

# CAA Consultation on a Proposal to amend ATOL Standard Term 6 and Information on other amendments to the CAA's Official Record Series 3

**CAP 1196**



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## Executive Summary

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### Avoiding Consumer Confusion

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The CAA has identified a risk to consumer clarity on ATOL protection arising from businesses which are exempt from ATOL but who may sell ATOL holders' protected seats with other components to UK consumers.

These exempt businesses are currently permitted to source ATOL protected seats, and sell them alongside other components to make up a holiday. In this event, the financial protection of that holiday will become confusing for consumers as only part of the holiday may be ATOL protected, and the seller may or may not issue an ATOL Certificate. This reintroduces some of the clarity problems that changes to the ATOL Regulations in 2012 sought to address.

These issues apply to any sales made to exempted businesses such as those businesses based in European Economic Area (EEA) states who are now exempt under the ATOL Regulations as well as those exempt under the class exemptions as published by the CAA in the Official Record Series 3.

The CAA proposes amending ATOL Standard Term 6 in order to prevent ATOL protected seats from being sold to exempt businesses when they will then be sold alongside other components to UK consumers and the whole holiday will not be protected under the ATOL scheme. However, exempt businesses will still be able to purchase these seats in an unprotected capacity on a business to business basis.

This document sets out the proposed changes to ATOL Standard Term 6 that are being consulted on. It also provides details of other amendments to the Official Record Series 3 that will come into force on 1 October 2014, which are included for information and are not being consulted on.

## CHAPTER 1

# Background to the proposal

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The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (ATOL Regulations) require the Civil Aviation Authority (CAA) to set the policies for licensing travel organisers and managing the ATOL scheme and to create specific requirements which ATOL holders must adhere to.

These requirements are published in the CAA's Official Record Series 3 (ORS3). The contents of the ORS3 include the ATOL Standard Terms, which were last reviewed and revised substantially as part of ATOL reform on 30 April 2012.

The key objectives of ATOL reform in 2012 were that there should be improved clarity for UK consumers about financial protection and that consumers should receive whole holiday protection for holidays that look like packages, but don't meet the legal definition. The ATOL Regulations were therefore changed to extend comprehensive financial protection to travel components being sold for the purpose of one holiday or trip but being sold separately, through the introduction of Flight-Plus.

The requirement to supply an ATOL Certificate immediately upon accepting payment from a consumer was also introduced. It provides clarity for consumers on what is protected and includes the necessary information for consumers on what to do in the event of a failure. Other measures were also introduced to complement these changes and to further support the Government's objectives to improve financial protection under the ATOL scheme.

The Government was clear that ATOL should apply in an effective way in the modern holiday market, so that consumers are clear about their financial protection, and travel businesses know which of their products should be and are protected. Whilst the reform of ATOL in 2012 was the biggest change to the industry for many years, it is clear that the market continues to evolve and consequently policies require regular review and updating.

The terminology in this document follows that of the ATOL Regulations and the current ATOL Standard Terms, as published by the CAA in the Official Record Series 3.

## CHAPTER 2

# Why is the CAA issuing the consultation?

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The CAA has identified a risk of consumer detriment arising from businesses which are exempt from ATOL but who sell an ATOL holder's protected seats<sup>1</sup> alongside other components. ATOL reform's key objective was to improve clarity for consumers and to enable consumers to make better buying decisions through having a full understanding of the nature of their purchase. A confused picture of what is financially protected, how and by whom, will hamper consumers' ability to make informed choices.

The risk occurs when ATOL protected seats are sold to any exempt business although it has become more evident recently due to a change in the ATOL Regulations, exempting businesses that are established in another European Economic Area (EEA) state. In these circumstances, when an exempt EEA business sells an ATOL protected seat back into the UK, its protection will be unclear to the consumer. If it is sold with accommodation and/or car hire as a package or a Flight-Plus, the seat would lose its financial protection under the ATOL scheme (as set out in the Air Travel Trust Payment Policy), although if sold as a package, the EEA established business would be required to provide protection under their own member state protection scheme.

In the event of a failure, consumers could be confused, inconvenienced and potentially out of pocket having to pay again for part of their holiday. There is likely to be a mistaken expectation from consumers that ATOL will provide comprehensive protection for their entire holiday if they have received an ATOL Certificate for the flight component, even though there may be no protection in place at all.

