



Commission for Aviation Regulation note for Travel Agents and Tour Operators, Retailers, Organisers and Facilitators of Linked Travel Arrangements

Directive (EU) 2015/2302

1. Member States are required to implement Directive (EU) 2015/2302 on package travel and linked travel arrangements by 1st July 2018. The Department of Transport, Tourism and Sport is currently working on a Statutory Instrument to give effect to the Directive. ***This note sets out the Commission's current understanding of the changes that need to be made to the existing licensing and insolvency protection arrangements that apply in Ireland. Once the Statutory Instrument is published we will review this guidance note and provide a further update as required.***
2. At present the Commission issues most licences to tour operators and travel agents in May and November of each year. We have recently completed our May 2018 licensing round. We receive applications from (a) entities that are established in Ireland; (b) entities that are established in another Member State and trading in Ireland; and (c) entities established outside the European Union and trading in Ireland.
3. From 1st July 2018 entities established in other Member States, who organise packages and/or facilitate linked travel arrangements, will be regulated by the Member State in which they are established. If these entities carry on business in Ireland, they will not be regulated by the Commission in Ireland. The Commission will treat such entities in the same manner as those established outside the European Union where the relevant Member State does not have insolvency protection arrangements in place.

Transitional Arrangement

4. As a transitional arrangement, all entities that have been provided with a licence by the Commission after 31st October 2017 and before 30th June 2018 can remain licensed for sales out of Ireland until the end date of their licence. From 1st July 2018 such entities that are established in Ireland will be required to have the relevant insolvency protection arrangements in place for any packages originating in other Member States. After the end date of their current licences, these entities will be required to comply with the requirements of the Directive.
5. If a licensed entity that is established in another Member State or outside the EU wishes to terminate its licence after 1st July 2018, it should make a formal request to the Commission at the earliest opportunity. Existing insolvency protection arrangements relating to its current licence will remain in place for a period of six months. Where the entity then intends to

continue to sell packages out of Ireland, it needs to provide the Commission with sufficient evidence of security for these sales - before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information.

Who is not required to provide insolvency protection?

6. Certain types of business do not need to provide insolvency protection. These are:
 - a. The sale of single travel services;
 - b. Packages and linked travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
 - c. Packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers; and
 - d. 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. If a licensed entity wishes to exclude such sales commencing in Ireland from its current licensable turnover after 1st July 2018 and before the end date of their current licence, it should make a formal request to the Commission at the earliest opportunity.

Entities established in Ireland

7. Tour operators and travel agents established in Ireland who are retailers or organisers of overseas travel packages commencing in Ireland, are not obliged but may choose to be licenced by the Commission for their ex-Ireland business.
8. Tour operators and travel agents established in Ireland who are retailers or organisers of packages commencing in other Member States, do not require a licence from the Commission for that element of their business.
9. This means that a tour operator or travel agent established in Ireland who retails or organises packages where some arrangements commence in Ireland and others in another Member State can (a) remain licenced for its ex-Ireland business but not licenced for its ex other Member State business; or (b) choose to be unlicensed for all its business.
10. 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. As is currently the case, if a licensed entity becomes insolvent, the bond in place will be used to provide protection to passengers commencing their package in Ireland. Where the bond is insufficient to cover all relevant costs, the Travellers' Protection Fund will be accessed.
11. Subject to point 7 above, these entities should apply for their next licence in the normal fashion. If licensed in November 2017, the entity should apply for a new licence from November 2018. Similarly for those licensed in the May 2018 round.
12. If a tour operator or travel agent established in Ireland is not licensed by the Commission, it must have sufficient evidence of security in respect of all packages offered for sale/or sold by the

entity both commencing in Ireland or other Member States. It must notify the Commission to that effect before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information.

13. If a tour operator or travel agent established in Ireland chooses not to be licensed and becomes insolvent, the security provided will be used to protect all affected passengers. The Travellers' Protection Fund will **not** be accessed where the security provided is insufficient to cover all relevant costs.

Entities established in another Member State

14. As is currently the case, from 1st July 2018 an entity which is established in another Member State but carrying on business in Ireland does not require a licence. Instead, it must have sufficient evidence of security (from the country in which it is established) for all packages offered for sale/or sold and must provide the Commission with a notification to that effect (in English) before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information.
15. Some entities received a licence from the Commission after 31st October 2017 and before 30th June 2018. Under the transitional arrangement, these entities can continue to use their licence for the period of that licence. After the end date of their current licence they will need to provide evidence of security.

