

Package Travel, Package Holidays and Package Tours Act 1994

Principal Act

Act. No. 1994-08	<i>Commencement (LN.1994/070)</i> <i>Assent</i>	17.10.1994 7.7.1994
Amending enactments	Relevant current provisions	Commencement date
Act. 2007-17 LN. 2017/250 ¹	ss. 17(7), 18(5)-(6) ss. 2-14, 14A, 15-16, 16A-16B, 17(1), (3)-(4), (7), 18(1), (3)-(7), 19(1)-(3), 20(1), (4), (6)-(7), 21(1), (3)-(7), 23, 24(1), 25(1), 26(1), 27(1), 29-45, Schs. 1-2	14.6.2007 1.7.2018
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2021/228	s. 2(1)	1.1.2021

Transposing:

Directive 90/314/EEC

Directive (EU) 2015/2302

¹ For transitional provisions please refer to s.33 of the Package Travel, Package Holidays and Package Tours Act 1994 (Amendment) Regulations 2017 (LN. 2017/250)

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AN ACT TO TRANSPOSE INTO THE NATIONAL LAW OF GIBRALTAR COUNCIL DIRECTIVE 90/314/EEC ON PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS.

PART 1

APPLICATION AND INTERPRETATION

Title and commencement.

1. This Act may be cited as the Package Travel, Package Holidays and Package Tours Act 1994 and shall come into effect on such day as the Governor may, by notice in the Gazette, determine, which day shall be no earlier than two months after the date of such notice.

Interpretation.

2.(1) In this Act, unless the context shall otherwise require,—

“appropriate policy” means a policy 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 policy holder not making payments under or in connection with other policies; or
- (c) unless the policy holder keeps specified records or provides the insurer with or makes available to him information therefrom;

“approved person” means a person who is for the time being approved by the Financial Secretary for the purposes of bonding in sections 17 and 18;

“authorised institution” means a person authorised under Gibraltar law to carry on the business of entering into bonds of the kind referred to in sections 17 and 18;

“child” means any person under the age of 18 years;

“competent authority” has the meaning provided in section 29;

“contract” means the agreement linking the traveller to the organiser or to the retailer, or to both, as the case may be;

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“durable medium” means any instrument which enables the traveller or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“establishment” means establishments as defined in regulation 2 of the Provision of Services Regulations 2010, as amended from time to time;

“lack of conformity” means a failure to perform or improper performance of the travel services included in a package;

“linked travel arrangement” means at least two different types of travel services purchased for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates-

- (a) on the occasion of a single visit or contact with his point of sale, the separate selection and separate payment of each travel service by travellers; or
- (b) in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service,

however where not more than one type of travel service as referred to in paragraphs (a), (b) or (c) of the definition of “travel service” and one or more tourist services referred to in paragraph (d) of that same definition are purchased, they do not constitute a linked travel arrangement if the latter services do not account for a significant proportion of the combined value of the services and are not advertised as, and do not represent, an essential feature of the trip or holiday;

“offer” includes an invitation to treat whether by means of advertising or otherwise, and cognate expressions shall be construed accordingly;

“organiser” means a trader who combines and sells or offers for sale packages, either directly or through another trader or together with another trader, or the trader who transmits the traveller's data to another trader in accordance with subsection (2)(b)(v);

“the other party to the contract” means the party, other than the consumer, to the contract, that is, the organiser or the retailer, or both, as the case may be;

“package” has the meaning provided in subsection (2);

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“package travel contract” means a contract on the package as a whole or, if the package is provided under separate contracts, all contracts covering travel services included in the package;

“point of sale” means any retail premises, whether movable or immovable, or a retail website or similar online sales facility, including where retail websites or online sales facilities are presented to travellers as a single facility, including a telephone service;

“repatriation” means the traveller's return to the place of departure or to another place the contracting parties agree upon;

“retailer” means a trader other than the organiser who sells or offers for sale packages combined by an organiser;

“start of the package” means the beginning of the performance of travel services included in the package;

“trader” means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Act, whether acting in the capacity of organiser, retailer, trader facilitating a linked travel arrangement or as a travel service provider;

“travel service” means-

- (a) carriage of passengers;
- (b) accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes;
- (c) the rental of—
 - (i) cars;
 - (ii) other motor vehicles as defined in section 2 of the Traffic Act 2005, having at least four wheels;
 - (iii) motorcycles requiring a Category A driving licence in accordance with section 31(1) of the Traffic Act;
- (d) any other tourist service not intrinsically part of a travel service within the meaning of paragraphs (a), (b) or (c);

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“traveller” means any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of this Act;

“unavoidable and extraordinary circumstances” means a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken.

(2) Subject to subsection (3), “package” means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if-

- (a) those services are combined by one trader, including at the request of or in accordance with the selection of the traveller, before a single contract on all services is concluded; or
- (b) irrespective of whether separate contracts are concluded with individual travel service providers, those services are-
 - (i) purchased from a single point of sale and those services have been selected before the traveller agrees to pay,
 - (ii) offered, sold or charged at an inclusive or total price,
 - (iii) advertised or sold under the term ‘package’ or under a similar term,
 - (iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or
 - (v) purchased from separate traders through linked online booking processes where the traveller's name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

(3) Notwithstanding subsection (2), a combination of travel services where not more than one type of travel service as referred to in paragraphs (a), (b) or (c) of the definition of “travel service” is combined with one or more tourist services as referred to in paragraph (d) of that same definition is not a package if the latter services-

- (a) do not account for a significant proportion of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or

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- (b) are selected and purchased only after the performance of a travel service as referred to in paragraphs (a), (b) or (c) of the definition of “travel service” has started.

Application.

3. This Act does not apply to-

- (a) packages and linked travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
- (b) packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers; and
- (c) packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession.

4. *Repealed.*

5. *Repealed.*

6. *Repealed.*

PART 2

INFORMATION OBLIGATIONS AND CONTENT OF THE PACKAGE TRAVEL CONTRACT

Information to be provided before the contract is concluded.

7.(1) A traveller is not bound by any package travel contract or any corresponding offer until the organiser and, where the package is sold through a retailer, also the retailer provides the traveller with the standard information by means of the relevant form as set out in Part A or Part B of Schedule 1.

(2) Without prejudice to subsection (1), where applicable to the package, the following information shall also be provided-

- (a) the main characteristics of the travel services, including-
 - (i) the travel destinations, itinerary and periods of stay, with dates and, where accommodation is included, the number of nights included,

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- (ii) subject to subsection (3), the means, characteristics and categories of transport, the points, dates and time of departure and return, the duration and places of intermediate stops and transport connections,
 - (iii) the location, main features and, where applicable, tourist category of the accommodation under the rules of the country of destination,
 - (iv) the meal plan,
 - (v) visits, excursions or other services included in the total price agreed for the package,
 - (vi) where it is not apparent from the context, whether any of the travel services will be provided to the traveller as part of a group and, if so, where possible, the approximate size of the group,
 - (vii) where the traveller's benefit from other tourist services depends on effective oral communication, the language in which those services will be carried out, and
 - (viii) whether the trip or holiday is generally suitable for persons with reduced mobility and, upon the traveller's request, precise information on the suitability of the trip or holiday taking into account the traveller's needs;
- (b) the trading name and geographical address of the organiser and, where applicable, of the retailer, as well as their telephone number and, where applicable, e-mail address;
- (c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the traveller may still have to bear;
- (d) the arrangements for payment, including any amount or percentage of the price which is to be paid as a down payment and the timetable for payment of the balance, or financial guarantees to be paid or provided by the traveller;
- (e) the minimum number of persons required for the package to take place and the time-limit, referred to in section 13(8)(a), before the start of the package for the possible termination of the contract if that number is not reached;
- (f) general information on passport and visa requirements, including approximate periods for obtaining visas and information on health formalities, of the country of destination;

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- (g) information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate termination fee, or, where applicable, the standardised termination fees requested by the organiser, in accordance with section 13(1) to (5);
 - (h) information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death.
- (3) Where the exact time under subsection (2)(a)(ii) is not yet determined, the organiser and, where applicable the retailer, shall inform the traveller of the approximate time of departure and return.
- (4) Where a package travel contract is concluded by telephone, the organiser and, where applicable, the retailer shall provide the traveller with the standard information set out in Part B of Schedule 1, and the information set out in subsection (2).
- (5) Before the traveller is bound by a contract or any corresponding offer-
- (a) the organiser and the trader to whom the data are transmitted under section 2(2)(b)(v) shall ensure that they each provide the information in subsection (2) in so far as it is relevant for the respective travel services they offer; and
 - (b) the organiser shall also provide, at the same time, the standard information by means of the form set out in Part C of Schedule 1.
- (6) Subject to subsection (7) the organiser and, where the package is sold through a retailer, also the retailer shall provide the information under this section in a clear, comprehensible and prominent manner.
- (7) The information referred to in this section shall be provided in writing and the organiser and retailer shall ensure that the writing is legible.
- (8) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Binding character of pre-contractual information and conclusion of the package travel contract.

