

# Modernising consumer protection in the package travel sector

## Consultation on ATOL changes

Moving Britain Ahead



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# Contents

<b>Executive summary</b>	4
<b>How to respond</b>	6
Freedom of Information	6
<b>1. Strengthening ATOL protection in line with the Package Travel Directive 2015</b>	7
Introduction	7
Rationale for intervention	7
Proposed changes to the ATOL scheme to ensure it is consistent with PTD 2015	10
<b>2. ATOL reform in the longer term</b>	17
Introduction	17
Principles and statement of intent	17
Options under consideration	18
<b>3. Review of 2012 ATOL reforms</b>	22
Evaluation of the 2012 ATOL Reform	22
<b>What will happen next?</b>	24
Annex A: Full list of consultation questions	25
Annex B: Consultation principles	27
Annex C: Definitions in the PTD 2015	28
Annex D: History of ATOL	30

# Executive summary

- 1 This consultation is part of the Government's programme of reform for the Air Travel Organisers' Licencing (ATOL) scheme. Since the 1970s ATOL has provided effective protection to holiday-makers, ensuring that they can complete their holiday or obtain a refund in the rare circumstances that a travel company fails. The scheme protects over 20 million holiday-makers each year, and it has been the key way in which the UK implements the EU Package Travel Directive (PTD 1990) for package holidays that include a flight.
- 2 We have already taken steps to update the ATOL scheme, and bring it in line with modern trade practices. In 2012, we worked with the Civil Aviation Authority (CAA) to introduce the "Flight-Plus" category, ATOL Certificates, and Agency Agreements in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("2012 Regulations"). We believe these interventions have had a positive impact by extending consumer protection, levelling the playing field between businesses and improving clarity for all.
- 3 We are now considering further reforms, to build upon these changes and make sure that ATOL keeps pace with a changing travel market. In particular, a new EU Directive on package travel and linked travel arrangements<sup>1</sup> ("PTD 2015"), has been introduced to bring similar, but further reaching improvements to consumer protection across Europe. This will need to be implemented across EU Member States by January 2018, and brought into force six months later.
- 4 The UK Government has supported the rationale for updating the PTD, in order to bring greater clarity on what constitutes a package holiday and to harmonise protection. Overall, the new Directive has the potential to provide a greater level of protection to UK consumers, whether they purchase from a company established in the UK or overseas. The amendments in PTD 2015 will also help to bring a level playing field for companies, whether they operate on the high street or online.
- 5 While our future relationship with the EU is still to be determined, the Prime Minister has announced that the UK will continue to be a full Member of the EU until exit negotiations are concluded. This means that all the rights remain in place, and our obligation to transpose EU law, including the PTD 2015, will remain at this time.
- 6 This consultation identifies the key changes that we are considering making to ATOL to ensure it is consistent with PTD 2015, in time for the Directive to be implemented in 2018. The response from this consultation will help finalise the Government's PTD 2015 implementation plans, and also influence the shape of the longer-term ATOL options. The Government will launch a further consultation on changes to the UK Package Travel Regulations (PTR), in due course. This will include proposals for non-air package travel. Businesses will then need to comply with any new requirements under ATOL or the PTR by summer 2018.

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<sup>1</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

## The Department for Transport (DfT) and Department for Business Energy and Industrial Strategy (BEIS) are working together to implement PTD 2015.

This will involve a two-step approach to the consultation:

**Step 1** - This document marks the first stage of consultation, and focusses on the changes we propose to make to the ATOL scheme. As some of these changes require both primary and secondary legislation, it is important that we consult now to allow sufficient time to implement.

**Step 2** - The second consultation will be launched in due course, and will discuss the over-arching proposals for implementing PTD 2015 as a whole, through updating the Package Travel Regulations (1992). These legislative changes can be carried out more quickly as they do not require primary legislation.

### Summary of the consultation document

- 7 This consultation is split into the following parts, and a separate Impact Assessment has been published alongside it:
  - Part 1 - Proposals for strengthening the ATOL scheme in line with the Package Travel Directive 2015 to ensure enhanced customer protection;
  - Part 2 - ATOL reform to make sure that the regulatory framework is right in the longer term; and
  - Part 3 - Evaluation of the 2012 ATOL regulations.
- 8 Overall, we are proposing to update the ATOL Regulations and the ATT Contribution Regulations, so that ATOL can deliver the enhanced consumer protection under the new Package Travel Regulations. These changes will ensure that the scheme continues to provide effective protection for holiday-makers whether they book online or on the high street. They will also make it easier for UK businesses to trade across Europe without needing to comply with insolvency protection requirements in each Member State.
- 9 It remains the Government's policy to minimise the burden of over-regulation when transposing European legislation. We also need to be mindful that the regulatory landscape will need to be able to adapt to future changes in our relationship with the European Union. We believe the changes we are proposing are consistent with these principles, and will help consumers, businesses and the CAA to transition to the new Package Travel Regulations in 2018 with minimal impact.
- 10 This consultation also lays the foundations for continued ATOL reform in the longer term. A call for evidence in 2013-14, indicated that we will consider further reforms in light of PTD 2015. It remains our aim to place financial protection arrangements for air-travel holidays on a commercial basis. We need to get the regulatory framework right so that the market works better for business and consumers, while minimising the risk for the Government and taxpayer. This is particularly relevant as we consider the options and opportunities that arise from exiting the EU.
- 11 The second section of this consultation therefore seeks further information and evidence to help inform the development of options for longer term reform. It is important that we have a more complete understanding of options, to be clear that they are feasible, sustainable and that the travel market is able to transition.
- 12 In the third part of this consultation, we seek information so that we can review the effectiveness of the 2012 Regulations and publish our findings before 30 April 2017.

# How to respond

The consultation began on 28<sup>th</sup> October 2016 and will run until midnight on 24<sup>th</sup> November 2016. Please ensure that your response reaches us before the closing date, and contact us if you need alternative formats (Braille, audio CD, etc.).

Please complete the response pro-forma at Annex A and return it to **ATOLconsultation@dft.gsi.gov.uk** or by post to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will be holding consultation events during November. If you would be interested in attending, please contact [ATOLconsultation@dft.gsi.gov.uk](mailto:ATOLconsultation@dft.gsi.gov.uk).

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

# 1. Strengthening ATOL protection in line with the Package Travel Directive 2015

## Introduction

- 13 The Air Travel Organisers Licence (ATOL) is a financial protection system managed by the Civil Aviation Authority (CAA). It was set up to protect consumers buying package holidays that include a flight from the insolvency of an ATOL licensed travel company.<sup>2</sup> If a licensed firm goes out of business, the CAA can refund customers or ensure they can continue their holiday and return home. The ATOL scheme is a key mechanism by which the existing Package Travel Directive 1990 (PTD 1990)<sup>3</sup> is implemented in the UK. PTD 1990 harmonises European rules on the sale of package holiday and places an obligation on companies selling package holidays to have insolvency protection in place.
- 14 The ATOL scheme was partially reformed in 2012 to ensure it was more capable of meeting the needs of the modern consumer. We believe further legislative change is now needed to enable the alignment of the scheme with the requirements of the new Package Travel Directive (PTD 2015), which was published in December 2015.<sup>4</sup>

## Rationale for intervention

### Consumer protection for the modern travel sector

- 15 The ATOL scheme and PTD 1990 were introduced many years ago to provide protection for consumers in the travel market. Payments for holidays are often made many months in advance of travel, while barriers to entry can be low with little capital required. This gives rise to a real risk that consumers could lose money or be stranded overseas, if their travel company becomes insolvent.
- 16 The travel sector has changed significantly since ATOL and PTD 1990 were originally put in place. Technical innovation and in particular the growth of the internet and mobile technologies, have opened up new ways of buying and selling holidays. This has provided increased choice and flexibility in the travel market, allowing consumers to mix and match or dynamically package the components of a holiday to suit their particular needs. It also led to a gap in protection, where these new business models fell outside the traditional scope of the PTD 1990 and ATOL.
- 17 In recent years, successive governments have recognised the need to update the

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<sup>2</sup> An ATOL licence is required by law when a travel company sells a flight package which it has organised itself; a flight from the UK plus overseas accommodation and/or overseas car hire (Flight-Plus); or flights where the seller is not acting as the appointed agent of an airline (flight only).

