

ATOL Reform Consultation Document

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Foreword

The Government's policy towards consumers is to ensure that they are treated fairly, know their rights and can use them effectively, and that consumer law is fair and proportionate for both consumers and business.

That is the context for our development of policy on the ATOL scheme since we came to office just over a year ago. In this case, consumers can find it very difficult to know and use their rights because they can be complex and unclear. The travel industry and travel products have so diversified over the last decade that the law no longer fits the real world in which consumers spend their hard-earned money on holidays abroad.

Package holidays have long been sold with financial protection against company insolvency; this is a European requirement and consumers expect it. But there are now holidays which look like packages but do not fall under the legal definition and so do not carry protection.

The draft Regulations published with this consultation document contains 2 main proposals to benefit consumers. First, we propose to extend the ATOL scheme to "Flight-Plus" holidays composed of a flight and other key components bought together (i.e. within 2 successive days). Second, every package and Flight-Plus consumer will get a recognisable ATOL certificate confirming their right to a refund, replacement or repatriation as appropriate should their travel company fail.

We also want to ensure that travel businesses arranging holidays on an 'agent for the consumer' basis, and so outside the ATOL scheme are fully aware of and fulfil their legal obligations to consumers. For example, the business must give the consumer clear information that the holiday under consideration will not carry ATOL financial protection should the business fail before the holiday is completed.

This is the first step on the road to reforming the ATOL scheme, and a necessary one. It will remedy a major area of confusion over sales by tour operators and travel agents.

Moreover the additional ATOL Protection Contributions of £2.50 per booking will help the financial soundness of the Air Travel Trust Fund. The Fund operates at a deficit and is supported by a Government guarantee. The Government believes it is essential for the fund to return to financial self-sustainability as soon as practicable, so that it is the travel industry and its customers who support it, rather than taxpayers.

I am therefore pleased that the consultation document also begins the debate on more extensive reforms to how the financial protection provided by ATOL operates and is funded in the medium-term.

We will be seeking views on further changes to the scope of holiday protection, which will be possible following this initial step of including Flight-Plus holidays; in particular whether holiday sales made by airlines and “agents for the consumer” should be regulated through the ATOL scheme to bring coherence to holiday protection. These changes would need primary legislation.

With industry’s help the success of the proposed initial measures could pave the way for the medium and long term solutions, allowing us all to achieve clarity and consistency for all consumers of air travel.

The UK has a highly innovative and successful travel industry, offering the public a great choice of holidays to suit wide-ranging tastes and budgets. I hope all travel businesses will consider these proposals and work with me to move away from what can sometimes seem to be a ‘small print culture’. If travel consumers get fair protection and transparent information, I believe that an already successful industry will be further strengthened. It is not possible to reform the whole system in a single leap but with this document we can make a firm start.

In line with the changes to the regulations presented in this consultation, the Government has asked the Trustees of the Air Travel Trust to consider what measures they may take to help achieve the objectives of reform, and I am pleased to include details of their current thinking in the CAA’s annex to this consultation.



The Rt Hon Theresa Villiers MP
Minister of State for Transport



Executive summary

Introduction

This document takes forward the Government's 'in principle' decision announced on 3 February 2011 to reform the Air Travel Organisers' Licensing (ATOL) scheme so that it better protects consumers in the 21st century holiday market and to put the scheme's finances back on a self-sustaining footing, allowing the current Government guarantee to be withdrawn.

The document is in two main parts. The first sets out further details of the reforms that can be implemented by new secondary legislation, seeking stakeholders' views on a number of details issues. The second part seeks stakeholders' broader views on potential medium to longer term reforms to the ATOL scheme including areas where new primary legislation would be needed. The consultation runs for 3 months, and ends on 15 September 2011.

Part 1: short term reforms

Stakeholders' views are sought on a number of detailed areas about the proposals to include Flight-Plus holidays in the ATOL scheme and also about providing better information to consumers through an ATOL certificate. Views are sought on proposed changes to Flight-Only sales in the scheme. Our planned approach to dealing with problems arising from the 'agent for the consumer' approach to purchasing holidays is discussed.

