



Department
for Transport

ATOL reform consultation Government response

Moving Britain Ahead



January 2017

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: <https://forms.dft.gov.uk>



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Contents

1. Executive summary	4
2. Summary of responses and Government position	7
Part 1 - Strengthening ATOL protection in line with the Package Travel Directive 2015.	7
Part 2 – ATOL reform in the longer term.	14
Part 3 – Evaluation of the 2012 ATOL Reform	19
3. List of respondents	21

1. Executive summary

What we consulted on

- 1.1 For over 40 years the Air Travel Organisers' Licencing (ATOL) scheme has provided protection for consumers when they book a holiday, which includes a flight. The scheme, managed by the Civil Aviation Authority (CAA), can provide a refund or a ticket home for stranded consumers, in the rare situation that their travel company fails. It has become a key way in which the UK delivers the European Package Travel Directive, providing peace of mind to more than 20 million holiday makers each year. The Government is currently taking forward a programme of reform to ensure the ATOL scheme, and the UK's financial protection regime, remains fit for today's world.
- 1.2 We have taken steps in recent years to update the ATOL scheme, and bring it in line with modern trade practices. In 2012, we updated the scheme to address gaps in consumer protection, by extending the ATOL scheme to include "Flight-Plus" arrangements. It is important that we build on these steps, to ensure ATOL can continue to respond to innovation in the travel market, and enhancements to the UK and European package travel regulations.
- 1.3 On 28 October 2016, the Government launched a consultation on proposals to strengthen the ATOL scheme in line with a new Package Travel Directive (PTD 2015).¹ This was the first stage of consultation on the implementation of PTD 2015, and was primarily focussed on seeking views on the primary legislation changes we propose to make to the ATOL scheme.
- 1.4 The consultation closed on 24th November 2016. In total we received 58 responses from a range of stakeholders (covering leisure travel, aviation, finance, legal and consumer protection) around the UK. The broad range of respondents provides useful and rounded opinion on the policy proposals set out in the consultation. This document provides a summary of the respondents' views and sets out the Government's response.

What we proposed

- 1.5 The consultation invited views on the following proposals to update the ATOL scheme to align with the new PTD 2015:
 - The ATOL scheme will be consistent with the new definition of "package" in the PTD 2015;
 - The scope of ATOL will be aligned with the PTD 2015, so that ATOL protects eligible flight sales that are made by businesses established in the UK, as compared to the current approach where it applies only to eligible flight sales offered to consumers in the UK.

¹ The consultation can be found at <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>

- ATOL licensed businesses will need to provide consumers with information about the insolvency protection in place, both before and after a sale in line with the PTD 2015. 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; and
 - we invited views on whether Linked Travel Arrangements (LTAs) should be protected within the ATOL scheme, or whether they should be entirely covered through market based products.
- 1.6 A second part of the consultation invited views and information, to help lay the foundations for continued ATOL reform in the longer term. This is particularly relevant as we consider the options and opportunities that arise from exiting the EU. It is important we get the regulatory framework right so that it can work better for business and consumers, while also minimising the risk for the Government and taxpayer.
- 1.7 The final part of the consultation invited 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. The responses to these questions will help to inform the Post Implementation Review (PIR) of the 2012 ATOL reforms, which we plan to publish before the 30th April 2017.

Government decision

- 1.8 Overall, there was broad support from the majority of respondents to the proposals to harmonise ATOL with the scope and definitions of PTD 2015. It was widely agreed that this will bring greater clarity and protection for consumers and help to level the playing field for businesses selling similar holidays.
- 1.9 The majority of respondents also accepted the need to change the scope of ATOL protection so that it applies to businesses that are established in the UK, when they are selling eligible holidays in the UK and Europe. Several respondents reasoned that this will help to promote cross-border trade and minimise burdens for UK companies. It was also suggested that this needs to be accompanied by effective monitoring and enforcement, to ensure that protection is correctly applied.
- 1.10 The response to the consultation also highlighted a clear preference for the inclusion of flight related Linked Travel Arrangements within the ATOL scheme, to ensure a consistent approach for the protection of holidays that involve a flight. However, there were differing views on how this should be implemented within ATOL. We will work with the CAA and the Department for Business, Energy and Industrial Strategy (BEIS) to consider how best to achieve this. In the meantime, we will ensure that we have the flexibility in the primary legislation to be able to introduce a separate levy and trust arrangements for flight-led LTAs, should we decide to implement in that way.
- 1.11 We have carefully considered the views and concluded that we will proceed to align ATOL with PTD 2015. We now plan to take forward the following proposals to update the ATOL Regulations at the next opportunity:
- We will align the ATOL scheme with the new definition of “package” in PTD 2015;
 - We will update the scope of the ATOL scheme and levy so that it is focused upon sales by businesses established in the UK;