<sup>3</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

<sup>4</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, repealing Council Directive 90/314/EEC

ATOL scheme to bring it into line with the new trade practices. This led to substantial reforms to the ATOL scheme in 2012 to extend protection to include “Flight-Plus” arrangements<sup>5</sup>, and also to introduce ATOL Certificates and Agency Agreements, which have helped to improve clarity about ATOL protection.

### Setting the right regulatory framework

18 Following the general election in 2015, we identified that we would make further reforms to ATOL to ensure that the regulatory framework is right (a commitment made in DfT’s Single Departmental Plan 2015 to 2020)<sup>6</sup>. This is particularly relevant as we approach a point of change, both following the EU referendum, and as the UK begins to implement a new Package Travel Directive (PTD 2015).

19 PTD 2015 was agreed across Europe in December 2015, to refresh the regulatory framework in Europe and bring it up to date with these same developments in the travel market. We have been supportive of PTD 2015, as it is broadly consistent with our own ambitions for reform in the UK, and the need to modernise and clarify protection for consumers and the travel sector. The UK is one of the leaders in this area, and in many ways PTD 2015 mirrors the level of protection already provided in the UK following the reforms in 2012. It includes the following key elements, which reinforce the ATOL reform measures already taken:

- A broadening of the concept of ‘package’, so that it is now clear that protection should apply when customers book customised combinations of travel;
- A new concept of ‘linked travel arrangements’ applying to looser combinations of travel services which will ensure some payments are protected in case the trader goes bankrupt; and
- Clearer information to travellers on the travel product they are buying and the level of protection that applies.

20 **EU Referendum Outcome** - The outcome of the EU referendum on 23 June will see the UK leave the European Union. Until we negotiate our exit, the UK remains a member state of the EU with all of the rights and obligations that this entails, including negotiating, implementing and applying EU legislation. The outcome of the negotiations for leaving the EU will determine the future arrangements that will apply, in relation to EU legislation, when the UK has exited the European Union. In the meantime the obligation to transpose PTD 2015 into UK law by January 2018, remains. We have been working closely with the Civil Aviation Authority to consider what this means for the ATOL scheme. The high level approaches are discussed in paragraph 21 and 22, and the specific proposals are outlined in paragraph 26 onwards.

### ATOL's role in implementing the Package Travel Directive

21 ATOL is integral to the way the UK implements the existing PTD. However, it is important to note, PTD 2015 does not require insolvency protection to be provided via a collective public scheme with entry controlled by licensing, as with ATOL. Member States are free to develop different models, both public and private (for example, a market approach) as long as these ensure effective protection under the PTD 2015. It is therefore important that we first consider whether ATOL will continue to have a role to play in implementing the Package Travel Directive 2015, before we

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<sup>5</sup> Flight-plus is a form of “dynamic packaging” where a business sells 1) a flight and 2) either accommodation or car hire, where 2) is within a day of 1).

<sup>6</sup> DfT Single Departmental Plan - [www.gov.uk/government/publications/dft-single-departmental-plan-2015-to-2020](http://www.gov.uk/government/publications/dft-single-departmental-plan-2015-to-2020)

consider whether changes are necessary to ensure the scheme can continue to provide effective protection. Table 1, provides a high level summary of these considerations.

Description	Assessment
<p><b>Approach 1: Do nothing.</b> Under this approach, there would not be any change to the ATOL scheme or ATOL regulations in order to implement PTD 2015. The ATOL scheme, its structure, definitions and regulations would remain the same as now, however the requirements would change around it through updated Package Travel Regulations.</p>	<p>This could lead to the updated Package Travel Regulations and the ATOL scheme not being fully aligned. It would also mean that UK organisers could not cover all their European sales through ATOL. It is for these reasons that this approach has not been selected for further consideration.</p>
<p><b>Approach 2: Strengthening ATOL to be consistent with PTD 2015.</b> This approach involves passing legislation to ensure the ATOL scheme and structure is capable of meeting the requirements of PTD 2015 for all flight packages sold by UK established companies, but not considering any broader structural changes to ATOL.</p>	<p>This approach would enable ATOL to provide effective consumer protection within the new PTD 2015 regulatory framework, and it would be feasible to do so within the transposition timescales. It will also allow ATOL members and consumers to access the benefits that the PTD2015 is designed to bring, while avoiding the difficulties of transitioning to a new type of insolvency protection within a short timescale.</p>
<p><b>Approach 3: Market approach.</b> This would remove the existing requirements under the ATOL scheme, so that insolvency protection obligations arising from PTD 2015 would be covered entirely in the market by 2018. This would place a requirement on businesses to meet their insolvency protection obligations, through a range of products in the market (for example, bonds and insurance). The ATOL levy and fund would no longer be required, and therefore would not need to be updated to meet the requirements of PTD 2015.</p>	<p>This approach has been explored through workshops involving stakeholders from the travel, financial services and insurance sectors. Views on similar themes were also sought in an earlier ATOL call for evidence, launched in September 2013. The general view is that this would constitute a fundamental and abrupt change for the travel sector. It appears to be a widely held view that it would not be possible to transition to a full market approach by 2018, where every business is able to cover its insolvency obligations through insurance, bonding or other market based schemes.</p>

**Table 1 High level appraisal of approaches**

22 Approach 2 is the preferred option because it offers effective transposition, of the new Directive in the UK by 1 January 2018, and also allows businesses to transition seamlessly. This approach also remains consistent with the Government's objectives around ATOL reform. We are attempting to place the ATOL scheme and insolvency protection as a whole onto a more sustainable financial footing. It would not be in the interest of consumers, business or Government to move to a new system in 2018, without allowing sufficient time for business to adjust. However, both DfT and the CAA will continue to consider more fundamental reforms in the longer term (as discussed in Section 2).

**Conclusion**

23 We believe that the ATOL scheme will continue to have a central role to play as a method of complying with PTD 2015. However, some changes will be necessary to ensure it is aligned with the scope of the new Directive (Approach 2 above). This approach therefore forms the basis of this consultation and the Impact Assessment.

24 The remainder of this chapter seeks views on detailed aspects of this approach. If a modified ATOL were not the main method for implementing the insolvency provisions

of PTD 2015 for air sales, then by default those provisions would need to be introduced by the arrangements made by BEIS in the Package Travel Regulations.