8.(1) The organiser and, where applicable, the retailer shall ensure that the information provided to the traveller pursuant to section 7(2)(a), (c), (d), (e) and (g) forms an integral part of the package travel contract and is not altered unless the contracting parties expressly agree otherwise.

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(2) The organiser and, where applicable, the retailer shall inform the traveller of all changes to the pre-contractual information in a clear, comprehensible and prominent manner before the conclusion of the package travel contract.

(3) If, before the conclusion of the package travel contract, the organiser and, where applicable, the retailer has not complied with the information requirements on additional fees, charges or other costs as referred to in section 7(2)(c), the traveller shall not bear those fees, charges or other costs.

(4) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Contents and form of contract.

9.(1) The package travel contract shall be in plain and intelligible language and, in legible writing.

(2) At the conclusion of the package travel contract or without undue delay thereafter, the organiser shall provide the traveller with a copy or confirmation of the contract on a durable medium.

(3) If the package travel contract has been concluded in the simultaneous physical presence of the parties, the traveller is entitled to request a paper copy of the document referred to in subsection (2).

(4) Without prejudice to subsection (3), in the case of off-premises contracts as defined in regulation 2 of the Consumer Rights on Contract Regulations 2013, a copy or confirmation of the package travel contract shall be provided to the traveller on paper or, if the traveller agrees, on another durable medium.

(5) The package travel contract or confirmation of the contract shall set out the full content of the agreement which shall include all the information referred to in section 7(2)(a) to (h) and the following additional information-

- (a) special requirements of the traveller which the organiser has accepted;
- (b) information that the organiser is-
 - (i) responsible for the proper performance of all travel services included in the contract in accordance with section 14, and
 - (ii) obliged to provide assistance if the traveller is in difficulty in accordance with section 15(4);

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- (c) the name of the entity in charge of the insolvency protection and its contact details, including its geographical address;
- (d) the name, address, telephone number, e-mail address and, where applicable, the fax number of either-
 - (i) the local representative of the organiser, or
 - (ii) a contact point or another service,

which enables the traveller to contact the organiser quickly and communicate with him efficiently, to request assistance when the traveller is in difficulty or to complain about any lack of conformity perceived during the performance of the package;

- (e) information that the traveller is required to communicate any lack of conformity which he perceives during the performance of the package in accordance with section 14(2);
- (f) where a child, unaccompanied by a parent or another authorised person, travel on the basis of a package travel contract which includes accommodation, information enabling direct contact with the child or the person responsible for the child at the child's place of stay;
- (g) information on available in-house complaint handling procedures and on alternative dispute resolution ('ADR') mechanisms pursuant to the Consumer (Alternative Dispute Resolution) Regulations 2015;
- (h) information on the traveller's right to transfer the contract to another traveller in accordance with section 10.

(6) With reference to packages as defined in section 2(2)(b)(v), the trader to whom the data are transmitted shall inform the organiser of the conclusion of the contract leading to the creation of a package.

(7) The trader shall provide the organiser, in a clear, comprehensible and prominent manner, with the information necessary to comply with his obligations as the organiser.

(8) The organiser shall, as soon as he is informed that a package has been created, provide the traveller, in a clear, comprehensible and prominent manner, the information referred to in subsection (5)(a) to (h) on a durable medium.

(9) The organiser shall, in good time before the start of the package, provide the traveller with-

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- (a) the necessary receipts, vouchers and tickets;
 - (b) information on the scheduled times of departure and, where applicable, the deadline for check-in; and
 - (c) the scheduled times for intermediate stops, transport connections and arrival.
- (10) The trader carries the burden of proof for compliance with the information requirements provided for in this Part.
- (11) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 3

CHANGES TO THE PACKAGE TRAVEL CONTRACT BEFORE THE START OF THE PACKAGE

Transfer of the package travel contract.

10.(1) In every contract there is an implied term that where the traveller is prevented from proceeding with the package the traveller may transfer the package travel contract to a person who satisfies all the conditions applicable to the package, provided that the traveller gives reasonable notice, on a durable medium, to the organiser of his intention to transfer before the start of the package.

(2) For the purposes of subsection (1) reasonable notice is notice given at the latest 7 days before the start of the package.

(3) Where a transfer is made in accordance with the implied term set out in subsection (1), the transferor and the transferee are jointly and severally liable for the payment of the balance due and for any additional fees, charges or other costs arising from the transfer.

(4) The organiser shall inform the transferor about the actual costs of the transfer, which shall not be unreasonable and shall not exceed the actual cost incurred by that party due to the transfer of the package travel contract.

(5) The organiser shall provide the transferor with proof of the additional fee, charges or other costs arising from the transfer of the package travel contract.

(6) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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Price revision.

11.(1) Subject to subsection (2), after the conclusion of the package travel contract prices may be increased only if-

- (a) the package travel contract expressly reserves that possibility and states that the traveller is entitled to a price reduction under subsection (4);
- (b) the package travel contract states how the price revision is to be calculated; and
- (c) the organiser notifies the traveller clearly and comprehensibly of the price increase, along with a justification for the increase and a calculation, on a durable medium at the latest 20 days before the start of the package.

(2) Price increases under subsection (1) are only possible exclusively as a direct consequence of changes in-

- (a) the price of the carriage of passengers resulting from the cost of fuel or other power sources;
- (b) the level of taxes or fees on the travel services included in the contract imposed by third parties not directly involved in the performance of the package, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports; or
- (c) the exchange rates relevant to the package.

(3) If the price increase under subsection (1) exceeds 8% of the total price of the package, sections 12(2) to (8) shall apply.

(4) If the package travel contract stipulates the possibility of price increases, the traveller shall have the right to a price reduction corresponding to any decrease in the costs referred to in subsection (2)(a), (b) and (c) that occurs after the conclusion of the contract before the start of the package.

(5) In the event of a price decrease, the organiser may deduct actual administrative expenses from the refund owed to the traveller.

(6) The organiser shall provide proof of the administrative expenses referred to in subsection (5) if the traveller requests such proof.

(7) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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Alteration of other package travel contract terms.

12.(1) With the exception of a change in price under section 11, the organiser cannot unilaterally change the terms of the package travel contract before the start of the package unless-

- (a) the organiser has reserved that right in the contract;
- (b) the change is insignificant; and
- (c) the organiser informs the traveller of the change in a clear, comprehensible and prominent manner on a durable medium.

(2) If, before the start of the package, the organiser is-

- (a) constrained to alter significantly any of the main characteristics of the travel services under section 7(2)(a);
- (b) cannot fulfil the special requirements under section 9(5)(a); or
- (c) proposes to increase the price of the package by more than 8 % in accordance with section 11(3),

the traveller may within a reasonable period specified by the organiser either accept the proposed change or terminate the contract without paying a termination fee.

(3) Subject to subsection (4), if the traveller terminates the package travel in accordance with subsection (2), the organiser may offer a substitute package, if possible of an equivalent or higher quality.

(4) If the organiser offers a substitute package under subsection (3), the traveller may either accept or reject the offer.

