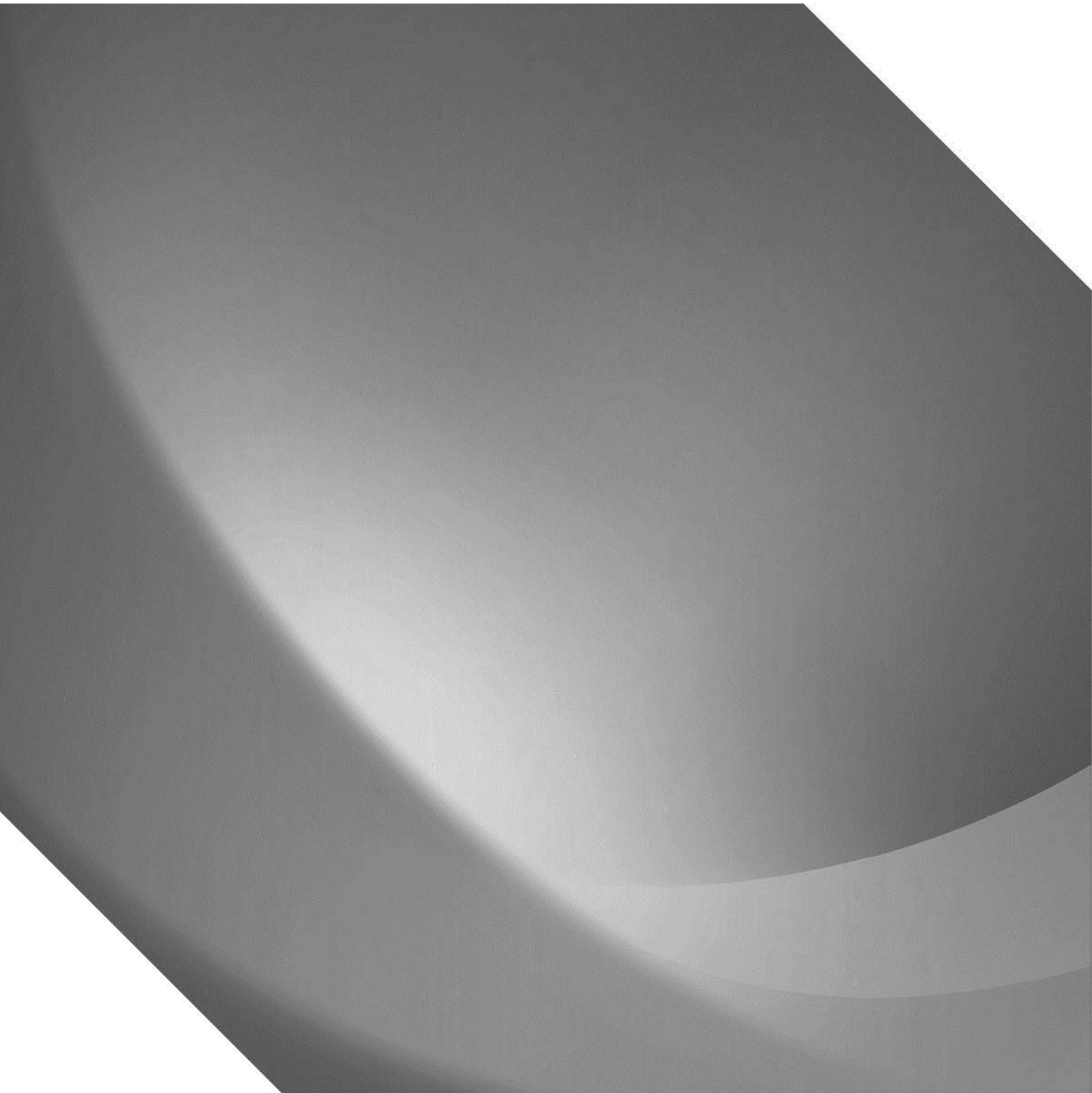


Consultation: Modernising ATOL

CAP 1631



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Introduction

Background

The air travel industry in the UK continues to evolve and change. Last year over 38 million people departed from the UK by air, up from around 28 million during the height of the recession in 2010 and this year holiday travel is expected to be more popular than ever before.

The Civil Aviation Authority (CAA) aims to ensure that consumers can make fully informed buying decisions, are aware of their rights and can exercise them effectively, and are protected from disproportionate risks where necessary. Insolvency protection is the core of ATOL and in implementing it the CAA is also mindful of the other aims. Because it is difficult for consumers to be fully informed about insolvency risk the UK and the European Union have introduced regulation to manage it in some areas of air travel. The Air Travel Organisers' Licence (ATOL) Regulations first came into force in 1973. They have evolved since then and were updated following the introduction of the first Package Travel Directive (PTD: see glossary) in 1990. Financial protection for package holidays is now expected. The ATOL scheme remains a central pillar of consumer protection in the UK travel industry and protected over 21 million holidaymakers last year.

Since ATOL's introduction, the travel industry has changed significantly. The introduction of internet technology and the advent of low-cost air carriers has changed consumer preferences and the way in which holidays are purchased. Regulation must be updated to keep pace of change to reduce new risks that consumers face. The CAA needs to ensure that consumers remain appropriately protected and this means ensuring that protection is periodically reviewed. The proposed changes set out in this consultation are part of this ongoing process of modernising holiday protection.

The implementation of the new PTD on 1 July 2018 will require changes to be made to the ATOL Regulations. The Department for Transport (DfT), as one of the departments responsible for implementing the PTD, sets the legal framework in which the CAA regulates the industry and protects consumers. Their consultation on the necessary changes to the ATOL and APC Regulations for the implementation of the PTD should be read in conjunction with this consultation. The CAA's consultation covers more detailed changes, for example to the ATOL Standard Terms, and other policies by which Government policy reflected in the Regulations are implemented. This includes important changes such as the CAA's approach to licensing ATOL holders established in European Economic Area countries (EEA: see glossary). We also provide information on how new ways of selling such as Linked Travel Arrangements (LTAs: see glossary) fit within the travel protection system.

