



Rialtas na hÉireann
Government of Ireland

Updated Guidance on the right of travellers to terminate package travel contracts due to unavoidable and extraordinary circumstances resulting from Covid-19

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

UPDATED 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 of the package or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the 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. These provisions give effect to the provisions of Article 12 of Directive (EU) 2015/2302 on package travel and linked travel arrangements.

On 26 March 2020, the Department of Transport, Tourism and Sport and the Department of Business, Enterprise and Innovation issued advisory guidance on the right of travellers to terminate package travel contracts in accordance with the provisions of section 18A of the Package Holidays and Travel Trade Act 1995. The guidance advised 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 significantly affecting the performance of packages or the carriage of passengers to package destinations should apply for the present only to package travel contracts due to start before 29 May 2020. If unavoidable and extraordinary circumstances resulting from COVID-19 were still significantly affecting the performance of packages or the carriage of passengers to package destinations after that date, the guidance would 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.

When the guidance of 26 March was being drawn up, widespread restrictions on non-essential travel had been, or were about to be, introduced throughout the European Union and beyond. These restrictions were accompanied in many cases by requirements for cross-border travellers to remain in quarantine for a specified period, typically two weeks, after their arrival. The guidance that the right to terminate package travel contracts on the ground of unavoidable and extraordinary circumstances should apply until 29 May 2020 reflected an assessment that, given the nature and scale of the restrictions imposed here and in other countries, it was highly unlikely that there would be any performance of packages involving travellers from Ireland in April or May 2020. That assessment has been borne out by subsequent events.

Though travel and other restrictions are still widely in place, the situation is now becoming more fluid and less uniform. Restrictions are being relaxed in different ways and at a different pace in different countries and, in some cases, within countries. A number of countries plan to lift restrictions on tourist arrivals at various dates from June onwards; in some cases, however, restrictions will initially be lifted only for visitors from neighbouring countries. Other countries have yet to decide when tourist arrivals will be

permitted. A requirement to self-isolate for 14 days after arrival currently operates in many countries, though in some it does not apply where the traveller can produce a health certificate stating that he or she is free of Covid-19.

The European Commission's guidance of 13 May on the safe resumption of travel states that the first step to make this possible is that the epidemiological situation in Member States permits the relaxation of domestic restrictions on free movement. As and when Member States manage to reduce the circulation of the Covid-19 virus, blanket restrictions on free movement should be replaced by more targeted measures. While a generalised lifting of restrictions would be desirable if the health situation were sufficiently positive across the European Union, the European Commission anticipates that a staged and coordinated approach is likely to be necessary. This would start with the lifting of restrictions and controls between regions and Member States with sufficiently similar epidemiological situations. The approach taken must be flexible however and allow for the introduction of restrictive measures if the public health situation requires it.

The Department of Foreign Affairs and Trade's General Covid-19 Travel Advisory currently advises against all non-essential overseas travel until further notice. The Government Roadmap of 1 May 2020 for Reopening Society and Business sets out a five-stage plan for gradually unlocking restrictions at three-week intervals in the period up to August 2020. Each phase sets out a flexible menu of options that will be considered by Government in the light of the evolving situation and the recommendations of the National Public Health Emergency Team (NPHET) with a view to suppressing the spread of Covid-19 while enabling the gradual return of social and economic activity. Progression in full or in part from one phase of the Roadmap to the next will be determined by a process of ongoing monitoring and assessment in accordance with the criteria set out in the NPHET Public Health Framework Approach. The Roadmap acknowledges accordingly the possibility that restrictions from an earlier phase might have to be re-imposed. It will also be possible for NPHET to recommend the earlier implementation of measures from a later phase of the plan depending on the prevailing circumstances.

The Roadmap provides that in Phases 1 to 3 of the plan which cover the period up to 20 July people should restrict their travel to within 20 kilometres of their homes and continue to avoid unnecessary journeys. While the Roadmap envisages that travel guidance may be extended to cover travel outside people's regions after 20 July in Phases 4 and 5, it does not go into further detail about the scope of any such extension.

In view of the gradual and uneven lifting of travel and other restrictions in Ireland and in other countries, the Departments consider that the updated guidance should not be of general application or specify a fixed period for which the right to cancel packages on the grounds of unavoidable and extraordinary circumstances resulting from Covid-19 would apply. The application of the right to terminate package travel contracts on the ground of unavoidable and extraordinary circumstances should be assessed instead by reference to the evolving official health and travel advice in Ireland and in package

destinations and to other relevant factors. If restrictions on non-essential overseas travel from Ireland preclude travel to package destinations, or restrictions in package destination countries preclude entry to persons not travelling for essential purposes, the carriage of passengers to the package destination would clearly be significantly affected and would satisfy the conditions for termination of the package travel contract under section 18A(4) of the Package Holidays and Travel Trade Act 1995. If travellers to a package destination are required to go into quarantine for 2 weeks after their arrival, that requirement would clearly significantly affect the performance of the package and entitle travellers to terminate the contract in accordance with section 18A(4). Even if travel is permitted without quarantine to a package destination, restrictions on the amenities and attractions that travellers can reasonably expect to be able to access in the course of a holiday may mean that the performance of the package is affected to an extent that would entitle the traveller to terminate the package travel contract in accordance with section 18A(4).

As the Government Roadmap of 1 May 2020 envisages no lifting of the restriction on overseas travel before 20 July, it can be taken as things stand that travellers will have the right to terminate package travel contracts due to start before this date on the ground of unavoidable and extraordinary circumstances resulting from Covid-19 and to receive a full refund of payments made for the package. While the performance of some packages due to start after this date is likely to be affected also by unavoidable and extraordinary circumstances resulting from Covid-19, there may be other packages where this is not the case and where the right to terminate the contract and to receive a full refund of the price will not apply. This will depend on Government health and travel advice and other relevant factors as these apply to particular packages at the time of their performance.

On 8 May 2020, the Government approved a proposal from the Minister for Transport, Tourism and Sport to legislate for a State guarantee for refund credit notes to be issued by registered travel agents and tour operators for package holidays cancelled due to restrictions arising from Covid-19. The refund credit notes will be redeemable for their cash value at a specified date and can be used to book a replacement holiday. The choice to accept a refund credit note or to receive a refund of payments will remain with the consumer. Legislative provisions are currently being drafted to give effect to the refund credit notes. When these provisions are in operation, travellers who are in a position to accept reimbursement by means of a refund credit note should consider doing so in order to help travel agents and tour operators, many of which are small locally-owned businesses, to come through the present exceptionally difficult trading conditions for the sector.