

HOW SHORT-TERM MISSION ORGANISERS CAN COMPLY WITH THE PACKAGE TRAVEL REGULATIONS (1992)

A. BACKGROUND TO PACKAGE TRAVEL (AND ATOL) REGULATIONS

The definition of 'package' in both the Package Travel Regulations (PTR) and the ATOL Regulations is a trip which lasts for more than 24 hours or involves an overnight stay and includes at least two of the following:

- Carriage of passengers: (flights, trains, ships, ferries and coaches)
- Accommodation (intrinsic accommodation as part of the carriage [e.g. sleeper train berth or ferry cabin] and long term residential accommodation is excluded)
- Motor Vehicle Hire (car and motorcycle included)
- Any other tourist service (these have to make up a 'significant' part of the package; examples include admission to concerts, ski passes, spa treatments etc.)

For the purpose of the legislation, transport can be international (flight to a host nation) or internal (transport from the airport to mission hosts or other areas within the host nation). A trip which lasts for more than 24 hours will normally involve some sort of accommodation either in the traditional sense (e.g. hotels, bed and breakfast etc.) or by staying with a mission host on location. Whilst many trips offer the opportunity to partake in traditional tourist activities as part of the experience, even the mission experience or sponsored activity itself may fall within the definition of 'tourist services'. As a result, many trips currently on offer don't just include two of the categories but potentially three.

Consequently organisers of short term mission trips are legally bound to comply with the regulations which include contractual and advertising requirements as well as making them liable for the proper performance of the contract. In the event of non-performance or improper performance resulting in damage to the consumer, the organiser is liable to provide compensation.

B. WHICH LEGISLATION APPLIES

It must be noted that ATOL is separate to and different from PTR. Both regulations may need to be adhered to as they cover different aspects of regulations but they are closely linked. It is important to read the relevant regulations.

- [Package Travel Regulations \(PTR\)](#)
- [ATOL Regulations](#)
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PLEASE ALSO SEE SECTION 'D' WHICH DETAILS THE 2018 UPDATE TO THE PACKAGE TRAVEL REGULATIONS.

The following chart is a guide to when each of the regulations apply.

Type of booking	Package Travel Regulations apply	ATOL Regulations apply
Single item NOT a flight	No	No
Flight only	No	Yes
Package with flight	Yes	Yes
Package without flight	Yes	No

This paper concentrates on compliance with the Package Travel Regulations. There is a separate paper available on the ATOL regulations which needs to be read in conjunction with this paper if a flight is involved.

C. HOW DOES AN ORGANISATION SEEK TO COMPLY WITH THE PACKAGE TRAVEL REGULATIONS?

The Package Travel Regulations set out

- what information must be given to the consumer (passenger/volunteer) before the contract is concluded (including information to be in brochures, where one is published) and
- what information must be given to the consumer before the package starts.

They lay down terms which must be included in the contract and prescribe the circumstances in which price revisions may be made. They stipulate that the organiser and/or retailer is strictly liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be provided by that other party or by other suppliers of services. They also state that the organiser shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.

In summary then, an organisation running short-term mission trips which come under the terms of the Package Travel Regulations needs to:

- 1. Ensure that brochures and websites comply with the regulations**
- 2. Create a standard form of Booking Conditions to comply with the regulations**
- 3. Provide sufficient evidence of security in the event of insolvency (financial failure)**
- 4. Understand (and insure against) liabilities covered by PTR**
- 5. Offer/confirm suitable travel insurance**

NOTE: There is no obligation on the organiser to provide or arrange travel insurance – it is recommended that proof of insurance is obtained as a condition of booking but the organiser does not have to arrange this themselves under the PTRs – travel insurance is a personal insurance and the responsibility of the traveller.

1. Ensure that brochures and websites comply with the regulations

Information to be included (in addition to the price) in brochures where relevant to packages offered:

- a) The destination and the means, characteristics and categories of transport used.
- b) The type of accommodation, its location, category or degree of comfort and its main features and, where the accommodation is to be provided in a member State, its approval or tourist classification under the rules of that member State.
- c) The meals which are included in the package.
- d) The itinerary.
- e) General information about passport and visa requirements which apply for British citizens and health formalities required for the journey and the stay.
- f) Either the monetary amount or the percentage of the price which is to be paid on account and the timetable for payment of the balance.
- g) Whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation.
- h) The arrangements (if any) which apply if consumers are delayed at the outward or homeward points of departure.
- i) The arrangements for security for money paid over and for the repatriation of the consumer in the event of insolvency.