- We will strengthen the CAA's powers so that they can request information from operators selling relevant holidays in the UK, and also UK based operators when they are selling across Europe; and
 - We will ensure we have flexibility in legislation to be able to introduce a separate levy and trust arrangements for flight-led LTAs.
- 1.12 These changes will extend ATOL protection to a broader range of holidays and make it easier for UK businesses to trade across borders. They will also help the CAA, as regulator, to monitor businesses and ensure that they have effective consumer protection in place where required.
- 1.13 The consultation also sought views on the following changes to the ATOL scheme to align with the PTD 2015, which do not require changes to primary legislation:
- the removal Business-to-Business sales from the ATOL scheme, where they are provided through a general agreement; and
 - updating the ATOL Certificate, so that it can become a means of complying with new information provisions in PTD 2015.
- 1.14 There was overall support for both of these proposals, and we are continuing to work with the CAA and BEIS to consider how to take them forward through secondary legislation and changes to the ATOL rules.
- 1.15 The Government will publish a second part to the consultation shortly, which will discuss the over-arching proposals for implementing PTD 2015, through changes to the UK's Package Travel Regulations (PTR 1992). The responses to this ATOL reform consultation have, and will continue to inform our considerations about updating both the PTR 1992 regulations and the ATOL regulations.
- 1.16 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 EU. We are grateful for the responses to questions on these issues, which will help to inform the options as we continue to work on a programme of longer term reform.

2. Summary of responses and Government position

2.1 We asked 14 questions relating to the Government's programme of reform for the Air Travel Organisers' Licencing (ATOL) scheme. The questions were spread across the following three parts:

- **Part 1** - Strengthening ATOL protection in line with the Package Travel Directive 2015
- **Part 2** - ATOL reform in the longer term
- **Part 3** - Review of 2012 ATOL reforms

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

2.2 This first part invited views on the Governments proposals for updating the ATOL legislation, 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. The proposals largely maintain the existing structure of the ATOL scheme, which we believe will allow consumers, businesses and the regulators to transition to the new Package Travel Regulations in 2018 with minimal impact.

Aligning ATOL with the definitions in PTD 2015

Question 1

The PTD 2015 defines a 'package' as being a combination of at least two different types of travel services² for the same holiday or trip. It clarifies that the definition should cover traditional package holidays, and other forms of combined travel³. We invited 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 include a flight, will need to meet their insolvency protection obligations by holding an ATOL and complying with the scheme.

² 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>.

³ 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>

- 2.3 The majority of respondents support the proposal to align the scope of the Air Travel Operator's Licence (ATOL) definition with the revised package definition set out in the Package Travel Directive 2015 (PTD). It was widely agreed that harmonising protection for all forms of package holidays that include flights will benefit both consumers and businesses.
- 2.4 A number of respondents cited the need for clear guidance to be issued so that the market and consumers are fully aware of the package protections offered and what will not be covered under the new Linked Travel Arrangements (LTA) category.

Flight Plus and Agent for the Consumer

Question 2

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. We invited views on the impacts on businesses if Flight-Plus and "agent for the consumer" business models are required to comply with the same terms as an ATOL flight-inclusive package.

- 2.5 There was generally strong support for the principle that Flight-Plus and agent for the consumer business models should comply with the same terms as an ATOL flight-inclusive package. Many argued that the agent for the consumer model is sometimes used as an avoidance technique, and so any move to ensure it is in scope of PTD 2015 and ATOL will improve protection and clarity for consumers. Some also mentioned that by covering the range of package holiday models under the same protection and rules will help to provide a level playing field for businesses selling similar products.
- 2.6 In contrast, a small number of respondents expressed some concerns. They indicated that their businesses would be impacted if Flight-Plus and agent for the consumer models were required to comply with the same terms as an ATOL package. It was felt that the proposal will increase their costs through additional ATOL levies paid to the CAA, and also costs associated with implementation, system updates and familiarisation. While some of these respondents still accepted the proposal, a small number felt the proposal would be unnecessarily burdensome.
- 2.7 Some respondents also indicated they would welcome clarity from Government on which Flight-Plus sales would be included in the new definition of a 'package'.