For bringing Flight-Plus holidays into the ATOL scheme the detailed questions concern:

- The definition of a Flight-Plus, including the holiday elements it must contain and the time period time within which the elements must be requested.
- The definition of a Flight-Plus arranger.
- The liabilities of Flight-Plus arrangers to their customers if one of the holiday suppliers becomes insolvent.
- The new 'approved body' arrangements to provide small businesses a further way of meeting the requirements of the ATOL scheme.
- A requirement for a written agency agreement between ATOL licensed businesses and agents selling on their behalf.

- The proposed criminal offences for breaching the ATOL regulations.
- Whether the moratorium on regulations affecting micro businesses should be applied to the Flight-Plus proposals. More information about the possible impacts is also sought.

As regards Flight-Only sales within the ATOL scheme, stakeholders' views are asked for on a proposal by the Air Travel Trust's Trustees that in future consumers purchasing Flight-Only tickets under the ATOL scheme would be entitled to repatriation assistance but not a refund. Views are also sought on replacing the current 'ticket provider' exemption with a 'right to fly provider' one.

The ATOL certificate is intended to make clear to consumers and the travel trade when a holiday is ATOL protected. CAA has begun discussions with the travel trade about its form and content. The consultation welcomes views on how to ensure that the proposed certificate is effective and proportionate, with costs kept to a minimum.

Travel agents can sometimes act as an agent for the consumer, where they technically 'buy' the holiday on behalf of a customer, rather than sell it to them. This puts the holiday outside the ATOL scheme, although consumers may well not be aware of this. We aim to strongly encourage businesses acting in this way to ensure that consumers are aware their holiday will not be ATOL protected so consumers can take fully informed decisions.

Views are also sought on the Impact Assessment of the short term reform proposals.

Part 2: Holistic review of medium to longer term reforms

The second part of the consultation asks more open questions about options for wider reforms to the ATOL scheme that could be delivered in the medium or longer term.

Bringing 'agent for the consumer' arranged holidays and sales by airlines into the scheme would require new primary legislation. Stakeholders' opinion on the desirability of doing this are sought, along with evidence about what its impact would be.

CAA intend to consult on options for the future management and funding of the ATOL scheme in early 2012 or once it is clear that the Fund is on course to pay off its deficit. In advance of that, we believe it would be useful for stakeholders to consider some of the issues and alternatives in relation to this subject. The consultation asks for views on the arguments for or against reforming the way refunds and repatriations are currently organised, along with the advantages and potential barriers. Views on what options might be considered in more depth by the Department and CAA are also requested.

Two EU initiatives are relevant to how the ATOL scheme may be reformed in the medium and longer term, the review of the Package Travel Directive and work on options for airline insolvency protection. The Commission are expected to publish proposals on both these in late 2011. The consultation seeks preliminary views on these issues to help inform the development of a UK negotiating position.

Next steps/implementation

We intend to make an announcement on the way forward with the reforms and on possible primary legislation in late autumn 2011. This will take into account the consultation responses. A summary of consultation responses will also be published then. The proposed date for new regulations implementing the Flight-Plus reforms to come into effect is 1 January 2012, in time for the peak booking season of January and February for summer 2012 holidays.

Annexes

The annexes to the consultation include the draft regulations, a note from CAA on implications of the reforms for its ATOL policies & procedures as well as an Impact Assessment.

1. Introduction

1.2 On 3 February 2011, Minister for Aviation Theresa Villiers announced the Government's 'in principle' decision to reform the Air Travel Organisers' Licensing (ATOL) scheme so that it better protects consumers in the 21st century holiday market and to put the scheme's finances back on a self-sustaining footing.

1.3 Three main reforms were proposed:

- Bringing into the ATOL scheme Flight-Plus, that is those where the various elements (flight and hotel accommodation for example) are requested by the customer within a specified short time period which resemble but are not 'package holidays' as currently legally defined.
- ensuring that where businesses sell holidays including a flight where the travel agent has arranged matters so they are acting as an 'agent for the customer' and so remain outside of the scheme, consumers are made fully aware of this, so that they can make an informed decision about their purchase.
- Replacing the current arrangements with clearer, standardised information for consumers that their holiday or flight is ATOL protected that would be both proportionate and fit for purpose.