### ATOL legislation

- 25 We must also consider the appropriate legislative path for ATOL reform. The ATOL scheme is made up of a requirement to hold a licence and a requirement to pay an ATOL Protection Contribution (APC) for licensable bookings. These obligations are defined in secondary legislation which are enabled by primary legislation under the Civil Aviation Act (1982). In order to take forward the preferred option (option 2), we would amend the powers to require licensing and APC payments in section 71(1) and (1A) Civil Aviation Act (1982), to align these with the scope of PTD 2015. We anticipate that primary legislation will be used for this, which could be introduced into Parliament early in 2017. If we go ahead and amend this APC payment power, we would still need to introduce secondary legislation at a later date to actually amend the class of booking that is required to pay an ATOL contribution.

### Proposed changes to the ATOL scheme to ensure it is consistent with PTD 2015

- 26 We have considered the changes that would need to be made to the ATOL scheme in order for it to be consistent with the PTD 2015. This section invites views on the following proposals to update ATOL in line with our current expectations for the implementation of PTD 2015:
- The scope of the ATOL scheme is modified so that it is consistent with the new definition of “package” in the PTD 2015 (the definition of “package” can be found in Annex C);
  - The scope of ATOL is aligned with the PTD 2015, so that ATOL protects eligible flight sales made by businesses that are established in the UK, as compared to the current approach where it applies only to eligible flight sales made in the UK. This could allow ATOL Members to trade across the EEA, without needing to obtain different insolvency protection for non UK sales. The ATOL scheme would continue to apply to non-EEA businesses where they are selling into the UK;
  - The obligation on ATOL licensed businesses to provide consumers with details of the insolvency protection in place, will be extended to include pre-sale as well as post-sale information. The ATOL Certificate, appropriately modified, would become a means of complying with the post-sale information provisions;
  - Business-to-Business travel bookings will be exempt from the ATOL scheme, where they are provided through a general agreement.
- 27 The PTD 2015 also introduces a new concept of “Linked Travel Arrangements” (LTAs) to cover sales of connected holiday elements purchased from separate suppliers (the definition of a Linked Travel Arrangement can be found in Annex C). We are interested in views on whether to include LTAs as part of the ATOL scheme (where they involve a flight), or as a part of a market based approach.
- 28 The 2012 Regulations enacted an exemption for Flight Plus that is not due to commence until 30 April 2019. We propose to make amendments so that most sales that fall into the current Flight Plus category will continue to be protected, although definitions will change as discussed in paragraph 32 below.
- 29 At present ATOL licences are also required to be held by businesses that offer Flight-

Only air tickets where they are not an official agent of an airline. The Government is interested in views on whether businesses making these sales should continue to require a licence in future. This is discussed further in chapter 2.

### New definition of 'Package' Holidays

- 30 The PTD 2015 defines a 'package' as being a combination of at least two different types of travel services<sup>7</sup> for the same holiday or trip. While this concept is broadly consistent with the existing Directive, the PTD 2015 has clarified that the definition should cover not only traditional package holidays, but also other forms of combined travel<sup>8</sup>. This includes dynamic booking channels where the travel services are purchased from separate traders through linked online booking processes, where there is a transfer of details (traveller's name, email address and payment details).
- 31 **We propose to align the scope of the ATOL scheme so that it is consistent with the new definition of 'package' in PTD 2015.** This will basically mean that any UK-established business that offers or sells a 'package' (as defined by PTD 2015), which includes a flight, will need to meet their insolvency protection obligations by holding an ATOL and complying with the scheme.
- 32 In practice, we believe the new footprint for the ATOL scheme will be similar to the existing scheme following the reforms that were made in 2012. The Flight-Plus category will cease to exist, but our expectation is that most current sales made as Flight-Plus will be caught by the new definition of a package and will therefore still need to be covered by the ATOL scheme.
- 33 The PTD 2015 also provides clarity on areas that have been open to interpretation in the existing regulatory framework, including businesses that act as agent for the consumer. The PTD 2015 has confirmed that a trader will not be able to avoid their obligations, simply through how they describe their business. In particular, it states that *when considering whether a trader is an organiser, it should make no difference whether that trader is acting on the supply side or presents himself as an agent acting for the traveller.*
- 34 This is a clear indication that ATOL requirements will apply to businesses acting as agents who have previously considered themselves out of scope of ATOL regulations, on the basis that they are acting for the consumer. It is our intention that these businesses will be brought into the full scope of the ATOL scheme by 2018, where they are offering a relevant flight-inclusive package. We previously sought views on agent-for-consumer holidays in 2011, where we received strong support for bringing them into the ATOL scheme as a way of improving consumer clarity and ending a potential way for businesses to avoid the scheme.

#### Question 1

What are your views on the proposal to align the scope of the ATOL scheme so that it is consistent with the new definition of 'package' in PTD 2015? This will mean that any UK-established business that offers or sells a 'package' (as defined by PTD 2015), which includes a flight, will need to meet their insolvency protection obligations by holding an ATOL and complying with the scheme. Please explain your reasoning.

<sup>7</sup> A definition of "travel services" can be found in Article 3 (1) of the Package Travel Directive (2015), though it generally means transport, accommodation or other services, e.g. car rental - <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2015:326:FULL&from=EN>.

<sup>8</sup> A definition of 'package' can be found in Article 3 (1)(2) of the Package Travel Directive (2015) - <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2015:326:FULL&from=EN>

## Question 2

What would be the impacts on your business if Flight-Plus and agent for the consumer business models need to comply with the same terms as an ATOL flight-inclusive package?

### Introduction of Linked Travel Arrangements (LTAs)

- 35 The PTD 2015 has introduced a new concept of Linked Travel Arrangements, which will apply to looser combinations of travel services than a “package”.
- 36 LTAs, as with packages, are the combination of at least two different types of travel services purchased for the purpose of the same trip or holiday. However, unlike packages, they involve the separate selection and payment of each travel service, and separate contracts with the individual travel service providers. They can apply regardless of whether the transactions are made online, over the telephone, through a visit to a shop or through a combination.
- 37 An LTA is also formed where a customer purchases one travel component through one seller (referred to here as the LTA facilitator), then receives a targeted link to another component offered by another seller. If the customer then purchases a second travel component via that link within 24 hours, then this forms a linked travel arrangement. If on the other hand, there is a transfer of certain personal data (traveller’s name, e-mail address and payment details) from the first vendor to the second, then the full protection for packages will need to apply.
- 38 LTA holidays offer less protection to customers than a “package”, with consequently fewer obligations on the travel company offering them. The key requirements are:
- **Refunds** - The LTA facilitator must provide insolvency cover for the refund of payments they have received from travellers. This would not cover all payments, for example it would not cover a payment made by a traveller directly to a provider of travel services other than the facilitator.
  - **Repatriation** – this cover is only required where the LTA facilitator is also responsible for the carriage of the consumer (e.g. an airline).
  - **Information** - Companies facilitating linked arrangements will be required to provide information on the level of protection prior to the booking / contract.
- 39 LTAs can apply to many different combinations of travel services, however, for the purposes of this consultation document we are only considering LTAs where the LTA facilitator (that is, the seller of the first contract) sold a flight. It is difficult to estimate the size of the LTA market in the UK in its entirety, however it is not believed to be a particularly common sales model at present. Of course it remains possible that this model may become more popular with sellers in the future.
- 40 **We would like to explore in this consultation how LTAs are introduced.** Even if the ATOL scheme provides the majority of protection for air travel, it does not necessarily follow that LTAs must form part of that. An alternative approach could be to implement this provision within a less-heavily controlled framework such as that which covers non-air packages at present. There appear to be two main options:
- a. An “ATOL solution” – sales where the LTA facilitator sells a flight must be licensed and protection will be funded from APCs or a similar vehicle, at a rate to be determined. Arguably, this allows a consistent approach for the protection of holidays that involve a flight, whether they are a package or an LTA. However, it would give businesses no choice of how to comply, and it

may lead to consumer confusion as to the nature of protection provided by ATOL, given the less comprehensive nature of the financial protection provided by LTAs.

