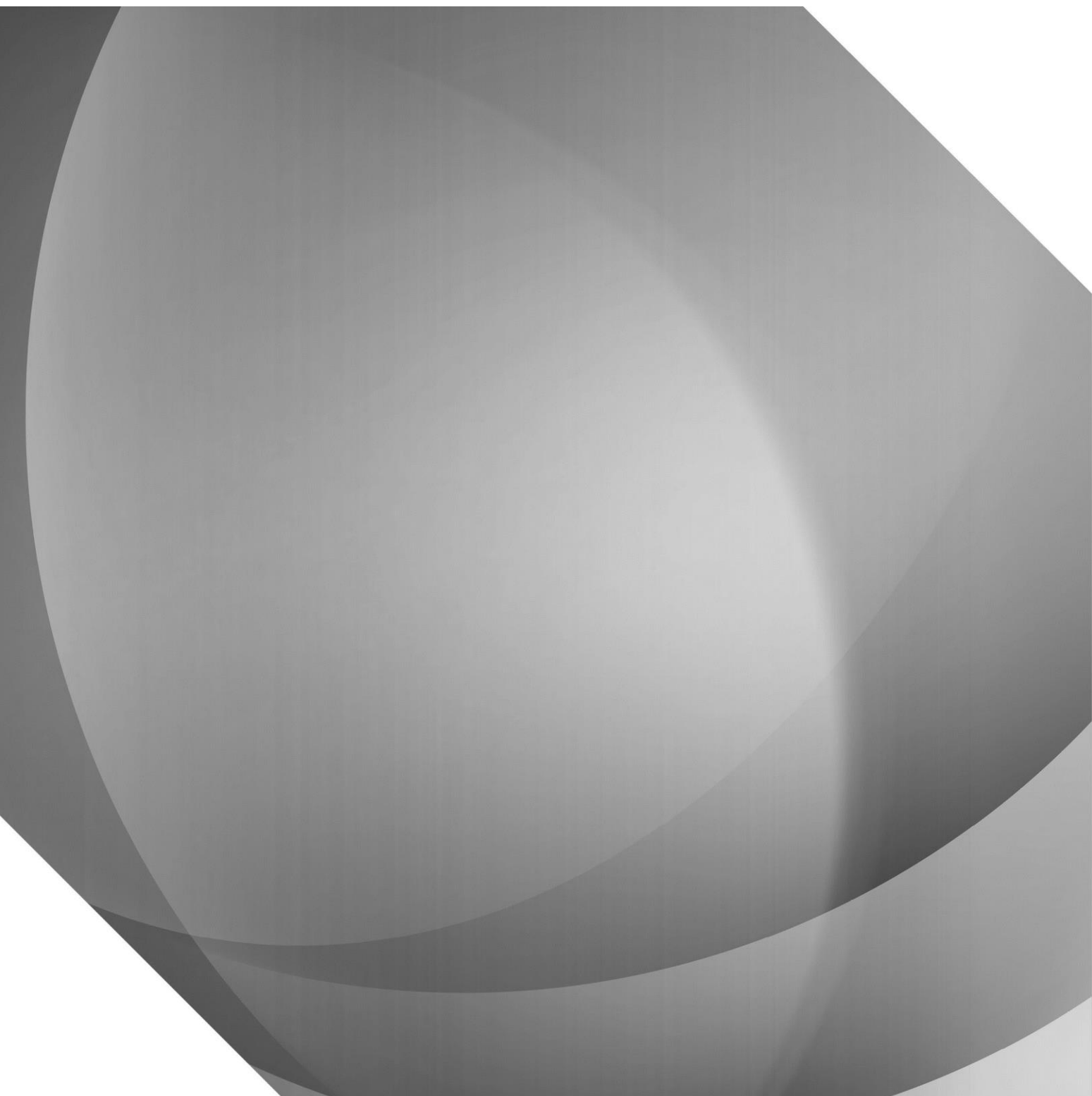


Modernising ATOL: consultation responses

CAP 1680



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Enquiries regarding the content of this publication should be addressed to: ATOL.consultations@caa.co.uk

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**Response of the Association of ATOL
Companies to the Civil Aviation Authority
on Modernising ATOL**



March 2018

The Association of ATOL Companies (AAC) welcomes this opportunity to respond to the Consultation and hopes this Response assists the CAA in seeking a way forward with the aim of improving consumer protection whilst limiting the impact on the travel industry. We are most grateful for the time the CAA put aside to meet and discuss with us some of the major issues raised by this Consultation

Background

The AAC was formed in 1994 to represent the interests of ATOL holders, initially those who saw themselves acting as agents for scheduled airlines but has expanded to represent all sectors of the ATOL market, including cruise lines who sell fly cruises and businesses who charter aircraft directly or through intermediaries. The sole requirement for membership is an ATOL licence. Our largest members have a licence for almost 400,000 seats a year and our smallest has a licence for 500 seats. Based on current sales, our member's turnover is around £4 billion a year in the United Kingdom. Although our members offer a wide range of products, around 40% of sales are currently marketed as packages, but this number will rise with the extension of the definition under the new Directive

To respond to the consultation, the AAC issued guidance to its members and invited members responses. Regrettably, due to the very short time allowed this Response is mainly based on discussions by our Executive Council who dedicated a special meeting to discuss the issues raised. We would normally have organised a formal survey in order to ensure we obtained as wide a range of opinions as possible but the time constraints of this Consultation made this impossible. Members were invited to respond directly to the Department if they were uncertain or unhappy with our Response on behalf of the Association.

Without doubt, the greatest concern expressed by members is the issue of a lack of time to implement the necessary changes, both in relation to substantial IT changes which will have to be made and the training of staff involved in the sale of travel arrangements.

Whilst the Directive was issued as long ago as December 2015, there has been a singular lack of engagement by the main Departments involved in implementation and at the date of this Response, the industry still awaits sight of the Regulations from BEIS. This is a very unsatisfactory situation and it is not surprising therefore that the majority of the travel industry has yet to take substantive steps to make the changes necessary to introduce what for the industry will be the most serious changes to the method of trading for over 25 years.

We re iterate our belief that there must a delay in the implementation, for a period of at least 6 months, to enable the necessary action to be taken by the industry. It is simply not a reasonable expectation for the industry to have taken action since December 2015 when the Directive was concluded, when the government itself has failed to do so.

Although not directly relevant to many of our members, for those that have not sold package holidays before but will be in the future as a result of these changes, there is the difficulty and cost of obtaining public liability insurance for the first time, and these costs could be substantial.

Our Response

So far as is possible, this Response will follow the format of the consultation paper and replies to the questions posed that we feel capable of answering in the order they were presented. **The issue above all which concerns our members is the continuing lack of clarity** in the proposals. It has been obvious since the Directive was concluded in December 2015, and indeed for some considerable time before, that the Directive left far too much open to interpretation and that is neither helpful to the consumer or the travel industry itself. The Department had a last opportunity to put this right for the benefit of all but appears to be taking the view that with limited time left, the best way forward is to “cut and paste” directly from the Directive.

Question 1

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

The AAC recognises that the Directive imposes new obligations to disclose specific information prior to customers entering a package holiday or LTA. There are however serious practical problems of implementation when sales are not on line, or when the purchase may begin as one type of sale but as actioned by the customer on line, become something else by the end of the day.

Currently ATOL holders must explain that only certain products will be protected by an ATOL licence, as evidenced by the issue of a Certificate in due course. The suggestion that specific information regarding protection should be close to the prices shown will create a serious issue for those that produce hard copy brochures, perhaps slightly less so for those whose products are only sold on line when the disclosures could occur as the shopping basket is filled. We do not see any easy solution for hard copy brochures where to expect information on protection for every price is completely unrealistic and would make a brochure unreadable. At best, we could possibly see an asterisk against each price with a point of explanation on the same or ‘close to’ page but no more

We have also provided evidence that some operators because of the nature of their business need the ability to sell ATOL protected holidays outside of the GDS booking

timeframe. As suggested, the change might prevent such bookings being accepted and we urge the CAA to discuss a sensible solution. We recognise that a few ATOL holders attempt to sell to customers on a bait and switch basis where there is little or no realistic chance of selling a flight at a time and price quoted and would welcome action to stop this practice. However, we must allow members who have a demand for bookings more than one year ahead and who, possibly due to demand at peak periods need to be able to accept reservations outside the period when actual bookings can be affected through airline booking systems. We suggest that although customers will be given full disclosure as required by the Directive as to the protection they will enjoy, and a Certificate will be issued in due course, for bookings more than 330 days ahead, and only for those bookings, it should be possible to process an advance registration without identifying specific flights which cannot be booked by any agent at that stage.

Question 2

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

There is clearly no alternative but to ensure parity between the PTR's and the ATOL Regulations. However, it seems clear that there is still some disagreement amongst government departments as to the meaning of some of the potential scenarios. For example, on enquiry to BEIS on the meaning of 'advertised or sold under the term 'package' or under a similar term' their view was that the only word that could create a package was the word 'package' and yet within the last 7 days the CAA advised that in their view advertising a product as a 'holiday' was equally likely to create a package. Anything that has the possibility of creating uncertainty should be removed before final drafting.

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 activity?

We do have some concerns that the CAA is becoming over burdensome in its expectations, driven by advice it has taken from the FCA. The FCA regulates banks and insurers, in the main businesses which must have higher levels of expertise and understanding of finances than the average ATOL holder. There is a perceived risk that financial regulation of the travel industry must not become such a burden as to prevent new entrants from joining or preventing existing ATOL holders from continuing to trade. We recognise the fact that the CAA needs to know about material changes to an ATOL holder but without a suggested list of information they would expect to be given, it is very difficult to be supportive of this change

Question 4

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

A Small aircraft

We have no comments on this exemption which is of little or no use to the majority of ATOL holders

B Flight only use of the consumers credit or debit card

Very few of our members conduct business where airline tickets are sold and paid for the same day, although it is not unknown. This will normally relate to Low Cost Carriers whose reservations are entirely on line and not booked through one of the GDS systems. Those that do make such bookings have not generally in the past used the 'agent for consumer' excuse to avoid the ATOL scheme but no doubt with the broadening of the definition, there may be some who would use this exemption in future. On the basis that the argument remains 'valid ticket or ATOL' we can see no objection to this exemption

C Overseas

We support this change to ensure that UK consumers buying flights returning on a different airline to the outbound journey, and therefore technically buying 2 one-way flights should be protected for both bookings

D Corporate Sales

The AAC has always supported the view that sales to corporate clients should be outside the Package Travel Regulations and we look forward to an early appearance of the CAA's views on the wording necessary to meet this exemption. Many corporate contracts may be for a considerable length of time and any change to the terms of those contracts will have to be agreed with the clients themselves

Question 5

What are your views on the changes proposed to the schedule of agency terms, including the proposal to remove the content of AST 1 from those?

We strongly support limiting the use of the ATOL logo by those who are not holders of an ATOL themselves, and the other minor changes proposed. However, it must be recognised that at a time when the sales process for every ATOL holder has got to change, amending agency agreements may not be seen as a top priority. For that reason, we would urge the CAA to allow the changes to be introduced within 6 rather than 3 months

Question 6

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

None of our members fall within this category, hence we will make no comment at all

Question 7

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

With the abolition of Flight Plus sales, the Certificate must clearly disappear and we would support any change to Flight Only Certificate to make it clear that it is only the flight that is protected. As has been seen in the past, a few businesses have attempted to mislead consumers into believing that the Certificate was a guarantee for the whole purchase when it clearly was not. It would also appear sensible to use the format of the former Flight Plus Certificate for new packages created by multi contracts.

Question 8

What are your views on the CAA's proposals 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?

Our initial view was that this would be a positive step. Overseas businesses may well produce accounts using a different method of drafting and there are certainly no ATOL Reporting Accountants to be found outside the UK. To some extent the few that exist at present may create an unreasonable risk of failure as it is undoubtedly more difficult to monitor businesses that are based overseas.

We do recognise however that, as the Low-Cost Holidays failure demonstrated, some overseas financial protection schemes leave a great deal to be desired and we are yet to be convinced that July 1 2018 will find every EEA country providing protection to the level available to customers of ATOL companies. Nevertheless, it is a customer's choice to book with a non ATOL holding company and provided the government have produced sufficient warnings against dealing with non ATOL Companies, and we recognise the difficulties that may present in future, then it is the customers choice to buy from any business, ATOL protected or not, of their choosing.

The Directive envisages a central point of contact in each state and we assume the CAA will perform that role in the UK. So long as customers can check easily what, if any, protection is available, we must support the proposed change in this respect

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 arrangements?

We endorse the three proposals but would suggest the CAA makes it clear to those that have been carrying out only Flight Plus sales or a majority of Flight Plus which will in future be considered to be packages, that they may be expected to meet new financial criteria on renewal so that this does not come as a shock.

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 PTR's?

It is clear they must be identical and we can see no logical objection

Question 11

Do you have any comments on the proposal to share AAR's with the relevant accountancy body?

We support this proposal as part of the CAA's efforts at improving visibility and if as has been suggested some ATOL Reporting Accountants Reports have been so poor as to be unreliable, then we can see no objection either from the travel industry or from good AAR's to the proposal to disclose the standard of work being delivered to the body that first gave approval for that specific accountant

Question 12

The CAA would welcome consultees views on this proposal, while it is still in the early stages (proposal to introduce on line ATOL Certificates)

We acknowledge the fact that a very small number of ATOL holders may be abusing the system at present by under reporting and potentially issuing the same numbered Certificate more than once. This not only puts the customer at risk but more importantly for other ATOL holders, puts the Air Travel Trust at risk of unexpectedly large claims when such a business fails.

A centralised system of issue makes sense and should reduce the costs of reporting for ATOL holders since the CAA will have transparency, much like power suppliers who provide smart meters that transmit details of use continuously. There are however a number of issues to be considered, not least the cost to individual ATOL holders of changing IT systems to enable the link to be made and to ensure, for example for on line sales, the Certificate reaches its intended destination from the CAA, whether directly or via the ATOL holder.

The DVLA of course only have two possible outcomes in respect of MOT Certificates, either a pass or a fail. In the case of travel there are multiple possibilities in relation to the sale, either the organiser has to determine what type of sale it is, or the CAA computer system must do so. Our own enquiries with back office computer suppliers suggest these costs will be far in excess of the costs relating to the changes brought about by the Directive itself and will not be easy to develop.

For those ATOL holders who sell through agents, there may well be a secondary issue of how the agent can obtain a copy of the ATOL Certificate if it has no computer links with the CAA and this would need careful consideration. Although most if not all our members would already have effective back office systems which could cope, albeit at some expense, with the changes proposed, the CAA should be mindful of some SBA's who may still operate mainly by hand and who might have to invest considerable sums of money to achieve the ability to operate through a centralised ATOL Certificate system. It is also unclear at present whether it is expected that customers would go to the CAA website to obtain their Certificate or whether, as at present, the Certificate would be generated and passed to the organiser/agent for onward transmission to the customer

However, subject to costs, we can see no reasonable objection to the proposals and look forward to discussing them further with the CAA in due course

Conclusions

The single most important issue to ensure is clarity in the Regulations. So far as possible, space should not be left for those that seek to avoid the much wider definitions of what a package might be as was clearly the case with the introduction of the original Package Directive by means of the 1992 Regulations. If these definitions are not resolved, very little of the other changes will be relevant, as those that wish to do so will create a booking system to avoid the law.

We are disappointed and very concerned that BEIS has failed to provide effective definitions within the proposals for virtually any of the major issues. This will undoubtedly lead to legal actions at the expense of the travel industry, consumers and potentially the Regulators. Even at this late stage we hope more consideration will be given to engaging with the industry

We do not believe allowing a myriad of different financial protection schemes from other EU countries can ever be seen to advantageous to the UK consumer but recognise that at present the UK's hands are tied. Likewise, we doubt the development of Linked Travel Arrangements will offer any advantages at all to UK consumers and there must be clear and unambiguous wording to avoid this being used as an avoidance option.

We would welcome discussions with the CAA at any time to clarify or expand on the ideas within this Response

21st March 2018

Association of ATOL Companies

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

www.aac-uk.org

[REDACTED]

Association of Accounting Technician's response to the Civil Aviation Authority consultation on Modernising ATOL

The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the Civil Aviation Authority consultation on Modernising ATOL published on 23 February 2018.

AAT supports the Civil Aviation Authority (CAA) aims of ensuring "...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".

AAT is generally supportive of the proposals in the consultation document and has specific comments on only two parts of the consultation as detailed below:

Question 11 – Do you have any comments on the proposal to share AARs (Accountants' Annual Reports) with the relevant accountancy body?

AAT agrees with the proposal for the CAA to share AARs with the AAT and other professional accountancy bodies, for the purpose of using actual case studies that are suitably redacted as part of the continuing designation of AARs.

All AAT members are required to undertake relevant Continuing Professional Development (CPD) in order to maintain their competence and so suitable case studies would be useful in highlighting best practice.

Chapter 2 – Proposal to introduce online ATOL Certificates

AAT welcomes proposals for consumers to be able to access their ATOL Certificates online from a reliable source (e.g. the CAA website or gov.uk) rather than being issued by the trader from which the consumer buys their holiday.

This will mean consumers are able to benefit from being able to easily access their Certificates and independently verify that they have booked an ATOL product whilst simultaneously providing the CAA with the ability to access passenger data in the event of a travel insolvency. This appears to be a long overdue and genuinely win-win proposal.

About AAT

AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are more than 4,250 licensed accountants who provide accountancy and taxation services to over 400,000 British businesses.

AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

Further information

If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact [REDACTED], AAT Technical Consultation Manager, at:

E-mail: [REDACTED]

Telephone: [REDACTED]

Twitter: @YourAAT

Association of Accounting Technicians, 140 Aldersgate Street, London, EC1A 4HY



ABTA Response to the Civil Aviation Authority, Modernising ATOL Consultation

March 2018

About ABTA

ABTA – The Travel Association – is the UK’s largest travel trade association representing nearly 1,200 separate businesses.

ABTA Members range from FTSE100/250 companies through to a large number of SMEs and Microbusinesses.

ABTA represents the full range of businesses affected by these proposed changes: travel organisers, selling as principals and as retail agents; travel agents who are likely to be most affected by the concept of Linked Travel Arrangements; including ‘high street’, online travel agents and call centre agents. ABTA also represents all major cruise operators and the major domestic coach and rail travel organisers. 38 of the UK’s top 50 business orientated travel management companies are also ABTA Members.

ABTA is the UK’s leading and largest BEIS ‘Approved Body’ under the 1992 Package Travel Regulations, providing financial protection to consumers.

ABTA has 1,157 separate legal entities in Membership, with a significantly larger number (more than 5,000) of operating brands. Members operate from 4,280 physical locations, with an additional number of associated homeworkers and outside sales representatives.

ABTA therefore uniquely represents the full spectrum of the industry providing organised travel arrangements for consumers and business travel agents.

In relation to financial protection, ABTA represents:

- 659 ATOL holders
- 496 businesses providing financial consumer protection through ABTA as their ‘Approved Body’
- 359 businesses participate in both sets of arrangements

ABTA holds more than 1,240 individual performance Bonds with a total of value of more than £600 million in relation to our Members’ travel activities. A much smaller number of Members utilise financial failure insurance products and the arrangements of the two other BEIS Approved Bodies (CPT BCH and ABTOT) to comply with ABTA’s requirements and / or those under the Regulations.

ABTA also operates an insurance based reserve fund through ABTA Insurance PCC Limited.

Member Consultation

ABTA has consulted widely with its Members since the Consultations were launched on 26 February 2018, in order to inform this submission.

Key elements of the process included:

- 28 February ABTA meets with BEIS
- 5 March ABTA attends the Air Travel Insolvency Protection Advisory Committee (ATIPAC) working group on the Consultations
- 6 March ABTA Launches combined online Member Consultation with links to all documents
- 6 March ABTA Policy Advisory Group meeting
- 6 March Regional Meeting Programme commences with Bristol meeting (Regional meetings continued through to May, with Newcastle, Edinburgh and Cardiff also within the short Consultation window)
- 8 March ABTA meets with DfT
- 9 March Membership Committee reviews consultations
- 13 March ABTA Conference Call briefing for Members
- 15 March FTO Policy Group meeting
- 16 March ABTA Consultation closes – analysis commences
- 23 March ABTA submits response - DfT and CAA Consultations close

Introduction

ABTA believes implementation of the Package Travel Directive 2015 must be the overriding, immediate, priority for both regulators and the travel industry, especially given the lack of available time for businesses to adjust to regulatory changes before implementation deadline of 1 July. Member States were required to have put in place the required implementing laws for the 2015 PTD by 1 January 2018.

Any broader changes to the basic operation of the ATOL scheme, which are not necessary for the implementation of PTD, should be subject to a thorough consultation process with the industry and appropriate implementation lead times.

There are several implementation issues where ABTA believes practical improvements could be made to drafting of regulations. However, we recognise that the Government has left itself very little time to consider alternative proposals. We would urge further consideration of these matters, where the opportunity exists.

It is extremely difficult for consultees to fully address these issues as the new BEIS Package Travel and Linked Travel Arrangements Regulations, implementing the 2015 Directive, have also not been implemented by 1 January 2015 or to date. Furthermore, they have not been consulted on and have not been provided in draft form. We have also raised our drafting comments with BEIS. Coordination between BEIS and DfT in relation to these matters is essential.

Section 1 - Definitions and scope

CAA Question 4: Exemptions from the ATOL Regulations: What are your views on the changes proposed to each of these four exemptions?

ABTA response:

ABTA supports the proposed amendment to the exemption for travel companies operating small aircraft, sporting event, carriage of animals, replacement transport and balloon/airship.

ABTA supports the proposed amendment to the exemption for Flight-Only sales using the consumer's credit or debit card.

ABTA supports the proposed amendment to the exemption in relation to Flight-Only sales with a non-UK departure.

With regard to the proposed amendment to the exemption in relation to corporate sales, the PTD includes an exemption for travel companies that sell packages and LTAs for business travel, as long as a 'general agreement' exists for the provision of business travel services. The Government and the CAA should reflect this exemption in the ATOL scheme. Many corporate sales are currently excluded from the ATOL Scheme.

The Government's proposal, however, includes provision for the CAA to lay down requirements for the contents of those agreements although the CAA is not obliged to do so.

It would seem appropriate for any terms that the CAA wishes to impose to be the subject of consultation in due course and for the implementation of any such terms to be subject to a reasonable period of notice to allow business to prepare for any new requirements. It should be recognised that, should the CAA dictate terms that restrict the ability of traders to operate within the exemption intended by the PTD, that might be seen as an attempt to gold plate the PTD in breach of the principle of maximum harmonization. It may also place UK companies at a disadvantage compared to their non-UK holding competitors who may well be complying fully with the requirements of the PTD and other consumer protection law but are not subject to a more onerous regime that might be imposed by the CAA.

CAA 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?

ABTA response:

ABTA supports this proposal.

Section 2 – Information requirements

CAA Question 1: Providing information to consumers before and after sale: What are your views on the proposed changes to ATOL standard terms 1 and 6?

ABTA response:

Whilst the statement about the intention behind these proposals has merit, the lack of any precise wording of any new Term means that it is difficult to give support to the proposal.

ABTA urges the CAA to come back to the industry with a fully worked up proposal outlining what will be expected of ATOL holders in future. That proposal can then be subject to a full and proper consultation process, so that its merits and any deficiencies can be explored, and so that ATOL holders can ensure they are able to comply with any new requirements.

With the information available, we are concerned about the practicalities of, and difficulties in complying with, the proposal. It would seem sensible to allow travel businesses time to implement the changes necessary for the Government's compliance with the requirements of the PTD before expecting further changes to business processes that are not required under the PTD.

It should also be recognised that, should the CAA dictate terms that restrict the ability of traders to operate within the terms intended by the PTD, that might be seen as an attempt to gold plate the PTD in breach of the principle of maximum harmonisation. It may also place ATOL holders at a disadvantage compared to their non-ATOL-holding competitors, who may well be complying fully with the requirements of the PTD and other consumer protection law but are not subject to the more onerous regime imposed by the CAA.

Section 3 - Enforcement measures

CAA Question 7: *What are your views on the proposals to change ATOL Certificates as set out above?*

ABTA response:

the proposal for the change of Flight-Plus ATOL Certificates to Package sale – multiple contract ATOL certificates. We believe that this will assist organisers operating on such a basis to maintain their agency status.

The CAA must allow a reasonable period of time for ATOL holders to make the necessary changes to their documenting processes, and should not seek to penalise ATOL holders who are endeavouring to make the changes, or their agents, where the ATOL holder fails and the customer is not holding the correct ATOL certificate.

It is proposed that 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 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). We support this proposal.

It is currently unclear what protection the traveller receives when buying an ATOL Protected Flight-Only in the event that the airline fails. In such a scenario, there is nothing in the ATOL Regulations

that would require the ATOL Holder to arrange alternative arrangements or provide a refund to the traveller. Neither is there any obligation, under the ATOL Standard Terms, for the ATOL Holder to deliver such a result.

It would be helpful if the Government could clarify its intentions in this regard. If the Government intends that there should be an obligation on the ATOL Holder in such a situation, any such proposal should be the subject of consultation in due course, and the implementation of any such requirement should be subject to a reasonable period of notice to allow business to prepare. It should be recognised that, should the Government put forward such a proposal, this would seem to restrict the ability of traders to operate within the terms intended by the PTD, as it would be an extension of the liability of the ATOL Holder that had facilitated an LTA. That might be seen as an attempt to gold plate the PTD in breach of the principle of maximum harmonisation.

CAA 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?*

ABTA response:

We believe that transitional arrangements will be necessary to allow businesses and CAA to adapt to the new rules so we welcome the proposed transitional arrangements.

Section 4 - Agency agreements

CAA 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?*

ABTA response:

We believe that the intention here is to remove the need to reproduce AST1 in the agency agreements, and to simply refer to AST1 in the schedule. We understand this to mean that any changes to AST1 will not require any amendment to the agency agreement itself.

On that basis, we support the intention behind this proposal.

However, the question, and the consultation reference a number of other changes, none of which are spelt out in a sufficient degree of detail. Any changes to the Agency Terms should be based on a consultation that specifies the new requirements in detail rather than simply putting forward proposals without the proposed wording of any new or amended Term.

Section 5 – Reporting

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

ABTA response:

We support this proposal. However, it would seem sensible and reasonable to allow travel businesses to implement the changes necessary for the Government’s compliance with the

requirements of the PTD before expecting further changes to business processes that are not required under the PTD.

CAA Question 3: *Reporting business and financial information to the CAA: 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?*

ABTA response:

Whilst the statement about the intention behind this proposal has merit, again, the lack of any precise wording of any new Term means that it is difficult to give wholehearted support to the proposal.

The CAA should come back to the industry with a fully worked up proposal outlining what will be expected of ATOL holders in future. That proposal can then be subject to a full and proper consultation process so that its merits and any deficiencies can be explored and so that ATOL holder can make arrangements to ensure that they are able to comply with any new requirement. In any event, it would seem sensible and reasonable to allow travel businesses to implement the changes necessary for the Government's compliance with the requirements of the PTD before expecting further changes to business processes that are not required under the PTD.

CAA Question 11: *Do you have any comments on the proposal to share Accountants' Annual Reports (AAR) with the relevant accountancy body?*

ABTA response:

We have no objections to this proposal.

CAA Question 12: *Online ATOL Certificates - The CAA would welcome consultees' views on this proposal, while it is still in the early stages.*

ABTA response:

ABTA Members have raised a number of concerns about this proposal whilst not being entirely opposed in principle.

Before Members can wholeheartedly support the CAA's proposal, they are seeking answers to the following questions.

- How much will this system cost to implement and how will it be funded?
- How will any necessary changes to travel companies' systems be funded?
- Will the load capacity / bandwidth of the system/database be able to cope with the volume of information that is passed to it?
- How will the security of customers' information be guaranteed?
- Will the speed of the system and frequency of the data uploads mean that passengers no longer receive certificates at the time of booking? Booking processes are 24/7 365 days a year and supported on that basis by Members. The same would be required of CAA IT.

- We understand that the CAA is looking to the DVLA's MOT Certificate system as a model. Because travel bookings change and are amended however, the solution required for ATOL Certificates is significantly more complex. Has the CAA considered all of the changes which can take place (part cancellations, schedule changes) etc., which might result in an ATOL Certificate being amended or reissued? How that process is then reconciled to APC contributions is also an important factor.
- Will travel companies be able to override the normal rules when there are extenuating circumstances?

Members strongly believe that any proposal would require a very careful forward planning phase, with a long implementation timeline from the conclusion of the full requirement specification, so that the many standard and non-standard industry IT systems are able to be changed as required.

More information: for more information, please contact [REDACTED], Director of Legal Affairs (T: [REDACTED]; E: [REDACTED])

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APPENDIX C

List of consultation questions

Question 1

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

We understand the reason for the proposed changes however we're concerned as to the practicalities on disclosing specific information in an offline environment, where a booking flow may not be as clean cut as that of an online booking flow where it is easier to disclose information.

Many of our retail agents, who hold an ATOL license, are selling flights to customers up to 2 years in advance, particularly when selling itineraries that may include a cruise, round the world trip etc. These holidays are sold in advance of the airlines issuing their flight programmes. In these cases flights are based on the current/previous years programme,

Again, some of our retail travel agent members, who hold an ATOL license, sell flight only ITX fares to customers, purchased through either the GDS or through Flight Consolidators. The practice in this scenario is to sell the customer a particular seat, provide them with the full flight details and then issue the ticket 4 weeks pre-departure. We need to ensure that this legitimate way of trading is protected and continues to be permitted.

Although this proposal is not necessarily designed to cover pipeline financial risk to the ATT, it's worth noting that client monies receipted by our franchisees for air tickets but not yet paid to an airline are ringfenced and protected as the funds are held in a CAA approved trust account.

Question 2

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

As a franchise ATOL holder, we oppose the need for our Franchise ATOL holders to individually submit AAR part 2.

As a Franchise ATOL accredited company we;

- ***account for all our Franchise ATOL holder's sales which are externally audited, centrally at Advantage Head Office***
- ***report centrally to the CAA the total licensable sales for all franchisees***
- ***control, hold, manage and guarantee all client money in a managed trust account set up***
- ***control the back-office systems of the franchisees***

We believe that there is no need for our individual franchise ATOL holders to supply the CAA with AAR page 2 and we propose that we provide the CAA with the completed AAR report, which would encompass all our Franchisee sales.

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?

We cannot provide a considered view as this would fundamentally depend on the level of information that would be required to be provided by the ATOL holder.

Question 4

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

We agree with all four exemptions and await the specific wording that will be required to meet the necessary requirements of the corporate sales exemption.

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?

We agree to these proposals

Question 6

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

Not relevant to our company however this seems a sensible approach

Question 7

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

We agree with the proposed changes to the ATOL certificates

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?

We agree to the proposals however we remain to be convinced that protection in other EEA countries will be up to what we believe in the UK to be to an acceptable level. As we all saw through the demise of Low Cost Holidays who were inadequately bonded through an overseas financial protection scheme, how are we going to receive certainty that from the 1st July 2018 all EEA countries will have adequate consumer protection in place.

In addition, consumers will need to be cautioned that they should be booking through an ATOL company and whilst it is the consumers choice we feel it is the obligation of government to draw public attention to this matter.

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?

We agree to these proposals.

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?

We agree that this must be changed as there needs to be a consistency

Question 11

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

We agree with this proposal

Question 12

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

We agree in principal with the proposed introduction of a centralised ATOL certificate system.

Our concerns here are:

- ***The practicalities of automating all back office and online booking systems. Our members are generally SBA's and their back-office systems aren't particularly sophisticated and may struggle to provide the relevant data required. There are also complexities around bookings changing from Flight Only to Package, which may be difficult for some technology providers to overcome.***
- ***The cost of implementing the necessary changes.***
- ***Consideration must be given to the timescale of implementing the automation.***

We would encourage a facility whereby ATOL holders can produce their own certificates in the event that the link to the central system was cut, due to an IT issue for example.

In summary we believe that clarity on the changes being brought in is crucial. The short turnaround between consultation and implementation, combined with the lack of detail provided thus far is very concerning. We are less than

four months away from implementation and we are concerned that a large proportion of ATOL holders aren't fully aware of the impact that these changes will have on their businesses. The CAA must adopt a light touch approach with regards to policing all changes being brought in on the 1st July which we believe should continue up to the end of 2018.



27 March 2018

UPDATING CONSUMER PROTECTION IN THE PACKAGE TRAVEL SECTOR: MODERNISING ATOL RESPONSE FROM THE ASSOCIATION OF INDEPENDENT TOUR OPERATORS (AITO) TO THE CIVIL AVIATION AUTHORITY (CAA)

AITO (www.aito.com) is an association of 120 specialist tour operators. The association was formed in 1976 and is currently governed by a 14-person board of directors known as the AITO Council. The members are considered amongst the best specialist holiday companies in the UK. Collapses of AITO tour operators have been extremely few and far between (circa five in total) over AITO's 40-year history. AITO monitors its members' financial health carefully.

Together, AITO members employ more than 3,100 people, carry approximately 600,000 passengers per annum and have a combined turnover of over £1 billion. AITO employs six members of staff.

