

ATOL Standard Term 6: CAA's statement on the consultation on a proposal to amend ATOL Standard Term 6

CAP 1328

A large, abstract graphic composed of overlapping, semi-transparent circular and curved shapes in various shades of blue and grey, occupying the bottom two-thirds of the page.

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Background

In June 2014, we published a consultation on a proposal to amend ATOL Standard Term 6 (AST 6) to extend the scope of the restrictions on who ATOL holders may sell to.

The amendments were proposed as it had become apparent that consumers could be confused about their ATOL protection when booking with businesses which are exempt from holding an ATOL but who sell ATOL holders' protected seats with other components.

These issues, which apply to any sales of an ATOL protected seat made through an exempted business, have become more apparent recently with businesses based in EEA states that are exempted in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (ATOL Regulations).

The confusion arises as it is often unclear to the consumer making such a booking whether there is any financial protection in place. In fact, if the ATOL protected seat is sold with accommodation and/or car hire as a package or a Flight-Plus, the seat loses its financial protection under the ATOL scheme (as set out in the Air Travel Trust Payment Policy) therefore no ATOL protection is in place. Where the ATOL protected seat is sold as part of a package, the EEA established business is required to provide protection under its own member state protection scheme.

In some of these bookings, consumers will receive a Flight-Only ATOL Certificate from the flight providing ATOL holder. There may therefore be a mistaken expectation from consumers that ATOL will provide comprehensive protection for their entire holiday even though there may be no protection in place at all. In the event of a failure, consumers may be confused, inconvenienced and potentially out of pocket having to pay again for all or part of their holiday.

To prevent this confusion arising, the CAA proposed amending AST 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. However, exempt businesses would still be able to purchase these seats in an unprotected capacity on a business to business basis as the proposed prohibition in AST 6 does not prohibit these sales.

The consultation document sets out the proposed changes to AST 6 and can be found [here](#). The terminology in the consultation document and 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.

Theme of Responses

The consultation period closed on 1 August 2014. The consultation paper posed the following question:

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 ATOL, for resale in the UK alongside other components, while still permitting them to sell seats on an unprotected business-to-business basis?

There were nine responses in total, with five in support of the proposal and four opposed to it. The responses have been published in appendix A.

Those in support of the proposal acknowledged the need to make changes in order to improve clarity for consumers on the financial protection of their holiday. However, others queried the scale of the problem and whether there was any evidence of consumer harm.

Some of the respondents asked whether it is the right time to make such changes given the impending implementation of a revised Package Travel Directive. A number of those opposed to the proposals also commented that the current ATOL Regulations are already sufficient to avoid the confusion identified in the consultation document and that the proposals to AST6 are therefore unnecessary. This is explored in more detail below.

The ATOL Regulations

The argument put forward by some of the consultation respondents is that the ATOL Regulations are already adequate to prevent these flights being sold to UK consumers without ATOL protection and this removes any confusion caused by the scenarios in question. In summary, the argument which has been made is as follows:

The main concern identified in the consultation relates to a circumstance where a business (Business A), established in an EEA state other than the UK, wishes to sell an ATOL protected seat on an agency basis together with other travel services, without holding an ATOL. Business A would be exempt from holding an ATOL pursuant to the exemption in ATOL Regulation 10(d).

ATOL Regulation 15(1) states that persons must not make available flight accommodation in the capacity of an agent for an ATOL holder, where it constitutes a package. Since Business A is acting in the capacity of an agent, it cannot therefore be selling packages.

ATOL Regulation 15(3) provides that "Flight-Plus" must only be sold under an ATOL. Consequently, Business A, which is exempt from holding an ATOL pursuant to ATOL Regulation 10(d), cannot be considered to be selling a Flight-Plus arrangement.

Consequently, given that these sales cannot be considered to be packages or Flight-Plus arrangements, some of the respondents state that they must therefore be considered a "Flight-only" sale under the Regulations. Businesses selling "Flight-onlys" are required to hold an ATOL under ATOL Regulation 9(b) and thus if Business A were to undertake this type of business, they would need to hold an ATOL.

However our view is that if a person is making available flight accommodation and taking steps to include it as a component of a Flight-Plus (as defined in ATOL Regulation 25) then that person is not making available "flight accommodation" only. A person cannot be a Flight-Plus arranger and a Flight-only provider at the same time, and thus if flight accommodation is made available by Business A in the capacity of a Flight-Plus provider, it cannot also be made available in the capacity of a Flight-only provider. Thus Business A can benefit from the exemption in Regulation 10(d).

For clarity, ATOL Regulation 15(3) remains subject to the exemptions set out in Regulation 10. Therefore, pursuant to the provisions of ATOL Regulation 15(3), a person selling a Flight-Plus arrangement must hold an ATOL unless exempted from the need to do so by Regulation 10(d).

Thus, we remain of the view that the analysis set out in the consultation document is correct and the introduction of a new ATOL Standard Term 6 will mitigate the potential consumer harm and detriment.

Decision

We stand by the key objectives of the proposals set out in the consultation document, of improving consumer clarity by enabling better buying decisions for those that wish to ensure their holiday is financially protected. It followed the key objective from ATOL Reform in 2012, to improve clarity for consumers and to provide whole holiday protection.

Furthermore, we remain committed to preserving the integrity of the ATOL scheme, through seeking to ensure that where seats are made available as ATOL protected, that they retain their protection when sold in the UK so as not to undermine the protection arrangements of the ATOL scheme or the clarity provided to consumers by the ATOL Certificate.

We acknowledge the comments made by respondents that the scale of the problem is currently unclear. However, we maintain that the risks exist and that the proposal seeks to protect against potential future consumer detriment.

Nevertheless, we have reconsidered the proposals set out in the consultation document, in the light of wider European developments. We understand that progress has been made on the publication of a new Package Travel Directive and that this should be finalised in the coming months. We therefore consider that it would be inappropriate for us to implement a decision on the AST6 proposal at this time, given that the issues identified as part of the proposal are at the heart of potential revisions to the Package Travel Directive.

We have therefore decided to put the proposals on hold and reconsider the proposal to change AST 6 later this year, at which point the changes to the Package Travel Directive will be clear. However, we may re-visit that decision, whether or not any revised PTD has come into force, if we identify increased consumer risk, or actual consumer harm, in the meantime.