1.4 This document takes forward the 'in principle' decision, by setting out further details of the reforms, including the draft secondary legislation needed to bring Flight-Plus sold by tour operators and travel agents into the ATOL scheme. The reform proposals are in two main parts. The first seeks stakeholders' views on a number of issues about the proposed reforms, including the details of how Flight-Plus should be defined, and the obligations that businesses selling Flight-Plus should have to their customers. The second part seeks stakeholders' views on potential medium to longer term reforms to the ATOL scheme including areas where new primary legislation would be needed such as requiring airlines to have an ATOL for their package holidays and Flight-Plus.

1.5 The Civil Aviation Authority (CAA) is responsible for managing the ATOL scheme, and has worked very closely with the Department in preparing this consultation. As part of this and to allow the travel trade to have a better idea of how the reforms would work in practice, the CAA has produced a document outlining how their ATOL polices

and procedures will need to change to incorporate the reform proposals. This is included as annex F to this document.

How to respond

- 1.6** The consultation runs for 3 months from 23 June ending on 15 September. Please ensure your response is with the Department by then. The specific questions on which views are sought are highlighted in bold in the text, and are also listed in annex A. Please send your response either to:

By email:

atolreform.consultation@dft.gsi.gov.uk

By post:

ATOL Reform Consultation
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If you would like further copies of this consultation document it can be found at www.dft.gov.uk or you can contact george.clarkson@dft.gsi.gov.uk if you would like alternative formats (Braille, audio CD, etc).

A list of consultees is at annex B.

- 1.7** 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.
- 1.8** 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.
- 1.9** 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.

1.10 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.

2. Background to the ATOL scheme

- 2.1** The ATOL scheme has been in place since the 1970s. Currently, it protects those buying flight inclusive package holidays and certain flights against the insolvency of their tour operator.
- 2.2** It is rare for tour operators to fail, and the vast majority of package holidaymakers are never affected by this problem. But the nature of the business means there can often be a significant time between paying for a holiday and actually going on it, potentially putting the holidaymaker's money at risk in this period. If a tour operator fails while a holiday is in progress there can be further substantial risks to holidaymakers from having to rearrange and pay for flights home and accommodation while abroad. This risk can be made worse if a large tour operator fails in peak season when only limited alternative seat capacity is available.
- 2.3** These were the reasons that lead to the creation of a statutory ATOL scheme in the 1970s. It has been in operation ever since, managed by the CAA. Although the insolvency of tour operators is infrequent, each year tens of thousands of holidaymakers directly benefit from the ATOL scheme. In 2010, over 190,000 consumers were directly affected by ATOL holder insolvencies. Consumers abroad when the insolvency occurred benefited from the repatriation arrangements provided by the CAA and the remainder, who had made a booking but not yet travelled, are entitled to claim a refund for their losses.
- 2.4** The basis of the ATOL scheme is that any business selling a package holiday including a flight or a flight on its own where the ticket is not issued within 24 hours, has to have an ATOL licence. Before issuing one, CAA has to ensure that those owning and managing the business are fit and proper persons to do so and also that the business has sufficient financial resources. CAA may require the business to provide additional security in some circumstances, for example whenever a business is newly created, or if CAA believes it presents particular risks. Each business then has to pay £2.50 per booking ATOL Protection Contribution (APC) into the pooled Air Travel Trust Fund (the ATTF or the Fund), which meets the costs of refunds and repatriations when a tour operator goes bust.

- 2.5** The ATOL scheme does not apply to airlines, which are specifically excluded from it under legislation. This was because most scheduled airlines were state owned when the scheme was first introduced, and so not expected to fail. Airlines have also been subject to separate licensing arrangements, currently Operating Licences issued under EU law. 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. Flights sold directly by airlines, for example from their websites, are outside the ATOL scheme.
- 2.6** While ATOL has been in existence since the 1970s, the European Union passed the Package Travel Directive (PTD) in 1990, which requires insolvency protection, and a range of other consumer protections, for all package holidays sold in the EU, both those including a flight and others. The Package Travel Regulations 1992 (PTRs) implement the PTD in the UK. Holding an ATOL licence is the way in which business selling package holidays with a flight can comply with the PTRs as far as providing insolvency protection is concerned.

