

Guidance for tour operators:
disruption of package holidays
by unusual and unforeseeable
circumstances

JUNE 2010

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Disruption of package holidays by unusual and unforeseeable circumstances

1. Introduction

(a) This guidance applies only to package travel and holidays which fall within the Package Travel, Package Holidays and Package Tours Regulations 1992 (“Regulations”) (“packages”). It summarises the views of BIS on the application of these Regulations when unusual and unforeseeable circumstances, such as the recent volcanic eruption in Iceland, occur and disrupt the package. However, the proper interpretation of the Regulations is a matter for the courts¹. Readers of this guidance may need to take their own advice on the Regulations.

(b) The comments made below relate to rights and obligations of consumers and tour operators under the Regulations. Particular package contracts may contain other provisions that apply in the circumstances.

(c) Some consumers who have purchased a package will also have rights against airlines under the Denied Boarding and Cancellation Regulations (EC No. 261 / 2004). The Denied Boarding and Cancellation Regulations make clear that they do not restrict the rights of airlines to seek reimbursement from tour operators or the rights of tour operators to seek reimbursement from airlines. Where liabilities fall on both tour operators and airlines, the ultimate burden of those liabilities will usually be allocated in accordance with the contractual arrangements between them. Tour operators and airlines should ensure that consideration of where that burden ultimately falls does not lead to delay in consumers obtaining remedies to which they are entitled.

2. Before departure – where the consumer has booked a package holiday

Information about significant changes to a package

(a) Unusual and unforeseeable circumstances may force a tour operator to make significant changes to a package before the consumer has departed. For example, unforeseen air traffic control restrictions may make it necessary to cancel or rearrange a flight; or a hotel may be destroyed by a hurricane. Consumers have the right to be informed of these significant changes as quickly as possible². Further, in certain circumstances events may mean that an operator is forced, or will choose, to cancel a package altogether.

¹ The Department is aware that since this guidance was published in June 2010 there have been decisions in the lower courts in which different interpretations have been given. (footnote added January 2012)

² Regulation 12(a)

Refunds and substitute packages

(b) Whatever the cause of the significant change, the consumer then has the option either to cancel the trip or accept the changes to the package, including any resulting change in the price³.

(c) If the consumer chooses to cancel the trip, or the operator cancels the package for any reason other than the fault of the consumer, the consumer then has the option either to accept a full refund, or to accept a substitute package if the tour operator is able to offer one. If a substitute package is of lower quality, the consumer is entitled to receive a refund of the difference in price⁴. If the substitute is of higher quality, no charge may be made of the consumer to reflect this.

Additional compensation

(d) Additional compensation will not be payable under the Regulations where a package is cancelled due to unusual and unforeseeable circumstances beyond the operator's control and the operator could not have avoided the consequences of those circumstances⁵. An example of this would be the cancellation of a package due to the closure of air space for several days following the initial eruption of the volcano in Iceland.

(e) Where significant changes are, or cancellation is, not due to unusual and unforeseeable circumstances, the consumer may be entitled to additional compensation for any loss resulting from the cancellation of, or the consumer's withdrawal from, the package⁶. An example of such loss might be where, as a result of cancellation at short notice, a consumer is unable to book an alternative holiday during the time he has booked off work for his holiday, and in consequence the consumer misses out on the enjoyment he would have had from having a holiday during this period.

(f) Occasional closures of air space resulting from the continuing eruptions of the volcano in Iceland are more likely than the closure which followed the initial eruption to be treated as foreseeable, in a similar way as severe weather in a region where it is known that this weather occurs from time to time. Tour operators should plan for the consequences of foreseeable circumstances.

³ Regulation 12(a)

⁴ Regulation 13(2)

⁵ Regulation 13(3)(b)

⁶ Regulation 13(3)

3. After departure – where the consumer on a package holiday is stranded

Failure to provide a significant proportion of the package

(a) The Regulations provide rights to consumers where a significant proportion of the package is not provided, including where this results from unusual and unforeseeable circumstances⁷. Accommodation or a return flight will normally be a significant proportion of the package.

Suitable alternative arrangements

(b) Where, for whatever reason, a significant proportion of the package is not provided, the tour operator must make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package⁸. For example, if unforeseen riots make it impossible for consumers to stay in a particular hotel, the operator should organise a suitable alternative hotel in a safe location. If it is impossible to make suitable alternative arrangements (for example because there are no suitable hotels in the region), or the consumer does not accept them for good reasons (for example because the consumer was caught up in the riots and simply wants to return home), then the operator should normally provide the consumer with transport home or to another agreed place⁹.

(c) If return flights home are not available within a reasonable timeframe after the contracted for time, the tour operator should make suitable alternative arrangements to get the consumer home. Depending on the circumstances, this might mean a later flight or some different means of transport. If there is a delay before this alternative transport can be provided, the consumer may need accommodation in the intervening period. The obligation on the tour operator is to make “suitable alternative arrangements for the continuation of the package”. Where the package included accommodation, these alternative arrangements should normally include accommodation of a reasonable standard for the intervening period before the alternative transport is provided, at no extra cost to the consumer. Where the package does not include accommodation, the obligation to provide accommodation for the intervening period is less clear, but the better analysis appears to be that a suitable alternative to sending the consumer home would still require the provision of the reasonable accommodation and food a consumer would inevitably need before return transport could be arranged. However, it will ultimately be for the courts to determine this issue. Furthermore, where travellers on a package have a right to care, including hotel accommodation, against airlines under the

⁷ Regulation 14

⁸ Regulation 14(2)

⁹ Regulation 14(3)

Denied Boarding and Cancellation Regulations because of a delayed or cancelled flight, then the organisers of the package which includes that flight may have a similar obligation to provide the care specified.

Prompt assistance

(d) Where unusual and unforeseeable circumstances disrupt a package holiday, tour operators are also obliged to provide prompt assistance to consumers who are in difficulty¹⁰. That assistance might, for example, include advising consumers about the alternative arrangements referred to above, about visa requirements or about where to find health care.

Additional compensation

(e) In normal circumstances the tour operator is liable for the proper provision of the whole package contract, including by third parties such as an airline; and therefore the tour operator could be liable for compensation for loss resulting from a failure to provide any part of the services properly¹¹. However, there is no right under the Regulations to compensation for such a failure in circumstances where it is attributable to (a) unusual and unforeseeable circumstances beyond the control of the relevant party, the consequences of which could not have been avoided even if all due care had been exercised; (b) the fault of the consumer; (c) the unforeseeable or unavoidable fault of a third party unconnected with the provision of the services contracted for under the package; or (d) an event which the tour operator, even with all due care, could not have foreseen or, (even if foreseen), was not reasonably capable of being forestalled.¹² Tour operators may also, save in respect of compensation for personal injury, provide in their contracts for reasonable limits upon the amount of any compensation payable for failures in the provision of services.¹³

BIS

9 June 2010

¹⁰ Regulation 15(7)

¹¹ Regulation 15

¹² Regulation 15(2)

¹³ Regulation 15(4)

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URN 12/558