DfT's consultation also proposes the introduction of civil sanction powers for the CAA. That consultation document includes the rationale and seeks views on this proposal. The CAA supports this because it will improve our ability to intervene in a more targeted way against ATOL holders whose compliance is inadequate, which will benefit consumers as well as the majority of ATOL holders who do comply.

This consultation seeks the views of stakeholders on a major change in how the ATOL Certificate will be issued. The proposal is that, rather than being issued by the trader from which the consumer buys their holiday, there will be a new online certificate which will be issued through an online CAA system based on data that the seller submits to the CAA. Moving to an online system is expected to deliver benefits for both consumers and for the running of the ATOL scheme. Consumers benefit from being able to easily access their Certificates and independently verify that they have booked an ATOL product. Other benefits include a greater ability for the CAA to access passenger data in the event of a travel insolvency. Direct access to customer data enables better repatriation and refund processing. Updating Certificates in this way will keep consumers at the centre of ATOL while also improving our understanding and monitoring of travel businesses.

The UK has a dynamic travel industry which is expanding as greater numbers of people seek to travel. This is underpinned by modern protection arrangements which form the core of the ATOL scheme. It is important to review regulation and ensure that it is comprehensible for travel businesses, and that it delivers the clear and robust protection which holidaymakers expect. The changes proposed in this consultation will help ensure that the holiday protection landscape is updated to reflect innovation and change in the travel market, and that future arrangements satisfy the obligations of the PTD.

The position of this consultation within the UK's implementation of the Package Travel Directive

A revised EU directive on package travel came into force in 2015 and the UK is required to implement and bring into force UK regulations to give effect to the Directive by 1 July 2018. As before, the UK is doing so via changes to the Package Travel Regulations (PTRs: see glossary) (which are the responsibility of the Department for Business, Energy and Industrial Strategy (BEIS: see glossary) and the ATOL Regulations (which are the responsibility of the DfT). The aspects of this consultation relating to the PTD form part of a broader UK picture:

- BEIS is the sponsoring Department for the PTD and the proposed PTRs implement it in full in the UK. Those Regulations specify that some businesses may meet the requirement to provide insolvency protection by holding an ATOL granted by the CAA.
- DfT is the sponsoring Department for ATOL and has responsibility for the ATOL Regulations. Its consultation covers the ATOL Regulations that set the legal scope within which the CAA can regulate and provide protection.
- The CAA implements ATOL within the parameters set by the legal framework. To the extent that it relates to implementing the PTD, this consultation sets out what detailed requirements the CAA will make to achieve that.

The CAA and the DfT have released simultaneous consultations, which follow on from the consultation issued by BEIS in 2017. BEIS is expected to publish the PTRs after Easter 2018.

Chapter 1

Implementing the Package Travel Directive into ATOL

Schedule of ATOL standard terms – what and why?

The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ('ATOL Regulations') provide the CAA the power to determine the policies and criteria it applies when granting ATOL licences and to set the rules ATOL holders must follow as a condition of holding an ATOL. These rules are known as the ATOL standard terms (AST: see glossary) and, among other things, are designed to ensure that consumers - who are at the heart of the ATOL scheme - are made more aware of ATOL and can understand the extent to which financial protection applies to their booking. The ATOL standard terms are published in the CAA's publication - Official Record Series 3 (ORS3: see glossary).

Another function of the standard terms is to improve standards and ensure that ATOL holders have in place good governance arrangements and follow sound business practices. This is achieved, for example, by requiring ATOL holders to maintain effective business systems and records and to provide information to the CAA on a regular basis or when a material change occurs to the business. ATOL holders must also ensure that they appoint suitably knowledgeable staff and that their appointed agents and any other businesses they transact with adhere to a high standard of clarity.

Collectively these measures help the CAA to monitor ATOL holders and assess the likely impact of failure on consumers and the Air Travel Trust (ATT: see glossary). They also ensure that the CAA has the necessary tools to obtain the information and data it needs, including the ability to manage ATOL holder failures as efficiently as possible and to assess ATOL holders' compliance.

ATOL standard term 1 (Providing information to consumers before and after sale)

This standard term aims to ensure that consumers know when they are protected and what that protection means for them. This is achieved through a number of specific measures including the requirement for ATOL holders to provide consumers with key information about ATOL and the extent to which this protects them. To improve consumer awareness ATOL holders are additionally required to refer to ATOL in broadcast media and to use set wording.

ATOL holders must advise consumers of the protection arrangements that would apply if the business failed before or during their trip. The result is that consumers receive their entitlement to a repatriation, a replacement or a refund as expediently as possible. It also ensures the ATT can mitigate its costs, hence reducing overall system costs.

Some of the requirements in this standard term satisfy the information requirements of the current PTD and the information that must be given to consumers (although the PTRs contain additional information requirements).

Changes arising from the new PTD mean that selling models that currently give rise to a Flight-Plus will typically become packages (unless the selling model is changed). Some traders may arrange their selling model such that consumers will be presented with a new type of protected booking - an (LTA). More detail on LTAs is set out in DfT's consultation.

However, facilitating an LTA will not be a licensable transaction, so a trader facilitating an LTA need not hold an ATOL (unless the flight component of the LTA gave rise to an ATOL licensable transaction). Appendix B to this document includes some illustrations of the relationship between ATOL protection and LTAs.