(5) The organiser shall, without undue delay, inform the traveller on a durable medium and in a clear, comprehensible and prominent manner of-

- (a) the proposed changes under subsection (2) and, where appropriate in accordance with subsection (6), their impact on the price of the package;
- (b) a reasonable period within which the traveller has to inform the organiser of his decision pursuant to subsection (2);
- (c) the consequences of the traveller's failure to respond within the period referred to in paragraph (b); and

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(d) where applicable, the offered substitute package and its price.

(6) The traveller is entitled to an appropriate price reduction if the changes to the package travel contract or the substitute package under subsection (2) result in a package of lower quality or cost.

(7) If the package travel contract is terminated pursuant to subsection (2) and the traveller does not accept a substitute package, the organiser shall refund all payments made by or on behalf of the traveller without undue delay, and in any event not later than 14 days after the contract is terminated.

(8) Pursuant to subsection (7), section 14A(2) to (8) shall apply mutatis mutandis.

(9) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Termination of the package travel contract and the right of withdrawal before the start of the package.

13.(1) The traveller may terminate the package travel contract at any time before the start of the package.

(2) Subject to subsection (6), if the traveller terminates the package travel contract under subsection (1), the organiser may require the traveller to pay an appropriate and justifiable termination fee.

(3) The package travel contract may specify reasonable standardised termination fees based on the time of the termination of the contract before the start of the package and the expected cost savings and income from alternative deployment of the travel services.

(4) In the absence of standardised termination fees, the amount of the termination fee shall correspond to the price of the package minus the cost savings and income from alternative deployment of the travel services.

(5) The organiser shall provide a justification for the amount of the termination fees if the traveller requests such justification.

(6) Notwithstanding subsection (2), the traveller may terminate the package travel contract before the start of the package without paying any termination fee if there is an event of unavoidable and extraordinary circumstances occurring at-

(a) the place of destination; or

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- (b) its immediate vicinity,
- and as a result the performance of the package or the carriage of passengers to the destination would be significantly affected.
- (7) If the termination of the package travel contract is a result of an event under subsection (6), the traveller is entitled to a full refund of any payments made for the package, but shall not be entitled to additional compensation.
- (8) The organiser may terminate the package travel contract and provide the traveller with a full refund of any payments made for the package, but shall not be liable for additional compensation, if-
- (a) the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination of the contract within the period fixed in the contract, but not later than-
 - (i) 20 days before the start of the package in the case of trips lasting more than 6 days,
 - (ii) 7 days before the start of the package in the case of trips lasting between 2 and 6 days,
 - (iii) 48 hours before the start of the package in the case of trips lasting less than 2 days; or
 - (b) the organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the traveller of the termination of the contract, without undue delay, before the start of the package.
- (9) The organiser shall provide any refunds required under this section or, with respect to subsections (1) to (5), reimburse any payments made by or on behalf of the traveller for the package minus the appropriate termination fee.
- (10) Refunds or reimbursements made under subsection (9) shall be made to the traveller without undue delay and in any event not later than 14 days after the package travel contract is terminated.
- (11) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 4

Package Travel, Package Holidays and Package Tours **1994-08**

PERFORMANCE OF THE PACKAGE

Responsibility for the performance of the package.

14.(1) Subject to section 42, the organiser is responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers.

(2) The traveller shall inform the organiser without undue delay, taking into account the circumstances of the case, of any lack of conformity which he perceives during the performance of a travel service included in the package travel contract.

(3) If any of the travel services are not performed in accordance with the package travel contract, the organiser shall remedy the lack of conformity, unless-

(a) it is impossible; or

(b) it entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel services affected.

(4) If the organiser does not remedy the lack of conformity in accordance with subsection (3), section 14A shall apply.

(5) Without prejudice to the exceptions in subsection (3), if the organiser does not remedy the lack of conformity within a reasonable period set by the traveller, the traveller may do so himself and request reimbursement of the necessary expenses.

(6) Pursuant to subsection (5) it is not necessary for the traveller to specify a time-limit if-

(a) the organiser refuses to remedy the lack of conformity; or

(b) if immediate remedy is required.

(7) Where a significant proportion of the travel services cannot be provided as agreed in the package travel contract, the organiser shall offer, at no extra cost to the traveller, suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the contract, for the continuation of the package, including where the traveller's return to the place of departure is not provided as agreed.

(8) If the organiser proposes an alternative arrangement under subsection (7) that results in a package of lower quality than that specified in the package travel contract, the organiser shall grant the traveller an appropriate price reduction.

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- (9) The traveller may reject a proposed alternative arrangement only if-
- (a) it is not comparable to what was agreed in the package travel contract; or
 - (b) the price reduction granted is inadequate.
- (10) Subject to subsections (11) and (12), where a lack of conformity substantially affects the performance of the package and the organiser has failed to remedy it within a reasonable period set by the traveller, the traveller may terminate the package travel contract without paying a termination fee and, where appropriate, request, in accordance with section 14A-
- (a) a price reduction;
 - (b) compensation for damages; or
 - (c) a combination of paragraphs (a) and (b).
- (11) The traveller is, where appropriate, entitled to a price reduction and compensation for damages under subsection (10) without having to terminate the package travel contract if-
- (a) it is impossible to make alternative arrangements; or
 - (b) the traveller rejects the proposed alternative arrangements in accordance with subsection (9).
- (12) If the package includes the carriage of passengers, the organiser shall, in the cases referred to in subsections (10) and (11), also provide repatriation of the traveller with equivalent transport-
- (a) without undue delay; and
 - (b) at no extra cost to the traveller.
- (13) Subject to subsection (14) if it is impossible to ensure the traveller's return as agreed in the package travel contract because of unavoidable and extraordinary circumstances, the organiser shall bear the cost of necessary accommodation, if possible of equivalent category, for a period not exceeding 3 nights per traveller.
- (14) If longer periods of time are provided for in passenger rights legislation applicable to the relevant means of transport for the traveller's return, those periods apply instead of the 3 nights in subsection (13).
- (15) The limitation of costs under subsection (13) do not apply to-

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- (a) persons with reduced mobility, as defined in point (a) of Article 2 of Regulation (EC) No 1107/2006, as may be amended from time to time, and any person accompanying them;
- (b) pregnant women;
- (c) unaccompanied children; and
- (d) persons in need of specific medical assistance, provided that the organiser has been notified of their particular needs at least 48 hours before the start of the package.

(16) The organiser may not invoke unavoidable and extraordinary circumstances to limit the liability under subsection (13) if the relevant transport provider is unable to rely on such circumstances under applicable legislation.

(17) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Price reduction and compensation for damages.

14A.(1) The traveller is entitled to an appropriate price reduction for any period during which there was lack of conformity, unless the organiser proves that the lack of conformity is attributable to the traveller.

(2) The traveller is entitled to receive appropriate compensation, without undue delay, from the organiser for any damage which the traveller sustains as a result of any lack of conformity.

(3) The traveller is not entitled to compensation for damages if the organiser proves that the lack of conformity is-

- (a) attributable to the traveller;
- (b) attributable to a third party unconnected with the provision of the travel services included in the package travel contract and is unforeseeable or unavoidable; or
- (c) due to unavoidable and extraordinary circumstances.

(4) If an international convention, which extends to Gibraltar, limits the extent of or the conditions under which compensation is to be paid by a provider carrying out a travel service that is part of a package, the same limitations shall apply to the organiser.

(5) Otherwise and without prejudice to subsection (4), the package travel contract may limit the compensation to be paid by the organiser as long as that limitation-

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- (a) does not apply to personal injury or damage caused intentionally or with negligence; and
 - (b) does not amount to less than three times the total price of the package.
- (6) Pursuant to subsection (7), any right to compensation or price reduction under this Act does not affect the rights of travellers under-
- (a) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91;
 - (b) Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on Rail Passengers' Rights and Obligations;
 - (c) Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents;
 - (d) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004;
 - (e) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004; and
 - (f) international conventions,
- as they may be amended from time to time.
- (7) If the traveller presents a claim under this Act and also under any of the paragraphs in subsection (6), the compensation or price reduction granted shall be deducted from each other in order to avoid overcompensation.
- (8) No claim for compensation under this section shall be commenced after the end of the period of 2 years beginning with the date of conclusion of the package travel contract.
- (9) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Contacting the organiser and obligation to provide assistance.