Government response to questions 1 and 2

- 2.8 Having noted the broad support for the harmonisation of the ATOL scheme with the PTD 2015. We will now proceed to make the changes required to align ATOL with the new definition of "package" in PTD 2015. The Department for Transport will work with BEIS and the CAA to provide guidance on what constitutes a package.

Linked Travel Arrangements

Question 3

We asked whether respondents currently offer or facilitate travel arrangements that are likely to fall into the Linked Travel Arrangements (LTA) category, and if so, what percentage of bookings fall into that category.

- 2.9 A relatively small proportion of the respondents indicated that they currently offer or facilitate travel arrangements that are likely to fall into the LTA category. This appears to be broadly in line with the expectations of several of the travel trade representative bodies who indicated that around 20-25% of their Members currently do business in this way, or may do so in the future.
- 2.10 The data received from respondents also suggests that LTA related sales currently form a relatively small proportion of overall bookings. Those respondents that currently offer travel arrangements likely to fall into this category estimated the proportion ranged from below 1% up to 10%.
- 2.11 Several respondents were also sceptical about the implementation of LTAs. These comments are more relevant to questions 5 and 6, and have been included below.

Question 4

We invited views as to whether businesses should be required to licence their LTA flight bookings and source their protection from the ATOL scheme (Option A), or implemented through a market solution (Option B), or another mechanism entirely.

- 2.12 A majority of respondents were in favour of Option A, where businesses would be required to cover flight related LTAs under their ATOL licence. The prime rationale expressed by respondents was the need to have a consistent approach to the regulation of flight inclusive travel arrangements, whether they are a package or an LTA. Several respondents suggested that this would help to support consumer understanding and ensure a level playing field exists for businesses offering similar products. Some also pointed to the CAA's expertise in managing ATOL protection for flight packages, and suggested it would be an anomaly if they did not have responsibility for regulating flight related LTAs.
- 2.13 Some respondents also feel there are similarities between a flight related LTA and a flight-only booking. It was argued that if any flight-only bookings are retained within the ATOL scheme, it would also be sensible to include flight related LTAs.
- 2.14 Opinion was divided on the best way to take forward Option A. Several respondents raised concerns about the potential to dilute or damage the ATOL brand if LTAs are brought into the scheme. These views stem from the assumption that protection for a flight LTA will be more limited than a package holiday. Some respondents suggested flight related LTAs should be branded differently to ATOL, to expressly communicate the different level of protection. In contrast, some respondents favoured a 'one ATOL' approach without different types of cover, branding or regulation. Approximately 20% of respondents favoured implementing flight related LTAs through a market solution (Option B), to avoid diluting the ATOL brand entirely.

Question 5

We invited views on whether LTA bookings should attract a different APC contribution rate, and be branded differently to ATOL, if they are included in the ATOL scheme

- 2.15 A significant majority of respondents suggested that LTAs should attract the same contribution rate as other ATOL bookings. It was felt that the potential exposure from an LTA involving a flight is essentially the same as a flight only booking in the existing ATOL scheme. It was argued that because ATOL protection for flight only bookings is priced at the standard APC rate⁴, there is no reason to introduce a different rate for LTAs.
- 2.16 Others suggested that there should not be a different rate, as it is not necessarily true that LTA bookings represent a lower risk. Instead, they felt all flight packages and linked travel arrangements should be subject to the same rules on financial protection. However, several respondents would support the introduction of a lower levy for LTAs, if the level of protection provided is less comprehensive than ATOL protection.
- 2.17 Most respondents shared the view that if the protection offered for ATOL LTAs and standard ATOL differed, then so should the branding to enable consumers to easily differentiate.

