

Home > Acts > 1995 > Package Holidays and Travel Trade Act, 1995

# Package Holidays and Travel Trade Act, 1995

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*Number 17 of 1995*

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## **PACKAGE HOLIDAYS AND TRAVEL TRADE ACT, 1995**

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### ARRANGEMENT OF SECTIONS

#### PART I

##### Preliminary and General

##### Section

1. Short title, collective citation and commencement.
2. Interpretation.
3. Organiser.
4. Expenses.
5. Fees.
6. Offences.
7. Proceedings.
8. Particular functions of Director.
9. Laying of regulations before Houses of Oireachtas.

#### PART II

##### Regulation of Travel Contract

10. Brochure content.
11. Liability for misleading brochures.
12. Information to be provided before conclusion of contract.
13. Information to be provided before start of package.
14. Essential terms of contract.
15. Form of contract.
16. Transfer of booking.
17. Contract price revision.
18. Alteration or cancellation by organiser.
19. Significant failure of performance after start of the package.
20. Extent and financial limits of liability.
21. Authorised officers.

#### PART III

##### Security

22. Security requirements in the event of insolvency.
23. Bonding where an approved body has a reserve fund or insurance.
24. Bonding where an approved body does not have a reserve fund or insurance.
25. Insurance.

#### PART IV

##### Amendment of Transport (Tour Operators and Travel Agents) Act, 1982

26. Functions of authorised persons.
27. Amendment of section 2 of the Act of 1982.
28. Amendment of section 6 of the Act of 1982.
29. Amendment of section 8 of the Act of 1982.
30. Amendment of section 13 (4) (d) of the Act of 1982.
31. Amendment of section 18 of the Act of 1982.
32. Amendment of section 20 of the Act of 1982.
33. Amendment of section 22 (2) of the Act of 1982.
34. Powers of Court under the Act of 1982.

#### SCHEDULE



Number 17 of 1995

## PACKAGE HOLIDAYS AND TRAVEL TRADE ACT, 1995

AN ACT TO ENABLE EFFECT TO BE GIVEN TO COUNCIL DIRECTIVE NO. 90/314/EEC OF 13 JUNE 1990 OF THE EUROPEAN COMMUNITIES ON PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS, TO AMEND THE TRANSPORT (TOUR OPERATORS AND TRAVEL AGENTS) ACT, 1982 , AND TO PROVIDE FOR CONNECTED MATTERS. [17th July, 1995]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### PART I

#### Preliminary and General

Short title, collective citation and commencement. **1.—**(1) This Act may be cited as the Package Holidays and Travel Trade Act, 1995.

(2) The Transport (Tour Operators and Travel Agents) Act, 1982 and this Act may be cited together as the Transport (Travel Trade) Acts, 1982 and 1995.

(3) This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes or different provisions of this Act.

Interpretation. **2.—**(1) In this Act, except where the context otherwise requires—

"*the Act of 1982*" means the Transport (Tour Operators and Travel Agents) Act, 1982 ;

"*authorised officer*" has the meaning assigned to it by section 21 ;

"*consumer*"—

(a) in relation to a contract, means the person who takes or agrees to take the package ("*the principal contractor*");

(b) in any other case, means, as the context requires—

(i) the principal contractor,

(ii) any person on whose behalf the principal contractor agrees to purchase a package ("*another beneficiary*"), or

(iii) any person to whom the principal contractor or another beneficiary transfers the package ("*the transferee*");

"*contract*" means an agreement linking the consumer to the organiser (whether dealing directly with the consumer or through a retailer);

"*contravenes*", in reference to any provision of this Act, includes a failure or refusal to comply with the provision;

"*the Directive*" means Council Directive No. 90/314/EEC of 13 June 1990(1) on package travel, package holidays and package tours the text of which in the English language is set out for convenience of reference in the Schedule to this Act;

"*the Director*" means the Director of Consumer Affairs;

"*functions*" includes powers and duties;

"*the Minister*" means the Minister for Transport, Energy and Communications;

"*offer*" includes an invitation to a person, whether by means of advertising or otherwise, to make an offer to buy a package;

"*organiser*" has the meaning assigned to it by section 3;

"*package*", subject to *subsection (2)*, means a combination of at least two of the following components pre-arranged by the organiser when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation—

(a) transport;

(b) accommodation;

(c) other tourist services, not ancillary to transport or accommodation, accounting for a significant proportion of the package;

"*package provider*" (or "*provider*") means—

(a) in circumstances other than those described at *paragraph (b)*, the organiser, or where the retailer is also party to the contract, both the organiser and the retailer, or

(b) in the case of a package sold or offered for sale by an organiser established outside the State through a retailer established within the State (and where the transport component of the package commences outside the State), the retailer;

"*premises*" includes any building, dwelling, temporary construction, vehicle, ship or aircraft;

"*record*" means any book, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

"*repatriation*" means the return of the consumer to the place of departure or other place agreed with the consumer;

"*retailer*" means the person who sells or offers for sale the package put together by the organiser.

(2) The submission of separate accounts for different components of the package shall not cause the arrangements to be other than a package for the purpose of this Act.

(3) This Act applies to packages offered for sale or sold in the State.

(4) In this Act—

(a) a reference to a section or a Part is a reference to a section or a Part of this Act unless it is indicated that a reference to some other enactment is intended;

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(5) In this Act a reference to any enactment shall be construed as a reference to that enactment, as adapted or extended by or under any subsequent enactment including this Act.

(6) A word or expression that is used in this Act and is also used in the Directive has, unless the contrary intention appears, the meaning in this Act that it has in the Directive.

(7) In construing a provision of this Act, a court shall give to it a construction that will give effect to the Directive and, for this purpose a court shall have regard to the provisions of the Directive including its preamble.

Organiser.

**3.—**(1) In this Act "*organiser*" means a person who, otherwise than occasionally, organises packages and sells or offers them for sale to a consumer, whether directly or through a retailer.

(2) For the purposes of *subsection (1)*, a person shall not be regarded as organising packages occasionally unless that person is a member of a class specified in regulations made by the Minister under this subsection.

Expenses.

**4.—**The expenses incurred by the Minister, any other Minister of the Government or the Director in the administration of this Act (including the costs and expenses incurred in the investigation and prosecution of offences) shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Fees.

**5.—**(1) The Minister may, with the consent of the Minister for Finance, from time to time specify the scale of fees payable in respect of the approval of an approved body under *section 23* or *24*.

(2) The Minister may make such charges in relation to any matter connected with the approval of an approved body under *section 23* or *24* as are determined by the Minister, after consultation with the Minister for Finance.

