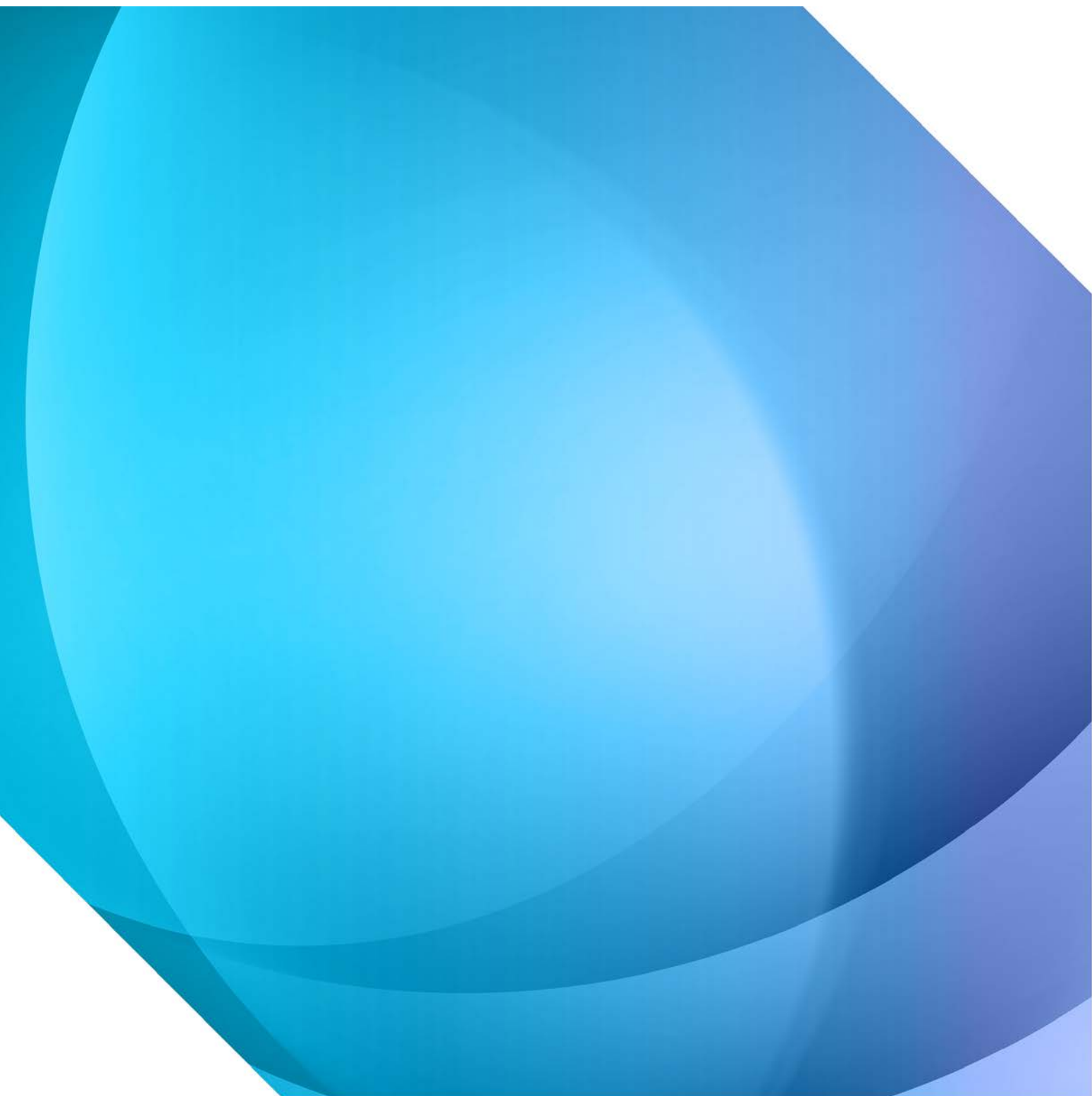


Guidance on the procedure for a decision by a CAA Board Member pursuant to Part 4 (Regulation 38) and Part 5 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

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1. OVERVIEW

1.1. Introduction

This is a practical guide to the making of a decision by the Civil Aviation Authority ('CAA') pursuant to Part 4 and Part 5 of the *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012* (the 'ATOL Regulations').

This guidance does not replace any laws or regulations and does not constitute legal advice.

The principles reflected in this guidance apply equally to an applicant or holder of an ATOL as they do to an applicant for or holder of an accreditation as an Accredited Body.

1.2. ATOL decision making by the CAA

The ATOL Regulations give the CAA a number of discretionary powers in relation to the grant, refusal, variation, suspension and revocation of an ATOL. The CAA must make decisions on these matters according to whether it is satisfied that specified circumstances exist. A decision to grant, refuse to grant, revoke or suspend an ATOL or to vary the terms of an ATOL can be made by an employee of the CAA if that decision was made at the request of, or with the agreement of, the applicant or holder.

In practice, it is employees of the CAA in the CAA's Consumer and Markets Group ('CMG') who deal with ATOL applicants and holders on a day to day basis¹. It is these employees who will assess the circumstances of a particular case and identify what in their view is the appropriate action for the CAA to take.

Where a decision to grant, refuse to grant, revoke or suspend an ATOL or to vary the terms of an ATOL is made by CMG without a request from or agreement of the ATOL applicant/holder CMG must first make a proposal to do so. A decision on the proposal may then only be taken by a panel of one or more CAA Board Members ('CAA Panel').

Unless it is otherwise withdrawn by CMG, a proposal is, in effect, a recommendation to the CAA Panel for a particular decision to be made. The ATOL applicant/holder will have an opportunity to submit its views on CMG's proposal.

Before reaching a decision, the CAA Panel must consider, in addition to the proposal from CMG, any representations and evidence put forward by the affected applicant or holder of an ATOL.

¹ In this guidance, employees within CMG are referred to as simply 'CMG'.

The processes described in this guidance are designed to ensure fairness for the applicant or holder of an ATOL whilst providing the CAA Panel with all the information they require to make a decision.

1.3. When this guidance applies

This guidance applies where:

- a) CMG intends to provisionally vary an ATOL (see section 4 below); or
- b) CMG proposes to—
 - i) revoke, suspend or vary² the terms of an ATOL otherwise than on the application of (or with the agreement of) the applicant/holder; or,
 - ii) grant or vary an ATOL on terms other than those requested by (or agreed to by) the applicant/holder; or
 - iii) refuse to grant an ATOL.

This guidance also applies, modified as may be necessary, where the requirements differ, where CMG sends a written proposal to an applicant for, or holder of, an accreditation (as an Accredited Body) that it proposes to—

- i) revoke, suspend or vary the terms of an accreditation otherwise than on the application of (or with the agreement of) the applicant/holder; or,
- ii) grant or vary an accreditation on terms other than those requested by (or agreed to by) the applicant/holder; or
- iii) refuse to grant an accreditation.

² An ATOL holder may, for example, apply to vary its licence by increasing the amount of licensable business it is entitled to undertake.

2. LEGAL FRAMEWORK

2.1. The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

Part 4 of the ATOL Regulations (**Annex A**) contains the regulations dealing with the grant, refusal, variation, suspension, revocation or provisional variation of an ATOL.

Part 5 of the ATOL Regulations (**Annex B**) contains the regulations dealing with 'Decisions and Hearings'.

2.2. Grant of an ATOL

2.2.1 Fitness

Before granting an ATOL, the CAA must be satisfied that the applicant is a fit person to hold an ATOL.

If the CAA ceases to be satisfied with the fitness of an existing ATOL holder, it must revoke, suspend or vary the ATOL.

2.2.2 Other factors

The CAA will also need to be satisfied that the ATOL applicant/holder—

- a) is competent to hold an ATOL;
- b) has sufficient financial resources to discharge its actual and potential obligations;
- c) has appointed an Accountable Person acceptable to the CAA;
- d) if it is an existing ATOL holder, has paid its required ATOL Protection Contributions ('APCs') to the Air Travel Trust; and
- e) is compliant with any term or condition of its ATOL.

If not, the CAA may refuse to grant an ATOL or a variation to an ATOL applied for, or may revoke, suspend or vary the terms of an ATOL.

In determining whether the applicant/holder is a fit and competent person, the CAA must have regard to the past activities generally of the applicant/holder, its employees, and (if a company) those appearing to the CAA to control the company.

The CAA's published policies on the *Criteria for an Application for and Grant of, or a Variation to, an ATOL: Fitness, Competence, Accountable Person and Financial*, can be found at: www.atol.org.uk

2.3. The Human Rights Act

The Human Rights Act 1998 applies to the procedures for a decision pursuant to Part 4 and Part 5 of the ATOL Regulations. They require compliance with the European Convention on Human Rights (ECHR).

Article 6 of the ECHR guarantees the right to a fair trial. More specifically, it provides that *“in the determination of his civil rights everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law.”*

This process, combined with the right for the applicant/holder to apply to the High Court to seek a judicial review of the CAA’s decision, or to the County Court to appeal a finding of fitness, has been designed to satisfy the requirements of Article 6 of the ECHR.

