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Consumer & Competition Policy
Department for Business, Energy & Industrial Strategy,
1 Victoria Street,
London, SW1H 0ET

packagetravelconsultation@beis.gov.uk

Dear sir/madam

Updating Consumer Protection in the Package Travel Sector

The Society of Chief Officers of Trading Standards in Scotland is the professional body representing the lead officers for trading standards services in Scottish local authorities, and I welcome the opportunity to respond to this consultation document on Updating Consumer Protection in the Package Travel Sector.

Please find our responses to the consultation questions below:

- 1. Should the UK apply the provisions to any additional areas, or to stand alone contracts? Do you have any evidence to support your position?**
 - a. Yes. Although the ATOL scheme provided insolvency protection for flight only tickets in certain situations, it would help the long-term protection of consumer interests to afford insolvency protection to flight only transactions. This would remove any doubt as to whether a flight transaction is or is not protected and would increase consumer confidence in the market.
- 2. Are there any particular elements of this definition that you think are difficult to interpret?**
 - a. Yes. Any definition must be clear for businesses and consumers to easily understand how it would apply to them. The proposed definition is not easy to understand as it covers different scenarios, and a business or consumer may struggle to understand how to make sure the product they

sell or purchase is a 'package' and therefore has the protection they would expect.

- b. The exclusion of packages that are less than 24 hours and occasionally organised on a not for profit basis for a limited group of travellers, such as a school trip may also be to the detriment of consumers. Expecting consumers to differentiate between the different types of packages is a concern as in reality they will expect their financial interests to be protected regardless of the type of package they purchase. Bringing these two exceptions within the definition would prevent any financial losses to those who pay their monies in good faith, expecting the legislation to protect them.

3. Do you envisage any issues with being able to comply with this new definition?

- a. Yes. As the new definition attempts to cover different situations, this will cause consumers and small businesses problems with the interpretation as to whether what is on offer is a package in accordance with the new definition. Future innovation in the travel sector may not fit neatly within the scope of the proposed definition as the travel industry is evolving constantly to find new ways to meet future varied consumer tastes in travel.
- b. The government's plan to publish guidance on the new definition for business is welcome. However, guidance has to be widely available to consumers and regulatory bodies to ensure there are no interpretational differences should a dispute arise.

4. What will be the costs of complying? Please provide evidence

- a. No comment

5. Are there any particular elements of LTAs that you have difficulty interpreting? Please explain your reasoning

- a. Yes. The addition of LTAs to an already difficult definition of package may add to the confusion in the mind of both consumers and businesses. Consumers when purchasing a travel product would expect a level of protection for what they paid for. To suggest that some of the elements may have insolvency protection and some not would add to the confusion of consumers especially in situations where the trader who facilitated the LTA is solvent but the business that provided the other element is not.
- b. If for example a consumer purchased a flight and after the transaction is complete they receive an email with accommodation which they activate and book the proposed accommodation. If the facilitator remains in business but the accommodation provider is not able to provide the service, then the consumer's flight is protected and not the accommodation. This would leave the consumer confused and at a financial disadvantage.

- c. The consultation document explains that the consumer will be clearly and prominently informed that the product they purchased is not a package. This is very important if the LTAs are to be introduced in the new regulations for this “financial health warning” to be bold, precise and compelling to ensure that consumers are in no doubt that they do not have protection for all the elements of the LTA.

6. Do you currently facilitate arrangements that will fall into scope? Please give examples

- a. No comment

7. What do you anticipate will be the cost of complying? Please provide evidence.

- a. No comment

8. What issues do you envisage with complying? Please explain your reasoning

- a. The added confusion between what is a package and what is an LTA would certainly add to consumer confusion, and potentially also to some businesses involved in the industry. Some may decide to adopt the LTA model to restrict their liability which in the long run may be to the detriment of consumers.
- b. An information campaign for both consumers and business is very important in order to make everyone aware of the differences between the different products on offer.
- c. An issue which we can see with complying, is businesses providing LTAs and also supplying packages, but only offering full financial protection for the packages. Providing clear warnings to consumers from businesses that not all part of the parts of the LTA are covered, may prove to be a challenge for those small firms who may not provide an adequate notice to consumers.

9. Do you agree that the contract should remain in place unless the traveller requests termination?

- a. Yes. Any additional protection for consumers is to be welcomed.
- b. In circumstances where an operator has no other choice but to significantly alter the main characteristics of the package, the consumer should be given the choice to terminate the contract without penalty.
- c. Where there are any changes which compel an operator to alter or cancel a package, the consumer has to be given information in a clear, comprehensible and prominent manner on a durable medium. They should also be given a reasonable period to respond. This period can be either prescribed by statute or specified in guidance to the trade and consumers to avoid any confusion or disputes.