2. Create a standard form of Booking Conditions to comply with the regulations

Elements to be included in the contract if relevant to the particular package:

- a) The travel destination(s) and, where periods of stay are involved, the relevant periods, with dates.
- b) The means, characteristics and categories of transport to be used and the dates, times and points of departure and return.
- c) Where the package includes accommodation, its location, its tourist category or degree of comfort, its main features and, where the accommodation is to be provided in a member State, its compliance with the rules of that member State.
- d) The meals which are included in the package.

- e) Whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation.
- f) The itinerary.
- g) Visits, excursions or other services which are included in the total price agreed for the package.
- h) The name and address of the organiser, the retailer and, where appropriate, the insurer.
- i) The price of the package, if the price may be revised in accordance with the term which may be included in the contract under regulation 11, an indication of the possibility of such price revisions, and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at ports and airports and tourist taxes) where such costs are not included in the package.
- j) The payment schedule and method of payment.
- k) Special requirements which the consumer has communicated to the organiser or retailer when making the booking and which both have accepted.
- l) The periods within which the consumer must make any complaint about the failure to perform or the inadequate performance of the contract.

It should be noted that both Financial Failure and Tour Operators Liability insurers will require sight of the Booking Conditions.

3. Provide sufficient evidence of security in the event of insolvency (financial failure)

Regulations 2-24 of the Package Travel Regulations 2018 stipulate three options to meet the requirement to provide suitable evidence of security in the event of insolvency and they are:

- a) **Bonding through membership of an approved body**
- b) **Monies in Trust**
- c) **Per passenger insurance, (also known as financial failure insurance)**

- a) **Bonding:** For organisations organising packages without flights there are three approved bodies and they are listed on here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749498/package-travel-regulations-2018.pdf

Of course, for organisations who are sending relatively small numbers abroad - say less than 100 passengers a year - the costs of membership and the additional administrative burden placed on your organisation is such that bonding may not be a practicable solution.

- b) **Monies in Trust** – a charity holding sufficient money in unrestricted reserves is not deemed to be sufficient protection for the consumer. The current arrangements for the operation of a Trust account, which meets the requirements of the regulations, requires all monies paid over by a consumer to be held in the United Kingdom by a person as trustee for the consumer until the contract has been fully performed. The organiser has to produce evidence to the trustee that the contract has been fully performed before the trustee can release the money. Using this form of financial security means that the organiser has to pre-finance all costs and cannot reclaim the money from the Trust Account until after completion of the trip. Also, setting up a Trust Account seems to be a costly solution. One supplier quoted an application fee of £150, monthly costs starting at £95 (plus VAT) and an annual membership of £500. Additional insurances also now have to be paid to ensure repatriation cover is in place.
- c) **Per passenger insurance** – This seems to be a more practicable arrangement in that the cost depends on use, and so should be far more cost-effective for organisations that are sending small numbers of passengers overseas each year. Financial Failure insurance is a viable option to meeting the need of providing sufficient evidence of security in the event of insolvency for both the ground arrangements and flights.

4. Understand (and insure against) liabilities covered by PTR.

Regulation 15 of the PTR states that the organiser is liable to the consumer for:

- Personal Injury due to the non-performance or improper performance of the package including the non-performance of any suppliers (Public Liability)
- Cover for damage other than personal injury resulting from non-performance or improper performance of the package (Professional Indemnity)

- Emergency Assistance even where failure to perform the contract or the improper performance of the contract is:
 - a) attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable; or
 - b) such failures are due to unusual and unforeseeable circumstances beyond the control of the party by whom this exception is pleaded, the consequences of which could not have been avoided even if all due care had been exercised; or an event which the other party to the contract or the supplier of services, even with all due care, could not foresee or forestall

A standard Public Liability policy only provides cover for legal liability arising from your negligence and resulting in death, bodily injury or disease to a third party. Standard Public Liability will not extend to including the negligence of suppliers, cover for Professional Indemnity or cover for Emergency Assistance. However liabilities can be covered by a Tour Operators Liability policy.