3. PART 5 PROCEDURES

3.1. Key roles

3.1.1 Appointment of the CAA Board Member(s) to the CAA Panel

One or more CAA Board Members will be appointed to consider each case and reach a decision, however, it should be noted that one CAA Board Member may make the decision alone. Where the CAA Panel consists of two or more CAA Board Members, one Board Member will normally act as Chair of the Panel and will have the casting vote in the event the Board Members making the decision disagree.

3.1.2 Appointment of Hearing Manager, CAA Panel Lawyer and CMG Lawyer

Before making a proposal, CMG must—

- appoint a Hearing Manager who will be identified in the proposal letter; and
- request that CAA's General Counsel appoint a CMG Lawyer and a CAA Panel Lawyer.

3.1.3 Role of the Hearing Manager

The Hearing Manager is a CAA employee whose role is to manage the administration of all matters under Part 5 of the ATOL Regulations. The Hearing Manager will have no prior involvement in the CMG proposal and will act as the point of contact for CMG and the ATOL applicant/holder. The Hearing Manager is responsible for receiving documents, ensuring all parties have a copy of all relevant material, handling queries and making the necessary arrangements for the hearing of the decision.

3.1.4 Role of the CAA Panel Lawyer

The role of the CAA Panel Lawyer is to advise the CAA Board Member(s), referred to in this guidance as the CAA Panel, who will make the decision. The CAA Panel Lawyer will normally have had no prior involvement in the case and will not discuss the case with CMG or with the CMG Lawyer.

Full details of the decision the CAA Panel is required to make will be set out in the Hearing bundle (see section 6.1.7 below).

The CAA Panel Lawyer will provide advice to the CAA Panel on matters of law and procedure.

The CAA Panel Lawyer will consider whether a technical assessor should be appointed and will advise the CAA Panel accordingly.

3.1.5 The role of the CMG Lawyer

The role of the CMG Lawyer is to assist and support the CMG employees responsible for the proposal under review.

3.1.6 Technical assessors

The ATOL Regulations permit one or more technical assessors to be appointed to sit with the CAA Panel. An assessor will advise the Panel Members on technical matters but will not be a decision maker. An assessor must not have had any prior involvement in the case. The CAA Panel Lawyer will discuss with the CAA Panel whether it would be appropriate to appoint a technical assessor in a particular case.

A technical assessor must not provide his or her own opinion on the matters before the CAA Panel. Rather, the technical assessor may assist the CAA Panel in understanding the evidence and identifying key issues. The technical assessor will not attend the deliberations of the CAA Panel after the hearing.

The role of a technical assessor is set out in more detail at **Annex C**.

3.2. Normal procedure for making licensing decisions under Part 5 of the ATOL Regulations

3.2.1 The proposal

Where CMG considers that the CAA should not grant an ATOL on terms applied for by the ATOL applicant/holder, CMG must send out a notice in the form of a written proposal (the 'proposal letter'). The proposal letter will provide the applicant/holder with at least 21 days' notice of the date on which a CAA Panel will make such a decision.

Similarly, where CMG considers there are sufficient grounds for the CAA to suspend or revoke, or vary the terms of an ATOL, CMG must send a proposal letter, providing the ATOL holder with at least 21 days' notice of the date on which the CAA Panel will make a decision on CMG's proposal.

Once the proposal letter is sent out by CMG, any letters or communications relating directly to the hearing of the proposal under Part 5 must be addressed to and dealt with by the Hearing Manager.

Other communications, not directly relating to the hearing, between the applicant/holder and CMG may continue normally, although these may be taken into consideration by the CAA Panel before making a decision.

A proposal letter is, in effect, a letter which sets out a recommendation that the CAA Panel make the proposed decision and the reasons why CMG is making that recommendation. The CAA Panel may accept the proposal being made by CMG or it may make a different decision.

Service of documents by CMG must be effected in accordance with Regulations 6 and 7 of the ATOL Regulations (*Annex D*).

3.2.2 The proposal letter

The proposal letter from CMG must include the following –

- CMG's reasons for the proposal;
- any documents supporting the proposal and other relevant evidence; and
- the date by which the applicant/holder must serve their written representations (10 days from the date of CMG's proposal letter, including the date it was sent).

The proposal letter should also include the following —

- the name of the Hearing Manager at the CAA to whom the applicant/holder's written representations should be sent; and
- where a hearing is to be held, the date on which that hearing will be held. This will be the earliest practicable date at least 21 days after the date on which the proposal letter was sent to the applicant/holder.

3.2.3 Written representations

Where the ATOL applicant/holder disagrees with the proposal from CMG, it should send written representations to the Hearing Manager explaining its reasons. This must normally be done within 10 days from the date of CMG's proposal letter, including the date it was sent, unless a CAA Panel has agreed to an extension of time (see 3.2.4 below).

The written representations of the applicant/holder should include the following—

- a response to CMG's reasons for the proposal;
- any documents supporting the response and other documentary evidence the applicant/holder wants the CAA Panel to take into account (if not already attached to the proposal letter);
- a request to attend the scheduled hearing, if one is wished for;
- if the applicant/holder wants a hearing but cannot attend on the day set out in the proposal letter, it should inform the Hearing Manager as soon as practicable. (The CAA Panel will then decide whether the proposed hearing date will be rescheduled for another date. If the CAA Panel is prepared to move the date of the hearing, it will instruct the Hearing Manager to fix a new date in consultation with the parties); and
- any arrangements the CAA needs to make to ensure the applicant/holder can access the hearing (such as interpreter, restricted mobility access, etc).

3.2.4 Extensions of time

The CAA Panel may agree to extend any time limit imposed by Part 5 of the ATOL Regulations, whether or not it has already expired. It may do this where the CAA Panel considers that it is reasonable to do so, or where by not extending the time limit would result in substantial injustice.

A request for an extension of any time limit by CMG or the applicant/holder must be sent in writing to the Hearing Manager as soon as practicable. The Hearing Manager will copy the request to the other party which may submit comments on the request. Normally, any comments will need to be submitted within 2 working days. The Hearing Manager will then invite the CAA Panel to consider the request and any comments. The CAA Panel's decision will be communicated to both parties in writing by the Hearing Manager.

3.2.5 CAA Panel may request additional information

A CAA Panel can request additional information from CMG or the applicant/holder at any time during the Part 5 process before making a final decision.

4. PROVISIONAL VARIATION OF AN ATOL

The legal test for issuing a provisional variation under Part 4 of the ATOL Regulations is that the CAA is of the opinion that it is in the interests of consumers to do so.³ When issuing a provisional variation the CAA must supply a summary of its reasons. This summary will be served by the CAA in the form of a letter.

A provisional variation may impose such terms or conditions on the ATOL as the CAA considers necessary for the protection of current or potential consumers.

A decision to take provisional variation action must be taken by a CAA Board Member based on a recommendation by a CAA employee.

The decision may be made by a CAA Board Member without consideration of any written representations from the ATOL holder concerned.

The CAA Board Member must supply the ATOL holder with a written summary of the reasons for the provisional variation.

The CAA's policy on the use of a Provisional Variation can be found at ***Annex E***.

³ Regulation 38 The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

5. EXPEDITED PROCEDURE FOR SUSPENDING AN ATOL

5.1 The proposal

The CAA may suspend (but not revoke nor vary the terms of) an ATOL without CMG complying with the normal procedure set out in section 3.2, where CMG complies instead with the expedited procedure set out in the ATOL Regulations. The CAA's policy on the use of an Expedited Suspension can be found at **Annex F**.

Under this procedure, CMG must serve a proposal letter on the holder providing the holder of an ATOL with at least 3 working days' notice of the proposed decision.

As with the normal procedure set out in section 3.2 of this guidance, CMG makes the proposal but the decision must be made by the CAA Panel.

5.2 The proposal letter

Where the CAA uses the expedited procedure set out in this section, the proposal letter from CMG must include the following—

- CMG's reasons for the proposal;
- any documents supporting the proposal and other relevant evidence; and
- the date by which the holder must serve their written representations.

5.3 The ATOL holder's representations

Upon receipt of the proposal letter, the ATOL holder will have until the expiration of the notice period to submit written representations to the CAA Panel.

The written representations should include—

- a response to CMG's reasons for the proposal; and
- any documents supporting the response and other evidence relevant to the ATOL (if not already attached to the proposal letter).

The CAA panel may consider the merits of the proposal and reach a decision solely on the basis of the information set out in CMG's proposal letter and any written representations received from the ATOL holder, without holding a hearing.

Where a proposal to revoke is served on an ATOL holder simultaneously with the proposal letter to suspend under the expedited procedure, the proposal to revoke must be served in accordance with the normal procedure set out in section 3.2.

6. PREPARING FOR A PART 5 HEARING

6.1 Details of the hearing

6.1.1 Holding a hearing

The decision by the CAA Panel will normally be reached following a hearing at which oral representations will also be considered.

