

DEPARTMENT FOR
**BUSINESS, ENTERPRISE
& REGULATORY REFORM**

**CONSULTATION ON DRAFT
GUIDANCE FOR BUSINESS**

Application of The Package Travel,
Package Holidays and Package Tours
Regulations 1992: Definition of a
"Package"

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A CONSULTATION DOCUMENT

DRAFT GUIDANCE FOR BUSINESS ON THE APPLICATION OF THE PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS REGULATIONS 1992 – DEFINITION OF A “PACKAGE”

Introduction

Following a Court of Appeal decision last year in The Association of British Travel Agents Ltd v Civil Aviation Authority case (“the Judgment”), the Department for Business, Enterprise and Regulatory Reform (DBERR- formerly the Department for Trade and Industry - DTI) considered whether it needed to adjust its existing guidance to the travel industry relating to package travel.

We understand there is a strong desire in the industry for fresh guidance on this issue, and that it has attracted considerable interest in the trade press and the enforcement community. We have therefore drafted revised Guidance to take account of the Court of Appeal decision. The draft is attached at **Annex A**. The Court of Appeal Judgment can be viewed here: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2006/1356.html>

The Guidance has been drawn up following consultation with the Office of Fair Trading, the Department for Transport and the Civil Aviation Authority, and aims to provide guidance to businesses in the travel industry as to whether part or all of their business constitutes a “package” for the purposes of the Package Travel, Package Holidays and Package Tours Regulations 1992¹ (“the Regulations”) and the Civil Aviation (Air Travel Organisers’ Licensing) Regulations 1995².

Inevitably, analysis of when, according to the Judgment, the Regulations apply will give rise to differences of opinion and different views on the implications for business practice. We are therefore consulting on this draft in order to be satisfied that the views of the industry and others have been taken properly into account. Additional background information is contained in the draft Guidance itself.

The Department believes that it is essential to publish the revised guidance as quickly as possible for the industry. Ministers have determined that to enable rapid publication, the consultation period will be **6 weeks** from the date of issue, not the usual 12 weeks minimum period set out in the Cabinet Office Code of Practice on Consultations.

Issued 02nd July 2007

Respond by 13th August 2007

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¹ Statutory Instrument SI 1992/3288

² Statutory Instrument SI 1995/1054

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1. Executive Summary

The draft Guidance looks at the examples and explanation in the Judgment as to when the Regulations apply to particular ways in which leisure travel is organised, and when they do not. The draft sets out the points we believe to be the key points for the travel industry.

Where the Judgment provides explicit examples it has been easier to provide more clarity on where the Regulations apply. But it is important to recognise that the Judgment also seeks to apply certain principles on a case-by-case basis. It is not possible to provide a firm view on how they apply in each and every case. We have instead drawn out the principles set out in the Judgment from which businesses may take their own view on whether the way they sell travel arrangements will mean that they are packages, and therefore subject to the Regulations, or not.

We have considered how the Judgment might apply to internet sales. In doing so we are aware that the Judgment did not do this. However, given the increasing proportion of sales made in this way, we believe it is important to try to give guidance on this matter.

We have included a section on good practice. We think it is important, that the travel industry considers whether its application of best practice in selling travel arrangements needs to be adjusted. We think it has become even more important, as a result of the Judgment, that it is clear to the consumer whether or not they are buying a package of arrangements that is subject to the Regulations.

We believe it is also timely for the travel industry to consider the implications of the Unfair Commercial Practices Directive in relation to their business activities. In order to encourage this we have included a section on the impact of the Directive, which is due to be implemented in the UK next year and which is currently the subject of a separate DBERR consultation. This can be accessed at <http://www.dti.gov.uk/consultations/page39674.html>.

A consultation stage Impact Assessment is also attached at Annex D.

2. How to respond

2.1 This consultation opened on 2nd July 2007 The last date for responses is 13th August 2007.

2.2 **When responding** please state whether you are responding as an individual or representing the views of an organisation. Where responding as an individual or a firm, please state the sector of trade in which you operate. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

2.3 We would prefer responses by email, but hard copy is also acceptable. Responses should be sent to:

E-mail: berenice.napier@dti.gsi.gov.uk

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2.4 An electronic version of this consultation document, including its annexes, is available in PDF format at www.dti.gov.uk/consultations/Open/index.html.

2.5 A list of those organisations and individuals to whom this consultation has been sent direct is at **Annex B**. We would welcome suggestions of others who you think may wish to be involved in this consultation process.

3. Confidentiality & Data Protection

3.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

3.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

3.3 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

4. Help with queries

4.1 Questions about the policy issues raised in the document can be addressed to **Berenice Napier** at the above address.

5. Complaints

5.1 If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

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Tel: 020 7215 0346

5.2 The principles of the Code of Practice on Consultations are set out in Annex C.

6. Consultation Questions

6.1 The first 8 paragraphs of the draft guidance seek to place the document in context, to provide some background to the Guidance, and to set out the relevant definition.