Government response to questions 3, 4 and 5

- 2.18 The response to the consultation highlighted a clear preference for the inclusion of flight related LTAs within the ATOL scheme, to ensure a consistent approach for the protection of holidays that involve a flight. However, there were differing views on how this should be implemented within ATOL. We will work with the Civil Aviation Authority and Department for Business, Energy and Industrial Strategy to consider how best to achieve that. In the meantime, we will ensure that we have the flexibility in legislation to be able to introduce a separate levy and trust arrangements for flight-led LTAs, should we decide to implement in that way.

Place of Establishment

Question 6

One of the key goals of PTD 2015 is to harmonise rules across Europe, both to ensure a consistent level of protection and support cross-border trade. This is underpinned by the principle of mutual recognition across Member States. This means that a company established in one Member State should be able to sell to consumers in other Member States, but only have to comply with the insolvency protection rules in the Member State in which they are established.

We invited views on a proposal to change the scope of ATOL from "place of sale" to "place of establishment" in line with this requirement. We also invited views on whether it will encourage businesses to establish in or out of the UK.

⁴ The ATOL Protection Contribution (APC), which is set at £2.50, is a per passenger charge payable by licence holders to the Air Travel Trust Fund which becomes payable each time a consumer books a product covered by ATOL.

- 2.19 The majority of respondents supported or accepted the need to change the scope of ATOL protection from “place of sale” to “place of establishment”. Several respondents felt that the proposals will allow greater harmonisation of protection across the European market, which will ultimately benefit the consumer and businesses. It was reasoned that this will promote cross-border trade and support the UK’s economy through increased trade. There was also broad support for the proposal to maintain the requirement for businesses established outside the European Economic Area to obtain ATOLs when selling to UK consumers.
- 2.20 Several respondents did however, also identify risks in the place of establishment approach. Some felt that it might be difficult to determine whether a company is established in the UK or another Member State. It was suggested that there will need to be effective monitoring and enforcement across borders, to determine where a company is based and ensure that protection is correctly applied.
- 2.21 There were differing views as to whether place of establishment will have a positive or negative impact on the ATOL scheme. Some suggested that this change of scope could see an increase in the amount of business covered by ATOL, which could bring more funding in to the Air Travel Trust Fund (ATTF). While a small number of respondents felt that this could place undue risk or exposure upon the ATTF, and potentially hamper CAA’s ability to respond to a failure.
- 2.22 Several respondents also commented on the “mutual recognition” of insolvency protection schemes across the EU. Some speculated that British consumers may encounter language difficulties, or other burdens, if they need to pursue action overseas under different schemes. Others felt that consumer harm could arise, if PTD 2015 is not adequately implemented across all Member States.
- 2.23 It was also suggested that UK businesses may consider moving their place of establishment to “shop around” for a cheaper insolvency protection regime. While it was felt businesses will look at a wide range of factors when considering their place of establishment, it was suggested the ATOL scheme will need to remain cost-competitive to minimise the likelihood of this happening. Only a couple of businesses did actually express an intention to re-consider their place of establishment in light of PTD 2015. This would be based upon a holistic consideration of costs, convenience and other factors. Of these, one commented it would not be assessed until after the UK has exited the EU.

Government response to questions 6

- 2.24 Having noted the overall support and acceptance of the need to change the scope of ATOL protection to place of establishment, we will bring forward legislative measures at the next opportunity to enable ATOL protection to apply to sales from businesses established in the UK. We will also continue to work with the Air Travel Trust and CAA to develop plans for transitioning the ATOL scheme to a “place of establishment” basis.
- 2.25 The response to the consultation also highlighted some concerns relating to effective cross-border implementation, enforcement and communication of protection. To address these, we will bring forward legislative measures at the next opportunity to strengthen the CAA’s powers to request information from UK established businesses on the products they make available across Europe. This will ensure the CAA is able to monitor and provide effective enforcement of the ATOL scheme across borders. We believe that concerns relating to other Member States’ schemes, including issues around strength of protection and communication should be addressed through the harmonisation of the consumer protection set out in the PTD 2015.

ATOL Certificates

Question 7

PTD 2015 will introduce new information requirements, which are designed to ensure consumers are better informed both before and after a sale has been made. We invited views on a proposal that an updated ATOL certificate should continue as a recognised way for ATOL holders to meet some of the after sale obligations in PTD 2015.