Meanwhile, we will continue to highlight to consumers the risks of booking with non-ATOL travel businesses through our website and media campaigns.

APPENDIX A

Responses to the CAA Consultation on ATOL Standard Term 6

This document contains the responses to the CAA consultation titled “CAA consultation on a proposal to amend ATOL Standard Term 6” (CAP 1196).

This consultation concluded on 1 August 2014.

List of respondents

AAC - Association of ATOL Companies

ABTA – The Travel Association

ATIPAC – Air Travel Insolvency Protection Advisory Committee

Consumer Council for Northern Ireland

Ian Dickson Travel Ltd – ATOL 4242

Seyexclusive Ltd – ATOL 9318

SPAA – Scottish Passenger Agents’ Association

Thomas Cook Group plc

Trading Standards Institute

RESPONSE OF THE ASSOCIATION OF ATOL COMPANIES TO PROPOSALS TO AMEND ATOL STANDARD TERM 6

This is the full and final response on behalf of the AAC (Association of ATOL Companies) to the CAA's proposals in relation to changing ATOL Standard Term 6.

The AAC represents companies, all of whom are required as a condition of membership to hold a valid and current ATOL licence, from the smallest to the largest. Our smallest member holds a Small Business ATOL, our largest member holds a licence for almost 400,000 seats per year. Our membership has a combined sale value approaching £3 billion per year, mainly involving scheduled flights but increasingly in recent years, charter flights and both packages and flight plus sales.

We have taken soundings from all members and overwhelmingly, they support the proposed change to Standard Term 6, we believe anything that improves consumer protection, or at the very least reduces consumer confusion is to be applauded and for that reason alone, support the change. However, the support comes with an element of concern and caution.

The success of the ATOL scheme and in particular the proposed change, is dependent on the awareness of the general consumer that to purchase travel without ATOL protection leaves them at risk. Whilst the issue of an ATOL Certificate makes the consumer aware of the financial protection in place for that purchase, those who make purchases that are not covered by the ATOL scheme and do not get a Certificate are generally in the dark as to what will protect them. Some assume it will be 'ABTA' or another trade association, section 75 of the Consumer Credit Act or some insurance policy which they purchase.

The success of overseas agents suggests that matters other than financial protection are uppermost in consumers' minds when purchasing travel arrangements and therefore we believe it is imperative that further work in improving consumer knowledge in this area is actioned.

Another area of concern is that under the current scheme there may be some element of protection for the consumer who is purchasing travel arrangements from an overseas agent as UK based ATOL holders who are selling on a retail basis do so in the knowledge that they may be at risk if an overseas agent ceases to trade and customers hold an ATOL Certificate issued by them. Under the new rule, they will no longer hold any risk and may possibly be even keener to sell 'risk free'.

We also note the need to change agency agreements for a second time since their introduction 2 years ago. The recent failure of Air Parade Ltd trading as Villa Parade has highlighted the fact that some ATOL holders appear to have not issued agency agreements

for some time and travel agents do not appear to have been insisting on them being issued. Whilst we recognise the need for change, the more often changes are required, the greater the likelihood is that agents will not have updated agreements at the time of any future failure and the greater the possibility for errors to creep in on ATOL holder's production of agreements in the future.

If you have any queries, please do not hesitate to contact us at:

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28th July 2014

ABTA response to CAA Consultation on a Proposal to amend ATOL Standard Term 6

July 2014

Introduction

This response is submitted on behalf of the membership of ABTA – The Travel Association.

ABTA was founded in 1950 - and is the largest travel trade association in the UK, with around 1,200 members and over 4,500 retail outlets and offices. Our members range from small, specialist tour operators and independent travel agencies through to publicly listed companies and household names, from call centres to internet booking services to high street shops.

ABTA Member sales account for 90% of the package holidays sold in the UK annually, accounting for roughly £41.2 million of the Air Travel Trust Fund's (ATTF) £46.2 million annual income. Currently, 631 ABTA Members are Air Travel Organisers' Licence (ATOL) holders. ABTA estimates suggest that our Members are licensed to sell in excess of 18 million ATOL protected holidays. ABTA Members are also responsible for the sale of millions of independent travel arrangements to UK travellers.

ABTA welcomes the opportunity to submit the views of our Members to this consultation. We would also like to offer our continuing support to the Department for Transport and the Civil Aviation Authority (CAA) in developing comprehensive and clear regulations in respect of ATOL reform.

CAA Reasons for the Proposal

The risk that the CAA has identified in the consultation is the risk that consumers might be confused about ATOL protection when buying an airline seat along with other components from a travel company that is exempt from the need to hold an ATOL, where that travel company has sourced that seat from an ATOL holder. The CAA believes that 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 if there may be no protection in place at all. The CAA believe that 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.

The proposed amendment seeks to prevent ATOL protected seats from being sold to an ATOL-exempt business when those seats will then be sold alongside other components to UK consumers, where the whole holiday will thus be unprotected under current ATOL rules. The CAA proposes that exempt businesses will still be able to purchase seats from ATOL holders on an unprotected basis.

The CAA expects the principal benefit to be consumer clarity by enabling better buying decisions for those that wish to ensure their holiday is financially protected. It also expects that the amendment will mitigate against the risk that following a failure, the repatriation and/or claims exercise will be

confused by uncertainty as to who is responsible, with consumers potentially needing to make different claims with regard to different components.

Consultation Question

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?

Compliance with Existing Regulations

The proposed amendment seeks to prevent ATOL protected seats from being sold to exempt businesses on a retail basis when they will then be sold alongside other components to UK consumers and the whole holiday will not be protected under the ATOL scheme.

Regulation 15(1) of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 provides that a person must not, in the capacity of an agent for an ATOL holder, make available flight accommodation which constitutes a component of a package except where all the components of the package are made available under a single contract between the ATOL holder and the consumer.

This means that any person acting as agent for an ATOL holder, which includes a person who is exempted from the need to hold an ATOL, cannot create their own packages using seats that are protected under another company's ATOL. Therefore there does not seem to be any need for further rules to prevent this when it comes to the sale of packages. This point is emphasised within exemptions 05/2013 and 06/2013.

Regulation 15(2) provides that a person must not, in the capacity of an airline ticket agent, make available flight accommodation which constitutes a component of a package or a Flight-Plus.

