



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

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. In Ireland, Statutory Instruments 80 and 105 of 2019 give effect to the Directive. This note sets out the Commission's understanding of the licensing and insolvency protection arrangements that apply in Ireland. It does not constitute legal advice. If you have any queries, please contact the Commission at traveltrade@aviationreg.ie.
2. 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.

What does not need to be covered by insolvency protection?

4. 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. Flight/travel only sales with a departure from Ireland, that fall into this category, are not excluded and need to be licensed and bonded.

Entities established¹ in Ireland

5. 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.

¹ 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.

6. 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.
7. Tour operators and travel agents established in Ireland who sell flight/travel only with a departure from Ireland must be licensed and bonded for this element of their business.
8. Tour operators and travel agents established in Ireland who retail third party packages, departing Ireland must be licensed and bonded for this element of their business.
9. Tour operators and travel agents established in Ireland who retail third party packages e.g. cruises, with a departure from another EU country also need to provide insolvency protection for this element of their business, when the organiser is established outside the European Economic Area, unless they, as retailer can satisfy the Commission for Aviation Regulation that the organiser complies with the insolvency protection requirement.
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 those commencing in Ireland but not licensed for those commencing in other Member State; or (b) choose to be unlicensed for all of its business (except travel only commencing in Ireland and third party packages commencing in Ireland), provided it complies with the applicable insolvency protection arrangements.
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 business commencing in Ireland 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. Where the bond 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, but is acting as an organiser, 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. Currently, the Commission is accepting full indemnity insurance as per option c of Section 23. This is until new bonding regulations are in place.
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.
14. The requirement for Irish established entities to obtain a licence for travel only sales for commencing in Ireland remains in place. This is set out in the Transport (Tour Operators and Travel Agents) Act, 1982.

15. Post 1st January 2021, if a business established in Ireland sells packages to consumers in the UK, please note the following:
- a. If the package includes a flight, the trader must hold an ATOL.
 - b. If the package does not include a flight, the trader must provide financial protection under one of the methods (bond, insurance, trust account) set out in the Package Travel and Linked Travel Arrangements Regulations 2018.²

Entities established in another Member State

16. 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's 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.
17. 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.

Entities established outside the EU

18. An organiser which is established outside the EU and carrying on business in Ireland, but which is not established in Ireland, cannot obtain an Irish tour operator's 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. Currently, the Commission is accepting full indemnity insurance as per option c of Section 23. This is until new bonding regulations are in place.
19. 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.
20. Post 1st January 2021, paragraphs 18-19 will apply to UK businesses.

² <https://www.legislation.gov.uk/ukdsi/2018/9780111168479/contents>

Traders facilitating Linked Travel Arrangement - established in Ireland

21. 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). Currently, the Commission is accepting full indemnity insurance as per option c of Section 23. This is until new bonding regulations are in place.
22. 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 Arrangements - established in another Member State

23. 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.
24. 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 Irish legislation.

Traders facilitating Linked Travel Arrangements - established outside the EU

25. 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). Currently, the Commission is accepting full indemnity insurance as per option c of Section 23. This is until new bonding regulations are in place.
26. 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.
27. 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.
28. Post 1st January 2021, paragraph 25-27 will apply to UK businesses.

Offence

29. 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.

Retailers

30. All retailers must provide insolvency cover if they cannot show that the organiser based in the non-EU country has it in place. This applies to all retailers, including those established outside the EU. Section 25B of the 1995 Act states that:

“Where the organiser is established outside the European Economic Area, the retailer shall be subject to the obligations imposed on organisers under sections 19, 20, 20A, 20B and 22, unless the retailer can satisfy the Commission for Aviation Regulation that the organiser complies with those sections.”

Post 1st January 2021, this will have implications if a business is retailing packages from a UK business.

Insolvency Protection Arrangements post 1st January 2021

Relevant organisers/traders must check in advance of Brexit that the financial institution with whom they have arranged their mandatory insolvency protection continues to meet the requirements as per the Package Holidays and Travel Trade Act, 1995, as amended.

Examples of financial institutions that would meet the requirements are those institutions that have the relevant licence or authorisation granted by the Central Bank of Ireland or another Central Bank in a Member State of the European Union.

Unless specified by the Commission, insolvency protection arrangements, impacted by Brexit, which were put in place for current licences will be regarded by the Commission as sufficient to meet these requirements until these licences expire.