This consultation proposes a change which will address this risk. In making this change, the CAA is keen to preserve the principle that where seats are made available as ATOL protected, that they retain their protection when sold in the UK. It is essential to ensure that the integrity of the ATOL scheme is preserved and that ATOL Certificates are not issued for seats that will not ultimately be ATOL protected. This will only undermine the protection arrangements of the

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<sup>1</sup> This document uses the term "ATOL protected seat" to refer to licensable flight-onlys (or packages) that are being sold by an ATOL holder on a retail basis, meaning that the exempt business is acting in the capacity of the ATOL holder's agent.

ATOL scheme and cause considerable confusion for consumers and the UK travel industry.

## CHAPTER 3

# The proposal

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The change, if implemented, will be achieved via a redrafted ATOL Standard Term 6 (AST 6). This currently sets out who ATOL holders may make flight accommodation available to. The purpose of the current AST 6 is to protect the integrity of the ATOL scheme by restricting ATOL holders to making sales only to consumers or businesses who can lawfully sell on, e.g. persons who act in the capacity of agent of the ATOL holder and other ATOL holders.

Under AST 6, ATOL holders are permitted to make available flight accommodation to exempt businesses who then sell this on to consumers. These seats may in some instances be sold on a business to business basis. In these circumstances, the seat is sold in an unprotected capacity meaning it is not ATOL protected by the original ATOL holder. Alternatively, they can be sold as an ATOL protected seat in the capacity of a retail agent, for which an ATOL Certificate must be issued. It is in the latter scenario that the risk detailed above occurs for consumers.

Consequently, the CAA is proposing to extend the scope of the restrictions in AST 6 by prohibiting sales of ATOL protected seats to UK consumers through intermediaries (such as agents) who are exempt from the need to hold an ATOL (for example, because they are established in another EEA state) and who makes those seats available to a UK consumer with other components as part of a package or Flight-Plus.

The restriction would require an ATOL holder that wanted to sell a seat to a UK consumer through an exempt business to sell it to them on a business to business sale basis. The exempt business may then, if permitted under the exemption, sell it on as part of a package or Flight-Plus but this would not be ATOL protected and an ATOL Certificate must not be issued by the ATOL holder.

Sales through intermediaries are examples of indirect sales, as referred to in the proposed AST 6. Business to business sales are examples of direct sales, as that term is used in the proposed AST 6.

The proposed AST 6 is a list of permitted sales. The direct sale (business to business sale), as described above is permitted by AST 6 (4). The indirect sale is prohibited as it is not on the list of permitted sales in AST 6. The proposed

AST 6 adopts a new format in order to incorporate the new terminology although the prohibition of indirect sales to exempt businesses as referred to above is effectively the only real change to this ATOL Standard Term.

If a business makes available flight accommodation that could be classed as exempt, but chooses to hold an ATOL and protect those sales under their ATOL, the prohibition referred to above will not apply. It will be a permitted sale under AST 6(6).

In addition, the proposed changes only seek to restrict the sale of ATOL protected seats where the seat is then sold on without ATOL protection. ATOL holders would still be permitted to make available ATOL protected seats to businesses who will be acting as their agent, under a valid agency agreement if:

1. The agent will be selling the ATOL protected seat on its own (Proposed AST 6(7) & (8)); or
2. The agent will be selling it in combination with accommodation and/or car hire and will be making that sale available under their own ATOL, either as a package or Flight-Plus. In these circumstances, the ATOL holding agent is required to issue a new ATOL Certificate for the entire trip (Proposed AST 6 (6)).

ATOL holders may have concerns as to how they will be able to establish if a seat will be combined with accommodation and/or car hire by their agent. The ATOL Standard Term requires ATOL holders to take reasonable steps and exercise due diligence to ensure that the agent will not be combining the seat with other components. The CAA recommends that such steps may include a clause within their agency agreements to this effect.

The proposed amended AST 6 is at Appendix A. A table illustrating which persons ATOL holders may sell ATOL protected sales to is at Appendix B.



A summary of the affects on stakeholders is set out below.

This group ....	.... are affected because ....
Consumers	They will be better able to understand the financial protection on their product and, following a failure, the claims process will be more transparent.
ATOL holders	<p>They may need to make changes to the way in which they sell seats to businesses which are exempt from the need to hold an ATOL so that the seat is not sold to them as ATOL protected.</p> <p>They will need to take reasonable steps to ensure that seats sold on a retail basis will not be sold on by the agent as part of an unprotected trip.</p>
Travel businesses exempt from the need to hold an ATOL who sell air holidays in the UK and who do not hold an ATOL.	They will not be able to source ATOL protected seats.