- b. A “market solution” – such sales will not require licensing or payment of APCs. Businesses would have the freedom to cover their LTA obligations in the way that suits them (for example, through a bond or insurance). It is also consistent with the Government's aims to seek market-based solutions, where they are possible.
- 41 For illustrative purposes, the Impact Assessment alongside this consultation considers the potential impact on businesses if they were to be included within the ATOL scheme (option a). However, following on from this analysis both Government and the CAA believe there may be a rationale in allowing business to cover LTAs (where the facilitator sells a flight) in the market (option b). This would also be consistent with the Government's long term ATOL reform plans, and the principle of encouraging market based solutions.
- 42 One further consideration, is whether the approach to LTAs that include a flight, should be consistent with the approach to "Flight-Only" sales. At present, the 2012 Regulations require a Flight-Only seller who is not acting as an airline's agent to hold an ATOL and pay the APC (see paragraph 70). If we continue to take this approach, then it would seem inconsistent to bar ATOL holders from obtaining insolvency protection for LTAs (which amounts to the same thing as protection for Flight-Only sales) through ATOL. We would like to explore this further in the following questions.

### **Question 3**

Do you currently offer or facilitate travel arrangements that are likely to fall into the Linked Travel Arrangements category? If so, what percentage of your bookings would likely fall into the Linked Travel Arrangements category?

### **Question 4**

Do you think businesses should be required to licence their LTA flight bookings and source their protection from the ATOL scheme (option a), or should protection be implemented through a market solution (option b), or through another mechanism entirely? Please explain the reasons for your preference.

### **Question 5**

If LTA bookings are included in the ATOL scheme, do you think the less comprehensive protection they offer means that they should attract a different APC contribution rate, and should they be branded differently to ATOL? Please explain the reasons for your preference.

### **‘Place of sale’ to ‘Place of establishment’**

- 43 One of the key goals of PTD 2015, is to harmonise rights and obligations across Europe, in order to ensure a consistent level of protection and support cross-border sales in the travel market. Disparities in the rules protecting travellers can act as a disincentive for consumers or businesses from trading across borders. It can also be inefficient for businesses to have to comply with insolvency protection regimes in each state that they sell holidays. The new Directive has provided a clearer set of rules to prevent insolvency protection obligations from acting as an obstacle to the free movement of services. It expressly requires all Member States to recognise the insolvency protection regimes of others and avoid imposing additional burdens upon

travel companies in their territories.

- 44 This means that where UK consumers purchase from businesses established in other Member States, they should receive effective insolvency protection from the regime of the country where the company is established. This would also mean that a travel company established here should be able to sell to customers in other Member States, but only have to comply with the insolvency protection rules of the UK.
- 45 **We are proposing to introduce primary legislation to enable the Secretary of State to make regulations to broaden the scope of ATOL in line with PTD 2015.** This would make it easier for UK businesses and consumers to trade across borders with ATOL protection. At present the ATOL levy and protection generally only applies to relevant flight bookings where the first leg departs from a UK airport. If we align the scope of ATOL with the PTD 2015, the scheme could then apply to sales by businesses established in the UK, and not just sales made in the UK. This would mean that the ATOL levy and protection could cover UK established undertakings where they are selling flight packages to consumers in other EEA states.
- 46 In broadening the scope in this way, it is also important to consider the practicalities for the CAA in providing ATOL protection to overseas consumers. There is an obligation in the PTD 2015 to provide effective security for repatriation, however, this is not an obligation to provide an organised repatriation. In the past, CAA has sometimes organised repatriations where large numbers of passengers are involved, but the ATOL scheme also allows the CAA to simply pay the passenger a sum in respect of repatriation costs (a flexibility reflected in PTD 2015). CAA will need to continue to exercise discretion and assess each situation on a case by case basis.
- 47 It is also important to consider the effect of this change on the potential exposure of the ATT, and its ability to react to changing risk profiles. So long as the form of insolvency protection is effective and complies with the laws of the State of establishment, it does not necessarily have to be sourced from one insolvency protection provider. This is an important consideration, as it recognises that individual insolvency protection providers (for example a private insurer or even a mutual scheme such as ATOL) may only be willing or able to cover a certain amount of exposure. This is explored further in part 2 of this consultation.
- 48 **We also propose to maintain the requirement for businesses established outside the EEA to obtain ATOLs when selling to UK consumers.** This is consistent with PTD 2015, which clarifies that non-EEA businesses will be required to comply with the insolvency protection arrangements of any State in which they provide services.

### Question 6

What do you think of the proposal to change the scope of ATOL from "place of sale" to "place of establishment" as outlined above? Please, include any views on whether it will encourage your business or others to establish in or out of the UK.

### Information Provisions

- 49 The PTD 2015 also introduces new information provisions which are designed to improve consumer awareness. This places obligations on the organiser to provide specific information before and after the sale has been made. Such provisions can help consumers to make informed choices and are particularly useful in a context where package sales have financial protection and repatriation provided, whereas LTAs or individual airline ticket sales may not. The next stage of consultation will

discuss the implementation of information provisions in more detail, however at this stage we are considering how they interact with the ATOL certificate.

### **Before the sale**

- 50 Before the traveller is bound by a contract, traders will be required to clearly state whether they are offering a package or an LTA, and provide information on the corresponding level of protection through standard information provisions. They must provide the traveller with a prescribed set of information including (but not limited to); the main characteristics of the package; total price of the package; name and details of the organiser; and, information on their cancellation policy.

### **After the sale**

- 51 Upon the conclusion of the travel contract, or without undue delay thereafter, the organiser shall provide the traveller with a copy or confirmation of the contract. This shall set out the full content of the agreement including information provided before the contract was concluded and further information detailing insolvency protection responsibilities. It must also include the name and contact details on the entity providing the insolvency protection.
- 52 **We propose that the ATOL Certificate together with the ATOL Confirmation Invoice, appropriately modified, should continue to be the recognised way for ATOL holders to meet their post-sale information obligations.**

#### **Question 7**

What do you think of the proposal that an updated ATOL certificate should continue as a recognised way for ATOL holders to meet some of the after sale obligations? Please explain your reasoning.

### **Business-to-Business Sales**

- 53 The new Directive also includes some new provisions to help reduce the burdens on business. It acknowledges that small businesses and professionals often use the same booking channels as holiday-makers and require a similar level of protection. In contrast, there are companies that make bookings through business travel agencies, which do not require the same level of protection designed for consumers. The Directive confirms that business trips arranged by business travel management companies will no longer be included under the rules.
- 54 **We propose to exempt business to business travel bookings from the ATOL scheme.** In order to be exempt there must be a general agreement or contract in place between the travel company and the buyer, outlining the terms of the business travel service over a period of time or a series of sales. This means that normal flight-inclusive packages, which are purchased by a consumer themselves for business purposes, would continue to be within scope of the proposal and be covered under the ATOL scheme.