3. The case for reform

Clarity for consumers and the travel trade

- 3.1** There have been major changes in the market for holidays and flights in the UK over the past 15 or so years. For example, there have been significant shifts in the types of holidays consumers purchase, with a move away from traditional package holidays in favour of independent travel. While it may be changing tastes for holidays that is driving this, it has been facilitated by the emergence of low cost airlines (as well as the response to this by established carriers) offering services to increasing numbers of destinations at lower prices. In 1997 for example it is estimated that some 97% of flights for leisure purposes (including package holidays) were ATOL protected. In 2009 this had fallen to 50%. The absolute number of ATOL protected holidays and flights has also fallen, from a peak of over 29 million in 2001, to just under 20 million in 2010, although this of course still represents a very sizeable market, equating to just under a third of the UK population.
- 3.2** Changing tastes in holidays are clearly not an issue for concern or Government intervention. The increased choice of destinations served by flights and lower fares will have benefitted consumers.
- 3.3** There have also been major changes in the way holidays are sold, principally driven by the use of the internet both as a means of selling airline tickets but also as a way of putting together and selling holidays, both by travel agents and also by consumers. This too has increased choice for consumers, by allowing a greatly expanded range of flight, accommodation and other options to choose from when buying a holiday. Holidays created and sold in this way are sometimes referred to as 'dynamic packaging', 'mix and match holidays', a 'DIY package' or 'tailor made holidays'. Clearly, the use of the internet to put holidays together in this way could not have been foreseen when the ATOL scheme was introduced, or when the PTD was agreed.
- 3.4** Such changes are the result of technological innovation and the dynamic, highly competitive nature of the travel market. Again, of itself, this is not a matter of concern because consumers are likely to value the additional choice and convenience.

- 3.5** However what is more of an area of concern for Government is the implication of the new approaches to selling holidays for the protection of consumers. In particular, the new approaches often do not sit easily with the definition of a 'package holiday' in the PTD and the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 (ATOL regulations). This is important because whether ATOL protection applies is determined by if a holiday is a 'package' or not. As a consequence there can be considerable confusion for consumers, the travel trade and CAA about whether a holiday is ATOL protected. It can be that out of two very similar holidays, with the same flight or hotel, one is and one is not ATOL protected, depending on which businesses the holiday was bought from or how it was put together.
- 3.6** Some holidays may only have the flight protected by ATOL, but not the hotel or villa accommodation or other elements such as, say, car hire. Consumers may be unaware of this, or seeing that ATOL protection applies to part of their holiday, believe that it covers all of it.
- 3.7** A further source of confusion can be holidays purchased, or said to be purchased, on an 'agent for the consumer' basis. Holidays purchased in this way may be outside the ATOL scheme, although some travel companies may not be fully aware of what acting on this basis entails, or their obligations to explain to consumers the implications of this for ATOL protection.
- 3.8** This lack of clarity and the ensuing confusion becomes a particular problem for consumers where a travel company does become insolvent. Consumers may well believe that they are fully ATOL protected, only to find out in the small print of their holiday documents, or when they try to make a claim under the scheme, that they are not. This can leave consumers out of pocket, potentially by a large amount. The detriment could be worse for consumers already abroad on holiday, who may have to make alternative arrangements at short notice for return flights as well as for accommodation. The cost of these arrangements could be significant, in addition to the stress and worry.
- 3.9** All the above have been evident in the major travel company failures over the past 5 or so years. These include the XL Leisure Group in 2008 where there was considerable confusion about which of the 50,000 affected consumers abroad at the time were entitled to ATOL protection. More recently, the failure of Sun4U in summer 2010 brought to light the large number of consumers who were unaware of the implications of purchasing holidays on an agent for the consumer basis. Also in 2010, the failure of Goldtrail showed the real lack of clarity for consumers and the travel trade from holidays that are sold with only partial ATOL protection. Goldtrail operated mainly by selling ATOL protected flights to travel agents who in turn sold these, together with accommodation, on to consumers. It proved extremely difficult for CAA to determine if these

holidays, or the flight part of them, were ATOL protected or not, leading to lengthy delays in processing claims.