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15.(1) Subject to section 42, the other party to the contract shall ensure that the traveller is provided with its contact details in case the traveller needs to address messages, requests or complaints in relation to the performance of the package.

(2) If the retailer receives any messages, requests or complaints under subsection (1) the retailer shall, without undue delay, forward those messages, requests or complaints to the organiser.

(3) For the purpose of compliance with either-

- (a) time limits; or
- (b) limitation periods,

the receipt by the retailer of any message, request or complaint, shall be the receipt by the organiser.

(4) The organiser shall provide, without undue delay, appropriate assistance to the traveller in difficulty, including in circumstances under section 14(13), in particular by-

- (a) providing appropriate information on health services, local authorities and consular assistance; and
- (b) assisting the traveller to make distance communications and helping the traveller to find alternative travel arrangements.

(5) The organiser may charge a reasonable fee for assistance provided in respect of subsection (4) only if the difficulty is caused-

- (a) intentionally by the traveller; or
- (b) through the traveller's negligence,

and such fee shall not exceed the actual costs incurred by the organiser.

(6) A person who breaches any of the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 5

INSOLVENCY PROTECTION

Security in event of insolvency.

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16.(1) Subject to section 42, the organiser shall be able to provide sufficient evidence of security for the situations mentioned in subsection (2) if-

- (a) the organiser is established in Gibraltar; or
 - (b) the organiser is not established in Gibraltar, but sells or offers for sale packages in Gibraltar, or which by any means directs such activities to Gibraltar.
- (2) The security to be provided in accordance with subsection (1) is-
- (a) the refund of all payments made by or on behalf of travellers if the relevant services are not performed as a result of the insolvency of the organiser; and
 - (b) the traveller's repatriation if the carriage of passengers is included in the package travel contract.
- (3) Notwithstanding subsection (2), continuation of the package may be offered.
- (4) The security to be provided by the organiser shall be effective and cover-
- (a) reasonably foreseeable costs;
 - (b) the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down payments and final payments and the completion of the packages; and
 - (c) the estimated cost for repatriations in the event of the insolvency of the organiser.
- (5) *Deleted*
- (6) If the performance of the package is affected by the insolvency of the organiser, the security shall be available free of charge to ensure-
- (a) repatriation; and
 - (b) if necessary, the financing of accommodation prior to the repatriation.
- (7) Refunds for travel services that have not been performed, shall be provided, without undue delay, after the traveller's request.
- (8) Without prejudice to subsection (1), the organiser shall at least ensure that there are in force arrangements as described in either sections 17, 18, 19 or 20 or, if the organiser is acting otherwise than in the course of business, as described in any one of those sections or section 21.

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- (9) A person who contravenes subsections (1) or (8) is guilty of an offence and liable-
- (a) on summary conviction to a fine not exceeding level 4 on the standard scale; and
 - (b) on conviction on indictment, to a fine.

(10) For the purposes of sections 17 to 21 a contract shall be treated as having 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 14.

Insolvency protection and information requirements for linked travel arrangements.

16A.(1) If the other party to the contract is a trader facilitating linked travel arrangements, whether established in Gibraltar or not, that is selling or offering for sale linked travel arrangements in Gibraltar, or which by any means directs such activities to Gibraltar, the trader shall ensure that he is able to provide sufficient evidence of security for-

- (a) the refund of all payments received from travellers insofar as a travel service that is part of a linked travel arrangement is not performed as a consequence of the trader's insolvency; and
 - (b) the traveller's repatriation if the trader is the party responsible for the carriage of passengers.
- (2) The security to be provided by the trader under this section shall be effective and cover-
- (a) reasonably foreseeable costs;
 - (b) the amounts of payments made by or on behalf of travellers in respect of travel services that are part of linked travel arrangements, taking into account the length of the period between down payments and final payments and the completion of the travel services; and
 - (c) the estimated costs for repatriation, if the trader is the party responsible for the carriage of passengers, in the event of the trader's insolvency.

(3) *Deleted*

(4) If the performance of the travel services that are part of linked travel arrangements are affected by the insolvency of the trader, the security shall be available free of charge to ensure-

- (a) repatriation, if the trader is the party responsible for the carriage of passengers; and

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- (b) if necessary, the financing of accommodation prior to the repatriation.
- (5) Refunds for travel services that have not been performed, shall be provided, without undue delay, after the traveller's request.
- (6) A trader facilitating linked travel arrangements under subsection (1) shall, before the traveller is bound by any contract leading to the creation of a linked travel arrangement or any corresponding offer, state in a clear, comprehensible and prominent manner that the traveller-
- (a) will not benefit from any of the rights applying exclusively to packages under this Act and that each service provider will be solely responsible for the proper contractual performance of his service; and
 - (b) will benefit from insolvency protection in accordance with this section.
- (7) A trader facilitating linked travel arrangements shall provide travellers with the information in subsection (6)(a) and (b) by means of-
- (a) the relevant standard form set out in Schedule 2; or
 - (b) if the particular type of linked travel arrangement is not covered by any of the forms set out in Schedule 2, provide the information contained therein.
- (8) If a trader facilitating linked travel arrangements has not complied with the requirements in this section, the rights and obligations laid down in sections 10 and 13 and, Part 4 shall apply in relation to the travel services included in the linked travel arrangement.
- (9) If a linked travel arrangement is the result of the conclusion of a contract between a traveller and a trader who does not facilitate the linked travel arrangement, that trader shall inform the trader facilitating the linked travel arrangement of the conclusion of the relevant contract.
- (10) Without prejudice to subsection (1), the trader shall at least ensure that there are in force arrangements as described in either sections 17, 18, 19 or 20 or, if the trader is acting otherwise than in the course of business, as described in any one of those sections or section 21.
- (11) A person who contravenes subsections (1) or (10) is guilty of an offence and liable-
- (a) on summary conviction to a fine not exceeding level 4 on the standard scale; and
 - (b) on conviction on indictment, to a fine.

16B. *Deleted*

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Bonding.

17.(1) In accordance with sections 16(8) and 16A(10), the other party to the contract may provide insolvency protection by ensuring that a bond is entered into by an authorised institution under which the institution binds itself to pay to an approved person a sum calculated in accordance with subsection (3) in the event of the insolvency of that other party.

(2) Any bond entered into pursuant to sub-section (1) shall not be expressed to be in force for a period exceeding eighteen months.

(3) The sum referred to in subsection (1) shall be such sum as may reasonably be expected to enable all monies paid over by the travellers under or in contemplation of-

- (a) contracts for relevant packages; or
- (b) travel services that are part of linked travel arrangements,

which have not been fully performed, to be repaid and shall not in any event be a sum which is less than the minimum sum calculated in accordance with subsection (4).

(4) The minimum sum for the purposes of subsection (3) shall be a sum which represents-

- (a) not less than 25% of all the payments which the other party to the contract estimates he will receive under or in contemplation of-
 - (i) contracts for relevant packages, or
 - (ii) travel services that are part of linked travel arrangements,

in the twelve month period from the date of entry into force of the bond referred to in subsection (1); or

- (b) the maximum amount of all the payments which the other party to the contract expects to hold at any one time, in respect of contracts or travel services which have not been fully performed,

whichever sum is the smaller.

(5) Before a bond is entered into pursuant to sub-section (1), the other party to the contract shall inform the approved person of the minimum sum which he proposes for the purposes of sub-sections (3) and (4) and it shall be the duty of the approved person to consider whether such sum is sufficient for the purpose mentioned in subsection (3) and if it does not consider that this is the case, it shall be the duty of the approved person so to inform the other party to

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the contract and to inform him of the sum which, in the opinion of the approved person, is sufficient for that purpose.

(6) Where an approved person has informed the other party to the contract of a sum pursuant to sub-section (5), the minimum sum for the purposes of sub-sections (3) and (4) shall be that sum.