5. Travel Insurance

See 'NOTE' in point 'C' introduction but the information below states an option if you prefer.

The organiser may either include travel insurance as part of the contract or provide in writing and in good time before the start of the journey information about an insurance policy which the consumer may, if he wishes, effect in order to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.

This is where charities organising 'packages' often differ from a Tour Operator or Travel Agent in that the charity takes on a clear duty of care to the passenger/volunteer for their well-being whilst participating in a trip and this would therefore include ensuring that they have adequate travel insurance.

There are a number of practical issues of leaving the passenger to arranging their own insurance:

- Bearing in mind the duty of care, how do organisers ensure that the travel insurance arrangements made by the passenger are adequate?
- Even where the passenger is responsible for arranging their own insurance, duty of care would imply that the organiser should keep copies of each passenger's insurance details to enable them to provide assistance in the event of a claim.
- In the event of an incident involving multiple persons such as a road traffic accident, the organisers of the trip may find themselves having to co-ordinate with multiple insurers if they leave the passenger to make their own insurance arrangements.

To overcome these issues and to ensure both compliance with the regulations and that appropriate cover is arranged, it is recommended that Travel Insurance is included as a compulsory part of the 'package'.

D. 2018 UPDATE TO THE PACKAGE TRAVEL REGULATIONS

Organisations which come under the Package Travel Regulations should familiarise themselves with the changes introduced in July 2018.

- The 1990 Package Travel Directive has been replaced by the [2015 Package Travel Directive](#). Please also see this [update](#) from the European Commission..
- The Package Tours, Package Travel and Package Holiday Regulations 1992 have been replaced by The Package Travel and Linked Travel Arrangements Regulations 2018
- The revisions seek to plug previous gaps in protection and to reflect changes in the travel industry, such as ways people book holidays (direct, online, instantly) and ways that they are sold (from homes, dynamically).
- The 2018 PTRs widen the definition of a package; bringing more holidays and operators within the scope of the legislation and thus requiring financial protection.

The 2018 Package Travel and Linked Travel Arrangement Regulations

- They became UK law on 1 July 2018
- They apply to all packages sold by UK organisations after 1 July 2018
- They expand the scope of the 1992 PTRs
- They expand the definition of a traveller beyond a consumer
- They introduce a new form of arrangements called Linked Travel Arrangements (LTAs)

- They make the *organiser* liable for the performance of the travel services making up the package (even if performed by third parties).
- They require detailed information to be provided to the traveller at point of sale.

Defining a 'package'

This is a combination of two or more different types of travel service which are combined for the purpose of the same trip:

- Carriage of passengers: (flights, trains, ships, ferries and coaches)
- Accommodation (intrinsic accommodation as part of the carriage [e.g. sleeper train berth or ferry cabin] and long term residential accommodation is excluded)
- Motor Vehicle Hire (car and motorcycle included)
- Any other tourist service (these have to make up a 'significant' part of the package; examples include admission to concerts, ski passes, spa treatments etc.)

When is a package not a package?

- **When the trip being organised only has a single element.**
 - If you only arrange carriage and accommodation is not charged for, nor any other 'tourist service' or car hire.
 - If you only arrange the accommodation and the traveller organises all their own transport and there are no other 'tourist services'.
- **If it is an LTA**

This is a brand new form of arrangement which requires a lower form of insolvency protection and repatriation cover than a package.

 - If there is more than one element, in order to avoid being a 'package' there has to be clear separation of the booking and selection processes
 - e.g. one booking has to be fully concluded before the next service is selected.

So what about LTAs?

An LTA occurs when the organisation facilitates:

- the selection and payment of two or more services for the same trip, under separate contracts with individual providers, with a single point of contact; or
- The separate selection and payment of two or more travel services for the same trip through targeted linked booking processes within 24 hours without transferring the travellers' payment details.

You are required to have insolvency protection in place in case you or any of the suppliers fail if you are the organiser of the LTA. Repatriation will also fall to you if you are responsible for the carriage element of the LTA.