3.10 To try and address these types of problem, which were evident even before the failure of XL Leisure Group, the CAA attempted to clarify the definition of a 'package holiday' through the UK courts. They argued that 'mix and match' or 'dynamic package' holidays should be considered as such and so covered by the ATOL scheme. However, the UK courts have ruled that holidays made up of components sold at the same time, but separately, are not package holidays. As a consequence:

- It is increasingly easy for businesses to sell 'mix and match' type holidays without an ATOL licence and associated financial fitness check.
- Companies are beginning to leave the ATOL scheme, or (even more confusing for consumers) retain their ATOL licence/logo but arrange most of their sales in a way which does not constitute a package. This can also cause problems for the ATTF in determining its liabilities after a failure. It also reduces the number of holidays protected by ATOL and the income into the ATTF.
- Consumers of 'mix-and-match' holidays do not have guaranteed financial protection if their tour operator or airline fails, and travel agents do not bear the consequences of booking passengers on airlines with unsound finances.

3.11 The intention of the ATOL scheme was to protect consumers taking holidays including a flight, but it is clear that this is no longer the case for an increasing number of holidays sold in the UK.

3.12 Following the failure of XL Leisure Group, the Department worked with CAA and the industry to provide guidance for consumers about their options for insolvency protection, both for package holidays and independent travel. The guidance was published on the Directgov website. In preparing the document the complexity of the issues involved became only too apparent, and it seemed unlikely that the average consumer would be willing to invest the time and effort needed to get a good grasp of the issues. It was therefore unlikely that better consumer information on its own would be sufficient to address the problem of lack of clarity about ATOL protection.

ATOL finances

3.13 The payment of refunds and repatriation expenditure due under ATOL is met by the ATTF. Up until April 2008 when the ATOL Protection Contribution (APC) was introduced, the ATTF had no source of income. Bonds provided by ATOL businesses as a condition of getting a licence were not sufficient to meet the full costs of tour operator failures and from

the 1990s onwards the Fund operated at a deficit and could only meet its obligations through commercial credit facilities supported by a Government Guarantee.

- 3.14** The introduction of the APC at £1 per booking in April 2008 was intended to pay off the deficit, which then stood at £21m, and so allow the Government guarantee of up to £30m to be phased out over three years. The APC income would then be used as the main way to meet refund and repatriation costs in future.
- 3.15** The failure of XL Leisure Group in September 2008 was the largest ever failure of an ATOL licensed business and led to an exceptionally large call on the ATTF - some £27m. The failure was in part caused by the global financial crisis which could not have been anticipated when the APC was introduced. It led to the APC being increased to £2.50 from October 2009, and the Government guarantee being increased and extended in length as the Fund was expected to be in deficit longer than previously anticipated. The Fund is financed through a mix of insurance, bank facilities and APC income, which provides access to £70m for to meet all the demands on it. The insurance policy has an annual limit of £300m. Although well managed, these arrangements are reliant on a Government guarantee, which ultimately places taxpayers' money at risk. This guarantee is currently £42m, programmed to reduce to £30m in August 2011, and £20m in August 2012 before being withdrawn in August 2013.
- 3.16** The ATOL business failures in summer 2010 placed further unanticipated costs on the Fund. The CAA estimate that the failure of Goldtrail Travel Ltd and Flight Options Ltd will, combined, cost the ATTF approximately £43m. The Fund's estimated deficit, as of March 2011 is £42m. The Government strongly believes that the full cost of ATOL protection must be met by holidaymakers and the travel trade, with no ongoing risk for taxpayers, particularly given the pressing need to reduce the fiscal deficit inherited from the previous Government. It believes that action is needed to ensure the Fund's deficit can be paid off and the Government guarantee withdrawn. Once this has been achieved and the Fund has returned to financial self-sustainability, there will be scope to consider alternative models for how ATOL is financed. This is discussed further below.