(3) All fees and charges payable under this Act shall be paid into, or disposed of for the benefit of, the Exchequer in accordance with the directions of the Minister for Finance.

(4) The Public Offices Fees Act, 1879, shall not apply in respect of fees payable pursuant to this Act.

Offences.

**6.—**(1) A person who contravenes any provision of this Act, contravention of which is deemed to be an offence, shall be liable on summary conviction to a fine not exceeding £1,500.

(2) A person who is guilty of an offence under section 21, 22 (3) or 26 shall be liable on summary conviction to a fine not exceeding £1,500 or, on conviction on indictment, to a fine not exceeding £50,000 or imprisonment for a term not exceeding two years or to both.

(3) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other similar officer of such body or of any person who was purporting to act in any such capacity, that officer or person, as well as such body, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first mentioned offence.

(4) No contract shall become enforceable or unenforceable and no right of action in civil proceedings in respect of any loss shall arise by reason only of the commission of an offence under section 22.

Proceedings.

**7.—**(1) Summary proceedings in respect of an offence under any section of this Act may be brought and prosecuted by the Director.

(2) Summary proceedings in respect of an offence under section 21 or 26 may be brought and prosecuted by the Minister.

(3) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced at any time within 12 months from the date on which the offence was committed.

(4) (a) Where a judge of the District Court proposes to make an order for the release on bail of a defendant charged with an offence under this Act or the Act of 1982 who is ordinarily resident outside the State, the judge may (unless satisfied that all documents required by law to be served on the defendant in connection with or for the purpose of the charge or of any proceedings arising out of or connected with the charge can be duly served on the defendant in the State) direct that those documents may, in lieu of being served on the defendant, be served on a person specified in the direction who is ordinarily resident in the State.

(b) Service of a document referred to in this subsection on a person specified in the direction shall be deemed for all purposes to be served on the defendant.

(5) In the case of a person ordinarily resident, or a body corporate established, outside the State service of documents relating to the charge may be effected by being served either on the person to be charged or on a person being a nominated agent under section 10 (1) (i) or 14 (1) (h) (ii).

(6) A body corporate may be sent forward for trial on indictment for an offence under section 21 , 22 (3) or 26 with or without recognisances.

(7) Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Minister or the Director, as the case may be, the costs and expenses, measured by the court, incurred by the Minister or the Director, as the case may be, in relation to the investigation, detection and prosecution of the offence.

(8) The provisions of section 382 of the Companies Act, 1963 , shall extend to every body corporate (whether or not a company within the meaning of that Act) charged on indictment with an offence under section 21 , 22 (3) or 26 .

Particular  
functions of  
Director.

**8.**—The Director may—

- (a) request persons engaging in or proposing to engage in such practices, business or activities as are, or are likely to be, contrary to the obligations imposed on them by any provision of this Act to refrain from such practices, business or activities;
- (b) institute proceedings in the High Court for orders requiring persons engaging or proposing to engage in any practices, business or activities as are, or are likely to be, contrary to the obligations imposed on them by any provision of this Act to discontinue or refrain from such practices, business or activities.

Laying of  
regulations  
before Houses  
of Oireachtas.

**9.**—Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

## PART II

### Regulation of Travel Contract

Brochure  
content.

**10.**—(1) An organiser shall not make available a brochure to a possible consumer unless it indicates in a legible, comprehensible and accurate manner the price and adequate information about the following matters—

- (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 accommodation is to be provided in a Member State, its approval or where applicable, tourist classification under the laws of that Member State;
- (c) the meal plan;
- (d) the itinerary;

- (e) general information about passport and visa requirements which apply to purchase of the package 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 latest time for informing the consumer in the event of cancellation;
- (h) any tax or compulsory charge;
- (i) in the case of packages offered by an organiser who has no place of business in the State, a nominated agent with an address within the State who will accept service on behalf of and represent the organiser in any proceedings (including criminal proceedings) in respect of or arising out of or connected with any contract or brought pursuant to or in connection with any provision of this Act;
- (j) in the event of insolvency of the organiser, the arrangements for security for money paid over and (where applicable) for the repatriation of the consumer.

(2) A retailer shall not supply a brochure knowing or having reasonable cause to believe that it does not comply with the requirements of *subsection (1)*.

(3) An organiser who contravenes *subsection (1)* and a retailer who contravenes *subsection (2)* shall be guilty of an offence.

(4) Subject to *subsections (5) and (6)*, where a consumer enters into a contract on the basis of information which is set out in a brochure, the particulars in the brochure (whether or not they are required by this Act to be included in the brochure) shall constitute warranties (whether express or implied as the case may be) as to the matters to which they relate.

(5) *Subsection (4)* shall not apply in respect of particulars where—

- (a) the brochure contains a clear and legible statement that changes may be made in the particulars contained in it before a contract is concluded, and
- (b) changes in those particulars so contained are clearly communicated to and accepted by the other party before a contract is concluded.

(6) *Subsection (4)* shall not apply in respect of particulars when the consumer and the organiser (whether directly or through a retailer) agree on or after the date on which the contract is made that those particulars should not form part of the contract.

Liability for misleading brochures.

**11.—**(1) An organiser or a retailer shall not supply to a consumer a brochure or other descriptive matter concerning a package, the price of a package or any conditions applying to a contract in respect of a package which contains any false or misleading information.

(2) In any proceedings against a retailer under this section it shall be a defence to show that the retailer did not know and had no reason to suspect that the brochure or other descriptive matter concerned contained information which was false or misleading.



(3) An organiser who provides a brochure or other descriptive matter concerning a package to a consumer (whether directly or through a retailer) shall be liable to compensate the consumer for any damage caused to the consumer as a direct consequence of and attributable to the consumer's reliance on information which is false or misleading—

(a) contained in the brochure or other descriptive matter; or

(b) given by the organiser in respect of the brochure or other descriptive matter.

(4) A retailer shall be liable to compensate the consumer for any damage caused to the consumer as a direct consequence of and attributable to the consumer's reliance on information which is false or misleading—

(a) contained in any brochure or descriptive matter supplied by the retailer, or

(b) given by the retailer in respect of the brochure or other descriptive matter.

Information to be provided before conclusion of contract.

**12.—**(1) Before a contract is made, the organiser (whether directly or through a retailer) shall provide the intending consumer with the following information in writing or in some other appropriate form—

(a) general information about passport and visa requirements which apply to purchase of the package, including information about the length of time it is likely to take to obtain the appropriate passports and visas;

(b) information about health formalities required by national administrations for the journey and the stay;

(c) where the consumer is required as a term of the contract to take out insurance to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness, the minimum level of insurance cover stipulated by the organiser but so that nothing in this Act authorises an organiser to make it compulsory for the intending consumer to purchase any specified insurance policy;

(d) in the event of insolvency, the arrangements for security for the money paid over and (where applicable) for the repatriation of the consumer.