Question 1: Do you have any comments or suggestions in relation to the opening sections of the draft Guidance (paragraphs 1 to 8)?

6.2 The draft Guidance looks at the examples and explanation in the Judgment and seeks to draw out the key points for the travel industry. Where the Judgment has provided these explicit examples, we believe this is reasonably straight-forward.

Question 2: Do you agree with our view, as expressed in paragraphs 9 to 16 of the draft Guidance, of the explicit examples presented in the Judgment (reproduced in Boxes 3, 4 & 5 in the draft Guidance)?

If you do not agree with our analysis, please say why. It would be very helpful if you could provide your reasoning for any alternative analysis, including any “real-life” examples to illustrate your position.

6.3 It is important to recognise that the Judgment also seeks to apply certain principles on a case-by-case basis, particularly in the variety of circumstances where a customer may choose and contract for two or more services on the same occasion. In these areas it has not been possible to provide a definitive view on how they might apply in each and every case. We have instead, in paragraphs 17 and 18, drawn out the principles and the “evidential pointers” referred to in the Judgment in order to enable businesses to take their own view on whether the way they sell travel arrangements will mean that they are packages or not.

Question 3: Do you agree with our analysis of the Judgment to the extent that we believe we cannot provide firmer guidance as to the applicability of the Regulations on a case-by-case basis?

If you do not agree, please provide examples where you believe the guidance could provide a firmer view based on the content of the Judgment.

Question 4: Do you agree that we have given appropriate “weight” to the “evidential pointers”? If not please provide your reasoning and alternative suggestions.

Question 5: Do you agree that we have presented the “evidential pointers” accurately and fully? If not, please provide alternative suggestions.

6.4 Paragraph 19 sets out our view of the meaning of “pre-arranged” in the context of the definition of a package, as defined in a previous European Court case.

Question 6: Is it helpful to include this reference to the meaning of pre-arranged in the Guidance?

6.5 The Judgment does not directly address the issue of internet sales. However, in paragraphs 20 to 26 we have set out our view on how what is set out in the Judgment might apply to internet sales. Given the increasing proportion of sales made in this way, we thought it important and potentially of value to the industry to try to give guidance on this.

Question 7: Do you agree that seeking to translate the terms of the Judgment to internet sales is useful for the industry?

Question 8: Do you agree with our guidance on the general approach to be adopted by internet traders in this market (paragraph 20)?

Question 9: Do you agree with our analysis of how the explicit examples in the Judgment can be reflected in web-based selling (paragraphs 21 & 22)?

Question 10: Do you agree with our view of the relevance of the Judgment’s coverage of “evidential pointers” to practice in respect of web-based sales (paragraphs 23 to 26)? If not, please explain which elements you would present differently and why.

6.6 Please feel free to suggest further examples of web-based sales practice which you think might usefully be covered in the Guidance.

6.7 We have included a section on good practice. We think it is important that the travel industry considers whether its application of best practice in selling travel arrangements needs to be adjusted. We think it has become even more important, as a result of the Judgment, that it is clear to the consumer whether or not they are buying a package holiday. In addition, the Office of Fair Trading (OFT) has recently published the results of a fact-finding study into internet shopping, which used sales of airline tickets as one of its case studies, and also looked at the issue of what information is provided to consumers when making online purchases. Further information can be found on the OFT website at:

http://www.offt.gov.uk/advice_and_resources/resource_base/market-studies/internet

6.8 It is also important that consumers are able to make an informed decision about the type of holiday they wish to buy. If consumers are not aware of the rights attached to

the purchase of a package, or that those rights are not available if a package is not purchased, then they will not be able to weigh up risks and benefits of their options.

Question 11: Do you agree with our view that the Judgment strengthens the case that business should be aware of good practice of the type set out in Box 6 on page 8, and should seek to apply it?

Question 12: Do you agree that the good practice set out in Box 6 is reasonable and achievable? If not, please explain why.

6.9 We have included a section (paragraphs 27 to 29) to alert the industry to the provisions of and the implications of the Unfair Commercial Practices Directive.

Question 13: Do you think this will be helpful?

6.10 Please provide any additional comments you have on the draft guidance which have not been made in response to the above questions.

7. Impact

7.1 We are keen to learn your views on the possible impact of the guidance on businesses in the sector. Any views and comments on impact in terms of ability to compete, or to participate in the sector, or in terms of added value/saving the guidance might provide, would therefore be very welcome.

Impact relating to publication of revised guidance

7.2 There seems to be a fairly widespread desire across the industry for guidance. This suggests that the degree of assurance, which guidance might provide, is of value to the industry which might equate to savings. The degree of saving will no doubt be relative to the degree of assurance the guidance provides. As covered previously in this document, we believe that there will be some businesses, or business practices, for which this guidance does not provide the degree of assurance which it might for others, but we believe it might nevertheless provide useful pointers to help them reach their own conclusions on coverage.

