing in Ireland) and must provide the Commission with a notification to that effect (in English), and in particular, of the nature and the amount of the security the organiser has arranged, before carrying on such business in Ireland.
16. The Commission will notify the entity when it has received sufficient information. Where the entity has arranged security in accordance with the law of the Member State in which it is established, it will be considered to have complied with the requirement to provide security in accordance with the Irish legislation giving effect to the Directive.

Entities established outside the European Union

17. An organiser which is established outside the European Union and carrying on business in Ireland, but which is not established in Ireland, cannot obtain an Irish tour operator or travel agent's licence. The organiser must have effective security in place in respect of all travel packages offered for sale/sold to persons in Ireland. Security options are set out in Sections 23 to 25 of the Package Holidays and Travel Trade Act, 1995, as amended (including by Statutory Instruments 80 and 105 of 2019, and in particular, Regulations 20 to 22 of Statutory Instrument 80 of 2019).
18. It must notify the Commission before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information. If an insolvency occurs, the security in place will be used to protect affected passengers. The Travellers' Protection Fund **cannot** be accessed, as recourse may only be had to it by customers of licensed tour operators or travel agents established in Ireland.

19. Some entities received a licence from the Commission before 11th March 2019. Under the transitional arrangement, these entities can continue to use their licence for the period of that licence in respect of their tour operator or travel agency business involving ex-Ireland travel. Before the end of the licence, they must have provided the Commission with the necessary evidence of security to continue selling packages ex-Ireland.

Traders facilitating Linked Travel Arrangement - established in Ireland

20. From 11th March 2019, a trader facilitating linked travel arrangements established in Ireland is required to have sufficient evidence of security in respect of all linked travel arrangements offered for sale/sold by the entity in the EU (irrespective of the traveller's place of residence, place of departure or where the package is sold). Security options are set out in Sections 23 to 25 of the Package Holidays and Travel Trade Act, 1995, as amended (including by Statutory Instruments 80 and 105 of 2019, and in particular, Regulations 20 to 22 of Statutory Instrument 80 of 2019).
21. It must notify the Commission before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information.

Traders facilitating Linked Travel Arrangement - established in another Member State

22. From 11th March 2019, a trader facilitating linked travel arrangements established in another Member State but carrying on business in Ireland must provide evidence of security (from the country in which it is established) in respect of all linked travel arrangements offered for sale/sold by the entity in Ireland.
23. It must notify the Commission before carrying on such business in Ireland, and in particular, of the nature and amount of the security the organiser has arranged. The Commission will notify the entity when it has received sufficient information. Where the entity has arranged security in accordance with the law of the Member State in which it is established, it will be considered to have complied with the requirement to provide security in accordance with the Irish legislation giving effect to the Directive.

Traders facilitating Linked Travel Arrangement - established outside the EU

24. From 11th March 2019, a trader facilitating linked travel arrangements established outside the EU but carrying on business in Ireland must provide evidence of security in respect of all linked travel arrangements offered for sale/sold by the entity to persons in Ireland. Security options are set out in Sections 23 to 25 of the Package Holidays and Travel Trade Act, 1995, as amended (including by Statutory Instruments 80 and 105 of 2019, and in particular, Regulations 20 to 22 of Statutory Instrument 80 of 2019).
25. It must notify the Commission to that effect before carrying on such business in Ireland, and in particular, notify the Commission of the nature and amount of the security it has arranged. The Commission will notify the entity when it has received sufficient information.
26. In all cases, the security provided by a trader facilitating a linked travel arrangement must be effective, cover reasonably foreseeable costs and provide for refunds of payments received by the

entity in respect of linked travel arrangement for customers and their repatriation from abroad to their place of departure in the event that they become insolvent. The Commission will consider whether the security meets these requirements and the decision in this regard is at the Commission's discretion.

Offence

27. Please note that it is an offence under the legislation mentioned in this note to fail to provide or put in place the required security in accordance with the legislation.

Non travel inclusive packages

28. The Commission is working with the Department of Transport, Tourism and Sport to determine the agency responsible for administering arrangements for this sector of the market. Until further notice, the Commission will continue to only administer the scheme for travel related sales/packages.

Retailers

29. A retailer is not ordinarily subject to the provisions of Section 22, to provide security. The retailer will only be subject to such obligations where the organiser is established outside the EEA and the retailer cannot satisfy the Commission that the non-EEA organiser complies with Section 22. This is set out in Section 25B.

Central Contact Point

30. The Commission will be updating its website in the coming weeks to reflect the new requirements.

Financial Security Arrangements – Update

31. Current insolvency protection arrangements have been in place since the early 1980s. In 2017, the Commission initiated work to review both the existing bonding arrangements and the operation of the Travellers' Protection Fund to ensure they continue to efficiently meet the objectives of the scheme and provide the travelling public with an appropriate level of protection.
32. In August 2017, we published a consultation paper⁴ and a report⁵. In January 2018, we published a project update⁶. The update set out our view of what needs to be further considered in arriving at a final set of insolvency arrangements. The Commission also published a summary of responses

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<http://www.aviationreg.ie/fileupload/Travel%20trade/CP8%20Travel%20Trade%20Consumer%20Protection%20Measures.pdf>

⁵ <http://www.aviationreg.ie/fileupload/Travel%20trade/TTConsumerProtectionMeasuresReport.pdf>

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<http://www.aviationreg.ie/news/project-update-travel-trade-consumer-protection-measures.828.html>

received⁷ and a report entitled “Bonding of the Irish Travel Trade Industry Final Report”⁸. This marked the end of this stage of the project. Early in 2019, we commenced the second phase of this work. This work is ongoing, and we are holding a workshop with industry on Tuesday 21st May. At this time, we do not intend to amend the current level of bonds for licensees until this work has been completed and all necessary changes to the existing arrangements have been implemented.

⁷http://www.aviationreg.ie/_fileupload/2018/18-1-10%20Responses%20to%20Consultation%20Travel%20Trade%20Consumer%20Protection%20Measures%20C-P8-2017.pdf

⁸ http://www.aviationreg.ie/_fileupload/2018/Europe%20Economics%20Final%20Report.pdf