



Rialtas na hÉireann
Government of Ireland

Guidance on the right of travellers to terminate package travel contracts due to extraordinary circumstances resulting from COVID-19

Prepared by the Department of Transport, Tourism and Sport and the Department of
Business, Enterprise and Innovation

Summary

A 'package' means a combination of travel and tourist services for the purpose of the same trip or holiday that lasts for at least 24 hours or, if less than 24 hours, includes an overnight stay. It is generally purchased from a single point of sale and sold at an inclusive price or advertised as a package. It must include at least two of the following: transport, accommodation, car rental, or a tourist service or activity such as golf or hillwalking that accounts for a significant proportion of the value of the package. The term is defined in full at <http://www.irishstatutebook.ie/eli/2019/si/80/made/en/print>

Section 18A(4) of the Package Holidays and Travel Trade Act 1995 gives travellers the right to terminate package travel contracts before the start of the package in the event of unavoidable and extraordinary circumstances occurring at the place of destination of the package or its immediate vicinity that significantly affect the performance of the package or the carriage of passengers to the package destination. Where package travel contracts are terminated in accordance with this right, travellers are not required to pay any fee for the termination of the contract and are entitled to a full refund of all payments made for the package not later than 14 days after the contract is terminated.

The Act and the Package Travel Directive to which it gives effect do not expressly specify the means by which payment refunds are to be made. The European Commission and the Departments interpret the refund requirement to mean that while travel agents and tour operators can propose that refunds be made by means of vouchers or credit notes in relation to travellers previously purchased package travel service, they cannot impose this form of refund on travellers who want their payments refunded in money form.

Subject to review in the light of changing circumstances and evolving official health and travel advice, the right of travellers under section 18A(4) of the Act to terminate package travel contracts on the grounds of unavoidable and extraordinary circumstances resulting from COVID-19 that are significantly affecting the performance of packages or the carriage of passengers to package destinations should for the present apply only to package travel contracts due to start before 29 May 2020.

Where however packages covered by the Act that are due to start after 29 May 2020 include a travel service (such as a flight or accommodation) or a tourist service (such as attendance at a sporting or cultural event), and that travel or tourist service has already been cancelled or is cancelled before 29 May 2020 on grounds relating to travel and other restrictions resulting from COVID-19, travellers should be entitled from the time of the cancellation of the travel or tourist service to terminate the package travel contract without paying a

termination fee and to receive a full refund of all payments made for the package.

If unavoidable and extraordinary circumstances resulting from COVID-19 are still significantly affecting the performance of packages or the carriage of passengers to package destinations after 29 May 2020, this guidance will be updated to provide that the right to terminate package travel contracts on these grounds under section 18A(4) of the Package Holidays and Travel Trade Act 1995 should continue to apply for a further specified period.

This guidance relates only to the right to terminate package travel contracts under section 18A(4) of the Package Holidays and Travel Trade Act due to unavoidable and extraordinary circumstances significantly affecting the performance of the package or the carriage of passengers to the package destination. It does not affect or apply to the separate right of travellers under section 18A(1) of the Act to terminate a package travel contract at any time before the start of the package for which travellers may be required to pay a termination fee to the package organiser in accordance with the provisions of the Act.

GUIDANCE STATEMENT

Section 18A(4) of the Package Holidays and Travel Trade Act 1995 gives travellers the right to terminate package travel contracts before the start of the package 'in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination'. Where a traveller terminates a package travel contract in accordance with this right, he or she is not required to pay any fee for the termination of the contract and is entitled to a full refund from the package organiser of all payments made for the package without undue delay and no later than 14 days after the contract is terminated. The Act and the Package Travel Directive to which it gives effect do not expressly specify the means by which payment refunds are to be made. The European Commission and the Departments interpret the refund requirement to mean that while travel agents and tour operators can propose that refunds be made by means of vouchers or credit notes in relation to packages previously purchased by travellers, they cannot impose this form of refund on consumers who want their payments refunded in money form.

The widespread travel and other restrictions now in force in Ireland, the European Union, and beyond as a result of COVID-19 clearly constitute unavoidable and extraordinary circumstances that significantly affect the current performance of package travel contracts and the carriage of passengers to package holiday destinations. While these circumstances and the travel and other restrictions that have resulted from them continue, travellers have the right to terminate package travel contracts without paying a termination fee and to receive a full refund of all payments made for the package.

While the right of travellers to terminate package travel contracts because of the current unavoidable and extraordinary circumstances affecting the performance of packages and the carriage of passengers is clear, what is much less clear is the length of time for which these circumstances, and the right that they give travellers to terminate package travel contracts, will continue to apply. The restrictions announced by the Irish Government on 12 March 2020 that were originally due to apply until 29 March were extended on 24 March and are currently due to remain in force until 19 April 2020. The closure of the European Union's external borders currently applies for 30 days from 17 March 2020. Restrictions of various kinds and duration apply in individual EU Member States and other countries.

Given the uncertainty around the duration of the travel and other restrictions currently in place to tackle COVID-19, there is a need to provide guidance to travel agents, tour operators, and travellers on the period of time for which

travellers should have the right to terminate package travel contracts on grounds relating to these restrictions that are significantly affecting the performance of packages or the carriage of passengers to package destinations.