To take account of the new means by which a trader may organise a package (including those holidays that currently would be Flight-Plus), it follows that the information ATOL holders must provide to consumers must change and the CAA therefore proposes to amend this standard term. This includes removing all references to Flight-Plus.

Businesses will also be required to provide clearer information than before to consumers before they commit to booking and paying for a package.

ATOL disclosures

To improve the clarity of pre-booking information and meet the requirements of the PTD, it is proposed to amend AST1.4 so that in all cases where an ATOL product is offered for sale, the ATOL holder must additionally state clearly and prominently and in close proximity to the advertised price that the product is ATOL protected. For bookings made on-line, the CAA envisages that the ATOL disclosure should be at the point where the protected product is offered for sale, either because it is a single contract sale and already includes protection, or where multiple products have been offered in such a way that the subsequent combination would become protected. As a result, the CAA believes there will no longer be a need for generic statements in ATOL holders' publicity material including websites and so proposes to remove the requirement for the statements in AST 1.1(c) and 1.2. However, the requirement to clearly show the ATOL holder's name (or trading name), ATOL number and the ATOL logo on all publicity material for licensable products (AST 1.1 (a) and (b)) will remain.

We will also take the opportunity to revisit the language used in this AST, particularly that which is aimed at consumers, to ensure it is as clear and comprehensible as possible.

Other disclosures

We propose to make some changes to improve more general information provided to consumers when searching for holidays on websites. This would include holidays advertised by the ATOL holder, by travel agents or on price comparison websites. This change does not flow directly from the amended PTD, but is expected to improve choice

and value for consumers and will help to ensure that ATOL holders meet their liabilities to consumers, by making it clearer exactly what they have bought.

First, we want to ensure that wherever holidays are advertised online consumers should be given sufficient information to allow them to make a fully informed choice. We therefore propose ATOL holders must ensure that once consumers have made an initial search for a flight or a holiday (whether on the website of the ATOL holder, a travel agent or a price comparison website), the search results must include a minimum set of information based on the details that are known at the time about the flight or holiday that is being advertised. This minimum set of information is i) the details of the ATOL holder and financial protection, ii) flight dates, and departure and arrival times at each airport, and whether the flight is direct or indirect, iii) departure and arrival airports (including any connecting airports if the flight is indirect) and iv) the name of the airline. ATOL holders should also provide information on the cost of key extras such as baggage and transfers that consumers can book with or through the ATOL holder. This would not include peripheral additions such as travel insurance, airport car parking or attraction tickets.

Second, consumer research has shown that features such as the time of day of the flight and the identity of the operating airline play an important role in consumer choice and value. It is therefore important that in situations where holidays are advertised as including a specifically identified flight (i.e. where information on the flights, departure and arrival times, the departure and arrival airports, and the name of the airline, has been presented to the consumer), that consumers are assured that the identified flight will form part of their holiday. Therefore, where this is the case we propose that ATOL holders must take all necessary steps to secure that flight immediately after they enter into a contract for a licensable transaction.

This obligation will be in addition to the consumer's simultaneous rights under the PTRs in cases where the ATOL holder is seeking to make significant changes to the package travel contract. Separately, this will also mitigate risk to the ATT and consumers in the event of the ATOL holder's insolvency. This is because where the ATOL holder books and pays for the scheduled seats immediately it will be more feasible for the CAA to manage the insolvency as a fulfilment exercise, in which case i) the consumer will get the holiday they had planned and paid for, thereby avoiding the need to claim then rebook, and ii) the cost to the ATT will be less because it will not be necessary to pay refunds for the flights.

It is therefore proposed that AST 1 will be adjusted to impose the information requirements above and AST 6 (Sales Restrictions) will be added to prevent ATOL holders:

- from advertising or selling flights or flight inclusive holidays through a web-site or price comparison site that does not comply with AST1; and
- from contracting to sell specific flights, either as a Flight-Only or as part of a flight inclusive holiday unless they can confirm that the booking has been accepted at the time of taking the consumer's booking and deposit/payment.

Question 1**What are your views on the proposed changes to ATOL standard terms 1 and 6?****ATOL standard term 3 (Providing information to the CAA)**

This standard term requires ATOL holders to provide the CAA with information that enables it to determine the level of ATOL Protection Contributions (APC: see glossary) to be paid, monitor the performance of ATOL holders and assess the likely impact that the failure of an ATOL holder could have on consumers and the ATT. It is also used to analyse the performance of the industry as a whole.

The CAA proposes to make minor changes to this term to reflect the removal of Flight-Plus. We also propose that the reporting period for Small Business ATOLs (SBAs) will be changed from annually to quarterly, to bring the reporting requirement for SBAs in line with the majority of Standard ATOL holders (note: the largest ATOL holders, i.e. those with an annual revenue limit of £5 million or more, are required to report monthly). This means that SBA holders will be required to submit reports to the CAA each quarter on the numbers of licensable passengers along with the corresponding revenue both on a booking date basis and a departure date basis. However, there will be no change to the period or timing of paying APC for SBAs.

This is in response to the CAA's experience where annual reports have uncovered that overtrading occurred over the previous year, which undermines the case for having licensed the business based on the simpler SBA financial test. Moving to quarterly reporting will enable both ATOL holders and the CAA to identify sooner where overtrading seems likely.

Further changes are proposed to this standard term to bring requirements in line with existing policy or existing practice. It is proposed to amend the reporting requirements for Franchise ATOL holders with less than £5 million licensable revenue and more than 1,000 passengers to include the provision of an Annual Accountants Report (AAR: see glossary) Part 2.

It is proposed that the timescale for submitting AARs will be changed to '*within 9 months of the ATOL holder's financial period end or its ATOL renewal date, whichever is the earlier*'. In practice, this means that most ATOL holders will not be required to submit their Reports any earlier than at the time of the ATOL renewal, which should reduce the administrative work for many.