- 2.26 There was general consensus from most respondents that the ATOL certificate should continue as it improves consumer awareness and generates brand awareness. However, there were a range of views as to whether the certificate should be used as a means of complying with the PTD information requirements.
- 2.27 The majority of representative organisation do favour keeping the ATOL certificate as a means for allowing ATOL holders to meet their after sale obligations. It was generally felt that the certificate has become well established since it was introduced in 2012, supported by the CAA's development work and consumer awareness campaigns. Some respondents did however indicate a preference for allowing businesses to decide how best to meet the post-sale information requirements set out in PTD 2015.
- 2.28 Tour operators were also largely unanimous in their support of the ATOL certificate on the basis that it has improved consumer clarity. A few respondents suggested that an electronic mobile friendly version would be beneficial for consumers, given this is often the primary device used for booking and handling travel documents. These views were mirrored by the financial sector respondents.

Government response to questions 7

- 2.29 The Government will outline the new information requirements in the next stage of consultation on the PTD 2015. We are continuing to work with the CAA and BEIS to consider how to take them forward in the ATOL scheme through secondary legislation and changes to the ATOL rules. In the meantime, we have noted the overall support from respondents in favour of maintaining the ATOL certificate and using it as a means of complying with after-sale information requirements in PTD 2015.

Business to business sales

Question 8

PTD 2015 confirms that business trips arranged by business travel management companies will no longer be covered by the regulations. We invited views on a proposal to exempt these business to business sales from the ATOL scheme.

- 2.30 Responses to this question were supportive of exempting business-to-business (B2B) sales from the ATOL scheme. Whilst only a small number of respondents actually sold B2Bs, those that do not also argued that the exemption is a logical proposal. There were however, a number of calls for Government to provide guidance and definitions on the meaning of a 'general agreement'.

Government response to questions 8

- 2.31 The Government will outline its proposals for the overall exemption of Business to Business sales in the next stage of consultation on the PTD 2015. In the meantime, we have noted the overall support from respondents in favour of exempting business to business sales from the ATOL scheme in line with PTD 2015. We are continuing to work with the CAA to consider how to take this forward in the ATOL scheme through changes to the ATOL regulations and guidance.

Familiarisation costs

Question 9

We invited businesses to provide an indication of the anticipated familiarisation costs for the proposed regulations.

- 2.32 Several respondents are of the view that the proposals will provide little or no additional cost, particularly if the ATOL system continues. Others indicated they would anticipate additional costs which largely related to updating IT systems or back office functions and training staff. Several respondents felt it was impossible to estimate implementation costs until the specific proposals for implementation are released and reviewed.

Government response to questions 9

- 2.33 We are grateful to respondents for providing information relating to familiarisation costs, which have helped us to finalise the Impact Assessment published alongside the document.

Part 2 – ATOL reform in the longer term.

2.34 The second part of the consultation set out the Governments desire to 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 (EU). It did not put forward a specific proposal for the long-term reform of ATOL, however, it sought views on the policy direction, which will help us to develop proposals for consultation at a later date.

Financial sustainability and fairness of the ATOL scheme

Question 10

We invited your views or preferences on several options for improving financial sustainability of the ATOL fund or fairness in the scheme. These options were not definitive and we sought views on any other options that could achieve similar policy outcomes, but with lower impacts.

- 2.35 There were mixed views from respondents on how to improve the financial sustainability of ATOL. Some respondents suggested that the scheme currently works well but many more offered suggestions to improve sustainability and fairness.
- 2.36 The financial sector, in particular, would support a greater use of market based products within the ATOL scheme. Some felt an increased use of bonding or insurance would improve financial sustainability and make the scheme fairer.
- 2.37 Several respondents also suggested that trust arrangements can enhance the financial sustainability of the fund, either as a supplement to the existing scheme or as a long-term replacement. It was argued that the key benefits of trusts are that they are readily available and they take the risk away from the ATT, which is not always the case with other market based products. One supporter emphasised that the mandatory use of trust accounts for ATOL Accredited Bodies has not resulted in undue hardship for the companies concerned. However, some respondents did feel trusts can be risky and difficult to police, and also restrict the agility of companies to run their businesses.
- 2.38 The majority of respondents favoured a flat rate ATOL levy, arguing that it was easy to understand, simple to administer, and had already proven to be effective. A number of those in favour of a flat rate levy, also support the notion that the CAA should be able to provide discounts to incentivise businesses to reduce their risk to the ATT. For instance, making use of a voluntary trust account, bond or insurance.
- 2.39 In contrast, those against, felt that a flat rate levy is not particularly fair as it cross subsidises the risk posed by some companies and transfers it to competitors and the tax-payer. There were suggestions that low-risk companies may find a better deal outside the ATOL scheme, which could lead businesses to move “off-shore” to places where the regulatory burdens are less. It was argued that a risk based levy would be a fairer approach, and would encourage ATOL holders to take steps to reduce their risk or exposure to the ATT.
- 2.40 There were also some suggestions for a varied approach depending on the nature of the risk. One respondent suggested that fixed levies could work better for small businesses, whilst a risk-based system could be effective for medium and large travel companies.