Uniquely amongst travel industry associations, AITO members are required to act as **principals**, taking full responsibility for the actions of their suppliers as required by the Package Travel Regulations, and to provide financial security for licensable, non-licensable **and** accommodation-only turnover (the latter is over and above current legal requirements in the UK – AITO aims to be the best in terms of consumer care). Currently 68 members are also members of the travel industry's overarching association, ABTA.

This submission has been approved by the AITO Board on behalf of its members and has been sent out to the membership for comment.

AITO also has an affiliated membership of 59 independent travel agents (AITO Specialist Travel Agents), with 90 branches; these travel agencies work closely with AITO specialists and sell AITO tour operators' holidays. Agents are not bound by the same requirements as AITO members, but they are all members of ABTA or another trade association. *NB This response is written on behalf of AITO tour operators, and does not take into account the views of AITO Specialist Travel Agents.*

Members' views are garnered via Council contacts (each AITO member has a specific Council member with whom they liaise and via whom their views are shared with Council at its bi-monthly meetings) and via discussion in regular general meetings of members, where topics of interest are raised, briefed and discussed at length. Members are also invited to bi-annual meetings with the Civil Aviation Authority (CAA), where views on current legislation and trading are discussed. AITO is also represented on the CAA's advisory body - ATIPAC.

PREAMBLE

This response is to be read in conjunction with the response made by AITO on 25th September 2017, to the Department for Business, Energy & Industrial Strategy, and the response by AITO of March 2018 to the consultation issued by the Department for Transport on Updating Consumer Protection In The Package Travel Sector: Consultation on ATOL.

AITO's initial thoughts

It is frustrating that three consultations have been required to the 25th November 2015 Directive, all of which cover much the same ground. The UK is unique within the EU in having to share the responsibility for implementing The Directive across the Department for Business, Energy &

Industrial Strategy, the Department for Transport and the Civil Aviation Authority.

For many years now, the industry has asked on numerous occasions that the Package Travel Regulations should be the responsibility of just one Government Department. Currently much time is wasted by the travel industry in terms of unnecessary multiple reporting requirements.

We are extremely disappointed to note that a great many organisers which previously traded under the 'Flight Plus' arrangement, acting as agents for the overseas accommodation providers and therefore paying no VAT on TOMS, will still be enabled to do so even though they will, in reality, be trading as principals as they will have to take full responsibility for the performance of the contract. Organisers conforming to the Package Travel Regulations have always had to trade as principals and come under VAT on TOMS. In 2016, 55 AITO members acting as principals paid £7.85 million under VAT on TOMS while competitors, also putting packages together but acting as agents, paid zero tax.

We are also very confused as to why it has been necessary to have both CAA and DFT consultations, inevitably covering much the same ground. It would have been far simpler and more efficient to have one consultation document to deal with.

QUESTION 1

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

AITO welcomes the adjustments planned for AST 1 and AST 6, but with some reservations.

The adjustments mentioned are aimed at online players which very often give scant information about what the consumer believes has been booked, with prices varying depending on when the flight content was finalised and

the accommodation actually booked. The new Directive and the end of Flight Plus will mean that, in most cases, we shall see the end of organisers acting as agents for the overseas accommodation; they will now have to take full responsibility for the actions of their suppliers.

However, the proposals are very vague, and we do not quite understand what the CAA means when it proposes that, in all cases where an ATOL product is offered for sale, the ATOL holder must state, in close proximity to the advertised price, that the product is ATOL protected. What does **close proximity** mean? Is it the intention (totally unnecessarily) that next to each brochure price panel there should be a statement that the product is ATOL protected?

Our members publish brochures featuring fixed group and tailor-made individual itineraries, often based on no-frills carriers' and scheduled carriers' flights, which vary in price from one minute to the next. As a result, our members are forced to publish 'from' prices as a guide. What is the CAA's view on the inability of our members to offer the correct price before a booking is actually made? It is not their fault but is the result of the manner in which flights are sold.

Has there ever been a problem with brochures as to whether the holidays within were covered by ATOL when the brochure states they are? Why change something that works?

If brochures cover both licensable and non-licensable holidays, why should there not be a statement in close proximity to the advertised price about how the non-licensable holiday is protected? Why ATOL only? Is the non-licensable cover unimportant?

When agents or a member of the public telephone to make a reservation from one of our members after having seen an advertisement online or in a newspaper or magazine, they invariably ask for flight details, accommodation details, departure and arrival details and discuss what the holiday entails. Very often they are given a wide choice of airlines or they

may be told to book the flights themselves. Is it the intention to force our members to go through details on the telephone when the information is already available in brochures or online? It would be a shame to have to sell holidays in the same way as financial instruments.

On contacting one of our members on the telephone, consumers may book immediately, hold an option or go away to think again. Members may have to book many component parts of the holiday, which could take time; in such instances, they warn the consumer that, by the time everything is confirmed, the flight and accommodation prices may well have changed, as a result of which the package price will also change.

If the consumer is booking one of our members' holidays online, then they (the consumer) are creating the package from a selection of accommodation and flights which are brought together and sold at that moment. Additionally, the consumer would have ticked to confirm having seen our members' booking conditions, which contain all the information that the CAA requires. Does the CAA want still more?

Many of the problems which the CAA is addressing are created by the way airlines sell their flights and now, in a similar manner, the way in which hoteliers are selling their beds. **It is not a tour operator problem;** the tour operator should thus not be forced into the position of providing the total solution when faced with the changed manner in which hoteliers and airlines are pricing their products to tour operators.

Unless the CAA gives concrete examples of their intentions, it will be impossible to comment about the likely impact on our members or whether the intended adjustments are feasible or not - or, if feasible, at what cost.

It is also very important that consumers do not view a change of carrier or a flight time change of a few hours as grounds for cancelling a holiday. In a constantly changing industry, it is impossible to give such fixed guarantees. What is the difference in quality between British Airways, easyJet or any other carrier flying in and

out of the UK? All can be equally good or equally bad. Carriers must remain interchangeable.

Finally, it is not clear whether the changes proposed are required under the PTD or if they are enhanced requirements on the part of the CAA. Should the UK really be gold plating the requirements? Will other jurisdictions be doing the same? Or will organisers based in the UK become uncompetitive as a result of excessive British Government action? It is clear to us that this is not the time to make life even more complicated for ATOL holders without serious and considerable justification.

Finally, what action is the CAA taking to regulate the hundreds of UK and non-EEA suppliers that sell holidays in the UK without a licence? Is it in all honesty fair to expect even more from licence holders when others outside the system operate to the detriment of UK consumers and to the detriment of licensed operators? We believe that this is totally inappropriate, and we seek and expect Government backing in this respect. We refer you to the attached opinion and expect action on the part of the CAA to enhance consumer protection by penalising illegal activity.

QUESTION 2

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

Some of our larger members will approve of the intention for smaller competitors to be brought into line through increased reporting. There is no doubt that bringing SBAs (Small Business ATOLs) into line with the majority of Standard ATOL holders will help prevent overtrading.

However, smaller members will feel that the many are being penalised for the transgressions of a few. It would help if the CAA would reveal the number of problems it has had with smaller members overtrading in order to justify the proposed changes. Otherwise, the concern that the CAA is becoming increasingly and unnecessarily intrusive will simply grow.

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?

Tour operators are not financial institutions and should not be treated as such.

AITO believes that the CAA is becoming more intrusive. What is the justification for more and more questions and financial probing? Is the EU Directive being gold-plated unnecessarily by the UK Government? Other than the collapse of All Leisure and Monarch, both companies that had already been struggling, were there any other large unexpected failures to merit even tighter scrutiny of the accounts of ATOL holders? We think not.

Even following the collapse of Monarch, the Air Travel Trust has not been seriously impacted.

The real threats to the system are the very large players and the airlines. The Air Travel Trust is now of a size where smaller collapses will not affect the overall security of the ATOL scheme.

If the CAA were able to present us with proof of a very different picture to that we have described above, then perhaps we would understand the necessity of even great financial controls. We have not seen any such proof and doubt its existence.

QUESTION 4

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

01/2012 - AITO has no view on the changes to this exemption

05/2013 - AITO has no view on the changes to this exemption

10/2012 - AITO has no objection to businesses being able to use both consumers' debit or credit cards and additionally their own company credit card in order to qualify for this flight-only exemption. However, we doubt very much that it will ever be understood that, when a Linked Travel Arrangement is created, the flight-only exemption portion will need to come under ATOL and any other service will need to come under non-licensable alternatives.

04/2013 - AITO has no view on the changes to this exemption.

QUESTION 5

What are your views on the changes proposed to the schedule of agency terms, including the proposal to remove the content of AST 1 from these?

AITO encourages any action that minimises bureaucracy, unnecessary paperwork and alterations to existing agency agreements.

Agency agreements are complicated enough! AITO asks that, if agency agreements prove not to be completely up to date, should an ATOL holder fail and the agent be found not to be holding the 'perfect' agency agreement, the CAA should simply carry out its obligations to the consumer and not hold the agent liable to do so as a result of it (the agent) not holding an updated agency agreement.

AITO feels that, once again, the CAA is overstepping the mark and making life unnecessarily difficult for AITO members to comply with regulations.

QUESTION 6

What are your views on the proposed changes to the schedule of Accredited Body Standard Terms?

AITO is not an Accredited Body and therefore has no views on any proposed changes.

QUESTION 7

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

AITO believes the changes as set out are logical. AITO has previously doubted the effectiveness of ATOL certificates and, for the most part, that view has not changed. By deciding to repatriate all Monarch Airline's scheduled flight-only sales, the Government downgraded the value of the ATOL certificate; from now on, the public simply expects to be repatriated at no charge in the event of a failure. The overarching view is "If they did it for Monarch, then why would they refuse to do it for anyone else, no matter how big or small?"

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?

The CAA's action seems logical. However, what this does mean is that EEA (non-UK) operators will be able to sell in the UK with proportionally lower overheads than the UK industry, as they will not have to hold an ATOL licence and be subject to scrutiny by the CAA.

Additionally, the CAA must not establish a system of regulation that does not bear on rogue traders that target UK consumers. UK consumers are

easily targeted by tour operators based outside the EEA ('third country traders' or 'TCTs') offering flight-inclusive packages etc. TCTs who do not direct activity at UK consumers (whom consumers may only find by deliberately searching outside the EEA for themselves) have no need of an ATOL. TCTs who do direct activity at UK consumers (who consumers may have difficulty distinguishing from UK-based traders), should be required to have an ATOL. In effect they must establish a UK entity, fully susceptible to UK controls etc. This is a reasonable requirement. It is essential to provide a level playing field for compliant UK traders, who would otherwise be at a significant disadvantage in overhead costs and administrative burdens. The test of 'directing activity' is in line with the regulation of cross-border consumer contracts and the new Package Travel Regulations and is superior to such tests as 'make available' or 'offer for sale' - especially for bookings placed online, which is highly relevant here.

Is this fair on UK ATOL holders? AITO thinks not.

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?

The transitional arrangements seem logical.

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?

AITO has no comments on this decision.

QUESTION 11

Do you have any comments on the proposal to share Accountants' Annual Reports with the relevant accountancy body?

AITO does not have an opinion on the sharing of AARs.

QUESTION 12

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

As already mentioned, AITO is ambivalent as to the necessity and effectiveness of ATOL certificates, especially following the mass, free repatriation carried out by the Government following the Monarch collapse.

There is a feeling that the CAA is becoming too intrusive in its dealings with the industry and, in the most part, this feeling is reinforced by the CAA wanting to issue all ATOL Certificates. The CAA is, quite simply, overstepping the mark.

The original ATOL Certificate system has taken time to bed in and our members now tolerate it and have learned to live with it. Why use this opportunity to change it yet again? Will the CAA be responsible for all the costs and inconvenience of doing so?

For instance, how many fraudulent ATOL certificates are issued every year? The industry needs to know before agreeing the relevance of changing the whole system. The CAA needs to be much more transparent.

How many ATOL holders under-report on purpose to reduce their APC costs? Is the figure relevant in order to justify another upheaval and increase in bureaucracy?

CONCLUSION AND REQUEST

To AITO it seems that the CAA is using the implementation of the new Directive to increase – unnecessarily - compliance costs. One member described the increasing demands of the CAA as ‘Orwellian’. We believe that the CAA should think again.

At the same time as heaping added regulation on our law-abiding members, the CAA and BEIS are allowing non EEA organisers, many unlicensed UK tour operators and the platforms that enable these organisations to target UK consumers, to trade quite freely in the UK. **These traders are putting the UK public at risk.**

AITO and ABTA have repeatedly asked representatives of BEIS, the DFT and the CAA to visit The Bird Fair in Rutland as a good example of how fast non EEA traders are growing within the UK tour operator environment. To the best of our knowledge, such visits have not taken place.

In AITO’s November 2017 response to the consultation on ‘Updating Consumer Protection In The Package Travel Sector’ published by BEIS, a special paper was included outlining the problem. The paper also follows here:

This paper has been prepared by one of our members and has the approval of our board. Should you have any queries regarding the suggestions put forward, then the member can be contacted through AITO’s head office.

Non EU organisers marketing directly to UK consumers

The scale of this problem

The Association of Independent Tour Operators considers this to be an area of great importance for UK consumers.

Third country traders are already using low-cost routes provided by marketing intermediaries to sell direct to UK consumers, typically illegally and without regard to mandatory UK consumer protections. Unless closed off, this activity will disrupt the application of the new regulations and render them ineffective in several key sectors of the market.

Some of the sectors where we see this are:

- small group holidays
- tailor-made touring holidays
- expedition or small ship cruising
- self-drive holidays
- safari or other wildlife holidays
- walking or trekking holidays
- diving, surfing, rafting or kayaking holidays

Significantly, we see third country traders targeting these types of holidays at UK consumers not only for packages in the trader's home nation, but also much more widely – even including holidays in Europe. A typical pattern is for a trader to become known in the UK market for holidays to its own country of establishment, then to spread regionally and wider.

Their business depends on the ready availability of marketing intermediaries through which they can target UK consumers:

- Our surveys of online advertising on Google Adwords show examples of advertisements for third country traders targeted through Google at UK browsers in all of the above categories and for all popular destinations outside the EU.
- At a recent consumer event in the UK, attended by over 20,000 people, there were more than 75 exhibition stands (see attachment) contracted by or that promoted third country traders offering package travel. Many of the packages included air travel.
- Some UK travel magazines currently sell a significant proportion of their advertising space to third country traders – up to 25% in some cases.

This activity has grown steadily over several years, with slow beginnings evolving into increasingly rapid growth. It is clear to us that this growth in non-compliant activity will accelerate further unless addressed.

It is significant that only a part of this market is served through retailers. We observe that the new rules will impose package responsibilities on them when they sell packages of non-compliant third country traders. This is welcome, but it does not go so far as to address what we clearly see to be the most significant area of non-compliant trading.

1. The importance of UK entities

The cornerstone of the UK regulatory system is that UK traders must establish an entity, typically a company, that is sufficiently well capitalised and has funds in the form of bonds, insurance or trusts located in the UK that the authorities can reliably access to refund customers in the event of the trader's failure and to repatriate them if the package includes flights from the UK.

Further, UK companies are insurable, they are readily monitored, they are subject to the UK courts, and their records are accessible to the public and HMRC. All these elements combine to make a system that is properly organised and robust, that the authorities can monitor and control, and that consumers can understand and trust.

Traders established in other EU member states are permitted access to the UK market on the basis that they comply with equivalent regimes.

Third country traders outside the UK and the EU are not subject to such regimes. They are largely out of reach of the UK authorities. There is no ready mechanism by which they can place funds at the disposal of UK authorities in the event of their failure. They operate in a wide variety of national legal frameworks that neither UK consumers nor even their legal advisers, can be expected to understand.

Few of these traders understand the extent of UK consumer protections.

For these reasons, the new regulations cannot allow third country traders to target UK consumers directly. Instead the regulations, directly or indirectly, should require them to establish a UK entity to carry out their UK business and accept all its bookings with UK customers. The company must be provided with sufficient capital and bonds against insolvency - just as any other UK trader has to do. The company would then be readily monitored and controlled, it would be insurable, it would be subject to UK law, and it would have company records etc. that are visible to UK consumers and HMRC - just as for any other UK trader's company.

Similar direct or indirect requirements to establish a UK entity occur in other sectors.

They are not a barrier. They are a necessary step to safeguard the public interest, without which the way that package travel is organised for the purpose of protecting consumers would be at risk. Bona fide third country traders face no particular difficulty in putting such arrangements in place, and many form UK subsidiaries to comply with the current regulations. They recognise that they are then in a position to provide UK consumers with the protections they expect and that the costs of doing business legally brings marketing benefits. They are willing to bear the same costs and burdens as their UK counterparts, instead of side-stepping the regulations and enjoying cost and operational advantages based on illegality.

We observe that the current regulations can in practice only be fully met by a UK or EU entity, and that if the current regulations had included adequate mechanisms to ensure compliance with them then no third country traders would currently be able to target UK consumers lawfully without establishing a UK entity.

Thus, by making essential improvements to the mechanisms for compliance the new regulations would simply secure what was there before and make the market more honest. The focus for this should be the requirement, or strong encouragement, for third country traders to establish a UK company with whom they contract with all their UK customers.

2. Marketing intermediaries

The new regulations must certainly bear on the third country traders themselves. But because they are substantially out of reach, the regulations can only be effective if they also bear on the intermediaries who provide their routes into the UK market.

If third country traders must establish UK entities, it then follows that the marketing intermediaries that provide the ability to target UK consumers can only accept business from UK or EU entities, as to do otherwise would be to assist a breach of the regulations. This provides the basis for the regulations to bear on them. The result can be a very workable mechanism to ensure compliance.

3. Our suggestions

We make three suggestions which we believe should be implemented together. We believe that by doing so the current regulations would close off this activity and prevent it disrupting the new regulations and undermining the compliant sectors of the market:

- Suggestion A: 'Directing activity' should be written into the new regulations
- Suggestion B: The requirement for third country traders to meet the full array of UK consumer protections (not only insolvency protection) should be emphasised in the new regulations or their guidance.
- Suggestion C: The new regulations should apply a specific liability on marketing intermediaries who direct activity at UK consumers on behalf of third country traders.

We would emphasise that our suggestions do not obstruct those UK consumers who would prefer to book with a third country trader. They simply have the effect that these consumers must be more active in their search. The need for them to be more active when they look for third country traders will help underline to them the fact that by doing so they are booking their trip in the third country's regime, and without the consumer protections available to them in the UK.

Suggestion A: 'Directing activity' should be written into the new regulations

The first part of Paragraph 75 of the consultation is worded as follows:

Organisers and traders not established in a Member State but who sell or offer packages (or facilitate LTAs) in the EU, or direct such activities to a Member State, are required to comply with the insolvency protection requirements of that Member State.

We recognise this as reflecting the requirements of Rome 1 (Articles 6 and 9), in addition to the UK regulations themselves.

We have found that the application of Rome 1 Articles 6 and 9 to third country traders who direct activities to the UK is not widely recognised amongst the UK bodies charged with the enforcement of consumer protections. Further, we have found it to be seldom considered by legal advisers, even some with a degree of specialism in travel law.

We consider that the concept of 'directing activity' is nevertheless a very useful and practical one. It is readily understood and has clear practical meaning. Its meaning in Rome 1 has

already been interpreted to encompass a wide range of activity, and in favour of the consumer where there is doubt. Adopting it in the new regulations would help achieve consistency.

‘Directing activity’ is especially relevant online, and thus to many of the key channels used by third country traders who pursue direct UK sales. Usefully, it distinguishes between traders established in third countries who merely have a website that can be found by UK consumers who are themselves actively searching outside the UK, and those traders who buy PPC advertising campaigns geographically targeted at UK browsers (all PPC campaigns are geographically targeted), who sign up to portals established as intermediaries to UK consumers, or whose websites provide UK telephone numbers for consumers to use, etc. – in other words traders who target consumers who are not looking for or expecting to deal with alien jurisdictions.

It is also clearly relevant to other means of pursuing direct bookings from UK consumers, such as advertising in UK magazines and newspapers, taking exhibition stands at UK consumer travel shows, or commissioning PR pieces to appear alongside the trader’s own contact details. ‘Directing activity’ is very easy to evidence. It is much easier to evidence than an actual sale, or to gather the evidence that shows where the booking contract was offered or formed.

Given that it is easily grasped and that obtaining evidence is easy, the concept of ‘directing activity’ should form an important part of the platform for ensuring the compliance of third country traders and it should be written into the new regulations.

We consider that because a trader that directs activity to the UK must meet the array of consumer protections (which we next suggest is made explicit in the new regulations) then in practice it can only do so if it establishes a UK entity – with the advantages that this has for the enforcement authorities to ensure compliance.

Suggestion B: The requirement for third country traders to meet the full array of the new regulations’ consumer protections should be written into the new regulations or their guidance.

Question 20 refers only to insolvency protection¹. It is important to recognise that while this is of course important, it is not the only element in the array of consumer protections that third-country traders are required to meet and by no means the most important.

It is important to consumers that liability for the performance of the contract is recognised and complied with. For example, this shifts the liability for personal injury that may be caused by sub-contracted suppliers (local hotels, transport companies, etc.) from those subcontractors onto the organiser. The consumer (and his/her travel insurer if a policy is in place) has only one party to pursue - the organiser - with whom he/she has a pre-existing direct relationship. Without liability for performance the consumer is left to identify the sub-contractor, establish the evidence against him/her, and pursue him/her in the foreign jurisdiction. The UK system has for decades recognised this as excessively onerous.

Travel insurers often exclude damages that can be claimed from the tour operator, which enables them to offer reduced premiums. In circumstances where this produces equivalent cover there is a saving to the consumer, but the consumer only benefits if it can easily claim from the tour operator. The regulations must ensure that consumers can easily claim from all

¹ On the topic of insolvency protection itself we note the necessity to ensure that the funds are accessible in the UK.

organisers who target UK consumers: if not, then unsuspecting consumers will lose out - perhaps very severely if seriously injured.

Further, third country traders commonly require the consumer to sign a waiver to absolve it from liability. Such waivers have no effect in UK law, but their imposition is confusing to the consumers and may wrongly persuade them not to pursue a sound claim.

The full array of protections also covers UK consumers against price increases, onerous cancellation terms, and misleading descriptions. These are all valuable to the consumer.

Unless the application of the full array of protections is made clear in the regulations themselves or the accompanying guidelines, then third country traders may not realise the extent of the compliance that is automatically imposed on them when they direct activity at UK consumers.

To summarise: the new regulations should be explicit that third country traders are required to meet the full array of its protections. This will encourage them to learn about their potential liabilities before they target the UK.

In practice, it would be difficult for third country traders to find insurance cover for their potential liabilities in their own jurisdiction, and UK and EU insurers are reluctant to provide cover outside the EU.

Just as insolvency protection is best met by establishing a UK entity, so also the most practical way to meet the other UK consumer protections is for the third country trader to establish a UK entity.

Suggestion C: The new regulations should apply a specific liability on marketing intermediaries who direct activity at UK consumers on behalf of third country traders.

As we have said, third country traders who direct activity at UK consumers inevitably do so illegally. The new regulations will make their illegality more starkly obvious, especially if our suggestions A and B are accepted.

As we have also said, third country traders have not passed UK solvency tests for air packages, they do not place funds in the UK that are accessible to UK authorities in the event of their failure, they do not honour the UK's array of consumer protections, and so on. Yet it is practically impossible to take direct enforcement action against them: the potential enforcement pathways for doing so are arguably too cumbersome. The new regulations will clarify their illegality but this alone will not radically affect the problems of cross-border enforcement.

This enforcement gap has produced an upsurge in activity by intermediaries who make a business from marketing third country traders to UK consumers. They too are subject to the current regulations, but the regime is arguably somewhat confused and certainly inadequately enforced against them. It has not been effective. As a result, the regime has been undermined to the detriment of consumers. It has also harmed the profitability of traders who do comply with the rules and put a chill on new enterprise.

A host of marketing intermediaries routinely enable third country traders to target UK consumers. They do so online, in UK print media, through web portals, and even by allowing them to exhibit at UK consumer events and travel shows.

It sometimes seems that everyone is in on the game: newspapers allow their travel writers to take sponsored trips with third country traders in return for mentioning their direct sales channel, bloggers take payment for hyping-up third country traders, charities that run fundraising holidays divert their bookings outside the UK, and so on.

This free-for-all has snowballed to the extent that the UK market appears so open to penalty-free abuse that several third country tourist boards have decided that the best way to increase their tourist numbers from the UK is to sponsor their local tour operators to direct sell to UK consumers. Some have gone on to developed elaborate, well-funded strategies for this. They have seen how this part of the market is exploding, and they perhaps do not realise that it is illegal.

While some of this takes place beyond the reach of UK compliance enforcement, or is too fragmented to be economically addressed, the principal marketing intermediaries – those who are most active, have the most effect and who capture the largest value-added – are established in the UK or the EU, or are otherwise directly addressable by UK compliance enforcement. The new regulations should apply a direct liability on those intermediaries. By doing so the enforcement authorities will be given a practical mechanism to ensure that the new regulations are complied with.

The current Package Travel Regulation 25 puts a liability on those who in the course of their business enable non-compliant traders to sell packages. Such intermediaries may also be pursued on other grounds (joint enterprise etc.). This existing liability has not been followed up effectively. It should be clarified and brought up-to-date in the new regulations.

We consider that this is a key step without which the new regulations will have a limited life-span.

For example, online advertising geographically targeted to the UK is an effective way for third country traders to sell holidays to UK consumers. The trader is able to buy a very complex and highly developed targeting service that not only targets where the consumer is located (often down to the exact postcode etc), but also targets them by gender, age, browsing history, social media use, psychographic profile, etc. This targeting service is developing at a rapid pace to a level of effectiveness, and a degree of uptake, that is unforeseeable over the intended lifespan of the new regulations. What is certain is that left unaddressed it will make greater and greater inroads into the UK market, degrade the public interest and disrupt the way package travel is organised for the purpose of protecting consumers.

When the third country trader contracts the task of targeting to such marketing intermediaries it directs its activity at UK consumers with great precision and at low cost on equal terms with its UK counterparts. The only difference is that the UK trader bears the burden of compliance with UK consumer protections including the new regulations.

There are two other key points to note. First, the marketing intermediary is not merely providing a forum for the advertisements etc, in some passive way that might make fixing it with a liability unreasonable. It is instead actively providing a targeted channel that enables the illegality to take place. Secondly, it is not enough to rely on consumer choice: the buying issues are far too

complex for consumers to judge - especially when the two alternatives are presented side-by-side as is typical.

Unless this situation is addressed the new regulations will be rendered prematurely obsolete. For example, significant sectors of the market can be expected to move outside the UK in favour of third country jurisdictions.

We therefore consider it essential that the new regulations bear on the intermediaries effectively and require them to exercise appropriate caution and control over the business they accept. In response to equivalent regulation in other sectors online and other advertising services (including newspapers, magazines and consumer events) already require traders to meet their guidelines on advertising a range of products and services: counterfeit goods, dangerous products, alcohol, copyright material, healthcare and medicines, sweepstakes, financial services, etc. It is just as important to prevent them from profiting from third country traders trying to avoid the new regulations.

We see three options for this barrier:

a direct barrier This would prohibit acceptance of advertising etc other than by entities established in the EU.

an indirect barrier This would place a liability on the intermediary if the trader does not conform to the new regulations

a barrier that combines direct and indirect elements. This would place a liability on the intermediary that is discharged if the advertiser is a UK entity².

Such a barrier must be designed to be applicable to all intermediaries: online advertising, online portals, print advertising, promotion at UK consumer events, etc.

A direct barrier is the most straightforward to enforce and the easiest for consumers to understand.

An indirect barrier has an attraction because it allows third country traders access through marketing intermediaries without the need for them to establish a UK entity. It places the risk on the intermediary. If the risk is in fact small, then intermediaries should be willing to accept it and may have access to insurance. If the risk is large, then intermediaries will not be willing to accept it – and neither should UK consumers be exposed to it. A key disadvantage is that it places the intermediary at risk if the advertiser is a non-compliant UK entity. Fundamentally, the intermediary is being treated in the same way as an agent.

²In the longer term, we note that the intermediaries who market third country traders have a direct relationship with them that puts them in the best position to assess whether the trader is at risk of insolvency, whether its booking conditions conform to UK requirements, etc. This could support an insurance product for the intermediaries to cover the risks posed by the third country traders that they expose to the UK consumers. While such a scheme is not likely to be possible within the timescale of the current regulations, it may eventually open a pathway for marketing intermediaries to remain involved between third country traders and UK consumers while ensuring that mandatory protections are properly provided.

(End of separate paper)

As BEIS has not communicated the results of the August 2017 consultation and AITO has no idea whether the department has taken any note of this very serious threat, both to consumers and to UK based organisers, The Association, in sheer frustration, decided to seek further advice.

At considerable cost to what is a small association, AITO approached one of the UK's leading silks in consumer law - [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

His opinion regarding enforcement action against third country traders that sell travel arrangements to UK consumers in contravention of ATOL and Package Travel regulations is attached. The opinion also deals with enforcement action against intermediaries that help these third country traders target UK consumers.

We ask BEIS, the DTI and the CAA once and for all to take action against these organisations:

- the likes of the RSPB, which promotes Birdfair:
- Google, Facebook and other internet giants which accept advertisements targeting UK consumers from third country traders;
- the many magazines and newspapers which accept advertisements from organisers which do not comply with the Package Travel and CAA regulations.

UK consumers are being put at unnecessary risk and the businesses of many small organisers which comply fully with the regulations are being increasingly threatened.

If the CAA is serious about protecting the consumer and many small, specialist ATOL holders, then perhaps the CAA would agree to the following suggested approach:

Unlike the Package Travel Regulations 1992, there is no provision in the ATOL Regulations which makes a person liable for causing someone else to commit a breach of the ATOL Regulations. As such, we have to rely upon the general criminal law principles of secondary liability. This does make the intermediaries liable, but we have to work very hard to get there because we have to fix the intermediaries with knowledge of the unlawful activity of the Third Country Traders. That can be quite difficult because the general criminal law is not really designed to address this sort of issue.

There is now an opportunity with the new ATOL Regulations to put the matter beyond any doubt. **There needs to be a provision in the new ATOL Regulations which provides a clear framework within which the intermediaries will be liable if they do not cooperate when it is brought to their attention that they are enabling Third Country Traders to sell unlawfully into the UK.** As mentioned above, the BEIS consultation in August 2017 sought views from the industry about how the issue of Third Country Traders selling unlawfully into the UK could be tackled – **requiring the co-operation of those who enable such unlawful trading provides the answer.**

Our suggestion above provides the CAA with the tool to enforce compliance. Should the CAA refuse to increase protection for the consumer and level the playing field for our members then we are entitled to an explanation **BEFORE THE IMPLEMENTATION OF THE NEW DIRECTIVE.**

We hope we can count on the support of the CAA in bringing the attached opinion to the attention of non-EEA traders and the UK platforms and we welcome a meeting solely to discuss this issue and the role of Government in the near future.

██████████, Membership and Industry Liaison Manager, AITO
AITO

Signed on behalf of
AITO Council (Board of Directors)
The Association of Independent Tour Operators
18 Bridle Lane
Twickenham
TW1 3EG
www.aito.com

encs. Opinion from ██████████, QC
copy of members responses
copy of non-EEA exhibitors at Birdfair 2016

IN THE MATTER OF:

THE ASSOCIATION OF INDEPENDENT TOUR OPERATORS
-and-
ENFORCEMENT ACTION AGAINST THIRD COUNTRY TRADERS
THAT SELL TRAVEL ARRANGEMENTS TO UK CONSUMERS
IN CONTRAVENTION OF ATOL AND PACKAGE TRAVEL REGULATIONS

OPINION

Introduction

1. I am instructed by the Association of Independent Tour Operators ('AITO') to provide an opinion¹ on whether enforcement action could be brought against a third country trader² ('TCT') for selling travel arrangements to a UK consumer in contravention of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the 'ATOL Regulations') and the Package Travel, Package Holidays and Package Tours Regulations 1992³ ('the PTR').
2. I am instructed to approach the opinion on the basis that it could be evidentially proven that such a TCT, if operating from the UK, had breached the requirements of the ATOL Regulations or the PTR. The fundamental question I am asked to address is firstly, whether these regulatory enforcement provisions apply to sales made by a TCT to a UK consumer when purchasing travel arrangements in the UK and, secondly, whether there

1 The law is stated as it applies in England and Wales.

2 In this opinion, 'TCT' concerns only tour operators operating from outside the European Economic Area ('EEA') without any physical presence in the UK or EEA.³ SI 1992/3288.

3 SI 1992/3288.

is jurisdiction to prosecute the TCT or a UK based facilitator for a criminal offence in the UK courts.