The CAA also intends to introduce a new IT system (page 23) which may lead to further changes in this area.

Question 2**What are your views on the proposed changes to ATOL standard term 3?**

ATOL standard term 4 (Reporting business and financial information to the CAA)

This standard term sets out the information ATOL holders must provide to the CAA or, in certain cases, a third party identified by the CAA. It also places an obligation on ATOL holders to give the CAA advance notification of matters that could affect the business such as an investigation. This enables the CAA to work with ATOL holders to discuss any issues so that, where possible, a way forward can be found.

The CAA proposes to remove some of the granularity from this term and make it more 'principles based'. This means requiring ATOL holders to advise the CAA of any information the CAA should reasonably expect to know, including any event that is likely to have a material impact on the financial resources or the operation of the ATOL holder.

This is consistent with the requirements imposed by financial regulators on financial institutions. Some proposed changes are also enablers for the CAA's proposed future ATOL Certificate IT platform (page 23).

The CAA also intends to issue separate guidance to ATOL holders in relation to any planned corporate activity (e.g. mergers and acquisitions, refinancing or group restructuring) to provide increased clarity of the CAA's information requirements and the potential licensing impact of these activities.

Question 3

What are your views on the proposed changes to ATOL standard term 4? What are your views on the CAA's intention to issue guidance to ATOL holders in relation to any planned corporate activity?

Exemptions from the ATOL Regulations

The new ATOL Regulations lead to consequential changes in the class exemptions issued by the CAA. The existing set of class exemptions are set out in Section 1.2 of the CAA's publication ORS3.

This section sets out proposed changes. Other than as indicated here, the exemptions will remain in their current form other than minor consequential changes such as the removal of references to Flight-Plus and updated references to the amended ATOL Regulations planned to come into force from 1 July 2018.

01/2012 – Small aircraft, sporting event, carriage of animals, replacement transport and balloon/ airship

This exemption will be narrowed to include a restriction that a person may not make use of it more than three times in any calendar month and may not use it if the flights are to be advertised as if it were a scheduled air service. The proposed change is an anti-avoidance measure and its introduction is unconnected with implementation of the PTD.

The exemption was made in order to remove from ATOL licensing seat only sales (it does not apply for package sales) in a number of circumstances where consumer detriment was considered to be low. One of those circumstances is that the aircraft in question has 19 or fewer passenger seats.

The CAA is aware of a case in which this exemption was used to start a business selling what amounted to a scheduled service to the public, but without the business holding any licence or even being obliged to meet other requirements such as those applicable to airline ticket agents. The frequency of the service meant that these sales were being made to a larger number of consumers than had been envisaged when the exemption was drafted.

The operation referred to has ceased but the CAA proposes to introduce a restriction limiting the use of this exemption, to prevent this from being used for essentially regular scheduled services which was not the intention when the exemption was first introduced.

10/2012 – Flight-Only use of consumer's credit or debit card

It is proposed that this exemption will be broadened to enable travel businesses to sell confirmed airline tickets in circumstances where the airline has been paid in full at the time the consumer made their booking and paid the travel business, regardless of how that payment was made. It will be re-labelled "Flight-Only ticket fully paid exemption."

The current exemption can be used only if the travel business uses the consumer's own credit or debit card. This will be changed to enable the travel business to make payment in any form that results in the airline ticket having been paid in full, while retaining the requirement that the consumer receives a confirmed ticket as part of the same transaction.

The reason for the change is to reduce the regulatory system's constraints on the trade, where doing so does not expose passengers to unacceptable risk.

The regulatory system permits airlines to sell tickets directly without holding an ATOL but, in the absence of any other type of exemption, all travel agent sales of tickets would require licensing. In considering how tickets may be distributed without an ATOL being required (in addition to direct airline sales), the CAA seeks to enable all means of sale that leave the consumer in the same position as if they had bought the ticket direct from the airline.

For that reason, the Regulations include the "airline ticket agent" exemption which can be used provided the agent has been appointed by the airline as its agent, in a written agreement, regardless of whether or not it has been paid. The agreement binds the airline to accept all ticket sales made by its agent. The CAA has also created another exemption – the "IATA exemption" – which specifies that ticket sales can be made unlicensed (even if there is no written agency agreement) because the arrangements made and enforced by IATA have a similar effect to the "airline ticket agent" arrangements, in that the IATA carrier is obliged to honour the tickets even if it has not been paid.

The proposal here is to broaden this exemption so that a travel business can take advantage of it provided that in a single transaction for a Flight-Only the airline is paid in full and at the same time the consumer receives a ticket that is valid for travel. This has the same effect as the consumer buying the ticket directly, regardless of how the payment was made.

04/2013 – Overseas

This exemption affects only Flight-Plus and Flight-Only sales, and once Flight-Plus has been removed from licensing it will only affect Flight-Only. It has the effect of limiting the scope of licensing and protection to UK departures, where the CAA has the discretion to do so.

There is no proposal to change this as regards most Flight-Only sales, as the CAA still sees no benefit from extending ATOL protection in respect of (Flight-Only) departures where the first leg starts outside the UK. The exemption from licensing does not apply to package sales at present and it will not do so in the future either. As a result, UK-established businesses selling packages departing worldwide will need to be licensed and protected, provided the flight accommodation was made available within the EEA.

The exemption will be adjusted to take account of a relatively new sales model. Some agency sales for return flights originating in the UK (that is UK – abroad – UK) are now sold with outbound travel on one carrier and the return leg on a different carrier. The CAA has observed an anomaly by which in certain scenarios the return flight to the UK would, but for the existence of this exemption, have been an ATOL protected Flight-Only sale. This exemption's current wording means that such sales are not licensable.