7.3 Publication of the revised guidance is likely to have two possible types of impact. The first is an impact on the number of firms that need to comply with the Regulations, and any costs or savings as a result. The second is on the costs to business of being familiar with what the guidance says. These are considered separately below.

Impact relating to firms who either need to comply, or do not need to comply, with the Regulations

7.4 The impact is likely to be determined by two factors: (a) the current classification of travel services - perceived by the business - with regard to whether or not its holiday services fall under the Regulations; and (b) the perceived classification of services after familiarisation with the guidance (perhaps completed after seeking legal advice).

7.5 In the situation where a firm believes that its services fall under the Regulations and the guidance confirms this, then we would not expect any impact. Also, in the case

where a firm perceives to be falling outside the Regulations and the revised guidance confirms this, again we would not expect any impact to arise.

Question 14: Is it possible to quantify the number of businesses affected in these ways?

7.6 We would expect that the adjustments to the Guidance would have a (likely negative) impact in those cases where the adjustments indicate that a firm's services actually fall under the Guidance when, previously, the firm was not complying with the Regulations. Businesses that offer package travel holidays need to incur a number of costs if the services that they offer fall under the Regulations. These include the cost of security in the event that the business becomes insolvent (e.g. bonding schemes, insurance policies, etc), cost of monies held in trust until the contract is fulfilled, cost of transferring bookings, costs of inserting clauses in contracts, cost of information requirements to customers (e.g. making brochures available, providing clear and accurate information with regard to the packages offered, providing the consumer with details prior to the commencement of the journey), etc.

Question 15: Is the possible number of businesses affected in this way quantifiable?

Question 16: What are the likely costs of complying with the Regulations in those cases where a business was not previously doing so?

7.7 In the same vein, we would expect that the adjustments to the guidance would have a (likely positive) impact in those cases where the adjustments indicate that a firm's services actually do not fall under the Guidance when the firm was previously complying with the Regulations. This will, presumably, mean that they will save some of what they have been spending in order to meet the requirements of the Regulations. For example, the calculation and reporting costs relating to sums of money held in trust in order to meet the requirements of the Regulations are an internal cost to business, which might be saved in this particular scenario.

Question 17: Is it possible to quantify the number of businesses affected in this way?

Question 18: Is the Guidance sufficiently clear to provide a reasonable assurance to business that the services in question do not after all fall within the Regulations?

Question 19: If so, can this assurance be translated into savings for business as they will no longer have to comply with the Regulations, and if so can you quantify these savings?

Impact relating to familiarisation with the Guidance

7.8 The revised Guidance can potentially have an impact on the internal costs of the firms. These costs will depend on a number of factors, including the internal time spent by firms familiarising themselves with the Guidance. We think there are likely to be 2 types of "familiarisation" impacts:

- a one-off impact of becoming familiar with the revised Guidance; and

- a recurring impact of re-acquainting themselves with the Guidance, in conjunction with the Regulations, to come to decisions about whether specific services fall within the Regulations or not.

These are considered in turn below.

7.9 There seems likely to be a one-off cost of business familiarising itself with the revised Guidance.

Question 20: Is it possible to quantify the cost of this initial familiarisation?

7.10 It is possible that familiarisation with guidance accounts for a considerable proportion of ongoing estimated internal costs. However, this would have also been the case when the previous guidance was in place. So the question is whether the new revised Guidance will take more time in ongoing familiarisation (for example when deciding whether a service falls under the Regulations or not), the same amount of time, or less time.

Question 21: Is it possible to quantify the possible change in ongoing familiarisation costs to business?

Impact of not publishing any revised guidance

7.11 The previous Guidance has already been withdrawn following the Judgment. So if revised guidance were not to be published there would be none available to the travel industry. The paragraphs below consider the possible impacts as a result.

Avoidable court action

7.12 There might be a risk that if the Guidance is not provided that additional costs would arise from consumer redress in those instances where: (a) consumers are dissatisfied with the services they have received; and (b) decide to seek legal action against travel organisers. Hence, it could be argued that by not providing revised guidance, some travel organisers who - at the moment mistakenly classify their services as falling outside the scope of the Regulations – face unnecessary costs (that could be avoided if revised guidance is provided) by those customers who pursue redress action against them. These include court costs and fines to companies found to be in breach of package travel rules.

7.13 Such costs may not include only the (short-term) legal fees if a case is brought to court, but also the possible (longer-term) costs of a damaged reputation.

Question 22: Are the enforcement costs of ‘avoidable’ court action, i.e. those that could be avoided if guidance was provided, quantifiable?

7.14 The cost of ‘avoidable’ court action could be quantified approximately as the average cost per legal case brought to court (that includes legal fees for court time plus fines) times an estimate of the number of cases brought to court that could be avoided if the guidance is put in place.