Background

3. AITO is concerned at the number of foreign travel companies that are selling holidays to UK consumers in contravention of the ATOL Regulations and the PTR. These companies typically target UK consumers by attending UK trade shows, advertising in UK magazines and newspapers and using the internet. They usually operate from outside the European Union ('EU') and in particular, South America, Central America, India and South Africa.
4. I am instructed that these companies would contravene the requirements of the PTR and the ATOL Regulations if they operated from the UK. Primarily because they are not ATOL licensed or exempted and consequently they do not have in place the consumer protection measures required under the ATOL and PTR schemes. There is a substantial detriment to UK consumers because:
 - (a) The TCT will not have taken out the insolvency protections required, which means that consumers do not have recourse to a financial protection scheme if the TCT becomes insolvent.
 - (b) Consumer are not given the mandatory pre-contractual and pre-departure information concerning the holiday, visa and immigration issues.
 - (c) Consumers are not given mandatory contractual rights. For example, the right to an alternative package or a refund if significant changes are made pre-departure.

- (d) The TCT does not take responsibility for the proper performance of the package, nor put in place measures (for example, insurance) to meet customer liabilities if something goes wrong during the holiday.
 - (e) The overall effect is to undermine consumer confidence in the regulatory system as a whole.
5. The European Commission has previously calculated that the total consumer detriment from unregulated travel packages in the UK is over £100 million.⁴ AITO estimates that between 10-25 percent of this UK consumer detriment total can be attributed directly to TCTs from unregulated sales made to UK consumers. In addition, AITO estimates that a similar level of consumer detriment arises from the sale of regulated travel packages by TCTs in the UK, where the TCTs do not comply with the PTR.
6. I am additionally asked to consider whether enforcement action could be brought against the UK intermediaries that provide services to TCTs assisting their sales to UK consumers. In particular, I am asked to consider the liability of:
- (a) the commercial organisers of UK trade shows at which TCTs exhibit in the UK;
 - (b) magazines and newspapers in which TCTs advertise;
 - (c) internet service providers operating in the UK through which the TCT's advertise on the internet.

4 "The European Commission estimates that consumer detriment from dynamic packages is €1.065 billion per year for EU-27 travellers, of which €114.9 million is for UK travellers." EC study on Consumer Detriment in the area of Dynamic Packages (November 2009 referred to in the BEIS Impact assessment for the consultation on the new Package Travel Directive 2015.

Summary of opinion

7. In my opinion:

- (a) there is likely to be territorial jurisdiction to bring criminal proceedings under the PTR or CPUTR in the English criminal courts against a TCT that sells travel arrangements to consumers in the UK. These regulatory provisions are designed to protect consumers and, in my opinion, the relevant offences are committed in the UK when they involve a purchase made by a UK consumer who is in the UK at the time.
- (b) A court may reject this interpretation of territorial jurisdiction for the criminal provisions in the ATOL Regulations. As a matter of statutory interpretation, the English courts are likely to adopt a narrower construction for the territorial extent of those regulations because of the effect that such a construction might have. However, there remains a tenable argument that the ATOL Regulations do apply to a TCT because there is no express exemption.
- (c) A UK intermediary that facilitated a TCT offence under the PTR or CPUTR may be criminally liable as a secondary party. It would, however, be necessary to prove knowledge of the regulatory infringement on the part of the intermediary. Where the intermediary is a company this is likely to require proof of knowledge of a person who is the directing mind of the company. This may be evidentially difficult where the intermediary is a large and complex organisation. However, such difficulties may be overcome by:
 - (i) clear evidence that a person that is the directing mind of the intermediary was actively and knowingly involved with a TCT.

- (ii) Evidence that a person who is the directing mind of the intermediary was on notice of the regulatory breach.

- (d) It follows that it may be difficult to prosecute an internet service provider or newspaper on the basis of secondary liability, unless there is evidence of such knowledge or clear notice. However, prosecuting the organiser of a UK trade show might be easier, particularly where steps had been taken to put the organiser on notice of the particular TCT's infringement.

THE LEGISLATION

8. I am asked to consider the enforcement action under three statutory consumer protection measures.
- (a) the ATOL Regulations;
 - (b) the PTR; and
 - (c) the Consumer Protection from Unfair Trading Regulations 2008 ('CPUTR').

I have focussed on the criminal offences created under these provisions that are usually prosecuted by public regulators, such as a local authority through its trading standards department.

The ATOL Regulations

9. The ATOL Regulations were made under powers in the Civil Aviation Act 1982 the 'CAA 1982').⁵ Section 71(1)(a) provides the power to make regulations so as to secure certain aims, including *“that a person does not in*

⁵ As amended, in particular, by the Civil Aviation Act 2012

the United Kingdom make available flight accommodation, either as principal or agent” unless certain conditions are met.”⁶

10. Section 69 of the ATOL Regulations makes it a criminal offence to contravene certain obligations it creates. In particular, it is a criminal offence to contravene regulation 9, which prohibits “*making available flight accommodation*” unless a person is ATOL licensed or exempted.

9 Who may make available flight accommodation

A person must not in the United Kingdom make available flight accommodation unless that person is—

- (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.

11. I have provided my opinion on the basis that the TCTs I am asked to consider would, if operating from the UK, be neither licensed under the ATOL scheme or exempted from its requirements. A TCT may potentially infringe other requirements of the ATOL Regulations, however, it is unnecessary to address these in this Opinion, which is focussed on territorial jurisdiction.

The Package Travel Regulations

12. The Package Travel, Package Holidays and Package Tours Regulations 1992⁷ (‘the PTR’) implement a European Directive⁸ and regulate the supply of combinations of travel services when offered for sale at an inclusive price. The underlying EU directive has now been replaced with a

⁶ The ATOL Regulations were not expressly made by reference to the extra-territorial jurisdiction provision in paragraphs 6 and 7 of Part 3 to schedule 13.

⁷ SI 1992/3288.

⁸ 90/314/EEC on package travel, package holidays and package tours.

new package travel Directive,⁹ which will be implemented by statutory instrument in 2018.¹⁰

13. At the time of writing the new regulations had not been published, however it seems unlikely that they will fundamentally alter this opinion because the new directive extends its coverage and it would seem unlikely that Parliament would intentionally reduce the scope of protection for UK consumers.
14. Regulation 3(1) of the PTR states that its provisions “*apply to packages sold or offered for sale in the territory of the United Kingdom.*” The PTR creates several offences, including an offence for the failure to provide requisite information¹¹ and provide certain evidence of security in the event of insolvency.¹² I am instructed to advise on the basis that it could evidentially be proven that the TCT had infringed one of those obligations.

The Consumer Protection from Unfair Trading Regulations 2008

15. I am also asked to consider the territorial extent of the Consumer Protection from Unfair Trading Regulations 2008 (‘CPUTR’). The CPUTR implements the Unfair Commercial Practices Directive (‘UCPD’) in the UK. The UCPD is a maximum harmonisation directive that Member States are expected to implement purposively but must not exceed its provisions.
16. In particular, I am asked to consider whether there is territorial jurisdiction to prosecute an offence in the UK when a TCT potentially infringes CPUTR by engaging in a misleading omission under regulation 6 because the TCT has failed to inform the consumer that they are not protected by ATOL status.

9 2015/2302/EU on package travel and linked travel arrangements, from 31 December 2015

10 Member States must transpose the Package Travel Directive into domestic law by 1 January 2018, ready for it to come into force from 1 July 2018.

11 PTR Regulation 7

12 PTR Regulation 16

17. I have approached this Opinion on the basis that it would be possible evidentially to prove that the TCT had made a misleading omission by failing to identify its status. The primary question is whether there is territorial jurisdiction to bring enforcement action when the TCT is based outside the EEA.

Territorial jurisdiction for criminal prosecution

18. The territorial extent of a statutory provision is presumed not to extend beyond territories of the United Kingdom over which Parliament lacks territorial jurisdiction, unless Parliament expressly states the contrary.¹³ It follows that, save for statutory exceptions, the English criminal courts are not generally concerned with conduct abroad.¹⁴
19. In determining territorial jurisdiction for the criminal offences in these measures, it is therefore important to establish where the offence was actually committed, which may not be the same as the location of a potential defendant. In establishing this, the courts have traditionally asked the question whether the ‘essence’ or ‘gist’¹⁵ of the offence occurred within the jurisdiction, sometimes known as the ‘last act’ rule.¹⁶ However, the modern approach is to ask where a ‘substantial measure’ of the activities constituting a crime took place.¹⁷
20. In my opinion the courts are generally likely to consider that a ‘substantial measure’ of an offence was committed within the UK jurisdiction, if the complainant was a consumer in the UK at the time it occurred. This is likely to

13 See Bennion on Statutory Interpretation 6th Edition, sections 101 and 106

14 *Board of Trade v Owen* [1957] AC 602 and *Cox v Army Council* [1963] AC 48 HL

15 *R v Harden* [1963] 1 QB 8 46 Cr App R 90.

16 *R v Manning* [1998] 2 Cr App R 461 CA.

17 *R v Smith (Wallace Duncan) (no 4)* [2004] 2 Cr App R 17 CA.

remain the position even if the offence is committed by a TCT remotely, for example using the internet or acting through an agent.¹⁸

21. The rationale for this is the consumer protection nature of the offences, which are primarily designed to protect UK consumers and it seems unlikely that Parliament would have intended that purpose to be jurisdictionally frustrated because a trader was selling to, or otherwise dealing with, UK consumers from abroad.

Jurisdiction in relation to the PTR and CPUTR

22. It follows that, in my opinion, where a TCT (operating from outside the EEA) sells a travel arrangement to a UK consumer (who is then in the UK) the criminal courts are likely to accept jurisdiction for an offence under:
 - (a) the provisions of the PTR because the package was “*sold or offered for sale*” to a consumer in the UK.
 - (b) The unfair commercial practices in the CPUTR because the ‘commercial practice’ involved selling to a UK consumer in the UK and the ‘transactional decision’ of the consumer making payment took place in the UK.¹⁹

Jurisdiction in relation to the ATOL Regulations

23. The jurisdictional position in relation to the ATOL Regulations is, however, likely to generate distinct arguments. This provision does not implement EU law and is not replicated universally in EEA states or internationally.

18 See also *R v Baxter* [1972] QB 1; Cr App R 214 on agency.

19 See regulation 2 of the CPUTR.

24. It is certainly arguable that an offence under the ATOL Regulations may be committed in the UK by a TCT that sells relevant flight accommodation when it is neither licensed nor exempted. Parliament did not expressly exempt a TCT in regulation 10 for the ATOL Regulations. However, this interpretation would have the effect of dramatically extending the ATOL scheme to any person selling flights to UK consumers from a foreign jurisdiction.
25. Ultimately the question of whether an offence is committed in the UK is a matter of statutory interpretation by the courts.²⁰ In addition to a purposive interpretation of the ATOL Regulations there are two further reasons that the courts might be reluctant to extend its ambit.
- (a) The language used in the “*must not in the United Kingdom make available*” implies that the provision regulates those “in” the UK.
 - (b) The provisions on extra-territorial jurisdiction in paragraph 6 and 7 of Part 3 to schedule 13 to the CAA 1982 were not engaged in making the ATOL Regulations. It can be argued, however, that interpreting the ATOL Regulations in this way does not engage extra-territorial jurisdiction, but merely asks whether the offence was actually committed in the UK.
26. In my opinion the arguments about territorial jurisdiction in relation to the application of the criminal provisions in the ATOL Regulations to a TCT are finely balanced. It follows that it may prove legally difficult to bring a criminal prosecution of a TCT under this provision.

Part 8 civil enforcement by public regulators

27. It should also be added that most public regulators, including local authorities and the Civil Aviation Authority (‘CAA’), have the power to bring civil

²⁰ See for example Lord Diplock’s speech in *Treacy v DPP* [1971] AC 537 HL

enforcement action under Part 8 of the Enterprise Act 2002 (the 'EA 2002'). The PTR and CPUSTR and both listed measures for the purposes of Part 8,²¹ however, the ATOL Regulations, which do not implement EU law, are not enforceable under Part 8.

28. The definition of goods and services in Part 8 permits action against overseas traders where they seek to supply goods or services to consumers in the UK.²² The pursuit of an overseas traders outside the EEA is likely, however, to be legally complex and dependent on the treaty arrangements between the UK and the country concerned. It would be important to ascertain whether those specific treaty arrangements mean that the judgment of a UK court will be recognised by the court of the country that the TCT is based in.

Criminal liability of intermediaries

29. In criminal proceedings there are primarily two²³ bases upon which the liability of an intermediary might be founded for an offence committed by a TCT:
- (a) as a secondary party ('accessory') to the criminal offence committed by the TCT as a principal.

21 Schedule 13 para 4 and 9C to the EA 2002 and the schedule to the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003/1374 as amended.

22 Section 232(4) and (5) Goods or services which are supplied wholly or partly outside the United Kingdom must be taken to be supplied to or for a person in the United Kingdom if they are supplied in accordance with arrangements falling within subsection (5). (5) Arrangements fall within this subsection if they are made by any means and—(a) at the time the arrangements are made the person seeking the supply is in the United Kingdom, or (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the United Kingdom.

23 I have also considered liability under the provisions of Part 2 of the Serious Crime Act 2007, however I do not consider they would provide any advantage over the general criminal law principles of secondary liability dealt with below.

- (b) Liability under the causal liability provisions in the regulation 25(1) of the PTR or regulation 16 of the CPUTR. There is no equivalent provision in the ATOL Regulations.

Secondary criminal liability

30. The primary basis for secondary (accessory) liability in this context is aiding and abetting²⁴ the commission of an offence.²⁵ It is, however, important to understand that there is a requisite *mens rea* that must be proven when the offence is alleged to have been committed by an accessory. In regulatory cases this *mens rea* can be difficult to establish evidentially, particularly when the alleged accessory is a large, complex company.
31. In order to be convicted under this mode of liability there would need to be evidence that the accessory had:
- (a) provided assistance or encouragement to the principal (the conduct element);²⁶ and
- (b) knew the essential matters which constituted the offence at the time that positive assistance or encouragement was given (the mental element).²⁷
32. It has been said that aiding and abetting is a mode of liability that is premised on a causal link between the act of the accessory and the commission of the offence by the principal offender.²⁸ Although it would seem clear from the

24 It is unlikely there would be an allegation of counseling or procuring an offence. The word 'abet' is now considered to be archaic (R v Stringer [2012] QB 160).

25 Contrary to section 44 of the Magistrates' Courts Act 1988 in summary proceedings.

26 *Cassady v Reg Morris (Transport) Ltd* [1975] RTR 470; *Bowker v Woodroffe* [1927] 1 KB 217; *National Coal Board v Gamble* [1959] 1 QB 11

27 *Johnson v Youden* [1950] 1 KB 544

28 *A-G's Reference (No. 1 of 1975)* [1975] QB 773

authorities that the act need not be the main or only cause of the principal committing the offence.

33. The courts seem historically to have adopted a narrower approach to this concept in regulatory cases, generally requiring proof that the accessory had actual knowledge. Although there are conflicting authorities about whether knowledge can be deemed from an accessory deliberately shutting his eyes to the obvious.²⁹ Whilst mere suspicion is not sufficient,³⁰ it is not necessary to know the precise details of the offence³¹ or to appreciate it was illegal.³²
34. In the more serious criminal cases, generally involving homicide, the courts have also been willing to find an accessory liable on the broader basis that the accessory foresaw the likelihood of an offence being committed.³³
35. The Supreme Court has recently reviewed the common law principles of secondary liability in *R v Jogjee (Ameen Hassan)*.³⁴ That review focussed on the law of homicide and the mental element necessary in a joint enterprise murder, which is a crime of specific intent. It is unlikely to alter the principles identified in regulatory cases involving offences that do not require proof of a specific *mens rea* against the principal.
36. Attributing *mens rea* to a company is not straight forward, particularly when the company is large and has a complex structure. In general terms the company will only be attributed with a specific *mens rea* if it was held by

29 *D Stanton & Sons Ltd v Webber* [1973] RTR 86

30 *R v Bainbridge* [1960] 1 QB 129

31 *R v Bainbridge* [1960] 1 QB 129

32 *Thomas v Lindop* [1950] 1 All ER 412; *Johnson v Youden* [1950] 1 KB 544

33 *DPP of Northern Ireland v Maxwell* [1978] 1 W.L.R. 1350; *R v Webster* [2006] 2 Cr. App. R. 6

34 [2016] UKSC 8; [2017] A.C. 387; [2016] 2 W.L.R. 681; [2016] 2 All E.R. 1; [2016] 1 Cr. App. R. 31; (2016) 180 J.P. 313; Times, March 2, 2016;

person who is the directing mind and will of the company, usually a company director.³⁵

37. A possible exception to the general principle is the rather uncertain concept of *delegation*. If the company has delegated complete control of a part of the business to an individual, the company may itself be fixed with that individual's state of mind.³⁶ The extent to which the company must have divested itself of control is not certain, however the authorities do not support the suggestion that the concept of delegation might apply to a lower level employee who is not a manager.

Opinion on the secondary liability

38. In my opinion the principles of secondary liability are capable of application to UK intermediaries that assist TCTs in the commission of a criminal regulatory infringements of these consumer protection regulations. However, it would be necessary to prove requisite knowledge that could properly be attributed to the particular intermediary.
39. For a company, this is likely to require proof that a person who was the company's directing mind (usually a company director) knew of the regulatory infringement by the TCT at the time assistance was provided. This knowledge element will inevitably be more difficult to prove where the intermediary is a large and complex organisation. However, such difficulties may be overcome by obtaining evidence that a person, that is the directing mind of the intermediary, was either:
- (a) actively and knowingly involved with a TCT; or
 - (b) on express notice of the regulatory breach.

35 *Tesco Supermarkets Ltd v Natrass* [1972] AC 153

36 *John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233

Causal liability

40. The PTR (regulation 25(1)) and CPUTR (regulation 16) both contain causal liability provisions that are designed to make a person liable for causing another to commit an offence. These provisions are also known as ‘bypass’ provisions because the directly liable party can be bypassed in favour of prosecuting the person who has caused the offence to be committed.
41. Regulation 16 of the CPUTR is set out below and is in similar terms to regulation 25(1) of the PTR.

Offence due to the default of another person

16(1) This regulation applies where a person ‘X’ –

- (a) commits an offence under regulation 9, 10, 11 or 12, or
- (b) would have committed an offence under those regulations but for a defence under regulation 17 or 18,

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under regulation 17 or 18 is due to the act or default of some other person ‘Y’.

- (2) Where this regulation applies Y is guilty of the offence, subject to regulations 17 and 18, whether or not Y is a trader and whether or not Y’s act or default is a commercial practice.
 - (3) Y may be charged with and convicted.
42. Causal liability provisions have historically been used to prosecute those who cause traders to commit regulatory offences. For example, where a person sells a car to a second-hand car dealer with a false, reduced odometer reading. The dealer may not know about the false reading and itself commit a strict liability offence when the vehicle is sold-on. A causal liability provision allows prosecution of the person who originally sold the vehicle to the dealer and effectively caused the offence.

43. Causal liability provisions have not been the subject of extensive appellate litigation, with most of the case law being under the repealed parts of the Trade Descriptions Act 1968. In *Tarleton v Natrass*,³⁷ it was held necessary for the prosecutor to show a causal connection between the act or default and the offence.³⁸ In *Padgett Brothers (A-Z) Ltd v Coventry City Council*,³⁹ it was said that causal liability ‘does not require that the relevant act should be solely due to the acts or default of the importer but merely that they are due, in part, to that’.

Opinion on causal liability

44. My concern about the application of causal liability to an intermediary in this situation is that a court may be reluctant to find that offence committed by the TCT was “*due to*” the act of the intermediary. Although the intermediary may have provided the mechanism or platform through which the TCT commits an offence, it may be difficult to persuade a court that the intermediary was its cause. This concern might be assuaged, however, where the intermediary plays an active and knowing role in the TCT’s regulatory breach.

Liability as a principal under the CPUTR

45. I have also considered whether a UK intermediary might be liable directly under the CPUTR because of the broad concepts of ‘trader’ and ‘commercial practice’. This was recognised by the Court of Appeal (Criminal Division) in *R v Scottish and Southern Energy plc*⁴⁰ (SSE PLC). The prosecution arose out of the doorstep selling of electricity and gas based on a sales script. The

37 [1973] 3 All ER 99.

38 See also *Cottee v Douglas Seaton (Used Cars) Limited* [1972] 3 All ER 750, [1972] 1 WLR 1408; *Naish v Gore* [1971] 3 All ER 737 and *Richmond Upon Thames LB v Motor Sales (Hounslow) Ltd* [1971] RTR 116.

39 (1998) 162 JP 673.

40 [2012] EWCA Crim 539, [2012] CTLIC 1, (2012) 176 JP 241.

PLC and an individual salesman employed by a subsidiary company (the subsidiary) wholly owned by the PLC were defendants. The PLC was convicted of two misleading action offences under regulation 5(2) CPUTR on the basis that its *'sales staff and agents were trained to deliver'* a deceptive sales script.

46. The Court of Appeal found that the definition of 'trader' in regulation 2(1) was broad in scope and should be construed purposively. It was possible for more than one trader to be guilty of a specific offence under the Regulations. At para 28, Davis LJ said:

'It is perfectly possible to have a prosecution of more than one person for the same alleged offence under the 2008 regulations. The very wide definition of "trader" and "commercial practice" demonstrates that: and that is also consistent with the provisions of regulation 16(2), which contemplates that both "X" and "Y" may be traders in relation to the same activity.'

47. A key factor in the court's decision on this was that there was some evidence that training was carried out with the involvement of the PLC and under its ultimate supervision and control. Davis LJ stated:

'It is important to bear in mind that "trader", for the purposes of the 2008 Regulations, extends to any person who in relation to a commercial practice is acting for purposes relating to his business. The words "any", "in relation to", "acting" and "relating to" are all words with width and elasticity. As to the definition of "commercial practice" that is likewise broadly framed. It is amply sufficient to cover involvement in or supervision or control of training, in appropriate circumstances, as being directly connected with the promotion or sale or supply of a product; and it is also to be noted that the definition of "commercial practice" carefully avoids saying that the promotion or sale or supply has to be made by the trader itself.'

Opinion on liability as a principal under the CPUTR

48. In my opinion, it might also be argued that an intermediary that facilitated the unlawful sale of travel arrangements was itself a trader under the CPUTR and the facilitation amounted to its own commercial practice. This would very much depend on the particular unfair commercial practice that was alleged and the circumstances of an intermediaries' involvement.⁴¹ The extent of the intermediary's active involvement with the TCT is likely to be important. However, the CPUTR provide a principles-based platform for consumer protection and this mechanism should also be considered as a potential route for prosecution.

Conclusion

49. In my opinion there is likely to be territorial jurisdiction to bring criminal proceedings under the PTR or CPUTR against a TCT that sells travel arrangements to consumers in the UK. It may also be possible to prosecute an intermediary that knowingly facilitated such an offence. I hope that I have covered all of the issues that I was asked to address. However, I can be contacted in Chambers should any matter require clarification or amplification.⁴²

28th February 2018

██████████ QC
Gough Square Chambers
London EC4A 3DE

41 It would be difficult to make such an allegation against a newspaper or magazine on the basis of the CJEU decision in *RLvS Verlagsgesellschaft mbh vStuttgarter Wochenblatt GmbH* C-391/12

42 This Opinion may only be relied upon by AITO.

IN THE MATTER OF:

**THE ASSOCIATION OF INDEPENDENT
TOUR OPERATORS**

-and-

**ENFORCEMENT ACTION AGAINST
THIRD COUNTRY TRADERS
THAT SELL TRAVEL ARRANGEMENTS
TO UK CONSUMERS
IN CONTRAVENTION OF ATOL AND
PACKAGE TRAVEL REGULATIONS**

OPINION

28th February 2018

██████████ QC
Gough Square Chambers
London EC4A 3DE

██████████
FieldFisher LLP
London

UPDATING CONSUMER PROTECTION IN THE PACKAGE TRAVEL SECTOR: MODERNISING ATOL

Supplementary comments from Members of the Association of Independent Tour Operators (AITO) to the Civil Aviation Authority (CAA)

These are the common points of feedback from members

“ATOL CERTIFICATES”

Firstly the question of “who issues the ATOL certificate?” Leaving aside the question of double handling involved with our sending it to the CAA and then you putting it on a web site, most of our customers are in the 60+ age bracket and a significant number still don't have access to a computer. These people would be disadvantaged by the new system which, according to the CAA, is intended to ensure that the customers are better informed about their rights. The current practice is to mail copies of the certificate to these people, together with their booking confirmation.

Still on the subject of the ATOL certificate, the CAA were most anxious when it was introduced that operators had to adhere very strictly to a timescale for issue following a customer's booking. Members have rigorously adhered to the requirement to reissue whenever there is a change to the booking. It is difficult to see that the proposed new system will keep customers informed either as promptly or as accurately as is done now.

The proposal to supply the CAA with all our client details and for them to issue the ATOL certificate is an obvious concern:

1. We have only recently spent money updating our systems to handle the new ATOL certificates. We do not want to have to spend more money to update our systems again. It maybe fine for the big players but these costs are not acceptable for smaller operators especially as this change comes so soon after the initial change
2. Supplying client data for an operator who deals with agents is a challenge we might know it is Mr & Mrs Smith travelling but that is it.
3. And the GDPR issue over handing over client details

FLIGHT DETAILS ON PROMOTIONAL MATERIAL

Whilst we can understand that time of day and choice of airline is an important factor in a customer's decision to book, the brochures are published far too early to make a detailed commitment. It is a fact that most airlines don't open bookings until 11 months before departure. Brochures for the whole of 2019 is published in August 2018 with a press date in July. One current practice is to use such phrases as "Afternoon departure from London for a late evening arrival in....." Operators are careful to specify that a scheduled airline will be used though don't usually say which one. Sometimes customers telephone or email prior to booking for the most up to date position available. There has been any reports of an instance where this has become an issue with customers.

Some members brochures quote a form of words which was given by the CAA many years ago to cover such instances where details are not known.

Response to the Civil Aviation Authority (CAA) Consultation on Modernising ATOL

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was established by the Secretary of State for Transport in 2000 to give advice to the Secretary of State, the Civil Aviation Authority and the Trustees of the Air Travel Trust on the arrangements for the financial protection of air travellers and customers of air travel organisers.

The Committee is formed of a diverse and representative group of the travel industry, balanced between the industry and those focused on consumer interests. It includes the major trade bodies (Association of British Travel Agents (ABTA), Association of Independent Tour Operators (AITO), The Association of ATOL Companies (AAC), Association of Scheduled Airlines Operating within the UK (BAR UK), Travel Trust Association (TTA)), larger and independent tour operators, passenger representatives and independent experts, including the Chairman, and representatives from the Civil Aviation Authority and Air Travel Trust (ATT). As such it is the only body in the UK that brings together the travel trade, regulator and consumer representatives and independent members devoted to the interests of air travellers.

ATIPAC supports the proposals set out in the consultation, but subject to the comments set out here.

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?

While the Committee approves the changes in that they clarify the obligations of ATOL holders and agents, it continues to be concerned over the position consumers find themselves in if no agency agreement exists, or if action is taken against an agent for non-compliance, where the consumer may not be refunded. The availability of civil sanctions against non-compliant agents - which the Committee strongly supports - must not prejudice the consumer's position.

One simple solution would be for the CAA to meet all legitimate consumer claims under the ATOL system and then, separately, to take any required enforcement action against an agent. One form of enforcement, where appropriate, might be the recovery of the claim value, but that does not automatically follow. In any event, the consumers claim should not be delayed or invalidated by a failing of an intermediary.

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?

We understand the CAA's legal concerns and the limitations on Member States set by this maximum harmonisation directive, but this proposal is not, in our view, in the best interests of UK consumers. The impact is likely to be that some existing ATOLs are surrendered and affected UK residents will be protected by the arrangements in the Member State where the organiser is established. ATIPAC has a long-standing view that insolvency protection will be more effective if organised on a national basis, on the grounds that

barriers (language, differing legal codes, geographical) may hamper the effective provision of insolvency protection services.

We also note that the insolvency of Low Cost Holidays demonstrated that some (though not all) non-UK protection arrangements are ineffective, which creates a further risk for UK consumers. There is an ambiguity over "UK" companies that are established in other EU/EEA states that operates to the potential disadvantage of UK consumers. From the UK consumer viewpoint, ATOL protection will be expected to apply to predominantly UK businesses. We urge the CAA to consider ways of addressing this risk, especially in establishing consumer-friendly processes to aid claimants.

The Committee considers that consumer information and education are necessary. From the consumer perspective, some travel companies which have previously offered their customers ATOL-protected holidays may lose the ability to do so and it must be made clear to the public that the status has changed. Customers may wish to acquire UK-based protection (or indeed may prefer another particular member state) and must be able to find out easily which travel companies are covered by which member state.

Proposal to introduce online ATOL Certificates

Although we support the proposal in general terms, we note that there seems to be no provision for people without internet access, which may include elderly holidaymakers. As set out, there seems to be no means by which such people would be able to access an ATOL Certificate. We recommend that the CAA considers how this could be achieved. For example, there could also be an obligation on the ATOL holder or agent to provide consumers with a printed Certificate, sourced from the CAA website, on request.

ATIPAC

12 March 2018

Please find below **Barrhead Travel's** response to Consultation proposals:

Consultation: Modernising ATOL CAP 1631

Consultation Queries -

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

An: Further clarity on some definitions would be helpful e.g. what does 'combines' mean perhaps 'a trader who provides transportation together with other services and sell or offers for sale packaged makes it clearer'. More clarity needed on 'close proximity' to the advertised price. Online 'to secure that flight immediately' is not practical and will not work (tour operators publish programmes many months before, group and ITX fares cannot be secured until final balance paid etc).

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

An: We believe the overall regulation mechanism in connection with LTA's is too complicated and will not be understood by either the trade or customers. This can only lead to confusion.

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?

An: No major issue here but we'd like to understand why the protection schemes in other member states 'may also remove their ability to market under those local schemes'

Question 4 What are your views on the changes proposed to each of these four exemptions?

An: Any general business agreement should be guidance only or business best practice and not incorporated into standard terms.

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?

An: No major issue

Question 6 What are your views on the proposed changes to the schedule of Accredited Body standard terms?

An: We are in agreement with this regulation

Question 7 What are your views on the proposals to change ATOL Certificates as set out above?

An: It would be useful to have clarity on what is defined as a multiple contract model. We suggest that the wording should be reviewed in order to clarify policy intention

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?

An: No issues with this proposal

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?

An: No issues with this.

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?

An: No issues with this.

Question 11 Do you have any comments on the proposal to share AARs with the relevant accountancy body?

An: Are there any data protection issues with this and how secure does this remain with professional accountancy bodies?

Question 12 The CAA would welcome consultees' views on this proposal, while it is still in the early stages.

An: The proposal of the CAA issuing all certificates does not appear practical. This also appears to expect all customers to have Internet access – what about those that do not? Also, there are data protection issues as certificates are not part of the contract (no legal basis for processing) and if it is considered a legal obligation, it goes much further than the PTD intended.

A full consultation will be required prior to any implementation of this proposal.

Hello

Our responses should all be read in the context of our business, which is 100% Flight-Only, B2C, ATOL 10880.

Q1 Customers living outside of the UK are outside the scope of ATOL regulation. It is not until the customer get as far as making the booking and adding their address that the ATOL cover becomes clear. It is therefore not possible to state that the product is ATOL protected (or not) at the point it is offered for sale.

Q2. We would support these proposals.

Q3. We would support these proposals.

Q4.

01/2012 – we have no strong views on this

10/2012 – we strongly support this proposal, as when the airline has been paid in full at time of booking, the consumer is in the same position as having bought directly. This exemption is perfectly reasonable and addresses an area that was over-regulated.

04/2013 We support these proposals

05/2013 We have no views on this as it is outside our experience.

Q5. We support these proposals.

Q6. We have no strong views on this.

Q7. We have no strong views on this.

Q8. We support these proposals.

Q9 We support the proposed transitional arrangements

Q10 We have no comments on this.

Q11 We would defer to our accountants to respond on this question.

Q12 We would broadly support this, but only where it provides genuinely improves consumer protection, and discourages under-reporting. What is not clear is the extent to which this is a problem at the moment. ATOL holders are already required to issue certificates immediately, and we're not aware of any uncertainty from our customers about their protection.

Best regards


Managing Director

BF Aviation Limited
ATOL 10880

Direct: [REDACTED]

Dear Sir

ATOL 5406

I'm not sure how to go about putting in my comments but, the system at the moment seems to be heavily weighted towards the bigger operators with large numbers of backroom staff to deal with all the paperwork. I am a small business ATOL holder with a maximum number of clients of 500 and maximum turnover of £1m which puts me at a huge disadvantage as this gives me an average tour price of only £2,000 and there are very few tours which cost less than that now. In fact, many of the tours are in the £4,000 - £5,000 category now as they are highly specialist wildlife tours including flights, guiding, accommodation, food, entrance fees etc. This means I could only sell 200 of these tours every year before I need to go up to the next category and increasing the paperwork I need to do which is extremely expensive for a small business. There has been no increase to the limit of £1m for small business ATOL holders for many years and this really needs to be increased to £1.5 or even £2 million otherwise is a severe restriction on our business as we have to run fewer tours.

Yours faithfully

████████████████████
Birdfinders
<http://www.birdfinders.co.uk>
Tel: ██████████████████

Good evening,

I've submitted responses via the DfT online resource and herewith add the supplementary comments and queries below for consideration along with the consultation responses.