Market involvement and commercialisation of ATOL

Question 11

We invited views on options for encouraging greater market involvement and commercialisation in the ATOL scheme.

- 2.41 There were a broad range of views both in favour and against encouraging greater market involvement in the provision of insolvency protection.
- 2.42 While there was general agreement that it would not be feasible to transition to a market approach by 2018, a number of respondents did feel that market involvement could be built and improved over time. Respondents in favour of encouraging market involvement, generally felt it would improve the choice and affordability of options for some businesses than the existing ATOL model.
- 2.43 A number of respondents argued against a market based approach because they believe it may lead to a prioritisation of profit over the consumer. Some felt that commercialisation of protection is unnecessary because they believe the current system works well. Several highlighted that there could be affordability and capacity issues for market based products, particularly if there is a sudden transition. Some respondents noted that this could lead to increased financial burdens and potentially a heightened risk of failure for some businesses if a transition is not managed effectively.
- 2.44 Several respondents supported the idea of sharing the risk, so that refunds are handled in the market and repatriations can continue to be handled by CAA. It was a widely held view that the CAA have expertise and should continue to be involved in managing the repatriation protection. Some respondents felt that a separation of risk and responsibility in this way may encourage greater market involvement and be a clear way of conveying to consumers how protection works.
- 2.45 A large proportion of respondents were strongly opposed to restrictions on when companies can take final balances from consumers. It was argued that restrictions such as these could create serious cash flow issues for the industry and put significant pressure on businesses, for example where they are contractually bound to pay suppliers in advance.

Streamlining the regulatory framework

Question 12

We invited views on the financial impacts or benefits of streamlining the regulatory framework, including a single set of regulations, a single regulator or moving to a single scheme covering both air packages and non-air packages.

- 2.46 The majority of respondents envisaged benefits in streamlining the regulatory framework, through a single set of regulations, a single regulator or a single regulatory scheme to govern both non-flight and flight inclusive packages. Several respondents felt that this could lead to reduced compliance costs and administrative burdens on businesses, which could be passed on to the consumer. A single system and point of contact could also improve consumer clarity.

- 2.47 There was no consistent view on which organisation should hold responsibility for regulating the whole travel sector. Some suggested that a move to a single scheme or regulator is worthy of further thought, however there will be repercussions which need to be better understood. There was also recognition by some respondents that the existing framework has largely worked effectively for several years.
- 2.48 **Overlapping protections:** The consultation also welcomed any views on the impacts of overlapping protection in the ATOL scheme, and how these could be minimised. A small number of respondents provided comments on this issue.
- 2.49 It was suggested that there is a long-held view in the travel industry that a duplication of protection and costs exists between ATOL and S75 of the Consumer Credit Act 1975. One respondent suggested this is a complex issue, which can result in security and additional fee costs being provided to the credit card merchant acquirers, who often find it difficult to model the level of protection offered by ATOL. However, another respondent indicated that the card industry takes various factors in when pricing risk, including whether other protection methods are available. It was reasoned that they would not seek additional security if the risk is covered elsewhere.
- 2.50 There were also differing views on the agreements that the CAA has made with merchant acquirers to identify any overlap in protection and pre-agree the allocation of liability. One respondent suggested that if these agreements were cancelled, then the merchant service providers could take a market solution by taking out insurance or bonds to cover these liabilities. However, another respondent, said these agreements have been in place for a number of years and are supported by clear communication from the CAA on what route the consumer has to take to get a refund. They added they were not aware of any major issues in relation to overlapping protections.