Exclusions under the 2018 PTRs

- **Packages and LTAs that last less than 24 hours**
Provided there is no overnight accommodation
- **Packages and LTAs that are organised occasionally and on a not for profit basis and for a limited group of travellers**
BEIS advise 'occasionally' to mean no more than a few times a year. BEIS use the example of a 'one-off trip arranged by a church for its members'
- **Packages and LTAs purchased on the basis of a general agreement.**
This covers bookings through framework contracts with business travel agencies. Smaller businesses and charities often use the same booking channels as holidaymakers and are therefore entitled to the same level of protection.

EU clarification

Recital (19) from the 2015 PTD relates to occasional travel on a not-for-profit basis:

- 'Since there is less need to protect travellers in cases of short-term trips, and in order to avoid an unnecessary burden for traders, trips lasting less than 24 hours which do not include accommodation, as well as packages or linked travel arrangements offered or facilitated

occasionally and on a not-for-profit basis and only to a limited group of travellers, should be excluded from the scope of this Directive. **The latter may for example include trips organised not more than a few times a year by charities, sports clubs or schools for their members, without being offered to the general public.** Adequate information on that exclusion should be made publicly available in order to ensure that traders and travellers are properly informed that those packages or linked travel arrangements are not covered by this Directive'.

BEIS clarification (Department for Business, Energy & Industrial Strategy)

The Department is unfortunately unable to endorse a particular interpretation beyond our Guidance for Business as interpretation of the law is a matter for the courts.

As 'occasional' is not defined in the Regulations or Directive, I think it would bear its ordinary, dictionary, meaning which I take to be something **which is irregular and (probably also) infrequent**. I am sorry that we do not have any specific criteria in order to help us decide what 'occasional' means.

You could argue that, say, a church organising an outing for its members might be outside the scope of the Regulations – ditto if a best man combines various travel services for the purpose of organising a stag do (but the answer would be different if a trader combines, say, travel and accommodation on behalf of the best man)."

Thomas McEwan, European Consumer Policy, Consumer and Competition Policy Directorate 16 October 2018

So what is 'Occasional'?

Look at the definition again:

- Packages and LTAs that are organised occasionally **and** on a not-for-profit basis **and** for a limited group of travellers

There is **no objective test** for this. It will be a question of proportionality and will be subject to argument. Items to consider will include:

- Cost per person and availability to buy
- Number of trips arranged per year
- Purpose of trips
- Destination – overseas/UK based

What should your organisation do?

You need to consider what will be proportional for your organisation;

- a small charitable organisation taking a dozen volunteers away once a year, even if it is every year, possibly does not need to comply with the PTRs.

BUT ask yourself:

- Do you make a profit on the trip?
- Do you combine additional experiences for your volunteers?
- Do you open yourself up to being sued in case of an accident?
- Do you risk stranding your volunteers abroad if the money runs out?

Your obligations

If you do organise packages or LTAs on more than an occasional basis you need to ensure you have:

- Appropriate financial protection – by bonding with a travel trade association such as ABTOT or ABTA, per passenger insurance or an updated trust account which meets the new rules
- Appropriate liability insurance – remember you are liable if accidents happen
- Appropriate contracts with suppliers – ensure they meet minimum standards and have their own forms of protection in place so you don't end up bearing the cost of poor service
- Clarity of information for your travellers about the protection in place and also about how suitable it is for persons with reduced mobility – on websites, booking T&Cs and brochures.

You may find it helpful to talk to [ABTOT](#) if you have questions about whether or not you need to comply with the PTRs. They also offer bonding solutions solutions and a 'per passenger insurance' option through their membership scheme.

ABTOT

0207 065 5313

www.abtot.com

E. INSURANCE SOLUTIONS FOR GLOBAL CONNECTION MEMBERS

Jelf previously Bluefin/Masterpolicy has been providing Travel Insurance to Global Connections members for 20 years and at the request of members they have now put together insurance solutions for both Financial Failure and Tour Operators Liability.

E.1 FINANCIAL FAILURE INSURANCE

Jelf has negotiated with International Passenger Protection Ltd (IPP) – a worldwide leader in providing financial failure insurance to the travel industry - to provide Financial Failure insurance for Global Connection members.