#### **Question 8**

What are your views on the proposal to exempt business to business sales from the ATOL scheme? Could you also please indicate whether your business currently sells business travel through a general agreement, and if yes whether your business also sells other transport services to consumers that will be in scope of PTD 2015?

## Complying with the changes

- 55 Government is committed to ensuring that the costs of compliance on businesses from regulation are minimised as much as possible. So that our final impact assessment can accurately reflect the scale and impact of these costs, we are interested in respondents' views about the costs that businesses would incur for complying with the policies in this document. Such familiarisation costs might include reading guidance (which impose an opportunity cost from foregone work), changing IT systems, or completing registration forms for ATOL licences. HMG is interested in a range of views from all types of businesses, from micro businesses to large, vertically integrated travel operators.

### **Question 9**

If you are a business affected by these proposals, what do you anticipate the familiarisation costs (as outlined above) will be for the proposed regulations? Do you anticipate any difficulties with implementing any of the proposed changes? Please explain your reasoning.

## 2. ATOL reform in the longer term

### Introduction

- 56 The proposals we have put forward in Chapter 1 will largely maintain the existing structure of the ATOL scheme, and ensure it can continue to provide effective protection under the new PTD 2015. We believe this will allow businesses, consumers and regulatory bodies to transition to the new Package Travel Regulations in 2018, with minimal impact. However, it is also important that we get the regulatory framework right in the longer term, both to continue the ATOL reform process and to take account of the outcome of the negotiations for leaving the European Union.
- 57 This consultation does not put forward a specific proposal for the long-term reform of ATOL, however, it does seek views on the policy direction, which will help us to develop proposals for consultation at a later date. We are conscious that this has been a period of change for ATOL members and are mindful that some options, if implemented, may involve further changes that could have impacts on the travel and finance sectors. It is therefore important that we have a more complete understanding of the costs, benefits and feasibility of these options.

### Principles and statement of intent

- 58 In September 2014, the Coalition Government indicated that we will conduct a fundamental review of the ATOL scheme as we implement the PTD 2015.<sup>9</sup> This would include further work to consider alternative financial protection mechanisms and the overall shape and scope of insolvency protection in the UK. The work has largely been guided by the following principles:
- **Providing appropriate protection for modern consumers** - recognising the need for balance between consumer rights and needs and the obligations placed on businesses;
  - **ensuring financial sustainability** - so that the scheme is adequately capitalised and self-sustaining, and the cost of insolvency protection continues to be borne fully by the travel industry and holiday makers that benefit from it; and
  - **getting the regulatory framework right** - to minimise costs to business, simplify regulation, and ensure that any reforms are proportionate and risk based.
- 59 Whilst we recognise that there would need to be trade-offs between how different approaches might deliver these principles, it remains the Government's view that the travel industry and its customers should bear the costs of any insolvency protection system, and that a solution that involves the market should be taken unless there is

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<sup>9</sup> Government response to ATOL Call for Evidence (September 2014) <https://www.gov.uk/government/consultations/atol-call-for-evidence>

good reason for the Government to intervene.

- 60 Discussions with the finance and insurance sectors have led us to conclude that it would not be feasible to transition to a market approach by 2018. While there appears to be desire from these sectors for greater involvement in providing protection for the air-travel sector, there is a general view that there is neither the appetite nor the capacity in the finance sector to provide security for the whole range of risks currently covered by the ATOL scheme.
- 61 We will continue to explore options that could lead to a solution that would allow greater involvement of the market, whilst minimising the cost to business and consumer. We will also continue to explore the benefits and feasibility of streamlining the current arrangements, so that there is more of a joined-up approach to the regulation of air packages (currently required to hold an ATOL licence under the ATOL regulations) and non-air packages (currently subject to the requirements of the Package Travel Regulations).

## Options under consideration

- 62 Set out below are some of the options for reform which we have been considering, though they are not exhaustive. We would welcome views and evidence from stakeholders in response, which will influence this work as we bring it forward.

### Financial sustainability of the ATOL fund

- 63 We believe that place of establishment rules brought in by the PTD 2015 could allow business, currently established elsewhere in the EU, to establish themselves in the UK and protect their sale through the ATOL scheme. Likewise, businesses currently established in the UK will be able to trade across the EEA and protect their sale through ATOL.
- 64 As a result the Air Travel Trust may need to react quickly to changing risk profiles and exposures if large businesses join the scheme, or existing ATOL holders expand the number of consumers they wish to protect through their licence. This may require the CAA to make more use of their ability to request additional security if it considers that the increased risk, or exposure, is too high for the Air travel Trust to bear.

### Fairness

- 65 We are keen to explore how the ATOL scheme could be enhanced to better reflect the range of risks it covers, in a fair and transparent way. In doing so, our intent would be to place the scheme and the travel industry on a more sustainable footing. This could potentially involve a change of approach to the APC payment or by encouraging businesses to take steps to reduce their risk or exposure to the ATT.
- 66 While the ATOL scheme does factor in some consideration of risk and the CAA can request additional security, this is generally only for companies that are perceived to provide the greatest risk. In the main, the majority of ATOL holders pay the standard £2.50 flat rate levy. The simplicity of the scheme has a number of benefits, in particular the ease in which businesses and the CAA can calculate and apply the levy. However, it does not in itself factor in risk or exposure for individual companies or the cost of the holiday that it is protecting. It also provides little incentive on business to reduce its own risk or the exposure it presents to the Air Travel Trust fund.
- 67 We are exploring a number of alternative levy options and we would seek your views on the fairness and feasibility of the following approaches:

- a. Flat rate levy with incentives to de-risk - in this option a flat rate levy would be maintained, however a formal process could be agreed so that companies that do not put consumer money at risk (ie. by utilising trust accounts) could be entitled to an APC discount
- b. Risk based levy - a fixed APC is abandoned in favour of a levy based upon an assessment of the risk and exposure of individual members.
- c. Turnover based levy - fixed APC abandoned in favour of a levy based on a percentage of a travel company's annual turnover.
- d. Holiday cost based levy - fixed APC abandoned in favour of a levy based on a percentage of the costs of the package holiday.

### Question 10

What are your views or preferences on the options for improving financial sustainability of the fund or fairness in the scheme as outline above? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options that could achieve similar policy outcomes, but with lower impacts?

### Market involvement and commercialisation

- 68 We believe that in order for the travel market to be more appealing to the finance sector, the Government may need to take steps to minimise or spread the risk or exposure. This might involve:
- a. separating the repatriation and refund obligations, so that refunds are handled in the market and repatriation (whether actually arranging it or simply meeting the cost of repatriation when this more appropriate) continue to be managed by CAA through an ATOL type scheme; or
  - b. placing restrictions on when companies can take final balances, as occurs in other markets (e.g. before four weeks in advance of holiday taking place)?

### Question 11

What are your views on the options for encouraging market involvement and commercialisation? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options?

### Streamlining regulation

- 69 We know from previous engagement with the travel industry that there is some support for simplifying the current arrangements, whether through a single set of regulations, a single regulator or by moving to one scheme covering both air packages and non-air packages. Although questions on this issue were raised in the 2013 Call for Evidence, a lack of financial information has precluded us from a detailed analysis of the costs and benefits in time for this consultation. We are continuing to explore this in more detail, particularly as we shape the regulatory framework in light of the negotiations for leaving the European Union. We welcome the ongoing support from the travel sector, in helping to fill this information gap.