The ATOL applicant/holder may request a hearing at which it may choose to be present by sending a written request to the Hearing Manager. This is done at the same time as written representations are delivered.

In the absence of such a request, the CAA Panel may still choose to hold a hearing if it considers it appropriate to do so in order to make the decision. Both parties have a right to appear and the hearing will proceed with only CMG present if the applicant/holder does not attend.

6.1.2 Date of the hearing

If a hearing is to be held, it should take place on the date set out in the proposal letter unless the CAA Panel has agreed to an extension of time (see section 3.2.4).

6.1.3 Venue of the hearing

The venue will be notified to the parties by the Hearing Manager. It will normally be held at the London offices of the CAA.

6.1.4 Notice of hearing

The ATOL applicant/holder will receive at least 7 days' written notice of the date of the hearing.

However, a hearing may be held with shorter notice having been served where a Member of the CAA Panel is satisfied that for reasons of urgency, it is desirable to do so.

In such a case, CMG must give notice of the date, time and place of the hearing, being notice of such length and by such means as it thinks fit, to the applicant/holder.

Notice of the hearing must clearly identify the matter to which it relates. In practice, this will be achieved by CMG providing details of the hearing in the proposal letter.

Where a hearing is adjourned, a new notice will be sent to the applicant/holder, again normally providing it with at least 7 days' notice. As with the original hearing, this notice period will not apply where the CAA Panel is satisfied that for reasons of urgency a shorter period should be given.

Where less than 7 days' notice is given, the CAA must give such notice as it thinks fit.

The CAA must publish details of the hearing at least 7 days in advance unless the hearing is to be held in private (see section 7.2).

6.1.5 Existing ATOL holders

Where a matter concerns an existing ATOL holder, if for any reason the hearing is delayed or adjourned, it may be necessary for CMG to consider—

- seeking a provisional variation of the ATOL under the procedure set out at section 4; and/or
- proposing to suspend the ATOL under the expedited procedure set out at section 5

pending the outcome of the hearing.

6.1.6 Additional material

In most cases, any evidence or material that the ATOL applicant/holder wishes to submit in addition to its written representations after the expiry of 10 days from the date of CMG's proposal letter, but before the hearing, (or after such longer period as may have been agreed by CMG or the CAA Panel in the particular case) will be considered by—

- CMG, who will consider whether this further material affects the basis of the proposal (which may need to be withdrawn or supplemented with further information to the CAA Panel making the decision); and
- the CAA Panel.

The CAA Panel may allow further evidence from CMG where it considers that the interests of a fair decision would benefit from that evidence.

The submission of any significant new material by one party close to the hearing date (outside the 10 day limit) may require an adjournment of the hearing to a later date to enable adequate consideration by the other party and the CAA Panel of that material.

In such cases, the CAA will consider whether in its view it is necessary to issue a provisional variation. See Annex E.

6.1.7 The hearing bundle

The hearing bundle will comprise one or more of—

- the CMG proposal letter with supporting documents and any other evidence;
- the written representations of the applicant/holder with supporting documents and any other evidence;
- any additional information or evidence submitted by the parties and accepted by the CAA Panel;
- answers to questions posed by the CAA Panel in writing.

CMG and the ATOL applicant/holder will be supplied with a copy of the hearing bundle by the Hearing Manager as soon as practicable and before the hearing date.

This will normally be at least 3 working days before the hearing unless the disclosure of supplemental material by CMG or the applicant/holder has delayed completion of the hearing bundle.

6.1.8 Legal representation

All parties have the right to be legally represented and may attend with whatever witnesses (persons with evidence or information relevant to the terms of CMG's proposal or the applicant/holder's disagreement with the proposal) it wishes.

The applicant/holder should be aware that if any significant new material is submitted or new point raised at the hearing, the CAA Panel may need to adjourn the hearing to provide time for CMG and the CAA Panel to consider it.

6.1.9 Interpreters

The Hearing Manager, rather than the ATOL applicant/holder, will arrange an interpreter. The Hearing Manager should check that the interpreter and applicant/holder understand each other. The Hearing Manager should be alert to the possible need for a particular dialect. It will be important to record the hearing where an interpreter is used to assist in dealing with a challenge concerning the quality of the interpretation.

6.1.10 Vulnerable persons

Questioning will be slow and steady providing several seconds for the witness to consider and respond. Other reasonable adjustments will be considered and it may be necessary to have more frequent breaks.

6.1.11 Attending the hearing

A hearing may be attended by—

- a) the CAA Board Member(s) comprising the CAA Panel;
- b) a CAA legal adviser providing legal advice to the CAA Panel (CAA Panel Lawyer);
- c) a technical assessor, where appointed by the CAA Panel;
- d) the ATOL applicant/holder;
- e) a legal adviser or other representative of the applicant/holder;
- f) witnesses requested by the applicant/holder to give evidence;
- g) CMG employee/s responsible for the proposal letter;
- h) a CAA legal adviser providing legal advice to CMG;
- i) witnesses requested by CMG to give evidence;

- j) the Hearing Manager;
- k) a shorthand writer;
- l) interpreters (if required);
- m) members of the public unless the hearing is to be in private.

6.2 CAA Panel preparation for the hearing

6.2.1 Reading the bundle

The CAA Panel Members will read the bundle of documents before the hearing. They should identify issues of fact where there is a dispute between the parties which they may be required to determine. They should however avoid coming to any concluded views at this stage so that their minds are open to argument by the parties at the hearing.

6.2.2 Preliminary questions before the hearing

If the CAA Panel wish to raise any preliminary questions with CMG or the ATOL applicant/holder prior to the hearing, the CAA Panel should discuss those questions with the CAA Panel Lawyer. The CAA Panel Lawyer will pass them to the Hearing Manager to send to the respective parties. The Hearing Manager will send them to the CMG Lawyer or the applicant/holder with a request for an answer within 7 days (or in any event before the hearing).

Both questions and answers will be disclosed to the other party by the Hearing Manager prior to the hearing. The other party may submit any comments either in writing to the Hearing Manager for circulation and/or comment on the matter at the hearing.

7. THE PART 5 HEARING

7.1 Administrative arrangements

The Hearing Manager is responsible for ensuring appropriate administrative arrangements are made.

7.2 Hearing normally to be in public

Hearings will be held in public unless one of the parties requests that the hearing is held in private and the CAA Panel consider it appropriate to do so.

Any request for the hearing to be held in private must be sent to the Hearing Manager as soon as practicable. The CAA Panel will decide whether the hearing should be held in private. The Hearing Manager will communicate the outcome of the request to both parties.

In certain cases, the CAA Panel may decide that part of the hearing is to be held in private or that certain information about the proceedings, the names and identifying characteristics of persons concerned in the proceedings, or specified evidence given in the proceedings must not be made public or disclosed to the applicant/holder.

The CAA Panel may permit any person to attend the hearing, whether or not it is in private.

7.3 The standard and burden of proof

The CAA Panel must determine any disputed issues of fact on the balance of probabilities.

Where the applicable legislation requires that the CAA be satisfied as to a particular matter, such as that an applicant has the necessary competence, it is for the applicant to satisfy the CAA Panel that he/she meets the requirement. So if the CAA Panel considered that the evidence as to whether or not an applicant was competent was evenly balanced, it must find that the applicant is not entitled to the licence in question.

7.4 Conduct of the hearing

The ATOL Regulations contain provisions for the conduct of the hearing - see Chapter 2 of Part 5 at **Annex B**.

The hearing will be conducted by the CAA Panel in accordance with a proposed Agenda which will be circulated by the Hearing Manager to each party before the hearing.

The formal rules of evidence that apply in civil proceedings in the English courts will not apply. If parties are not legally represented, the CAA Panel, with the assistance of the CAA Panel Lawyer, will guide the ATOL applicant/holder through the process of the hearing.

The hearing will allow both parties the opportunity to make oral representations before the CAA Panel, seek clarification of any issues arising and ask questions of each other and/or a technical assessor if one has been appointed (see section 3.1.6).

The applicant/holder or CMG may call one or more witnesses. The other party must be given an opportunity to question each witness. The party who called the witness should be offered the opportunity to re-examine his/her witness on any points brought up in the questioning by the other party (but not to bring up new points).

The CAA Panel may ask questions of CMG, the applicant/holder and any witnesses. The applicant/holder, or their representative, will always be allowed to make the final statement, prior to the CAA Panel bringing the hearing to a close.

The CAA Panel must satisfy itself generally that the applicant/holder has been properly and fairly treated and that this guidance has been followed.

The CAA Panel may adjourn the hearing to a later date for any reason and in so doing, the CAA Panel must communicate its reasons to CMG and to the applicant/holder at the end of that hearing. In practice, the reasons for an adjournment will also be communicated to CMG and to the applicant/holder by the Hearing Manager in the form of a letter, normally within 7 days of the date of the hearing.

7.5 Transcript

A shorthand writer will create a transcript of the hearing. On request, and as soon as it is available, an electronic copy of the transcript of the hearing will be made available to the parties by the Hearing Manager. If the hearing was in private, only those attending the hearing may request a copy.

