

ATOL Reform Consultation: Clarification Q&A

Introduction

The questions and answers provided below arose in the course of the Department's recent consultation on ATOL reform. They are intended to provide further clarity to stakeholders about the various issues, but do not represent the Department's formal response to the consultation. This is expected to be made later in 2011.

Definition of Flight Plus

(a) Definition of "flight" in Flight Plus

Question: Does a flight in Regulation 22 (1)(a)(i) & (ii) include a flight which constitutes a component of a package? For example, where an agent sells a package (which attracts £2.50 APC), and adds separate car hire, does this create a Flight Plus arrangement and attract a further £2.50 APC because of the car hire?

Answer: The Department believes that this scenario should fall within the definition of Flight Plus and believe that the current drafting achieves this. The aim of Flight Plus is to ensure that holidays are protected as a whole, and this includes sales where an agent sells a package holiday and adds an additional service such as car hire. Car hire is a significant part of a holiday booking and can represent a significant proportion of the overall cost of the holiday. The Department thinks it is therefore desirable that there is linked, statutory financial protection for the package and car hire.

These sales will attract two APC payments, as will sales for Flight Plus which include an ATOL protected flight and accommodation and/or car hire. In annex F to the consultation, the CAA explain that the Trustees of the Air Travel Trust are considering making a contribution to the Flight Plus arranger in the event of the failure of the ATOL holder providing the flight where the flight was obtained on a retail basis. This policy could extend to the scenario in the question. The Department has had initial discussions with the CAA who may consider recommending to the Trustees that where a Flight Plus contains a package, a greater contribution (possibly the full amount of the original package contract) could be paid to the Flight Plus arranger in the event of the ATOL package organiser's failure. Any decision on this is at the discretion of the Trustees.

(b) Definition of "request" in Flight Plus

Question: Regulation 22 (5) states that the basis for determining a Flight Plus is the *request* made by the consumer. Is it intended that such request should be a request for specific, named living accommodation, self-drive car hire or other tourist services or a non-specific request that accommodation, car hire or tourist services should be booked at a later date outside of the specific time frame? If so, how could this be regulated?

Answer: The request may be specific, but would not need to be. If the request is made for a flight and another element within the specified timeframe, the fact that the booking is completed outside the specified timeframe does not prevent the sale from being a Flight-Plus.

The Department expects a large element of the regulation of this to be driven by the consumer who will be seeking an ATOL certificate, and who will be encouraged to contact the CAA if a certificate is not issued. The Department also expects the CAA to be proactive in using its full regulatory toolkit which could involve targeted compliance monitoring such as test bookings.

(c) Definition of “contract” in Flight Plus

Question: Where a Flight Plus arranger is acting as an agent for the provider of the flight accommodation, is the intention of this regulation that the other tourist services are only part of the Flight Plus where they are provided by the principal provider of the flight accommodation?

Answer: This is not the intention. The intention is for ‘in connection with the contract’ to be interpreted in its usual meaning in the English language i.e. they are supplied to be used on the same holiday as the flight contract is for.

Flight Plus Arranger as agent or principal

Question: Is the use of the words ‘as a principal’ in regulation 15 (1)(a) intentional or in error? If it’s intentional then does this mean that a Flight Plus Arranger acting as the agent of an ATOL holder or a carrier is not required to supply an ATOL Certificate?

Answer: The Department hopes that it is clear from the consultation document that the policy intention is that the ATOL certificate must be issued by the entity which interacts with the consumer. For Flight Plus, this will always be the Flight Plus arranger. The Department will review the wording of regulation 15 to ensure that it fully reflects this approach.

There is no intention to require flights sales between ATOL holders to be conducted either on an ATOL to ATOL basis or on a retail basis. It is a commercial issue for the individual ATOL holders to decide how they wish to obtain the flight element of a Flight Plus.

CAA have indicated that they would expect the required written agency agreements to clarify the basis on which the sale was made, and may provide for specific requirements in the ATOL Standard Terms to ensure that appropriate mechanisms are in place to avoid confusion on failure. The CAA will consult on these in the autumn.

There is also no intention to require Flight Plus arrangers to obtain Scheduled Airline Failure Insurance (SAFI), although some may choose to do so.