This means that any person who is exempted from the need to hold an ATOL for the sale of a particular package or Flight-Plus, cannot sell the flight as an airline ticket agent.

Regulation 15(3) provides that a person (other than the operator of the relevant aircraft or an airline ticket agent) who makes available flight accommodation which constitutes a component of a Flight-Plus must do so under and in accordance with its own ATOL or under an ATOL held by the accredited body of which it is a member.

This means that any person who sells a Flight-Plus must do so under its own ATOL unless they are the operator of the relevant aircraft or an airline ticket agent. The exemption available to persons established in an EEA state other than the UK under Regulation 10(d) is not applicable in this case as the sale of the airline seat, not forming part of a package, must be the sale of a Flight-Only at the time that it is made, a point developed further below.

As a result of the above, ABTA believes that the existing Regulations are sufficient to avoid the confusion that the CAA is concerned about.

If the CAA has reason to believe that the existing Regulations and Standard Terms are not sufficient to avoid the confusion referred to, these reasons should be presented as part of this consultation process as this would offer stakeholders an opportunity to assess whether the proposed amendment is the most effective way of addressing those problems.

Imposition of monitoring obligations on ATOL holders

The current ATOL Standard Term 6 prevents ATOL holders from making available flight accommodation unless they have 'reasonable grounds for believing' that the person to whom they are making available flight accommodation is entitled to it.

The proposed amended Article 6 significantly increases the obligation on ATOL holders by preventing them from making available flight accommodation unless they have 'taken reasonable steps and exercised all due diligence to ensure' that the person to whom they are making available flight accommodation is entitled to it.

If the CAA has reason to believe that this significant increase in the monitoring obligations of ATOL holders and the consequent system changes and documentation changes are justified they should provide evidence to show that the existing obligations under Standard Term 6 are not sufficient.

In the absence of such evidence ABTA does not believe that such a change is appropriate.

Evidence in Support of the Proposal

Whilst ABTA supports the CAA's aim of ensuring that there is consumer clarity in the purchase of protected travel services, the CAA consultation document does not evidence that ATOL Certificates are being issued by exempt businesses or that consumers are confused by the protection offered when buying from exempt businesses.

ABTA has sought this evidence from our Members and Partners and we received no information that would suggest that the issuing of ATOL Certificates by exempt businesses is occurring.

In addition, ABTA would suggest that the proposed amendment would not enable consumers to make better buying decisions as the issuing of an ATOL Certificate is, by its very nature, a post-purchase event which will not have any bearing on the consumer's choice of flight provider.

Further, we understand that it is the CAA's general position that the ATOL Certificate provides clarity on the protection provided by the ATOL scheme. It is therefore difficult to understand why an expressly 'Flight-Only' ATOL Certificate would create potential confusion that protection was greater. If that were the case the same concern should arise between Package sale ATOL Certificates, Flight-Plus ATOL Certificates generally.

If the CAA has evidence that, notwithstanding the requirements of the existing Regulations or Standard Terms, ATOL Certificates are being wrongly issued or consumers are being misled when buying from exempt businesses, this should be presented as part of this consultation process so that stakeholders can assess whether the proposed amendment is the most effective way of addressing those problems.

Business to Business Sale

As the proposed amendment would prevent an ATOL holder from selling 'ATOL protected' seats to businesses that are exempt from holding an ATOL where that business would sell on that seat as part of a package or a Flight-Plus, the CAA is suggesting that such sales could be made on a business to business basis. It is unclear what is meant by sales on a 'business to business basis'.

Regulation 9 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 prevents flight seats being made available other than by:

- (a) the operator of the relevant aircraft;
- (b) an ATOL holder acting in accordance with the terms of its ATOL;
- (c) a person who is exempt from the need to hold an ATOL by reason of Regulation 10; or
- (d) a person who is exempted by the CAA under Regulation 11 from the need to hold an ATOL.

As a result of Regulation 9, an ATOL holder cannot sell a seat other than as an ATOL holder or where any particular sale would fall under a specific exemption. There is no provision for any other form of 'business to business' sale.

The proposed amendment provides that an ATOL holder can make a sale of a Flight-Only or package to a non-ATOL holder where that ATOL holder is exempt from the need to hold an ATOL if selling *that* (our emphasis) package or Flight-Only on to a consumer in the UK. There is no provision for the non-ATOL holder to be able to sell that Flight-Only as part of a package.

It is therefore unclear how an ATOL holder would be able to make seats available on a 'business to business basis' as suggested by the CAA.

The CAA should provide further details about how sales could be made on a 'business to business basis' so that stakeholders can assess whether the proposed amendment is the most effective way of addressing some of the concerns outlined in the consultation.

Flight-Plus Sold by a Person Exempted Under Regulation 10(d)

Regulation 10(d) provides that a person who is established in an EEA state other than the UK and who is not a Flight-Only provider is exempt from the need to hold an ATOL.

This means that if such a person sells, in the UK, a package or a Flight-Plus, they are exempt from the need to hold an ATOL.

With regard to packages, this should not present a problem for UK consumers as the package must be protected in accordance with the Package Travel, Package Holidays and Package Tours Regulations which might include protection under the scheme of the EU Member State in which the business is established.

With regard to Flight-Plus sales however, UK consumers would not benefit from any of the protections envisaged under Regulations 26 -30 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 as the business would not hold an ATOL.

Whilst the creation of a category of 'unprotected Flight-Plus' holidays would be a concern, we believe that the definition of Flight-Only provider being a person who as a principal or agent makes available flight accommodation only means that, at the time of the sale of that flight accommodation, whether or not in conjunction with other tourist services outside of a package, the business must be considered to be a Flight-Only provider and therefore not exempt from the need to hold an ATOL by virtue of Regulation 10(d), rather than an exempt Flight-Plus arranger.

In order to allow stakeholders to assess whether the proposed amendment is the most effective way of addressing the concerns outlined in the consultation, the CAA should set out whether it agrees with this assessment of the impact of Regulation 10(d).

Requirement to Supply an ATOL Certificate

ABTA would suggest that if there is any problem with the issuing of ATOL Certificates for sales which are exempt from ATOL protection (and ABTA has not seen any evidence that there is any such problem) that problem might arise due to the provisions of Regulation 17 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012.