Bonding where approved person has reserve fund or insurance.

18.(1) In accordance with sections 16(8) and 16A(10) the other party to the contract may provide insolvency protection by ensuring that a bond is entered into by an authorised institution, under which the institution agrees to pay to an approved person a sum calculated in accordance with subsection (3) in the event of the insolvency of that other party.

(2) Any bond entered into pursuant to sub-section (1) shall not be expressed to be in force for a period exceeding eighteen months.

(3) The sum referred to in sub-section (1) shall be such sum as may be specified by the approved person as representing the lesser of-

- (a) the maximum amount of all the payments which the other party to the contract expects to hold at any one time in respect of contracts or travel services which have not been fully performed; or
- (b) the minimum sum calculated in accordance with sub-section (4).

(4) The minimum sum for the purposes of subsection (3) shall be a sum which represents not less than 10% of all the payments which the other party to the contract estimates that he will receive under or in contemplation of-

- (a) contracts for relevant packages; or
- (b) travel services that are part of linked travel arrangements,

in the twelve month period from the date of entry referred to in subsection (1).

(5) *Repealed.*

(6) A person may not be approved by the Financial Secretary as an “approved person” for the purposes of this section unless-

- (a) he has a reserve fund or insurance cover with an insurer authorised in respect of such business, in Gibraltar, of an amount in each case which is designed to enable

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all monies paid over to the other party to the contract by travellers under or in contemplation of-

- (i) contracts for relevant packages, or
- (ii) travel services that are part of linked travel arrangements,

which have not been fully performed, to be repaid to those travellers in the event of the insolvency of that other party; and

- (b) where he has a reserve fund, he agrees that the fund will only be held by persons and in a manner approved by the Financial Secretary.

Insurance.

19.(1) In accordance with sections 16(8) and 16A(10), the other party to the contract may provide insolvency protection by ensuring that it has insurance under one or more appropriate policies with an insurer authorised in respect of such business, in Gibraltar, under which the insurer agrees to indemnify travellers, who shall be ensured persons under the policy, against the loss of money paid over by them under or in contemplation of contracts for packages or travel services that are part of linked travel arrangements, in the event of the insolvency of the contractor.

(2) The other party to the contract shall ensure that it is a term of every contract with a traveller that the traveller acquires the benefit of a policy of a kind mentioned in sub-section (1) in the event of the insolvency of the other party to the contract.

Monies in trust.

20.(1) In accordance with sections 16(8) and 16A(10), the other party to the contract may provide insolvency protection by ensuring that all monies paid over by a traveller under or in contemplation of-

- (a) a contract for a relevant package; or
- (b) travel services that are part of linked travel arrangements,

are held in Gibraltar by a person as trustee for the traveller until the contract or travel service has been fully performed or any sum of money paid by the traveller in respect of the contract or travel service has been repaid to him or has been forfeited on cancellation by the traveller.

(2) The costs of administering the trust mentioned in sub-section (1) shall be paid for by the other party to the contract.

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(3) Any interest which is earned on the monies held by the trustee pursuant to sub-section (1) shall be held for the other party to the contract and shall be payable to him on demand.

(4) Where there is produced to the trustee a statement signed by the other party to the contract to the effect that—

- (a) a contract for a package, or a travel service that is part of a linked travel arrangement, the price of which is specified in that statement has been fully performed;
- (b) the other party to the contract has repaid to the traveller a sum of money specified in that statement which the traveller had paid in respect of a contract for a package, or a travel service that is part of a linked travel arrangement,; or
- (c) the traveller has on cancellation forfeited a sum of money specified in that statement which he had paid in respect of a contract for a relevant package or a travel service that is part of a linked travel arrangement,

the trustee shall (subject to sub-section (5)) release to the other party to the contract the sum specified in the statement.

(5) Where the trustee considers it appropriate to do so, he may require the other party to the contract to provide further information or evidence of the matters mentioned in paragraphs (a), (b) or (c) of sub-section (4) before he releases any sum to that other party pursuant to that sub-section.

(6) In the event of the insolvency of the other party to the contract the monies held in trust by the trustee pursuant to subsection (1) shall be applied to meet the claims of travellers who are creditors of that other party in respect of—

- (a) contracts for packages; or
- (b) travel services that are part of linked travel arrangements,

in respect of which the arrangements were established and which have not been fully performed and, if there is a surplus after those claims have been met, it shall form part of the estate of that insolvent other party for the purposes of insolvency law.

(7) Notwithstanding subsection (6), the other party to the contract shall ensure that it has sufficient funds to meet the necessary costs of any traveller repatriation for which it is responsible.

Monies in trust where other party to contract is acting otherwise than in the course of business.

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21.(1) If the other party to the contract is acting otherwise than in the course of business, it may in accordance with sections 16(8) and 16A(10), provide insolvency protection by ensuring that all monies paid over by a traveller under or in contemplation of-

- (a) a contract for a relevant package; or
- (b) travel services that are part of linked travel arrangements,

are held in Gibraltar by a person as trustee for the traveller for the purpose of paying for the traveller's package or travel service.

(2) The costs of administering the trust mentioned in sub-section (1) shall be paid for out of the monies held in trust and the interest earned on those monies.

(3) Where there is produced to the trustee a statement signed by the other party to the contract to the effect that-

- (a) the traveller has previously paid over a sum specified in that statement in respect of a contract for a package, or a travel service that is part of a linked travel arrangement, and that sum is required for the purpose of paying for the travel service or a component (or part of a component) of the package;
- (b) the traveller has previously paid over a sum of money specified in that statement in respect of a contract for a package, or a travel service that is part of a linked travel arrangement, and the other party to the contract has paid that sum in respect of the travel service or a component (or part of a component) of the package;
- (c) the traveller requires the repayment to him of a sum of money specified in that statement which was previously paid over by the traveller in respect of a contract for a package or a travel service that is part of a linked travel arrangement; or
- (d) the traveller has on cancellation forfeited a sum of money specified in that statement which he had paid in respect of a contract for a package or a travel service that is part of a linked travel arrangement,

the trustee shall (subject to sub-section (4)) release to the other party to the contract the sum specified in the statement.

(4) Where the trustee considers it appropriate to do so, he may require the other party to the contract to provide further information or evidence of the matters mentioned in paragraphs (a), (b), (c) or (d) of sub-section (3) before he releases to that other party any sum from the monies held in trust for the traveller.

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(5) In the event of the insolvency of the other party to the contract and-

- (a) of contracts for packages; or
- (b) travel services that are part of linked travel arrangements,

which have not been fully performed, whether before or after the insolvency, the monies held in trust by the trustee pursuant to sub-section (1) shall be applied to meet the claims of travellers who are creditors of that other party in respect of amounts paid over by them and remaining in the trust fund after deductions had been made in respect of the amounts released to that other party pursuant to subsection (3) and, if there is a surplus after those claims have been met, it shall be divided amongst those travellers pro rata.

(6) Notwithstanding subsection (5), the other party to the contract shall ensure that it has sufficient funds to meet the necessary costs of any traveller repatriation for which it is responsible.

(7) Any sums remaining after-

- (a) all the packages in respect of which the arrangements were established have been fully performed; or
- (b) all the travel services that are part of linked travel arrangements under the responsibility of the other party to the contract have been performed,

shall be dealt with as provided in the arrangements or, in default of such provision, may be paid to the other party to the contract.

Offences arising from breach of sections 20 and 21.

22.(1) If the other party to the contract makes a false statement under section 20(4) or 21(3) he shall be guilty of an offence.

(2) If the other party to the contract applies monies released to him on the basis of a statement made by him under section 21 (3) (a) or (c) for a purpose other than that mentioned in the statement he shall be guilty of an offence.

(3) If the other party to the contract is guilty of an offence under sub-section (1) or (2) of this section he shall be liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment, to a fine.

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23. *Repealed.*

Due diligence defence.

24.(1) Subject to the following provisions of this section, in proceedings against any person for an offence under section 16, 16A or 22, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by sub-section (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice under sub-section (3) on the person bringing the proceedings.