(2) (a) An organiser who contravenes *subsection (1)* shall be guilty of an offence unless the contravention is shown to be due to the failure of the retailer to pass on to the intending consumer the information supplied to the retailer by the organiser.

(b) A retailer who fails to provide the intending consumer with the information shall be guilty of an offence.

(3) The obligations of *subsection (1)* may be fulfilled by referring the intending consumer to such information contained in a brochure supplied to the intending consumer and which complies with *sections 10* and *11 (1)* and to which no relevant alterations have been made since the brochure was supplied.

(4) Where the consumer is not required as a term of the contract to take out insurance to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness, the organiser shall, where such is available to him, provide the intending consumer with information about the optional conclusion of an insurance policy to cover those risks.

Information to be provided before start of package.

**13.**—(1) The organiser shall in good time before the package is due to start (whether before or after the contract has been made) provide the consumer (whether directly or through a retailer) with the information specified in *subsection (2)* in writing or in some other appropriate form.

(2) The information referred to in *subsection (1)* is—

(a) where the package includes a transport component, the times and places of intermediate stops and transport connections and details of the place to be occupied by the traveller, including, cabin or berth on ship, sleeper compartment on train;

(b) the name, address and telephone number—

(i) of the representative of the organiser in the locality where the consumer is to stay, or

(ii) if there is no such representative, of an agency in that locality to provide assistance to a consumer in difficulty,

or, if there is no such representative or agency, a telephone number or other information which will enable the consumer to contact the organiser and the retailer, or either of them, during the course of the package;

(c) in the case of a journey or stay outside the State by a minor, information enabling direct contact to be made with the minor or with the person responsible at the minor's place of stay.

(3) (a) An organiser who contravenes *subsection (1)* shall be guilty of an offence unless the contravention is due to the failure of the retailer to pass on to the consumer or intending consumer the information supplied to the retailer by the organiser.

(b) A retailer who fails to provide the consumer or intending consumer with the information shall be guilty of an offence.

(4) The obligations of *subsection (1)* may be fulfilled by—

- (a) referring the consumer or intending consumer to such information contained in a brochure supplied to the consumer or intending consumer which complies with section 10 and to which no relevant alterations have been made since the brochure was supplied, or
- (b) supplying the consumer with such information under the terms of the contract in writing or some other form as is comprehensible and accessible to the consumer provided that such information is supplied in good time before the start of the package.

Essential terms of contract. **14.**—(1) The organiser (whether dealing directly with the consumer or through a retailer) shall ensure that, depending on the nature of the package being purchased, the contract contains at least the following elements if relevant to the particular package—

- (a) the travel destination or destinations 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 (if any) or degree of comfort, its main features and, where the accommodation is to be provided in a Member State, its compliance with the laws of that Member State;
- (d) the meal plan;
- (e) whether a minimum number of persons is required for the package to take place and, if so, the latest time 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) (i) the name and address of the organiser, the retailer and, where appropriate, the insurer;
- (ii) in the case of packages sold by an organiser (whether dealing directly with the consumer or through a retailer) who has no place of business in the State, a nominated agent with an address within the State who will accept service on behalf of and represent the organiser in any proceedings (including criminal proceedings) in respect of or arising out of or connected with any contract or brought pursuant to or in connection with any provision of this Act;
- (i) the price of the package, if price revisions may be made in accordance with the terms which may be included in a contract, an indication of the possibility of such price revisions, and an indication of any dues, taxes or fees chargeable for certain services (such as 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 provided that such periods shall not be less than twenty eight days from the date of completion of the package.

(2) Without prejudice to the liability of the organiser under *subsection (1)*, it shall be an express term in every contract that the consumer shall communicate at the earliest opportunity, in writing or any other appropriate form, to the supplier of the services concerned, and to the organiser or local representative, if there is one, any failure which the consumer perceives at the place where the services concerned are supplied.

(3) The words "*any other appropriate form*" in *subsection (2)* include oral communication, provided written details of the complaint are confirmed to the organiser or the local representative if the consumer fails to obtain a satisfactory response to the complaint.

(4) In cases of complaint the organiser or local representative shall make prompt efforts to find appropriate solutions.

Form of  
contract.

**15.—**(1) The organiser (whether dealing directly with the consumer or through a retailer) shall ensure that—

- (a) all the terms of the contract are set out in writing or in such other form as is comprehensible and accessible to the intending consumer and are communicated to the intending consumer before the contract is made;
- (b) a written copy of these terms is supplied to the consumer.

(2) *Subsection (1) (a)* shall not apply in the case of a proposal by an intending consumer made to the organiser or the retailer not more than fourteen days before the date of departure under the proposed contract.

(3) An organiser (whether dealing directly with the consumer or through a retailer) who contravenes *subsection (1) (b)* shall be guilty of an offence unless the contravention is due to the failure of the retailer to provide the consumer with a written copy of the terms of the contract supplied to the retailer by the organiser.

(4) A retailer who fails to provide the consumer with a written copy of the terms of a contract supplied to the retailer by the organiser shall be guilty of an offence.

Transfer of  
booking.

**16.—**(1) In every contract there shall be an implied term that where the consumer is prevented from proceeding with the package, the consumer may transfer the booking to a person who satisfies all the conditions required to be satisfied by a person who takes the package, provided that the consumer gives reasonable notice to the organiser or to the retailer acting on the instructions of the organiser of the consumer's intention to transfer the booking before the specified departure date.

(2) Where a transfer is made in accordance with the implied term set out in *subsection (1)*, the transferor and the transferee shall be jointly and severally liable to the organiser or the retailer acting on the instructions of the organiser for payment of the price of the package (or, if part of the price has been paid, for payment of the balance) and for any additional fair and reasonable costs incurred by the organiser as a result of the transfer.

Contract price  
revision.

**17.—**(1) A term in a contract to the effect that the prices laid down in the contract may be revised shall be void unless the contract provides for the possibility of upward or downward revision and satisfies the conditions of *subsection (2)*.

(2) The conditions mentioned in *subsection (1)* are:

(a) that the manner in which the price revision, if made, will be calculated, is described precisely in the term, and

(b) that the circumstances in which the price may be revised shall be described in the term and shall be such as to provide that price revisions may be made only to allow for variations in—

(i) transport costs, including the cost of fuel,

(ii) dues, taxes or fees chargeable for services such as landing taxes or embarkation or disembarkation fees at ports and airports, or

(iii) the exchange rates which apply to the particular package.