**CHAPTER 4****Expected benefits and impact**

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The principal benefit is to consumer clarity, by enabling better buying decisions for those that wish to ensure their holiday is financially protected. It also mitigates against the risk that following a failure the repatriation and/or claims exercise will be confused by uncertainty as to who is responsible, and consumers potentially needing to make different claims with regard to different components.

The only “cost” is a restriction in how an ATOL holder may trade: they will only be able to sell non-ATOL protected seats to exempt businesses. This will actually cost the ATOL holder £2.50 less as it will incur no APC on these sales.

## CHAPTER 5

# Responding to the consultation

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The CAA is keen to ensure that the above proposals are effective and appropriate. It is committed to incorporating the views of its stakeholders and has devised the following question to achieve this. Respondents are welcome to submit comments on the content of the proposals that are not specifically covered by the question and are encouraged to contact the CAA to discuss any areas of uncertainty or concern.

### Question 1

- Do you agree that the CAA should introduce a new ATOL Standard Term 6 which has the effect of preventing ATOL holders from making ATOL protected seats available to businesses that are exempt from holding an ATOL, for resale in the UK alongside other components, while still permitting them to sell seats on an unprotected business-to-business basis?

Please send any comments you have by 1 August 2014 to:

[atolresponses@caa.co.uk](mailto:atolresponses@caa.co.uk)

or write to:

Christina Brazier  
Consumer Protection Group K3,  
CAA House 45-59 Kingsway  
London WC2B 6TE

The CAA will review all of the responses received and may publish them on its website ([www.atol.org.uk](http://www.atol.org.uk)), within four weeks of the closing date.

This document has been sent to those parties listed in Appendix C. The CAA invites responses on this document from any source. If a response is provided on behalf of a representative body, the response should summarise the parties that body represents. If you consider the view of a stakeholder not listed at Appendix C should be sought, please notify the CAA at the address above.

## CHAPTER 6

# Other Changes to Official Record Series 3

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The CAA has also identified a number of other changes to the ORS3, which it intends to publish in September 2014. Unless stated the change will be implemented on 1 October 2014. The changes are being made for a number of reasons detailed below.

### **Exemption 08/2012 - Airline Ticket Agents/IATA Agents selling Flights**

This exemption applies to IATA accredited agents and enables those that meet the criteria to have the benefits of an Airline Ticket Agent without the need to seek written agency agreements with airlines. Following changes to the IATA rulebook, the exemption criteria is being tightened to ensure that those falling within the scope meet the UK financial criteria in addition to their local criteria. This ensures that those businesses based overseas that wish to sell to UK consumers are monitored consistently with UK businesses. For those businesses that do not meet the revised criteria of the exemption, they will need to obtain written agency agreements with airlines if they wish to sell as an Airline Ticket Agent, as set out in the ATOL Regulations. The new exemption wording is at Appendix D. The exemption will be published in September 2014 although the CAA will allow a period of transition until 1 April 2015 for businesses to comply with the new requirements or make alternative arrangements.

### **Exemptions 08/2012, 10/2012, 04/2013, 05/2013, 06/2013**

To improve consumer clarity for unprotected sales, the above listed exemptions require exempt businesses to place a statement on their invoices and receipts that states "This flight is not protected under the ATOL scheme". The CAA has been informed that some IT systems do not differentiate between different non-ATOL products. They would therefore need to apply this disclosure statement to all invoices relating to non-ATOL sales, some of which may not include flights. As this could be confusing to consumers, we are responding to this feedback and are amending the required statement to "This sale is not protected under the ATOL scheme."

### **Exemption 06/2012 – Whole Plane Sales, 05/2013 – Corporate Sales**

These exemptions include terms relating to how the exempt business must satisfy themselves that the flight being provided is not being made available to

another person. This term has been amended for clarification to specify that persons making available whole plane or corporate sales will not be exempt where their customer has stated that they will be selling it on to another person. The new exemptions are at Appendix E and Appendix F .

### **Agency Schedule of Terms**

Agency agreements were introduced as part of ATOL reform in order to clarify relationships between ATOL holders and agents and were seen to be best practice in clarifying business relationships. The CAA publishes a Schedule of Agency Terms, which is required to be included in written agency agreements. When introducing agency agreements, the CAA anticipated that the schedule of terms would be included in a more detailed agency agreement that contained other terms and conditions of the business relationship and that this would be dated in accordance with standard contract practice. However, a review of agency agreements has demonstrated that agreements are not being dated as a matter of course and the CAA is therefore amending the schedule of terms to require a date to be inserted. This will ensure that in the event of a failure, the status of the agent/principal relationship can be more easily established and with no resultant delays in the consumer claims process.