(3) A notice under this sub-section shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by sub-section (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender.

25.(1) Where the commission by any person of an offence under section 16, 16A or 22 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this sub-section whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under any of the provisions mentioned in sub-section (1) (including where it is so guilty by virtue of the said sub-section (1)) in respect of any act or default which is shown to have been committed with the consent or connivance

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of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, sub-section (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Prosecution time limit.

26.(1) No proceedings for an offence under section 16, 16A or 22 shall be commenced after—

- (a) the end of the period of three years beginning with the date of the commission of the offence; or
- (b) the end of the period of one year beginning with the date of the discovery of the offence by the prosecutor,

whichever is the earlier.

(2) For the purposes of this section a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by him shall be conclusive evidence of that fact, and a certificate showing that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.

Saving for civil consequences.

27. No contract shall be void 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 sections 16, 16A or 22.

Terms implied in contract.

28. Where it is provided in this Act that a term (whether so described or whether described as a condition or warranty) is implied in the contract, it is so implied irrespective of the law which governs the contract.

PART 5A

ENFORCEMENT POWERS

Competent authority.

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- 29.(1) The OFT is the competent authority for the purposes of this Act.
- (2) The competent authority shall have as its main role the protection of travellers, and shall-
- (a) visit businesses to review their practices and inspect their compliance with the Act;
 - (b) monitor and check advertisements for accuracy;
 - (c) investigate matters and conduct of business practices which could or appear to harm traveller interests.
- (3) The competent authority may investigate any offence under this Act using the enforcement powers in this Part.
- (4) If the competent authority suspects that there has been a breach of this Act it may bring legal proceedings against the person that has contravened the relevant provision.

Complaints to the competent authority.

30.(1) A traveller may make a complaint to the competent authority in accordance with the provisions of this section, if, in his opinion there has been a failure by a trader to meet any obligations under this Act.

(2) The competent authority shall, within 120 days after the day on which it receives all information relating to the complaint, produce a response stating how it proposes to deal with the complaint, and in particular-

- (a) whether it has decided to take any action, or to take no action, in response to the complaint; and
 - (b) if it has decided to take action, what action it proposes to take.
- (3) The response shall state the competent authority's reasons for its proposals.

Notice to give evidence.

31.(1) The competent authority may give notice to any person requiring him-

- (a) to attend at a time and place specified in the notice;
- (b) to give evidence to the competent authority;

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- (c) to produce any documents which are specified or described in the notice, or fall within a category of document which is specified or described in the notice and which are in that person's custody or under his control; and
 - (d) to produce any documents under paragraph (c) at a time and place so specified and to a person so specified.
- (2) A notice under this section shall include information about the possible consequences of not complying with the notice.
- (3) The person to whom any document is produced in accordance with a notice under this section may, for the purpose mentioned in subsection (1), copy the document so produced.
- (4) No person shall be required under this section to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the Magistrates Court or to supply any information which he could not be compelled to supply in evidence in such proceedings.

Offences in relation to section 31.

- 32.(1) A person commits an offence if he, intentionally and without reasonable excuse, fails to comply with any requirement of a notice under section 31.
- (2) A person commits an offence if he intentionally and without reasonable excuse alters, suppresses or destroys any document which he has been required to produce by a notice under section 31.
- (3) A person commits an offence if he intentionally obstructs or delays the competent authority in the exercise of its powers under this Act.
- (4) A person who commits an offence under this section shall be liable-
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding one year or to a fine not exceeding level 5 on the standard scale or to both.

Powers generally exercisable on the trader's premises.

- 33.(1) The competent authority may, in exercise of its powers under this Act-
- (a) observe the carrying on of a business on the premises;
 - (b) inspect goods or documents on the premises;

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- (c) require any person on the premises to produce goods or documents within such period as the competent authority considers to be reasonable;
 - (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere; or
 - (e) seize, remove and retain goods or documents which the competent authority reasonably suspects may be required as evidence of a breach of a relevant enforcement measure.
- (2) The power in subsection (1)(c) to require a person to produce goods or documents includes the power to require the person-
- (a) to state, to the best of his knowledge and belief, where the goods or documents are;
 - (b) to give an explanation as to the goods or documents; and
 - (c) to secure that any goods or documents produced are authenticated or verified in such manner as the competent authority considers appropriate.
- (3) The competent authority may take copies of, or extracts from, any documents to which it has access by virtue of subsection (1).
- (4) In this Part document includes information recorded in any form.
- (5) The reference in subsection (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

Warrants to enter trader's premises.

34.(1) A Magistrate may issue a warrant authorising the competent authority to enter premises for purposes falling within this Act if the Magistrate considers that there are reasonable grounds for believing that-

- (a) there are, on the premises, goods or documents to which the competent authority would be entitled to have access; and
- (b) in addition to paragraph (a)-
 - (i) the competent authority has been, or would be likely to be, refused admission to the premises or access to the goods or documents,

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- (ii) the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under section 31, or
 - (iii) there is likely to be nobody at the premises capable of granting admission.
- (2) A warrant under this section authorises the competent authority-
- (a) to enter the premises specified in the warrant, using reasonable force if necessary;
 - (b) to search for goods or documents which the competent authority has required a person on the premises to produce where that person has failed to comply with such a requirement;
 - (c) to require, to the extent that it is reasonably necessary to do so, any person to whom subsection (3) applies to break open a container and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to allow an officer of the competent authority to do so; and
 - (d) to take any other steps which the competent authority considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which the competent authority would be entitled to have access under this Part.
- (3) This section applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.
- (4) A warrant under this section-
- (a) is issued on information given under oath by an officer of the competent authority;
 - (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
 - (c) shall, on request, be produced to the occupier of the premises for inspection.
- (5) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.

Power to enter premises without a warrant.

35.(1) An officer of the competent authority who reasonably suspects that there have been, or are likely to be, business practices carried on which significantly harm traveller interests, may enter those premises to investigate whether there has been, or is likely to be, such business practice.

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(2) An appropriate notice shall be given to the occupier of the premises before the officer of the competent authority enters under subsection (1).

(3) An appropriate notice is a notice in writing given by the competent authority which-

- (a) gives at least two working days' notice of entry on the premises; and
- (b) sets out why the entry is necessary.

(4) Subsection (2) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so, and if that is the case, the officer of the competent authority upon entering the premises shall produce to any occupier that he finds on the premises a document setting out-

- (a) why the entry is necessary; and
- (b) indicating the nature of the alleged offence being investigated.

(5) In all cases, the officer of the competent authority entering the premises shall produce to any occupier evidence of-

- (a) his identity; and
- (b) his authorisation.

Powers of entry- persons and equipment.

36. An officer of the competent authority who enters premises by virtue of section 34 or 35 may take with him such persons and equipment as he considers appropriate.

Obstructing, or failing to co-operate with, powers of entry.

37.(1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with an authorised officer of the competent authority, who is exercising or seeking to exercise a power under this Part.

(2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) The competent authority can refer any matters in the exercise of its powers under this Act to the Royal Gibraltar Police if the competent authority believes that a criminal offence has occurred or is likely to occur.

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Retention of documents and goods.

38. No documents seized under this Part may be retained for a period of more than two months from the date they were seized unless they are reasonably required in connection with the exercise of any function of the competent authority and where goods are so required they may be retained for a further period of one month from the expiry of the two month period.

Orders and sanctions.

39.(1) If the competent authority concludes that there has been a breach or suspected breach of this Act it may issue any of the following orders-

- (a) a cease and desist order requesting the person to-
 - (i) cease any conduct that constitutes an infringement, and
 - (ii) desist from any repetition of that conduct;
- (b) an enforcement order requiring the person to-
 - (i) take a specified action, and
 - (ii) review, or take remedial action in respect of, past conduct; or
- (c) a penalty order for infringement, of an amount not exceeding £250.

(2) An order issued under subsection (1) must be issued by notice in writing and specify a time limit, no longer than 28 days, by which the person has to comply with the order.

(3) Subject to subsection (4), a person who fails to comply with an order is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) A person may appeal to the Supreme Court against an order issued under this section, and such appeal shall be made within 28 days of receipt of the order.