Regulation 17 requires that an ATOL certificate is supplied by any person (other than the operator of the relevant aircraft or an airline ticket agent) who makes available flight accommodation to a consumer. There is no exception to this Regulation for persons who are exempt from the need to hold an ATOL.

If the CAA has concerns about the issuing of ATOL Certificates by travel companies exempt from the need to hold an ATOL who might, for example, be acting as the agent of an ATOL holder, ABTA would propose that the CAA should review the provisions of Regulation 17 or the content of any relevant exemption.

Conclusion

Whilst ABTA is sympathetic to the CAA's aim of ensuring that there is consumer clarity in the purchase of protected travel services, we are concerned the consultation document is unclear in

outlining precisely the problem that the CAA has identified, leading it to conclude that a change to ATOL Standard Term 6 is required.

If the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 are being enforced and complied with and if the current exemptions contained within the Official Record Series 3 are being properly adopted, it is not clear from the consultation how there can be a problem with exempted companies selling packages or Flight-Plus holidays in a way that would cause confusion for consumers as to whether or how those packages or Flight-Plus holidays were being protected under the ATOL scheme. The consultation does not provide the evidence to suggest that such confusion has arisen.

Whilst there might be a need to review the provisions of Regulation 17, ABTA does not believe that the consultation sets out with sufficient clarity why the current proposal is necessary or why the proposed amendment might be the most effective way of dealing with the concerns raised in the consultation.

ABTA and our Members support action that promotes consumer clarity with respect to the financial protection applicable to travel services. It is unclear from the consultation whether the proposed amendment will achieve that.

We understand that the CAA is concerned with ensuring the proper functioning of the ATOL scheme, and recognise that constant review is positive, and indeed changes may be necessary. However, we do have a concern that the proposed changes will add further layers of complexity to the scheme when a more fundamental review of the entire consumer protection regime will soon begin. Where there is not an immediate consumer detriment to be solved, we would encourage further changes to ATOL to form a part of the wholesale review due to begin with the implementation of the revised Package Travel Directive.

Thank you for taking our comments into consideration. We would welcome the opportunity to discuss any points raised in our response further with the CAA.

Further information



AIR TRAVEL INSOLVENCY PROTECTION ADVISORY COMMITTEE

RESPONSE TO CAA CONSULTATION ON A PROPOSAL TO AMEND ATOL STANDARD TERM 6 AND INFORMATION ON OTHER AMENDMENTS TO OFFICIAL RECORD SERIES 3

1. Air Travel Insolvency Protection Advisory Committee (ATIPAC)

- 1.1 The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was established by the Secretary of State for Transport in 2000 to provide advice to the Civil Aviation Authority (CAA), the Trustees of the Air Travel Trust and the Secretary of State for Transport on the financial protection arrangements for air travellers and customers of air travel organisers.
- 1.2 The Committee consists of a wide range of representatives from the travel industry, including the major trade bodies (ABTA, AITO, AAC BAR UK), , larger and independent tour operators, and representatives from the Civil Aviation Authority and Air Travel Trust Fund (ATTF). The Committee also contains passenger representatives and independent representatives, including the Chairman. It is important to note that the Committee brings together the travel trade and its customers in one forum.

2 The principal issue addressed by the proposal to amend AST6

- 2.1 The proposal is based on a perceived risk to consumer clarity in respect of sales by ATOL holders' protected seats to businesses that are exempt from ATOL such as businesses based elsewhere within the EU/EEA [Regulation 10, *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012*, referred to in this submission as the 'ATOL Regulations'].
- 2.2 It is understood that the proposed changes are designed to address the issue that arises when exempt businesses established in another jurisdiction procure ATOL-protected seats from an ATOL holder and resell them to its UK customers combined with other elements of a holiday (hotel accommodation, car hire or other surface arrangements) as a 'package'. The issue is exemplified by Lowcostholidays' move from UK to Spanish jurisdiction in 2013. The changes are designed to prevent ATOL holders from selling protected seats to such exempt businesses. The aim is to establish a clear distinction between holidays or Flight-Plus arrangements sold by ATOL holders, which are fully protected under ATOL, and those sold by exempt businesses that will not enjoy any financial protection under UK law.

3. Issues raised by the proposal

3.1 The Committee is concerned by any proposal that removes ATOL protection from any customers who currently enjoy such protection. Any diminution of consumer entitlement must be justified on the grounds of consumer interest - i.e. the loss of such protection must, on balance, be outweighed by the benefit of greater clarity of consumer rights. There are a number of issues that the CAA must address:

- a. For the consumer, the provision of an ATOL Certificate is important as it signifies ATOL protection, even if it protects only the flight. It may be that, under the current regime, exempt resellers of ATOL-protected seats are not providing their customers with ATOL Certificates where the seat has been purchased from an ATOL holder. This is in clear breach of the ATOL Regulations, which places the onus on the ATOL holder. The issue in this regard is one of enforcement against the ATOL holder.
- b. The scale of the problem these changes address must be established. It is not clear how many passengers per year will be affected by the change to AST6. There is no evidence of the scale of the issue in the consultation document, or of the consequent consumer detriment. If the numbers involved are few, the Committee believes that such changes may not be immediately necessary and would be better addressed as part of the UK implementation of the new Package Travel Directive.
- c. In the case of the business model exemplified by Lowcostholidays, the change does not appear to be relevant. It is designed around selling hotel accommodation and other elements of the customer's holiday and procuring the flight accommodation from low-cost carriers such as Easyjet, Ryanair, Jet 2 etc using the customer's credit card; as a result, the contract for the flight is made between the customer and the airline direct. Its model is not predicated on purchasing ATOL-protected seats from ATOL holders. In practice, it may find that particular seats are available for its customer from ATOL-holders, but this is likely to be the exception. In the absence of evidence to the contrary, it is considered that this is likely to be the case with other exempt businesses.
- d. Consumer clarity is clearly served by establishing a clear distinction between UK-based ATOL-licensed businesses that provide full financial protection under the ATOL scheme and businesses established outside the UK that are exclusively the subject of the protection regime of the country of establishment. It will also serve to discourage businesses currently established in the UK from moving to another jurisdiction but continuing to sell to UK consumers, where the benefits

of ATOL's comprehensive repatriation or refund protection will be wholly removed. However, this clarity is already compromised by the continued acceptance of ATOL-protected Flight-only. The waters are already muddy.