Question 23: Any ideas on how to estimate the number of cases brought to court that could be avoided if guidance is provided?

Legal costs for business

7.15 If guidance were not published it is possible that more businesses may decide to seek their own legal advice about the interpretation of the Judgment.

Question 24: Is it possible to quantify the cost of the travel industry taking their own legal advice on the meaning of the Judgment?

7.16 If guidance were not published, businesses may take a precautionary view and comply anyway with the Regulations, when they may not need to, in order to avoid incurring the expense of taking their own legal advice.

Question 25: Is it possible to quantify the cost to a business of taking this approach?

8. What happens next?

8.1 The results of this consultation exercise, including a summary of the views expressed, will be published no more than three months after the close of the exercise. The results of may be viewed on the DBERR consultations home page at: <http://www.dti.gov.uk/consultations/> .

8.2 Subject to the response to this consultation, it is intended that the Guidance be published as soon after the closing date as possible but no later than October 2007. The Guidance will be available on the DBERR web-site.

ANNEX A

WHAT IS A PACKAGE?

Summary

1. This note provides guidance to the travel industry in assessing whether part or all of their business constitutes a “package” for the purposes of the Package Travel, Package Holidays and Package Tours Regulations 1992 (“**PTR**”) and the Civil Aviation (Air Travel Organisers’ Licensing) Regulations 1995 (“**ATOL Regulations**”). It replaces the original guidance and represents our view of the law in the light of recent court decisions.
2. This guidance is designed for the travel industry only.
3. Consumers can find a range of advice on the following websites, including what to look out for when booking a holiday and how to ensure they are protected if something goes wrong.

DBERR: www.dti.gov.uk

CAA: www.atol.org.uk

[Consumer Direct](#)

Definition of a Package

4. The legal definition of a “package” is set out in the PTR and repeated in Box 1 below. It is also the definition used in the ATOL Regulations, which form a protection scheme for flights and air holidays, managed by the Civil Aviation Authority (CAA).

Box 1

Regulation 2(1)

“package” means the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

- a) transport;
- b) accommodation;
- c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package, and:
 - i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package;

- ii) the fact that the combination is arranged at the request of the consumer and in accordance with his specific instructions whether modified or not shall not of itself cause it to be treated as other than pre-arranged.

5. The Court of Appeal, in a case called The Association of British Travel Agents Ltd v Civil Aviation Authority, has recently considered this definition. Links to the Court of Appeal Judgment ('the Judgment') are provided at the end of this note. The Court of Appeal decision supersedes the High Court Judgment given by Mr Justice Goldring in the same case. The Judgment identified that the essential question in determining whether a package has been created is whether, on a case-by-case basis, the travel services are sold or offered for sale as components of a pre-arranged combination or whether they are sold or offered for sale as separate travel services.

Why is it important to determine whether travel services are being sold as a package?

6. Sellers of travel services sold or offered for sale as a package must comply with the PTR and, if the package includes a flight, the ATOL Regulations. It is therefore important that travel firms consider whether the services offered are packages or not, both from the point of view of understanding their obligations and ensuring that the customer knows what they are buying. Click [here](#) if you would like to view the PTR.

Box 2

Use of the word "package"

The travel industry uses a number of terms to describe travel services. The terms "package" "DIY package" "dynamic package" and "tailor made holiday" can be confusing, as the meaning of each one seems to depend on the operator/agent using it. Often the word package is used even though the terms and conditions suggest that the services are not intended to be sold as a package. Equally, services may be sold as "flight+hotel" with the suggestion that they are not a package, whereas in fact they may fall within the legal definition of a package. For the purposes of this note, any reference to a "package" (unless otherwise expressly stated) means the legal definition of package as set out in the PTR and the ATOL Regulations.

How to determine whether you are selling a package

7. The first step is to consider whether you are advertising or selling at least two of the services set out in Package Travel Regulation 2(1) (see Box 1 above) and whether these cover a period of more than 24 hours or include overnight accommodation. If this is not the case, then the services do not meet the criteria in the PTR and are not a package.

8. If the services meet these criteria then you need to consider whether they are sold or offered for sale as components of a pre-arranged¹ combination. If this test is met, the price will be an inclusive one and the combination of services will fall within the legal definition of a “package” and must comply with the PTR (and if an air package, the ATOL Regulations).

Examples of Packages

9. Whether services are sold or offered for sale as components of a pre-arranged combination can only be determined on the facts of each individual case. Some cases will be straightforward. The Judgment in ABTA v CAA sets out two examples where there is unlikely to be difficulty in concluding that a package has been sold. In the first example the components are sold at a price different from the sum of the individual parts. In this case, there is little difficulty in concluding that the services are sold as a package. The relevant part of the Judgment is set out in Box 3.

¹ For definition of pre-arranged see paragraph 19.