Entities established outside the European Union

16. From 1st July 2018 an organiser which is established outside the European Union but carrying on business, as a retailer, in Ireland does not require a licence. The retailer must have sufficient evidence of security in respect of all packages offered for sale/or sold commencing in Ireland. It must notify the Commission to that effect before carrying on such business. The Commission will notify the entity when it has received sufficient information. Alternatively, the retailer can provide evidence to the Commission that the organiser had already provided the necessary information.
17. Some entities received a licence from the Commission after 31st October 2017 and before 30th June 2018. Under the transitional arrangement, these entities can continue to use their licence for the period of that licence. After the end date of their current licence they will need to provide evidence of security.

Linked Travel Arrangement Providers

18. From 1st July 2018, a facilitator of Linked Travel Arrangements established in Ireland is required to have sufficient evidence of security in respect of all linked travel arrangements offered for sale/or sold by the entity both commencing in Ireland or another Member State. It must also notify the Commission to that effect before carrying on such business in Ireland. The Commission will notify the entity when it has received sufficient information.
19. The security provided 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.

Financial Security Arrangements

20. Under the Directive, organisers of packages must put into place sufficient security to provide for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the entity's insolvency and provide for the traveller's repatriation. The security must cover the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down payments and final payments and the completion of the packages as well as the estimated cost for repatriations in the event of insolvency.
21. In all cases, the security put in place must be effective and covers reasonably foreseeable costs.
22. The security provided can take one or more of the following forms:
- a. A sum of money deposited in a bank or financial institution in the State in the sole name of the Commission, which shall be made fully and exclusively available to the Commission in the event of insolvency;
 - b. A guarantee secured with a bank or insurance company which shall be made fully and exclusively available to the Commission in the event of insolvency;
 - c. An insurance policy;
 - d. Any arrangement or scheme acceptable to the Commission entered into on a collective basis by travel agents or any group of travel agents, provided that in the event of insolvency of any member, the amount of money payable to the Commission would be at the same level as that specified by the Commission in Regulations in respect of an individual travel agent; or
 - e. A security of such other type as may be acceptable to the Commission.
23. The current levels of security are set out in two Statutory Instruments. S.I. No. 102/1983 – Tour Operators and Travel Agents Bonding Regulation 1983 – sets the bond at 10% of projected licensable turnover for tour operators and 4% for travel agents that are licensed by the Commission. S.I. No 270/1995 – Package Holidays and Travel Trade Act 1995 (Bonds) Regulation, 1995 states that the bond is set at 10% for a person who is a member of an approved body which has an appropriate reserve fund or insurance cover and 15% for a person who is a member of an approved body that does not have a reserve fund or insurance cover as specified in section 23 (2) of the 1995 Act.
24. 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.
25. In August 2017, we published a consultation paper¹ and a report². In January 2018, we published

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

a project update³. 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 received⁴ and a report entitled “Bonding of the Irish travel trade industry Final Report”⁵. This marked the end of this stage of the project. The Commission will shortly commence the second phase of this work – following publication of the Statutory Instrument.

26. Pending the conclusion of this work, the bonding levels will remain at 10% for licensed tour operators and 4% for licensed travel agents. As an interim measure, the Commission intends to set bonding levels at 10% and 4% of the relevant projected turnover for tour operators and travel agents, respectively, (a) established in Ireland (but unlicensed) and (b) established outside the EU in respect of all packages offered for sale/sold by the entity. As an interim measure the Commission also intends to set bonding level at 10% of the relevant projected turnover for facilitators of linked travel arrangements.

Information to Passengers

27. Please be fully aware of the requirements of the Directive in relation to the information required to be provided to customers. In relation to insolvency protection, and in order to increase clarity for travellers and enable them to make informed choices as to the different types of travel arrangements on offer, entities must state clearly and prominently whether they are offering a package or a linked travel arrangement, and provide information on the corresponding level of protection, before the traveller agrees to pay.

² <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>

⁴ <http://www.aviationreg.ie/fileupload/2018/18-1-10%20Responses%20to%20Consultation%20Travel%20Trade%20Consumer%20Protection%20Measures%20CP8-2017.pdf>

⁵ <http://www.aviationreg.ie/fileupload/2018/Europe%20Economics%20Final%20Report.pdf>