- **Limit of indemnity:** The limit of indemnity or sum insured will be determined by the maximum package cost per passenger.
- **Level of premium:** Due to the underwriting complexities of Financial Failure insurance, it is not possible to offer a standard package. Terms will be assessed on a case-by-case basis and is dependent on:
 - the package destination
 - the number of passengers/volunteers
 - the maximum cost of the package
 - an assessment of your organisation's credit rating

The Insurers will charge a minimum premium (non-refundable) in order to provide cover, but the actual premium will be assessed on a case-by-case basis.

Below are some examples of quotations that Jelf obtained for financial failure insurance. They serve a **guide only** as even if requirements matched those of one of the samples below, the premium will be calculated on the actual information supplied:

	Organisation A	Organisation B	Organisation C
Package Destination	UK, Europe (France, Morocco, Spain) and Worldwide (China)	Worldwide (specific destinations Ethiopia, Lesotho, Malawi, Nepal)	Worldwide (specific destinations India, Kenya, Malawi, Sri Lanka & Uganda)
Estimated number of Passengers	156	80	40
Maximum Package Cost	£1,200	£2,000	£1,900
Estimated annual income from passengers	£50,700	£80,000	£50,000
Premium	£638	£960	£630

Jelf charge a one off annual fee of £250 in respect of all financial failure policies.

Please contact Sarah Grant if you have any queries concerning financial failure (her contact details are below)

E.2 TOUR OPERATORS LIABILITY INSURANCE

Jelf has established a Tour Operators Liability scheme underwritten by Vantage Insurance Services to provide appropriate cover. The scheme has been underwritten with the knowledge that the organiser is a charity or not-for-profit organisation and that the customer would be a volunteer. There are special rates for GC members. *Jelf is also able to offer cover to non-Global Connections members, however, the minimum premium and adjustable rates are considerably higher.*

Limits of Indemnity:

Employers Liability £10,000,000

Public Liability £2,000,000* (including Emergency Assistance £5,000)

Professional Indemnity £250,000

Higher limits are available on request

Premium: There are special rates for Global Connections members in two categories:

Category 1 - Churches and small agencies sending up to 300 passengers/volunteers overseas per annum.

These organisations have a limited number of trips a year and will often be sending out less than 50 passengers/volunteers a year. The minimum and deposit premium for organisations falling under category 1 would be **£350** inclusive of 6% IPT and administration fees and would provide cover for up to **50** passengers/volunteers travelling per year.

Prior to renewal the organiser will be required to provide a declaration of the actual number of people during the year. An additional premium will be levied for any excess over 50. The additional charge is £2.65 inclusive of IPT per passenger. For 100 people, the premium would be £350 + (50 x £2.65) giving a total of £482.50. This works out at less than £5 per person.

Category 2— Larger organisations who have a number of programmes running throughout the year and their passenger numbers are in excess of 300 per annum.

There is a 10% discount off book rates subject to a minimum premium of £1,090 inclusive of IPT and administration fees.

Standard Booking Conditions: Organisers are required to have a set of Standard Booking Conditions.

To obtain your own personalised quotation please contact:

Steve Nixon
JELF INSURANCE
Stuart House, St. John's Street, Peterborough, PE1 5DD
T: 01733 563957
www.jelf.com
Authorised and regulated by the Financial Conduct Authority
Registered Address: 5 Old Broad Street, London, EC2N 1AD
Registered in England No. 931954

E.3 TRAVEL INSURANCE:

Global Connections works with Jelf and Banner Insurance to provide travel and medical insurance cover. For further details please contact either:

JELF - please contact Sarah Grant or Vicky Morris.
Contact details are as follows:

Sarah Grant Commercial Account Handler

Jelf | Stuart House, St John's Street, Peterborough. PE1 1QF

01733 294500 Direct Dial 01733 295296 Mobile 07880078721

sarah.grant@jelf.com

Victoria Morris

Commercial Account Handler/New Business Developer

Jelf | Stuart House, St Johns Street, Peterborough, PE1 5DD.

01733 294505 | 01733 294500

Mobile: 07880078706

Vicky.morris@jelf.com

BANNER FINANCIAL SERVICES, t/a Harrison Beaumont Insurance Services Ltd

Globe House, 24 Turret Lane, Ipswich IP4 1DL

0844 846 9911

www.bannergroup.com/travel-insurance/

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