### **ATOL Standard Term 1.1 – Information in publicity material**

There are currently no specific requirements within this ATOL Standard Term for Accredited Body Members (AB Members) to disclose their capacity as AB Members. Consequently there is currently some inconsistency in the statements being used by AB members. Consumers should be clear on who their booking will be with to enable them to make informed choices and to be clear on their protection arrangements, particularly in the event of a failure. The CAA will therefore be amending AST 1.1 to include a statement for AB members to incorporate in their publicity material. The statement can be seen in Appendix G.

### **ATOL Standard Term 1.5**

Agency Term 2.3 requires agents to disclose on receipts for money, which part of the money is protected by ATOL and which if any, is not. However the ATOL Standard Term does not impose the same requirements on ATOL holders. In order to give consumers full clarity on their financial protection on all of the information relating to payments and to maintain a consistent approach, AST 1.5 will be amended to incorporate this requirement for ATOL holders as well as their agents. The revised wording is at Appendix G.

**ATOL Standard Term 1.7**

The CAA must ensure that consumers who book with ATOL holders receive full financial protection for that booking, as required by the ATOL Regulations. This protection can be at risk if an ATOL holder chooses to transfer the bookings. The CAA accepts that there are circumstances where an ATOL holder may wish to do this, but in these circumstances consumers should be given full information on the alternative and a reasonable time to consider the effects and whether to accept the transfer. Consequently, the CAA is amending AST 1.7 to include a requirement that ATOL holders must not include clauses within their consumer terms and conditions that enable them to transfer their obligations without the prior agreement of the CAA. This would enable the CAA to have oversight of any proposed transfers and to ensure that consumers' rights are protected. The revised AST 1.7 is at Appendix G.

**ATOL Standard Term 5.4 – Records Maintenance**

AST 5.4 details which records must be retained by ATOL holders for a specified period, during which, under AST 5.9 and 5.10 they must be made available to the CAA if requested to do so. The CAA can rely on this information in order to assist with the financial assessment of an ATOL holder's business and to verify, where necessary, that the appropriate level of business is being reported under the licence.

The current list of items predominantly relate to licensable transactions but it has become evident that items relating to the sale of non-licensable flights may be required for inspection in order to complete an accurate assessment of an ATOL holder's business. Consequently, a new item has been added to the list requiring ATOL holders to maintain records and copies of any contracts or commercial agreements into which the ATOL holder has entered relating to the provision of flight accommodation. The new wording is at Appendix G.

**ATOL Standard Term 7 – Accountable Person**

In 2008, the CAA introduced the requirement for a Compliance Manager to be appointed by each ATOL holder, which was incorporated into the ATOL Regulations as an Accountable Person. This person is responsible for ensuring the ATOL holder complies with the ATOL Regulations and licence terms.

In consulting with the industry on the Accountable Person's role in 2011, the CAA indicated that it was considering introducing training for these persons. The CAA is now in the process of developing this training and will be contacting ATOL holders with more details in due course. In order to implement the training, the CAA is amending AST 7 in order that it may require an Accountable

Person to complete a course of training when requested to do so. The revised AST 7 is at Appendix G.

### **Accredited Bodies Standard Terms**

Accredited Bodies (AB) are now required to put in place a Trust Account approved by the Air Travel Trustees and the CAA. Trust Accounts will help ensure those independent travel businesses, who are members of an Accredited Body, can continue trading even if the AB collapses or gets into financial difficulty.

Trust Accounts will also offer greater benefits to consumers who have booked ATOL protected holidays with an AB member, through the increased possibility of the booking being fulfilled in any event.

The CAA will therefore be amending the Accredited Body Standard Terms to account for the new Trust requirements. The revised Accredited Body Standard Terms are at Appendix G.

### **Amendment to Agency Agreements**

The amendments to the Agency Schedule of Terms and AST 1.1, 1.6 and 1.7 will require ATOL holders that make licensable sales through agents to change the terms of their written agency agreements with their agents.

The new terms will be published in September 2014, although the CAA will allow a period of transition until 1 April 2015 for ATOL holders to make the changes and re-issue agreements as appropriate to their agents.