### Question 12

What are your views on the financial impacts or benefits of streamlining the regulatory framework? Please explain your reasoning, including any particular

views on a single set of regulations, a single regulator or moving to a single scheme covering both air packages and non-air packages.

### Getting the regulatory framework right for Flight-Only tickets

- 70 We have taken steps in recent years to ensure that consumers are protected when they purchase any form of package holiday, which includes a flight. This will be enhanced further as we update ATOL in line with PTD 2015. However, there are still some inconsistencies to the application of insolvency protection where a consumer books an airline seat on its own (a "Flight-Only" ticket). There is no requirement in European regulations to provide insolvency protection for individual travel services, though historically the UK has acted to cover some Flight Only bookings through the ATOL scheme.
- 71 The current basis of the ATOL scheme is that any business selling holidays including a flight, and flights on their own, that is not exempted by legislation or by CAA needs to hold an ATOL. The main exemptions are all sales by airlines, businesses acting as the appointed agent of airlines or ATOL holders, and businesses established in non-UK EU Member States. Each ATOL holder then needs to comply with the scheme, including through a payment of the ATOL Protection Contribution (APC). Those who need an ATOL licence to sell Flight-Only air tickets fall into three main areas:
- c. Large, vertically integrated tour operators which sell seats on their own airlines through a separate ATOL-holding business rather than directly from the airline to the public.
  - d. Those who charter whole or part aircraft, for example to serve special events, or to provide regular services for passengers with no, or limited, scheduled services.
  - e. Businesses selling seats on scheduled flights where they are not selling as the appointed agent of an airline.
- 72 The ATOL scheme does not apply to airlines, which are specifically excluded from it under legislation. Historically, this may have been because most scheduled airlines were state owned when the scheme was introduced, and so not expected to fail. Airlines are also subject to separate licensing arrangements, namely EC1008/2008 which contains financial fitness requirements and so any requirements must be consistent with the rules in the EU Regulation. In practice, a number of UK airlines have set up subsidiary companies that are eligible to hold an ATOL licence to protect the package holidays they sell.
- 73 Arguably, this inconsistent approach to the protection of Flight-Only seats is confusing for consumers and potentially leads to gaps in protection in the rare event of a failure. Previous Governments have stated that they did not intend to legislate for the inclusion of all Flight-Only tickets, including those sold directly by airlines, on the basis that aircraft operators selling such seats are regulated under the EU aircraft operator licensing regime. It was also important to take account, among other matters, of the European Commission's position on passenger protection in the event of airline insolvency, which they proposed to review in 2015. Subsequently, the Commission have not brought forward any proposals to introduce mandatory insolvency protection for flight-only passengers.
- 74 We would be interested in views on the approach to providing protection for Flight-Only sales in the UK. In previous consultations, a number of respondents from the airline and package travel sectors have favoured the removal of Flight-Only sales

from the ATOL scheme entirely, whilst others have supported the extension to cover all Flight-Only sales.

75 In the event that Flight Only sales are removed from the ATOL scheme, then it would no longer be a requirement for the Flight Only vendors mentioned in paragraph 70 to hold an ATOL. We are mindful that removing protection from these bookings could cause harm for consumers if the vendor subsequently fails. We seek your views on whether alternative lighter-touch mitigations should be implemented to reduce the risk of consumer harm. Mitigations could involve:

(i) making it a legal requirement for these travel companies to issue a valid airline ticket immediately once payment is taken, in all circumstances; or

(ii) controlling market entry by requiring vendors to undergo some form of assessment resulting in the holding of an approval or licence, but not pay an APC contribution; or

(iii) making it a legal requirement for businesses to disclose at the point of sale if a transaction is not protected against insolvency.

### **Question 13**

Do you have any views on whether the ATOL scheme should:

- a. Continue to include certain Flight Only sales;
- b. remove Flight Only sales, without any mitigations;
- c. remove Flight Only, but only following the introduction of new mitigations;
- d. or be extended, potentially to offer repatriation protection on all seats (this might be optional)?

### **Overlapping protections**

76 We understand from stakeholders that overlapping protection between the ATOL scheme and Section 75 of the Consumer Credit Act 1974 can lead to increased costs and cause consumer confusion. We also appreciate that as card providers have joint and several liability if a travel company were to become insolvent, they can restrict capital or seek additional security if they perceive a risk of failure. This in turn can increase the probability of a failure actually occurring.

77 The Government is keen to clarify and manage overlapping protection, so that it can be minimised where possible, and we will continue to consider this issue as part of the wider-ATOL reform programme, liaising with the Financial Conduct Authority (FCA), as the body responsible for regulating consumer credit, as necessary. We remain open to welcome views on the impacts of overlapping protection in the context of the ATOL scheme, and how it can be minimised.

## 3. Review of 2012 ATOL reforms

### Evaluation of the 2012 ATOL Reform

- 78 We would also like to invite views on the impact of the reforms to the ATOL scheme that were made in 2012 under The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012. This is a statutory duty in the regulations that requires a review of the implementation before the 30th April 2017 in the form of a Post Implementation Review (PIR).
- 79 The Department is committed to evaluating policy in order to understand how the policy was implemented, whether the policy objectives were met, and if there were any unintended consequences. In light of the current ATOL reform and expected changes to the Package Travel Regulations, we plan to carry out this evaluation in a light-touch manner. The results will help to inform the future direction of the ATOL programme.

#### The Air Travel Organisers' Licensing (ATOL) Scheme 2012

- 80 In 2012 the government had two overarching policy objectives for reform to the ATOL policy; firstly to provide protection and clarity to consumers about if their holiday is ATOL protected; and, secondly to ensure that the schemes finances were returned to a sustainable level. To achieve these policy objectives we:
- Created a new Flight Plus category in the ATOL scheme to make clear that 'mix and match' as well as traditional package holidays were protected.
  - Required providers to issue an ATOL certificate for passengers when they booked an ATOL protected holiday or flight.
- 81 Accompanying the regulations the Department published an Impact Assessment which considered the costs and benefits of the policy<sup>10</sup>. We are looking to evaluate whether this analysis correctly estimated the impacts, and if not to use more accurate estimates in future ATOL policy appraisal.

#### Post Implementation Review Questions

- 82 There are a list of questions below which seek to strengthen our evidence base regarding the impact of the 2012 ATOL reforms. We welcome views from affected businesses on the following areas:
- Following the 2012 regulations do travel organisers have more certainty when a holiday is ATOL protected?
  - Do travel organisers feel that the 2012 regulation put UK businesses at a competitive advantage/disadvantage to European competitors?

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<sup>10</sup> This impact assessment can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/3431/dft-ia-00160-primary-ia.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3431/dft-ia-00160-primary-ia.pdf)

- When applying for or renewing an ATOL, what are the cost to your business in terms of time per employee?
- If your business has to hold a bond as a requirement of your licence what is the cost and impact of having to do this?
- If you business sells Flight Plus holidays, what were the costs of changing IT software in order to identify when a Flight Plus has been sold?
- Were there any unintended consequences following the 2012 regulations that we did not consider at the time of putting the legislation in place?

#### **Question 14**

We welcome responses from businesses on any of the above areas regarding the impact of the ATOL 2012 reform to inform our Post Implementation Review. Please explain your reasoning.