(3) Notwithstanding any terms of the contract no price increase may be made later than a date specified in the contract which shall not be less than twenty days before the specified departure date.

Alteration or  
cancellation by  
organiser.

**18.—**(1) In every contract the following terms are implied—

(a) that, subject to *section 17*, where the organiser is compelled before departure to alter significantly an essential term of the contract, such as the price, the consumer will be notified as soon as possible in order to enable the consumer to take appropriate decisions and in particular to withdraw from the contract without penalty or to accept a variation to the contract specifying the alterations made and their impact on the price; and

(b) that the consumer will inform the organiser or the retailer (as appropriate, in the light of the organiser's instructions) of the decision as soon as possible.

(2) (a) The terms set out in *paragraphs (b) and (c)* shall be implied in every contract and shall apply where the consumer withdraws from the contract pursuant to the term in it implied by virtue of *subsection (1) (a)* or where the organiser, for any reason other than the fault of the consumer, cancels the package before the date when it is due to start.

(b) The consumer is entitled—

(i) to take a replacement package of equivalent or superior quality if the organiser (whether directly or through a retailer) is able to offer such a replacement; or

(ii) to take a replacement package of lower quality if the organiser is able to offer such a replacement and to recover from the organiser the difference in price between that of the package purchased and the replacement package; or

(iii) to have repaid as soon as possible all the moneys paid under the contract.

(c) The consumer is entitled, without prejudice to *paragraph (b)*, to be compensated by the organiser for non-performance of the contract except where—

(i) the package is cancelled because the number of persons who agree to take it is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period prescribed in the contract, or

(ii) the package is cancelled by *force majeure*, that is to say the package is cancelled by reason of unusual and unforeseeable circumstances beyond the control of the organiser, the retailer or other supplier of services, the consequences of which could not have been avoided even if all due care had been exercised.

(d) Overbooking shall not be regarded as a circumstance falling within *paragraph (c)* (ii).

Significant failure of performance after start of the package.

**19.**—(1) The terms set out in *subsections (2) and (3)* shall be implied in every contract and shall apply where, after departure, a significant proportion of the services contracted for is not provided, or the organiser becomes aware that a significant proportion of the services cannot be provided.

(2) The organiser shall make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package and shall compensate the consumer for any difference between the services to be supplied under the contract and those actually supplied.

(3) If it is impossible to make arrangements as described in *subsection (2)*, or these are not accepted by the consumer on reasonable grounds, the organiser shall, where homeward transport arrangements are a term of the contract, provide the consumer at no extra cost with equivalent transport back to the place of departure or to another place to which the consumer has agreed and shall compensate the consumer for the proportion of services not supplied.

Extent and liability. **20.**—(1) The organiser shall be liable to the consumer for the proper performance of the financial limits of obligations under the contract, irrespective of whether such obligations are to be performed by the organiser, the retailer, or other suppliers of services but this shall not affect any remedy or right of action which the organiser may have against the retailer or those other suppliers of services.

(2) The organiser shall be liable to the consumer for any damage caused by the failure to perform the contract or the improper performance of the contract unless the failure or the improper performance is due neither to any fault of the organiser or the retailer nor to that of another supplier of services, because—

- (a) the failures which occur in the performance of the contract are attributable to the consumer,
- (b) such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable, or
- (c) such failures are due to—
  - (i) *force majeure*, that is to say, unusual and unforeseeable circumstances beyond the control of the organiser, the retailer or other supplier of services, the consequences of which could not have been avoided even if all due care had been exercised, or
  - (ii) an event which the organiser, the retailer or the supplier of services, even with all due care, could not foresee or forestall.

(3) In the case of damage arising from the non-performance or improper performance of the services involved in the package, other than—

- (a) death or personal injury, or
- (b) damage caused to the consumer by the wilful misconduct or gross negligence of the organiser,

the contract may, save as provided in *subsection (5)*, include a term limiting, in accordance with *subsection (4)*, the amount of compensation payable to the consumer.

(4) Where compensation limits are a term of the contract under *subsection (3)*, the organiser may not limit liability to less than—

- (a) in the case of an adult, an amount equal to double the inclusive price of the package to the adult concerned,

(b) in the case of a minor, an amount equal to the inclusive price of the package to the minor concerned.

(5) In the case of damage arising from the non-performance or improper performance of the services involved in the package, the contract may provide for compensation to be limited in accordance with any international conventions in force governing such services in the place where they are performed or are due to be performed.

(6) Without prejudice to *subsections (3), (4) and (5)*, liability under *subsections (1) and (2)* cannot be excluded by any contractual term.

(7) In the circumstances described in *paragraphs (b) and (c) of subsection (2)*, it shall be an implied term of the contract that the organiser, or the retailer acting on the instructions of the organiser, as the case may be, will give prompt assistance to a consumer in difficulty.

(8) The provisions of this section are without prejudice to the provisions of the Hotel Proprietors Act, 1963 .

Authorised  
officers.

**21.—**(1) In this section "*authorised officer*" means:

(a) a person appointed and authorised in writing by the Director to exercise, for the purpose of this Act, the functions conferred by this section,

(b) a person appointed and authorised in writing by the Minister to exercise for the purpose of the Act of 1982, the functions conferred by this section.

(2) Every authorised officer shall be furnished with a warrant of appointment and, when exercising any function conferred by this section shall, if requested to do so by a person affected, produce the warrant or a copy thereof to that person.

(3) An appointment as an authorised officer shall cease—

(a) in the case of an appointment made by the Minister, when the Minister revokes the appointment;

(b) in the case of an appointment made by the Director, when the Director revokes the appointment;

(c) where it is for a fixed period, upon the expiry of that period; or

(d) where the person appointed is an officer of the Minister, the Director or the Minister for Enterprise and Employment, upon ceasing to be such an officer.