- e. Implementation of the AST6 changes may well exacerbate the problem of repatriating ATOL protected passengers mixed with non-ATOL protected passengers booked on the same flight, as was found in the case of the failure of XL Leisure. It has the potential to increase consumer confusion in the event of the failure of the ATOL holder supplying the flight accommodation.

4. The existing regulatory framework

4.1 The ATOL Regulations provide that:

- a. Only an ATOL holder can create and sell a Flight Plus arrangement [Regulation 15(3)]. The supply of ATOL protected flight-only accommodation to an exempt business, which will combine it with beds, car hire and other elements of a package, would appear to breach this provision.
- b. Regulation 17 provides that an ATOL holder making flight accommodation available must supply an ATOL Certificate. It is that ATOL holder's responsibility to supply the ATOL Certificate and supply the information required by Regulation 20. In other words, such a 'flight only' sale can only be made and protected by the originator's ATOL [Regulation 9].
- c. If a business acts as the agent of the ATOL holder, it must do so under the terms of a written ATOL-compliant agency agreement, and must be entitled to supply an ATOL Certificate on behalf of the ATOL holder and bind the ATOL holder to the contract for the flight accommodation. It must disclose the ATOL holder as principal. It must not combine the flight accommodation with beds or other services to form a package [Regulation 15(1)].
- d. The impact of the proposed change on persons exempted under Regulation 11 (especially those exempted under the Corporate Sales Exemption) is unclear. There is no comment in the consultation document on the impact of the proposed change to AST6 on those exemptions. See also section 6 below.

4.2 From the analysis of the ATOL Regulations and from some anecdotal evidence from the trade, it appears that the scope and significance of sales of flight accommodation by an ATOL holder to an exempt business that retains ATOL protection for the flight only is already very small.

5. The need for change to AST6

- 5.1 The Committee supports the objectives of both improving consumer clarity and removing the need to seek compensation under both ATOL and the failed exempt business's applicable protection regime. However, the proposed wording is repetitive and convoluted for both the trade and consumers alike, and could be much simplified. In particular:
- a. It is not clear that the indirect sale covered in paragraph 6 is substantively different from the direct sale covered in paragraph 2, as the 'intermediary' is in fact acting as principal and reselling under its own ATOL.
 - b. Paragraph 8 is entirely unclear in that it provides for a circumstance where "the intermediary is its own agent for that ATOL holder". What does this mean?
- 5.2 The scale of the issue being addressed does not appear to justify what is seen in the travel trade as a complicated solution to a minor problem. Even if it is necessary, the wording used is complicated and unclear - the very antithesis of good regulation. The Committee invites the CAA to look again at the issue of flights sold to exempt businesses, and at alternative solutions, in the context of a revised Package Travel Directive that is expected to come into effect in 2017.
- 5.3 It should be noted that the proposed changes do little to reinforce the importance of the ATOL Certificate itself as being of central importance to consumer clarity. The CAA has indicated that it provides clarity on the protection provided by the ATOL regime. It is not clear why a 'Flight-only' ATOL Certificate is likely to be misinterpreted as evidencing greater protection as would be the case with a Package or a Flight-Plus ATOL Certificate.
- 5.4 It should be noted that the ATOL Regulations provide for a five-yearly review of ATOL Regulations having regard to how the Package Travel Directive is implemented in other EU member states [Regulation 2]. The first such review is due in 2017. The CAA should consider whether minor technical changes to the Official Record should be made in this way, or await the review provided for in the ATOL Regulations, depending on the scale of the problem being addressed.

6. Other proposed changes

- 6.1 The proposed change to the Corporate Sales Exemption exempts employees of schools and of Higher Education institutions. This excludes (or could be seen to exclude) two categories of UK educational institutions:
- Universities in Northern Ireland

- Further Education colleges, (i.e. general FE colleges, sixth form colleges, specialist colleges of agriculture, horticulture, and drama/dance, and adult education institutes). The HEFCE web site referred to in the consultation document lists only the minority of FE colleges that offer and receive funding for higher education courses, and takes no account of the majority of such institutions.

It is recommended that the following wording be added to paragraph i), before the URL for HEFCE: "or the Department for Employment and Learning in Northern Ireland".

It is recommended that a new paragraph be inserted after i) as a new j) as follows: "Employees of Further Education Institutions defined as further education providers funded by the Skills Funding Agency in England, the Scottish Funding Council, the Welsh Department for Education and Skills or the Department for Employment and Learning in Northern Ireland".

7. Policy on future changes to Official Record Series

- 7.1 Changes to regulation inevitably meets resistance from the trade that has to implement rule changes. Consumer clarity is not necessarily improved by frequent minor 'technical' changes to the ATOL regime, that place the onus of interpretation and explanation on tour organisers and their agents; if the trade is confused, so will its customers. The Committee believes that there is a threshold below which regulatory changes should be kept until the five-yearly review provided for in the ATOL Regulations takes place, except where there is evidence of consumer detriment, when the CAA should immediately address the issue and amend the regime accordingly. Where the threshold lies should be a matter of further consultation with the trade and consumers.

ATIPAC

31 July 2014



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Chairperson
Rick Hill
Deputy Chairperson
Mandy Patrick MBE
Interim Chief Executive
Aodhan O'Donnell

The Consumer Council

Elizabeth House
116 Hollywood Road
Belfast
BT4 1NY

Our ref: PD 20010 1926

1 August 2014

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

Dear Christina

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

The General Consumer Council for Northern Ireland (the Consumer Council) is an independent consumer organisation, working to bring about change to benefit Northern Ireland (NI) consumers. Our aim is to *'make the consumer voice heard and make it count'*.

We have a statutory remit to promote and safeguard the interests of consumers and have specific functions in relation to energy, water, transport food and postal services. These include considering consumer complaints and enquiries, carrying out research and educating and informing consumers.



The Consumer Council believes that consumers must be given clear and concise information on what aspects of their purchases are ATOL protected to allow for informed decisions to be made.

The Consumer Council supports CAA's the proposal that ATOL protected seats should not be made available to businesses that are exempt from holding an ATOL for resale. The Consumer Council agrees with the CAA's aim to only restrict the sale of ATOL seats where the seat is then sold on without ATOL protection and continuing to permit ATOL protected seats to businesses where the appropriate conditions are met.