## APPENDIX A

# Proposed ATOL Standard Term 6

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## ATOL Standard Term 6 – Sales Restrictions

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Interpretation:

In this ATOL Standard Term:

- “direct sale” means there is a contract for sale and purchase between a selling business and a consumer (or purchasing business) entered into by the consumer (or purchasing business) directly with the seller. Traditionally these have been referred to as principal sales.
- “indirect sale” means a sale through an intermediary i.e. a contract for sale and purchase between a selling business and a consumer (or purchasing business) is entered into by the consumer (or purchasing business) by means of dealing with an intermediary where the intermediary is acting on behalf of (or otherwise facilitating):
  - (a) the selling business; or
  - (b) on behalf of the purchasing consumer and on behalf of the selling business.

An ATOL holder selling a holiday through its ATOL agent is an example of an indirect sale

### ATOL Standard Term 6

Where, in the circumstances in which a person is making available flight accommodation, the ATOL Regulations require that person (i.e. an ATOL holder) to hold an ATOL in order to make available a seat on a flight (i.e. an item of flight accommodation as defined by the ATOL Regulations), the ATOL holder may NOT make available that flight accommodation EXCEPT in the circumstances listed below.

1. A direct sale of a Flight-Only, Flight-Plus, or package to a consumer;
2. A direct sale of a Flight-Only or package to an ATOL holder who (the selling ATOL holder has taken reasonable steps and exercised all due diligence to ensure), if selling that Flight-Only or package on to a consumer based in the



UK, will make the Flight-Only or package available to a consumer under its own ATOL, (including paying APC and accounting for that sale within its authorised limits of its ATOL).

3. A direct sale of a Flight-Only or package to an ATOL holder who (the selling ATOL holder has taken reasonable steps and exercised all due diligence to ensure), if selling the Flight-Only or package to a third ATOL holder based in the UK will account for that sale within its authorised limits of its ATOL.
4. A direct sale of a Flight-Only or package to a non-ATOL holder who will be exempt from the need to hold an ATOL if selling that package or Flight-Only on to a consumer based in the UK.
5. A direct sale of a Flight-Only or package to a non-ATOL holder who (the selling ATOL holder has taken reasonable steps and exercised all due diligence to ensure) will NOT make that flight accommodation available in the UK.
6. An indirect sale of a Flight-Only or package where the intermediary is an ATOL holder and (the selling ATOL holder has taken reasonable steps and exercised all due diligence to ensure) when making that Flight-only or package available to a consumer based in the UK (and whether or not it combines it with another component to form a different package or a Flight-Plus), will make the flight or package available to a consumer under its own ATOL, (including paying APC and accounting for that sale within its authorised limits of its ATOL.)
7. An indirect sale of a Flight-Only BUT ONLY where (the selling ATOL holder has taken reasonable steps and exercised all due diligence to ensure) the intermediary acting on behalf of the selling ATOL holder or otherwise facilitating the sale will, if making that flight accommodation available to a consumer in the UK, make it available as a Flight-Only (i.e. not combine it in a package or a Flight-Plus).
8. An indirect sale of a package where the intermediary is its own agent for that ATOL holder BUT ONLY where (the selling ATOL holder has taken reasonable steps and exercised all due diligence to ensure) that agent for that ATOL holder will, if making that flight accommodation available to a consumer in the UK, make it available as that Package to a consumer (i.e. will not combine it with other elements to form a different package or a Flight-Plus).

9. An indirect sale of a flight-only or a package where that intermediary is a member of an accredited body, PROVIDED THAT, if the member makes the Flight-Only or package available to a consumer in the UK, the Accredited Body will account for the sale to the consumer by the Member under its own ATOL (including paying APC and accounting for the sale within its authorised limits of its ATOL).
10. An indirect sale of a Flight-Only or a package where that intermediary is the CAA or the Air Travel Trust.

## APPENDIX B

## Table of Scenarios in which ATOL protected seats may be sold to businesses under proposed AST6

Can an ATOL holder make available an ATOL protected <u>seat only</u> in the UK to another business:				
Where the business is making available to a UK consumer in the capacity of:		And the business will sell:		
		As a Flight-Only	With other components as a Flight-Plus	With other components as a Package
1	An ATOL holder selling under its licence	✓	✓	✓
2	An agent for an ATOL holder, with whom there is a written agency agreement in place complying with ATOL Regulations	✓	X	X
3	A member of an Accredited Body acting in accordance with AB membership conditions, selling under the AB ATOL	✓	✓	✓
4	An Airline Ticket Agent*	X	X	X
5	A business established in an EEA state, other than the UK*	X	X	X
6	A business selling under a Class Exemption*	X	X	X
7	CAA	✓	✓	✓
8	Trustees of the Air Travel Trust	✓	✓	✓
An X indicates that an ATOL holder cannot make the ATOL protected seat available to this business. The business must meet the criteria and be acting in the capacities with a ✓ in order to purchase an ATOL protected seat from the ATOL holder.				
* If a business acting in this capacity also holds an ATOL, it will only be permitted to purchase an ATOL protected seat from an ATOL holder if it sells that ATOL protected seat under its own ATOL and declares it under its licence.				