Flight only sales

Question 13

We invited 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
- d. be extended, potentially to offer repatriation protection on all seats (this might be optional)

- 2.51 The views in response to this question were broadly split three ways between maintaining the status quo (option (a)), removing flight only sales from ATOL (option (b) or (c)), or extending ATOL protection to all flights (option (d)).
- 2.52 Respondents in favour of option (a) cited the need to maintain protection for consumers, particularly where an airline ticket is not issued immediately. Consumer organisations tended to favour this approach, as they believed a removal of this protection could lead to confusion or detriment for consumers.
- 2.53 Respondents in favour of extending repatriation protection to all flight bookings departing the UK (option (d)), argued that it would improve clarity and protection for

consumers. A few respondents also felt it would improve fairness between businesses selling similar products, particularly as they suggest it is not necessarily the case that an air carrier is less likely to fail than other flight only ticket sellers.

- 2.54 However, some respondents acknowledged that option (d) might be difficult to achieve because airlines are already subject to separate licensing arrangements under EU law.
- 2.55 Around a third of all respondents indicated a preference for options (b) or (c) above the others. The common arguments in favour of this approach are that it would provide, consumer clarity and a level playing field for businesses. One respondent also identified that flight only protection is unique to the UK, which can put UK businesses at a competitive disadvantage.
- 2.56 Several respondents raised concerns that removing Flight Only protection (option (b) or (c)) could harm consumers. Some felt the risk of consumer confusion and detriment could be amplified by the use of the ATOL logo on a company's website, where only a proportion of the bookings are actually protected. Some respondents felt this may lead consumers to incorrectly assume they have protection. There was some support for the introduction of mitigating measures to minimise these risks. The most common suggestion was the introduction of a new requirement that any company that sells flights must clearly notify the consumer at the point of booking if a flight does not have ATOL protection. One respondent suggested that consumers should even be required to confirm that they understand the booking is not protected, before the transaction can be completed.

Government response to questions 10, 11, 12 and 13

- 2.57 It is 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 EU. As indicated in the consultation document, it remains the Government's aim to place financial protection arrangements for air-travel holidays on a commercial basis with greater involvement from the market where possible. This reform is needed to ensure the system works effectively for business and consumers, in a fair and transparent way while minimising the risk and impacts for Government and the taxpayer.
- 2.58 It is clear from the consultation that several respondents also consider that further reforms are needed, however, there are a broad range of views on where this should be directed and how it should be achieved. Respondents expressed preferences which range from maintaining the status quo, through to moving to an entirely market based model of insolvency protection including the establishment of a new single regulator. There was also a signal from several respondents that it might take a number of years to transition fully to some of the market based options.
- 2.59 We also acknowledge the support for streamlining the regulatory framework, through a single set of regulations, a single regulator or a single regulatory scheme to reduce administrative burdens. Though it is also clear from the consultation that the historical approach of subjecting holidays with a flight to a greater degree of scrutiny remains appropriate, and that while it is desirable to develop a single system of regulation, the current architecture is working. In developing the ATOL scheme and looking at utilising market mechanisms there may therefore be some value in seeking to bring the compliance mechanisms between the ATOL and PTR regimes closer together where there are clear benefits. However, the value attached by respondents to the CAA's expertise in repatriation and licensing clearly argues for their continuing involvement as the regulator for flight inclusive holidays. We will continue to consider

this, the issue of overlapping protection, and flight only sales as part of the reform process.

- 2.60 Looking to the future direction of reform, it remains the Government's view that there can be considerable benefits in moving to a more market or risk based approach to protection. The consultation document indicated that we will need to consider whether options are feasible, sustainable or are likely to have disproportionate impacts on the travel and finance sectors. The responses to the consultation have helped inform these considerations. It suggests that there are several options which do appear to be feasible, however some will require a managed transition. In particular, several respondents feel a move to a fully market based model would need to be carefully and gradually implemented to allow businesses in the travel and finance sectors to adapt. However, intermediate options that retain the current ATOL architecture but use more risk based pricing, or increased market involvement, may offer a more immediate and intermediate step.
- 2.61 We are grateful for the responses to questions on these issues. We will consider potential options in more depth, before bringing forward proposals for the next phase of ATOL reform beyond the implementation of the Package Travel Directive 2015.