# What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing. Paper copies will be available on request.

If you have questions about this consultation please contact:

Jonathan Friel  
ATOL consultation  
Department for Transport  
1/25 Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

**Email: [ATOLconsultation@dft.gsi.gov.uk](mailto:ATOLconsultation@dft.gsi.gov.uk)**

# Annex A: Full list of consultation questions

## Question 1

What are your views on the proposal to align the scope of the ATOL scheme so that it is consistent with the new definition of 'package' in PTD 2015? This will mean that any UK-established business that offers or sells a 'package' (as defined by PTD 2015), which includes a flight, will need to meet their insolvency protection obligations by holding an ATOL and complying with the scheme. Please explain your reasoning.

## Question 2

What would be the impacts on your business if Flight-Plus and agent for the consumer business models need to comply with the same terms as an ATOL flight-inclusive package?

## Question 3

Do you currently offer or facilitate travel arrangements that are likely to fall into the Linked Travel Arrangements category? If so, what percentage of your bookings would likely fall into the Linked Travel Arrangements category?

## Question 4

Do you think businesses should be required to licence their LTA flight bookings and source their protection from the ATOL scheme (option a), or should protection be implemented through a market solution (option b), or through another mechanism entirely? Please explain the reasons for your preference.

## Question 5

If LTA bookings are included in the ATOL scheme, do you think the less comprehensive protection they offer means that they should attract a different APC contribution rate, and should they be branded differently to ATOL? Please explain the reasons for your preference.

## Question 6

What do you think of the proposal to change the scope of ATOL from "place of sale" to "place of establishment" as outlined above? Please, include any views on whether it will encourage your business or others to establish in or out of the UK.

## Question 7

What do you think of the proposal that an updated ATOL certificate should continue as a recognised way for ATOL holders to meet some of the after sale obligations? Please explain your reasoning.

## Question 8

What are your views on the proposal to exempt business to business sales from the ATOL scheme? Could you also please indicate whether your business currently sells

business travel through a general agreement, and if yes whether your business also sells other transport services to consumers that will be in scope of PTD 2015?

#### Question 9

If you are a business affected by these proposals, what do you anticipate the familiarisation costs (as outlined above) will be for the proposed regulations? Do you anticipate any difficulties with implementing any of the proposed changes? Please explain your reasoning.

#### Question 10

What are your views or preferences on the options for improving financial sustainability of the fund or fairness in the scheme as outline above? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options that could achieve similar policy outcomes, but with lower impacts?

#### Question 11

What are your views on the options for encouraging market involvement and commercialisation? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options?

#### Question 12

What are your views on the financial impacts or benefits of streamlining the regulatory framework? Please explain your reasoning, including any particular views on a single set of regulations, a single regulator or moving to a single scheme covering both air packages and non-air packages.

#### Question 13

Do you have any views on whether the ATOL scheme should:

- a. Continue to include certain Flight Only sales;
- b. remove Flight Only sales, without any mitigations;
- c. remove Flight Only, but only following the introduction of new mitigations;

or be extended, potentially to offer repatriation protection on all seats (this might be optional)?

#### Question 14

We welcome responses from businesses on any of the above areas regarding the impact of the ATOL 2012 reform to inform our Post Implementation Review. Please explain your reasoning.

## Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator  
Department for Transport  
Zone 1/29 Great Minster House  
London SW1P 4DR  
Email [consultation@dft.gsi.gov.uk](mailto:consultation@dft.gsi.gov.uk)

# Annex C: Definitions in the PTD 2015

The following definitions are copied from **DIRECTIVE (EU) 2015/2302**, on package travel and linked travel arrangements (PTD 2015).

## **Chapter 1 - Subject matter, scope, definitions and level of harmonisation**

### *Article 2*

#### **Scope**

1. This Directive applies to packages offered for sale or sold by traders to travellers and to linked travel arrangements facilitated by traders for travellers.
2. This Directive does not apply to:
  - (a) packages and linked travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
  - (b) packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers;
  - (c) packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession.
3. This Directive does not affect national general contract law such as the rules on the validity, formation or effect of a contract, insofar as general contract law aspects are not regulated in this Directive.

### *Article 3*

#### **Definitions**

For the purposes of this Directive, the following definitions apply:

- (1) **'travel service'** means:
  - (a) carriage of passengers;
  - (b) accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes;
  - (c) rental of cars, other motor vehicles...;
  - (d) any other tourist service not intrinsically part of a travel service within the meaning of points (a), (b) or (c);
- (2) **'package'** means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:
  - (a) those services are combined by one trader, including at the request of or in accordance with the selection of the traveller, before a single contract on all services is concluded; or

- (b) irrespective of whether separate contracts are concluded with individual travel service providers, those services are:
- (i) purchased from a single point of sale and those services have been selected before the traveller agrees to pay,
  - (ii) offered, sold or charged at an inclusive or total price,
  - (iii) advertised or sold under the term 'package' or under a similar term,
  - (iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or
  - (v) purchased from separate traders through linked online booking processes where the traveller's name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

A combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 is combined with one or more tourist services as referred to in point (d) of point 1 is not a package if the latter services:

- (a) do not account for a significant proportion of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or
  - (b) are selected and purchased only after the performance of a travel service as referred to in point (a), (b) or (c) of point 1 has started;
- (5) **'linked travel arrangement'** means at least two different types of travel services purchased for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:
- (a) on the occasion of a single visit or contact with his point of sale, the separate selection and separate payment of each travel service by travellers; or
  - (b) in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

Where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 and one or more tourist services as referred to in point (d) of point 1 are purchased, they do not constitute a linked travel arrangement if the latter services do not account for a significant proportion of the combined value of the services and are not advertised as, and do not otherwise represent, an essential feature of the trip or holiday.

## Annex D: History of ATOL

Date	Event	Notes
1960s	No statutory protection for air travellers.	Protection was provided on a voluntary basis by trade associations such as ABTA and the Tour Operators Study Group.
1969	Government committee publishes report 'British Air Transport in the Seventies' (Edwards report).	One of its principle recommendations was to set up the Civil Aviation Authority. Functions would include licensing air travel organisers in order to provide control of entry.
1971	The Civil Aviation Act 1971 comes into force	This Act established the Civil Aviation Authority and required travel organisers to hold a licence.
1973	The Civil Aviation (Air Travel Organisers' Licensing) Regulations 1972 come into force.	As part of the Civil Aviation Act 1971, the first ATOL regulations were made in 1972. They required travel organisers to hold a licence. They did not provide consumer refunds, but were intended to prevent fraud and ensure that consumers were repatriated if failures occurred.
Aug-74	Court Line Group collapses during the peak season.	The Group was the second largest operator at the time and it collapsed in peak season. Although the repatriation costs were protected through bonding, 100,000 consumers were at risk of losing their forward bookings. Government promises to protect all advance payments.
1975	Introduction of the Air Travel Reserve Fund Act 1975	Establishes the Air Travel Reserve Fund Agency (ATRFA), a separate back-up fund independent of the CAA. The purpose of the fund was to provide capital when liabilities exceed bond limits. It was initially financed with a £15m government loan and it allowed for a levy on ATOL holders based on a % of turnover to provide income.  The £15m loan was to be used to pay for the refunds for Clarkson customers. The contributions to the fund were then used to repay the Government loan, build the funds reserves, and to fund the outgoing from subsequent failures. Contributions to the fund ceased in 1977.