2009-2010 consultation

- 3.17** It was against the background of the issues about lack of clarity for consumers that the previous Government consulted on options for ATOL reform as part of the 'Regulating Air Transport' (RAT) consultation, which ran from December 2009 to March 2010. The consultation proposed five

measures for reforming the scope of the ATOL scheme with the main objective of providing greater clarity to consumers. A full summary of the consultation responses received is at annex G. The reforms we are taking forward are detailed below, including where appropriate some of the key points made from the consultation.

Developments since May 2010

3.18 Since coming into power last year, the coalition Government has been considering the issues around ATOL reform including the consultation responses summarised in annex G. There have been a number of developments in the past year:

- In July 2010, the Supreme Court decided not to hear CAA's appeal against the High Court's decision in the Travel Republic case, relating to whether holiday elements sold separately but at the same time were package holidays and so required ATOL protection. The High Court had previously decided not to refer the matter to the European Court of Justice, in part because both the Department and the European Commission were considering possible legislative changes in this area.
- The travel company failures in summer 2010 again highlighted many of the problems with the current scheme as regards clarity for consumers and the travel trade about what holidays are and are not protected. These failures also placed further stress on the finances of the ATTF and the Government guarantee supporting it.
- The Government's key priority has been tackling the country's fiscal deficit, for example through the measures announced in the Spending Review on 24 October 2010.
- In March 2011, Government Tourism Policy was published, with the aim of helping the tourism industry achieve its potential as a central part of Britain's growth strategy. This includes a commitment to strengthen the voice and power of consumers to allow better informed choices to be made about their holiday choices.
- The European Commission has continued its work reviewing the PTD, as the issues outlined above about the lack of clarity for consumers about whether their holiday is protected or not applies across the EU as legislation has not kept up with changes in the travel market. The Department expects the Commission to bring forward proposals for reform of the PTD in late 2011.
- The Commission is also considering options for providing insolvency protection to consumers in relation to sales of all flight tickets, including those directly from airlines. An announcement about this work is also expected in 2011. The PTD review and this work are clearly closely inter-related.

3.19 In light of the above, the Government believes that the ATOL scheme remains in pressing need of reform to ensure that it is relevant to the protection of consumers the 21st century travel market and so that it can return to financial self-sustainability. While the expected proposals to revise the PTD may cover similar ground to the options for ATOL reform, any proposals published by the Commission in late 2011 would be unlikely to be agreed and transposed into UK law before 2014 at the earliest. The Government believes that it cannot wait until then to address today's real problems with the ATOL scheme in terms of its finances and the potential detrimental effects on consumers.

4. Part 1: Short term reforms

- 4.1** On 3 February 2011, the Government announced its 'in principle' decision to take forward three measures to reform ATOL in the short term, building on those consulted on in 2009/10. As noted above, these measures are:
- To introduce a new category of Flight-Plus into the ATOL scheme so that it now covers holidays including a flight that may closely resemble 'package holidays' but fall outside the legal definition, which comes from EU law. This requires new secondary legislation to amend the ATOL regulations.
 - To aim to ensure that where businesses arrange holidays that look like package holidays but are transacted on an 'agent for the consumer' basis and so remain outside the ATOL scheme, consumers know this so they can make informed choices about what alternative protection they may want to arrange. Relevant here are the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) which prohibit misleading statements and omissions which might lead consumers to make different purchase decisions. Guidance and advice to travel agents about the 'agent for the consumer' business model and their obligations will also help.
 - To replace the current arrangements so as to give consumers clearer, standardised information when they buy an ATOL protected holiday or flight, perhaps in the form of an 'ATOL certificate'. This would also require secondary legislation, as well as changes to ATOL licence standard terms.

Reform objectives

- 4.2** The reforms have been developed with the following objectives in mind.
- to ensure that customers are clearer about when they are covered by the ATOL scheme and when they are not so they can make alternative arrangements such as buying insurance if desired.
 - to provide clarity for the travel trade and the CAA as regulator about when financial protection is required including which holidays and Flight-Only bookings are protected.

- to safeguard the Government's guarantee that supports the ATTF and allow for its withdrawal as the ATTF is restored to financial self-sustainability.
- Linked to the above, in the medium term once the scheme is financially sustainable to aim to lower the overall cost of ATOL protection to the travel trade, potentially by reducing the APC from its current level as well as considering alternative mechanisms for funding ATOL protection.