However, considering that the purpose of ATOL is to protect consumers, such sales should be licensable and hence protected – otherwise consumers would be buying UK-originating return air travel, with the return leg bought from a non-airline, but would have no repatriation protection. This would leave a class of passenger that the CAA seeks to protect as unprotected.

The CAA therefore proposes to narrow the scope of the exemption, so that such Flight-Only return legs (abroad – UK) become licensable if they were sold as part of the same trip as a UK-originating outbound leg (assuming that some other exemption does not apply).

05/2013 – Corporate sales

This exemption effectively removes from protection transactions between corporate entities, where the travel is for corporate purposes (defining corporations broadly to include educational institutions and so on).

As set out in DfT’s consultation, this issue is now addressed in the PTD, which specifies activities relating to such sales that need not be protected. Broadly the PTD exclusion, which has been picked up in the proposed PTRs and proposed ATOL Regulations, extends to businesses which are selling travel to persons within a “general business travel agreement” and the travel relates to the person’s “trade, business, craft or profession”.

That exemption is proposed to be incorporated into the ATOL Regulations and covers broadly the same ground as the CAA’s existing class exemption. The CAA therefore proposes to eliminate the existing class exemption.

The proposed ATOL Regulations attached to the DfT’s Consultation give the CAA the role of defining minimum requirements for general business travel agreements. We propose to set those minimum requirements such that current levels of consumer protection/industry regulation are maintained. We propose to publish minimum requirements for such general business travel agreements (similar to the way in which we publish minimum requirements for agency agreements, for example) in due course.

Question 4

What are your views on the changes proposed to each of these four exemptions?

Schedule of Agency Terms

Background

Regulation 12 of the ATOL Regulations 2012 defines the capacity “agent for an ATOL holder” and specifies that a person does not act in that capacity unless they act in accordance with a written agency agreement that complies with the requirements of Regulation 22.

Regulation 22 requires ATOL holders selling packages or flights to consumers via agents to issue written agreements to those agents, which must include the schedule of terms published by the CAA in ORS3.

For clarity, both the current and the new Regulations require ATOL holders to have agency agreements in place for all licensable sales made through agents. That currently applies to agents established in EEA countries, in respect of sales made in the UK. If the ATOL Regulations are amended as proposed in the DfT’s consultation then the requirement will also apply to sales made by agents established in EEA countries in the EEA.

Proposed changes

Minor changes to the CAA’s schedule of agency terms will be required to reflect the new ATOL Regulations.

Agency Term 1 of the schedule currently requires agents to comply with most of AST1 and the schedule reproduces most of the content of that AST. At present the schedule (and therefore each written agency agreement) must therefore be amended to reflect changes made to AST1, as proposed on page 8 above (and any changes made to the ASTs from time to time). In order to simplify the schedule and to avoid ATOL holders having to re-issue agency agreements if future changes are made to AST1, it is proposed to refer to AST1 in the schedule rather than reproducing the content of the AST in the schedule.

A number of other changes are proposed in order to provide more clarification in areas that have, on occasion, previously caused confusion. These include:

- Making it clear that agents are not allowed to use the ATOL logo in promotional material (except as otherwise required under AST1).
- Requiring ATOL holders to permit and require their agents to issue ATOL certificates immediately upon accepting any payment from a consumer in respect of an ATOL licensable transaction. This would bring the agency terms in line with the requirement in the current ATOL Regulation 22, which states that agents must have a written agreement under which the agent must not accept payment unless it supplies an ATOL Certificate on behalf of the ATOL holder. This is expected to improve agents’ compliance with Regulation 17 in the current ATOL Regulations.

We also propose a change to Agency Term 11 which will clarify the obligations placed on principals to re-issue agency agreements in the event that the schedule of agency terms is amended. While we appreciate that it is not reasonable to expect agreements to be reissued immediately, we believe it is reasonable to expect changes to be incorporated into agreements with three months of implementation.

Question 5

What are your views on the changes proposed to the schedule of agency terms, including the proposal to remove the content of AST1 from these?

Schedule of Accredited Body standard terms

In addition to granting the CAA the power to determine the rules that apply to ATOL holders, the ATOL Regulations require the CAA to set and publish specific rules for Accredited Bodies. Accredited Bodies are also ATOL holders and must adhere to both Accredited Body and ATOL standard terms.

Accredited Bodies were introduced in 2012 as a Better Regulation solution to enable smaller businesses to sell flight inclusive holidays by membership of one of a choice of providers, without the need for their own ATOL. Under this arrangement Accredited Bodies hold ATOLs that allow their members to sell licensable products as members.

The Accredited Body standard terms (ABSTs: see glossary) outline the obligations of Accredited Bodies as well as the obligations they must impose on their members including reporting, compulsory membership terms and documentation requirements. These measures ensure that Accredited Bodies vet and monitor their members, and they do not admit any person unfit to hold an ATOL. Although they do not hold ATOLs, AB members are required to comply with parts of AST1 as if they applied directly to them.

The Accredited Body arrangement has seen over 1,500 small businesses and self-employed people authorised to sell as part of seven Accredited Bodies selling to 900,000 passengers. Any Flight-Plus bookings currently sold by Accredited Bodies will become packages under the new ATOL Regulations and PTRs. This is the only significant change Accredited Bodies will face although we are proposing to make a number of minor changes to the wording of the ABSTs to ensure they reflect the legislative changes of the PTD and principally the removal of Flight-Plus as a category of licensable transaction.

Additionally, in order to simplify the compulsory terms of membership and to avoid Accredited Bodies having to re-issue compulsory terms of membership if future changes are made to AST1, it is proposed to refer to AST1 in the schedule rather than reproducing AST1's content in its entirety, as well as reflecting revisions to AST1 in the compulsory terms of membership. This is expected to reduce Accredited Bodies' administrative burden.