Question 1 Response:

Contractual fees - Minimum set of Information

Clearly defined ticket cancellation fees should be expressly stated within the minimum set of information. Cancellation or change fees are incurred in relation to the primary booking, not optional extras. Wordings should make clear these are not to be treated (and therefore expressed to consumers) with an importance level equal to peripheral extras. The peripheral extras stated are clearly referring to optimal additional purchases. Cancellation is very rarely an optional cost for a consumer yet bookings can be concluded presently without the relevant fee being specified. This gap in access to pre booking information for consumers should be closed with the new regulations. The responsibility to provide cancellation terms and fees, specific and relevant, for the quote should rest with the agent.

The regulations should make clear it's not acceptable to tell the customer it's their responsibility to find the airline's booking conditions. All relevant contractual conditions and potential fees being agreed to in accepting the quote should be made available to the consumer prior to purchase. That should apply in relation to fees potentially imposed by the travel provider and the agent.

New CAA IT System for ATOL

A traveller may be prevented from travelling but decides to use their right to transfer, as provided for in the PTD, to transfer their booking to someone else. Currently in this scenario the ATOL certificate is reissued in the new traveller names with no additional admin fee. If the CAAS are required to reissue an ATOL cert in this scenario under the new system, can you confirm there will be no financial burden placed on the traveller for the certificate's reissue or related admin fee? Note that any additional costs associated with consumers exercising their right to transfer would work against the intentions of the PTD's which extend, not prohibit, the consumers right to transfer.

Yours sincerely,

[Redacted signature]



Travel cancellation & transfer specialist

p: [Redacted] m: [Redacted]
w: www.cannytravel.com e: [Redacted]





Consumer Markets Group K3
CAA House 45-49 Kingsway
London
WC2B 6TE

22 March 2018

Dear Nikki

RE: Consultation – Modernising ATOL

The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI).

The Consumer Council has specific statutory duties in relation to energy, postal services, transport, and water and sewerage. These include considering consumer complaints and enquiries, carrying out research and educating and informing consumers.

ATOL disclosures

The Consumer Council believes that in order for consumers to make informed travel decisions it is vital that they are provided with clear and concise information in a format that is easy to understand. It is especially important at a time of change in the travel sector to ensure that consumers are aware of what protections are in place when making purchasing decisions. It is our belief that this information must be provided upfront when advertising products and at point of sale as it may be an influencing factor on what purchases are made.



Other disclosures

The consultation document states that consumer research shows that features such as time of flight and the operating airline are important when selecting holidays. The Consumer Council understands that this may offer consumers a sense of security that the flights that have been identified will be part of their holiday. We believe that in addition to the ATOL holder having to secure flights immediately at point of sale the consumer must also be made aware of their cancellation rights. The Consumer Council would welcome further information on whether this new requirement will impact on consumers' cancellation rights?

Exemptions from ATOL Regulations

The Consumer Council seeks further information on the CAA's proposal to broaden exemption 10/2012 – Flight-only use of consumer's credit or debit card. It is The Consumer Council's understanding that the current exemption can only be used if the travel business uses the consumer's own credit or debit card. The Consumer Council requests clarity that if the travel business makes payment to the airline in other forms, will the consumer's payment protection under other schemes/legislation¹ if a consumer's credit or debit card been used, be diminished by the travel business making the payment through other means?

Proposal to introduce online ATOL Certificates

The proposals note that the issuing of the ATOL certificates is to change from being issued by the ATOL holder or agent, which made the sale to being issued by the CAA. The consultation explains that the consumer will be issued with a reference number, enabling them to go onto the CAA's website and check the details of protection. We appreciate that the full details of this scheme are yet to be developed. However, The Consumer Council has some concerns about introducing online ATOL certificates and believe that in developing this scheme the CAA should consider the following issues:

¹ E.g. Consumer Credit Act or debit card charge back scheme

- The CAA must take into account the consumers who do not have access to the internet, who are not computer literate or are 'offline consumers'. Our research shows that only 28% of consumers access Government services online. The reasons that consumers who do not use the internet to buy goods and services are lack of interest (53%), lack of knowledge and skills (29%) and concerns about security or privacy (18%)². Therefore, the CAA should consider providing an alternative method of contact that is widely advertised;
- Consumer apathy and lack of understanding about the importance of the ATOL certificate may act as a barrier from the consumer actively accessing the CAA website to check the details of their protection;
- Consumers may have security concerns about using a third party website to access information about their holiday. Our research about consumers' views on travel insurance found that consumers expressed reservations about security and reliability of some online sites³;
- While many consumers regularly make purchases online there are others that for specific reasons have chosen to purchase holidays face to face e.g. in high street travel agents. In buying a service in this way consumers will have an expectation that they will be provided with all the information that they need from the sale agent. An example of this is that consumers have told us that in relation to travel insurance they do not specifically seek information but rather inform a broker or travel agents of their needs for them to select the most appropriate policy⁴;
- It may be a consumer's preference to receive information in paper format or other accessible formats; and
- Consumers may not consider the value of this information unless in a situation where things go wrong, if away on holiday at that time they may not have access to the internet or their reference number.

² The Consumer Council – Consumers in Control (2015)

³ The Consumer Council - Insured to travel? (2013)

⁴ The Consumer Council - Insured to travel? (2013)

If you wish to discuss any aspect of this response, please contact [REDACTED] on [REDACTED] or via email on [REDACTED]

Yours sincerely



[REDACTED]
Head of Transport Policy

Modernising ATOL

(Civil Aviation Authority)

Chartered Trading Standards Institute Response
23rd March 2018

About The Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the [Business Companion website](#) to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the [Consumer Codes Approval Scheme](#) which facilitates high principles of assisted self regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI is also a key member of the [Consumer Protection Partnership](#), set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.

This response has been composed by [REDACTED]. Should you have any queries or wish to discuss the response please do not hesitate to contact [REDACTED], Lead Officer and Policy Executive at CTSI [REDACTED]

Chartered Trading Standards Institute
1 Sylvan Court, Sylvan Way
Southfields Business Park
Basildon, Essex, SS15 6TH
Tel: 01268 582200
www.tradingstandards.uk

Modernising ATOL: CTSI Response

Holiday and Travel in the UK is currently regulated by the Package Travel Regulations 1992 (PTR's), the Consumer Protection from Unfair Trading Regulations 2008 (CPR's) and The Consumer Rights Act 2015 (CRA), all enforced by UK Trading Standards Authorities.

Core UK package holiday and travel businesses will, in cases where a flight is included in the package, be regulated by the Civil Aviation Authority (CAA) and their ATOL scheme, but only in relation to the financial protection and repatriation of consumers.

Trading Standards using the legislation above enforce the sales of non-flight packages, specifically, the financial protection of consumers, as well as the accuracy of information, the legality of pricing activity and advise on the liability of the business who have a 'duty of care' to their consumers.

Responses to consultation questions

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

Changes arising from the new PTD mean that a Flight-Plus arrangement will typically become a package (unless the selling model is changed). CTSI are concerned that some businesses may arrange their selling model so that consumers will be presented with a new type of booking – a Linked Travel Arrangement (LTA). Under the new PTD a flight-inclusive LTA will not be a licensable transaction (won't need an ATOL), so a business advertising or selling (facilitating) an LTA need not hold an ATOL (unless the flight component of the LTA needs an ATOL) which will be very confusing for consumers as they would expect a flight-inclusive arrangement would require an ATOL. Funded training advice to business, enforcement and consumers will be needed.

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

We are told that this standard term requires ATOL holders to provide the CAA with information that enables it to determine the level of ATOL Protection Contributions to be paid and assess the likely impact that the failure of an ATOL holder could have on consumers and the Air Travel Trust Fund. We are told these are changes envisaged due to the changes with Flights=Plus".

CTSI have no specific comments other than the changes should be transparent.

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?

CTSI have no comments

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

CTSI have no comments

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?

CTSI would support any change which will clarify the obligations of ATOL holders and Agents of course. The availability of civil sanctions against non-compliant agents - which the CTSI strongly supports and hopes will be included in the PTD implementation - must not prejudice the consumer's position.

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

CTSI have no comments

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

As already stated, CTSI are aware that transparency will be the key for consumers. Unless clearly explained, consumers will be expecting an ATOL Certificate for flight-inclusive LTA's, which, as we know, are a difficult concept made more difficult as the enforcement of ATOL protected packages and multiple contracts, will trigger an ATOL Certificate, flight-inclusive LTA's will not.

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?

CTSI have major concerns about the whole issue of Place of Establishment. Currently (under the 1992 PTR's) it's Place of Sale that dictates the enforcement and the new process of Mutual Recognition will cause consumers concerns if they contract with business outside the UK, but in the EU, as their insolvency protection may differ considerably from the UK's. This was highlighted by the recent problems with LowCostHolidays who based themselves in Spain after being in the UK and there was only limited protection for consumers when the business collapsed. Insisting on ATOL protection if a business is based in the EU (not UK) would not comply with the new PTD.

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?

CTSI are in agreement with these transitional provisions.

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?

CTSI have no comments.

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

CTSI have no comments.

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

Although CTSI support the proposal to produce online ATOL Certificates, we note that there seems to be no provision for people without internet access, which may include elderly holidaymakers. There seems to be no means by which such people would be able to access an ATOL Certificate. We recommend that the CAA considers how this could be achieved. For example, there could also be an obligation on the ATOL holder or agent to provide consumers with a printed Certificate, sourced from the CAA website, if requested.

Response of dnata Travel UK to the Civil Aviation Authority on Modernising ATOL

March 2018

dnata Travel UK welcomes this opportunity to respond to the consultation on Modernising ATOL. We hope that this response aids the Government with the aim of increasing protection for consumers whilst at the same time, limiting the impact on the travel industry.

dnata Travel is one of the largest ATOL holders in the UK with an annual turnover in excess of £1 Billion. The dnata UK Travel Group is trusted by over 1 million passengers each year. We have offices throughout the UK which employ over 1,000 staff. The dnata UK group includes the following ATOL holders: The Gold Medal Travel Group, Travel2, Travelbag, The Global Travel Group, Travel Republic, Imagine Cruising and Emirates Holidays.

Each company within the dnata Travel UK group has contributed their thoughts and opinions with regards to the questions raised in the consultation and the answers provided reflect the consensus of the group.

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

The changes proposed to ATOL standard terms 1 and 6 appear to be aimed at providing the consumer with additional clarity about what they are booking prior to entering into a contract. As such, we fully support the principles of the proposed changes. Our concerns however deal with the wording which has been used as in some cases it is not clear what would be required to comply, and in other cases, it seems to suggest solutions which would be impractical to implement. We would like to address three specific points in the proposals and discuss the implementation options.

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."

With regards to the above wording, the requirements for implementation will hinge upon where it is deemed that a product is "offered for sale". For many of our online sales, the booking journey is such that a consumer may search for an individual travel service, and once selected, it is added to a "shopping basket". The consumer can then "check out", or continue to search for additional travel services. The "shopping basket" serves as a summary screen which details all of the individual travel services which a consumer has selected and provides an overall price for their booking. It is at this summary page where we believe it should be clearly stated to the consumer whether or not the travel service(s) they have selected would be protected via the ATOL scheme.

There have been some in the industry who have suggested that the point in which a "product is offered for sale" relates to the initial search – for instance if searching for a flight which returns 20 results, a statement must be provided against each of the 20 prices detailing whether or not ATOL protection would apply. We believe this would be the wrong approach. Because in many cases ATOL protection is dependent upon the combination of travel services, it is impossible to ascertain when a consumer

searches for a single travel service whether they intend to then combine it with something else. We believe the only workable solution is to ensure that in the “shopping basket” page which a consumer must review prior to confirmation, that it is made clear at that point whether all of the services within the basket would fall within the scope of ATOL Protection.

Other Disclosures

“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. The minimum set of information is i) the details of the ATOL holder and financial protection... 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.”

Once again, we are fully committed to ensuring consumers are given sufficient information to allow them to make a fully informed choice prior to entering into a contract. We have a number of questions about the wording of this proposal and the implementation it suggests.

Very much related to the point we raised above, we question whether the point of an initial search for a flight is the appropriate place to provide details of the financial protection which may or may not exist. As highlighted earlier, the financial protection which applies to a booking is very much dependent upon the combination of travel services which a consumer selects. We simply do not know at the point of an initial flight search whether they intend to book only a flight, or if they intend to add additional services to the booking. It is for this reason that we do not believe the point of the initial search is the correct place for this information, and instead, information on the financial protection which may or may not apply to a booking should be clearly presented to the consumer in the “shopping basket” summary page where all the components which they have selected can be viewed in their entirety and an accurate assessment of the financial protection which would apply can be made.

With regards to price comparison websites, if the responsibility rests with the ATOL holder to ensure their compliance, this will require travel businesses to add contractual obligations on the sites which aren’t currently in place. We would therefore be required to revisit such contracts with limited incentives for the price comparison sites to engage, and who will potentially want ATOL holders to bear the cost of the required changes to their sites by offering inferior commercial deals or otherwise. We would also highlight that the majority of price comparison sites only provide an initial search for a single travel service before redirecting consumers to the ATOL holder’s website. We would again argue that the “shopping basket” summary page later in the booking journey would be the more appropriate place for such information.

We also have concerns about the feasibility of providing the cost of “key extras such as baggage and transfers” in the initial flight search. In respect of baggage, we have a firm commitment to ensuring the consumer is aware of the baggage allowance which is included in the cost of the fare we have quoted. We believe this is fully in keeping with the stated purpose of the changes and provides the consumer with “sufficient information to allow them to make a fully informed choice”. It is not feasible along with the results of the initial flight search to provide a matrix of costs based on any number of additional bags / weights for each airline which the consumer may or may not want to add in addition to what is included with the fares quoted. We believe the wording should be changed so that there is a requirement to make it clear what baggage allowance is included in the fares quoted –

but does not go so far as to require quotes for a range of additional extras which the consumer has not requested.

Likewise for transfers, it is not feasible to provide a cost with the initial flight search as in most cases, we would not know where the passenger wanted to be transferred to. We would recommend changing the wording of the proposal so that this requirement applied only to the sale of pre-arranged packages.

We also are not clear of the intention of the wording in the second change within the “Other Disclosures” section.

It has been proposed that *“ATOL holders must take all necessary steps to secure [a] flight immediately after they enter into a contract for a licensable transaction”*. One of the reasons given for this is that *“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 scheduled seats immediately it will be more feasible for the CAA to manage the insolvency as a fulfilment exercise...”*

Our first question on this section is what it means to “secure” a flight. We would presume that to secure a flight means to “book” it with the airline, as opposed to issuing tickets and paying the airline in full. If that is the case though, it would not necessarily provide any additional protection to the Air Travel Trust.

Conversely, if by “secure” it was meant that tickets must be issued on all bookings at the point of confirmation, then we would strongly oppose this change. Whilst we admit that this would mitigate risk to the ATT as stated, this would have a tremendously negative impact upon the industry. The cash flow implications for travel business would be such that no one could offer flights on a deposit basis. If the requirement was for travel companies to issue tickets and pay the airline immediately, then they in turn would have to require immediate payment from consumers as well. We do not believe the huge detriment this would cause to the industry or to consumers could anyway justify the limited amount of added protection this would give to the ATT.

Questions have also been raised about out-of-date-range flights and whether the proposed wording would prevent their sale. We don’t believe this is the intention of the wording, however we believe that clarification is required.

Lastly, we would question whether an implementation date of 01 July 2018 is appropriate for all of the proposals which have been made. We fully accept that the Government has no choice but to push for the implementation of the Package Travel Directive by this date as it has been dictated by the EU. Many of the proposals put forward by the CAA however appear to go beyond the scope of the Directive, particularly in relation to flight-only bookings. Given the extremely short amount of time between the consultation and the proposed implementation date, we would request that only the changes required for compliance with the Directive are fast-tracked for 01 July delivery. We would hope that the industry would be given at least six months’ worth of development time from the point in which the regulations are published on all points of compliance which go beyond that which are required by the Package Travel Directive 2015.

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

We have no objections to 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?

We have no objections to the proposed changes to ATOL standard term 4. We value the close relationship which we have with the CAA and meet with them regularly to keep them informed of any significant changes to the business. We do not believe this will add any additional requirements above and beyond what we do already.

Question 4 What are your views on the changes proposed to each of these four exemptions?

We have no concerns with the proposed changes to the exemptions 01/2012 (Small Aircraft, sporting events, carriage of animals, replacement transport and balloon/airships), 04/2013 (Overseas) or 05/2013 (Corporate Sales). We would however like clarification on 10/2012 (Flight-ONLY use of consumer's credit or debit card).

We have previously defined our views with regards to the protection which is afforded to Flight-ONLY bookings. We have repeatedly argued that there must be consistent application of the rules to every seller within the same market. In relation to Flight-Only bookings, this does not exist at present as currently the same flight accommodation may or may not be financially protected based solely upon who has sold it to the consumer. We have also expressed concerns that this disparity between sellers may increase when the move is made from "place of sale" to "place of establishment" – and that ATOL holders will be put at a financial disadvantage when selling within their own market as compared to an equivalent company based abroad.

We have also stated any regulatory scheme should be clear and understandable to the average consumer. We do not believe this is currently the case with regards to Flight-Only bookings as the inconsistent application of the rules means that the average consumer does not grasp the subtle differences between travel businesses which ultimately dictate whether or not they would be financially protected.

To this end, we would welcome a move to extend the protection of Flight-Only bookings to apply to ALL sellers in the market. We would ask the Government to ensure that travel businesses established outside of the UK do not have an advantage over UK businesses when selling in the UK market – and to ensure that the notion of "mutual recognition" is not extended beyond the stated requirements in PTD 2015. We also believe there should be a review of the rationale behind why airlines are currently excluded from the requirement, as we believe this risk posed by some carriers far exceeds that of other sellers in the market. We understand and accept that this may require changes to current legislation, but as changes in legislation are required to meet the obligations of PTD 2015, we do not believe this alone should prevent the advancement of consumer protection in this area.

If however it is not feasible to extend the protection requirements to all sellers in the market, then we believe the requirements for flight-only bookings should be removed without any mitigations. There must be a level playing field in the market. It is our understanding that reforming legislation to bring the airlines into the scope of flight only protection would be extremely challenging due to the EU Airline Licensing obligations, and as such, a more likely outcome is that no Flight Only should be protected.

We welcome that the proposal appears to be a step in the right direction by extending the flight-only exemptions in certain circumstances. It is our understanding that the intention of the proposal is to extend the scope of the exemption so that it covers sales made via Sub-Agents (i.e. where a travel company issues flight tickets on behalf of an airline and sells to the consumer through a travel agent). We note the wording, *“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 at the same time the consumer receives a ticket that is valid for travel”.*

We query the use of the wording “paid in full” and suggest this should be broadened to include all instances where a consumer receives a ticket that is valid for travel which an airline is obliged to accept. This includes where a debit/credit card is used to pay the airline at the time of ticketing, however it is also true in the case where either a written agency agreement is in place or where the airline is an IATA carrier. Both the “airline ticket agent” exemption and the “IATA Exemption” are well established principles where a flight-only can be made non-licensable even without the airline being “paid in full”. We believe clarity of the wording is needed and that new re-labelled “Flight-Only ticket fully paid exemption”, the “airline ticket agent” exemption and the “IATA Exemption” all apply to both B2C and B2B businesses going forward.

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?

We believe greater clarity is needed in this proposal. It is our understanding that one of the changes to be made is to make reference to AST1 in the agency agreements rather than listing the schedule in full. The rationale behind this is to prevent agency agreements from needing to be re-issued every time there is a change to the schedule. Later however, it is proposed to change Agency Term 11 to clarify the obligations to re-issue agency agreements in the event that the schedule of agency terms is amended. The process of issuing new agency agreements is a major undertaking for a company of our size and the current Agency Term 11 automatically incorporates any updated ASTs without the need to do so. We believe this legitimately incorporates updated terms from a legal perspective and is preferable to the administrative burden of re-issuing. We are unclear about the intention of this proposal.

Question 6 What are your views on the proposed changes to the schedule of Accredited Body standard terms?

We have no objections to 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?

We support the proposals to change ATOL Certificates as set out in the consultation. The proposals suggest making only minimal changes to the format of the ATOL Certificates as would be required under the Package Travel Directive 2015. We welcome the approach taken.

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?

We have no objections with this approach. We recognize the difficulty which the CAA faces in monitoring businesses established in other member states – and the lack of ATOL Reporting Accountants which exist outside of the UK. As it is far more difficult for the CAA to gauge the financial

fitness of an organisation which is established outside of the UK, this feels like a prudent step to protect the Air Travel Trust.

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?

We support the CAA's proposed transitional arrangements.

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?

We have no objections. The changes are in-line with the requirements of the PTD.

Question 11 Do you have any comments on the proposal to share AARs with the relevant accountancy body?

We have no objections.

Question 12 The CAA would welcome consultees' views on this proposal, while it is still in the early stages.

We have no objections in theory, however we do have questions and concerns about implementation:

- What will be required from travel businesses and how much will this cost to implement?
- Will the load capacity / band-width of the CAA system/database be able to cope with the massive volume of information which is passed to it?
- We have concerns about the security of our customer's information, particularly in light of GDPR. Will the CAA indemnify all traders and be prepared to accept full financial liability in the event of a data breach?
- The speed of the system and frequency of the data uploads may mean that passengers no long receive certificates at the time of booking.
- If passengers need to visit the CAA website to download the certificates themselves, we question how many would actually do so. Is there a danger of a loss of "brand awareness" if the ATOL Certificate does not come automatically with the booking documentation?
- Alternatively, if the certificates are to be sent to the passengers directly, many agents would be hesitant to share the contact details of their passengers with the tour operators.
- We understand that the CAA is looking to the DVLA's MOT Certificate system as a model. Because travel bookings change and are amended however, the solution required for ATOL Certificates will be significantly more complex. We want to ensure the CAA has considered all of the changes which can take place (part cancellations, schedule changes, etc.) which might result in an ATOL Certificate being reissued.
- The solution needs to be able to deal with the "human" factor, i.e. the system would need to be able to override the normal rules when there are extenuating circumstances.

To summarize, we have no objections to this as a concept but only if the CAA are able to deliver a well-designed system which works in a variety of circumstances and which can deal with the complexity of travel arrangements and changes which can occur – and if they can do so for a reasonable amount of development costs on both the part of the Air Travel Trust and UK Businesses.

We would encourage the CAA to engage with travel businesses early in the design phase of the project in order to identify the numerous occurrences with which the system must be able to cope. dnata would be more than happy to assist if the CAA was to organise a working group to flush out the system requirements.

easyJet response to CAA consultation on implementing the Package Travel Directive into ATOL

Introduction

easyJet is the UK's largest airline and a significant proportion of our passengers are travelling to go on holiday. Our focus is on ensuring that the regulatory structure delivers the protection that our passengers value, reflects the requirements of market demand and provides incentives to ensure that passengers receive the efficient and sustainable services they are after.

easyJet does not support the use of ATOL to protect packages. By requiring travel companies to use a monopoly provider it removes incentives for the more efficient provision of protection and requires consumers who book with low risk sustainable providers to cross subsidise high risk unsustainable providers as the pricing of consumer protection is not risk based. This is detrimental to consumers in the long run as it removes price signals from the market and means that more holiday makers are affected by the failure of their provider due to the absence of these market signals than would otherwise be the case.

But we recognise this is not a consultation on ATOL and we have focussed on the questions set out in the consultation itself. We have limited our answers below to those questions where we have specific views.

Detailed response to consultation questions

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

We support these changes as it is important that passengers are provided with information relevant to their holiday choices. It is particularly important that passengers are not misled.

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

We support the change set out. However, they do not go far enough.

The treatment of exemptions in the proposed Package Travel Regulations and the ATOL Regulations do not reflect the emergence of new airline business models. Both sets of regulations exempt airlines from various ATOL requirements. However, this exemption is restricted to a narrow view of an airline by relying solely on the airline licencing framework. So where an airline group has several licenced airlines but conducts its commercial activity using a separate company within its group, it would not qualify for the ATOL exemptions as the commercial activity is not carried out by a company with an airline operating licence. This distinction is an artificial one.

Instead we believe the relevant ATOL exemptions should apply to any wholly owned sister company of a licenced airline that would otherwise qualify for the ATOL exemptions.

We support the use of an exemption from ATOL requirements where a booking made by a third party to an airline leads to the immediate creation of a confirmed reservation and where these will be honoured whatever the future status of the third party. However, the CAA has chosen to restrict this exemption to either arrangements made under IATA rules or to link it to payments made to the airline. However, we suggest that the key criteria is that a confirmed booking is created immediately and that booking will be honoured by the airline. Whether this is linked to instant payment to the airline (as opposed to any other party) or carried out through IATA would seem irrelevant to the consumer outcome. Consequently, we think the CAA should redraft this exemption to focus simply on whether the third party sale leads to the immediate creation of a confirmed booking.

easyJet

March 2018

By email

22nd March 2018

eDreams ODIGEO's response to the Civil Aviation Authority's consultation on Modernising ATOL

Dear Sir/Madam,

eDreams ODIGEO is one of the largest online travel agencies (OTA) in the world and a leading European e-Commerce business. Through our brands eDreams, Opodo, GoVoyages, Travellink and Liligo, we served 18 million customers served last year, making eDreams ODIGEO the largest flight retailer by sales in Europe.


We welcome the opportunity to respond to the CAA's consultation on Modernising ATOL. Both of eDreams ODIGEO's UK businesses - eDreams.co.uk and opodo.co.uk - are ATOL holders and we support the CAA's efforts to update the scheme.

We have only provided responses to those questions where we have views and these responses can be read below.

As you will see from our response to question 12, we would welcome, preferably as soon as possible, further information about the CAA's proposal to create ATOL certificates via its new online system. This is a move that we support but we have concerns about the timeframes for its implementation, particularly if it requires any technical or administrative changes by ATOL holders for it to work effectively.

I hope you find our responses useful. Of course, should you or any of your team have any questions about the information contained within this response, please do not hesitate to let me know.

Yours sincerely,


Head of UK & Group External Affairs
eDreams ODIGEO

Answers

1. **What are your views on the proposed changes to ATOL standard terms 1 and 6?**
2. **What are your views on the proposed changes to ATOL standard term 3?**
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?**

eDreams ODIGEO supports the CAA's proposal to remove some of the granularity from standard term 4 to make it more 'principles based.'

We would, however, welcome a degree of clarification with regards to what the CAA refers to as 'requiring ATOL holders to advise the CAA of any information the CAA *should reasonably expect to know.*' As currently proposed this is too ambiguous. We would welcome examples from the CAA of what types of information the CAA should reasonably expect to know.

Furthermore, we would welcome further clarification regarding what the CAA considers to fall within the scope of 'planned corporate activity'. As the CAA knows, activities of this type are often confidential so we would appreciate the regulator's thoughts on this type of information and processes for how it should be shared with them.

4. **What are your views on the changes proposed to each of these four exemptions?**
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?**
6. **What are your views on the proposed changes to the schedule of Accredited Body standard terms?**
7. **What are your views on the proposals to change ATOL Certificates as set out above?**
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?**
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?**
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?**

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

eDreams ODIGEO supports the CAA's proposal to share AARs with relevant accountancy bodies. As with all information sharing of this nature, the CAA must ensure that this information is treated as confidential and must seek assurances from the relevant accountancy bodies that they will also treat it as confidential.

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

eDreams ODIGEO believes it would be more straightforward if the responsibility for issuing ATOL Certificates remained that of the ATOL holder and we have strong reservations about the CAA's proposal as currently drafted.

We are concerned that the CAA is operating under a very tight time schedule if they intend to deploy a new system by the end of September 2018. Such a timeframe is especially tight if the CAA will also require ATOL holders to implement changes to work with their new system.

We would welcome as soon as possible further information on how the CAA expects the system will work and the CAA's expectations of the role that ATOL holders should play in this process. In particular, we would welcome further information on any IT, administrative or other costs that might be involved.

We have a particular concern that under the CAA's current proposals it would require the ATOL holder to transfer large amounts of data to the CAA in order for the certificates to be generated. We would welcome the CAA's views on how it expects this can be done as securely as possible.

Finally, we would also welcome the CAA's thoughts on how it proposes to deal with issues such as potential errors on certificates. For example, there might be instances in the future where the CAA's new system might produce a faulty certificate. The CAA needs to consider how outcomes such as this would be dealt with under the new system.

As requested we are pleased to provide the feedback below as part of the ATOL modernising consultation process. Just before we do you might want to amend the link in your PDF:-

<https://consultations.caa.co.uk/cmgi/modernising-atol/consultation/download>

At the start of Chapter 4 on page 26 it says feedback to atol.consultations@caa.co.uk but if you click on the link then it generates an e mail to consultations@caa.co.uk – well it did for me anyway.

Answers to consultation questions:-

Question 1:- The providing information to the consumers at the point of sale is fine. For AST6 if people are being asked to confirm the booking precisely at the time of booking they need to be allowed to say that the confirmation is still subject to availability and genuine errors. Not all hotels or airlines are able to provide realtime, accurate availability information at the time of booking. So travel companies still need that flexibility to say that a confirmation is still subject to getting final confirmation from the third party travel provider concerned.

Question 2:- Fine

Question 3:- This seems a bit loose. How can we determine what information the CAA should reasonably be expected to know? It should remain prescriptive so that we know exactly what our reporting requirements are. This is borne out by the fact that you are seeking to provide some further clarity on planned corporate activity like mergers/acquisitions etc..

Question 4:- Fine

Question 5:- Fine

Question 6:- Fine

Question 7:- Obviously we need to make sure that all new entities and transactions that are now being brought into an ATOL (or equivalent) protected environment are going to contribute for their passengers to the same extent as traditional ATOL holders do so that there are funds available or failures rather than it coming out of the historic ATT pot.

Question 8:- Good. We need to close loop holes where people like Low Cost could pretend to be the equivalent of all ATOL holder when the protection in other countries is not as strong. If you depart from the UK then you should be covered by the UK CAA and should pay into it.

Question 9:- Fine as long as you don't suddenly penalise people who are now starting to exceed their existing package estimates just because flight plus is now being treated as a package. There should be a good grace period to enable people to adjust to the change.

Question 10:- Fine

Question 11:- This is ok as long as it's on a confidential basis so that accountant bodies only use case studies on an anonymous basis unless they have consent of the company in question.

Question 12:- If it's done right then it could save on a bit of paperwork and help ease the reporting burden on the operator/agency. However there are some big issues that need to be addressed:-

- **Ease of technology:-** The CAA needs to have a very very simple way of being able to report this information electronically. Something that is based on a very very common standard which all types of back office systems could export easily.
- **Security:-** This is a massive massive issue. The CAA would have to make their environment 100% secure and offer to indemnify ATOL holders for any loss of data that could occur. Knowing when customers are travelling on holiday is very sensitive data and would be a gold mine for criminals. As well as keeping the customer data secure, the environment for uploading the data has to be secure so that criminals couldn't cause havoc by uploading bogus data to the system. It could be a large undertaking to secure the reporting environment between ATOL holder and CAA.
- **Data protection:-** It would have to be implemented in a way whereby it happens automatically (ie customers can't opt out of doing it this way – as this would cause a headache) but where it doesn't fall foul of the new General Data Protection Regulations. Will this data be deleted a certain period of time after the customer returns from holiday so that unnecessary data is not being held?
- **Updating consumer details:-** What would happen if the customer changes their details between issuing the certificate and departure? Would the ATOL holder have to update the system at the CAA? If so, this might cause a lot of complexity for less IT savvy companies. Would the CAA system then be able to return a response to the ATOL holder to confirm that the details have been updated correctly?
- **Reporting:-** It could remove the need for manual APC reporting and also remove a big part of the annual reporting. However if there is going to be realtime monitoring of ATOL holders trading then there needs to be good grace periods for them to adjust licences, provide further information/security etc.. You couldn't have a situation where realtime reporting suddenly triggers all sorts of issues at the CAA and the ATOL holder is suddenly required to increase their licence, provide further information/security etc.. and if they don't then their licence becomes at risk. There needs to be systems that give due warning and a good grace period after the event for the licence holder to get everything in order. At the moment the ATOL holder is geared up to do this monthly, quarterly or annually. They are not geared up for it to happen daily.

I hope this helps.

Regards


Director

Elegant Escapes – ATOL 10012

ETTSA submission to the CAA consultation on Modernising ATOL

Introduction and General Remarks

The European Technology & Travel Services Association (ETTSA) was established in 2009 to represent and promote the interests of travel technology companies, including global distribution systems (“GDSs”), online travel agencies (“OTAs”), and meta-search engines, towards policy-makers, opinion formers, consumer groups and all other relevant European stakeholders. Our Members include Amadeus, edreams Odigeo, Expedia, Lastminute.com Group, Sabre, Travelport, Skyscanner and Tripadvisor. Strategic Partners include OAG, HitRail, e-Travel, etraveli, Kiwi.com, Travelgenio, Travix and Tripsta. This submission represents the consolidated view of ETTSA.

The paper sets out ETTSA’s response to the consultation on modernising ATOL. ETTSA members have many years of experience in the travel technology sector welcome the opportunity to contribute to this exercise.

Please do let us know if you have any questions regarding our response and we would be happy to provide further information.