(4) An authorised officer may, for the purpose of obtaining any information which may be required in relation to the matter under investigation in order to enable the Minister to exercise functions under the Act of 1982, or the Director to exercise functions under this Act, on production of his authorisation, if so required—



- (a) at all reasonable times enter any premises, at which there are reasonable grounds to believe that any trade or business or any activity in connection with a trade or business is or has been carried on, or that records in relation to such trade, business or activities are kept, and search and inspect the premises and any records on the premises;
  - (b) secure for later inspection any premises or any part of a premises in which such records are kept or there are reasonable grounds for believing that such records are kept;
  - (c) require any person who carries on such trade, business or activity or any person employed in connection therewith to produce such records and in the case of information in a non-legible form to reproduce it in a legible form or to give to the officer such information as the officer may reasonably require in relation to any entries in such records;
  - (d) inspect and take copies of or extracts from any such records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form);
  - (e) remove and retain the said records for such period as may be reasonable for further examination, subject to a warrant being issued for that purpose by the District Court;
  - (f) require any such person to give to the officer any information which the officer may reasonably require in regard to the trade, business or activity or in regard to the persons carrying on such trade, business or activity (including, in particular, in the case of an incorporated body of persons, information in regard to the membership thereof and of its committee of management or other controlling authority) or employed in connection therewith;
  - (g) require any such person to give to the officer any other information which the officer may reasonably require in regard to such trade, business or activity;
  - (h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto;
  - (i) summon, at any reasonable time, any other person employed in connection with the trade, business or activity to give to the officer any information which the officer may reasonably require in regard to such activity and to produce to the officer any records which are in that person's power and control.
- (5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant from the District Court authorising such entry.

(6) Where an authorised officer, in the exercise of any power under this section, is prevented from entering any premises that officer or the person by whom the officer was appointed may apply to the District Court for a warrant authorising such entry.

(7) An authorised officer, where the officer considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer by this Act.

(8) A person who obstructs or interferes with an authorised officer in the exercise of functions under this Act or gives to an authorised officer information which is false or misleading shall be guilty of an offence.

(9) A person who refuses to comply with any request or requirement of an authorised officer in the exercise of functions under this Act shall be guilty of an offence.

### PART III

#### Security

Security requirements in the event of insolvency. **22.—**(1) In relation to a package to which this Act applies, a package provider shall have sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.

(2) A package provider shall be deemed to have satisfied the requirements of *subsection (1)*—

- (a) by making any one or more of the arrangements as described in *sections 23 to 25* in relation to the package, or
- (b) if the package is one in respect of which the provider is required to hold a licence under the Act of 1982, and is covered by arrangements entered into for the purposes of that Act.

(3) A package provider, other than a package provider who holds a licence under the Act of 1982 in respect of the package in question and has made the necessary arrangements for the purposes of that Act, who fails to—

- (a) make one of the arrangements described in *subsection (2)*, or
- (b) ensure that such arrangements are in force,

shall be guilty of an offence.

(4) For the purposes of this Part, a contract shall be deemed to have been fully performed if the package, or, as the case may be, the part of the package has been completed irrespective of whether the obligations under the contract have been properly performed for the purposes of *section 20*.

Bonding where an approved body has a reserve fund or insurance. **23.**—(1) This section relates to a bond entered into by an authorised institution under which the institution pays to an approved body of which the package provider is a member such sum as may reasonably be expected—

- (a) to enable all moneys paid over by consumers under or in contemplation of contracts for packages which have not been fully performed to be repaid,
- (b) to enable consumers to be repatriated, where appropriate, and
- (c) to defray any reasonable expenses necessarily incurred by the approved body, in the event of the insolvency of the package provider.

(2) A body may not be approved for the purposes of this section unless:

- (a) it has a reserve fund or insurance cover with an institution authorised in respect of such business in a Member State of an amount in each case which is designed in the event of the insolvency of a member to enable all monies paid over to that member of the body by consumers under or in contemplation of contracts for packages which have not been fully performed to be repaid to those consumers and to provide for the repatriation, where appropriate, of consumers; and
- (b) where it has a reserve fund it agrees that the fund will be held by persons and in a manner approved by the Minister.

(3) The Minister may by regulations provide that the bond may be for such minimum sum and valid for such maximum period as may be specified in the regulations.

(4) (a) In this section "*approved body*" means a body which is for the time being approved by the Minister (in consultation with the Minister for Tourism and Trade where arrangements cover a package which is to take place exclusively within the State) for the purposes of this section and no such approval shall be given unless the conditions mentioned in *subsection (2)* are satisfied in relation to it.

(b) The Minister may by regulations specify additional conditions that shall be complied with and other appropriate matters relating to the grant of approval to a body which applies to the Minister to be an approved body.

(5) Before a bond is given pursuant to *subsection (1)*, the package provider shall inform an approved body of which the provider is a member of the minimum sum proposed for the purposes of that subsection and it shall be the duty of the approved body to consider whether such sum is sufficient for the purpose mentioned in that subsection and, if it does not consider that this is the case, it shall be the duty of the approved body to inform the package provider of the sum which, in the opinion of the approved body, is sufficient for that purpose.

(6) It shall be the duty of an approved body to ensure that there are adequate arrangements for the repatriation of the consumer in the event of the insolvency of a package provider who is a member of that approved body.

(7) In this section "*authorised institution*" means a person authorised under the law of a Member State to carry on the business of entering into bonds of the kind required by this section.

Bonding where an approved body does not have a reserve fund or insurance.

**24.—**(1) This section relates to a bond entered into by an authorised institution under which the institution agrees, in the event of the insolvency of the package provider, to pay to an approved body which does not have a reserve fund or insurance as set out in section 23 (2) of which the package provider is a member such sum as may reasonably be expected to—

- (a) enable all moneys paid over by consumers under or in contemplation of contracts for packages which have not been fully performed to be repaid,
- (b) enable consumers to be repatriated, where appropriate, and
- (c) defray any expenses necessarily incurred by the approved body.

(2) The Minister may by regulations provide that the bond may be for such minimum sum and valid for such maximum period as may be specified in the regulations.

(3) Before a bond is given pursuant to *subsection (1)*, the package provider shall inform an approved body of which the provider is a member of the minimum sum proposed for the purposes of that subsection and it shall be the duty of the approved body to consider whether such sum is sufficient for the purpose mentioned in that subsection and, if it does not consider that this is the case, it shall be the duty of the approved body to inform the package provider of the sum which, in the opinion of the approved body, is sufficient for that purpose.

(4) It shall be the duty of an approved body to ensure that there are adequate arrangements for the repatriation of the consumer in the event of the insolvency of a package provider who is a member of that approved body.

(5) The Minister may by regulations specify conditions that shall be complied with and other appropriate matters relating to the grant of approval to a body which applies to the Minister to be an approved body.

(6) In this section—

"*approved body*" means a body which is for the time being approved by the Minister (in consultation with the Minister for Tourism and Trade where arrangements cover a package which is to take place exclusively within the State) for the purpose of this section;

"*authorised institution*" has the meaning given to that expression by section 23 (7).

Insurance.