**APPENDIX C****List of Consultees**

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ABTA The Travel Association

AGB Associates

Air Travel Insolvency Protection Advisory Committee

All ATOL holders

All Trustees of the Air Travel Trust

ASB Law LLP

Association of ATOL Companies

Association of Chartered Certified Accountants

Association of Greek-Cypriot Travel Agents

Association of Independent Tour Operators

BAR UK

Bird & Bird LLP

British Air Transport Association

British Bankers Association

Confederation of Passenger Transport UK

Elman Wall

Eventia

Federation of Small Businesses

Field Fisher Waterhouse

Guild of Travel Management Companies

Hamlins LLP

Hill Dickinson LLP  
Institute of Chartered Accountants for England and Wales  
Kennedys  
Longi Associates  
Professional Trustees to Travel Ltd  
Sam McKee Ltd  
Scottish Passenger Agents Association  
The Air Travel Consultancy Ltd  
The European Low Fares Airline Association  
The Travel Network Group  
Trading Standards Institute  
Travel and General Insurance Company  
Travel Trade Consultancy Ltd  
Travel Trade Management  
Travel Trust Services Ltd  
Travlaw LLP

## APPENDIX D

# Amended IATA Exemption

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## IATA Accredited Agents Selling Flight-Only

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1. Subject to paragraph 5 the Civil Aviation Authority, in exercise of its powers under Regulation 11(2) of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("ATOL Regulations 2012") as amended, exempts any International Air Transport Association ("IATA") Accredited Agent specified in paragraph (2), that makes available flight accommodation from the need to hold an Air Travel Organiser's Licence.
2. The person referred to in paragraph 1 is any person who makes available flight accommodation where that person is authorised by the relevant airline to do so in accordance with IATA Passenger Sales Agency Rules) but only where:
  - a) that person is making available flight accommodation to a consumer and not making it available to a third person who either intends to make the ticket available to another person or is acting as agent for that consumer;
  - and
  - b) that person issues a confirmed ticket to the consumer by the specified method (as defined in ATOL Regulation 18); and
  - c) that person states on invoices and receipts that it issues in respect of the flight accommodation it makes available "This flight is sold as Agent of the Airline(s) named on the ticket and is not protected under the ATOL scheme".
3. The relevant airline means the airline named on the ticket or a codeshare/interline partner of that airline.
4. A person is authorised by the relevant airline under IATA Passenger Sales Agency Rules (as that term is used in paragraph 2) if
  - a) the person

- i) has met:-
    - (a) the local criteria for IATA accreditation,
    - (b) financial criteria for the United Kingdom as set out in the current IATA Travel Agent's Handbook as published from time to time,and
    - (c) has signed a sales agency agreement or agreements in accordance with IATA Passenger Sales Agency Rules;or;
  - ii) has met the qualifications for IATA accreditation, has signed a sales agency agreement or agreements in accordance with IATA sales agency rules and is an ATOL holder
- and
- b) the relevant airline has given that person Ticketing Authority (as defined by Resolution 866 of the IATA Travel Agent's handbook as published by IATA, notifying the IATA Billing and Settlement Plan ("BSP") that that person may sell its tickets on its behalf and has not revoked that notification.
5. The persons specified in paragraph 2 are not exempt from the need to hold an Air Travel Organisers' Licence in circumstances where the person making available flight accommodation which forms part of a package as defined by the ATOL Regulations 2012 or a Flight-Plus as defined by ATOL Regulation 24.
6. This exemption comes into force on xxxxx.

David Moesli for the Civil Aviation Authority

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**APPENDIX E****Amended Whole Plane Sales Exemption**

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**Whole Plane Sales Exemption**

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1. Subject to paragraphs (2) and (3), the Civil Aviation Authority, in exercise of its powers under Regulation 11 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("ATOL Regulations 2012"), exempts any person who makes available flight accommodation consisting of the entire capacity of one or more aircraft to a consumer (as defined in the ATOL Regulations 2012) from the need to hold an Air Travel Organiser's Licence.
2. This exemption does not apply in circumstances where the person making available flight accommodation which forms part of a package as defined by the ATOL Regulations 2012.
3. The exemption does not apply where the person buying the flight accommodation (B) will make it available to another person (C) and accept any payment in relation to it unless the person making the flight accommodation available (A) to B took all reasonable steps and exercised all due diligence to enquire of the person buying the flight accommodation (B) whether they will make it available to another person (C) and accept any payment in relation to it and A has satisfied itself that that is not the case.
4. This exemption came into force on xx xxx.