Feb-82	Laker Group collapses	Laker and its packaged holiday subsidiaries collapsed. Laker's bond is exhausted and ATOL claims amounted to £11m and involve 139,000 customers.
1983	Government commissions review of ATOL and the back-up fund from Sir Peter Lane.	In his review, Sir Peter was asked to consider if the licencing system could be replaced by a less interventionist insurance arrangement. The Lane Report concluded that an insurance based scheme could not replace licencing, and he endorsed the effectiveness of the scheme. The report did however make some recommendations, such as an advisory body to the Secretary of State and CAA. As a result the Air Travel Trust Committee was formed.
1986	ATRFA replaced by Air Travel Trust (ATT) and incorporated to the CAA	The Government considered that a back-up fund was an integral part of the ATOL scheme and that it should be incorporated into the CAA. The Air Travel Trust was established and it remains as the primary funding mechanism behind ATOL to date. It is managed by a Board of Trustees made up of senior CAA officials.
Mar-91	International Leisure Group (ILG) fails	ILG failure also caused the collapse of Air Europe. The cost of ILG's failure was £11m
1991	Change in bonding arrangements.	CAA takes over responsibility for holding bonds from trade bodies such as ABTA. This was following the failure of International Leisure Group in 1991. ABTA had recently experienced financial difficulties and they and other trade bodies requested CAA take over responsibility to insulate them from risk.
1992	The Package Travel, Package Holidays and Package Tour Regulations 1992 (known as the Package Travel Regulations 1992) come into force.	These implement the EU Package Travel Directive 90/314/EEC9 (PTD), part of which requires businesses selling package holidays to make arrangements for refunds and repatriations in the event of insolvency. ATOL allows sellers of flight-inclusive package holidays to meet this requirement.  BIS has overall lead for the PTD.
1995	The Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 come into force.	Prior to this charter seats were unprotected. These regulations covered some additional types of 'seat only' sales. It was in response to an emerging source of consumer risk as selling of flights became liberalised. Consolidators and travel agents were also selling tickets at discounted prices not backed by the airlines. This change greatly increased the complexity of the scheme.

1997	Greater financial monitoring by CAA of ATOL holders.	Intended to prevent overtrading. CAA also required personal guarantees from many tour operator principals.
2000	The Air Travel Insolvency Protection Advisory Committee (ATIPAC) replaces the Air Travel Trust Committee.	ATIPAC, which remains to this day, is similar to the ATTC but with a wider makeup. The CAA, ABTA, and key industry figures hold places on the committee.
2001	9/11 attack and Enrol crisis	Caused major US based insurers that were prominent at the larger end of the ATOL bond market to withdraw their products at short notice. ATOL businesses needed to find alternative financial security on short notice.
2003	Civil Aviation (ATOL) (Amendment) 2003	Amended the definition of a package to align with PTD and bring into the scheme holidays where each component is sold on a separate contract.
2003/2004	CAA consults on future financial protection for air travellers and holidaymakers, the scope of ATOL protection and the mechanisms to provide it. Advises Government in March 2004.	Recommended covering all air travellers flying from UK internationally by single protection scheme. Government decided that costs outweighed benefits but agreed to review bonding system.
2006	Civil Aviation Act 2006.	Provides power to make regulations requiring contribution to ATT instead of bonding.
2007	Thomas Cook and MyTravel Merge. First Choice and TUI also merge.	The four largest ATOL holders merged into two, reshaping the top end of the market.
Nov-07	Introduction of Civil Aviation (Contribution to the Air Travel Trust) Regulations 2007	Regulation requires contribution to the ATT based on number of bookings
Apr-08	APC introduced	APC introduced at a rate of £1 per head. Replaces compulsory bonding.

Sep-08	XL Group fails.	Then third biggest tour operator. The collapse exposes confusion over who is protected by ATOL as many were on “mix and match” sold my online travel agents packages, which at that time lacked protection (now protected under Flight-Plus). Government decides to repatriate everyone, including unprotected airline passengers.
01-Oct-09	APC rises to £2.50.	A string of failures due to recession, and in particular the failure of XL, increases pressure on ATT so APC raised.
Oct-09	CAA v Travel Republic Ltd.	CAA prosecuted Travel Republic for selling licensable holidays without ATOL protection. Travel Republic had been putting together “mix and match” packages. Court determines that a holiday is not a package if elements can be purchased separately. This made it difficult to determine what is covered under ATOL.
Dec-09	Regulating Air Transport consultation, including ATOL.	Proposed five measures to increase consumer clarity. These included Flight-Plus, a certificate, reforming Flight-Only sales and non-air packages. Government recommended taking forward Flight-Plus and certificate proposals.
Jun-11	ATOL Reform consultation.	Following the 2009 consultation, this consultation presented detailed Flight-Plus and certificate proposals and review of medium-term changes to include ‘agent for the consumer’ and holidays sold by airlines.
Feb-12	Government response to ATOL Reform consultation.	Government decided to implement Flight-Plus and certificate.
Feb-12	Flight-Plus and ATOL Certificate Impact Assessment.	Final IA published online.
Apr-12	Flight-Plus reform comes into force	A Flight-Plus is formed when a flight and accommodation/car hire are requested within a day of each other. Covers holidays sold on separate contracts and brings clarity for consumers by closing loopholes.
Apr-12	Transport Select Committee report on ATOL	Generally supportive. It calls for evidence of consumer needs, argues for a fundamental review and separation of refunds/repatriations and calls for industry-financed scheme.
Aug-12	Impact Assessment (IA) for changes to ATOL using primary legislation.	Published as part of Civil Aviation Act 2012 IAs. Covers holidays sold by airlines and agents for the consumer.

Sep-12	Government response to Transport Select Committee report published.	Takes account of concerns and notes that the Government has begun work with the CAA to develop options for future funding and organisation of ATOL.
Oct-12	ATOL Certificate launch.	The ATOL Certificate brings clarity to consumers by providing proof of and details of coverage.
Dec-12	Civil Aviation Act 2012.	New powers to make regulations to bring into the ATOL scheme holidays sold by airlines, those sold by agents for the consumer and by facilitators.
May 13	Gov publishes the ATOL Reform Call for Evidence.	<p>Coalition Government publishes a Call for Evidence detailing the high level PTD2 proposals and setting out its principles for reviewing the ATOL scheme:</p> <ul style="list-style-type: none"> <li>- Recognition of the need for balance between consumer rights and needs and obligations placed on businesses;</li> <li>- Reducing Government and taxpayers' exposure so that the cost of insolvency protection should be borne fully by the travel industry and holiday makers that benefit from it;</li> <li>- Minimising costs to business, simplifying regulation; and,</li> <li>- Proportionate risk based policy.</li> </ul> <p>DfT publishes its response to the Call for Evidence in Sept 14.</p>
Dec 15	New Package Travel Directive (PTD2) Published	<p>The PTD2 will bring in a number of changes, most notable it introduces “place of establishment” to allow business established in one member state to trade across the EEA by protecting their sales using the protection scheme of where they are established. PTD2 also broadens the definition of a “package”, and it introduces the concept of “linked travel arrangements”, both of which will provide greater protection for consumers than what is currently available.</p> <p>The UK will need to transpose the Directive into UK law before 1 January 2018.</p>