Response to questions

Question 1

What are your views on the proposed changes to ATOL standard terms 1 (Providing information to consumers before and after sale) and 6?

1. ATOL disclosures

ATOL protection disclosures (whether on Metasearch or branded sites) requiring disclosures next to each ATOL protected product being offered, and in “close proximity” to the price as proposed in the consultation paper, would require additional technical development work for our members, with consequential time and resource costs arising from this.

It is not clear from the consultation paper whether the intention from the CAA would be that the ‘ATOL protected’ disclosure should happen once next to the headline price the first time it is displayed, or each time the price was displayed during the booking path. If the latter approach was adopted, it would require considerable additional technical work to the websites of our members and it would greatly extend the timeframe our members would need for making such website changes. Displays of search results are generally already crowded and often space is limited (e.g. mobile App). Therefore, this requirement would impose additional challenges for online travel businesses in particular.

Moreover, we are concerned that in the context of online multi-item and/or dynamic booking paths, which are increasingly more prevalent in the travel sector, one can very easily envisage a scenario where ATOL protected disclosures may be required at certain stages of the consumer’s booking journey (e.g. initial search results page) but subsequently may no longer be applicable if a consumer decides to remove certain product components from their initial shopping *wish-list*. In such dynamic shopping environments any ATOL protected disclosures that were originally shown at search results stage could be inadvertently misleading and would likely cause confusion to consumers.

As such, we believe that the current ATOL website disclosures as set out in AST1.1 and AST1.2 of the ORS3, which are typically displayed on the footer of websites and appear throughout the booking path, should be sufficiently adequate to communicate ATOL protection

to consumers booking via our members' websites or to consumers arriving on such member websites from a metasearch channel.

If the CAA does not feel that this level of disclosure is adequate, then an alternative and more workable approach could be a link to an information page on ATOL, which could be displayed at the top of the ATOL holder's (package path) search results page. This approach would provide a less costly and more manageable rollout for businesses. It would also ensure that information on ATOL protection is:

- a) presented to consumers without overcrowding each search result listing and;
- b) correct and relevant to consumers at all times. An ATOL information page for consumers, which could be in a form agreed with the CAA, could be easily updated in response to any future ATOL changes that may be implemented by the CAA.

Separately, ETTSA believes that the CAA should also take this opportunity to update the disclosure requirements set out under AST 1.3 of the ORS3 as it relates to broadcast media advertising as the requirements are far too generic in their present form and do not adequately take account of the differing broadcast media advertising practices for the various advertising channels.

For example, whilst we see a rationale for having the audible "ATOL protected" words in radio broadcast ads, where ATOL holders advertise ATOL protected products, we believe that the display of the ATOL protected logo and ATOL number should be sufficient in the case of other broadcast media, such as cinema or television ads.

Additionally, where the advertising consists of video-on-demand ads that do not contain any voice-over at all, it seems both illogical and unreasonable to require ATOL holders to have audible "ATOL protected" disclosures on those advertisements. Again, the display of their ATOL protected logo and ATOL number should be sufficiently appropriate.

2. Other disclosures

For price comparison sites, we believe that the minimum disclosures proposed by the CAA would involve considerable development work and cost for our members. The additional ATOL disclosure requirements would require members who advertise packages on metasearch sites to provide additional information to each metasearch partner. Some of our members advertise packages on multiple price comparison sites in the UK and whilst they provide certain flight information to metasearch partners when advertising a package, they do not currently provide the full list of information that the CAA would require under its proposal paper.

To meet the CAA's proposed obligations, our members would need to undertake extensive technical development work to ensure that they could access the required flight information in a scalable way in order to then provide that information to each of the metasearch partners, who would in turn consume and display it on their websites. This is especially problematic for the complex baggage information that differs by airline and transfer information which differs by destination.

We believe that the considerable work required to achieve this would impose a significant burden on our members' business in terms of time, resources, cost and technology development. Additionally, imposing this obligation on ATOL holders, when the price comparison sites control the display on their sites, makes compliance with this requirement very difficult. It would be helpful to understand the extent to which the CAA has had discussions with price comparison sites when formulating its proposals.

In addition to the problems identified above for price comparison site advertising, some ETTSA members would need to undertake extensive technical development work to adapt their own websites to meet the proposed disclosure requirements. The CAA proposal is a UK-specific requirement and, as far as ETTSA is aware, no other EU regulator or regulators globally have imposed a similar onerous requirement on travel businesses. Most of ETTSA members seek to ensure that their website display practices can be rolled out globally and bespoke variations by country (such as those proposed by the CAA) will result in considerable additional administrative resources and cost in terms of managing websites and custom-built changes to website information.

The new requirements under the CAA proposal paper therefore seem largely disproportionate when considering the considerable effort, time and costs put on businesses to comply with such measures vs. the benefits to consumers.

ETTSA would therefore welcome the opportunity to discuss a more workable and realistic solution that will achieve the desired goals of the CAA on the above topics for both businesses and consumers alike.

Question 2

What are your views on the proposed changes to ATOL standard term 3 (Providing information to the CAA)?

No comment. Though see our comments below regarding the CAA's proposal to introduce a new IT system for ATOL Certification purposes.

Question 3

What are your views on the proposed changes to ATOL standard term 4? (Reporting business and financial information to the CAA)

ETTSA agrees.

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

In principle, ETTSA welcomes this proposal but further information on what implications this guidance would have on ATOL holders is required before we can form a proper opinion on the matter.

Question 4

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

It remains ETTSA's view that Flight-Only sales should be removed from the scope of the ATOL scheme altogether. This view is largely based on the continuing exemption of airlines from the ATOL scheme, which remains an unfair and discriminating outcome for travel agents.

However, in the absence of the above outcome, ETTSA agrees with the introduction of a broader and re-labelled "Flight-Only ticket fully paid exemption". However, this is only providing the current "Airline Ticket Agent" and "IATA" Flight-only exemptions, included under the existing ATOL Regulations, are to remain in place alongside the broader exemption noted above.

It is also ETTSA's view that corporate (i.e. business to business) travel arrangements should be exempt altogether from the ATOL Regulations and Package Travel Regulations in the UK as stated in the PTD. It should be further clarified by the DfT and CAA that any such exemption

would be dependent on the existence of a general business-to-business agreement or contract **between the corporate travel company and the business traveller and/or his/her employer.**

This is important as in practice business travellers book their travel via their dedicated company travel page/platform but then pay for their travel with their own personal credit card and subsequently get reimbursed through the company's expenses systems. Therefore, booking confirmations and invoices are, in most cases, provided to the business traveller themselves rather than the employer.

Additionally, ETTSA does not see a justification for the CAA to introduce a so-called "schedule of terms" with minimum requirements for business-to-business agreements, which we believe is an unnecessary and burdensome requirement on businesses that were meant to remain outside the scope from the maximum harmonisation PTD.

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?

ETTSA's view is that ATOL holders (and not their appointed agents) should continue to have overall responsibility and control over the issuance and provision of ATOL Certification to consumers.

We therefore oppose the proposed changes requiring ATOL holders to permit and require their appointed agents to immediately issue ATOL certificates themselves in respect of licensable transactions protected under the ATOL holder's licence.

Given the numerous new requirements under the ATOL Regulations and new Package Travel Regulations that businesses must implement prior to 1st July 2018, ETTSA believes that the timeline for ATOL principals to re-issue agency agreements incorporating any updated schedule of agency terms should be a minimum of nine months from the date of implementation and not three months as proposed in the CAA consultation paper.

Question 6

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

No comments.

Question 7

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

ETTSA believes that the proposed re-labelling of ATOL Certificates, which will lead to two types of Package Certificates (i.e. "Package sale" and "Package sale – multiple contract") is both unnecessarily burdensome to businesses and will likely lead to confusion for consumers.

ETTSA therefore strongly advocates for the use of a single Package Sale ATOL Certificate - regardless of whether such package is sold on the basis of one single or multiple contracts - and a Flight-Only ATOL Certificate, where applicable.

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?

ETTSA does not believe the scope of the ATOL scheme (or indeed that of other Member States) should be restricted to "place of establishment" given that the 'mutual recognition principle' under the PTD does not take into consideration the activities of businesses which are established outside the EEA but yet already participate in, and indeed have long contributed to, the national insolvency schemes of individual Member States such as the UK's ATOL scheme.

This discrepancy in the PTD will also leave such non-EEA businesses without an option to elect to participate in the protection scheme of an EU Member State for protecting their sales to consumers in other Member States.

It is ETTSA's understanding and strong view that all existing ATOL holder businesses that are not established in the EEA will be allowed, at the very least, to continue to protect UK consumers in the same way in the future. Moreover, it is our view that any such non-EEA ATOL holders should also be able to, if they so elected, to protect their sales to consumers across the EU under the UK insolvency regime.

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?

Given the very limited time between the publishing of the final versions of the ATOL Regulations and Package Travel Regulations and the prescribed effective date (1st July 2018) for these national laws implementing the PTD, ETTSA believes that a longer transitional period (i.e. of no less than 9 months) should be given to businesses thus allowing them to properly adopt and adjust to any new requirements (including changes to ATOL standard terms) arising from the new legislation.

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?

No comment.

Question 11

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

No comment.

Question 12

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

The proposal to develop an automated system whereby all ATOL Certificates are to be issued online by the CAA, and not by the ATOL holders, does raise important questions regarding the safe transfer of consumer's personal data and will put a greater burden on businesses to ensure this. This could also lead to potential cases of data loss or breaches given the likely non-encrypted nature of the data which the CAA will require from ATOL holders to fulfil the ATOL certification requirements.

We also question whether it is proportionate for the CAA to assume overall control for the issuance of ATOL Certificates when all the data will be held by the ATOL holders. Moreover, closer involvement from the CAA in the operational aspects of the ATOL certification process would seem to be at odds with its enforcement function as a regulatory body.

It is ETTSA's view that if such a system was to be implemented then it should apply only to smaller businesses/ATOL holders, which we presume is the area where the CAA may have identified more examples of the fraudulent activity that are mentioned in its consultation paper (such as the issuance of fraudulent ATOL Certificates and/or cases where ATOL holders have under-reported regulated booking volumes to reduce their APC costs).

We do not find the "key advantages" of these new arrangements as set out in the consultation paper to be sufficiently persuasive to require changes to the current certification practices nor would they outweigh the consequential extra administrative burden and cost on larger ATOL holders, who will have invested considerable time and money to implement their present ATOL Certification processes.

As such, we believe the issuance of ATOL Certificates is a matter that should continue to remain within the control of ATOL holders alone and not with the CAA, as proposed in the consultation paper.

Finally, on the point concerning a possible reduced requirement for ATT funding, it is ETTSA's firm view that a fair and sustainable ATOL scheme is one that assesses the risk, the required level of protection and/or levy contribution payable based on the individual risk profile of a given business/ATOL holder. We therefore urge the CAA to implement a fairer method for calculating the level of APC payable by each respective ATOL holder at its earliest opportunity.

For Further Information, please contact:

██████████
Secretary General
ETTSA
Square de Meeüs 38/40
1000 Brussels
Belgium
Tel.: ██████████
Mob: ██████████
E-mail: ██████████

Thank you for the opportunity to respond.

We are Ffestiniog Railway Holdings Ltd. T/A Ffestiniog Travel
ATOL 3047

ATOL CERTIFICATES

Firstly the question of “who issues the ATOL certificate?” Leaving aside the question of double handling involved with our sending it to the CAA and then you putting it on a web site, most of our customers are in the 60+ age bracket and a significant number still don’t have access to a computer. These people would be disadvantaged by the new system which, according to the CAA, is intended to ensure that the customers are better informed about their rights. Our current practice is to mail copies of the certificate to these people, together with their booking confirmation.

Still on the subject of the ATOL certificate, the CAA were most anxious when it was introduced that we had to adhere very strictly to a timescale for issue following a customer’s booking. Likewise we have rigorously adhered to the requirement to reissue whenever there is a change to the booking. I can’t see that the proposed new system will keep customers informed either as promptly or as accurately as we do now.

FLIGHT DETAILS ON PROMOTIONAL MATERIAL

The second point concerns the inclusion of flight details in promotional material. Whilst I can understand that time of day and choice of airline is an important factor in a customer’s decision to book, the brochures are published far too early to make a detailed commitment. It is a fact that most airlines don’t open bookings until 11 months before departure. Our brochure for the whole of 2019 is published in August 2018 with a press date in July. Our current practice is to use such phrases as “Afternoon departure from London for a late evening arrival in.....” We are always careful to specify that we use a scheduled airline though we don’t usually say which one. Sometimes customers telephone or email prior to booking and we can give them the most up to date position available. We have never had an instance where this has become an issue with customers.

Our brochure Page 62, under the heading “Airlines used for Ffestiniog Travel holidays” quotes a form of words which was given to us by the CAA many years ago to cover such instances where details are not known.

I hope these comments are useful.

Regards



Managing Director

Ffestiniog Travel
Former St Mary's Church
Tremadog
Porthmadog
Gwynedd
LL49 9RA
United Kingdom

Ffestiniog Travel is the trade name of Ffestiniog Railway Holdings Ltd. Company Number 2555576
Tel: +44 (0) 1766 512400 Fax: +44 (0) 1766 515639
info@ffestiniogtravel.co.uk www.ffestiniogtravel.com



Consultation Questions:

CAA Question 1: *Providing information to consumers before and after sale: What are your views on the proposed changes to ATOL standard terms 1 and 6?*

It is frustrating that a potentially, highly onerous proposal has been included but without any clear guidance on what constitutes satisfactory disclosure. The devil is obviously always in the detail with these type of things, and as the CAA should be aware if they have spent the last few years developing a new IT system, what can sound like a simple requirement can be anything but simple when trying to implement changes to an existing IT system. I would therefore suggest this may be impractical to achieve for some, and I would hope this legislation isn't designed to put travel companies out of business and reduce the choice for consumers.

I simply cannot agree that sticking "ATOL Protected" at close proximity (whatever that may actually mean) to each quoted price changes the protection offered or makes things any clearer to consumers. If anything, it has the potential to cause confusion where a list of prices are quoted and the different potential options, and in particular where the product may not require disclosure by an agent not being the ATOL holder, but if packaged, then the agent becomes the ATOL holder. There could be so many permutations that the page/screen becomes unintelligible!

ATOL Standard Term 6 proposed changes – so, am I to understand that the CAA are going to change the culture of the worldwide travel industry governing flight times, slots, etc., as well as the consumers desire to only book 6 to 8 months out?

If not, then the timescales within which travel companies would have to wait before they can finalise, produce and distribute marketing for their packaged products would mean consumers would be disadvantaged, and would be impractical. There are often occasions where there are changes to previously published flight detail, but the PTD deals with this. I would also suggest there is very much a difference in consumer views between long-haul and short-haul flights.

The ATOL Holder should be able to sell without providing the detail, but with the obligation of naming the intended carrier and have an obligation to obviously use that carrier or one of an equal or superior standard. The consumer then has the **CHOICE** of whether they wish to book or wait until all the details are available. I believe the choice and wish for a consumer to book outside of 6 to 12 months easily outweighs the need for full flight details as proposed.

There is also the issue of a lot of potential added time that a consumer would need to spend with a travel agent in making their booking, which could otherwise be completed once the consumer has left. The trade-off between how a consumer values their precious time versus the need for all the details at the time of booking is something that should also have been included in the CAA's aforementioned consumer research.

I'm afraid this proposal just conjures the image of a regulator locked away in an ivory tower, having never worked in the industry they are trying to regulate or having any concept of the practical realities of operating a commercial business, and starting with the preconceived view that a consumer isn't able to exercise their own rational judgement in making decisions!

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

The proposals are positive, and will certainly help to streamline the reporting process to the CAA.

CAA Question 3: *Reporting business and financial information to the CAA: 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?*

We are back to the world in lack of clarity and individual interpretation. What is the definition of “..reasonably expect to know..” and “..likely to have a material impact..” in the context of the proposal?

“Material” to whom? The ATOL Holder? Their owner? Their bond obligor? The CAA? What we might deem could fall into either of those categories of information, our competitors might interpret differently, putting us at a competitive disadvantage. I’m afraid it seems a little nonsensical! Please state clearly what information is required and companies will know to provide it, wherever possible.

CAA Question 4: *Exemptions from the ATOL Regulations: What are your views on the changes proposed to each of these four exemptions?*

The changes to the exemptions make sense, and it seems crazy that the current exemptions have allowed Flight-Only return legs to the UK unprotected.

CAA 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?*

The proposed changes make sense, but once again, there may need to be changes made to IT systems in order for compliance to produce ATOL Certificates in some areas (that aren’t currently needed). I also agree that the focus for travel companies is compliance with PTD, so the timescale should be increased to at least 6 months.

CAA Question 6 – N/A

CAA Question 7: *What are your views on the proposals to change ATOL Certificates as set out above?*

There is always a challenge when it comes to changing IT systems to implement even something as simple as a change of wording, whereby travel companies can find themselves at the mercy of their software providers’ timescales. The CAA must admit to, and accept their own shortcomings in delaying the publication of the new rules, and be reasonable in their expectations of the time it may take travel companies to comply.

CAA 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?*

The EU was supposed to bring down barriers and ensure consistency and uniformity in the application of laws and regulations, but we currently have a situation where very different models of consumer protection can be found across the member states. Whilst these schemes are allowed to differ, then it will never be a fair playing field where the reciprocal benefits are not matched to the UK’s proposed “gold plated” scheme, which goes over and beyond the PTD requirement. It puts UK

travel companies at a competitive disadvantage if EEA travel companies can sell to the UK market but not have the same corresponding level of bonding/consumer protection costs and liabilities.

It would be interesting to know how consumers will be made aware of the differences.

CAA 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?*

As with the imposition of any new major legislation, there needs to be a transitional period, to allow companies to change business models and agreements where necessary. It is totally unacceptable to businesses that the Government have reneged on their promise and duty to issue the industry with finalised details of the new legislation at the beginning of the year, leaving such a short window of opportunity for travel businesses to both respond and enact. The CAA might not have a commercial business to run, but we in the industry have, and without us, there is no industry to regulate!

The transitional arrangements are therefore very much required, but they do not go far enough for Companies who have to renew their Licence and subsequent bonding in 3 months' time from 1st October 2018. Given the bonding model the CAA subscribe to for travel companies, we are at the mercy of the surety market and its capacity, and it can take a lot of time to organise bond variations. If there was more time to plan, then it may not have been a problem, but it is very unreasonable to expect companies to do this whilst having to spend time on all the renewal work, and how the new PTD legislation affects renewal.

Travel companies may need to embark on very different business models and strategies, and these cannot simply happen overnight. There certainly should not be any Licence revocation or newly established civil penalties for at least 6 months.

CAA 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?*

No particular comment.

CAA Question 11: *Do you have any comments on the proposal to share Accountants' Annual Reports (AAR) with the relevant accountancy body?*

How does this work? Our ARA is our client partner at KPMG, who relies on his audit staff to give him some of the comfort required to sign-off our figures on our AAR. Which professional accountancy body would this be shared with?

How does the confidentiality of our client detail remain, when it could be sent to another body for goodness knows who to use as part of a case study?!

This is confidential Company data that is sent to the CAA and audited by our auditors under a signed agreement, so I would not expect it to be shared with the wider world.

CAA Question 12: *Online ATOL Certificates - The CAA would welcome consultees' views on this proposal, while it is still in the early stages.*

I thought this one might have been an early April Fools' joke! Why, especially in the current world of GDPR, would we wish to send our sales' database piecemeal to a 3rd party?!!! A conspiracy theorist might think that the CAA has no real interest in making things better for the consumer, but simply for themselves from an administrative perspective in the relatively rare occurrence of an operator failure!

The system ramifications do not bear thinking about, and I do not think it will be possible for travel

companies to submit all of the information that the CAA require in the timescales they would need. Real-time submissions – are you mad?!!! A look should be taken at the practical implications and costs of what is being asked.

What if the CAA's system defaults? Will you admit responsibility and accept the consequences, since I certainly would not expect to see blame levied at ATOL Holders for not submitting data through no fault of their own? There are so many issues with this proposal, there is not enough time to put them all down.

I would like the CAA to explain how is requiring a consumer to go onto a Government website, if indeed they have access, to download a Certificate, quicker or better than being handed one or sent one with all their other holiday documentation? It's simply not, and the demographic of the cruise industry in particular (which represents a large percentage of our business) means not every customer will have access to go online.

IT is supposed to improve business processes, but travel companies may find themselves having to employ more staff just to handle this "improvement", which might prove financially prohibitive.

Good Morning Nikki [REDACTED]

i would wish to make a comment in relation to Standard Term 3 following the proposal to make SBA holders report quarterly as do standard ATOL holders. As a Company we have held a standard ATOL for a number of years. However following changes in consumer demand we have applied from this year to operate under the current SBA arrangements for very reason of cost and reduced reporting administration. However under the proposed new arrangements it appears that in addition to quarterly reporting we shall also have to pay £500.00 deposit to the ARTF which did not of course apply to a standard ATOL licence. Whilst it is understood that regulatory changes may be necessary following consumer changes and in some cases operator overtrading, the new proposals seem to one of somewhat over regulation.

Yours Sincerely

[REDACTED]

Greenslade Developments Ltd
ATOL 2536

Consultation Questions:

Section 1 - Definitions and scope

DfT ATOL Question 1: *We are updating the ATOL regulations to adopt the new definition of a 'package' from Package Travel Directive 2015(PTD). Do you think the way the new definitions are drafted will cause any issues?*

The PTD broadens the definition of package holidays so that more sales of travel services will fall within scope. The Government is required to adopt these definitions and other definitions in the PTD, as part of its implementation process, but some of those definitions might be clearer if some minor drafting changes were made. Any drafting changes will need to be reflected in the wording used in the new Package Travel Regulations (PTR). There does need to be absolute clarity on the drafting.

DfT ATOL Question 3: *Do you foresee any issues arising from implementing flight-LTAs under the Package Travel Regulation mechanisms through bonding, insurance or trusts?*

We believe that the basis of the DfT's assertion that airline failure is covered should be clarified. If the provider of the other services in the LTA fails, the LTA arranger does not have responsibility to the client.

There will be different protection schemes for different types of regulated flight based holidays. This could cause confusion for consumers and businesses. It appears it will be left to the seller to try and explain what is and is not protected financially and for repatriation purpose but not such an issue for a touring package

DfT ATOL Question 4: *We are updating the ATOL scheme so that the requirement to hold an ATOL will apply to UK businesses when they sell packages to consumers in Europe. Do you foresee any issues from the changes in who needs to hold an ATOL?*

The PTD requires the financial protection scheme of each Member State (including the UK) to protect the package sales by travel companies in the scheme to consumers across the EEA. This will mean that UK established companies will not need to subscribe to local financial protection schemes in other Member States in which they wish to sell but may also remove their ability to market under those local schemes which may be an issue.

DfT ATOL Question 5: *We are updating the ATOL Regulations to require Agents acting for the Consumer to hold an ATOL? Do you expect any issues from the new regulation?*

This proposal would appear to be aimed at bringing within the scope of the ATOL Scheme different types of businesses that are currently, or may in future, market travel services using models outside of the traditional models of travel agent and tour operator. Again if this brings consistency and a level playing field then a good thing.

DfT ATOL Question 6: *We are updating the ATOL regulations to exempt business-to-business sales from the ATOL scheme (regulation 10). Do you expect any issues from the new regulation?*

As the PTD includes an exemption for travel companies that sell packages and LTAs for business travel as long as there is a general agreement in place between the travel company and the business traveler this needs to be reflected in the ATOL scheme. Many corporate sales are already excluded from the ATOL Scheme.

It would seem appropriate for any terms that the CAA wishes to impose to be the subject of consultation in due course and for their implementation to be subject to a reasonable period of notice to allow business to prepare for any new requirements.

DfT ATOL Question 7: *We are updating the ATOL regulations to qualify the exemption for Agent for ATOL Holders when they are organising packages (regulation 15)? Do you agree with this approach, and do you foresee any issues with the proposed changes?*

As drafted the proposal would appear to require all the services under the package sold through an agent for the ATOL holder to be supplied under a single contract between the ATOL holder and the consumer. This would appear to prevent organisers who wish to sell packages under a multiple contract model (a model which is allowed under the PTD and specifically provided for under the ATOL Standard Terms) from selling those packages through their appointed agents. We do not believe that this is the policy intention and the drafting should therefore be reviewed so Agents are not impeded.

DfT ATOL Question 8: *We are updating the regulations to exempt Agents that are selling packages organised by EEA traders from the ATOL scheme. Do you agree with this approach, and do you foresee any issues with the proposed changes?*

It would seem appropriate for any such terms and conditions, and the necessary monitoring and enforcement processes, to be the subject of consultation in due course and for their implementation to be subject to a reasonable period of notice to allow business to prepare for any new requirements.

In the meantime, it would seem appropriate to allow the exclusion where a contractual agency situation can be proved to exist.

In addition, the proposal does not set out how agents will be treated when acting as the agent of organisers based outside of the EEA. Such organisers are required to provide protection under PTR but it should be clarified whether, and on what basis, it is unclear whether they are required to hold an ATOL.

DfT ATOL Question 9: *We propose to remove Part 3 of the ATOL regulations, to revoke ATOL 'Flight Plus'. Do you foresee any issues with this approach?*

Flight-Plus holidays are sales of travel services that will from 1 July generally fall within the expanded definition of package under PTR or under the definition of LTA. As such the removal of Flight-Plus will be a necessary part of the Government's compliance with the PTD.

CAA Question 4: *Exemptions from the ATOL Regulations: What are your views on the changes proposed to each of these four exemptions?*

There are a number of specific exemptions from the ATOL Regulations and the CAA is proposing changes to four of these.

The first is to the exemption for travel companies operating small aircraft, sporting event, carriage of animals, replacement transport and balloon/airship.

The second is to the exemption for Flight-Only sales using the consumer's credit or debit card. The

CAA proposes 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 and regardless of whether the travel business is an agent of the airline. This will 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 said to be to reduce the regulatory system's constraints on the trade, where doing so does not expose passengers to unacceptable risk.

The third exemption is in relation to Flight-Only sales with a non-UK departure. The exemption will be adjusted to take account of a particular sales model. Some agency sales for return flights originating in the UK (that is UK – abroad – UK) are 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, the CAA considers that as 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).

The fourth exemption relates to corporate sales. As set out in DfT's consultation, this issue is now addressed in the PTD. Broadly, the PTD exclusion, which has been picked up in the 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".

It is proposed that the exemption is incorporated into the ATOL Regulations and, as it covers broadly the same ground as the CAA's existing corporate exemption, the CAA proposes to eliminate the existing corporate 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. It would seem appropriate for any such terms to be the subject of consultation in due course and for their implementation to be subject to a reasonable period of notice to allow business to prepare for any new requirements. In the meantime, it would seem appropriate to allow the exclusion where a general business travel agreement can be proved to exist.

CAA 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?

As this proposal seeks to end the grant of ATOLs to such organisers. Where organisers established in the EEA do not, for some reason, have protection in their Member State of establishment, they will be required to provide protection under the PTR rather than ATOL for sales in the UK which seems

reasonable.

Section 2 – Information requirements

CAA Question 1: *Providing information to consumers before and after sale: What are your views on the proposed changes to ATOL standard terms 1 and 6?*

The CAA's proposals go much further than what is required to bring ATOL and PTD requirements in line and are simply not necessary at this point in time when businesses are struggling with ensuring that they are compliant with GDPR and new PTR's. The enhanced proposals would have a significant impact on our business as an operator and seller of package overseas tours and seem to be based on limited consumer feedback rather than full industry consultation which should be the way forward. As 100% of our flight seats are procured from scheduled airlines we have no control over the scheduling of flights and cannot guarantee that when we plan and put tours on sale 18mths in advance of departures (which we have to do to remain competitive) that the actual flights used (Airline,route,timing) will be the same as that currently being used for a particular tour and envisaged for future out of range departures. It would also be impossible without a huge financial / market position impact to wait until flights came in to range to procure the flights before the tour was advertised and sold to a customer. Our model is to take groups / allocations of seats as soon as they come in to range but we cannot guarantee that the airline will continue to provide the route, the actual timing of the flight or that all the seats we request are obtained. The additional information that the CAA are suggesting should be displayed at the point of sale (Airline, airports, timings, baggage) would require considerable changes to all of our inventory and sales systems and would require a fundamental change in our model. The suggested changes would potentially give a huge advantage to tour operators using their own aircraft and in control of these elements and do not fit the complexity of touring holidays.

We need some flexibility in being able to treat a change in airline, timings, direct to indirect in accordance with the provisions of the PTR's to be able to operate the touring model and as multiple flights may be included within a single tour and the flights are just one element of the tour package we believe the requirements within the PTR's are more than adequate.

Changing systems and brochures to display the ATOL / protection information next to every price instead of the current generic message would also have a huge impact on web sites and brochures and again seems unnecessary.

Section 3 - Enforcement measures

DfT ATOL Question 11: *Please set out your views on the proposal to introduce civil sanctions (e.g. those provided for in Regulatory Enforcement and Sanctions Act 2008 (RESA 2008)) to give the Civil Aviation Authority more effective and flexible enforcement powers for the ATOL scheme.*

Having more effective and flexible powers to act would be a good thing

CAA Question 7: *What are your views on the proposals to change ATOL Certificates as set out above?*

Absolute clarity needs to be given on this

CAA 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?*

Transitional arrangements will be necessary to allow businesses and CAA to adapt to the new rules

and broadly they seem OK

Section 4 - Agency agreements

CAA 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?*

It would seem sensible to allow travel businesses to implement the changes necessary for the Government's compliance with the requirements of the PTD before expecting further changes to business processes that are not required under the PTD but at least 3 months grace post full implementation needs to be given for Agreements to be re-issued and systems changed.

Section 5 – Reporting

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

It would seem sensible to allow travel businesses to implement the changes necessary for the Government's compliance with the requirements of the PTD before expecting further changes to business processes that are not required under the PTD.

CAA Question 3: *Reporting business and financial information to the CAA: 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?*

It would seem sensible to allow travel businesses to implement the changes necessary for the Government's compliance with the requirements of the PTD before expecting further changes to business processes that are not required under the PTD.

CAA Question 11: *Do you have any comments on the proposal to share Accountants' Annual Reports (AAR) with the relevant accountancy body?*

CAA Question 12: *Online ATOL Certificates - The CAA would welcome consultees' views on this proposal, while it is still in the early stages.*

Whilst no timescales are given it seems that this would be the CAA'S preferred route. This takes no account of the considerable impact on tour operators systems and the different customer demographics and their propensity to want / be able to do everything on line. As our demographic for tours is particularly mature this would potentially be very problematic and part of our appeal is that we are able to provide all documentation for our customers and give them peace of mind. We would also be concerned over the frequency of data submission and system changes required plus responsibility for data security.

DfT ATOL Question 2: *to what extent will the next concept of Linked Travel Arrangement affect the holiday products your business sells?*

DfT ATOL Question 12: *How much do you expect the cost to familiarise your business with the updated ATOL regulations to be? (e.g. training, interpreting guidance etc.)*

If the changes are as they should be just those required to bring ATOL in to line with the new PTD

there will be costs and given other business priorities with GDPR etc it will be onerous but just about manageable. IF the gold plated additional requirements are agreed then it would be extremely costly and difficult to ensure that everything would be in place.

DfT ATOL Question 13: how much do you expect the implementation cost to be for updating your business systems, tools and processes to comply with the changes we are implementing?

As long as no changes to the production of ATOL certificate and the additional consumer requirements for information that are in addition to the PTD then not too bad. However, having to change systems to incorporate the gold plated version would have a significant impact and totally change our business model

Dear CAA

Thank you for your email. I would like to make two observations.

In reply to question 4, specifically your proposed changes to section 10/2012 and 04/2013

10/2012. As a business we encounter commercial competition from unlicensed UK competitors who use these procedures to avoid having an ATOL. It provides them with the opportunity to pass themselves off as professional tour companies, providing financial protection to their customers, which they do not.

There should be NO loophole that allows unprofessional travel companies to exploit the system. The person offering non-ATOL flights doesn't even know what ATOL and package travel regulations are.

04/2013. Again, having a possible loophole is not helping genuine ATOL holders, it encourages unlicensed behaviour, and provides opportunities for unlawful activity.

The simpler the whole system the better, all or nothing. I believe you need to remove opportunities for misuse and opportunities to confuse customers. We see it happening.

Regards

██████████

Founder and Owner

E / ██████████ T / ██████████ W / www.hctravel.com
A / 16 High St, Overton, Hants. RG25 3HA Fb / [HCTravelMotorcycleTours](https://www.facebook.com/HCTravelMotorcycleTours)



Includes:

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Since 1994, with all elements of your H-C Travel holiday guaranteed 100% financially protected:
TTA T7861, ATOL T7002, registered in England 4204028

... Because only the best is good enough!

This is a response to the consultation on *Modernising ATOL*. This is from Honeyguide Wildlife Holidays, a long-standing holder of a Small Business ATOL (SBA) ATOL 3253.

General comments:

I recognise that selling holidays is changing for many businesses and that ATOL and other consumer protection has to try to keep pace with this.

It should be remembered that these changes are not universal: we continue to run group wildlife holidays in a very similar way to which they have always been run.