David Moesli for the Civil Aviation Authority



**APPENDIX F****Amended Corporate Sales Exemption**

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**Corporate Sales Exemption**

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1. Subject to paragraphs (2),(3) and (4), The Civil Aviation Authority, in exercise of its powers under Regulation 11 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("ATOL Regulations 2012"), exempts any person who makes available flight accommodation to:
  - a) A body corporate, including body corporates incorporated by statute, other than a body corporate that is an ATOL holder
  - b) Executive Agencies
  - c) Non-departmental public bodies
  - d) Ministerial departments
  - e) Non-ministerial departments
  - f) Devolved national administrations
  - g) Local Authorities
  - h) Employees of Charities, as defined under the Charities Act 2006
  - i) Employees of Higher Education institutions in the UK, defined as higher education providers funded by Higher Education Funding Councils of the UK and listed with either the Higher Education Funding Council for England, the Scottish Funding Council, or the Higher Education Funding Council for Wales ([www.hefce.ac.uk/unicoll/](http://www.hefce.ac.uk/unicoll/))
  - j) Employees of schools.from the need to hold an Air Travel Organiser's Licence.
2. This exemption does not apply in circumstances where the person is making available flight accommodation as part of a package as defined by the ATOL Regulations 2012.

3. This exemption only applies if that person states on invoices and receipts that it issues in respect of the flight accommodation it makes available: "This sale is not protected under the ATOL Scheme".
4. This exemption does not apply where the person buying the flight accommodation (B) will make it available to another person (C) and accept any payment in relation to it unless the person making the flight accommodation available (A) to B took all reasonable steps and exercised all due diligence to enquire of the person buying the flight accommodation (B) whether they will make it available to another person (C) and accept any payment in relation to it and A has satisfied itself that that is not the case.
5. This exemption comes into force on xx xxxx.

David Moesli

for the Civil Aviation Authority

## APPENDIX G

# Draft Amended ATOL Standard Terms

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Amendments are highlighted in yellow

### ATOL Standard Term 1.1 – Information in Publicity Material

The ATOL holder must ensure that:

Either:

- a) the name shown on its ATOL (or a trading name notified to the CAA), its ATOL Number and the ATOL Logo; or
- b) for Accredited Body Members, the statement “(Accredited Body Member trading name as notified to the CAA) is an Accredited Body Member of (Name of Accredited Body)”, and the Accredited Body’s ATOL number and the ATOL logo

And

- c) the Statement...

“All the flights and flight-inclusive holidays [in this brochure] [on this website - as appropriate] are financially protected by the ATOL scheme. When you pay you will be supplied with an ATOL Certificate. Please ask for it and check to ensure that everything you booked (flights, hotels and other services) is listed on it. Please see our booking conditions for further information or for more information about financial protection and the ATOL Certificate go to: [www.atol.org.uk/](http://www.atol.org.uk/) ATOLCertificate.”

is stated clearly on all publicity material (including websites and brochures).

### ATOL Standard Term 1.5

*ATOL holder’s terms and conditions of booking, information relating to payment requests (Invoices) and information relating to payment acknowledgment (Receipts)*

The ATOL holder must ensure that:

- a) the terms and conditions upon which the ATOL holder (or its agent or AB member on its behalf) enters into a licensable transaction;

- b) the terms and conditions which the ATOL holder (or its agent or AB member on its behalf) holds out as terms upon which it will enter into a licensable transaction; and
- c) any receipts or invoices supplied by the ATOL holder, its agent or its AB member for a licensable transaction;

each contain the ATOL holder's name as shown on its ATOL (or trading name notified to the CAA), ATOL Number and a statement in the following form:

"Your Financial Protection. When you buy an ATOL protected flight or flight inclusive holiday from us you will receive an ATOL Certificate. This lists what is financially protected, where you can get information on what this means for you and who to contact if things go wrong."

If an ATOL holder produces a receipt for money paid by a consumer the ATOL holder must identify which part of that money is protected by ATOL and which, if any, is not.