Box 3

Paragraph 25

“In many cases – indeed, I suspect, in the majority of cases – the price of the combination will not be the aggregate of the prices for which the components within the combination would have been sold or offered for sale if each component had been sold or offered for sale as a separate service outside the combination. That may be because some of the components (for example, the services of the organiser’s local representative) would not be available as a separate service outside the combination. Or it may be because some of the components can be provided more cheaply if provided in conjunction with other components – the hotel may provide a courtesy airport transfer service. Or it may be that, in order to sell the package, the organiser will price attractively: the organiser will offer the package of services at a price which is below the aggregate of the prices which would be charged if the components had been sold separately. In those cases there is unlikely to be difficulty in reaching the conclusion, on the facts, that the components (including flight accommodation) are being sold as a pre-arranged combination and at an inclusive price. The same could be said of cases – which, I suspect, are likely to be rare indeed – in which the price of the combination exceeds the aggregate prices for which the components would have been sold or offered for sale separately.”

10. The Judgment also identified another example where there is little doubt that a package has been sold. This is where the consumer has not been informed of the prices of the individual travel services. The relevant paragraph is set out in Box 4.

Box 4

Paragraph 27

“Suppose a customer, in London, who wishes to spend the week at a named hotel in, say, Rome. He asks his travel agent what the trip will cost him. The agent finds that the cost of the return flight will be £X, the cost of accommodation will be £Y and the cost of the airport transfers will be £Z. Without disclosing the individual cost of each service, the agent offers the customer flights, accommodation and transfers at a price of £(X+Y+Z). The customer accepts without further inquiry. In that case there would be little doubt – as it seems to me – that the services were sold as a pre-arranged combination and at an inclusive price. “

Example of sale of separate travel services

11. The Judgment provides only one example of where two or more services are sold separately, rather than as a package. See Box 5 below.

Box 5

Paragraphs 28 and 29

“Now suppose that the agent has told the customer that the cost of flights will be £X, the cost of accommodation will be £Y and the cost of transfers will be £Z; and has explained to the customer that he can purchase any one or more of those services, as he chooses, without any need to purchase the others. He has explained, in effect, that the customer can choose to purchase the other services elsewhere; or to make other arrangements. In that case – as it seems to me - there would be little doubt that the services are not offered for sale as a pre-arranged combination and at an inclusive price. “

“What, then, if the customer chooses, and contracts for, one of those services. It is plain that that service would not be sold as a pre-arranged combination: it is not sold in combination with any other service. And it is plain that that position would not alter, if having paid for one of these services, the customer subsequently decides to take, and contracts for, another of the services. Nor would the position alter if, after paying for the second service, the customer later decides to take, and contracts for, the third service. And it would make no difference if, having entered into three separate contracts and received three separate invoices, the customer were to pay the three invoices with a single cheque. The position would be the same. There would have been no sale of a pre-arranged combination of components at a single inclusive price. Rather, there would have been three separate sales of independent services, the aggregate of the prices payable for the three separate services being satisfied by a single payment.”

12. The two paragraphs in Box 5 suggest that the agent has offered separate travel services at specific prices, and has made clear that the customer can buy any one or more without any need to buy the others; he has not offered a ‘package’.

13. The sale of an individual travel service, following an offer as described in Box 5, is exactly that. It is not sold in combination with any other service. A similar analysis applies to the subsequent sale of a second travel service, and to a third service, if the customer later decides to buy them.

14. In the example in Box 5 there are three separate sales of three travel services, the second subsequent to the first, and the third later than the

second. Each sale is of an individual travel service, and so does not fall within the definition of a package (see Box 1 above).

15. Since the three sales are not a pre-arranged combination, the settling of the three separate invoices by a single payment does not create an 'inclusive price', and so bring the whole series of transactions within the definition of a package (see paragraph 18 composite billing).

16. The Judgment has thus far identified cases where it is clear a package has been sold or offered for sale, ie where the price of the services is greater or less than the arithmetic total of the individual travel services; and where the services are offered together at a single price. It has also identified how the sale of more than one travel service sequentially, for a single payment need not in principle be a package.

17. The Judgment (see paragraph 31) then goes on to say that difficult questions of fact are likely to arise if the customer chooses and contracts for two or more of the services on the same occasion. To determine whether these services were offered and sold either in combination or as separate sales of travel services, involves considering the evidential pointers in the transaction(s).

Evidential Pointers

18. The Judgment provides a number of evidential pointers that should be considered to help determine the facts of specific cases. Where there is dispute over the true nature of a sale the Court is likely to consider the evidential pointers to determine whether the sale was a package or whether the services were sold separately. The pointers are set out below (the paragraph numbers alongside the pointers refer to the paragraphs in the Judgment).