Overall, *Modernising ATOL* seems to be about selling holidays to individual travellers. It seems to lack awareness that holiday for groups have some differences in terms of practicalities, costings and risks. Honeyguide may be unusual in that we expect to run every, or almost every, group holiday that we promote in a small programme. But for us and others, key points are:

1. Each group holiday has to be viable and will have a minimum number of participants. This makes the whole business much less risky compared with many travel operations.
2. Flights would normally be bought once the minimum group size is reached.

The new “Linked Travel Arrangements” (LTAs) idea does not affect us.

Comments page by page.

Page 10: more information to allow a fully informed choice by including:

“ ii) flight dates, and departure and arrival times at each airport, and whether the flight is direct or indirect,”

I see the sense in this: certainly flight details are often a detail people are keen to know. With our group holidays, the brochure and initial online information are often before airline schedules are available and are a best guess based on previous schedules. Often they are correct; sometimes schedules change. It is practical and sensible to update online information once schedules are available.

Page 10: “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.”

Response: I sympathise with this idea and it chimes with Honeyguide’s normal practice. After all, it’s good to have those seats secured and early buying of flights usually yields the keenest prices. Where it may not work is for group travel where a minimum group size is needed to make a holiday viable.

Secondly, we have dates that are far set ahead for which flights are not yet available. For example, the website finalised in August 2017 and brochure sent in September 2017 included holidays in the autumn/early winter at the end of 2018 – way beyond when flights are available. Systems the CAA sets up must take this into account.

Page 11: 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.

Response: it adds additional administration, but this shouldn’t be difficult, and marks a return to the previous system of quarterly returns. The key thing is that any system is not overly bureaucratic.

The devil or angel may be in the detail. If it’s a simple online reporting process, that could work well. If an accountant’s (ARA’s) audit for quarterly returns is demanded, that adds a layer of work and cost. The consultation implies not, as it says: “there will be no change to the period or timing of paying APC for SBAs” to which ARA audits apply.

It would be good to confirm that the audit system remains annual. The ARA process for SBAs, as I have suggested in previous correspondence, already has a cost that seems out of proportion to the money raised from APCs.

Page 19: 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.

Phew!

Page 21 "For the next issue of the ATOL, we expect any ATOL holder making sales in EEA countries to licence those seats under ATOL."

This is good. It's presently a gap that I cannot issue an ATOL certificate to occasional customers from Europe.

P23-24 Proposal to introduce online ATOL Certificates

"d) Consumers will receive a reference number, enabling them to go onto the CAA's web site and check the details of their protection."

This is perhaps the most radical of the proposals. I can see some benefits, such as underlining the ATOL-protected basis of holidays. You could say it adds to the prestige of the sale through an independent confirmation. That said, these things are unlikely to trouble regular Honeyguide customers. Most would see the need to go on the CAA's website as a slightly difficult extra task that they'd rather not do.

Furthermore, there are still several Honeyguide customers who do not access the internet. It's a choice they make, surprising though it may seem. What should they do – or rather, what can the CAA and ATOL holders do for them?

Honeyguide Wildlife Holidays (ATOL 3253)
36 Thunder Lane
Thorpe St Andrew
Norwich NR7 0PX
01603 300552

www.honeyguide.co.uk



KAYAK Europe GmbH
Fraumünsterstrasse 16
CH-8001 Zürich
Tel.: +41 44 403 90 27
athalmann@kayak.com
www.kayak.com

KAYAK Europe GmbH, Fraumünsterstr. 16, CH-8001 Zürich

By email to atol.consultations@caa.co.uk
Civil Aviation Authority
Consumer and Markets Group K3
CAA House 45-59 Kingsway
London WC2B 6TE

Zurich, 23 March 2018

Response to the Consultation on Modernising ATOL

Reference is made to the above mentioned consultation. We would like to submit following comments to the proposals:

About KAYAK

KAYAK and its affiliates are operating the travel metasearch sites www.kayak.co.uk, www.cheapflights.co.uk and www.momondo.co.uk. Metasearch sites provide consumers with an overview of available travel options (e.g. flights, packages) as well as a comparison of prices offered by different suppliers, which can be online travel agencies and airlines. Consumers can click on the links provided on the search results page to access directly the offer on the suppliers sites and make the booking there. In no event does KAYAK receive a payment from the consumer.

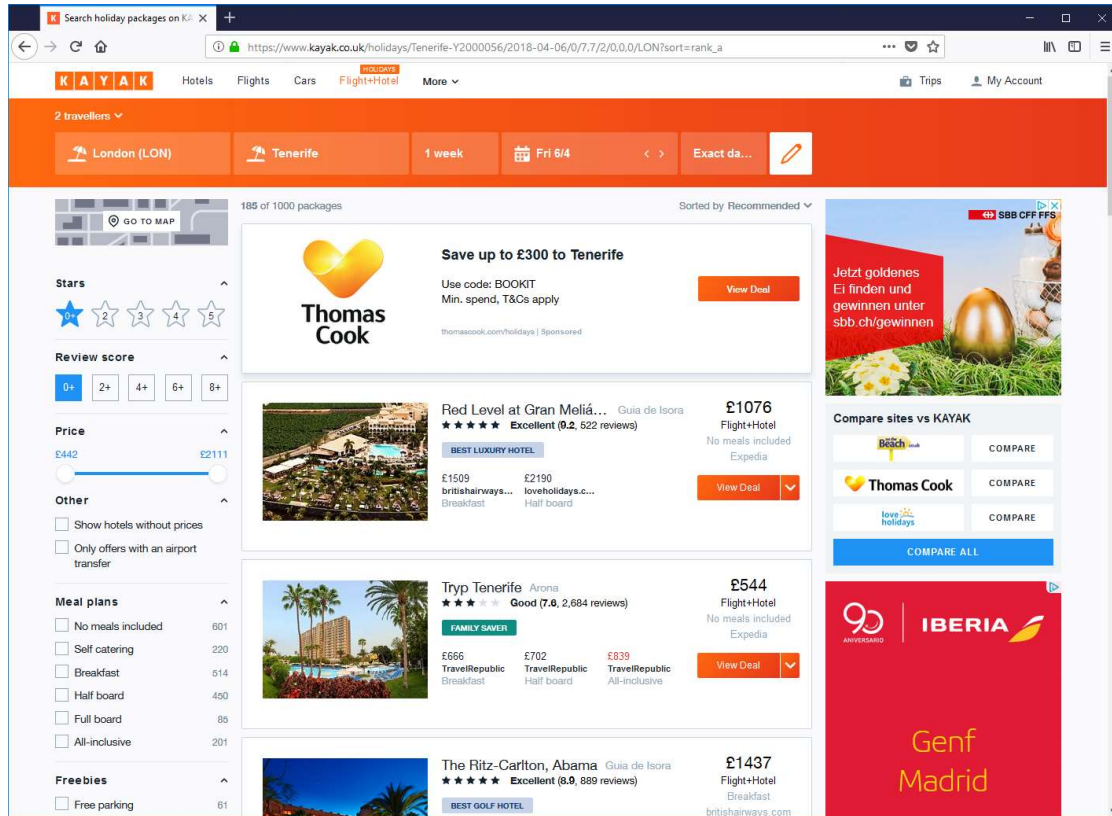
The Competition and Markets Authority has conducted in 2017 an extensive market study of digital comparison tools, including flight metasearch engines, see <https://www.gov.uk/government/publications/digital-comparison-tools-summary-of-final-report/digital-comparison-tools-summary-of-final-report>; KAYAK has participated in that market study.

KAYAK's comments

Since KAYAK is only affected by a limited set of the proposal, we have commented only on question 1:

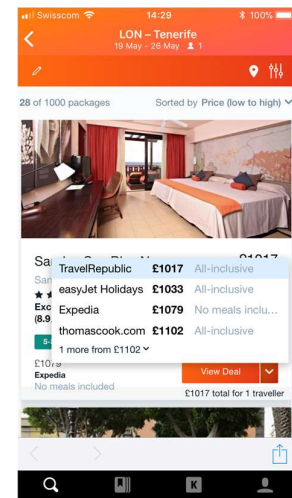
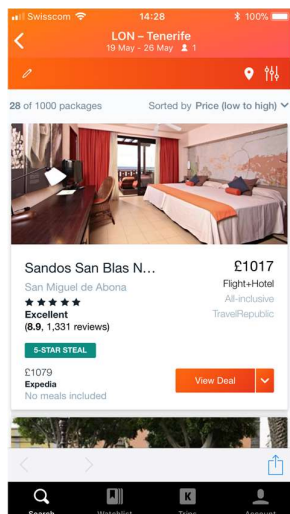
Question 1 What are your views on the proposed changes to ATOL standard terms 1 and 6?

KAYAK, as well as the other metasearch engines, display a price comparison of the offers of several suppliers for the same package (example below).

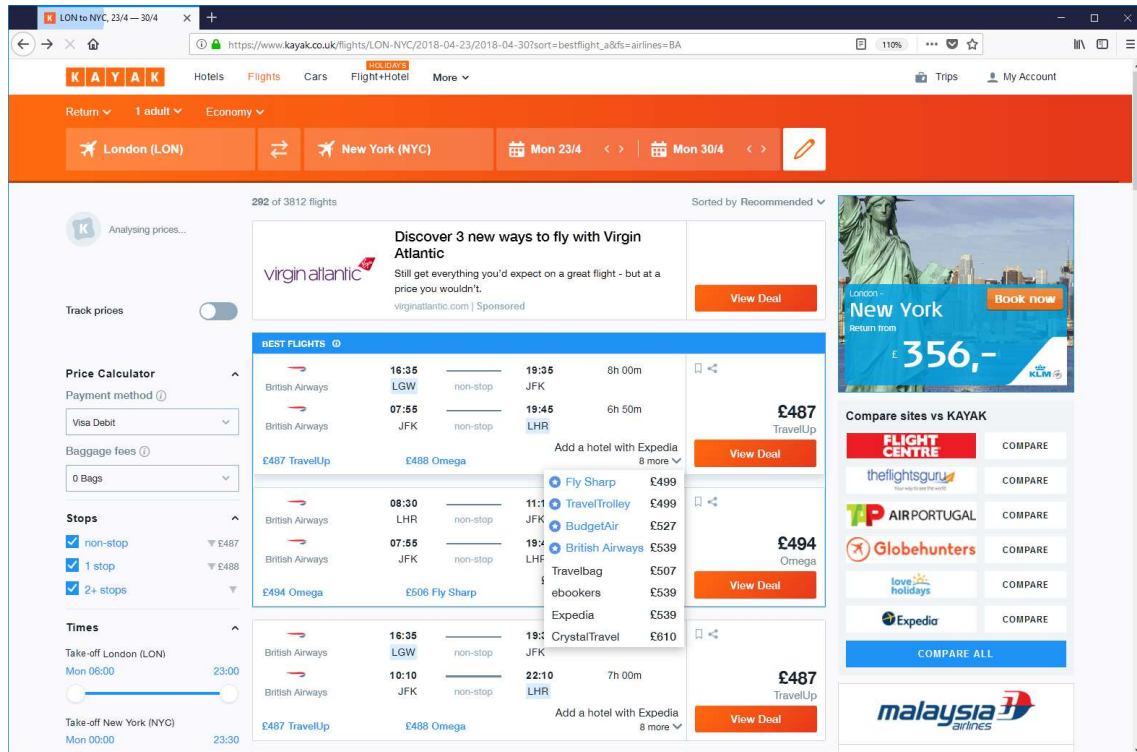


Due to this comparison of several suppliers, it is very difficult to add the minimum set of information proposed by the CAA in its consultation. The search results page would look very different and for practical purposes would not be a comparison between suppliers anymore. There is also no real value to include this information in the metasearch results page, since we do provide links to the booking pages on which this information is provided.

This issue is exacerbated on mobile devices and their small screens. Searches on mobile are already over 1/3 of overall searches:



In the case of flight only, the price comparison between the different suppliers for the same flight is central to the whole price comparison site concept (see example below).



Having to add ATOL holder's name (or trading name), ATOL number and the ATOL logo for each offer would force price comparison sites to reduce the number of displayed offers and potentially privilege the airline direct offers or the offers of EEA based, not ATOL participating suppliers, thus diminishing the choice of UK consumers without any tangible benefit on the upside.

For these reasons, we believe that the proposed changes to ATOL standard terms 1 and 6 go beyond what is necessary for modernising ATOL.

KAYAK is of course available to discuss these points with the CAA

Best regards,


 Deputy General Counsel
 Kayak Europe GmbH

Hello,

Further to the email I received on 23rd February regarding the Consultation Process on “Modernising ATOL”. I can confirm that the changes all seems sensible to me.

However, based on my understanding of the last details sent out by BEIS on the PTD, my business will definitely not be classed as providing Packages and it seems actually may not fall under the Linked Arrangements definition either as they currently seem to apply to “sales” and my business just makes arrangements and does not sell holidays to clients. However, I am still waiting on better clarity on this this from BEIS and have raised my queries as part of their Consultation Process. But even if my business is classed as making Linked Arrangements, it seems it is likely it will fall outside of being a Licensable Transaction.

I currently hold a SBA as I, under the currently rules, am deemed to be an arranger of services which requires a Flight-Plus ATOL. Obviously having to have an ATOL has been a financial burden on my business due to the £40,000 bond I had to hold and also the annual financial obligations required in reporting and audits. I will say that I have also benefited since ATOL is a “badge of quality” with clients. It also means that that if I want to sell products to clients (as opposed to just arrange as I currently do), but under my Flight Plus ATOL (not as a package), that is something I can currently do.

I am keen to understand that if I will no longer require to be ATOL Bonded under the new PTD, does my ATOL just fall away? What if I wanted to change my business model in the future, would I have to go through the whole process of registering for a new ATOL? Would it be possible to retain my existing ATOL Number (10597) for example, so that I could reactive it should the regulations change again?

I look forward to hearing from you on the above in due course.

Kindest regards,

[REDACTED]

[REDACTED]

la Concordia - Personal Travel Planning

ATOL: 10597

[REDACTED] | [REDACTED]

www.la-concordia.co.uk | [Twitter](#) | [LinkedIn](#)

la Concordia
PERSONAL TRAVEL PLANNING



Dear Sirs

We have reviewed the above consultation and provide our responses to the questions below. We have also responded to the DfT. We are happy to provide further information or discuss.

Yours sincerely

██████

General comments

The DfT consultation mentions a number of times that the PTD is a maximum harmonisation directive. However, a lot of the proposals in the CAA are essentially goldplating as they go further (much further in some case) than what is required in the PTD. This, combined with the new enforcement powers for the CAA (which we are supportive of, with some caveats), means that there is not a level playing field for UK based operators who are competing against businesses based outside the UK.

The changes proposed are very significant and need to be reviewed, and the timescales are too tight for businesses to comply.

We also need to see the actual ASTs and have the opportunity to comment on these.

Question 1 – What are your views on the proposed changes to ATOL Standard Terms 1 and 6?

The consultation says:

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.

With regard to the first bullet point, we have the following comments to make:

- the information proposed to be included on the search results page goes very significantly beyond what is workable. Online sales processes are designed to give the customer the optimum booking process, and the booking funnel is very finely tuned to ensure we're giving the customer the information they need to make their choices at the appropriate time in the booking process. If you give the customer too much information too early in the process, the customer will be overwhelmed and it's a terrible customer experience. All of the information listed will be given as part of the booking process at some point, but to include all of this on the first page is simply not feasible. On the search results page, customers don't need to or want to know this information. We have attached a few slides to illustrate how it works on our website (the bottom of the slide shows which stage of the booking path the screenshot represents). We would be happy to put the CAA in touch with our user experience guys to discuss this further. Our recommendation would be to say that all of the information listed must be part of the booking path and given prior to the customer placing the booking, but not that it needs to be on the search results page.

- The extension to meta/price comparison sites will cause issues for them as they are not aware of the CAA consultation and will not be in a position to make changes to their website in time. If we can't advertise through these sites from 1 July, that is not good for consumers, OTAs or meta sites. Our recommendation is that the CAA engage with meta sites to really focus on the areas that the CAA believe are the most important. A customer searching for a deal on a meta site does not want to know how much a transfer costs so the same points apply to meta as they do to OTAs.

With regard to the second bullet point, we are an online travel agent and we don't control flights. When a customer makes a booking on our website, that is a request for us to book the flight and hotel on their behalf. A contract is not formed until we have managed to successfully book the travel elements for the customer and have sent them an order confirmation. We quote a price for the hotel and a price for the flight – both of which we arrange as agent not principal. Although in the new world, what we sell will be a package, the actual price of the package will be the total of the prices of the individual elements. After we have received a booking, we will attempt to book the flight, but on occasion it may no longer be available or the price may have increased significantly so we have to go back to the customer to discuss their options.

As currently drafted, we wouldn't be able to sell specific flights. I believe what this is actually trying to stop is businesses taking a customer's order but not immediately booking the flight. That is not what we do – we try to book the flight as soon as we've got the customer's order but sometimes it is not possible to do that.

The wording in the consultation says “unless they can confirm that the booking has been accepted at the time of taking the consumer's booking and deposit/payment”. This needs to be changed to “unless they can confirm that the booking has been accepted at the time they confirm the contract with the customer, which must be done as soon as possible after the customer has placed their order”.

Question 2

We have no concerns or comments.

Question 3

The information provided on the plans to change AST4 are too vague – we would need to see the actual wording to be able to comment.

Question 4

Re Flight only/use of consumer's credit or debit card, we are very supportive of the proposals here. However there is one point of clarity. The consultation says:

“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.””

There will frequently be a situation where the travel business has paid the airline in full for the ticket, so the ticket has been paid for, but the consumer has not yet paid the travel business – most travel agents enable customers to pay in instalments.

Therefore the language needs to say “and has paid **or agreed to pay** the travel business” just to cover this point.

Question 5

We have no comments

Question 6

We have no comments

Question 7

We are supportive of the proposals re Flight Plus certificates as we would still want to break out the individual prices because we plan to sell packages on a multiple contract basis.

Question 8

We are supportive. However, we have a concern that if UK operators are subject to more stringent compliance requirements and there is more stringent enforcement by CAA than other regulators, it will not be an even playing field. The CAA therefore needs to consider before taking enforcement action the impact on that business’s ability to compete with non UK businesses.

Question 9

We are supportive. This will help us, particularly in relation to our overseas sales. We sell to customers based in Sweden and Norway, and soon will be selling to customers in Denmark. As an online travel agent, we rely on branded traffic to succeed in international markets and we need to build up trust which we do by bonding/licensing locally, with the local equivalent of ATOL. If we have to display ATOL rather than the local equivalent, that will not mean anything to our international customers. We need to continue to be able to bond/be licensed by the local regulators.

Question 10

This seems to make sense.

Question 11

We have no comments.

Question 12

We have already had a session with the CAA on this and we are supportive.

██████████, General Counsel and Company Secretary
On The Beach Group plc



Park Square, Bird Hall Lane, Cheadle, SK3 0XN

Mobile: [REDACTED]

Web: www.onthebeach.co.uk

Email: [REDACTED]

ATOL Consultation – disclosures required on search pages

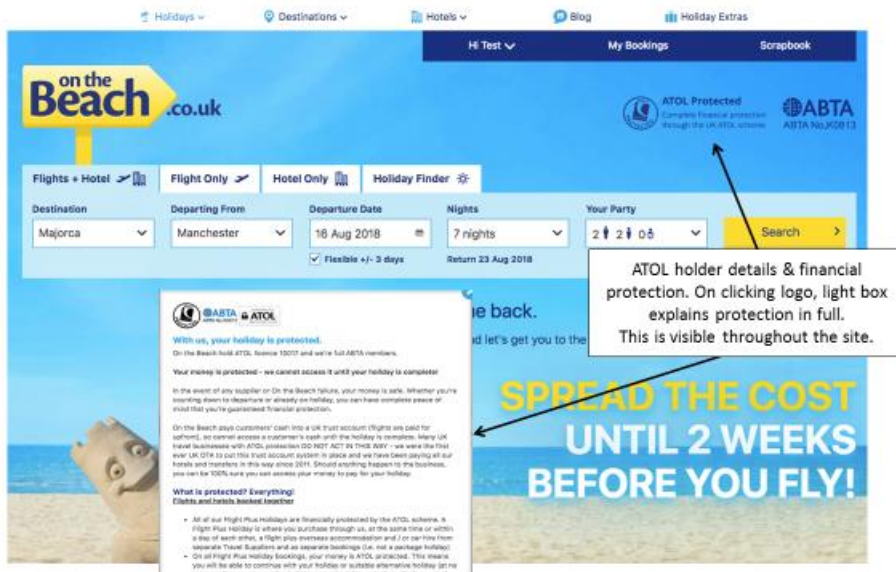
We have a process of continual optimisation of the customer experience on site. We have two key booking paths, Flight + Hotel and Holiday Finder (previously called Deals), on which we continually split test alternative designs, features and information architecture.

A key focus has been making the paths as simple as possible, showing on the essential information to the customer at each stage to ensure we can offer the simplest possible booking journey.

As a result, the key information around flights, financial protection and ancillaries is introduced to the customer at what we believe is the right point in their journey that they want to see this information.

The screenshots that follow on the next few pages are a result of this test and learn focus, being improved through regular conversion split testing over the last few years. It is likely that these pages will continue to change in future to best meet changing customer need.

HOME PAGE



HOME PAGE > FLIGHT RESULTS > HOTEL RESULTS > EXTRAS

FLIGHT + HOTEL PATH: FLIGHT RESULTS

Flight dates, times, airports

Ability to include bags cost in flight prices, depending on how many bags the customer wants to take.

Name of airline

Filter your results

Departure dates

- Any PP Inc. taxes £152.87
- Mon 13 Aug £139.68
- Tue 14 Aug £168.04
- Wed 15 Aug your date £133.56
- Thu 16 Aug £175.38
- Fri 17 Aug £166.20
- Sat 18 Aug £179.46
- Sun 19 Aug
- Return to same airport only

Airlines

- Any PP Inc. taxes £152.87
- Easyjet £220.37
- Jet2 cheapest £133.56
- Ryanair £216.19
- Tui £177.98
- Thomas Cook

Take off times

Outbound 00:00 - 24:00

Inbound 00:00 - 24:00

Taking bags? Add them here to see the best flight prices

Add bags here and save

Add bags 0

We've found 572 flights

Cheapest

Thursday 16 August 2018 Ryanair This flight is selling fast

18:00 Manchester 21:40 Palma 2h 40 FR 9036 **£133.56** Select Flight

Thursday 23 August 2018 Ryanair

12:45 Palma 14:30 Liverpool 2h 45 FR 9593 ATOL Protected

This price includes a Ryanair fee of £8.00 for reserved seats

Discount | Includes 4 hold bags

Sunday 19 August 2018 Thomas Cook This flight is selling fast

06:55 Manchester 09:35 Palma 2h 40 MT 1464B **£211.68** Select Flight

Sunday 26 August 2018 Thomas Cook

09:20 Palma 11:10 Manchester 2h 50 MT 1853B Discount - incl. 4 hold bags ATOL Protected

Thursday 16 August 2018 Ryanair Low Deposit

18:00 Manchester 21:40 Palma 2h 40 FR 9036 **£137.64** Select Flight

Thursday 23 August 2018 Ryanair

HOME PAGE > FLIGHT RESULTS > HOTEL RESULTS > EXTRAS > PAYMENT > CONFIRMATION

FLIGHT + HOTEL PATH: FLIGHT RESULTS

Thursday 16 August 2018 Scheduled Flight

08:45 Manchester 11:45 Zurich 1st Stop 2h 0 Stop over 0h 40

Thursday 16 August 2018 Scheduled Flight

12:25 Zurich 20:45 Dubai 6h 20 Total 9h 0 This flight is selling fast **£389.20** Select Flight ATOL Protected

Friday 24 August 2018 Scheduled Flight

01:35 Dubai 06:25 Zurich 1st Stop 6h 50 Stop over 0h 40

Friday 24 August 2018 Scheduled Flight

07:05 Zurich 08:05 Manchester 2h 0 Total 9h 30

hide flight details

Indirect flights have connecting airports broken out.

HOME PAGE > FLIGHT RESULTS > HOTEL RESULTS > EXTRAS > PAYMENT > CONFIRMATION

FLIGHT + HOTEL PATH: EXTRAS

Add transfers

- Shuttle Service (return) £9.99 pp
- Speedy Shuttle (return) Max 4 Stops £14.08 pp
- Private Taxi (return) £12.94 pp
- Wheelchair Adapted Taxi (return) £43.40 pp
- No transfer £0.00 pp

Add bags

£36.00 per hold bag each way
Hold bag weight limit is 20kg.
Your booking includes 10kg hand luggage per person.

Customer can add one of many different transfer products at this stage. Not viable to offer this choice on flight results.

Customer can add bags here, or on the prior flight results

HOME PAGE > FLIGHT RESULTS > HOTEL RESULTS > EXTRAS > PAYMENT > CONFIRMATION

HOLIDAY FINDER PATH: RESULTS

on the Beach .co.uk

Flights + Hotel | Flight Only

Destination: Tenerife | Departing: Manchester

Your Party: 2 ↑ 2 ↓ 0 ♂

Filter your results

- Price per person / Total price
- List results by: Recommended, TripAdvisor Rating, Lowest price first, Highest price first
- Star Rating: Any, 5 stars, 4 stars, 3 stars, 2 stars
- Board Basis: Any

Flight dates, Airlines, and airports.

Time omitted for clarity, and because these can be changed on the following page.

Laguna Park 1

Costa Adeje, Tenerife, Spain

Ryanair

Wed 15 Aug 2018

Manchester → Tenerife South

Ryanair

Wed 22 Aug 2018

Tenerife South → Manchester

You can select other flight and board options later

£455.90PP

Annapurna Hotel Tenerife

HOME PAGE > HOLIDAY FINDER RESULTS > HOLIDAY DETAILS > EXTRAS > PAYMENT > CONFIRMATION

HOLIDAY FINDER PATH: DETAIL PAGES

on the Beach .co.uk

ATOL Protected
Consumer Financial Protection
through the UK ATOL scheme

ABTA
ABTA No. J06113

Flights + Hotel | Flight Only | Hotel Only | Holiday Finder

Destination: Tenerife | Departing From: Manchester | Departure Date: 15 Aug 2018 | Nights: 7 nights | Your Party: 2 Adults, 2 Children

Manchester to Tenerife
2 Adults, 2 Children - Wednesday 15 August 2018 (7 nights)

Your chosen hotel
Laguna Park 1 (Costa Adeje, Tenerife, Canarias)

Chosen flights
Ryanair
→ Wed 16 Aug 2018
Manchester → Tenerife South (FR 1248)
09:55 → 10:30 (Duration: 4h 35m)

Ryanair
← Wed 22 Aug 2018
Tenerife South → Manchester (FR 1248)
11:00 → 15:35 (Duration: 4h 30m)

Including £100.00 hotel discount

Book Holiday
£1,823
2 Adults, 2 Children

Flight times first shown here

HOME PAGE > HOLIDAY FINDER RESULTS > HOLIDAY DETAILS > EXTRAS > PAYMENT > CONFIRMATION

HOLIDAY FINDER PATH: EXTRAS

Add transfers

Shuttle Service (return)
From Tenerife South airport
Estimated journey time: 1h 10m
4 passengers
£9.99 pp

Speedy Shuttle (return) Max 4 Stops
From Tenerife South airport
Estimated journey time: 0h 50m
4 passengers
£14.08 pp

Private Taxi (return)
From Tenerife South airport
Estimated journey time: 0h 30m
4 passengers
£12.94 pp

Wheelchair Adapted Taxi (return)
From Tenerife South airport
Estimated journey time: 0h 30m
4 passengers
£43.40 pp

No transfer
£0.00 pp

Add bags

£36.00 per hold bag each way
Hold bag weight limit is 20kg
Your booking includes 10kg hand luggage per person.
0
£0.00

Hotel Suna
£2,408.98
Sunlight Bahia Principe Tenerife *****
7 nights - All Inclusive - 1x junior suite
Supplied through Hoteles Nivara Canarias SL

Flights
£1,000.32
→ Wed 16 Aug 2018
Manchester → Tenerife South
09:55 → 10:30 (Duration: 4h 35m)

← Wed 22 Aug 2018
Tenerife South → Manchester
11:00 → 15:35 (Duration: 4h 30m)

Ryanair Seat Re
ATOL Protection

Hotel Early Booking
Hotel Extra Discou
Total Discou
-£262.91

Customer can add one of many different transfer products at this stage. Not viable to offer this choice on flight results.

Customer can add bags here, or on the prior flight results

HOME PAGE > HOLIDAY FINDER RESULTS > HOLIDAY DETAILS > EXTRAS > PAYMENT > CONFIRMATION

ALL PATHS: ORDER PENDING PAGE

Thanks for placing your order
Your order reference: MY952778

Order Status PENDING
This is not a confirmed booking
An email has been sent to stephen.nulty@onthebeach.co.uk containing your order information below

What Happens Next
We'll now check the availability of your requested order with our travel partners. Once confirmed this will be booked on your behalf. You'll receive a **Booking Confirmation email within 48 hours of making your initial booking request**. In most cases bookings will only need to be confirmed by email.
If it's no longer possible to confirm your requested booking, a member of our Online Team will personally contact you.

Order Summary

From: Manchester
To: Alicante
Return: Manchester
Duration: 7 nights
Hotel: (El Campello, Costa Blanca, Spain)

Passenger Details

Lead name: Mr test test
Adults: 1

Flight Booking Summary

Flights Out: Manchester, 7 Mar 2018
Flights Back: Manchester, 14 Mar 2018

Print this page

Quidco
As a thanks from On the Beach, we've arranged for Quidco to give you £10!
Find out more

Gas & Electric Discount

CONFIRMATION

We show clearly to the customer that the booking is in a 'Pending' status, subject to payment being successfully taken, and all individual elements being successfully booked.

We inform the customer what to expect next, and give an idea of when their booking will be confirmed.

ALL PATHS: ORDER PENDING & ORDER CONFIRMED EMAILS

on the Beach .co.uk

Holiday Reference: MYB6897965B
Order Status: ***Pending***

Thank you for your order with us, **Test Test**
We'll now check the availability of your requested order with our travel partners. Once confirmed, this will be booked on your behalf and you'll receive a **Booking Confirmation Email** within 48 hours of making your initial booking request. In most cases, bookings will be confirmed by email.
If it's no longer possible to confirm your requested booking, a member of our Online Team will contact you to discuss.

Manage Your Booking

When your booking is confirmed, you will be able to access the website where you will be able to:

- ✓ Make Payments
- ✓ Book Extras
- ✓ Print Voucher
- ✓ Make Special requests
- ✓ Add Passengers
- ✓ Request Changes and more...

Passenger Summary

Passenger 1: Test Test
Passenger 2: Test Test

Flight Summary

➔ **Outbound** Ryanair Limited trading as Ryanair FR3152
East Midlands to Tenerife South
Departing: 12:55, 09 August 2018

on the Beach .co.uk

Holiday Reference: MYB4175011B
Order Status: ***Confirmed***

Dear **Stephen Nulty**,
We have booked your Holiday!

Many thanks for your booking and welcome to On the Beach. Please print the attachment of your booking confirmation. Please ensure the details of your booking are correct.

As an internet-based company it is not our policy to send anything, including documents where applicable, by post. The following information (postal, flight and/or transfers) that are contained in this attachment should therefore be printed and stored safely.

We are pleased to confirm your booking for your order and we hope you will have a fantastic holiday with us.

Kind regards,
On the Beach Team

On the Beach Limited. Registered in England no 3162962. Registered office: Park Square, Bird Hall Lane, Cheshire SK3 0XN

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We make it clear to the customer that initially the order is pending confirmation that each individual element has been booked successfully. This is followed shortly after by the order confirmed email.

Good afternoon

Please find below our responses to the current consultation.

As our company trades in, and is based in, the Channel Islands and Isle of Man, we are in the unusual position of selling to local residents (who are not covered by ATOL as things currently stand) and to UK residents (who are). This creates a disparity in protection afforded to the different clients based on their place of residence, even when they could be booking exactly the same holiday. We would be very keen for the Channel Islands and Isle of Man to be brought under the umbrella of ATOL so that residents of these jurisdictions, in which we trade, would benefit from the same level of protection as residents on the Mainland.

Best regards,

[REDACTED]

[REDACTED] | Aviation and Online Travel Specialist
ONLINE REGIONAL TRAVEL GROUP

E: [REDACTED]
T: [REDACTED]
www.ortg.co.uk

Wayfarers World Travel & Just the Flight, Guernsey
Mann Link Travel & Richmond Travel, Isle of Man
Bellingham Travel, Jersey

Online Regional Travel Group is a limited company registered in the Isle of Man
Company Registration No. 119861C
Registered office: 14 Athol Street, Douglas, Isle of Man IM1 1JA

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If you have received this message in error, please notify us and remove it from your system

Q1. On ATOL Standard Term 1, relating to the requirements of ATOL holders to provide information to consumers when selling ATOL protected services, as a trader in the online arena we will need to review the implications on our booking flows for what would previously have been Flight Plus. This is particularly important if a customer makes a flight only Search initially, but then adds a cross-sold hotel or car rental (for example) later in the process. Until we have clarity on exactly what the requirements will be, it's difficult to know how long these changes will take to implement, but the process will certainly require input from our technology partners.