The CAA is entitled to request payment for the transcript from the applicant/holder.

8. DELIBERATIONS AND DECISION

8.1 Procedure where the ATOL applicant/holder does not respond

Where no response to a proposal letter is received within the specified time from the ATOL applicant/holder, the Hearing Manager will notify the CAA Panel via the CAA Panel Lawyer, and the CMG Lawyer.

At this stage, the CAA Panel may request legal advice from the CAA Panel Lawyer before deliberating on a decision. Following consideration of the representations received from CMG, the CAA Panel Members may decide that the decision be taken without a hearing.

If there is to be no hearing, the CAA Panel must wait until the expiry of 21 days from the date of service of the proposal letter before making a decision. The decision may then be taken on the basis of the proposal letter.

Where the CAA Panel does not wish to make a decision without a hearing, notice of the hearing must be sent to the ATOL applicant/holder. The applicant/holder will still have the right to attend and make oral representations at the hearing.

Where no response to a proposal letter is received and the CAA Panel wishes to ask questions of CMG, it must hold a hearing and ask those questions at the hearing. The hearing will always be in public, unless after seeking the views of CMG the CAA Panel considers there are special circumstances to merit the hearing being held in private.

8.2 The CAA's policy

One key issue in determining whether a discretionary power has been exercised correctly will be the CAA's policy for the exercise of that power. The existence of a policy will be important for a number of reasons—

- a) it is good administrative practice to have a policy;
- b) it provides transparency and certainty for applicants. They can see how the CAA will normally deal with a particular matter; and
- c) it contributes to a consistent approach on the part of the CAA. Consistency is one element of reasonableness.

Where the CAA has a published policy setting out how it will exercise a discretionary power it should apply the policy in a consistent, but not inflexible, manner.

Nevertheless, the CAA must be prepared to consider any argument that a departure from policy is appropriate in the particular case.

Where there is a published policy, the CAA Panel will need to consider the following—

- a) Is the policy in itself reasonable?
- b) If the policy is considered to be reasonable, was it followed in this particular case?
- c) If it was followed, are there nevertheless factors in this case which ought to have persuaded CMG to depart from their policy?
- d) If CMG did depart from their policy in the particular case, what were their reasons for so doing?

If there is no applicable policy, CMG will have to explain the basis of their decision from first principles.

Applying the policy

The CAA Panel's decision is the decision of the CAA in the particular case. If the decision does not conform to any CAA policy, there are two possible consequences. First, the CAA Panel may determine that the policy itself is sound and should be retained but that there are special circumstances in this case which justify a departure from that policy. The CAA Panel should stipulate what those special circumstances are. The policy would need to be departed from in any other case where those same special circumstances arose.

Alternatively, the CAA Panel may consider that the policy itself should be amended and their decision is based on the application of that amended policy. The amended policy would then be that of the CAA and would need to be applied in other applicable cases subsequently.

In the decision letter, the CAA Panel should make clear which approach they are adopting, what are the special circumstances which justify a departure from the policy, or what revisions they require to be made to the policy.

8.3 What the CAA Panel will consider when making its decision

The only information that will be made available to the CAA Panel for the purposes of the decision will be—

- the hearing bundle;
- any additional material submitted to the CAA Panel subsequently in accordance with section 6.1.6 (where appropriate); and
- oral evidence and other material put forward at the hearing.

8.4 Determining the facts

The CAA Panel must decide on what factual basis it is going to make its decision, apply the facts as found by them to the law and any written policy and reflect that analysis in the final decision letter.

Where there are disputes of fact, the CAA Panel will first need to determine whether the particular fact in dispute is relevant to the decision which it must take.

Where the CAA Panel finds facts are irrelevant, the CAA Panel's decision will say so, and give reasons.

Where the CAA Panel finds facts are relevant and in dispute, the CAA Panel will be required to state in the decision the conclusion it has reached on the relevant facts and why.

8.5 Reaching the Decision

The decision must be that of the Members constituting the CAA Panel. The reasoning for that decision must also be that of the CAA Panel.

This means that the Panel Members must make the decision themselves without any involvement from other parties (including the CAA Panel Lawyer). They will normally meet immediately after a hearing without anyone else present and make their decision and identify their reasons for it. They may wish to consider further and make their decision following meetings or telephone discussions over the next few days. But, they must not discuss the case with anyone else, other than to take legal advice from the CAA Panel Lawyer until the decision is made.

Where a hearing has taken place, the decision will usually be reserved and sent to the ATOL applicant/holder and to CMG in writing at a later date (normally within 10 working days from the date of the hearing).

The CAA Panel must send a substantive written statement of reasons to the applicant/holder and CMG setting out the reasons for the decision.

For the sake of clarity, no decision shall be made by the CAA Panel until the hearing has formally concluded and/or all relevant information, including, but not limited to the proposal letter, any further information received from CMG and any written representations from the applicant/holder have been fully considered by the CAA Panel Members.

Where the CAA Panel decides to revoke or suspend an ATOL, the decision must be published by the CAA in accordance with Regulation 55 of the ATOL Regulations. The decision will therefore be published on the CAA website: www.caa.co.uk.

8.6 Publication of the Decision

Where the CAA Panel decides to revoke or suspend an ATOL, the decision must be published by the CAA in accordance with Regulation 55 of the ATOL Regulations.

A CAA Panel decision will be published on the CAA's website, including the name of the ATOL applicant/holder.

After five years, the decision will be removed from the website.

9. RELATED PARTIES THAT HOLD BOTH AN OPERATING LICENCE AND AN ATOL

A proposal to revoke or suspend an ATOL may coincide with a related proposal to exercise the CAA's powers in respect of a related licence holder pursuant to the *The Operation of Air Services in the Community Regulations 2009* ('UK Regulations') or *Regulation (EC) No 1008/2008 Common Rules for the Operation of Air Services in the EU* ('EU Regulations'). In this case, the CAA will follow the statutory procedure for ATOL decision-making as set out in this guidance and would expect to conduct its investigative and decision-making procedures under Regulation 7 of the UK Regulations and Article 9 of the European Regulations in tandem with the ATOL decision-making process.

Therefore, if it is determined that a hearing would be appropriate in relation to either (or both of) a decision pursuant to Part 5 of the *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012* and a related decision under Regulation 7 of the UK Regulations and Article 9 of the European Regulations in relation to related licence holders, the CAA would normally expect to consider both matters at the same hearing.

10. CHALLENGING A CAA DECISION

Where the ATOL applicant/holder wishes to overturn a CAA decision to refuse to grant or to revoke, suspend, or vary the terms of its ATOL, it must seek permission from the High Court to judicially review the CAA's decision within the time limit specified for such an application.

However, pursuant to ATOL Regulation 67, if in reaching its decision, the CAA has determined that the applicant/holder is not a fit person to hold an ATOL; the County Court has jurisdiction to hear an appeal from the applicant/holder as to the CAA's decision that it was not a fit person. Such an appeal is not against the revocation, suspension or variation of the ATOL, but only against the decision that the person is not fit to hold an ATOL.

11. REAPPLICATION

A decision to revoke, suspend, refuse to grant or grant/vary an ATOL on terms other than those requested by the ATOL applicant/holder does not preclude the applicant/holder from making a new application at any time thereafter.

Clearly, if a further application is made quite soon after a decision has been reached, in the absence of any relevant new material in support of the application, CMG is likely to reach the same decision.

Such a decision is not a permanent bar to holding an ATOL.

Often, depending on the nature of the reasons for the decision, the CAA will be looking for a period of compliance with the ATOL Regulations and other relevant law, prior to considering a fresh application from an ATOL holder (or from people appearing to the CAA to control an ATOL holder that has had licensing action taken against it by the CAA under this Part 5 process).

12. COMPLAINTS

Any complaint concerning the manner in which a decision is made under this procedure should be sent in writing to the General Counsel, Civil Aviation Authority, Aviation House, Gatwick Airport South, Gatwick, West Sussex, RH6 0YR.

ANNEX A

PART 4

LICENSING PROVISIONS

CHAPTER 1

Application for, and refusal of, an ATOL or accreditation as an accredited body

Application for and grant of an ATOL or a variation to an ATOL

31.—(1) The CAA must specify and publish the requirements for an application for an ATOL or a variation to an ATOL.

(2) Subject to paragraph (4), an application for the grant or variation of an ATOL must be made in a form and manner published by the CAA.

(3) Where such an application is received the CAA must—

(a) grant an ATOL or a variation to an ATOL to the applicant in the terms requested in the application;

(b) grant an ATOL or a variation to an ATOL in those terms with such modifications and subject to such conditions as the CAA thinks fit; or

(c) refuse to grant an ATOL or a variation to an ATOL.

(4) The CAA may refuse to consider an application unless it is accompanied by the charge payable under a charging scheme made under section 11 of the Act.

(5) The CAA may require as a condition or a term of the ATOL compliance with one or more of the ATOL standard terms and all or any part of the schedule of agency terms.