- **Customer perception** (Paragraph 45) – whether the customer thinks he is buying two or more separate services rather than a combination of services (or vice versa) is a powerful indicator as to the nature of the transaction.
- **Advertising, brochures and commitments in relation to hotel beds or airline seats** (Paragraph 56) - are all useful indicators that services are being offered as packages, but their presence alone is unlikely to be determinative of whether services are offered separately or in combination.
- **Availability of travel services as a separate service** (Paragraph 25) - for example if the services of a local representative would not be available as a separate service outside a combination there is unlikely to be any difficulty in concluding there is a package.
- **Composite billing** (Paragraph 30) – might be evidence (in the particular case) that the services had been sold as a package. The sale of a pre-arranged combination cannot be altered by invoicing the components

separately,² but where services have been sold separately, separate billing will merely reflect the nature of the sale.

- **Payment** (Paragraph 29) - a single payment is at best of evidentiary value in deciding if a package has been sold. The key point is whether the components are sold in combination or separately.
- **Describing the services as a package or as dynamic packages** (Paragraph 47) - the Court of Appeal was explicit in that if an agent offers dynamic packages, then these will be packages.
- **Request to buy a holiday** (Paragraph 49) – if the customer approaches an agent to “buy a holiday” it is likely that what will be sold or offered for sale will be a package.
- **Request to buy a flight and accommodation and/or other services** (Paragraph 49) – it will not necessarily follow that travel services will be sold or offered for sale as a package, but they may be.

What does “pre-arranged” mean?

19. A previous European Court case³ confirmed that the term “**pre-arranged**” does not only apply to components put together in advance, eg in a brochure, but also combinations put together based on the customer’s requirements. So pre-arranged covers cases where the components have been put together well in advance of contact with the individual customer, and also those where they are not put together until right up to the moment when the parties reach agreement and conclude a contract.

Internet Sales

20. The examples set out in the Court of Appeal Judgment are based on a conversation with a travel agent and do not refer specifically to internet sales. When making an internet booking, the customer is unable to explain whether it is his intention to purchase a package and cannot seek clarification if the site is unclear. It is therefore important that the website provides clear information, prior to a decision to make a booking, about what is being offered for sale. The same principles apply to internet sales as those expressed in the Judgment for verbal transactions and businesses will need to consider whether they are offering services in combination, or whether the services are being sold or offered for sale separately. Clear and unambiguous statements will be important if the customer is to know what he is purchasing.

21. The examples in Boxes 3 and 4 set out scenarios in which a package is created. Box 3 deals with pricing, and concludes that if the components are offered and sold at a price different from the sum of the individual parts there is little difficulty in concluding that the services are sold as a package. This is equally true for internet sales.

² Article 2(1)(c)(i) of the PTR states “the submission of separate accounts for different components shall not cause the arrangements to be other than a package”;

³ Club-Tour, Viagens e Turismo SA v Alberto Carlos Lobo Goncalves Garrido (Case C-400/00) [2002] ECR I-4051

22. Box 5 includes an example of a sale which is not a package. This is based on the consumer being fully informed of the price of the individual elements and the option to purchase any one or more with no obligation to purchase the others. This example is based on a conversation with an agent, and a website would need to provide exactly the same type of information prior to the consumer making decisions to purchase each travel service. This Box also sets out how to contract for each item, before moving on to purchase the next. You should also consider the Good Practice set out in Box 6 below to provide a clear message to consumers.

23. The Judgment also states that it may be difficult to determine whether a package is being sold. In these cases, to help decide the basis of the sale, a number of evidential pointers were identified (see paragraph 18 above). Particular emphasis was given to the customer's perception of whether he is buying a package or separate services and the existence of one or more pointers could imply that a package has been sold. This will apply equally to internet transactions.

24. Some websites offer a range of "tabs" for customers to choose from such as "Flights", "Hotels" and "Holidays". The use of such tabs alone is unlikely to be sufficient to make it clear whether the website is offering separate travel services or combinations. This will depend also on how the sale is transacted and the information provided to the customer. However, the use of wording such as "DIY Packages" or "Dynamic Packages" means that it is not an offer of separate travel services.

25. Some websites use a shopping basket to place items in prior to purchase. Where this is used it is important that the customer is aware whether putting more than one travel service in the basket is an offer of a combination or not. At the checkout customers should be aware whether they are individually contracting for the contents of the basket and completing a series of individual purchases or whether they are buying a pre-arranged combination.

26. There may be occasions when there are conflicting indicators; the way in which the products were offered for sale indicated the sale of separate travel services, but the way in which the sale was completed indicated the sale of a package (or vice versa). In these cases it will be necessary to consider the evidential pointers set out above at paragraph 18.

Other Issues to Consider

Box 6

Good practice

It is a matter of good business practice to indicate clearly to a consumer the nature of the goods or services they are buying. Business will wish to establish clearly with their customers whether

they are or are not buying a package, and make clear what protections a package would entail. Terms and conditions should clarify whether the seller is intending to sell services as a package or not, and should be expressed in plain language. They should also be given to the consumer before they commit themselves to the purchase.