Accredited Body standard term 7

This sets out the reporting requirements for Accredited Bodies to ensure that the CAA is kept up to date with changes in membership, including new Members or those whose membership has been terminated. The CAA is proposing to remove the requirement to report changes in membership on a weekly basis and instead require members to update this in real time via the new IT platform.

Question 6

What are your views on the proposed changes to the schedule of Accredited Body standard terms?

ATOL Certificates

The basic requirement for ATOL Certificates remain unchanged – ATOL Certificates will be required for all ATOL consumer sales. However, some specific changes are proposed. We will change the contact details by which members of the public can contact the CAA. In addition, the following changes are proposed in order to adapt ATOL Certificates for consistency with the PTD.

Flight-Plus ATOL Certificates

In implementing the new PTD, the ATOL Regulations introduce two changes that have a bearing on the forms of ATOL Certificate. First, Flight-Plus will no longer exist as a licensable form of sale. Second, the definition of a package has been expanded so that it includes packages that are sold on the basis of multiple contracts¹.

The CAA proposes to keep the form of the Flight-Plus ATOL Certificate but to change its name so that it becomes the form of ATOL Certificate that must be used for multi-contract packages.

Since Flight-Plus sales were broadly made on the basis of multiple contracts, we believe this is likely to enable businesses wanting to continue selling in broadly the same way as at present to continue doing so, with minimum changes to business systems. It would be necessary to re-label the ATOL Certificates as “Package sale – multiple contract”.

If businesses wanted to change their sales method so that sales currently classified as Flight-Plus were to become LTAs (which would not be licensable transactions) then of course they would be able to do so.

Package ATOL Certificates

No additional changes are proposed to the form of the Package ATOL Certificate, which will be used for single-contract package sales.

Flight-Only ATOL Certificate

At present, Flight-Only ATOL sales provide only repatriation protection if the seat is sold in conjunction with other travel services including accommodation or car hire; refunds are not provided. That measure was introduced to require businesses selling ATOL-protected Flight-Only seats on the basis that they were acting as the agent of the consumer (and hence did not hold ATOLs themselves) to take more responsibility for protecting consumers. However, since the new ATOL Regulations establish unambiguously that acting as the agent of a consumer does not in itself exempt sales from licensing², that limitation will be removed. Flight-Only ATOL sales will offer full refund protection in the event that the ATOL holder becomes insolvent (although if the insolvent ATOL holder's

¹ Regulation 4A (1)(b) of the proposed Regulations.

² Regulation 4B of the proposed Regulations.

Flight-Only was part of another ATOL holder's multi-contract package, the consumer will have no claim, the package organiser must look after the consumer and can make an ATT contribution claim towards the cost of doing so – as happens now with an ATOL Flight-Only claim which forms part of another ATOL holder's Flight-Plus).

To help consumers understand what ATOL protection means for them, the ATOL Certificate will still specify that coverage extends only to the flight and not other travel services bought in conjunction with the flight.

Question 7

What are your views on the proposals to change ATOL Certificates as set out above?

Other implementation issues

Businesses established in the EEA (non-UK)

The PTD reinforces the implementation across Europe of the “country of origin” principle, by which businesses established in EEA states should be able to sell throughout the EEA on the basis of the regulatory arrangements made in their country of establishment.

At present the CAA issues licences to some ATOL holders which are established in EEA (non-UK) states although for the sale of packages those licences are not necessary because the sales are exempt from the need for licensing, under Regulation 10(d) in the current ATOL Regulations. Granting licences to such businesses is an unsatisfactory regulatory position because it is not possible for the CAA to insist on and enforce the same regulatory standards for non-UK established business that are voluntarily participating in the ATOL scheme given that the business does not in fact require the licence to conduct the sales.

In view of the unsatisfactory nature of current arrangements, as well as to better implement in spirit the country of origin principle, the CAA proposes that it will no longer consider granting ATOLs to businesses established in the EEA (non-UK). Such businesses will need either to sell into the UK on the basis of the protection arrangements in their country of establishment, or rearrange their business so they have a place of establishment in the UK and the sales hence become licensable under ATOL. This would take effect from the expiry of an affected business's licence – that is, the licence currently held would not be renewed.

Question 8

What are your views on the CAA's proposal to stop granting ATOLs to businesses that are exempt from the need to hold an ATOL because they are established in an EEA country other than the UK?

Transitional arrangements

New package definition and current Flight-Plus sales

The new definition of a package is likely to capture more sales, which may require businesses to vary their licences with effect from 1 July 2018.

To aid transition, the CAA means to adopt the following position. Where sales that are currently classified as Flight-Plus sales on the licence fall into the definition of packages from 1 July, we will not require ATOL holders to vary those licences to remove the Flight-Plus authorisations and add package authorisations. Instead we will be content, for the remaining period until the licence's next renewal, to treat the Flight-Plus sales as packages. ATOL holders will be expected to continue paying APCs for those sales.

However, where ATOL holders identify that under the new definition of packages their licensable business has expanded to exceed the sum of currently-licensed packages and Flight-Plus sales, we will require them to vary the licence accordingly.

UK-established ATOL holders selling into the EEA

The revised ATOL Regulations are expected to come into effect on 1 July 2018. From that date packages sold by UK-established businesses in the EEA become licensable under ATOL. Some businesses should consider whether they need to vary their licences to take account of these additional sales.

However, on a transitional basis, the CAA will not require licensing of such sales where we have received confirmation from a legitimate provider of insolvency protection in the Member State in which those sales take place. In those cases, we would exempt those sales from the need for licensing typically for the remaining period of the ATOL holder's licence – that is, until its next renewal. For the next issue of the ATOL, we expect any ATOL holder making sales in EEA countries to licence those seats under ATOL.