The requirement to include information on key extras such as baggage is important in providing transparency to consumers, however in reality this is something which poses substantial challenges to implement on travel websites, not least because of the varying approaches taken by airlines in the ways of charging for extras.

On ATOL Standard Term 6, relating to the selling of a specifically identified flight, and the requirement to secure that flight immediately after they enter into a contract for a licensable transaction, this too could pose challenges, dependent on the point at which the contract is deemed to commence. There is a possibility that a supplier link could fail at the time of booking, or that a booking may fail our internal card fraud check, meaning that we may not be in a position to confirm the booking immediately. If the contract only comes into effect once we have claimed payment from the customer, that would obviously be more practical.

Q2.

Q3. In relation to ATOL Standard Term 4 and the information ATOL holders must provide to the CAA, it would seem sensible to allow agencies to implement the changes necessary for compliance with the Package Travel Directive first, before implementing these changes. There are many other regulatory changes going on at the present time, for example GDPR, and the implementation needs to be done in a manageable way.

Q4. The proposed changes to the four exemptions all seem sensible.

Q5. The text indicates that ATOL holders “permit and require agents to issue ATOL Certificates immediately upon accepting any payment...” There doesn’t appear to be any mention of how this will work when the ATOL Certificates move online, however?

Q6.

Q7. There is a need for clarification on exactly what is required in terms of ATOL certificates for multi-contract packages, in order to identify what work is required to implement these. Adequate timescales should be provided.

Q8. On the proposal to stop granting ATOLs to businesses that are exempt from the need to hold an ATOL because they are established in an E.E.A. country other than the U.K., we would be hopeful that the Channel Islands and Isle of Man are not impacted by this, since the Islands are neither members of the U.K. nor the E.E.A. - and as such that agents based here will be able to retain their ATOLs. We would far prefer that the Channel Islands and Isle of Man are brought under the umbrella of ATOL so that residents of these jurisdictions, in which we trade, would benefit from the same level of protection as residents on the Mainland.

Q9.

Q10.

Q11.

Q12. In relation to the move to Online ATOL Certificates, multiple different booking and back office tools are used across the business. September 2018 is a very tight timescale and whilst supportive of the changes, work will be required with technology partners to enable the transmittal of data, as well as reviewing of business processes. This will be difficult in light of existing regulatory changes such as GDPR.

We would definitely want some reassurance regarding the confidentiality of client data, again especially in light of the GDPR.

Consideration needs to be given to those who don't have internet access to retrieve their ATOL Certificates in this way.

Clarity is needed around what the costs of implementation and running will be, and by whom they will be borne.



SPAA response to CAA Consultation : Modernising ATOL CAP 1631

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 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, airports, holidays and all travel related issues which are relevant to their customers who in turn become customers of the airlines, tour operators, airports and ground arrangers within the UK.

Our Association represents Scotland's major travel agents within our Membership, working increasingly pro-actively with a growing group of Associate Members who are our industry Principals, to address the issues and meet the challenges of the constantly changing travel marketplace, thereby protecting the interests of our members and mutual clients throughout the nation and beyond. We are regularly involved in submissions to Government regarding major travel issues such as APD, reforming the ATOL scheme & review of the package travel regulations and work with Scottish transportation suppliers including rail operators, airlines & airports.

Executive Summary

The SPAA welcomes the opportunity to respond to this consultation but would voice concern once again at the very short time of 4 weeks allowed to complete this consultation

The SPAA would further comment on our great concern over the lead in time given before the proposed implementation date of the new regulations on the 1st July 2018, especially since the results will not be known until after Easter, with no actual definitive date being stated.

SPAA strongly proposes that the CAA should carry out further investigations and consultations with the travel trade to determine the parameters and timeline for the implementation of the automated ATOL certificate. We now understand the timeline for the introduction of the online ATOL certificate may not be available for at least a year, if not more. The consultation document seems to have been very misleading in stating that over 200 agents were being utilised to test a system, which now appears to erroneous ?

With the approach of the UK leaving the European Union the UK government SPAA must again stress the importance of UK Companies not being placed at a disadvantage

SPAA welcomes the confirmation of the continued exclusion of Business Travel arrangements but would recommend that the CAA should not enforce any details of agreements between the TMC's and their Corporates

There is still considerable concern for many of our members regarding the introduction of Linked Travel Arrangements and the removal of Flight Plus.

Flight Plus has been successfully received by members offering an acceptable alternative to arrangements covered under a full ATOL. The removal of Flight Plus will create additional financial burdens on many of our members in relation to their bonding requirements as well as a change to their liabilities.

The SPAA feels that there is still a lack of clarity and transparency on the complete definition of an LTA and also the definition of a package and further clear guidance is urgently required. The various methods where an LTA can be covered by insurance etc, is far from clear from a consumer perspective and needs further clarity to ensure the consumer fully understands the risks, otherwise consumer protection for the travel industry is not fully rounded.

SPAA would urge the CAA to let the new Package Travel Regulations as proposed by the DfT/BEIS proceed on the 1st July but delay the introduction of any other items relating to further reforms until there has been time to establish a full set of requirements, a full understanding of the implications and costings to agents together with a measured and a realistic lead in time for implementation.

Consultation Questions

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

There are serious questions surrounding the timelines of booking processes that are not available in the GDS systems. This particularly relates to airline bookings over a year ahead, as in the case of cruise bookings and other long term selling. There must be an effective way of allowing an operator to make a booking outside the particular time frame to quantify an advance registration for a reservation of 11 months or over.

2. What are your views on the proposed changes to ATOL standard terms 3 ?

SPAA has no issue on these proposed changes

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

SPAA has no problems with these proposed changes and is agreement with the idea of issuing guidelines to ATOL holders relating to any planned Corporate activity which would hopefully highlight any major changes up front, however details of this guidance are limited and therefore we could be agreeing to a question where we do not have the full facts. It is dependent on what information is required.

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

01/2012 – SPAA finds this change acceptable

10/2002 – SPAA finds this change acceptable

04/2013 – SPAA finds this change acceptable

05/2013 The SPAA has continued to recommend the ongoing business exemption from ATOL but does not agree with the CAA publishing any wording of minimum requirements for agents/TMC's to have with their Corporate customers. This is not only onerous, but impractical in certain situations, such as where business accounts are being bid for, and ad-hoc test bookings may be made over a period of time, such as six months

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 ?

SPAA is in agreement with the changes proposed but would definitely question the three month period recommended for new agency agreements to be issued and would suggest that a period of six months would be more attainable. particularly as third parties are involved, over which we have no control.

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

SPAA feels that the proposed changes are entirely reasonable

7. What are your views on the proposal to changes ATOL Certificates as set out above ?

There is mention of changing the contact details by which the public can contact the CAA – but what does this mean ?

Flight-Plus ATOL Certificates

In light of Flight-Plus not being an option, we have no objection to this change. However, is the wording “Package sale – multiple contract” to appear in the revised ATOL Certificate or is it the responsibility of the agent to add this in as appropriate ?

Package ATOL Certificates

We note no changes will occur

Flight-Only Certificates

The SPAA has concerns that the consumer will, once again, lack the knowledge to understand the workings of this process where the third party package organiser is liable after the failure of a flight-only agent booking. Ultimately, they still can make a claim against the package organiser so a consumer trying to understand what is ATOL protected and what is the responsibility of the third party organiser could be challenging.

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

SPAA has no problem with this. We agree with the proposal to stop granting ATOL's in this manner, as this will prepare us for exit from the EU.

- 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 ?**

SPAA feels that these proposals are acceptable

- 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 PTR's ?**

SPAA has no comment on this.

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

SPAA feels that the recommendations are reasonable.

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

SPAA members feel that there is a great deal of work to be done before this system can be introduced and feel that a full investigation should be carried out and proposed possibly via a separate consultation.

There are a number of issues which should be considered in relation to the ATOL certificate relating to items such as how an ATOL certificate with the full pricing could be created when it is for, say a cruise holiday, which departs in 2020, where the flights and prices may not yet be available. This would mean that there would need to be either a separate form of certificate labelled differently for advance registrations or the ATOL form would need to be amended with price amendments and also timings of flights etc

The implementation of any electronic system will take time and there must be an adequate amount of time for the detail of this system to be analysed and the cost implications considered.

This should also be linked with training with agents to enable them time to understand and comply with the new regulations

Further information

██████████ President, SPAA – ██████████
██████████, Political Convener, SPAA – ██████████
██████████, Secretary, SPAA – ██████████

21st March 2018

Dear Nikki

As a SBA holder I have two areas of concern with the proposed 'modernisation' of the ATOL system.

- i. Qu. 12 On-line issuing of ATOL certificates – what will happen with our customers who do not have access to computers and iphones?
- ii. Qu. 2 Introducing quarterly accounting for SBA – this adds another onerous task to small businesses with limited man power and time. Given the small volume of passengers is this really practical and necessary?

Many thanks



Tel. [REDACTED]

Spencer Scott Travel Services
Inspirational, Motivational & Informative Travel

www.spencerscotttravel.com

Tel. +44 (0)1825 714310 Fax. +44 (0)1825 712286
Pippingford Manor, Nutley, East Sussex TN22 3HW. UK



Established 1988 ATOL license 3471

Dear Nikki,

I've just been reading the consultation document on the proposed ATOL changes.

I have the following observations/comments on Chapter 2 (page 23) regarding the introduction of online ATOL certificates. (Question 12)

b) there is a data protection consideration with the ATOL holder providing the CAA with contact details for consumers. It's easily covered in an ATOL holder's Ts and Cs, but it's something ATOL holders will need to be aware of.

c) having an API that could connect our on-line booking management system to the CAA system to auto-submit ATOL certificate details would be a useful tool.

Top of page 24 (b) May I suggest that contact details are limited to just one main point of contact for each booking rather than each passenger.

Additional thoughts

- 1) We work with school groups and sometimes make booking up to 2 years in advance of travel. Therefore, we do not necessarily know exact departure dates and/or airlines or the flight details that form part of the ATOL package at the time we take a deposit from the clients. Therefore, any CAA system for on-line submissions would need to be flexible enough to cope with us not knowing all data fields at the time of initial submission. Naturally, it follows that we would need the ability to go back into a particular booking / ATOL submission and update details at a later stage.
- 2) Group numbers on our bookings also change, so we would need the capability to add in additional passengers to bookings, and/or reduce numbers if necessary.

I hope that helps. Any questions, please let me know.

Thanks

██████████

████████████████████

Director

Direct Dial: ██████████

STC Expeditions (formerly The School Travel Consultancy)

6b, King St, Exeter, EX1 1BH

Tel: 01392 660056

www.thestc.co.uk



Dear Sir /Madam

RE PROPOSAL TO INTRODUCE ONLINE ATOL CERTIFICATES BY
THE 1ST JULY 2018

Can you please tell me when the CAA are going to inform the consumer that from July 2018 they will have to go online to the CAA for their ATOL certificate. What about the Thousands of consumers that travel all over the world but are NOT tech savvy or do not have a computer. The CAA in its Consultation document regarding this change do not mention anything about informing the Public about the changes. Surly the CAA have a responsibility to the consumer to inform them of the changes that are being proposed.

As a consumer and NOT a Travel operator or Agent I have only found out about this consultation by reading a copy of Travel Weekly which is a publication for T/As &T/Os' Can you please explain why the CAA has not given the consumer the chance to put forward its views on this very important change. Perhaps the Consultation : Modernising ATOL cap 1631 should be put out in full onto Face Book then any one of the people that it will impact on can contact the CAA & DfT with views of there own. I look forward to a speedy reply to my VIEWS and intentions.

Yours Sincerely
Steve Kane

I have read most of the Directives and Regulations/consultation reports already and my main question/concern is how system companies like ours – who produce the ATOL Certificate automatically for the client (tour operator or travel agent) - will be able to communicate with a central CAA system and how easy it will be for the client to access and print the ATOL Certificate themselves.

At present the tour operator or travel agent is supplying this.

Who will be standing the costs of the development which will be required?

Re- labelling the Flight Plus ATOL certificate to 'Package sale – multiple contract' is not an issue.

Your response would be appreciated.

Regards

██████████ | Managing Director

tassolutions

the attic | south suite | fullbridge mill | maldon | essex | cm9 4le | UK

tel: +44 (0)1621 857785 - www.tas-solutions.co.uk

**Modernising ATOL – CAP 1631
Thomas Cook Group’s consultation response**

23 March 2018

I. General overview

Thomas Cook Group is grateful for the opportunity to respond to the CAA’s consultation on Modernising ATOL. A robust, consistent, and fair UK financial protection scheme is in the interest of all Thomas Cook customers, and we believe that the 2015 Package Travel Directive represents a significant step in the levelling of the playing field for Europe’s travel businesses.

Furthermore, Thomas Cook Group notes the open and constructive manner in which CAA officials have engaged with industry and stakeholders, and we strongly welcome this approach.

This response is submitted on behalf of the Thomas Cook Group and represents the views of Thomas Cook UK & Ireland, the Freedom Travel Group, and Thomas Cook Airlines UK.

II. About Thomas Cook Group

For more than 177 years, Thomas Cook has been the UK’s trusted pioneer in global travel, opening up the world and enabling travel for all. One of the world’s leading leisure travel groups – and the only of this scale headquartered in the UK – Thomas Cook Group plc employs around 22,000 people, operating from 17 source markets. Our sales in 2017 totalled £9 billion.

Our UK business sent six million British customers on holiday in 2017. From booking their holiday right through to their return back home, our customers are supported by 8,800 employees in the UK, including in our 600 stores lining high streets across the country.

III. Response to consultation questions

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

Proposed change to AST 1.4

The changes proposed to ATOL standard terms 1 and 6 will require significant systems changes by Thomas Cook in order that we meet the new requirements. Notably, AST 1.4 will have a significant impact on resources, as we expect colleagues to have to invest significant time in affecting the changes.

For some of our websites and products, this development would take a number of months to schedule, develop and deploy. When considering the full implementation deadline is 1 July 2018, just over three months away, this leaves a wholly inadequate window for travel companies to resource, schedule, develop, deploy, and implement the required changes. Bearing in mind any changes cannot commence until the final ATOL standard terms have been published, we do not believe it will be possible to meet this deadline.

Further proposals within this section lack clarity, and we would specifically highlight the following comments:

“Where an ATOL protected product is offered for sale, the seller must state clearly & prominently, in close proximity to the price, that the product is “ATOL protected”.

Thomas Cook Group and the CAA are aligned in a collective view that financial protection information must be provided to customers in a transparent way so that they can make an informed purchase. While we would agree with the CAA that there may be some specific examples of bad practice whereby certain holiday companies are not presenting customer information in a transparent way, we do not believe that the case for regulatory action has been comprehensively made by the CAA at this time.

Furthermore, it is important to highlight that this proposal appears to represent a ‘gold plating’ of the Package Travel Directive, which would be contrary to the commitments made by both the CAA and the Department for Transport that regulators would seek to avoid this approach. We are particularly concerned that the proposal would entail such significant change that in order to achieve compliance, significant time and resource would be required, and at a time when businesses are already working to comply with a raft of reforms in an unrealistically limited period of time.

We would also like to highlight the following comments:

- The case has not been made as to how a customer would benefit from it becoming mandatory to display an “ATOL Protected” statement in close proximity to the price, particularly as the requirement to show the ATOL holder’s name, ATOL number and the ATOL logo on publicity material and websites will remain in place.
- By compelling travel agents to state that a product is ATOL protected in close proximity to the price, we do not believe that this proposal is practical and will most likely lead to further confusion for customers. As proposed, some products that travel companies sell, such as cruise-only packages, would not have to display information about ATOL protection by the price, whilst other products (such as a fly-cruise) , would have to. In this example, both sales are a package and have to have comparable level of protection, but showing an ATOL logo against one package but not the other might be confusing and unclear for customers while presenting technical challenges for businesses attempting to display this information.
- We have not been made aware of issues with respect to the current practice of displaying generic ATOL statements at the foot of an ATOL holder or agent’s website. We do not believe that this has caused any significant detriment to the customers’ understanding of the protection they are provided and therefore do not see the need to alter this practice.

“Where an ATOL protected product is offered for sale, the “search results” (online), must include a minimum set of information.”

We find the term ‘search results’ to be open to interpretation. It is not clear whether this means the results presented after the customer first enters their travel requirements or whether the information should be presented when a particular holiday is selected.

On our website (Thomascook.com), the initial ‘search results’ show only brief information about each holiday, displayed on a list, allowing a customer at quick glance to compare different attributes of each holiday. This proposal would negatively impact our customers’ experience, because our customers already recognise that Thomas Cook are selling ATOL protected arrangements (by clear messaging on our website home page), so having to mention this next to every price takes up valuable space especially when we see more and more customers using a mobile device to search for holidays, where information is displayed in a more restrictive format than those using a device with a larger screen.

We believe a more appropriate location for this information to be displayed would be when a customer has selected a holiday and wants to view 'more details'. This would allow the customer to compare holidays easily and effectively, but also have access to protection information at the most relevant and convenient point of the booking process.

There is significant focus on this section about information being given on websites which, although important in this digital age when customers are increasingly booking online, it neglects to address comparable requirements for bookings made over the phone or in high street stores. Because of this, we do not agree that using the term 'search results' is helpful and believe a more practical and appropriate approach would be to require information to be displayed before a customer is committed to a purchase.

i) Details of the ATOL holder and financial protection;

This reference is particularly unclear, as there is not clarity on what those "details" are and there appears to be duplicate information in the previously suggested 'ATOL disclosures' section.

We are also unclear as to how this proposed requirement fits with the information notice requirements of the PTD Annex. Provided the customer is informed at some point before they are committed to purchase that the holiday or travel service they are booking is ATOL protected and that the name or trading name of the ATOL holder is clear, we believe this is sufficient information.

ii) Flight dates, departure and arrival times at each airport and whether the flight is direct or indirect

Occasionally specific times are not known at the time of booking – for example flights booked over a year before departure, or bespoke charter flights for travel to sporting events. We agree that, where known, it is appropriate to inform customers if flights require an intermediate stop or change, however, there's no reason to have to state that a flight is non-stop if it is, as that should be assumed in the absence of information to the contrary. Any such requirement here would also need to be clear on definitions between direct, indirect and non-stop flights, because in aviation terms, some airlines may regard direct flights as having an intermediate stop.

iii) Departure and arrival airports

It is unclear why the CAA considers that existing legislation does not cover this information having to be provided and we would welcome further clarity on the rationale behind this approach.

iv) Name of the airline

It is unclear why this proposal has been made, as the proposals are already covered under existing European legislation. Furthermore, the Thomas Cook Group owns a number of airlines, which operate as part of our wider Thomas Cook Group Airlines business and in some cases, the name of the actual operating carrier might not be known at the time the flight or holiday is offered for sale.

v) The cost of key extras (baggage & transfers)

This proposal does not make it clear when and where this information would be displayed. The way the proposal is set out suggests this information must also be shown on 'search results', which is not aligned to the online booking journey.

We accept that it would be appropriate to provide this information in most cases before customers commit to a purchase and where the operating carrier is known, but most websites allow customers to choose the holiday, review the details and then consider optional extras, therefore posing a number of challenges to this proposal as it stands.

Proposed changes to AST 6 (Sales Restrictions) to be added – consumer to be assured that where holidays are advertised as including a specifically identified flight, that identified flight will form part of their holiday.

This proposal represents a very serious concern to Thomas Cook Group, as it makes no allowance for the fact that flights and holidays can often be booked over a year before departure, where flight details and timings are not always confirmed. This proposal would have the effect of limiting customer choice, as well as their ability to book flights well in advance of travel, despite a significant customer demand for such flights.

The proposal also does not seem to take into account that where a travel agent is caught by the ATOL regulations or the PTD, agents would not have any control over flight schedule changes by an airline. It is often the case that flight schedules can change for many different reasons. The flights customers book can and do change, whether that's the operating carrier, flight timings, or other details.

The industry needs to retain some flexibility with its operations, and the proposal by the CAA does not seem to make any allowance for even 'minor' changes to flights that might be made months before customers travel that will have minimal impact, especially on an overall holiday package where the flight is just one element of this.

If the CAA's intention is to clamp down on misleading sales practice where more unscrupulous companies might take consumer's money without making a booking with an airline operator, then we do not object to adjusting AST 1. We do not object to the CAA's specific condition that would seek to prevent ATOL holders:

“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.”

However, we do strongly feel that as currently worded, the proposals do not address any specific customer detriment, and in fact, potentially create one. We would strongly encourage the CAA to reconsider the proposed approach.

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

We do not have any specific concerns with these proposals as articulated.

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?

In terms of the wording of this section, it is fairly general, making it difficult to provide a detailed and specific response. We would welcome further clarity on some of the specific proposals likely to be put forward, and would support further consultation of industry and stakeholders.

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

We do not have any specific concerns with these four proposals as articulated.

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?

Thomas Cook are in agreement with the proposal to simply AST 1 in the schedule of agency terms, rather than having to reproduce the content of AST 1, for the sake of convenience.

With regard to the proposal to require ATOL holders to permit and require their agents to issue ATOL certificates immediately upon accepting payment from the consumer, it is unclear whether this proposal means ATOL holders will not have the option to issue their own ATOL Certificates directly to customers via email if the customer chooses to receive their booking confirmation electronically.

We also have serious concerns about the proposed timeframe for re-issuing agency agreements. The current proposal does not provide enough time for large ATOL holders like Thomas Cook, who work with many hundreds of agents, to update and re-issue these agency arrangements and we would strongly suggest that a period of six months would be more appropriate.

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

We are supportive of the changes proposed for Accredited Body terms in relation to membership agreements. If any change is made by the CAA moving forward, the proposals would make our workload more manageable.

We would also welcome a move from weekly submissions to a real time portal for reporting new and closing members, as it would make this process easier and more reliable.

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

We agree with the proposed changes to ATOL Certificates.

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?

We do not have any specific comment on this proposal as articulated.

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?

We support the transitional as proposed.

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?

We support aligning the wording used in the APC Regulations with the PTRs to ensure consistency of interpretation.

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

We are general happy with the proposals under this section. The only concern that we would like to raise however, is that if data is shared with accountancy bodies, it should be on an NDA basis, with the details of the relevant travel company and any identifying information redacted.

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

In general, Thomas Cook welcomes the CAA's plans to review the way ATOL Certificates are issued. We recognise the potential advantages in terms of reducing the administrative burden of having to produce Certificates and the reduction in cost that this might bring.

We would however question how practical it would be to transfer customer data to the CAA, as the current proposals would require. This will no doubt become more complex and contentious in the context of the implementation of GDPR and the sequential Data Protection Bill.

There is also the need to better understand what these proposals will mean in terms of costs ATOL holders and their agents might incur in making system developments to support the transfer of data in the required format. Part of this will include any potential costs that the CAA may seek to levy on travel companies in order to support the administration of this proposal. We would therefore welcome further details about this proposal, and further detailed consultation.

IV. Further information

We would be very happy to provide any further clarity or detail with respect to any of the matters raised within this consultation response. For further information, please contact [REDACTED], Group Head of Public Affairs on [REDACTED] or [REDACTED]

23 March 2018

Hi,

Firstly – I am pleased that this is a consultation document. I am sure that this process will raise many questions and amendments following industry feedback.

Here are my responses to those proposed changes in the ‘CAP 1631 Modernising ATOL’ consultation document that I feel need to be re-looked at.

These on behalf of my two my two companies (ATOL 9828 + 9728)

Question 1

Page 9 (ATOL Disclosures)

- i) What message should we put where a ground package is priced without international flights, but where international flights can be added if the customer wishes, thus turning the product into an ATOL package? Most tailor made tour operators quote ground arrangements separately, and offer international flights as an optional add on. If we can only mention ATOL by the every single product and not in a generic space, given that we want our prospective customers to be aware that this is potentially ATOL protected, it seems that under these proposals, then next every single price of a ground product we market, a message would need to be added along these lines:

‘The price quoted is just for the ground products as seen, and customer financial protection is provided by our ABTA bond if you don’t book international flights with us. If however you do book your international flights with us, customer financial protection will fall under the auspices of our ATOL license’ (I have made this as brief as possible!)

I think that we this would be a pretty clumsy and annoying. I think that we are better off staying as we are with explaining financial protection in one place on a website, especially if LTA’s are to be introduced.

Question 4

Exemptions from ATOL regulations

Page 13 (Flight -Only’s use of consumer’s credit or debit card)

- i) The logic that applies to the ‘*Flight Only ticket fully paid exemption*’ is a good attempt at levelling the playing field between airlines and agents, but why should this status only apply when airlines have been paid in full and customers receive a confirmed ticket issued immediately? Why not in cases where tickets are issued just a little later than this?

E.g. where after payment, bookings need to be:

- double checked by customers (e.g. they have made a small change at the same time as paying the balance),
- go through internal quality control before issuing tickets,
- and when issued, have to go through a final manual despatch system.

It seems that in these cases, ticket sellers for who simply more careful to avoid mistakes or simply have a manual process between taking payment and issuing tickerts, are burdened with financial responsibility that could last for up to a year or more in the event that the airline(s) involved were to fail – even if tickets were issued and customers received tickets just hours later or the next day?

This would of course leave a short time gap when agents were sitting on funds that have not been paid to the airline(s), but if we are in the process of re-inventing and improving

the system here, this could easily be covered, you would just need to know what the maximum exposure was at any one time and provide cover for that (would be unlikely to be more than a few days turnover as once airline tickets are paid for, the race is always on to get them issued before taxes / fuel charges / fares change and before tight airline imposed ticketing time limits auto cancel reservations.

- ii) Most agencies don't deal with airlines directly, but purchase tickets through wholesalers or consolidators (such as Travel2, Gold Medal or the Holiday Team) . In cases where these wholesalers have written agreements with airlines binding them to honour bookings, if the wholesalers in turn have a similar agreement with the sub-agent the same exemption should apply.
- iii) As in the points above, where prices are advertised for just flights, what is the guidance for the ATOL message here? E.g, should the message by each price read '*ATOL Protected unless after paying you receive your tickets within 10 minutes / 1 minute / an hour / same day..in which case ATOL protection doesn't apply*' ?
- iv) Does this exemption apply if a deposit for flights has been paid and the balance paid a few days later (and tickets issued straightaway)?

It isn't clear, but I can only presume that ATOL exemption, when tickets are issued immediately. doesn't apply to package bookings as this would mean that ATOL would be covering ground only arrangements?

Question 8

Page 21 (UK – established ATOL holders selling into the EEA)

- i) The application of the 'Country of Origin' principle is inconsistent. The proposal boldly states that '*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*' but then significantly diverts from this by making this only applicable to Packages and not Flight Only bookings.

For a UK established ATOL holder selling into the EU, where is the logic behind applying the same ATOL rules to packages, but not to Flight Only bookings?

There are 1.2m British citizens living in other EU countries, many of whom prefer to book flights with a UK based company in their native tongue who incredibly still won't be covered. This is not to mention the other 500 million non-British residents and potential customers across 27 other member states in the common market.

The proposal says:

'..the CAA sees no benefit from extending ATOL protection in respect of Flight Only departures where the first leg starts outside the UK' ..but fails to explain why.

The CAA's position here is in direct conflict with the aims of the BEIS. The statement on the BEIS website homepage says:

*'The Industrial Strategy sets out a long term plan to **boost the productivity and earning power of people throughout the UK***

It would be hugely beneficial to my company and am sure many others if we were able to cover flight only bookings that depart from other EU states under ATOL and would literally **boost our productivity and earning power!** Joined up thinking is required here!

Question 12

Page 23/24 (Proposal to introduce online ATOL certificates)

- i) I can see how viewing your ATOL certificate on the CAA website would provide an extra level of certainty for consumers, but wonder if this is necessary – i.e. is it solving a problem that the CAA see regularly? Does the scale of this problem warrants the amount work required?
- ii) If yes, booking management systems need an easy way to upload and amend this data – especially with complex tailor made bookings where elements are added and changed over time. This proposal would require scoping, building, complete QA + user acceptance testing, training and launch that would take at least a year. We would also need to be certain that this is a long term idea and one that is likely to still be needed post Brexit.

Appendix B

The subtext is fairly clear here – i.e. ‘if you just treat whatever you used to call F+ as a Package and very little will change’

There are however a lot of bookings that contain flights and land, but really shouldn't be classified as packages, e.g.:

- someone books a 12 month trip with say just one night's accommodation or a few days car hire.
- ground elements are added to a flight only booking long after the flights have been booked and tickets issued.

Currently we just update the booking and the ATOL certificate (changing it from FO to F+ in the latter example) so the customer can see all details about their financial protection on one document.

Any booking with a mix of ATOL and LTA protected elements will be spread over two lots of acronyms cause more ‘alphabet soup’ confusion for the customer.

As above, if LTA's must replace F+, a 01 July 2018 launch deadline seems improbable.

General

The public only have a basic grasp of how financial protection works now. Since this is all about the consumer, can I suggest it before any decisions are finalised, be an interesting test if you were conceive of an easy to follow guide to consumer protection in say a two minute video or ad in a paper format. The aim would of course be to make the various permutations, acronyms and exceptions nice and clear for consumers.

Thank-you



Good Morning,

I only have a few points to make and I make them informally, in my capacity as a travel industry specialist solicitor as well as the director of a company which acts as a trustee over a number of Accredited Body Air Travel Trust Accounts:-

- I. Exemption for UK agent for EEA operator – Contradicts CAA’s mantra that ‘the consumer is at the heart of the ATOL Scheme’. This exemption exposes the consumer to sales by companies in countries that have applied a less strict interpretation of the definition of a ‘package’ (eg Germany). This is inconsistent with the PTD’s stated objective of harmonising consumer protection for travel services sold across Europe. As the agent is established in the UK, and the PTD gives Member States the opportunity to impose enhanced liabilities on UK established retailers, these retailers should carry enhanced liabilities *where they are selling products for EEA operators that don’t meet the standard imposed by the UK*.
- II. What is a ‘general business travel agreement’? This is potentially unclear and could cover just about any contract covering business travel.
- III. As trustees employing an audit-style approach to running Air Travel Trust Accounts, we welcome the proposal to create a central database of ATOL certificates controlled by the CAA; and the change to ABST7 to impose obligations on Accredited Bodies to upload membership information to a central database. We hope that access to these databases would be extended to us as trustees, to enable us to verify the status and value of trust protected bookings.

Many thanks

[REDACTED]

Director,
Travel Trust Services Ltd.

DDI: [REDACTED]

M: [REDACTED]

Skype: [REDACTED]



Chambers and Partners says: [Sarah Lacy](#) is "extremely able" and "knows what she's talking about."
www.serenitytrusts.co.uk

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

Riverbank House
2 Swan Lane
London EC4R 3TT
T +44 (0)20 7861 4000
F +44 (0)20 7488 0084
E info@fieldfisher.com
CDE 823

www.fieldfisher.com

By email (atol.consultations@caa.co.uk)

Our Ref: DRG/EZB/64049-00001/69843874 v1

Partner

23 March 2018

Dear

Consultation - Modernising ATOL

Fieldfisher LLP is instructed by The Travel Network Group Limited ("TTNG") in relation to the CAA consultation described above (the "CAA Consultation").

We attach a copy of the TTNG's response to the Department for Transport's consultation on ATOL reform ("DfT Consultation"), which is currently running in parallel to the CAA Consultation. Given the close connection and overlap between both consultations, TTNG wishes to reiterate the comments made in response to the DfT Consultation in the CAA Consultation. Also, you will see that some of the TTNG's responses to the DfT Consultation answer questions/issues in the CAA Consultation – see DfT Consultation question 6, which is relevant to the CAA's comments on linked travel arrangements on page 21 and Appendix B of the CAA Consultation, and question 7, which is relevant to question 8 of the CAA Consultation.

In addition to the comments made above, the TTNG wishes to make two further comments in response to the CAA Consultation.

Franchise Organisations

As you will know, the TTNG owns the Travel Trust Association ("TTA"). It was formed in 1993 as a membership organisation which enabled its members to comply with the financial protection requirements of the ATOL Regulations 2012 (as they now are) and the Package Travel Regulations 1992 through the use of trust accounts. The TTA is a very effective route to market for travel companies. The TTA estimates that it represents approximately 75% of all new travel businesses and has more than 450 members in total, ranging from large businesses with turnover in excess of £300 million to small start-ups.

The TTA is an ATOL Franchise Organisation. It has an agreement with the Trustees of the Air Travel Trust (the "Trustees") that it will (amongst other matters):

Belgium | China | France | Germany | Italy | Netherlands | UK | US (Silicon Valley)

- stand in the shoes of the CAA and the Trustees if a TTA members fails. In the event of such a failure, the TTA guarantees that it will take over any unfulfilled customer bookings and arrange for the customer's holiday to continue without cost to the customer and, where requested by the customer, to provide a full refund. This is done without any recourse to the Trustees.
- ensure that where a TTA member has included within a package a flight provided by a failed ATOL holder company, the TTA member will either: (i) ensure that the flight is paid and the customer can travel; (ii) source another flight for the customer; or (iii) refund the customer where no alternative flight can be provided.
- ensure that all TTA members operate a trust account – backed by fidelity insurance – as is described in more detail in the attached response to the DfT Consultation.