(6) When granting an ATOL, the CAA must provide a number for that ATOL, unique to that ATOL.

Refusal to grant an ATOL

32.—(1) The CAA must refuse to grant an ATOL if the CAA is not satisfied that the applicant is a fit person to make available flight accommodation.

(2) The CAA may refuse to grant an ATOL or a variation to an ATOL if the CAA is not satisfied—

(a) that the applicant is competent to make available flight accommodation;

(b) that the resources of the applicant and the financial arrangements made by the applicant are adequate for discharging the actual and potential obligations in respect of the activities in which the applicant is engaged (if any) and in which the applicant may be expected to engage if granted the ATOL;

(c) that it has appointed a person acceptable to the CAA as its accountable person; or

(d) that the applicant has complied with all or any of regulations 7, 8 and 9 of the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007(10) which are applicable to it in the circumstances.

(3) In determining whether the applicant is a fit and competent person under paragraph (1) or 2(a) the CAA must have regard to—

(a) the past activities generally of the applicant and the applicant's employees; and

(b) where the applicant is a body corporate, the past activities generally of the persons appearing to the CAA to control that body.

(4) The CAA is not obliged to refuse an ATOL on the grounds that the applicant has insufficient experience in making available flight accommodation.

Application for and grant of accreditation as an accredited body

33.—(1) The CAA must specify and publish the requirements for an application for an accreditation as an accredited body or a variation of such an accreditation.

(2) Subject to paragraph (4), an application for accreditation as an accredited body or a variation of such an accreditation must be made in a form and manner published by the CAA.

(3) Where such an application is received the CAA must—

(a) grant an accreditation or a variation to such an accreditation to the applicant in the terms requested in the application;

(b) grant an accreditation or a variation to such an accreditation subject to such conditions as the CAA thinks fit; or

(c) refuse to grant an accreditation or a variation to such an accreditation.

(4) The CAA may refuse to consider an application unless it is accompanied by the charge payable under a charging scheme made under section 11 of the Act.

(5) The CAA may require as a condition or a term of the accreditation compliance with one or more of the accredited body standard terms and all or any part of the schedule of agency terms.

Refusal to grant an accreditation

34. The CAA must refuse to grant an accreditation as an accredited body or a variation to such an accreditation for the purposes of these Regulations unless—

(a) the applicant is an ATOL holder; and

(b) the CAA is satisfied that the applicant's—

(i) organisation, staffing, financial and other arrangements; and

(ii) conditions of membership and its arrangements for supervising its members, are such that a person dealing with a member of the accredited body will receive a level of protection which is equivalent to the one they would receive if dealing similarly with an ATOL holder that is not an accredited body.

CHAPTER 2

Revocation, suspension, variation and refusal of ATOL or accreditation

SECTION 1

ATOL

Revocation, suspension or variation of an ATOL

35.—(1) The CAA must revoke, suspend or vary an ATOL if the CAA is no longer satisfied that the ATOL holder is a fit person to make available flight accommodation.

(2) The CAA may revoke, suspend or vary an ATOL if—

(a) it is no longer satisfied with regard to any of the matters specified in regulation 32(2), or

(b) the ATOL holder fails to comply with any term or condition of its ATOL.

Procedure for revocation, suspension, variation or refusal of ATOL

36. Subject to regulation 37, if it is proposed to—

(a) revoke, suspend or vary an ATOL otherwise than on the application of the holder;

(b) grant or vary an ATOL in terms other than those requested by the applicant; or

(c) refuse to grant an ATOL,

the CAA must serve on the ATOL holder or the applicant for the ATOL at least 21 days notice of the proposal to make such a decision and its reasons for the proposal.

Expedited suspension of an ATOL

37.—(1) The CAA may suspend an ATOL notwithstanding that it has not complied with the requirements of regulation 36 if it—

(a) is no longer satisfied that—

(i) the ATOL holder is a fit or competent person to make available flight accommodation; or

(ii) the resources and financial arrangements of the ATOL holder are adequate for discharging the actual and potential obligations in respect of the activities in which the ATOL holder is engaged;

(b)serves on the ATOL holder at least 72 hours notice of its proposal to suspend the ATOL and its reasons for the proposal; and

(c)considers any representations which may be made to it by the ATOL holder before the expiration of such notice.

(2) In computing the period of 72 hours specified in paragraph (1)(b), the whole of any Saturday, Sunday, Christmas Day, Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom is to be disregarded.

Provisional variation of an ATOL

38.—(1) Where in the CAA's opinion it is in the interests of consumers to do so, the CAA may provisionally vary an ATOL with immediate effect.

(2) When issuing a provisional variation the CAA must supply a summary of the reasons for the provisional variation to the ATOL holder.

(3) Within a period of 28 days beginning with the date of issue of a provisional variation the CAA must service a notice under regulation 36 to revoke, suspend or vary the ATOL unless the provisional variation is withdrawn by the CAA.

(4) A provisional variation may impose such terms or conditions on the ATOL as the CAA considers necessary for the protection of current or potential consumers.

Application for revocation, suspension or variation of an ATOL

39.—(1) The ATOL holder may make an application to the CAA to revoke, suspend or vary its ATOL at any time.

(2) No application may be made to revoke, suspend or vary the ATOL standard terms.

(3) The CAA may refuse to consider any application for variation of an ATOL unless it is accompanied by the charge payable under a charging scheme made under section 11 of the Act.

Compliance with and variation of ATOL standard terms

40.—(1) The CAA must publish a schedule of standard terms for an ATOL.

(2) The CAA may publish a proposed variation to ATOL standard terms.

(3) A proposal to vary one or more of the ATOL standard terms must specify the date on which the variation will come into force which must be at least 28 days after the date of publication.

(4) Where an ATOL is subject to one or more of the ATOL standard terms, the ATOL holder must comply with any variation to the ATOL standard terms applicable to its ATOL.

Supplying false information

41. A person must not, knowingly or recklessly, supply to the CAA any information which is false in a material respect for the purpose of obtaining for themselves or for another person an ATOL or a variation of an ATOL or the cancellation of the suspension of an ATOL.

SECTION 2

Accreditation

Validity of an accreditation

42. An accreditation ceases to be valid if the accredited body ceases to hold an ATOL or its ATOL is suspended.

Revocation, suspension or variation of an accreditation

43. The CAA may revoke, suspend or vary an accreditation if—

(a) it is no longer satisfied with regard to any of the matters specified in regulation 34(b);

(b) the accreditation body fails to comply with any term or condition of its accreditation;
or

(c) it discovers that false information has been supplied for an application for an accreditation as an accredited body or a variation of such an accreditation.

Procedure for revocation, suspension, variation or refusal of accreditation

44. Subject to regulation 45, if it is proposed to—

(a) revoke, suspend or vary an accreditation otherwise than on the application of the accredited body;

(b) grant or vary an accreditation in terms other than those requested by the applicant;
or

(c) refuse to grant an accreditation,

the CAA must serve on the accredited body or the applicant for the accreditation at least 21 days notice of the proposal to make such a decision and its reasons for the proposal.

Expedited suspension of an accreditation

45.—(1) The CAA may suspend an accreditation notwithstanding that it has not complied with the requirements of regulation 44 if it—

(a) is no longer satisfied that the applicant's—

(i) organisation, staffing, financial and other arrangements; and

(ii) conditions of membership and its arrangements for supervising its members,

are such that a person dealing with a member of the accredited body will receive a level of protection which is equivalent to the one they would receive if dealing similarly with an ATOL holder that is not an accredited body.

(b)serves on the accredited body at least 72 hours notice of its proposal to suspend the accreditation and its reasons for the proposal; and

(c)considers any representations which may be made to it by the accredited body before the expiration of such notice.

(2) In computing the period of 72 hours specified in paragraph (1)(b) the whole of any Saturday, Sunday, Christmas Day, Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom is to be disregarded.

Provisional variation of accreditation

46.—(1) Where in the CAA's opinion it is in the interests of consumers to do so, the CAA may provisionally vary an accreditation with immediate effect.

(2) When issuing a provisional variation the CAA must supply a summary of the reasons for the provisional variation.

(3) A provisional variation remains in force until a decision is reached on the proposal to revoke, suspend or vary the accreditation unless the provisional variation is withdrawn by the CAA.

(4) A provisional variation may impose such terms and conditions on the accreditation as the CAA considers necessary for the protection of current or potential consumers.

Application for revocation, suspension or variation of accreditation

47.—(1) The accredited body may apply for its accreditation to be revoked, suspended or varied at any time, but may not apply for the variation of the accredited body standard terms.

(2) The CAA may refuse to consider any application for variation of an accreditation unless it is accompanied by the charge payable under a charging scheme made under section 11 of the Act.

Compliance with and variation of accredited body standard terms

48.—(1) The CAA must publish a schedule of standard terms for an accredited body.

(2) The CAA may publish a proposed variation to accredited body standard terms.

(3) A proposal to vary one or more of the accredited body standard terms must specify the date on which the variation will come into force which must be at least 28 days after the date of publication.