**25.—**(1) The package provider shall have insurance under one or more appropriate policies with an insurer authorised in respect of such business in a Member State under which the insurer agrees to indemnify consumers (who shall be insured persons under the policy), against—

- (a) the loss of all money paid over by them under or in contemplation of contracts for relevant packages, and
- (b) where applicable to the package concerned, the cost of repatriation of consumers based on administrative arrangements established by the insurer to enable repatriation of such consumers,

in the event of insolvency of the package provider.

(2) The package provider shall ensure that it is a term of every contract with a consumer that the consumer acquires the benefit of a policy of a kind mentioned in *subsection (1)* in the event of the insolvency of the package provider.

(3) In this section "*appropriate policy*" means one which does not contain a condition which provides (in whatever terms) that no liability shall arise under the policy, or that any liability so arising shall cease—

- (a) in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy,
- (b) in the event of the failure of the policy holder to make payments to the insurer in connection with that policy or with other policies, or
- (c) unless the policy holder keeps specified records or provides the insurer with information therefrom.

#### PART IV

##### Amendment of Transport (Tour Operators and Travel Agents) Act, 1982

Functions of authorised persons.

**26.—**(1) The functions set out in *subsections (4) and (5) of section 21*, shall be exercisable, for the purposes of the Act of 1982, by a person authorised by the Minister under section 11 of that Act.

(2) A person who—

- (a) obstructs or interferes with a person authorised by the Minister under the Act of 1982 in the exercise of functions under that Act shall be guilty of an offence under this Act,
- (b) refuses to comply with any request or requirement of a person so authorised in the exercise of functions under that Act shall be guilty of an offence under this Act.

Amendment of section 2 of the Act of 1982.

**27.—**Section 2(1) of the Act of 1982 is hereby amended by—

(a) the substitution for the definitions of "*carrier*", "*Minister*", "*overseas travel contract*", "*tour operator*" and "*travel agent*" of the following definitions:

*'carrier'* means a person (other than a package provider where the package includes transport commencing in the State to destinations outside the State or Northern Ireland) whose principal business is the provision of transport by land, sea or air on aircraft, vessels or other modes of transport owned and operated by such person;

*'the Minister'* means the Minister for Transport, Energy and Communications;

*'overseas travel contract'* means a contract for the carriage of a party to the contract (with or without any other person) by air, sea or land transport commencing in the State to a place outside the State or Northern Ireland, whether the provision of the carriage is the sole subject matter of the contract or is associated with the provision thereunder of any accommodation, facility or service;

*'tour operator'* means a person other than a carrier who arranges for the purpose of selling or offering for sale to any person accommodation for travel by air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or other services;

*'travel agent'* means a person other than a carrier who as agent sells or offers to sell to, or purchases or offers to purchase on behalf of, any person, accommodation on air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services;";

(b) the insertion of the following definitions:

*"'package'* and *'package provider'* have the meanings assigned to them by the *Package Holidays and Travel Trade Act, 1995;*".

Amendment of **28.**—Section 6 of the Act of 1982 is hereby amended by the substitution for subsection section 6 of the (5) of the following:  
Act of 1982.

"(5) A licence granted under this Act shall, unless earlier surrendered or revoked, remain in force for such period as the Minister thinks fit and specifies in the licence."

Amendment of **29.**—Section 8 of the Act of 1982 is hereby amended by the substitution for subsection section 8 of the (2) of the following:  
Act of 1982.

“(2) The Minister may also revoke, or vary the terms and conditions of, a licence granted under this Act if he is no longer satisfied that—

(a) the financial, business and organisational resources of the holder of the licence or any financial arrangements made by him are adequate for discharging his actual and potential obligations in respect of the business for which he has been granted a licence, or

(b) having regard to—

(i) the past activities of the holder of the licence or of any person employed by him or, if such licence holder is a body corporate, having regard to the past activities of any director, secretary, shareholder, officer or servant of the body corporate, or

(ii) the manner in which the holder of the licence is carrying on his business,

he is a fit and proper person to carry on business as a tour operator or travel agent, as the case may be.”.

Amendment of **30.**—Section 13 (4) of the Act of 1982 is hereby amended by the substitution for section 13 (4) (d) paragraph (d) of the following paragraph:

of the Act of  
1982.

“(d) to defray any reasonable expenses incurred by the Minister or, as the case may be, the person nominated or approved of by the Minister as trustee, or provide for any payments to the Minister or trustee on behalf of a customer of a tour operator or travel agent in respect of an overseas travel contract which could not be completed by reason of the inability or failure of the tour operator or travel agent to meet his financial or contractual obligations in relation to such overseas travel contract.”.

Amendment of **31.**—(1) Section 18 (1) of the Act of 1982 is hereby amended by the insertion of the section 18 of the following paragraph:

Act of 1982.

“(e) to defray any reasonable expenses related to the recovery of monies due under subsection (7) where the Minister is satisfied that in undertaking such expenses there would be a substantial interest in protecting the fund.”.

(2) Section 18 of the Act of 1982 is hereby amended by the insertion of the following subsection:

“(7) Where payments have been made from the fund under subsection (1), because the Bond is insufficient, the fund shall be an unsecured creditor of the tour operator or travel agent concerned, in respect of such payments.”.

Amendment of section 20 of the Act of 1982. **32.**—Section 20 of the Act of 1982 is hereby amended by:

- (a) the substitution in subsection (2) of “£50,000” for “£10,000”,
- (b) the substitution in subsection (4) of “£1,500” for “£500”,
- (c) the insertion of the following subsection—

“(6) Where a person is convicted of an offence under this section the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Minister the costs and expenses, measured by the Court, incurred by the Minister in relation to the investigation, detection and prosecution of the offence.”.

Amendment of section 22 (2) of the Act of 1982. **33.**—Section 22 of the Act of 1982 is hereby amended by the substitution for subsection (2) of the following:

“(2) The provisions of section 382 of the Companies Act, 1963 shall extend to every body corporate (whether or not a company within the meaning of the Act) charged on indictment with an offence under section 20 of this Act.”.

Powers of Court under the Act of 1982. **34.**—The High Court may, on the application of the Minister, make orders requiring persons engaging or proposing to engage in any practices, business or activities as are, or are likely to be, contrary to the obligations imposed on them by any provision of the Act of 1982 to discontinue or refrain from such practices, business or activities.