This will help maintain consumer trust and confidence in the integrity of the scheme and allow the consumer to make informed decisions when choosing holidays on the level of protection that is available for their holiday.

If you wish to discuss any aspect of this response in more detail please do not hesitate to contact [REDACTED]

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Scott Kennerley
Head of Policy (Transport)

From: [REDACTED]
Sent: 23 June 2014 11:34
To: ATOL Consultation
Subject: ATOL Consultation on Proposal to Amend ATOL Standard Term 6

Good morning,

I have read the consultation document and the answers to your questions ar below :

Question 1

I DO agree that the CAA should change the terms of standard term 6.

Regards,

John Barr

John Barr
Director
Ian Dickson Travel Service
50 Dundas Street
EDINBURGH
EH3 6JN

[REDACTED]

From: [REDACTED]
Sent: 09 June 2014 10:59
To: ATOL Consultation
Subject: ATOL Consultation on Proposal to Amend ATOL Standard Term 6

As far as Seyexclusive is concerned we don't have any comments but support the proposed amendment.

Regards,

Charles Kerrigan
Director of Operations
Seyexclusive Ltd

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SPAA response to CAA Consultation on a Proposal to amend ATOL Standard Term 6

Introduction

Established in 1921, the Scottish Passenger Agents Association (SPAA) is the world's oldest travel trade association. Today the SPAA is Scotland's largest travel trade association and represents the interests of Scotland's major independent and Corporate Business Travel Management Companies as well as both Independent and Multiple Leisure Travel Agents. The SPAA works alongside its' Associate Members, which are made up of many of the world's leading airlines, tour operators and cruise lines together with Edinburgh, Glasgow & Aberdeen Airports. Each of these sectors within the industry has an interest in aviation and package travel issues which are relevant to their customers who in turn become customers of the airlines and or tour operators and airports, plus ground arrangers, within the UK.

The SPAA has been involved in a number of previous Consultations in conjunction with Government on the subject of ATOL reform and we continue to be committed to the principle of being able to achieve a fair, comprehensive, clear and transparent system of consumer financial protection for all travellers and to work with both the CAA and Government to achieve this

Consultation Question

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, whilst still permitting them to sell seats on an unprotected business to business basis ?

The SPAA understands that the CAA is concerned with the integrity of the ATOL scheme being preserved together with ensuring that customers have complete clarity in whether their holiday is partly/fully or unprotected and thus allowing them the opportunity to make better buying decisions

The current regulations quite clearly break down the varying ways that packages can be sold by an agent and whether they require to be a full ATOL holder and offer complete protection to their customers, by financially protecting their customers under the flight plus scheme or a full package and by issuing the relevant paperwork via the ATOL Certificate.

Alternately, some agents choose to cover the customers via an accredited body and some of our members choose to protect their customers via a Small Business ATOL.

The proposed Article 6, if adopted, would further increase the requirements for our members by stopping them from selling ATOL protected seats to an ATOL exempt business together with other components

The CAA are looking for the outcome of this amendment to mean that customers would understand more clearly which elements of their holiday are protected/not protected.

The SPAA feels that the current use of ATOL certificates and the explanation that our members give their customers, adequately covers their protection and we have not heard of any instances where customers appear to have been misled. We have equally have not received any evidence that ATOL certificates are being issued by exempt businesses

With regard to the Business to Business sales, we are not clear how an ATOL holder would be able to make seats available on a 'business to business' basis. ATOL holders cannot sell a seat other than as an ATOL holder or where any particular sales would fall under a specific exemption We would therefore require further clarification on this

The SPAA is cognisant of potential issues where a person who is established in an EEA state, and not the UK, and who is not a Flight-Only provider is exempt from the need to be an ATOL holder. This currently presents no problems for packages which are covered under the Package Travel regulations but would mean that Flight-Plus sales would be unprotected.

The need for the creation of another category of 'unprotected Flight Plus Holidays' does not appear to be totally necessary as a Flight Only provider would generally not be exempt from the requirement to be an ATOL holder rather than an exempt Flight-Plus arranger

Conclusion

The SPAA understands that the CAA is trying to amend the current regulations to provide better clarity for consumers relating to their protection when buying airlines seats and other components from a travel company that is exempt from the need to hold an ATOL. We are however, not convinced that the proposed amendment will create any better clarity.

It is felt that if our members are adhering to the regulations as currently instructed to, we therefore do not see sufficient benefit in accepting this amendment which will not provide further clarity for customers. Many of our members already comment that the time it takes to comply with ATOL regulations makes the selling of holidays a long and complicated process, and by adding another layer of regulation this will not help.

We once again call for a more in depth review of the Regulations in line which complete clarity for consumers which could be achieved in conjunction with the Package Travel Directive revision. We would also add once again that any such review should include all airline sales and 'click – throughs'

The Council of the SPAA, on behalf of its Members, wishes to thank the CAA for providing us with an opportunity to continue to allow us to give our opinions on proposed changes to ATOL regulations. We would welcome the opportunity to discuss any points raised in our response.

Further information

[REDACTED]

01 August 2014

Thomas Cook Group plc
Legal & Compliance Department
The Thomas Cook Business Park
Unit 17, Coningsby Road
Peterborough, PE3 8SB

Our Ref: Legal/DB
[REDACTED]



Christina Brazier,
Consumer Protection Group K3

By e-mail: atolresponses@caa.co.uk

1 August 2014

Dear Christina,

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

Please find set out on the following pages, the response from Thomas Cook to the above consultation.

Thomas Cook welcomes the opportunity to submit our views to this consultation as we also consider it critical to our industry that financial protection is clear for both consumers and the industry alike.

Please do not hesitate to contact me if you require any further information at this time.

Yours sincerely,



David Blight
Legal Adviser
Thomas Cook Group

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

Response to consultation by Thomas Cook Group plc

1 August 2014

A. Layout of this response

1. Thomas Cook Group plc ("**Thomas Cook**") responds to the CAA's consultation as follows:

- Section B: The CAA should not introduce a new ATOL Standard Term 6
- Section C: The CAA's proposals will directly affect Thomas Cook Group plc
- Section D: The CAA has not made an adequate case for reform of AST 6
- Section E: The proposed amendment to AST 6 will not benefit consumers
- Section F: The proposed amendment to AST 6 will have un-costed compliance implications
- Section G: Conclusion

B. The CAA should not introduce a new ATOL Standard Term 6

1. The CAA asks one question:

"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?"