However, consumers do not always pay close attention to terms and conditions and can find them difficult to understand. In addition, they are often not provided until the very end of a consumer's decision-making process, by which time the consumer has already decided to purchase. For example, in the case of an internet based sale the terms and conditions are often provided at the "checkout" stage.

The Government, the CAA, [ABTA, FTO and AITO] recommend that brochures, websites and personal sales literature (including invoices) should state clearly to customers buying more than one service:

- whether they are buying a package holiday;
- if not, what protections they will lack compared to a PTR-protected holiday (so the customer can make an informed choice as to whether they want those protections); and
- whether the option is open to them to buy the same services as a package (possibly at a different price).

In addition, if a package is not being sold, then the term "package" (for example, as in "DIY package") should not be used at all.

Impact of the Unfair Commercial Practices Directive (UCPD)

27. The UCPD introduces a general prohibition on unfair commercial practices. The Government has consulted several times on how the Directive should be implemented in the UK. Regulations implementing the Directive will come into force in April 2008. The Directive prohibits 31 types of unfair commercial practices outright, including certain high-pressure or persistent selling methods. It also has rules prohibiting misleading and aggressive practices, and introduces a catch-all "duty" not to use unfair commercial practices.

28. The Directive also prohibits misleading actions and misleading omissions. Misleading actions might occur when a practice misleads through false or deceptive information, and is likely to (or does) cause consumers to make choices about products they might not otherwise have taken. Misleading omissions occur when traders mislead by failing to give consumers the information they need to make an informed choice in relation to a product and this is likely to (or does) cause consumers to make choices about products they might not otherwise have taken. This might be through omitting information, hiding it or making it unclear, unintelligible or ambiguous or by giving it too late.

29. Practices that mislead consumers into thinking they are buying a package holiday when they are not, are likely to be unfair, if consumers are likely to make different decisions because of these practices.

Need further information?

30. You should remember that this is guidance, and not a definitive statement of whether a package exists or not. That will depend on the facts of each particular case and ultimately is for the Court to decide. You should also be aware that bonding schemes run by approved bodies and the ATOL Regulations may impose requirements that are not covered in this document. If you remain unsure after reading this you can obtain further information from the contacts listed below.

31. If you would like to see a copy of the Court of Appeal Judgment on this issue please click [here](#). Firms selling holiday arrangements should also refer to it to consider how they carry out their business and whether they need to hold an ATOL. **You may also wish to seek independent legal advice.**

32. ATOL holders can discuss their particular arrangements with their normal contact at the CAA. Firms which do not hold an ATOL should contact Industry Affairs on 020 7453 6700 or newapplicants@cpq.org.uk.

Department for Business, Enterprise and Regulatory Reform
[date]

ANNEX B

Consultation List

Association of ATOL Companies
Association of Bonded Travel Organisers Trust Ltd
Association of British travel Agents
Association of Independent Tour Operators
Confederation of Passenger Transport
Federation of Tour Operators
Passenger Shipping Association
Travel Trust Association

Cosmos Holidays
Expedia Inc
First Choice
Kuoni Travel Limited
My Travel
Sabre Holdings Corporation
The Really Great Holiday Company
Thomas Cook UK
Tui Northern Europe
Virgin Holidays

Air Transport Users Council
Citizens Advice
Trading Standards Institute
Local Authority Coordinators of Regulation Services
Local Government Association
National Association of Citizen's Advice Bureaux
National Consumer Council
Scottish Consumer Council
Welsh Consumer Council
Which?

Northern Ireland Trading Standards Service
Scottish Executive Government
Welsh Assembly Government

ANNEX C

Code of Practice on Consultations

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
7. The complete code is available on the Cabinet Office's web site address:
<http://www.cabinetoffice.gov.uk/regulation/consultation/code/>

Summary: Intervention & Options

Department /Agency: DTI	Title: Impact Assessment of Guidance on the application of The Package Travel Regulations 1992: Definition of a "Package"	
Stage: Consultation	Version: 2.0	Date: 20 June 2007
Related Publications: Consultation on Draft Guidance for Business on the application of the Package Travel, Package Holidays and Package Tours Regulations 1992		

Available to view or download at:

<http://www.dti.gov.uk/consultations/Open/index.html>

Contact for enquiries: Berenice Napier

Telephone: 020 7215 6778

What is the problem under consideration? Why is government intervention necessary?

Following a Court of Appeal decision last year in The Association of British Travel Agents Ltd v Civil Aviation Authority case ("the Judgment"), the Department (DTI) has considered whether it needs to provide revised guidance to the travel industry relating to the definition of a "package" for the purposes of the Package Travel, Package Holidays and Package Tours Regulations 1992 (PTR) and the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995. It has been necessary to withdraw existing guidance as it was not consistent with the Judgment.

What are the policy objectives and the intended effects?