Advice and information.

40.(1) The competent authority may publish advice and information with a view to-

- (a) explaining the provisions of this Part to persons who are likely to be affected by them; and
- (b) indicating how the competent authority expects such provisions to operate.

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(2) Advice from the competent authority may be sent to a business who in the opinion of the competent authority is not compliant, and such advice shall-

- (a) be confirmed in writing on request;
- (b) explain why any remedial action is necessary and over what timescale; and
- (c) ensure that legal requirements are distinguished from any best practice guidance that may be issued.

(3) The competent authority may at any time publish revised or new advice or information.

(4) Advice or information published in pursuance of subsection (1) may include advice or information about the factors which the competent authority may take into account in considering how to exercise the functions conferred on it by this Part.

(5) Advice or information published by the competent authority under this section is to be published in such form and in such manner as it considers appropriate.

(6) In preparing advice or information under this section the competent authority may consult such persons as it thinks are representative of persons affected by this Part.

Notice of convictions and judgments to competent authority.

41.(1) This section applies if-

- (a) a person is convicted of an offence by or before any court in Gibraltar; or
- (b) a judgment is given against a person by any court in civil proceedings in Gibraltar.

(2) Such court as referred to in subsection (1) may make arrangements to bring the conviction or judgment to the attention of the competent authority if it appears to the relevant court-

- (a) having regard to the functions of the competent authority that it is expedient for the conviction or judgment to be brought to the attention of the competent authority; and
- (b) that without such arrangements the conviction or judgment may not be brought to the attention of the competent authority.

(3) "Judgment" includes an order or decree and references to the giving of the judgment shall be construed accordingly.

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PART 6

GENERAL PROVISIONS

Organiser established outside Gibraltar.

42.(1) Subject to subsection (2), where the organiser is established outside Gibraltar, the retailer shall be responsible for the obligations laid down in Parts 4 and 5.

(2) The retailer does not have to comply with subsection (1) if it can provide sufficient evidence that the organiser established outside Gibraltar is complying with the obligations laid down in Parts 4 and 5.

Liability for booking errors.

43.(1) Subject to subsection (2) the other party to the contract is liable for any errors due to technical defects in the booking system which are attributable to him and, where he has agreed to arrange the booking of a package or of travel services which are part of linked travel arrangements, for the errors made during the booking process.

(2) The other party to the contract is not liable for booking errors that are attributable to the traveller or that are caused by unavoidable and extraordinary circumstances.

Right of redress.

44. If the other party to the contract-

- (a) pays compensation;
- (b) grants a price reduction; or
- (c) meets the other obligations incumbent on him under this Act,

the other party to the contract may seek redress from any third parties that contributed to the event triggering the action in paragraphs (a) to (c).

Imperative nature of the Act.

45.(1) A declaration made by the other party to the contract that-

- (a) he is acting exclusively as a travel service provider;
- (b) he is acting as an intermediary or in any other capacity; or

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- (c) a package or a linked travel arrangement does not constitute a package or a linked travel arrangement,

will not absolve him from his obligations under this Act.

- (2) Travellers cannot waive the rights conferred upon them under this Act.

(3) Any contractual agreement or any statement by the traveller which directly or indirectly waives or restricts the rights conferred on travellers pursuant to this Act or aims to circumvent the application of this Act is not binding on the traveller.

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SCHEDULE 1

Part A

Standard information form for package travel contracts where the use of hyperlinks is possible

The combination of travel services offered to you is a package within the meaning of the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, you will benefit from all rights applying to packages. Company XY/companies XY will be fully responsible for the proper performance of the package as a whole.

Additionally, as required by law, company XY/companies XY has/have protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation in the event that it becomes/they become insolvent.

More information on key rights under the Package Travel, Package Holidays and Package Tours Act 1994 (to be provided in the form of a hyperlink).

Following the hyperlink the traveller will receive the following information:

Key rights under the Package Travel, Package Holidays and Package Tours Act 1994

- Travellers will receive all essential information about the package before concluding the package travel contract.
- There is always at least one trader who is liable for the proper performance of all the travel services included in the contract.
- Travellers are given an emergency telephone number or details of a contact point where they can get in touch with the organiser or the travel agent.
- Travellers may transfer the package to another person, on reasonable notice and possibly subject to additional costs.
- The price of the package may only be increased if specific costs rise (for instance, fuel prices) and if expressly provided for in the contract, and in any event not later than 20 days before the start of the package. If the price increase exceeds 8 % of the price of the package, the traveller may terminate the contract. If the organiser reserves the right to a price increase, the traveller has a right to a price reduction if there is a decrease in the relevant costs.

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- Travellers may terminate the contract without paying any termination fee and get a full refund of any payments if any of the essential elements of the package, other than the price, are changed significantly. If before the start of the package the trader responsible for the package cancels the package, travellers are entitled to a refund and compensation where appropriate.
- Travellers may terminate the contract without paying any termination fee before the start of the package in the event of exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the package.
- Additionally, travellers may at any time before the start of the package terminate the contract in return for an appropriate and justifiable termination fee.
- If, after the start of the package, significant elements of the package cannot be provided as agreed, suitable alternative arrangements will have to be offered to the traveller at no extra cost. Travellers may terminate the contract without paying any termination fee, where services are not performed in accordance with the contract and this substantially affects the performance of the package and the organiser fails to remedy the problem.
- Travellers are also entitled to a price reduction and/or compensation for damages where the travel services are not performed or are improperly performed.
- The organiser has to provide assistance if the traveller is in difficulty.
- If the organiser or, where applicable, the retailer becomes insolvent, payments will be refunded. If the organiser or, where applicable, the retailer becomes insolvent after the start of the package and if transport is included in the package, repatriation of the travellers is secured. XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if services are denied because of XY's insolvency.

Package Travel, Package Holidays and Package Tours Act 1994 ([hyperlink](#)).

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Part B

Standard information form for package travel contracts in situations other than those covered by Part A

The combination of travel services offered to you is a package within the meaning of the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, you will benefit from all rights applying to packages. Company XY/companies XY will be fully responsible for the proper performance of the package as a whole.

Additionally, as required by law, company XY/companies XY has/have protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation in the event that it becomes/they become insolvent.

Key rights under the Package Travel, Package Holidays and Package Tours Act 1994

- Travellers will receive all essential information about the package before concluding the package travel contract.
- There is always at least one trader who is liable for the proper performance of all the travel services included in the contract.
- Travellers are given an emergency telephone number or details of a contact point where they can get in touch with the organiser or the travel agent.
- Travellers may transfer the package to another person, on reasonable notice and possibly subject to additional costs.
- The price of the package may only be increased if specific costs rise (for instance fuel prices), and if expressly provided for in the contract, and in any event not later than 20 days before the start of the package. If the price increase exceeds 8 % of the price of the package, the traveller may terminate the contract. If the organiser reserves the right to a price increase, the traveller has a right to a price reduction if there is a decrease in the relevant costs.
- Travellers may terminate the contract without paying any termination fee and get a full refund of any payments if any of the essential elements of the package, other than the price, are changed significantly. If before the start of the package the trader responsible for the package cancels the package, travellers are entitled to a refund and compensation where appropriate.
- Travellers may terminate the contract without paying any termination fee before the start of the package in the event of exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the package.

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- Additionally, travellers may at any time before the start of the package terminate the contract in return for an appropriate and justifiable termination fee.

- If, after the start of the package, significant elements of the package cannot be provided as agreed, suitable alternative arrangements will have to be offered to the traveller at no extra cost. Travellers may terminate the contract without paying any termination fee, where services are not performed in accordance with the contract and this substantially affects the performance of the package and the organiser fails to remedy the problem.

- Travellers are also entitled to a price reduction and/or compensation for damages where the travel services are not performed or are improperly performed.

-The organiser has to provide assistance if the traveller is in difficulty.

- If the organiser or, where applicable, the retailer becomes insolvent, payments will be refunded. If the organiser or, where applicable, the retailer becomes insolvent after the start of the package and if transport is included in the package, repatriation of the travellers is secured. XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if services are denied because of XY's insolvency.