Liability of a Flight Plus Arranger

Question: What is intended by '*significantly*' in regulation 24 and what is intended by '*impossible*' in regulations 25 and 26?

Answer: As stated in the consultation document (paragraph 4.25) these obligations are similar to those imposed on package organisers by the Package Travel Regulations. The Department would expect Flight-Plus arrangers to interpret the ATOL Regulation requirements in the same way that package organisers interpret Regulation 14 of the Package Travel Regulations. There are risks to the Flight Plus arranger from taking on this responsibility. We would expect agents to consider this when making a commercial decision about the principals for whom they act as agent when creating Flight-Plus arrangement.

Contribution by the Air Travel Trust

Question: In paragraphs 30 to 39 of annex F what is intended by '*contribution*' from the Air Travel Trust?

Answer: The CAA have advised the Department that the Trustees are considering how best to calculate the contribution. They are aware of the need for this to be consistent and easy for ATOL holders to calculate, so that they are able to assess their exposure. The CAA will be publishing details on this on behalf of the Trustees in the autumn. As stated above, the CAA is considering advising the Trustees that the contribution for Flight Plus arrangements which include a package should be for the full amount of the package.

Credit sales

Question: It is proposed in paragraph 20 of annex F that credit sales should be exempt from the ATOL scheme. What is intended by *credit*?

Answer: The Department understands that the CAA intends this to mean sales where payment is made after fulfilment of the travel arrangements, as used by some companies providing travel services to businesses. The main purpose of the proposed reforms is to protect consumers who buy Flight Plus holidays rather than businesses, and the Department will consider options for how this might be achieved.

Insolvency of Flight Plus Arranger

Question: In the event of the Flight-Plus arranger's insolvency, is it intended that the consumer should be able to continue with the Flight Plus arrangement? What recourse will the consumer have against the Air Travel Trust in the event of the failure of one or all of the contract principals supplying the services under the original Flight Plus?

Answer: The policy intention is that, where possible, the consumer should be able to use the services booked when a Flight-Plus arranger becomes insolvent. To enable this, the CAA is developing the concept of a 'fulfilment partner', a third party organisation appointed to take on the role of the failed Flight Plus arranger for future bookings. This approach would ensure that principals honoured contractual obligations and that arrangements could be made to help consumers in the event of a supplier failure.

Provision of flight accommodation by aircraft operator

Question: In regulation 9 (a) does the operator of the relevant aircraft include a carrier selling seat accommodation on an aircraft operated by another carrier under a code-share or similar agreement?

Answer: No, however the CAA already has a class exemption in place for code-sharers so that (in the circumstances set out in the exemption) airlines selling seats on another carrier under a code-share arrangement are not required to hold an ATOL to sell that seat. This can be found in the CAA's Official Record Series 3.

Agency Agreements

Question: Under regulation 12 (c) does an agency agreement which is available solely online constitute a written agency agreement for the purposes of acting as an agent for an ATOL holder?

Answer: The Department sees no reason in principle why agency agreements should not be available solely in an electronic format. The CAA intends to provide more information on Agency Agreements in its consultation in the autumn.

Right to Fly

Question: In regulation 20 (1) is it intended that a specified operator will confirm that it provides right to fly documents or information to specific, identified right to fly providers or to right to fly providers generally?

Answer: The current intention is for the confirmation from specified operators to be a general commitment to honour any ticket issued on a Right-to-Fly basis. As stated in the consultation document (paragraph 4.65), this aims to resolve the current limitation of the Ticket Provider provision whereby an airline can refuse to honour tickets issued by their agents if they have not been issued according to their terms and conditions.

Airline holiday sales

Question: Is new primary legislation needed to bring airline holiday sales into ATOL, given the recent article by Peter Stewart in Travel Law Quarterly which argues that the draft ATOL regulations accompanying the consultation already require airlines to provide financial protection for Flight-Plus holidays.

Answer: The Government's position is that airlines cannot be required to provide financial protection for the proposed Flight Plus holidays under the Secretary of State's current powers to make ATOL regulations. The draft ATOL regulations will need to be amended to ensure they are consistent with this.

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