(4) Where an accreditation as an accredited body is subject to one or more of the accredited body standard terms, the accredited body must comply with any variation to the accredited body standard terms applicable to its accreditation.

ANNEX B

PART 5

DECISIONS AND HEARINGS

CHAPTER 1

Licensing Procedures

Meaning of “the person concerned”

49.—(1) In this Part, “the person concerned” means the applicant for or holder of an ATOL or accreditation which is the subject of the proceedings.

(2) In this part, “the CAA’s employee responsible for the proposal” means an employee of the CAA designated by them to consider whether an ATOL or accreditation ought to be revoked, suspended or varied and who proposes what action should be taken to the Member.

Decisions to be made by Member

50.—(1) This Part applies to the CAA’s function of making a decision to—

- (a) revoke, suspend or vary an ATOL or accreditation otherwise than on the application of the person concerned,
- (b) grant or vary an ATOL or accreditation in terms other than those requested by the applicant,
- (c) refuse to grant an ATOL or accreditation, or
- (d) provisionally vary an ATOL or accreditation.

(2) Any other decision to grant, revoke, suspend or vary an ATOL or accreditation may be made on behalf of the CAA only by a Member or by an employee of the CAA.

(3) Where this Part applies, the quorum of the CAA is one Member.

(4) Where a decision is to be made by more than one Member, references in this Part to “Member” shall include all such Members.

Application for extension of time limit

51.—(1) The CAA may extend any time limit imposed by this Part whether or not it has already expired, if—

- (a) it would not be reasonable to expect any person subject to such a limit to comply or to have complied with the time limit; or
- (b) not to extend the time limit would result in substantial injustice.

(2) Before deciding whether or not to extend the time limit the CAA must give persons entitled to attend a hearing under regulation 59 an opportunity to submit written representations.

Confidential information

52.—(1) In this regulation, confidential information means personal data (as defined in section 1 of the Data Protection Act 1998(11)) or information which in the opinion of the CAA relates to the commercial or financial affairs of any person.

(2) The CAA must exclude from a statement of reasons or decision which it is required to publish any confidential information which cannot be disclosed without disadvantage to the person to whom it relates where, by comparison with the advantage to the public, its disclosure is unwarranted.

Consideration of representations

53.—(1) Before making a decision specified in regulation 50(1)(a), (b) or (c), the Member must consider any representations and evidence submitted by the person concerned and the CAA's employee responsible for the proposal.

(2) The requirement to consider the representations only applies if they are provided to the CAA by the person concerned within 10 days beginning with the date of service of the notice under regulation 36 or regulation 44 or such additional period as the Member may determine in accordance with regulation 51.

(3) The Member may request further information and specify the period of time in which it must be supplied from the person concerned or the CAA employee responsible for the proposal after considering any representations and evidence submitted.

Statement of reasons

54. Where the CAA makes a decision to—

(a) revoke, suspend or vary an ATOL or an accreditation otherwise than on the application of the person concerned;

(b) grant or vary an ATOL or an accreditation in terms other than those requested by the person concerned; or

(c) refuse to grant an ATOL or an accreditation,

the CAA must supply a statement of its reasons for the decision to the person concerned.

Publication of Decision

55. Where the CAA decides to revoke or suspend an ATOL or accreditation the decision must be published by the CAA.

CHAPTER 2

Requirement for and conduct of hearing

Requirement to hold a hearing

56.—(1) Within the time limit under regulation 53 for providing representations to the CAA, the person concerned may request a hearing.

(2) Where the person concerned requests a hearing, the Member must before making a decision, hold a hearing and consider any representations made or evidence submitted at such a hearing.

(3) Where the person concerned does not request a hearing, the Member may hold a hearing, if the Member considers it appropriate following consideration of representations and evidence submitted under regulation 53.

Giving notice of hearing

57.—(1) Subject to regulation 51, no hearing is to be held under this Part unless the CAA has served on the person concerned at least 7 days notice of the date, time and place of the hearing.

(2) The notice must clearly identify the matter to which it relates.

(3) The notice must be published at least 7 days before the date of the hearing unless the hearing is to be held in private.

(4) On the day of the hearing, the notice must be exhibited in a visible and accessible place at the venue where the hearing is scheduled to take place unless the hearing is to be held in private.

Expedited hearing

58.—(1) If the CAA is satisfied that for reasons of urgency it is desirable to do so, a hearing may be held without notice having been served, published and exhibited in accordance with regulation 57.

(2) In such a case, the CAA must give notice of the date, time and place of the hearing, being notice of such length and by such means as it thinks fit, to the applicant, the ATOL holder or accredited body.

Entitlement to attend and be heard

59. The person concerned and the CAA's employee who has made the proposal under regulation 36 or regulation 44 to be determined have a right to attend and be heard at the hearing.

Absence of party

60. Where the CAA is required to hold a hearing under this Part, the hearing may proceed in the absence of the person concerned or that person's representative and the CAA must consider any representations made or evidence submitted by any person entitled to attend who is in attendance.

Technical assessors

61. The Member conducting a hearing may appoint a technical assessor, so long as that assessor did not participate in the application or proposal which is the subject of the hearing, to provide advice and assistance.

Right to be represented, produce evidence and examine other persons

62.—(1) At a hearing every person with a right to be heard may appear in person or be represented by any other person who they have authorised to represent them.

(2) A person with a right to be heard or their representative may—

(a) produce oral and written evidence; and

(b) examine the other persons being heard, and any witness produced by such persons.

Hearings in public or in private

63.—(1) All hearings must be in public unless—

(a) the CAA is satisfied that a private hearing is required—

(i) in the interests of morals, public order or national security in a democratic society,

(ii) the interests of juveniles or the protection of the private lives of the parties, or

(iii) to the extent strictly necessary in the opinion of the CAA in special circumstances if publicity would prejudice the interests of justice; or

(b) where the person concerned has requested in writing that the hearing be in private and the CAA is satisfied that there is no important public interest consideration that calls for the public to be present.

(2) The CAA may decide under paragraph (1) that part only of the hearing is to be in private or that information about the proceedings before the CAA, the names and identifying characteristics of persons concerned in the proceedings or specified evidence given in the proceedings must not be made public or disclosed to the person concerned.

3) Any person who the CAA, with the consent of the person concerned or their representative, permits to attend the hearing may attend a hearing, whether or not it is in private.

Procedure at hearing

64.—(1) At the beginning of any hearing the CAA must explain the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence.

(2) The CAA may conduct the hearing in the manner it considers most suitable—

(a) to the clarification of the issues before it; and

(b) to enable the CAA, with the assistance of the person concerned (or their representative) and the CAA employee responsible for the proposal, to deal with the case fairly and justly;

seeking to avoid, where appropriate, formality and inflexibility in its proceedings.

(3) The CAA may consider evidence of any fact which seems to the CAA to be relevant even if the evidence would be inadmissible in proceedings before a court of law.

Provision of transcripts

65.—(1) All the proceedings at a hearing in accordance with this Part must be recorded in writing.

(2) Subject to paragraphs (3), (4) and (5), a copy of the transcript of the proceedings must be made available to any person on request, unless a decision has been taken to hold the hearing in private, in which case a transcript must only be made available to those present at the hearing.

(3) If part of the hearing is held in private, a copy of the transcript of that part of the proceedings must only be supplied to persons present during that part.

(4) The CAA is entitled to require payment of a reasonable fee before supplying a copy of any transcript.

(5) The CAA is not required to supply an electronic recording or transcript of the proceedings at any time more than one year after it has published or notified its decision.

Exclusions

66. Nothing in this Part prevents the CAA from provisionally varying an ATOL in accordance with regulation 38 or an accreditation in accordance with regulation 46.

ANNEX C

Guidance on the use of a technical assessor by the Panel

Power to appoint technical assessor

Regulation 61 of the ATOL Regulations provides that:

“Technical assessors

61. The Member conducting a hearing may appoint a technical assessor, so long as that assessor did not participate in the application or proposal which is the subject of the hearing, to provide advice and assistance.”

Role

The role of a Technical Assessor is to act as an adviser to assist the CAA Panel to understand the technical background of the case and to identify any key technical issues in dispute. The CAA Panel may not necessarily have a technical aviation background and advice from an assessor may be helpful to develop the CAA Panel’s understanding of the context of the case.

The CAA Panel Lawyer will advise the CAA Panel on the proper role of an assessor. The assessor will not be acting as an expert witness in the case and must not—

- a) provide an opinion on the issues in dispute;
- b) act as a decision maker; or
- c) attend the deliberations of the Panel after the hearing.

If appointed, an assessor will attend the hearing and may, if required, provide advice to the Panel at the hearing as well as in advance of the hearing.

Identity of technical assessor

The CAA Panel Lawyer will assist the CAA Panel to decide whether the appointment of an assessor would be beneficial in each case. If such an appointment is to be made, the CAA Panel Lawyer will identify and appoint a suitable assessor on the CAA Panel’s behalf. The assessor will be independent, not an employee of the CAA, and will have had no prior involvement in the case. He/she will have the necessary skills and expertise to provide advice to the CAA Panel.