2. As one of the world's leading leisure travel groups and the second largest ATOL holder, Thomas Cook's answer to this question is no; we do not feel we are able to support this statement. The CAA has asserted, but in our view has not yet proven, a

consumer detriment, and we have doubts that the proposed solution will lead to a better outcome for consumers. With the review of the 2012 ATOL Regulations and the new Package Travel Directive due as soon as 2017, it is Thomas Cook's view that the CAA would benefit the industry by waiting until its evidence is sufficiently developed to support the proposed policy and then asking this question again.

C. The CAA's proposals will directly affect Thomas Cook Group plc

3. In the UK, Thomas Cook has around 6.2 million customers, over 800 retail outlets and 31 aircraft. It is the second largest ATOL holder. Almost all of its flight sales are covered by ATOL. All of its flight only sales require 100% payment of the fare at the time of booking.
4. Thomas Cook is well placed to comment on this consultation since it does sell flight seats to consumers via a company based outside the UK, in the EU/EEA. This company acts as an agent for the consumer and the CAA's proposals could affect these sales. It is also possible that other companies are buying ATOL protected seats for consumers from the Thomas Cook website, without Thomas Cook's knowledge. If a company uses a consumer's payment card and personal details when making a booking on behalf of that consumer, Thomas Cook would never be able to identify this, as such, this should be a consideration when the CAA are assessing responses to their new proposals.

D. The CAA has not made an adequate case for reform of AST 6

5. The CAA perceives that a loophole has emerged by which ATOL-protected seats might be sold to overseas agents and tour operators who are not ATOL-regulated, and who then might sell on these seats to consumers alongside other – non-protected – travel products. The consumer may believe he is buying a fully-protected product, and if those arrangements fall within the definition of a package under the Package Travel Directive, the sale should be fully protected in accordance with the laws and financial protection scheme of the member state. The CAA may have a reasonable concern if the sale does not constitute a package, but the Consultation does not appear to provide any evidence of the scale of this risk or likely (financial) impact of this, therefore it is difficult for us to agree that this is warranted.
6. To close the loophole that the CAA perceives exists, it is proposing to change ATOL Standard Term (AST) 6 to prohibit sales of ATOL-protected seats to UK consumers through intermediaries (such as overseas agents and tour operators) who are

exempt from the need to hold an ATOL (for example, because they are established in another EEA state)

7. Under the new AST 6, an ATOL holder that wanted to sell a seat to a UK consumer through an exempt business is required to sell it to them on a business-to-business basis. The exempt business may then, if permitted under the exemption, sell it on as part of a package, but this seat and package would not be ATOL-protected and an ATOL-certificate could not be issued by the ATOL holder.
8. To date Thomas Cook hasn't seen any persuasive evidence that would support the expectation of any consumer harm. If the CAA has such evidence, we would appreciate being provided with a documented and detailed Impact Assessment, which describes how the CAA has calculated the likely detriment (as opposed to what appears to be a more theoretical risk at this stage). Also, how it has concluded that it is worth legislating now, rather than waiting until the forthcoming revision to the Package Travel Directive has been finalised.
9. The CAA's Impact Assessment provided to us - repeated in full here – appears to lack analysis of *how* the theoretical loophole obscures the issues before the consumer at the time of purchase:

“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. These will actually cost the ATOL holder £2.50 less as it will incur no APC on these sales.”¹

10. It is our view that this Consultation suggests that the size of the perceived loophole is in fact larger than it actually is, but we would be happy to review any evidence to the contrary. There are two primary reasons that we believe support our viewpoint; firstly, because in Thomas Cook's case, the company collects full payment when any ATOL protected seats are bought from the company, this means a customer's flight seat(s) will be available to them even if an overseas agent/operator has collapsed. There

¹ Consultation document, Chapter 4

would be no call on the ATT in this scenario. Secondly, if an overseas agent/operator had sold a package, it is legally required to protect the sale under the applicable member state's licensing/protection scheme. In the unlikely event of Thomas Cook's failure, the overseas agent/operator would be responsible for refunding or replacing the flight, or arranging repatriation – not the ATT. If however a consumer does choose to make a claim, they will have paid £2.50 APC, should have an ATOL flight only Certificate, and would be entitled to be assisted in the same way as any other holder of an ATOL flight only Certificate. Thomas Cook suggests that the process as described above provides better consumer clarity and a clearer position for handling a business failure since all consumers flying with Thomas Cook would be protected. Based on the examples above, we are not clear on the precise circumstances from which the CAA considers the consumer harm will arise.

E. The proposed amendment to AST 6 will not benefit consumers

11. The CAA wishes to reduce confusion and add clarity but it is Thomas Cook's view that its proposals will do the opposite:

- a. ATOL Regulation 15 (1) prohibits a person putting a package together that includes a flight if it does not hold an ATOL. The CAA does not explain why the current regulations do not serve the CAA's required purpose. Likewise, Regulation 15 (1) prohibits an agent selling flight-only as a component of a package where all the components of the package are not made available under a single contract between the ATOL holder and the consumer. The regulations are clear in this regard and cover the eventuality that the CAA is concerned with.
- b. ATOL Regulation 9 does not contain the concept of a business-to-business sale. We would appreciate an explanation from the CAA as to how it intends to include such a provision within the scope of the existing regulations and how a business-to-business sale would be described or defined.
- c. Page 8 of the Consultation Document states that ATOL holders will be required to take "*reasonable steps and exercise due diligence to ensure that the agent will not be combining the seat with other components*". How does the CAA propose this to be done? How can ATOL-holders police exempt businesses? As we pointed out earlier, there is no conceivable way to prevent an overseas agent/operator buying ATOL protected seats from a website

using the customer's card for payment and customer's personal details, and selling that seat with other travel products (whether or not as part of a package). It seems the CAA's proposal does not provide any solution to address this.