#### SCHEDULE

#### COUNCIL DIRECTIVE

Section 2 (1).

of 13 June 1990

on package travel, package holidays and package tours

(90/314/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission(1) ,

In cooperation with the European Parliament(2) ,

Having regard to the opinion of the Economic and Social Committee(3) ,



Whereas one of the main objectives of the Community is to complete the internal market, of which the tourist sector is an essential part;

Whereas the national laws of Member States concerning package travel, package holidays and package tours, hereinafter referred to as '*packages*', show many disparities and national practices in this field are markedly different, which gives rise to obstacles to the freedom to provide services in respect of packages and distortions of competition amongst operators established in different Member States;

Whereas the establishment of common rules on packages will contribute to the elimination of these obstacles and thereby to the achievement of a common market in services, thus enabling operators established in one Member State to offer their services in other Member States and Community consumers to benefit from comparable conditions when buying a package in any Member State;

Whereas paragraph 36 (*b*) of the Annex to the Council resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy<sup>(4)</sup> invites the Commission to study, *inter alia*, tourism and, if appropriate,

to put forward suitable proposals, with due regard for their significance for consumer protection and the effects of differences in Member States' legislation on the proper functioning of the common market;

Whereas in the resolution on a Community policy on tourism on 10 April 1984<sup>(5)</sup> the Council welcomed the Commission's initiative in drawing attention to the importance of tourism and took note of the Commission's initial guidelines for a Community policy on tourism;

Whereas the Commission communication to the Council entitled 'A New Impetus for Consumer Protection Policy', which was approved by resolution of the Council on 6 May 1986<sup>(6)</sup>, lists in paragraph 37, among the measures proposed by the Commission, the harmonization of legislation on packages;

Whereas tourism plays an increasingly important role in the economies of the Member States; whereas the package system is a fundamental part of tourism; whereas the package travel industry in Member States would be stimulated to greater growth and productivity if at least a minimum of common rules were adopted in order to give it a Community dimension; whereas this would not only produce benefits for Community citizens buying packages organized on the basis of those rules, but would attract tourists from outside the Community seeking the advantages of guaranteed standards in packages;

Whereas disparities in the rules protecting consumers in different Member States are a disincentive to consumers in one Member State from buying packages in another Member State;

Whereas this disincentive is particularly effective in deterring consumers from buying packages outside their own Member State, and more effective than it would be in relation to the acquisition of other services, having regard to the special nature of the services supplied in a package which generally involve the expenditure of substantial amounts of money in advance and the supply of the services in a State other than that in which the consumer is resident;

Whereas the consumer should have the benefit of the protection introduced by this Directive irrespective of whether he is a direct contracting party, a transferee or a member of a group on whose behalf another person has concluded a contract in respect of a package;

Whereas the organizer of the package and/or the retailer of it should be under obligation to ensure that in descriptive matter relating to packages which they respectively organize and sell, the information which is given is not misleading and brochures made available to consumers contain information which is comprehensible and accurate;

Whereas the consumer needs to have a record of the terms of contract applicable to the package; whereas this can conveniently be achieved by requiring that all the terms of the contract be stated in writing of such other documentary form as shall be comprehensible and accessible to him, and that he be given a copy thereof;

Whereas the consumer should be at liberty in certain circumstances to transfer to a willing third person a booking made by him for a package;

Whereas the price established under the contract should not in principle be subject to revision except where the possibility of upward or downward revision is expressly provided for in the contract; whereas that possibility should nonetheless be subject to certain conditions;

Whereas the consumer should in certain circumstances be free to withdraw before departure from a package travel contract;

Whereas there should be a clear definition of the rights available to the consumer in circumstances where the organizer of the package cancels it before the agreed date of departure;

Whereas if, after the consumer has departed, there occurs a significant failure of performance of the services for which he has contracted or the organizer perceives that he will be unable to procure a significant part of the services to be provided; the organizer should have certain obligations towards the consumer;

Whereas the organizer and/or retailer party to the contract should be liable to the consumer for the proper performance of the obligations arising from the contract; whereas, moreover, the organizer and/or retailer should be liable for the damage resulting for the consumer from failure to perform or improper performance of the contract unless the defects in the performance of the contract are attributable neither to any fault of theirs nor to that of another supplier of services;

Whereas in cases where the organizer and/or retailer is liable for failure to perform or improper performance of the services involved in the package, such liability should be limited in accordance with the international conventions governing such services, in particular the Warsaw Convention of 1929 in International Carriage by Air, the Berne Convention of 1961 on Carriage by Rail, the Athens Convention of 1974 on Carriage by Sea and the Paris Convention of 1962 on the Liability of Hotel-keepers; whereas, moreover, with regard to damage other than personal injury, it should be possible for liability also to be limited under the package contract provided, however, that such limits are not unreasonable;

Whereas certain arrangements should be made for the information of consumers and the handling of complaints;

Whereas both the consumer and the package travel industry would benefit if organizers and/or retailers were placed under an obligation to provide sufficient evidence of security in the event of insolvency;

Whereas Member States should be at liberty to adopt, or retain, more stringent provisions relating to package travel for the purpose of protecting the consumer,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to packages sold or offered for sale in the territory of the Community.

#### *Article 2*

For the purposes of this Directive:

1. '*package*' means the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

- (a) transport;
- (b) accommodation;
- (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.

The separate billing of various components of the same package shall not absolve the organizer or retailer from the obligations under this Directive;

2. '*organizer*' means the person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer;

3. '*retailer*' means the person who sells or offers for sale the package put together by the organizer;

4. '*consumer*' means the person who takes or agrees to take the package ('*the principal contractor*'), or any person on whose behalf the principal contractor agrees to purchase the package ('*the other beneficiaries*') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('*the transferee*');

5. '*contract*' means the agreement linking the consumer to the organizer and/or the retailer.

### Article 3

1. Any descriptive matter concerning a package and supplied by the organizer or the retailer to the consumer, the price of the package and any other conditions applying to the contract must not contain any misleading information.

2. When a brochure is made available to the consumer, it shall indicate in a legible, comprehensible and accurate manner both the price and adequate information concerning:

- (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, its approval and tourist classification under the rules of the host Member State concerned;
- (c) the meal plan;
- (d) the itinerary;
- (e) general information on passport and visa requirements for nationals of the Member State or States concerned 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 time-table 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.

The particulars contained in the brochure are binding on the organizer or retailer, unless:

- changes in such particulars have been clearly communicated to the consumer before conclusion of the contract, in which case the brochure shall expressly state so,
- changes are made later following an agreement between the parties to the contract.

### Article 4

1. (a) The organizer and/or the retailer shall provide the consumer, in writing or any other appropriate form, before the contract is concluded, with general information on passport and visa requirements applicable to nationals of the Member State or States concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay;
  - (b) The organizer and/or retailer shall also provide the consumer, in writing or any other appropriate form, with the following information in good time before the start of the journey:
    - (i) the times and places of intermediate stops, and transport connections as well as details of the place to be occupied by the traveller, e.g. cabin or berth on ship, sleeper compartment on train;
    - (ii) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call.

Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the organizer and/or the retailer;
    - (iii) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay;
    - (iv) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.
2. Member States shall ensure that in relation to the contract the following principles apply:
- (a) depending on the particular package, the contract shall contain at least the elements listed in the Annex;
  - (b) all the terms of the contract are set out in writing or such other form as is comprehensible and accessible to the consumer and must be communicated to him before the conclusion of the contract; the consumer is given a copy of these terms;
  - (c) the provision under (b) shall not preclude the belated conclusion of last-minute reservations or contracts.

3. Where the consumer is prevented from proceeding with the package, he may transfer his booking, having first given the organizer or the retailer reasonable notice of his intention before departure, to a person who satisfies all the conditions applicable to the package. The transferor of the package and the transferee shall be jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.

4. (a) The prices laid down in the contract shall not be subject to revision unless the contract expressly provides for the possibility of upward or downward revision and states precisely how the revised price is to be calculated, and solely to allow for variations in:

- transportation costs, including the cost of fuel,
- dues, taxes or fees chargeable for certain services, such as landing taxes or embarkation or disembarkation fees at ports and airports,
- the exchange rates applied to the particular package.

(b) During the twenty days prior to the departure date stipulated, the price stated in the contract shall not be increased.

5. If the organizer finds that before the departure he is constrained to alter significantly any of the essential terms, such as the price, he shall notify the consumer as quickly as possible in order to enable him to take appropriate decisions and in particular:

- either to withdraw from the contract without penalty,
- or to accept a rider to the contract specifying the alterations made and their impact on the price.

The consumer shall inform the organizer or the retailer of his decision as soon as possible.

6. If the consumer withdraws from the contract pursuant to paragraph 5, or if, for whatever cause, other than the fault of the consumer, the organizer cancels the package before the agreed date of departure, the consumer shall be entitled:

(a) either to take a substitute package of equivalent or higher quality where the organizer and/or retailer is able to offer him such a substitute. If the replacement package offered is of lower quality, the organizer shall refund the difference in price to the consumer;

(b) or to be repaid as soon as possible all sums paid by him under the contract.

In such a case, he shall be entitled, if appropriate, to be compensated by either the organizer or the retailer, whichever the relevant Member State's law requires, for non-performance of the contract, except where:

- (i) cancellation is on the grounds that the number of persons enrolled for the package is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated in the package description; or
- (ii) cancellation, excluding overbooking, is for reasons of *force majeure*, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised.

7. Where, after departure, a significant proportion of the services contracted for is not provided or the organizer perceives that he will be unable to procure a significant proportion of the services to be provided, the organizer shall make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package, and where appropriate compensate the consumer for the difference between the services offered and those supplied.

If it is impossible to make such arrangements or these are not accepted by the consumer for good reasons, the organizer shall, where appropriate, provide the consumer, at no extra cost, with equivalent transport back to the place of departure, or to another return-point to which the consumer has agreed and shall, where appropriate, compensate the consumer.

#### *Article 5*

1. Member States shall take the necessary steps to ensure that the organizer and/or retailer party to the contract is liable to the consumer for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be performed by that organizer and/or retailer or by other suppliers of services without prejudice to the right of the organizer and/or retailer to pursue those other suppliers of services.

2. With regard to the damage resulting for the consumer from the failure to perform or the improper performance of the contract, Member States shall take the necessary steps to ensure that the organizer and/or retailer is/are liable unless such failure to perform or improper performance is attributable neither to any fault of theirs nor to that of another supplier of services, because:

- the failures which occur in the performance of the contract are attributable to the consumer,
- such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable,
- such failures are due to a case of *force majeure* such as that defined in Article 4 (6), second subparagraph (ii), or to an event which the organizer and/or retailer or the supplier of services, even with all due care, could not foresee or forestall.

In the cases referred to in the second and third indents, the organizer and/or retailer party to the contract shall be required to give prompt assistance to a consumer in difficulty.

In the matter of damages arising from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited in accordance with the international conventions governing such services.

In the matter of damage other than personal injury resulting from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited under the contract. Such limitation shall not be unreasonable.

3. Without prejudice to the fourth subparagraph of paragraph 2, there may be no exclusion by means of a contractual clause from the provisions of paragraphs 1 and 2.

4. The consumer must communicate any failure in the performance of a contract which he perceives on the spot to the supplier of the services concerned and to the organizer and/or retailer in writing or any other appropriate form at the earliest opportunity.

This obligation must be stated clearly and explicitly in the contract.

#### *Article 6*

In cases of complaint, the organizer and/or retailer or his local representative, if there is one, must make prompt efforts to find appropriate solutions.

#### *Article 7*

The organizer and/or retailer party to the contract 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.

#### *Article 8*

Member States may adopt or return more stringent provisions in the field covered by this Directive to protect the consumer.

#### *Article 9*

1. Member States shall bring into force the measures necessary to comply with this Directive before 31 December 1992. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

#### *Article 10*

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1990.



*For the Council*

*The President*

D. J. O'MALLEY

ANNEX

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, 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, its compliance with the rules of the host Member State concerned and the meal plan;
- (d) 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;
- (e) the itinerary;
- (f) visits, excursions or other services which are included in the total price agreed for the package;
- (g) the name and address of the organizer, the retailer and, where appropriate, the insurer;
- (h) the price of the package, an indication of the possibility of price revisions under Article 4 (4) and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at ports and airports, tourist taxes) where such costs are not included in the package;
- (i) the payment schedule and method of payment;
- (j) special requirements which the consumer has communicated to the organizer or retailer when making the booking, and which both have accepted;
- (k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract.

Acts Referred to

<u>Companies Act, 1963</u>	1963, No. 33
<u>Hotel Proprietors Act, 1963</u>	1963, No. 7
<u>Petty Sessions (Ireland) Act, 1851</u>	1851, c. 93
Public Offices Fees Act, 1879	1879, c. 58
<u>Transport (Tour Operators and Travel Agents) Act, 1982</u>	1982, No. 3

- (1) O.J. No. L 158/59 23.6.1990.
- (1) O.J. No. C 96, 12.4.1988, p.5.
- (2) O.J. No. C 69, 20.3.1989, p.102 and O.J. No. C 149, 18.6.1990.
- (3) O.J. No. C 102, 24.4.1989, p.27.
- (4) O.J. No. C 165, 23.6.1981, p.24.
- (5) O.J. No. C 115, 30.4.1984, p.1.
- (6) O.J. No. C 118, 7.3.1986, p.28.