(Website where Package Travel, Package Holidays and Package Tours Act 1994 can be found.).

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Part C

Standard information form where the organiser transmits data to another trader in accordance with the definition of “package” at section 2

If you conclude a contract with company AB not later than 24 hours after receiving the confirmation of the booking from company XY the travel service provided by XY and AB will constitute a package within the meaning of the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, you will benefit from all rights applying to packages. Company XY will be fully responsible for the proper performance of the package as a whole.

Additionally, as required by law, company XY has protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation in the event that it becomes insolvent.

More information on key rights under the Package Travel, Package Holidays and Package Tours Act 1994 (to be provided in the form of a hyperlink).

Following the hyperlink the traveller will receive the following information:

Key rights under the Package Travel, Package Holidays and Package Tours Act 1994

- Travellers will receive all essential information about the travel services before concluding the package travel contract.
- There is always at least one trader who is liable for the proper performance of all the travel services included in the contract.
- Travellers are given an emergency telephone number or details of a contact point where they can get in touch with the organiser or the travel agent.
- Travellers may transfer the package to another person, on reasonable notice and possibly subject to additional costs.
- The price of the package may only be increased if specific costs rise (for instance, fuel prices) and if expressly provided for in the contract, and in any event not later than 20 days before the start of the package. If the price increase exceeds 8 % of the price of the package, the traveller may terminate the contract. If the organiser reserves the right to a price increase, the traveller has a right to a price reduction if there is a decrease in the relevant costs.

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- Travellers may terminate the contract without paying any termination fee and get a full refund of any payments if any of the essential elements of the package, other than the price, are changed significantly. If before the start of the package the trader responsible for the package cancels the package, travellers are entitled to a refund and compensation where appropriate.
- Travellers may terminate the contract without paying any termination fee before the start of the package in the event of exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the package.
- Additionally, travellers may at any time before the start of the package terminate the contract in return for an appropriate and justifiable termination fee.
- If, after the start of the package, significant elements of the package cannot be provided as agreed, suitable alternative arrangements will have to be offered to the traveller at no extra cost. Travellers may terminate the contract without paying any termination fee, where services are not performed in accordance with the contract and this substantially affects the performance of the package and the organiser fails to remedy the problem.
- Travellers are also entitled to a price reduction and/or compensation for damages where the travel services are not performed or are improperly performed.
- The organiser has to provide assistance if the traveller is in difficulty.
- If the organiser or, where applicable, the retailer becomes insolvent, payments will be refunded. If the organiser or, where applicable, the retailer becomes insolvent after the start of the package and if transport is included in the package, repatriation of the travellers is secured. XY has taken out insolvency protection with YZ [the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if services are denied because of XY's insolvency.

Package Travel, Package Holidays and Package Tours Act 1994 (hyperlink).”.

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SCHEDULE 2

Part A

Standard information form where the trader facilitating an online linked travel arrangement within the meaning of paragraph (a) of the definition of “linked travel arrangement” at section 2 is a carrier selling a return ticket

If, after selecting and paying for one travel service, you book additional travel services for your trip or holiday via our company/XY, you will NOT benefit from rights applying to packages under the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, our company/XY will not be responsible for the proper performance of those additional travel services. In case of problems please contact the relevant service provider.

However, if you book any additional travel services during the same visit to our company's/XY's booking website, the travel services will become part of a linked travel arrangement. In that case XY has, as required by law, protection in place to refund your payments to XY for services not performed because of XY's insolvency, and, where necessary, for your repatriation. Please note that this does not provide a refund in the event of the insolvency of the relevant service provider.

More information on insolvency protection (to be provided in the form of a hyperlink).

Following the hyperlink the traveller will receive the following information:

XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company).

Travellers may contact this entity, or where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if the services are denied because of XY's insolvency.

Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY's insolvency.

Package Travel, Package Holidays and Package Tours Act 1994 (hyperlink).

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Part B

Standard information form where the trader facilitating an online linked travel arrangement within the meaning of paragraph (a) of the definition of “linked travel arrangement” at section 2 is a trader other than a carrier selling a return ticket

If, after selecting and paying for one travel service, you book additional travel services for your trip or holiday via our company/XY, you will NOT benefit from rights applying to packages under the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, our company/XY will not be responsible for the proper performance of the individual travel services. In case of problems please contact the relevant service provider.

However, if you book any additional travel services during the same visit to our company's/XY's booking website, the travel services will become part of a linked travel arrangement. In that case XY has, as required by law, protection in place to refund your payments to XY for services not performed because of XY's insolvency. Please note that this does not provide a refund in the event of the insolvency of the relevant service provider.

More information on insolvency protection (to be provided in the form of a hyperlink).

Following the hyperlink the traveller will receive the following information:

XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company).

Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if the services are denied because of XY's insolvency.

Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY's insolvency.

Package Travel, Package Holidays and Package Tours Act 1994 (hyperlink).

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Part C

Standard information form in the case of linked travel arrangements within the meaning of paragraph (a) of the definition of “linked travel arrangement” at section 2 where the contracts are concluded in the simultaneous physical presence of the trader (other than a carrier selling a return ticket) and the traveller

If, after selecting and paying for one travel service, you book additional travel services for your trip or holiday via our company/XY, you will NOT benefit from rights applying to packages under the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, our company/XY will not be responsible for the proper performance of the individual travel services. In case of problems please contact the relevant service provider.

However, if you book any additional travel services during the same visit to or contact with our company/XY, the travel services will become part of a linked travel arrangement. In that case XY has, as required by law, protection in place to refund your payments to XY for services not performed because of XY's insolvency. Please note that this does not provide a refund in the event of the insolvency of the relevant service provider.

XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company).

Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if the services are denied because of XY's insolvency.

Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY's insolvency.

(Website where Package Travel, Package Holidays and Package Tours Act 1994 can be found.).

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Part D

Standard information form where the trader facilitating an online linked travel arrangement within the meaning of paragraph (b) of the definition of “linked travel arrangement” at section 2 is a carrier selling a return ticket

If you book additional travel services for your trip or holiday via this link/these links, you will NOT benefit from rights applying to packages under the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, our company/XY will not be responsible for the proper performance of those additional travel services. In case of problems, please contact the relevant service provider.

However, if you book additional travel services via this link/these links not later than 24 hours after receiving the confirmation of the booking from our company/XY, those travel services will become part of a linked travel arrangement. In that case XY has, as required by law, protection in place to refund your payments to XY for services not performed because of XY's insolvency, and, where necessary, for your repatriation. Please note that this does not provide a refund in the event of the insolvency of the relevant service provider.

More information on insolvency protection (to be provided in the form of a hyperlink).

Following the hyperlink the traveller will receive the following information:

XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company).

Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if the services are denied because of XY's insolvency.

Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY's insolvency.

Package Travel, Package Holidays and Package Tours Act 1994 (hyperlink).

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Part E

Standard information form where the trader facilitating an online linked travel arrangement within the meaning of paragraph (b) of the definition of “linked travel arrangement” at section 2 is a trader other than a carrier selling a return ticket

If you book additional travel services for your trip or holiday via this link/these links, you will NOT benefit from rights applying to packages under the Package Travel, Package Holidays and Package Tours Act 1994.

Therefore, our company/XY will not be responsible for the proper performance of those additional travel services. In case of problems please contact the relevant service provider.

However, if you book additional travel services via this link/these links not later than 24 hours after receiving the confirmation of the booking from our company/XY, those travel services will become part of a linked travel arrangement. In that case XY has, as required by law, protection in place to refund your payments to XY for services not performed because of XY's insolvency. Please note that this does not provide a refund in the event of the insolvency of the relevant service provider.

More information on insolvency protection (to be provided in the form of a hyperlink).

Following the hyperlink the traveller will receive the following information:

XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company).

Travellers may contact this entity or, where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if the services are denied because of XY's insolvency.

Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY's insolvency.

Package Travel, Package Holidays and Package Tours Act 1994 (hyperlink).