- d. The current AST 6 is much clearer than the proposed new AST 6. The current AST 6 specifies that a person cannot make flight only accommodation available in their capacity as agent of an ATOL holder unless exempt under 6.1. The proposed new AST 6 is unclear and confusing. The inclusion of the language of direct/indirect sales doesn't appear to add any clarity and we are concerned that it actually serves to make the terms more difficult for the industry to understand and apply.
- e. The CAA says that one objective of the reform is to "*enable consumers to make better buying decisions*"², but it has not explained how these changes relate to the *purchase*, as the ATOL Certificate (if passed onto the consumer) would be presented only after booking. The reform therefore appears to be more about dealing with an operator failure, than assisting a customer's buying decision.
- f. However, when the CAA turns to operator failure, it claims that consumers will be "*better able to understand the financial protection on their product and, following a failure, the claims process will be more transparent.*"³ We are unable to agree with this statement. Currently all Thomas Cook seats are ATOL protected. This proposal means potentially some seats would not be ATOL protected – this will create confusion/uncertainty and complication if Thomas Cook should face difficulties.
- g. Under ATOL Regulation 17, Thomas Cook is obliged to issue an ATOL certificate where it makes available flight accommodation. The CAA has not yet explained how that Regulation will be dis-applied by the proposed AST 6.

F. The proposed amendment to AST 6 will have un-costed compliance implications

² Consultation, Chapter 4, Expected benefits and impact.

³ Consultation, Chapter 3, The Proposal, summary on page 9.

12. If a way was found to amend the ATOL Regulations to address the concerns raised above, it is possible that Thomas Cook may save money on APC contributions from the proposed reform. However, we feel the CAA has overlooked other potential costs (aside from the restriction in how an ATOL holder may trade): for example, the CAA has not defined what a business-to-business sale would require, and therefore how it would be achievable for businesses to adopt this arrangement. It seems likely that any such change would impact our current business/trading model, and our relationship with other agents/operators. This could mean further costs to our business with changes to websites, systems, agreements, certificates, sales reporting, and more, depending on what would be required to position sales under the business-to-business arrangement.

G. Conclusion

13. Thomas Cook requests that the CAA reconsiders its proposal to amend AST 6 and resists the impulse to regulate before the benefits have been clearly established and the supporting evidence for the changes clearly identified.

Proposal to amend ATOL Standard Term 6

CAA consultation 2014

**Response of
The Trading Standards Institute**

August 2014

About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our broad church of Members are represented at the highest level of government, both nationally and internationally. TSI campaigns on behalf of the profession to obtain a better deal for both consumers and businesses.

We are taking on greater responsibilities as the result of the government's announcement in October 2010 that trading standards is one of the two central pillars of the new consumer landscape (the other being Citizens Advice).

We have taken over responsibility for business advice and education, and the role of local authority trading standards services in the promotion of public health gained in importance when, as part of its health reforms, the government repositioned public health back into English local government.

The TSI Consumer Codes Approval Scheme, established at the request of the government to take over from the OFT scheme, went live in April 2013 and was formally launched in June 2013.

TSI is a member of the Consumer Protection Partnership which was set up by the government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has canvassed the views of its Members and Advisers. The response has been composed by TSI Lead Officer for the Holiday and Travel Industry Bruce Treloar. If you would like clarification on any of the points raised in the response, please do not hesitate to contact Bruce at email bruce.treloar@hotmail.co.uk.

TSI does not regard this response to be confidential and is happy for it to be published.

Trading Standards Institute
1 Sylvan Court, Sylvan Way
Southfields Business Park
Basildon, Essex, SS15 6TH

www.tradingstandards.gov.uk

Consultation on a Proposal to amend ATOL Standard Term 6 – CAA

Trading Standards Institute response – August 2014

Question; “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 exempt from holding an ATOL, for resale in the UK alongside other components”

The Trading Standards Institute (TSI) is grateful for the opportunity to respond to this consultation as it the changes will undoubtedly affect UK consumers when purchasing flight inclusive package holidays.

TSI wishes for total transparency in consumer purchases of holidays and travel and agrees that there should be no confusion when purchasing ATOL protected products.

This whole consultation identifies the problems of lack of consumer clarity on ATOL protection arising from those businesses which are exempt from ATOL but who may sell ATOL holders’ protected seats with other components to UK consumers, thereby selling a package holiday which to all intents and purposes will remain unprotected, with no requirement to provide an ATOL Certificate.

The 2012 changes to ATOL protection (the introduction of 'Flight-Plus' protection) sought to address these issues, but it would appear that recent situations have confused this requirement. If Standard Term 6 is not changed, any sales made to consumers by exempted businesses such as those businesses based in the European Economic Area (EEA) will provide no ATOL protection and will be a major problem for UK consumers.

TSI fully supports this proposed change by the CAA. We are of the view that such an amendment to ATOL Standard Term 6 will prevent ATOL protected seats from being sold to exempt businesses (those businesses who don't need an ATOL) who may well sell these unprotected seats alongside other components to UK consumers, leaving the whole combination with no protection.

The Institute was very supportive of the ATOL reform in 2012 as it improved transparency for UK consumers in regard to their financial protection. The ATOL Regulations essentially gave consumers confidence that comprehensive financial protection would be extended to travel components being sold for the purpose of a package holiday.

There was also another advantage for consumers. The requirement to supply an ATOL Certificate immediately upon accepting payment from a consumer was also introduced. This provided clarity for consumers on what was protected and included the necessary information for consumers on what to do in the event of a company collapsing.

The Trading Standards Institute has been proactive in assisting the CAA in providing clarity to consumers who may well purchase flight inclusive package holidays from exempt businesses based in the EEA.

A major UK holiday company, LowCostHolidays, moved its registered office and business to Majorca and therefore there was no requirement for them to obtain an ATOL to protect consumers payments.

So if LowCostHolidays obtained ATOL protected seats as an exempt business in the European Economic Area and then sold this ATOL protected seat back into the UK with accommodation and/or car hire as a package or a Flight-Plus, then the combination would lose its financial protection under the ATOL scheme, even though if sold as a package, the EEA established business would be required to provide protection under its own member state protection scheme.

Not surprisingly, in the event of a failure, consumers would be confused and probably out of pocket having to pay again for part of their holiday.

In conclusion, it is clear that unless this Standard Term is changed consumers will probably be under the misleading assumption that their whole holiday package is protected.

TSI hopes that with these changes consumers will be better able to understand the financial protection on their holidays and that in the event of a holiday company collapsing the claims process will be more transparent.

Trading Standards Institute – August 2014