As the Government departments with responsibility for the Package Holidays and Travel Trade Act and the Package Travel Directive, the Department of Transport, Tourism and Sport and the Department of Business, Enterprise and Innovation consider that, subject to review in the light of changing circumstances and evolving official health and travel advice, the right of travellers to terminate package travel contracts under section 18A(4) of the Act on the grounds of unavoidable and extraordinary circumstances resulting from COVID-19 that are significantly affecting the performance of packages or the carriage of passengers to package destinations should for the present apply only to package travel contracts due to start before 29 May 2020. Where however packages covered by the Act that are due to start after 29 May 2020 include a travel service (such as a flight or accommodation) or a tourist service (such as attendance at a sporting or cultural event), and that travel or tourist service has already been cancelled or is cancelled before 29 May 2020 on grounds relating to travel or other restrictions resulting from COVID-19, travellers should be entitled from the time of the cancellation of the travel or tourist service to terminate the package travel contract without paying a termination fee and to receive a full refund of all payments made for the package. If unavoidable and extraordinary circumstances resulting from COVID-19 are still significantly affecting the performance of packages or the carriage of passengers to package destinations after 29 May 2020, this guidance will be updated to provide that the right to terminate package travel contracts on these grounds under section 18A(4) of the Act should continue to apply for a further specified period.

As with businesses in other sectors, the COVID-19 outbreak has had a very damaging effect on travel agents and tour operators. The impact on the travel trade has been further affected by the entitlement of travellers under section 18A(4) of the Package Holidays and Travel Trade Act to terminate package travel contracts without paying a fee and to receive a full refund of payments. Travel agents and tour operators must make the refunds to which travellers are entitled under the Act in circumstances where they are receiving no revenues from new bookings and are experiencing difficulties and delays in recouping payments made to the providers of the various services that go to make up package holidays. The COVID-19 outbreak is similarly having an extremely serious impact on individuals and households throughout the country, including many who purchased package holidays at a time when no one could have foreseen the pandemic's suddenness, scale, and severity.

Consumer law in this and other areas is about striking a fair, proportionate, and sustainable balance between the rights given to consumers and the obligations

placed on businesses. Striking this balance is not an easy task in the current very challenging conditions. Travel agents and tour operators may understandably take the view that the right of travellers to terminate package travel contracts on the grounds of travel and other restrictions affecting packages resulting from the extraordinary and unavoidable circumstances caused by COVID-19 should, in line with the current time frame for the restrictions extended by Government on 24 March, apply at present only until 19 April 2020. Consumers facing an uncertain and worrying future may, equally understandably, take the view that they should be entitled now to terminate package travel contracts that are due to start later in the summer.

It is simply not possible at this point to predict with any degree of certainty the duration of the extraordinary circumstances caused by the COVID-19 outbreak, and of the significant travel and other restrictions resulting from these circumstances that entitle travellers to terminate package travel contracts and to receive a full refund of payments. In the Departments' view, the time frame of 19 April 2020 for the restrictions applied by Government in the interests of public health is not an appropriate basis for the time frame that should apply to the right of travellers to terminate package contracts on grounds relating to the travel and other restrictions resulting from COVID-19. It is reasonable to assume that the restrictions affecting package travel contracts are likely to last longer than the restrictions currently applying to key aspects of domestic social and economic activity. The cut-off date of packages due to start before 29 May 2020 set out in this guidance seeks to strike a balance between the rights and needs of travel agents and tour operators and those of travellers, and will be subject to review in the light of changing circumstances and evolving official health and travel advice. It is fair and proportionate in the Departments' view that travellers should be entitled now to terminate package travel contracts due to start before 29 May 2020 in view of the reasonable grounds for believing that the performance of these packages may not be possible. It is not fair or proportionate however to require travel businesses facing extremely difficult financial circumstances to provide full refunds at the present time for package holidays that are not due to start until the summer months. The purpose of this guidance is to provide clarity for all parties about the application of the rights granted by the Act and the Directive in the conditions of very considerable uncertainty that currently obtain.

No traveller will be denied his or her rights under the Package Holidays and Travel Trade Act or the Package Travel Directive as a result of this guidance. For as long as unavoidable and extraordinary circumstances significantly affecting the performance of packages or the carriage of passengers to package destinations continue to apply, travellers will be entitled to terminate package travel contracts without paying a termination fee and to receive a full refund of all payments they have made for the package.

This guidance relates only to the right to terminate package travel contracts under section 18A(4) of the Package Holidays and Travel Trade Act due to unavoidable and extraordinary circumstances significantly affecting the performance of the package or the carriage of passengers to the package destination. It does not affect or apply to the separate right of travellers under section 18A(1) of the Act to terminate a package travel contract at any time before the start of the package for which travellers may be required to pay a termination fee to the package organiser in accordance with the provisions of the Act.

EXPLANATORY NOTE

The Package Holidays and Travel Trade Act 1995 (as amended by the European Union (Package Travel and Linked Travel Arrangements Regulation) 2019 (S.I. No. 80/2019)) is the principal Irish legislation that gives effect to Directive (EU) 2015/2302 of the European Parliament and Council on package travel and linked travel arrangements.

Section 18A(4) of the Act (as inserted by Regulation 13 of the 2019 Regulations) gives effect to Article 12(2) of the Directive. The requirement on package organisers to make a full refund of payments not later than 14 days after the package travel contract at Article 12(4) of the Directive is given effect at section 18A(7) of the Act. The separate general right of travellers under section 18A(1) of the Act to terminate package travel contracts for which travellers may be required to pay an appropriate and justifiable termination fee gives effect to Article 12(1) of the Directive. The termination fees that travellers may be required to pay in such cases are regulated by section 18A(2) of the Act.

The right of travellers to terminate a package travel contract under section 18A of the Act and the obligation of package organisers to refund all payments made for the package are governed by the definitions of 'package', 'package travel contract', 'traveller' and 'organiser' and related terms at section 2(1) of the Act. These definitions can be accessed at <http://www.irishstatutebook.ie/eli/2019/si/80/made/en/print>