### ATOL Standard Term 1.7

#### *Agreement with Consumer about form of ATOL protection*

##### AST1.7A

Where the ATOL holder has a contractual or statutory obligation (including as a Flight-Plus arranger) to provide a flight (and where applicable other travel services) to a consumer whether concluded direct or through an agent or AB member, the ATOL holder must ensure the terms of its agreement with its consumer require the consumer to accept and agree that, if the ATOL holder fails, services to be provided by the ATOL holder pursuant to a licensable transaction may, with the CAA's prior agreement, be provided by another ATOL holder, or the consumer may be required to claim a refund under the ATOL scheme by including in its terms of business with consumers the term that:

"We, or the suppliers identified on your ATOL Certificate, will provide you with the services listed on the ATOL Certificate (or a suitable alternative). In some cases, where neither we nor the supplier are able to do so for reasons of insolvency, an alternative ATOL holder may provide you with the services you have bought or a suitable alternative (at no extra cost to you). You agree to accept that in those circumstances the alternative ATOL holder will perform those obligations and you agree to pay any money outstanding to be paid by you under your contract to that alternative ATOL holder. However, you also agree that in some cases it will not be possible to appoint an alternative ATOL

holder, in which case you will be entitled to make a claim under the ATOL scheme (or your credit card issuer where applicable).”

*Prohibition on transferring obligations under agreements with consumers without agreement of the CAA*

**AST 1.7A2**

Other than the clause required as set out in AST1.7A, the ATOL holder must not include a clause in its terms of its agreement with consumers that enables, or purports to enable, the ATOL holder to transfer its obligations to consumers in respect of a licensable transaction to another person (whether or not that person is an ATOL holder) without the prior agreement of the CAA.

**ATOL Standard Term 5.4 – Records Maintenance**

The ATOL holder must keep specified items for a period of 12 months from the date of the latest flight provided under any licensable transaction or ATOL to ATOL transaction. The items specified for the purposes of ATOL Standard Term 5.4 are:

h) records and copies of any contracts or commercial agreements into which the ATOL holder has entered relating to the provision of flight accommodation.

**ATOL Standard Term 7 – Accountable Person**

**AST7.1**

The CAA must be satisfied that the person appointed as an ATOL holder’s Accountable Person is acceptable to the CAA at all times to grant or continue to grant an ATOL.

If requested by the CAA, the ATOL holder’s Accountable Person must complete a course of training on the role and responsibilities of the Accountable Person, provided either by the CAA or by some other person approved by the CAA for this purpose, as determined by the CAA from time to time.

The ATOL holder must give the CAA at least 28 days notice (or where this is impossible as much notice as possible) of the Accountable Person leaving their post for any reason.

**Accredited Bodies Standard Terms**

**ABST3**

ABs will maintain an approved Trust account in the terms approved by the ATT and CAA, to receive payments made by consumers to their AB members.

### ABST7

ABs will maintain an up to date list of their AB members. ABs will not permit AB members to use trading names already used by any ATOL holder or any AB member of any other AB. Every week Abs will provide the CAA with information in respect of any new AB member that has joined, or any AB members whose membership has been terminated, in the previous week. The following information must be provided:

- Name of applicant (trading name, registered company name, name of sole-trader or partners);
- Name and date of birth of applicant's directors, shareholders, sole trader, or partners where applicable;
- Name of any other person, partnership or body corporate appearing to the AB to have influence over the proposed AB member.

### COMPULSORY TERMS AND CONDITIONS OF MEMBERSHIP

#### A1

Members will ensure that all consumer payments in respect of licensable transactions\* are paid into accounts in accordance with the terms of the AB Trust Deed, which has been approved by the ATT and CAA.

#### A2

Members agree that the CAA may audit the AB member's financial records, business records, financial systems and business systems at any time. Members agree to make these records and systems available to the CAA on 3 days notice at the CAA's request and agree to provide the CAA with such help and assistance as is necessary for the CAA to complete whatever investigation it requires.

\*The words "licensable transactions" in these Terms and Conditions of membership mean "agreements to provide Flight-Only, Flight-Plus or packages that, if the AB member were not an AB member of the AB, the AB member would need an ATOL to enter into."

#### A3

All consumer payments in respect of licensable transactions paid into accounts in respect of a licensable transaction for services accordingly owed by the AB to the consumer, is received and held by the AB member on behalf of and for the benefit of the Trustees of the Air Travel Trust but subject to the AB member's

right and obligation to make payment to the AB for so long as the AB does not fail. If the AB fails, the AB member hold any consumer payments on behalf of the Trustees of the Air Travel Trust and without any right or obligation to pay the same to the AB.