EEA-established businesses selling into the UK

As noted above, the CAA would continue to protect sales made under ATOL by businesses established in a EEA (non-UK) country for the remainder of that business's licence period.

Question 9

What are your views on the CAA's proposed transitional arrangements? Are they helpful in adapting to the new arrangements? Should there be other transitional provisions?

Linked Travel Arrangements

As set out in the DfT's consultation on the ATOL Regulations the facilitation of an LTA will not require ATOL licensing, and the requirement to provide financial protection for such sales will be contained within the PTRs. Nevertheless, it is possible that some facilitators of LTAs will be able to rely on the insolvency protection provided by ATOL, for example for

Flight-Only sales, to meet some or all of the PTR requirement that a flight-inclusive LTA is protected. This is explained in more detail in Appendix B (page 28).

Legal change to the definition of “consumer”

A change to the definition of ‘consumer’ needs to be made to the ATOL Regulations to encompass the concept and use of the word ‘traveller’ in the PTD and therefore in the PTRs. It is important that the meaning of the term consumer in the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (APC Regulations; see glossary) is identical to the meaning of that term in the ATOL Regulations. For this reason, a consequential change needs to be made to the APC Regulations. The law requires the Secretary of State to require the CAA to consult with industry before any change is made to the APC Regulations. This consultation therefore also incorporates that formal consultation of the proposal that the definition of consumer in the APC Regulations is amended to align with the definition of consumer in the amended ATOL Regulations.

Question 10

Do you have any comments on the proposed change to the definition of the word “consumer” in the APC Regulations, which will encompass the word “traveller” in the PTRs?

Accountants’ Annual Report – proposed disclosure to professional bodies

Accountancy professional bodies are now responsible for appointing ARAs, which provide the AARs to the CAA.

It is proposed that the wording of the standard consent on the ATOL application form is adjusted, to enable the CAA to share AARs with relevant professional accountancy body, as already happens in respect of the ATT and the ATT’s insurers. The purpose of this is to enable the professional accountancy bodies to use actual case studies as part of their assessment of the continuing designation of ARAs.

Question 11

Do you have any comments on the proposal to share AARs with the relevant accountancy body?

Chapter 2

Proposal to introduce online ATOL Certificates

As noted in the consultation on “Rebalancing ATOL”³ the CAA is introducing an online ATOL licensing system. That system has been deployed on a trial basis to around 270 ATOL holders for renewal of their ATOLs by the end of March 2018. The intention is then to deploy it to all ATOL holders whose ATOLs come up for renewal at the end of September 2018.

The next phase of IT development is to change the way in which ATOL Certificates are to be issued, from being issued by the ATOL holder or agent which made the sale, to being issued by the CAA, based on data provided to us by the ATOL holder or agent.

The full details of the scheme are yet to be developed and there is no scheduled timetable for delivery, but the main characteristics of the system are expected to be as follows.

- a) ATOL holders and/or their agents will no longer have to issue ATOL Certificates on making a licensable sale, but will have to submit the data that would have populated the Certificate to the CAA instead, by electronic means.
- b) The CAA would also consider additional data requirements such as contact details for consumers, for use during the repatriation or refund management exercise following an ATOL holder insolvency.
- c) Data submission would need to be more frequent than current requirements. We would investigate the feasibility of real-time submissions, or daily.
- d) Consumers will receive a reference number, enabling them to go onto the CAA’s web site and check the details of their protection.
- e) APC returns will still be determined by the CAA based on these new returns.
- f) Working with the industry, the CAA would investigate whether aggregated, anonymised data could be made available to licence holders.

The key advantages of the new arrangements would be as follows.

- a) Consumers would have more certainty that a holiday sold to them as ATOL protected was indeed protected – they would be able to check independently. This will also make it more difficult for a travel company to issue a fraudulent ATOL Certificate.
- b) Consumers would also benefit because the CAA would have immediate access to real time data on where consumers were, and also better data on how to contact

³ <http://publicapps.caa.co.uk/docs/33/CAP%201190%20Rebalancing%20ATOL.pdf>

them. This mitigates the risk that on insolvency the passenger data proves difficult to obtain, which can considerably hamper the CAA's effectiveness especially of a repatriation. It will also enable a smoother refund process.

- c) ATOL holders would benefit to the extent that the greater consumer visibility would discourage some ATOL holders from under-reporting bookings, to reduce their APC costs.
- d) Improved CAA ability to monitor the prospects of ATOL holders through developing an improved understanding of performance within the markets that those ATOL holders specialised in. To the extent this mitigates potential calls on the ATT, ATOL holders will benefit from a reduced requirement for ATT funding.

Introduction of this system would require ATOL holders to submit data electronically to the CAA. The CAA would work in conjunction with representatives of ATOL holders, trade bodies and travel booking system suppliers to determine the set of data to be sent, and also to determine a range of different means by which returns could be made.

Question 12

The CAA would welcome consultees' views on this proposal, while it is still in the early stages.

Chapter 3

A proportionate approach to enforcing ATOL compliance

In their consultation the DfT sets out their intention to introduce legislation to grant the CAA civil sanctions to enforce the ATOL Regulations. The CAA supports this proposal and considers it will provide a more effective and proportionate way of tackling compliance issues. The CAA will work with the DfT and stakeholders on a revised enforcement policy, which will detail the new powers, how it intends to use those powers and the level of proposed penalties.

Chapter 4

How to respond

The CAA is keen to ensure that the above proposals are effective and appropriate. It is committed to incorporating the views of its stakeholders and the questions in the document provide a structure to enable this.

Please send any comments you have by 23 March 2018 to:

atol.consultations@caa.co.uk

or write to:

Nikki Circou
Consumer and Markets Group K3
CAA House 45-59 Kingsway
London
WC2B 6TE

The CAA will review all of the responses received and may publish them on its website.