The CAA Panel Lawyer will notify the applicant and CMG Lawyer in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.

Where any person has been proposed for appointment as an assessor, the applicant/holder or CMG may object to that person either personally or in respect of that person’s qualification and the CAA Panel will consider the objections before deciding whether or not to appoint that person.

Instruction of a technical assessor

The CAA Panel Lawyer will manage the instruction of the assessor. The assessor will receive an appointment letter setting out the terms and conditions of his appointment, which will include a copy of this guidance. The assessor will be provided with the bundle of documents which have been prepared for the hearing.

The Panel may ask questions of the assessor and receive advice through some or all of the following methods—

- a) Meeting in advance of the hearing. The CAA Panel Lawyer will attend to manage the meeting. After the meeting the assessor will confirm the advice which he/she has provided in a letter, which will be copied to the applicant and CMG Lawyer prior to the hearing.
- b) Written questions and written responses, which will be copied to the Applicant and CMG Lawyer prior to the hearing.
- c) At the hearing. The CAA Panel may put further questions to the assessor during the hearing but the assessor will not give oral evidence or be open to cross-examination or questioning by the applicant/holder or CMG.

The advice

The assessor's advice should be the independent product of the assessor uninfluenced by the pressures of the case or the review process.

Assessors should make it clear—

- a) when a question or issue falls outside their expertise; and
- b) when they are not able to provide definite advice, for example because they have insufficient information.

If, after giving advice, an assessor's view changes on any material matter, such change of view should be communicated to the CAA Panel without delay.

The assessor's written advice should—

- a) give details of the assessor's qualifications and experience;
- b) set out the questions that have been put by the CAA Panel;
- c) give details of any literature or other material which has been relied on in providing the advice;
- d) make clear which of the facts stated in the report are within the assessor's own knowledge;
- e) contain a summary of the conclusions reached;

- f) if the expert is not able to give advice without qualification, state the qualification; and
- g) contain a statement that the assessor:
 - i) understands that he/she has been appointed to provide technical advice to the CAA Panel;
 - ii) is aware that he/she is not acting as an expert witness and must not provide an expert opinion on any technical issues in dispute; and
 - iii) is not aware of any potential conflict of interest and there is no other reason why he/she should not act in the matter.

ANNEX D

Extract of ATOL Regulations concerning service of documents

Service by post etc

6.—(1) A notice or other document is served on a person in accordance with this regulation if it is set out in writing and —

- (a) delivered to that person;
- (b) left at the person's proper address;
- (c) sent by post to that address; or
- (d) sent to the person at that address by fax or other similar means which produce a document containing a text of the communication, in which event the document is regarded as served when it is received.

(2) In paragraph (1), "proper address" means in the case of—

- (a) an individual, that person's usual or last known place of business, employment, or residence;
- (b) a body corporate, its principal or registered office or its principal place of business;
- (c) a limited liability partnership, the address of its principal or registered office; or
- (d) a partnership or an unincorporated body or association, its principal office or principal place of business.

Electronic service by the CAA

7.— (1) A notice or other document required to be served by the CAA is served in accordance with this regulation if—

- (e) an address for service using electronic communication has been given by that person and not withdrawn in accordance with paragraph (5);
- (f) that person has agreed to accept service by electronic communication of documents in a certain form and has not withdrawn that agreement in accordance with paragraph (5); and
- (g) electronic communication is used to send the notice or other document in that form to that person at that address.

(3) A document given to or served on a person in accordance with paragraph (1) must be in a form sufficiently permanent to be used for subsequent reference.

(4) If a document is given to or served on a person in accordance with paragraph (1), the document is deemed to have been given to or served on that person at the time at which the electronic communication is transmitted unless—

(a) the contrary is proved; or

(b) paragraph (4) applies.

(5) If the time at which an electronic communication is transmitted to a person is a time at which that person's principal place of business in the country in which the addressee is situated is not normally open for business, the document is deemed to have been given or served on that person on the next day on which that person's principal place of business in the country in which the addressee is situated is normally open for business.

(6) A person who has supplied an address for service using electronic communication and has agreed to accept service of documents in a certain form in accordance with paragraph (1)(b) may give notice withdrawing that address or that agreement or both.

(7) A withdrawal under paragraph (5) takes effect on the later of—

(a) the date specified by the person in the notice; and

(b) the date which is 14 days after the date on which the notice is given.

(8) This regulation does not apply to any document the service of which is provided for by the rules of the court.

ANNEX E

Use of Provisional Variation

1. The Law

Regulation 38 of the Air Travel Organiser's Licensing Regulations 2012 (the ATOL Regulations) provides—

Provisional variation of an ATOL

38.—(1) Where in the CAA's opinion it is in the interests of consumers to do so, the CAA may provisionally vary an ATOL with immediate effect.

(2) When issuing a provisional variation the CAA must supply a summary of the reasons for the provisional variation to the ATOL holder.

(3) Within a period of 28 days beginning with the date of issue of a provisional variation the CAA must service a notice under regulation 36 to revoke, suspend or vary the ATOL unless the provisional variation is withdrawn by the CAA.

(4) A provisional variation may impose such terms or conditions on the ATOL as the CAA considers necessary for the protection of current or potential consumers.

2. Applying the test

The legal test for issuing a provisional variation of an ATOL⁴ is that the CAA is of the opinion that it is in the interests of consumers to do so. When issuing a provisional variation the CAA must supply a summary of its reasons. This summary will be supplied by the CAA in the form of a letter.

A provisional variation may impose such terms or conditions on the ATOL as the CAA considers necessary for the protection of current or potential consumers.

A decision to take provisional variation action must be taken by a CAA Board Member.

3. Requirement for proposal in 28 days

In addition, regulation 38(3) requires that within a period of 28 days beginning with the date of issue of a provisional variation of an ATOL the CAA must serve a notice under regulation 36 to vary, suspend or revoke the ATOL unless the provisional variation is withdrawn by the CAA. This notice will be served by the CAA in the form of a written proposal. Provided such a proposal is served within 28 days, the provisional variation will then remain in force until such time as a final decision is made by the CAA whether to revoke, suspend or vary the ATOL, or the provisional variation is withdrawn.

⁴ The same legal test applies for issuing a provisional variation of an accreditation as an Accredited Body. The principles reflected in this policy apply equally to the provisional variation of an accreditation.

4. Consumer detriment

As noted, to issue a provisional variation of an ATOL the CAA must be of the opinion that it is in the interests of consumers to do so. It is one of the CAA's strategic objectives to put consumers first when making its regulatory decisions, therefore it is the CAA's policy to minimise overall consumer detriment. Consumer detriment may arise—

- through the financial failure of ATOL holders;
- through the lack of fitness or competence of ATOL holders; or
- because the person previously accepted by the CAA as the accountable person of an ATOL holder is no longer acceptable.

Note that consumer detriment may be suffered both—

- *by a consumer that has booked (or may book) with the ATOL holder concerned; and*
- *by consumers that have booked (or may book) with other ATOL holders where, for example, a failure may increase the level of APC payable, which cost is ultimately borne by consumers through increased holiday prices.*

5. The terms and conditions that may be imposed by a provisional variation

The range of terms and conditions the CAA can impose on an ATOL is very wide. Any such term or condition must always give effect to the purpose of the ATOL scheme. In addition, as a provisional variation has immediate effect, the consequence of the provisional variation must be one which is needed immediately, in the reasonable opinion of the CAA in the interests of consumers.

The terms of a provisional variation could therefore include, for example—

- a) requiring the ATOL holder to open a trust account into which consumer payments are deposited;
- b) preventing the ATOL holder from accepting any monies in respect of existing bookings;
- c) prohibiting any new bookings;
- d) putting a weekly limit on the number or value of bookings the ATOL holder may take;
- e) imposing a corrective action plan with perhaps a forward dated restriction on the taking of new bookings or acceptance of balances if the plan is not achieved; or
- f) reducing the ATOL Licence Limit to zero.

6. Use of a provisional variation

A provisional variation of an ATOL may be used on its own or in conjunction with a proposal to take one of the other regulatory actions available to the CAA under the ATOL Regulations, namely—

- expedited suspension;
- suspension (not expedited);
- revocation; or
- variation

of the ATOL

7. Example of circumstances when the CAA might issue a provisional variation without at the same time issuing a written proposal to vary, suspend or revoke an ATOL

One example of the circumstances in which the issuing of a provisional variation without at the same time issuing a written proposal to vary, suspend or revoke an ATOL may be appropriate is where—

- a) the legal test for a provisional variation is satisfied (see paragraph 2);
- b) CAA has sufficient information to raise serious concerns about the ATOL holder's compliance with the ATOL Regulations or involvement in serious financial crimes or other serious crimes involving dishonesty on the part of the ATOL holder or its directors, or those appearing to the CAA to control the ATOL holder; and
- c) the CAA is making or intends to make urgent, further enquiries before deciding whether or not to proposal to suspend or revoke the ATOL on the grounds of fitness and it is in the interests of consumers that further terms and conditions should be imposed on holder's ATOL whilst those enquiries are ongoing.