The arrangements described above ensure that the TTA take all ATOL responsibility for its members away from the CAA and the Trustees. The TTA provides the CAA and the Trustees with a complete financial protection model, ensuring that there is no scenario in which the CAA will have to step in, or the Trustees will have to pay out, as a result of the failure of a TTA member.

As a result of the arrangements described above, members of the TTA can apply for an ATOL without needing to provide financial bonds to the CAA as a condition to the grant of an ATOL (as is the case for other new applicants for ATOLs).

The DfT Consultation and the CAA Consultation make no reference to the arrangements between the CAA and the Franchise Organisations. The logical assumption, therefore, is that the forthcoming changes to ATOL and the UK's Package Travel Regulations will not affect these arrangements. We would be grateful for this to be confirmed.

Proposal to introduce online ATOL Certificates

TTNG is broadly supportive of the concept that ATOL Certificates will be issued by the CAA in the future. The biggest concern which the TTNG would have is to ensure the restricted use, and security, of customer data transmitted by travel companies to the CAA. We would like to see close cooperation between the CAA and the industry as this project progresses, and the TTNG would be happy to assist in this regard.

If you have any queries on this response, please would you contact [redacted] of the TTNG at [redacted]

Yours sincerely

[redacted signature block]

Partner



Department
for Transport

Updating ATOL consumer protection

Introduction

Thank you for taking the time to read the consultation document and responding to the questions. Your views will help us update the ATOL regulations.

Confidentiality

All consultation responses will be treated securely, with responses anonymised. These will be analysed at an aggregate level, in order to draw out the key messages that come from this consultation.

Personal details

1. Your email address. We will only use this if we need to contact you to ask about any of your responses.

[Redacted email address]

2. Are you responding:

on behalf of an organisation?

as an individual?

Organisation details

3. Name of organisation (if responding on behalf of an organisation)

The Travel Network Group, 2 Crown Square, Woking, Surrey, GU21 6HR

(The views expressed in this response are those of The Travel Network Group Limited and not its members although we anticipate that many of our members will share these views.)

Consultation questions

4. We are updating the ATOL regulations to adopt the new definition of a 'package' from the Package Travel Directive 2015. Do you think the way the new definitions are drafted will cause any issues?

Not answered.

5. To what extent will the next concept of Linked Travel Arrangements affect the holiday products your business sells?

Not answered.

6. Do you foresee any issues arising from implementing flight-LTAs under the Package Travel Regulation mechanisms through bonding, insurance or trusts?

We agree that flight-LTAs should not fall to be protected under the ATOL scheme as it exists today, with the same protection, levy and rules as for flight-inclusive packages. This would not comply with the maximum harmonisation requirements of the Package Travel Directive 2015 ("PTD 2015").

We also agree that the best option for protecting flight-LTAs is a market-based solution. We described in our response to the BEIS Consultation of August 2017 (*Updating consumer protection in the package travel sector: Consultation on the new Package Travel Directive*) how the use of what we called "**Enhanced Trust Accounts**" for non-flight packages and LTAs would have enormous benefits for travel companies and consumers. We have attached to this document a copy of our response to the BEIS Consultation. We believe that the reasons which make Enhanced Trust Accounts so effective for non-flight packages and LTAs are equally applicable to the insolvency protection for flight-LTAs.

We do not, however, agree that regulation of flight-LTAs should be placed outside of the ATOL scheme. In our view, the regulator which is best placed to police the sale of flight-LTAs is the Civil Aviation Authority. It is the UK's specialist aviation regulator and it has the knowledge and experience of regulating the sale of flight-inclusive arrangements in the UK. It would be to the detriment of the industry and consumers for the regulation of flight-LTAs to be left to local trading standards authorities, which simply do not have the expertise or resources to regulate flight sales in the UK, particularly if there is a failure which requires the repatriation of consumers. As we have seen with the recent failure of Monarch, it is the CAA which is best place to organise the refund and repatriation of flight-inclusive arrangements and so the regulation of flight-LTAs should sit with the CAA.

We also disagree with the view that flight-LTAs should sit outside of the ATOL scheme. The concern expressed in the consultation is that including flight-LTAs within the ATOL brand may lead to consumers being confused as to the level of protection offered by flight-LTAs. Consumers may see the ATOL logo and associate that with full refund and repatriation rights, whereas the reality is that flight-LTAs offer much more limited protection for the reasons set out in the consultation.

We disagree with this analysis. Whilst we agree that the ATOL brand is well recognised and which consumers associate with insolvency protection, the reality is that most consumers do not understand precisely how it works unless and until they are unfortunate enough to book with a failed travel company. Moreover, the PTD 2015 contains mandatory pre-contract disclosures which have to be given to consumers in a prominent manner, which vary according to whether the customer has booked a package or an LTA. The purpose of these disclosures is to spell out to the consumer exactly which type of holiday they are buying, and the legal rights and insolvency protection associated with that holiday. Indeed, the LTA disclosure specifically requires customers to be told that they are not buying a package and that the insolvency protection is much more limited than if the customer had bought a package. The purpose of these rules is to remove the sort of confusion which leads the consultation to propose that flight-LTAs should sit outside of the ATOL scheme. We do not agree with this approach as the pre-contract disclosures will remove any risk of confusion.

For these reasons, we agree with the consultation's suggestion that flight-LTAs should be protected through the use of one of the market solutions set out in the Package Travel Regulations (specifically, Enhanced Trust Accounts, for the reasons set out in the attached note), but we believe that this should form a part of the ATOL scheme and be regulated by the Civil Aviation Authority for the reasons set out above.

7. We are updating the ATOL scheme so that the requirement to hold an ATOL will apply to UK businesses when they sell packages to consumers in Europe. Do you foresee any issues from the changes in who needs to hold an ATOL?

We agree that the ATOL scheme should be expanded so that it also covers flight-inclusive package sales made by UK businesses into other European countries. This change needs to be made to bring the ATOL scheme into line with the PTD 2015. It will also allow UK businesses greater freedom and agility to sell cross-border without having the burden and cost of complying with local insolvency protection arrangements in each country into which they sell.

In addition to the comment made above concerning UK businesses selling into Europe, we also wish to comment on the proposal set out in paragraph 2.32 of the consultation concerning EEA traders selling into the UK. It is proposed that they will have three options: (i) use the insolvency protection scheme of the place of their establishment; (ii) use one of the Package Travel Regulations options (i.e. trust accounts, bonding or insurance); or (iii) create an establishment in the UK to sell packages to UK consumers and obtain an ATOL (although this is not expressly stated in the consultation, it is the logical outcome of the consultation's proposal). We agree with this proposal, and again we wish to reiterate that, for the reasons set out in the attached note, the use of Enhanced Trust Accounts would be an effective means of insolvency protection for EEA traders selling into the UK if they did not wish to use the insolvency protection scheme of their place of establishment. This option should be given to the EEA traders, particularly as the insolvency protection measures of certain European countries may be less effective and appropriate for UK consumers. A local trust account in the UK may be much more effective.

8. We are updating the ATOL regulations to require agents acting for the consumer to hold an ATOL? Do you expect any issues from the new regulation?

Not answered.

9. We are updating the ATOL regulations to exempt business-to-business sales from the ATOL scheme (regulation 10). Do you expect any issues from the new regulation?

Not answered.

10. We are updating the ATOL regulations to qualify the exemption for agent for ATOL holders when they are organising packages (regulation 15). Do you agree with this approach, and do you foresee any issues with the proposed changes?

Not answered.

11. We are updating the regulations to exempt agents that are selling packages organised by EEA traders from the ATOL scheme. Do you agree with this approach, and do you foresee any issues with the proposed changes?

Not answered.

12. We propose to remove Part 3 of the ATOL regulations, to revoke ATOL 'Flight Plus'. Do you foresee any issues with this approach?

Not answered.

13. We are making minor amendments to the ATOL regulations so that the CAA's existing enforcement provisions are fully aligned with the changes we are making to the scope of

ATOL (eg to include agent for the consumer sales).Do you foresee any issues with the proposed amendment to Regulations 69 and 70 to achieve this?

Not answered.

14. Set out your views on the proposal to introduce civil sanctions (eg those provided for in RESA 2008) to give the Civil Aviation Authority more effective and flexible enforcement powers for the ATOL scheme.

Not answered.

15. How much do you expect the cost to familiarise your business with the updated ATOL regulations to be? (eg training, interpreting guidance etc)

Not answered.

16. How much do you expect the implementation cost to be for updating your business systems, tools and processes to comply with the changes we are implementing?

Not answered.

Return your response

Save your completed form and email it to:

ATOLconsultation@dft.gsi.gov.uk

Or post it to:

ATOL Consultation coordinator
1st Floor
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Updating consumer protection in the package travel sector: Consultation on the new Package Travel Directive (the "Consultation")

Response by The Travel Network Group Limited ("TNG"), dated 21 September 2017

Preliminary comments

TNG welcomes the Government's latest Consultation on the new Package Travel Directive 2015 ("New PTD"), particularly concerning the insolvency protection arrangements for non-flight packages and linked travel arrangements ("LTAs"). These are the areas which are of most concern to the TNG and so our response will focus on these matters.

Broadly speaking, the TNG is in favour of continuing with the current insolvency protection regime for non-flight packages, particularly the option for travel companies to utilise trust accounts to provide this protection. We also believe that this regime should be extended to cover the new definition of a "package", as well as non-flight LTAs. As described below, the TNG has extensive experience regarding the use of trust accounts. We therefore set out below some history about the TNG, the use of trust accounts and why they serve the interests of both customers and travel companies very well. We conclude by addressing specifically questions 13 – 17 of the Consultation.

1. Introduction to the Travel Trust Association

- 1.1 The Travel Trust Association ("TTA") is owned by TNG. It was formed in 1993 as a membership organisation which enabled its members to comply with the financial protection requirements of the Package Travel Regulations 1992 ("PTR"), and later the ATOL Regulations 2012, through the use of the TTA's trust accounts. In short, by using TTA trust accounts, TTA members complied with their financial protection obligations under the PTR and ATOL Regulations 2012.
- 1.2 TTA represents approximately 75% of all new travel businesses. It has 457 members, ranging from large businesses with turnover in excess of £300 million to small start-ups.

2. Trust accounts

- 2.1 The way a trust account works is very simple. The Tour Operator will set up a separate bank account into which the customer's money is paid. That bank account is operated by Trustees acting in accordance with a Trust Deed which requires the customer's money to remain in the trust account until the package holiday has been completed (at which point it will be released to the Tour Operator). The money in the trust account is segregated from the Tour Operator's assets and so, in the event of the Tour Operator's failure, the Trustee will use the money in the trust account to arrange refunds and repatriations for consumers.
- 2.2 The trust accounts operated by the TTA are an enhanced version of the basic trust account model described in paragraph 2.1 above ("**Enhanced Trust Accounts**"). They have the following additional features:
 - (a) In order to ensure that the trust accounts are administered correctly, and to reduce the risk of fraud or maladministration of the trust account, TTA trust accounts are all overseen by professional independent trustees whom are qualified accountants. These trustees are responsible for ensuring that all customer money is paid into the trust account and segregated from the member's assets until the package holiday is complete. The trustees also have the responsibility (along with the TTA) to step in and arrange customer refunds and repatriations in the event of a member's failure. As qualified accountants, the professional independent trustees have responsibilities as regulated pro-

professionals; breaches of these responsibilities may have a serious impact on their ability to practise their profession, ensuring that Enhanced Trust Accounts enjoy a further layer of protection.

- (b) Each TTA trust account is backed by unique fidelity insurance so that even if, upon the failure of a TTA member, the funds in the trust account are not sufficient to meet the full extent of refunds and repatriations owed (whether because of fraud or deceit), then the fidelity insurance will cover the shortfall. Similarly, the trustees are also required to have professional indemnity insurance in place and so in the event there is a shortfall because of some error or omission on the part of the trustee, that shortfall may be met from the professional indemnity insurance.

2.3 Our Enhanced Trust Accounts may be used by our members to provide the required financial protection for non-flight packages and flight-inclusive packages. For non-flight packages, the Package Travel Regulations 1992 ("PTR") specifically allow trust accounts to be used as a means of providing financial protection. Moreover, for flight-packages, whilst our members must have an ATOL and comply with the ATOL Regulations 2012, the CAA acknowledges the benefits of our Enhanced Trust Accounts and the fact that the entire responsibility for financial protection (including in dealing with a member's failure) has been moved from the Air Travel Trust Fund ("ATT") to the TTA. In recognition of this, our members are required to make an APC payment of £2.50 per passenger, but receive a rebate of £1.75 per passenger.

3. The benefits of trust accounts

3.1 There are many good reasons which make the current insolvency protection regime, and in particular trust accounts, an attractive insolvency protection solution for non-flight packages and LTAs. We set out these reasons below and identify where applicable the additional advantages of trust accounts over bonding and insurance solutions:

- (a) Trust accounts put the responsibility for financial protection in the hands of the industry and not the Government. The trusts are created, administered and policed by the trustees, as are the arrangements for customer refunds and repatriation in the event of the failure of a Tour Operator. The Government has said on many occasions that it wishes to see responsibility for financial protection moved away from the Government and into the industry by a form of market-based solution (a "**Market Solution**"). Trust accounts achieve this aim.
- (b) Trust accounts are a readily available form of Market Solution. They do not require any whetting of the appetite of the bond and insurance market.
- (c) Trust accounts are a Market Solution capable of protecting both flight-inclusive packages and non-flight packages. They could be used as part of a long-term solution to remove the complexity and confusion surrounding the current split between the way in which flight-inclusive packages and non-flight packages are regulated and financially protected in the UK.
- (d) There is no risk of a shortfall in the funds available to refund and repatriate consumers in the event of the failure of the Tour Operator. This is because the entire customer payment must be ringfenced in the trust account, under the power of the trustee, until the end of the customer's package holiday. This is not the case for other forms of financial protection, for instance bonding and insurance, which are taken out at the beginning of the year and are capped by reference to the projected turnover of the Tour Operator.
- (e) The TTA trust account is also more effective than the ATT model given that the sum sitting in the ATT as at 31 March 2017 (£145 million) would not be sufficient to meet the

refund and repatriation costs associated with the failure of one of the larger Tour Operators or if several were to fail in close proximity.

- (f) The risks of fraud, errors or omissions in the administration of trust accounts can be mitigated by adopting an Enhanced Trust Account, which requires the appointment of professional independent trustees who are qualified accountants, and also by having in place unique fidelity insurance and professional indemnity insurance in the manner described above.
- (g) A trust account is fair, with the costs of its administration and fidelity insurance naturally being linked to the size and risk profile of the business.
- (h) Trust accounts are a relatively low cost solution, particularly for start-ups looking to enter the travel industry.
- (i) The use of trust accounts by a travel company which acts as a retail agent of a Tour Operator also provides financial protection for the Tour Operator in the event of the retail agent becoming insolvent. In such insolvency, the customer's money would remain in the trust account and be available to be transmitted to the Tour Operator. In this way, trust accounts offer "pipeline money" protection for Tour Operators who sell package holidays through retail agents.

4. The disadvantages of trust accounts

4.1 The perceived disadvantages of a trust account are twofold and are largely illusory.

4.2 First, it is sometimes said that trust accounts have an impact on the cashflow of the Tour Operator because it means that the customer's money must be ringfenced until the package holiday is complete. This means that the customer's money cannot be used as the working capital of the business, for instance to pay suppliers, until the money is released from the trust account. This is not accurate. There are measures available to allow the customer's money to be paid to the supplier before completion of the package holiday. For instance if the Tour Operator has Supplier Failure Insurance in place then the customer's money will be protected even if it has been transferred from the trust account to the supplier. These cashflow criticisms also distort the reality that there is good justification for imposing some control over the Tour Operator's use of customer money – it helps ensure that the customer's money is financially protected. Moreover, it helps ensure that the Tour Operator is properly capitalised and is not taking cashflow risks by using the customer's money (which should be used to pay suppliers) to meet expenses in other parts of the business.

4.3 Second, trust accounts are liable to fraud if they are not administered properly. This is a risk, but one which can be eliminated by the use of an Enhanced Trust Account as described above.

5. Analysis of effectiveness of the Enhanced Trust Account

5.1 The effectiveness of an Enhanced Trust Account is demonstrated by the TTA's track record. Since its inception in 1993, no customer of a member of the TTA has ever lost out as a result of the failure of a member. All customers have either been able to continue their holiday, or have received a full refund. The position is well illustrated by the following factual analysis (which was accurate as at November 2016, when the calculation was made):

Approximate value of customer bookings taken by members over the last 10 years	£8 billion
Average number of members who fail each year	6
Customers who did not travel or receive a full refund over the last ten years	0

6. Endorsement of trust accounts by the CAA

6.1 The use of trust accounts underpins the entire scheme for the financial protection of package holidays in the UK:

- (a) For flight-inclusive packages, financial protection is arranged by way of requiring travel companies to make a per passenger contribution of £2.50 into the ATT. The ATT is itself a trust account, overseen by independent trustees, with day-to-day responsibility for administering the trust account delegated to the CAA. In the event of the failure of an ATOL holder, funds from the ATT are used to refund and repatriate consumers. This is similar to the model utilised by the TTA, albeit our Enhanced Trust Accounts do not suffer from the risk of a shortfall as described in paragraph 3.1(e) above, and the Enhanced Trust Accounts are also backed by unique fidelity insurance (which covers against the risk of fraud and theft) and the trustee's professional indemnity insurance in the event of errors and omissions in the administration of the trust account.
- (b) For non-flight packages, as noted above the PTR specifically provides for trust accounts to be used to provide financial protection.

6.2 The benefits of trust accounts have also been recognised and endorsed by the CAA in the following way:

- (a) As a part of the ATOL application process, Tour Operators are required to satisfy certain financial criteria. For those companies which fail to satisfy these criteria, the CAA may require a bond to be lodged to reduce the risk to the ATT, or it may require that applicant to take out a trust account.
- (b) The CAA has required the use of trust accounts by the Accredited Bodies to remove this risk from the ATT. The Accredited Bodies are associations which provide their members with a range of services, including the right to trade under the ATOL of the Accredited Body. In order to move this risk away from the ATT and into the market, the CAA required the Accredited Bodies to ensure that all their members utilise trust accounts. In recognition of the transfer of this risk away from the ATT, the members of the Accredited Bodies are charged a reduced APC rate of £1.25. Members of the TTA are also eligible for a rebate on their APC payments in recognition of the transfer of the risk away from the ATT.

7. Conclusion

7.1 The current insolvency protection regime for non-flight packages (especially trust accounts) are already widely used in the industry and their benefits are overwhelming. For consumers, trust accounts provide a secure form of financial protection, demonstrated by the fact that no customer of one of our members has ever lost money as a result of a TTA member's failure. For the industry, trust accounts represent a simple and relatively low-cost solution for the financial protection of

non-flight package holidays. For the Government, they represent a market solution capable of moving the entire responsibility for financial protection, including the administration of refunds and repatriation, to the industry.

7.2 We therefore urge the Government to do the following:

- (a) Ensure that the current insolvency protection regime, and in particular trust accounts, continues to be available for the industry as a means of providing insolvency protection for non-flight package holidays under the New PTD.
- (b) Expand the current insolvency protection regime, and in particular trust accounts, to cover the new definition of a package under the New PTD.
- (c) Expand the current insolvency protection regime, and in particular trust accounts, to cover non-flight LTAs.

8. Consultation responses

8.1 With this in mind, and in relation to the specific questions raised in the Consultation on insolvency protection arrangements for non-flight packages and LTAs, we comment as follows:

Question 13: Do you agree with our opinion that the UK should not introduce a requirement for the insolvency certificates to be provided with non-flight packages?

Yes. There has been no such requirement for non-flight packages since the PTR was introduced in 1992 and we are not aware of any consumer detriment or complaints which suggest that such certificates would be beneficial. We also agree with the comments made in the Consultation that the standard information requirements introduced by the New PTD mean that the customer will be given information about insolvency protection arrangements in any event. It would potentially confuse the consumer to introduce further standard information forms.

Question 14: Do you agree with our proposal to broaden the scope of the non-flight insolvency regime to cover the new definition of a package introduced by PTD 2015?

Yes. For the reasons set out in this note, the use of trust accounts is an effective, tried-and-tested model which ensures that customers are fully secured against the risk of a tour operator's failure. Trust accounts are also simple, relatively low cost and readily available in the market, without there being any need to entice the bonding or insurance markets to participate. Trust accounts also achieve the Government's long-stated policy aim of seeing responsibility for insolvency protection sit with the industry.

Question 15: Are there any issues with the current regime that you think should be addressed? Please give examples.

We agree with the suggestion that the trustees of trust accounts ought to be independent from the tour operator itself as this helps to ensure the trust account is properly managed. As described in paragraph 2.2(a) above, this is how the TTA trust accounts operate, and we would encourage the Government to require all trust accounts to have trustees which are independent from the tour operator itself.

Question 16: What do you think of the proposal to cover non-flight LTA insolvency protection under the same regime as non-flight packages? Do you envisage any issues with this approach? Please explain your reasoning.

We agree with this proposal, specifically that non-flight LTA insolvency protection should be covered through the use of trust accounts. The benefits of trust accounts set out in this note are as relevant to LTAs as they are to packages.

Question 17: Do you agree with proposal to update non-flight insolvency options so that they can be used for EU sales?

Yes. The benefits of trust accounts set out in this note are as relevant to EU sales as they are to UK sales.



Civil Aviation Authority Consultation

Consultation: Modernising ATOL

The TUI Group is the world's number one integrated tourism group operating in around 180 destinations worldwide. The Group employs around 67,000 people in 130 countries.

TUI offers our 30 million customers comprehensive services from a single source. This comprises leading tour operator brands and 1,800 travel agencies in Europe, six airlines with around 150 aircraft, and more than 300 Group-owned hotels and resorts.

TUI recognises and values the importance of consumer protection in the travel industry and understands the needs to align the CAA standard terms with the new Package Travel Directive. However, there are a number of areas where the proposals set out in the consultation go beyond obligations required by the new Directive.

TUI is strongly of the view that proposals that go beyond alignment with the new Directive should not be imposed immediately, particularly the changes to Standard Term 1. The extremely short lead-in time to implement any final regulations has already increased the cost and burden to businesses in the travel industry and to propose changes over and above the requirements of the new Directive will only serve to increase this cost and burden.

The lead-in time to develop IT systems and provide training for retail staff is insufficient and the delay has needlessly increased the costs and burden to businesses in the travel industry. To place further obligations over and above the requirements of the new Directive at this time would further add to these costs and burdens, particularly where changes to IT systems are required.

TUI's response to the consultation questions

Question 1

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

While TUI would welcome the opportunity to eliminate the need to include generic statements, the changes that are proposed represent an additional burden at this time, which are not strictly required to align with the new Package Travel Directive.

The proposal to require businesses to move the ATOL logo to be in close proximity to the product price represents further IT development and costs at a time when changes associated with the new Package Travel Directive and ATOL regulations are already creating a significant burden.

Question 2

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

TUI is not a Small Business ATOL holder so is not impacted by the proposed changes to the reporting requirements.

TUI supports the change to timescales for submitting an Annual Report.

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?

TUI has concerns over confidentiality, given any information provided to the CAA is subject to Freedom of Information requests. Information on mergers and acquisition will be highly confidential and sensitive to the markets, so the CAA needs to provide clear guidance, including at what stage of corporate activity a business should report. Any development of this guidance should be done in full consultation with the industry.

Question 4

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

Under the new Directive, corporate sales are exempt and instead governed by general agreements. The proposal for the CAA to set out minimum terms for these general agreements is over and above the requirements of the new Directive. TUI questions why the CAA has responsibility for drafting minimum terms when corporate sales are exempt from the ATOL scheme and when corporate sales fall outside of the CAA's consumer protection remit. As stated previously, given the short amount of time businesses have to comply and the already high burden imposed on industry, any changes that go over and above the provisions in the new Directive should not be implemented at this time.

TUI has no concerns with the other proposed changes.

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?

TUI agrees changes to AST1 should take effect immediately, but is of the view that when changes are made to the schedule of agency terms, the changes should immediately take effect for the whole schedule, rather than just AST1. To require businesses to update the agency agreement is an administrative burden and TUI is not always notified when changes to the standard terms are made.

Question 6

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

TUI has no opinion in respect of this question.

Question 7

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

TUI is of the view that another layer of complexity is added by having two types of package certificates. Given the same level of financial protection is provided under each, TUI is of the view that there should be one type of package certificate.

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?

TUI understands this step is consistent with the requirements of the new Package Travel Directive, but there is a concern that the varying levels of financial protection offered to consumers will not be properly understood, leading to customer confusion.

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?

The proposed transitional arrangements seem fair and TUI has no further suggestions for other transitional provisions.

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?

TUI has no concerns with this change and recognises that it ensures consistency across the relevant regulations.

Question 11

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

TUI has no concerns with the proposal to share AARs with the relevant accountancy body given such professional bodies are bound by confidentiality.

Question 12

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

There are a number of issues that should be considered as these proposals develop.

The proposed changes would rely on customers having access to an online system, which could exclude certain customer groups from being able to access ATOL certificates.

There are a number of other issues to consider. First, whether the proposals are compatible with the incoming GDPR legislation, given the volume of customer data that would be transferred from the travel agent to the CAA. Secondly, whether there will be an obligation on travel agents to obtain extra data from customers, which creates an additional burden on staff in retail stores. Thirdly, whether there will be a need for the travel agent to provide the customer with a reference number to ensure that the customer can access the ATOL certificate; TUI would want to further understand if this is generated in real time and how this is expected to be passed on to the customer.

TUI would be keen to discuss any proposals with the CAA as they develop, in order to better understand how the proposals would work in practice. Currently, TUI is of the view that these changes impose a disproportionate burden on business, compared to the objectives it seeks to achieve.

Response to the Civil Aviation Authority (CAA) Consultation on Modernising ATOL

White Hart Associates (“WHA”) is a boutique firm of Chartered Accountants and Statutory Auditors that have been advising the travel industry for 26 years. One of the partners in WHA has been advising the travel industry for 39 years and another partner sits on the ICAEW Travel, Tourism and Hospitality advisory committee. WHA currently has an ongoing travel portfolio of approaching 300 travel clients, most of whom are ATOL holders, is an ATOL Reporting Accountant (“ARA”) and at one time has acted for over 45% of the current list of the top 250 ATOL companies.

Over the past decade the ATOL Regulations have undergone frequent and comprehensive changes, all of which have added greatly to the travel industry’s costs of compliance in the fees paid to the CAA and in the costs of protection that are borne by the consumer - most noticeably the increase of the ATOL Protection Charge from £1 per passenger to £2.50 per passengers within two years of the implementation of the current levy scheme.

As a consumer centric organisation, not only regulating the ATOL Regulations but also the Consumer Protection from Unfair Trading Regulations 2008, the impact that the costs of the CAA’s regulatory regime, and related extensive and invasive monitoring, has on the amount a consumer pays for their holiday cannot be ignored. We believe this to be the most significant potential impact of these modernisation proposals. The consumer will pay more for their holidays as a direct result of these proposals.

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

One of the greatest strengths of the UK travel industry is the ability to sell a holiday far more cheaply than other EU counterparts. If UK consumers were to compare the price they have paid for their holiday, with say German individuals staying in the same accommodation and having broadly travelled with an equivalent travel arrangement, then the German consumer would have paid materially more for the holiday. One of the major reasons for this is the “maturity” of the UK market and the ability to be flexible in supply – buying at the right time and right price. These changes will inhibit this and will lead to higher holidays costs for UK consumers. The flexibility of flight sourcing is a case in point – no frills carriers are much of a muchness – this will give the consumer clarity of choice but at a higher price.

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

This will add further compliance and professional costs to smaller ATOL holders – a further step to what we believe will be the eventual eradication of the Small Business ATOL (“SBA”). Government agencies who are responsible for fair competition should respond and advise on these changes.

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?

We do not agree with the proposed changes to ATOL standard term 4. The need to advise the CAA of any significant changes should be prescriptive, “granular” and absolutely clear. Too much of the

ATOL regulatory regime is based upon the subjective view of the CAA and in consequence there are varying decisions made on matters that do not mirror what has been granted to other comparators. An ATOL holder should be able to plan any changes with objective and absolute clarity of the requirements.

We absolutely agree that there should be a detailed and transparent guidance note that outlines the CAA approach in relation to corporate activity. The still published ***ATOL Policy and Regulations 2010/03 – Groups and Related Parties*** is outdated – it still refers to the non-existent Free Asset Test – and needs to be replaced with a guidance note that has detailed clarity on the CAA Aviation and Travel Finance Team (“**ATF**”) approach. It should also clearly outline that there are specific periods of time where the ATF will not be able to progress any corporate activity due to internal resource issues for what appears to be approaching 2 months prior to each renewal semester – one third of the year. Notwithstanding a regulator applying Better Regulation should be sufficiently resourced to deal with corporate activity in tandem with normal licensing cycles.

ATOL Policy and Regulations 2016/01 contains only two short generic paragraphs on the CAA regulatory approach in relation to the finances of a Standard ATOL holder with an ATOL limit in excess of £20million – totally inadequate. This approach should not be applied to the guidance note on corporate activity.

Question 4 - What are your views on the changes proposed to each of these four exemptions?

01/2012 – we have no comments.

10/2012 – this change is a significant move to eliminating the inequity of airlines being able to sell flight seats without protection but not travel companies. It however does not go far enough. Flight-only, for clarity and simplification, should be eliminated entirely from the ATOL scheme. Many references in the consultation refer to consumer clarity – for ATOL cover on all flight-only sales to be eliminated is clarity. The consumer has the simple expedient alternative - pay for a flight-only with a credit card.

04/2013 – we have no comments.

05/2013 – we are in agreement with this proposal. It is hoped that the “*minimum requirements for general business travel agreements*” are straightforward, clearly thought through and, unlike the mandatory terms for agency agreements, are not almost immediately, and thereafter frequently, changed necessitating excessive and unnecessary compliance costs.

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?

We have no comments.

Question 6 - What are your views on the proposed changes to the schedule of Accredited Body standard terms?

We have no comments.

Question 7 - What are your views on the proposals to change ATOL Certificates as set out above?

We have no comments.

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?

Article 17 of the new PTD states: "*Organisers not established in a Member State which sell or offer for sale packages in a Member State or which by any means direct such activities to a Member State, shall be obliged to provide the security in accordance with the law of that Member State.*" We are therefore concerned that EU travel companies, who for commercial reasons, seek to hold an ATOL will be denied this whereas non-EU counterparts can, indeed will be obliged to, obtain an ATOL. This cannot be seen as anything other than unfair discrimination. Our view is that the "place of establishment rules" require a Member State to accept the insolvency protection scheme of the place of establishment, but they do not require a travel company to use the insolvency protection scheme of its place of establishment to cover all its EU-wide sales. If a Member State was to do this, then we think it would cause them problems under the Services Directive (which prohibits a licensing authority from discriminating against companies on the basis of nationality). As a result, we believe travel companies have to offer Member States one of two options: (i) obtain a licence in the place of sale; or (ii) obtain a licence in the place of establishment. We believe the CAA should re-think this proposal.

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?

The transitional arrangements outlined make practical sense. There are however problems for EEA-established businesses selling into the UK where departures straddle licence periods – how can such a travel company previously selling using ATOL protection carry a passenger in a period when it has no ATOL? However please see our answer to question 8 above.

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?

We have no comments.

Question 11 - Do you have any comments on the proposal to share AARs with the relevant accountancy body?

Our firm is an ARA. When the ARA arrangement was initiated the leading trade associations – ABTA, AOC, AITO etc, petitioned travel specialist firms such as ours to provide ARA reporting for their members where their member's own accountants/auditors did not or would not have ARA status. Some smaller ARAs appear to have made a "cottage industry" out of these reporting engagements at costs we feel are impractical to remunerate a firm for a thorough and professional job. The ATOL Annual Report ("AAR") part 2 also reports on the detail extracted from the statutory accounts of the ATOL holder. It is difficult to see how an ARA could obtain sufficient comfort on these numbers without themselves having reviewed and reported on the accounts from which they are taken. It makes absolute sense for the CAA to share AARs with the professional accountancy bodies where

they have concerns over the accuracy of the AARs. However the CAA must first raise concerns regarding any AARs directly with the ARA before referral to the professional accountancy bodies. The entire burden of ARA compliance should not fall to the professional accountancy bodies solely. The CAA has a role in education and guidance themselves and this is not something they should abdicate by arbitrary referrals to the professional accountancy bodies without first entering into constructive dialogue with the ARA.

Question 12 - The CAA would welcome consultees' views on this proposal, while it is still in the early stages.

The online ATOL licensing system is not yet the finished article and our initial observations are that it still has some considerable refinements and development requirements. It is not without glitches and is currently an unwieldy process. This has proved burdensome to the travel industry although the future benefits are obvious. The CAA has also used this online solution to ask far more extensive questions without consultation.

The costs of this should be analysed and carefully assessed. This sounds like a substantial and expensive exercise and may not be easily implemented by smaller ATOL holders.

Consideration should also be given to people without internet access

White Hart Associates

Chartered Accountants and Statutory Auditors

22 March 2018