Part 3 – Evaluation of the 2012 ATOL Reform

2.62 The final part of the consultation invited 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. We will use the responses to these questions in a Post Implementation Review (PIR) of the 2012 ATOL reforms, which we plan to publish before the 30th April 2017.

Question 14

We invited views from affected businesses on the following questions:

- 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?
- 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 your 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?

2.63 Although respondent's views were mixed as to whether the 2012 regulation changes have helped or hindered them. The majority of respondents were generally positive or at least neutral in their opinions toward the 2012 regulations and the changes that these have brought. Several respondents did feel there was still a great deal of uncertainty and confusion with unnecessary regulations in place. Others stated that the 2012 regulations have been a useful 'stepping stone', which has provided greater clarity but more work was needed when considering the implementation of the future PTD 2015.

2.64 The majority of respondents were more positive focussing on the benefits that the 2012 regulations and the introduction of Flight-Plus and the ATOL certificate have brought to both their business and consumers. One firm stated that "the 2012 reform was a sound development which attracted much support from the key stakeholders. The ATOL certificate has made the work of all of the parties easier as there is so much more clarity as to where the protection sits".

2.65 Some respondents saw the ATOL certificate as a selling point which helps provide the proof to the existence of protection, has helped promote the ATOL 'brand' and provides useful clarity for all parties. While others felt that the certificate did not particularly add value and has primarily led to additional cost for businesses.

2.66 One respondent thought that the introduction of Flight-Plus has weakened consumer protection as it has enabled businesses to act as 'agents' as opposed to 'principals'. A number of respondents were much more positive, focussing on the benefits that

the 2012 regulations have brought to their business. For example, one respondent stated that the 2012 regulations (through Flight-Plus) has allowed small to medium sized businesses to compete with the large multinationals.

- 2.67 The vast majority of respondents thought that the 2012 regulations placed neither a competitive advantage nor disadvantage on UK firms.
- 2.68 The cost to businesses for applying or renewing their ATOL varied depending on the business in question, and a number of respondents were not able to quantify. The majority of those who responded did not hold a bond as a requirement of their licence.
- 2.69 For businesses selling Flight-Plus holidays, the costs of changing IT software varied depending on the business in question and a number of respondents were not able to quantify. Several respondents stated zero or minimal costs, one respondent did indicate that they had incurred 'significant' costs as a result.
- 2.70 The majority of respondents stated there were no unintended effects following the 2012 regulations.

Government response to questions 14

- 2.71 We are grateful to respondents for providing information relating to the 2012 regulations, responses will be used to inform the Post Implementation Review which we plan to publish before 30 April 2017.

3. List of respondents

ABTA

Advantage Travel Centres LTD

Air Travel Trust (ATT)

Airbnb Ireland

Alfa Travel

Association of ATOL Companies

Association of Independent Tour Operators (AITO)

ATIPAC

Avios

Baba Holidays LTD

Barrhead Travel Services Ltd

Canny Travel

Civil Aviation Authority

Co-operative Travel (Midcounties Co-operative)

CTSI

David Grant, Emeritus Professor, Northumbria University

dnata Travel

European Technology & Travel Services Association (ETTSA).

Foreign and Commonwealth Office

G Adventures Limited

Glen Travel Ltd

IMP Travel

Jet2holidays Ltd

La Concordia Personal Travel Planning LLP

Lazer Travel

Love Holidays Ltd

Monarch Group

Mundy Cruising

One Traveller

Online Regional Travel Group Ltd

Peak Retreats
Prestige Holidays
Protected Travel Services Limited
PT Trustees LTD
Ramsay World travel
Reef and Rainforest Tours Ltd.
RWH Travel Ltd
Saga
Serenity Trusts
Scottish Passenger Agents Association (SPAA)
The Advantage Travel Partnership
The Association of Bonded Travel Organisers Trust Ltd. (ABTOT)
The Consumer Council, Northern Ireland
The Culture Experience
The Travel Network Group Limited
The Travel Professionals
The UK Cards Association
Thomas Cook Group
Travel Bonding
Travel by Design Group
Travel Nation + Rickshaw Travel
Travel Trust Services Ltd
Travelwise Group Ltd
TravLaw LLP
TUI
White Hart Associates
Worldpay