The objective is to provide revised Guidance to the travel industry to take account to the Court of Appeal decision. This will help the travel industry to determine whether the products they offer are subject to regulation or not. It will also encourage them to consider whether best practice in the sale of holidays needs to be adjusted and provide an indication of the impact of the Unfair Commercial Practices Directive when it comes into force next year.

What policy options have been considered? Please justify any preferred option.

There are two options; do nothing or issue revised guidance. DTI believes that it is important to issue revised guidance, in response to requests for advice from the travel industry, to provide clarity of definitions for both the industry and enforcement agencies because the existing Guidance on the definition of a package (which has been withdrawn already) no longer reflects the Court of Appeal's interpretation of the Package Travel Regulations.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Further review of the guidance will await any changes to the definition of a package, following the recently begun review of the Package Travel Directive by the European Commission.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ian McCartney

.....Date: 21 June 2007

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Cost and savings details to be added following consultation. See below for rationale relating to impacts, costs and benefits.		
	One-off (Transition) Yrs			
	£			
	Average Annual Cost (excluding one-off)			
	£	Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' As above.		
	One-off Yrs			
	£			
	Average Annual Benefit (excluding one-off)			
	£	Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups' The guidance encourages the travel industry to make it clear to consumers whether or not they are buying a package. So any indirect impact on consumers will be to help them make better informed decisions about the type of travel services and insurance they need to purchase.				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?	Guidance not enf				
What is the total annual cost of enforcement for these organisations?	£				
Does enforcement comply with Hampton principles?	Yes/No				
Will implementation go beyond minimum EU requirements?	Yes/No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; background-color: #fff9c4;">Micro</td> <td style="width: 25%; background-color: #fff9c4;">Small</td> <td style="width: 25%; background-color: #fff9c4;">Medium</td> <td style="width: 25%; background-color: #fff9c4;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Yes/No</td> <td style="width: 25%; text-align: center;">Yes/No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	Yes/No	Yes/No	N/A	N/A
Yes/No	Yes/No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

In 2005 ABTA challenged in the courts, a guidance note issued by the CAA relating to the ATOL Regulations, which CAA are responsible for enforcing. The case turned on the definition of a “package”, which in the ATOL Regulations, derives from the Package Travel Regulations (PTR), which in turn is derived from the Package Travel Directive (PTD). As a result of the Judgment issued by the Court of Appeal in November 2006, DTI’s guidance for business on package travel needs to be revised as it no longer reflects the interpretation of the Courts on this issue.

It is important to the travel industry to know whether or not they are selling a package because travel services sold as a package must comply with the PTR and, if the package includes a flight, the ATOL Regulations. If travel operators are not clear about whether or not they are selling a package, then consumers certainly will not be either.

The Guidance considers the definition of a “package” in the light of the Court’s interpretation.

Costs/Benefits

These will be revised post-Consultation. However, there are some general observations on the possible costs and/or benefits that we can make. For further detail please see section 7 of the Consultation document.

There seems to be a fairly widespread desire across the industry for guidance. This suggests that the degree of assurance, which guidance might provide, is of value to the industry which might equate to savings. The degree of saving will no doubt be relative to the degree of assurance the guidance provides. We believe that there will be some businesses, or business practices, for which this guidance does not provide the degree of assurance which it might for others, but we believe it might nevertheless provide useful pointers to help them reach their own conclusions on coverage.

Publication of the revised guidance is likely to have two possible types of impact. The first is an impact on the number of firms that need to comply with the Regulations, and any costs or savings as a result. There are a range of scenarios to consider here:

- Where a firm’s assessment of whether it needs to comply or not comply with the Regulations does not change following publication of the revised guidance, then there are no impacts.
- Where a firm’s assessment of whether it needs to comply or not comply with the Regulations changes after publication of the guidance, then there is likely to be an impact. In some cases this may mean increased costs and in others it may mean savings.

The second type of impact is on the costs to business of being familiar with what the guidance says. There are likely to be 2 types of “familiarisation” impacts:

- A one-off impact of becoming familiar with the revised guidance; and
- A recurring impact of re-acquainting themselves with the guidance (as compared to the previous guidance), in conjunction with the Regulations, to come to decisions about whether specific services fall within the Regulations or not.

There are also impacts possible if it were decided not to publish the guidance. The previous guidance has already been withdrawn following the Court of Appeal Judgment. So if revised guidance were not to be published there would be none available to the travel industry. Three types of impact are possible. Firstly, there might be a risk that additional costs (of court cases) would arise from consumer redress in those instances where: (a) consumers are dissatisfied with the services they have received; and (b) decide to seek legal action against travel organisers. Secondly, some firms might decide that, in the absence of any guidance, they need to take their own legal advice to ensure they are complying with the law. Such an impact might fall more heavily on small businesses. Thirdly, in the absence of guidance, businesses may decide to take a precautionary view and comply anyway with the Regulations instead of seeking legal advice and incurring legal expenses.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

None

End