10. Do you envisage travellers being given the option to terminate in "unavoidable and unforeseeable" circumstances causing significant issues? Please give examples

- a. Yes, and we would encourage clarification as to what is deemed as "unavoidable and unforeseeable", this can be either by statute in the proposed legislation or in subsequent guidance

11. Do you agree that we should not implement the right for a traveller to withdraw from an off-premises package travel contract within 14 days without giving reason? If you disagree, please provide evidence

- a. Yes, we agree with this proposal, however would encourage the additional requirement for information to be given to consumers when booking a package to be advised (by means of a clear and prominent notice) that package holidays are not subject to cancellation rights

12. Do you agree that we should not introduce legislation that would make the retailer responsible as well as the organiser? If you disagree, please provide evidence

- a. Yes, we welcome the proposed changes to the present regime, by bringing in those who may have in the past sought to avoid liability by describing their business model as agent for the consumer.

13. Do you agree with our opinion that the UK should not introduce a requirement for insolvency certificates to be provided with non-flight packages?

- a. No, we do not agree with the suggestion. The provision of a certificate is to inform the consumer of the protection they have with the product purchased. This should be encouraged for all packages regardless of being flight inclusive or not. This will in the long run educate consumers to look for a certificate when purchasing a package. However, there should also be introduced a means of identifying the different types of certificates depending on the level of protection to indicate what type of protection is offered depending on what the consumer has purchased.

14. Do you agree with our proposal to broaden the scope of the non-flight insolvency regime to cover the new definition of a package introduced by PTD 2015?

- a. Yes, we agree with the proposal

15. Are there any issues with the current regime that you think should be addressed? Please give examples

- a. Yes, although Trust Accounts can play a role in insolvency protection, the Society agrees with the consultation document that some trust accounts may not be set up as the legislation intended and therefore, may not provide the protection it sought to establish.
- b. Consumers should also have a means of verifying that the insolvency protection they acquired is actually in place. This can be achieved by providing enough information for consumers to check the type of insolvency provision with the actual provider

16. What do you think of the proposal to cover non-flight LTA insolvency protection under the same regime as non-flight packages? Do you envisage any issues with this approach? Please explain your reasoning

- a. We agree with the proposal.

17. Do you agree with proposal to update non-flight insolvency options so that they can be used for EU sales?

- a. Yes. Mutual recognition to facilitate the operation of businesses throughout the EU should not be a means for some businesses based within other member states to target UK consumers with a lower insolvency protection. Consumers and regulators should be in a position to establish whether the level of protection in place is sufficient for the intended purpose. Mutual recognition should not discourage operators to leave the UK for a lower insolvency protection regime which may place UK based companies at an unfair disadvantage.
- b. Cross border enforcement may also be a problem for regulators to establish infringements.

18. What benefits do you envisage from being able to trade across EU under the UK insolvency regime? Are you likely to take advantage of this? Please provide evidence

- a. No comment

19. What issues do you envisage as a result of this new principle? Please explain your reasoning

- a. Please see our response to 17 above.

20. Do you have any suggestions on possible mechanisms that the UK could introduce to ensure compliance of third country traders?

- a. Dealing with third country traders can present enforcement difficulties for regulators especially for the transactions that are conducted over the internet.
- b. A way to address this is for the packages sold through a retailer established within the EU, is to make the retailer responsible for any breaches of the proposed directive.
- c. Consumers when purchasing over the internet, should also be encouraged through an information campaign to look for providers established within the community as should a problem arise with the provision of their package, they will have a party established in the EU that can deal with their issue.

21. Do you have any views on the creation of a central contact point(s) in the UK?

- a. We believe that the creation of a central contact point is a good step forward for the reasons listed in the consultation document.
- b. This would also benefit regulators and would lessen the burden on business as they would not receive enquiries from regulators as to their insolvency protection arrangements.

22. Do you think that the CAA should act as a central contact point for queries related to ATOL alongside a designated body for all other queries?

- a. We have no objection to the CAA acting as a central point.

23. Should the UK set up a register for all UK established organisers to help comply with the 15-working day response requirement?

- a. Yes, we would also suggest the creation of a UK register which can be free, or for a small fee, for businesses to register to facilitate the administration of the register. This can be compulsory and can be similar to the present free Scottish Government register for those selling tobacco and nicotine vapour products.
- b. Non-compliance with the requirement for registration could be subject to a fixed penalty similar to the regime for tobacco or nicotine vapour products

24. Do you agree that the measures should be brought into force on 1 July 2018? Please explain your reasoning.

- a. We have no objection to the suggested date

25. Do you agree with our proposal that the incoming measures should only apply to any sales made from the coming into force date? Please explain your reasoning

- a. We have no objection to this proposal.

I hope this is helpful, and if you wish to discuss further in relation to these or any other matters, please do not hesitate to contact me. Please feel free to publish our response on the BEIS website if appropriate.

Yours faithfully

**Peter Adamson
Chairman SCOTSS**

The Society of Chief Officers of Trading Standards in Scotland, SCOTSS, is the professional body representing the lead officers for Scottish local authority trading standards services.