APPENDIX A

Abbreviations and glossary

Abbreviations and glossary	
AAR	Auditor's Annual Report – a report produced by an ARA covering a specified set of ATOL holders' regulatory returns to the CAA.
ABST	Accredited Body standard term – a requirement that the CAA requires Accredited Bodies to meet, similar to licence terms.
APC	ATOL Protection Contribution
APC Regulations	Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 require ATOL holders to pay the APC for every protected consumer to the Air Travel Trust.
ARA	ATOL Reporting Accountant – an accountant designated by a professional accountancy body as qualified to produce AARs.
AST	ATOL standard term – a term on an ATOL applicable to all ATOL holders, with legal force.
ATOL	Air Travel Organiser's Licence
ATT	Air Travel Trust. A legally constituted trust created by the Secretary of State for Transport to hold funds used to provide repatriation and refunds to the customers of failed ATOL holders.
BEIS	Department for Business, Enterprise, Innovation and Skills – the sponsoring Department for the Package Travel Directive.
CAA	Civil Aviation Authority
DfT	Department for Transport
EEA	European Economic Area. This enables Iceland, Liechtenstein, and Norway EU Member States along with into the European Single Market.
LTA	Linked Travel Arrangement. A new legislative form of travel sale comprising two travel components, both intended for the same trip, but the sale of which was more loosely linked than in a package.
ORS3	Official Record Series 3. A document published by the CAA setting out legal requirements and notifications made by the CAA regarding ATOL, such as standard licence terms and exemptions.
PTD	Package Travel Directive. A European directive, requiring EU Member States to legislate to implement its provisions.
PTR	Package Travel Regulations – the main vehicle for implementing the Package Travel Directive in the UK. Sponsored by BEIS, they implement all but insolvency protection for air packages, which is covered by ATOL.

APPENDIX B**Linked Travel Arrangements and ATOL**

The following text is an explanatory note setting out the relationship between LTAs and the ATOL scheme, as set out in DfT's consultation, and how it will work in practice.

The new ATOL Regulations do not require the licensing of LTAs, so sales of LTAs do not need to be reported to the CAA as LTAs and do not attract a payment of the APC (though they may include a licensable element within them, such as an ATOL-protected Flight-Only, or an ATOL protected flight inclusive package).

However, in UK law LTAs will still require protection by means of one of the options set out in the PTRs. It is therefore possible that a travel business will sell in such a way that an LTA is created, and insolvency protection may then be needed for some of the travel services that make up the LTA. In that event, the insolvency protection provided under ATOL may provide adequate financial protection to meet at least that part of the PTR requirements for that LTA. That is, the insolvency protection provided by ATOL for flight-inclusive packages and Flight-Onlys continues unchanged (whether the flight or flight-inclusive package forms part of an LTA or not) and it may be used to provide or contribute to the insolvency protection requirements of LTAs.

The fact that an ATOL protected Flight-Only or flight inclusive package also forms part of an LTA (and attracts LTA financial protection) will not diminish or replace the ATOL protection that attaches to the flight or flight-inclusive package. For example, an ATOL holder which sells a licensable Flight-Only is required to replace the seat if the airline becomes insolvent (which an LTA facilitator is not required to do) even if that flight is also part of an LTA.

Example 1

A travel business sells a Flight-Only (under its own ATOL) in conjunction with accommodation from a bed bank, in such a way that the combined sales form an LTA. In that event, the ATOL Flight-Only will be a normal ATOL Flight-Only, unchanged from current treatment – the business will need to honour the seat sale if the airline supplier becomes insolvent, and the CAA will provide insolvency protection for the flight if the ATOL holder itself becomes insolvent.

In addition, the travel business will have to meet the LTA requirements set out in the PTRs, including disclosure and the provision of insolvency protection. The insolvency protection requirements for the seat would be covered by ATOL. If there were also insolvency protection requirements for the accommodation sale the LTA seller would have to source insolvency protection for the accommodation from a BEIS approved scheme.

Example 2

Travel agency A sells ATOL holder B's package, comprising a flight and a hotel, and also sells transfers between the airport and the hotel. Travel agency A sells it in such a way that it has facilitated an LTA.

Because A and B have an agency agreement, B is contractually obliged to honour the package whether or not B has received the consumer's payment from A, and if B fails the ATOL scheme will protect the passenger for the package. If there is a requirement for insolvency protection against A's insolvency for the transfer, that will have to be sourced from one of the options available from a BEIS approved scheme, but not ATOL.

APPENDIX C

List of consultation questions

Question 1

What are your views on the proposed changes to ATOL standard terms 1 and 6?

Question 2

What are your views on the proposed changes to ATOL standard term 3?

Question 3

What are your views on the proposed changes to ATOL standard term 4? What are your views on the CAA's intention to issue guidance to ATOL holders in relation to any planned corporate activity?

Question 4

What are your views on the changes proposed to each of these four exemptions?

Question 5

What are your views on the changes proposed to the schedule of agency terms, including the proposal to remove the content of AST1 from these?

Question 6

What are your views on the proposed changes to the schedule of Accredited Body standard terms?

Question 7

What are your views on the proposals to change ATOL Certificates as set out above?

Question 8

What are your views on the CAA's proposal to stop granting ATOLs to businesses that are exempt from the need to hold an ATOL because they are established in an EEA country other than the UK?

Question 9

What are your views on the CAA's proposed transitional arrangements? Are they helpful in adapting to the new arrangements? Should there be other transitional provisions?

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Do you have any comments on the proposed change to the definition of the word “consumer” in the APC Regulations, which will encompass the word “traveller” in the PTRs?

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The CAA would welcome consultees’ views on this proposal, while it is still in the early stages.