There may be other circumstances in which the issuing of a provisional variation without at the same time issuing a written proposal to vary, suspend or revoke is appropriate.

8. When the CAA might issue a provisional variation with a written proposal to vary or revoke an ATOL

A provisional variation would be imposed at the same time as a proposal to vary or revoke where the CAA has all the information required to propose to vary or revoke an ATOL but the interests of consumers may require some restrictions on the ATOL holder during the period between the proposal and a decision.

This would normally only be done in circumstances where the provisional variation itself, would not have such an impact so as to threaten the viability of the ATOL holder pending the hearing.

Where a provisional variation would threaten the viability of the ATOL holder, the CAA will normally issue a proposal for an expedited suspension at the same time as the proposal to revoke. This will enable the ATOL holder to put its case to the decision maker before any decision that compromises the ability of the ATOL holder to continue trading is taken.

9. Use of provisional variation where ATOL holder appears to be deliberately frustrating the CAA

One particular circumstance where provisional variation may be appropriate is where the CAA concludes that an ATOL holder is deliberately frustrating the CAA's attempts to establish all the facts in a particular licensing case. This may be for example by failing to attend meetings or failing to provide information which has been requested and which the CAA is entitled to request.

In these circumstances, the CAA may notify the ATOL holder that a failure to respond as requested within a specified period will result in the issue of a provisional variation. The restrictions imposed may be proportionate and targeted to incentivise proper cooperation with the regulator. As always, the legal test for a provisional variation must also be satisfied.

10. Using a provisional variation to extend an ATOL

ATOLs are normally granted for a year. Ordinarily, ATOL holders are expected to have completed all necessary steps to renew their ATOL in good time before the expiry of their previous ATOL. As set out in the CAA's published policy, where an ATOL holder fails to do so, it must take a number of steps including desisting from taking new bookings that would require it to hold an ATOL. However, exceptionally, if the CAA considers it is in the interest of consumers to do so and the CAA considers it is not in a position to decide whether to grant a new ATOL, the CAA may consider issuing a provisional variation to extend the period of the existing ATOL.

11. Taking account of risk to viability of ATOL holder's business

In assessing whether to take provisional variation action, full account will be taken of the likely impact on the ATOL holder and the fact that this impact would be imposed without the ATOL holder having an opportunity to put its case to the decision maker.

The use of this power, where the effect would be an immediate and substantial impact on the viability of the ATOL holder, will generally therefore be reserved for those circumstances, where after proper consideration, the CAA has concluded there is no alternative approach that would achieve the protection the CAA considers necessary to protect consumers from an immediate and significant risk of harm.

12. Changes to the reasons for issuing a provisional variation

When issuing a provisional variation, the CAA must supply a summary of reasons. But after further enquiries, when the time comes to serve the proposal, those reasons, or some of them, may no longer be valid. They may have been wholly or partly displaced or supplemented by new concerns. The proposal will need to reflect these new concerns.

If this situation arises, the CAA will formally withdraw the original provisional variation and replace it with a new one. This should be done at the same time as the proposal.

So the proposal letter would consist of three parts—

Part 1 Withdrawal of the original provisional variation

Part 2 Issue of a new provisional variation, confirming that the CAA is of the opinion that it is in the interests of consumers to issue it and setting out a new summary of reasons. This may simply reference the reasons for the proposal set out in Part 3 of the letter.

Part 3 The proposal, thereby satisfying the requirement to serve a proposal within 28 days of the provisional variation.

If the CAA has issued a provisional variation and the CAA ceases to consider that the legal test to provisionally vary the ATOL is met, it will withdraw the provisional variation immediately.

13. What if the CAA is not able to serve a written proposal to vary or revoke an ATOL within 28 days?

The provisional variation must be withdrawn if the CAA is not able to serve a written proposal to vary or revoke an ATOL within 28 days.

In such a case, the CAA may immediately reissue a new provisional variation. Examples might occur where—

- a) there are new grounds for a provisional variation that meet the test above; or
- b) the circumstances justifying the original provisional variation remain in existence; and

a significant reason for a written proposal to revoke or vary an ATOL not being made within the 28 day period is that, in the opinion of the CAA, the ATOL holder has wilfully delayed supplying or refused to supply information that the CAA was entitled to demand from the ATOL holder. This would be information relevant to the CAA's enquiries, which the CAA required in order to finalise those enquiries, and which the CAA could not obtain from another source.

ANNEX F

Use of Expedited Suspension

1. The Law

Expedited suspension of an ATOL

37.—(1) The CAA may suspend an ATOL notwithstanding that it has not complied with the requirements of regulation 36 if it—

(a) is no longer satisfied that—

- (i) the ATOL holder is a fit or competent person to make available flight accommodation; or
- (ii) the resources and financial arrangements of the ATOL holder are adequate for discharging the actual and potential obligations in respect of the activities in which the ATOL holder is engaged;

(b) serves on the ATOL holder at least 72 hours notice of its proposal to suspend the ATOL and its reasons for the proposal; and

(c) considers any representations which may be made to it by the ATOL holder before the expiration of such notice.

(2) In computing the period of 72 hours specified in paragraph (1)(b), the whole of any Saturday, Sunday, Christmas Day, Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom is to be disregarded.

2. Applying the test

The grounds on which the CAA might wish to suspend an ATOL,⁵ using the expedited suspension procedure under Regulation 37, are that the CAA is no longer satisfied that—

- a) the ATOL holder is a fit or competent person to make available flight accommodation; or
- b) the resources and financial arrangements of the ATOL holder are adequate for discharging the actual and potential obligations in respect of which the ATOL holder is engaged; and

it is appropriate to use the expedited (72 hour procedure) rather than the 21 day procedure.

⁵ The grounds on which the CAA might wish to suspend an accreditation an Accredited Body are set out in regulation 46 of the ATOL Regulations. The principles reflected in this policy apply equally to the provisional suspension of an accreditation.

It would be appropriate to use the expedited procedure rather than the full 21 day notice procedure if—

- a) the CAA has sufficient grounds to make a proposal to revoke the ATOL;
- b) the CAA makes such a proposal at the same time as it makes the proposal for expedited suspension; and
- c) the interests of the consumer require the expedited suspension of the ATOL.

3. When the interests of the consumer will require the expedited suspension of the ATOL

The CAA will normally consider that the interests of the consumer require the expedited suspension of the ATOL if—

- a) the CAA considers that the evidence as to the lack of fitness or competence or as to the resources and financial arrangements of the ATOL holder is compelling;
- b) consumers' interests will be seriously put at detriment if the ATOL is not suspended on such short notice rather than on the full 21 days; and
- c) such detriment will outweigh any potential detriment to the ATOL holder as a result of an expedited suspension.

4. Use of expedited suspension

This would be appropriate in the same circumstances as the provisional variation but where the protection of consumers does not demand immediate action so that it will be appropriate to allow the ATOL holder to continue to conduct licensable business for a short period.

It would normally be coupled with a proposal to revoke although it is likely that a hearing on the proposal to revoke would only be reached in cases where the expedited suspension itself had not been fatal for the ATOL holder/business.

5. Circumstances in which expedited suspension may be appropriate

Generally (but there may be circumstances where it is necessary to proceed otherwise), in cases where—

- a) issuing a provisional variation, on the terms necessary in the view of the CAA to protect the interests of consumers, is likely to cause the ATOL holder to fail;
- b) in CMG's view, the CAA has sufficient grounds to suspend or revoke an ATOL, and is issuing a proposal to do so; and
- c) nevertheless the CAA wishes to protect the interests of consumers by preventing the ATOL holder from trading until a decision has been made by the CAA Board Member on the proposal to revoke the ATOL

then, the CAA will issue a proposal for an expedited suspension of the ATOL at the same time as issuing a proposal to revoke the ATOL rather than issuing a provisional variation at the same time. This is so that the ATOL holder may have its representations considered albeit at short notice (pursuant to the Part 5 procedure in the ATOL Regulations) before any decision (that will stop the ATOL trader trading or cause it to fail) is made by a CAA Board member and can come into force.

6. When the CAA might take provisional variation action at the same time as proposing an expedited suspension and proposal to revoke the ATOL

The CAA may take provisional variation action at the same time as proposing an expedited suspension of, and proposal to revoke, the ATOL where—

- the CAA intends to issue a proposal to revoke and, at the same time, a proposal for an expedited suspension; and
- pending the hearing of the proposal to revoke, the CAA also wishes to provisionally vary the ATOL.

Such circumstances might arise because the case is so serious that the need to make such a provisional variation in the interests of consumers outweighs the detriment to the ATOL holder.

In particular, it outweighs the detriment resulting from the ATOL holder not being able to have its representations heard (even under the expedited procedure) before a decision is made by a CAA Board Member. This is even though such a decision may stop the ATOL holder trading or cause it to fail.