4.3 The last point is important, as it puts the 3 reforms in the context of a wider, more holistic review of insolvency protection arrangements for holidays including a flight and air travel more generally. We are seeking views on what future arrangements might look like in part 2 of this consultation.

Bringing Flight-Plus into ATOL

4.4 The RAT consultation sought views on incorporating Flight-Plus into ATOL and also bringing airline sales of Flight-Plus products under the ATOL scheme.

4.5 There was support for these proposals from the travel industry, passenger representative groups and regulators, although many pointed out practical difficulties in implementing them. Airline respondents were less in favour of these measures, suggesting that there was already sufficient protection or that including 'click through' sales would be complex and technically difficult.

4.6 The Government has decided to go ahead with including Flight-Plus into the scheme where this can be achieved through new secondary legislation. Including packages and Flight-Plus sold by airlines in ATOL would need new primary legislation and is discussed further in part 2 below.

4.7 The purpose of this reform is to provide greater clarity to consumers about whether their flight inclusive holiday is ATOL protected or not. It aims to bring within the ATOL scheme those holidays that are very similar in content and appearance to package holidays but are outside the legal definition of a package holiday. As this definition comes from EU law, it is not possible to amend it other than by changing the PTD.

4.8 Instead, the proposal is to create a new category of Flight-Plus in the ATOL scheme to cover holidays which closely resemble packages. As a consequence, tour operators and travel agents selling Flight-Plus would be required to have an ATOL licence (or belong to a consortium organisation or 'Approved Body' which holds an ATOL licence on behalf of its members) so protecting consumers against the insolvency of the

business selling the Flight-Plus, as well as against the insolvency of businesses providing the flight, accommodation and other elements of the holiday.

- 4.9** The draft regulations that are proposed to implement this change are at annex D. As well as putting in place the reforms, these regulations also replace the existing ATOL regulations as well as the amendments made to them in 1996, 1997 and 2003. This has the advantage of having just one set of regulations about ATOL scheme, which should improve clarity and simplicity for travel trade as well as the CAA.

Key areas

- 4.10** This section sets out some of the key areas in relation to Flight-Plus covered by the draft regulations, aiming to explain their effect and the policy intention behind them. Stakeholder's views are sought on a number of specific issues. Comments on any aspects of the draft regulations are also welcome.

The definition of a Flight-Plus

- 4.11** Regulation 22 sets out the definition of a Flight-Plus holiday. For a Flight-Plus to be created, the following holiday elements are required:
- A flight out of the UK, or an inbound flight where the outbound trip from the UK was not by air (return flights will of course also be protected as part of the Flight-Plus where applicable); and
 - Hotel (or other) accommodation and/or car hire, both outside the UK and supplied under the same contract as or in connection with the flight; and
 - Where overnight accommodation is not included (that is where the Flight-Plus comprises a flight and car hire) the arrangements must cover more than 24 hours.
- 4.12** Once a Flight-Plus has been created, any other tourist services not ancillary to the flight, accommodation or car hire are part of it, but only where they account for a significant proportion of the Flight-Plus and are supplied under the same contract as or in connection with the flight.
- 4.13** Flight-Plus is restricted to holidays that are outside the UK, as we believe that it is these holidays where the risk of consumer detriment from insolvency is greatest.
- 4.14** In order to form part of a Flight-Plus, the various elements of it such as hotel accommodation, car hire or other tourist services must be requested by a consumer either the day before, on the same day, or the day after the flight was requested. This means it would be possible for a

hotel to be booked the day before a flight is requested, or the day afterwards and a Flight-Plus would still be created. The time period relates to a calendar day rather than 24 hours. So for example if a consumer requested a flight from a travel trade business at say 9.00 am on a Tuesday, the accommodation (or car hire) would have to be requested by midnight on the Wednesday for a Flight-Plus to be created (assuming all the other criteria in the draft regulations were met).

- 4.15** A key difference from the current ATOL regulations and the concept of a package is that it is a consumer's request for a holiday that determines when a Flight-Plus is created, not how a business responds to that request as is presently the case.
- 4.16** Views on the timing issue were sought in the RAT consultation. There was a range of responses, with some arguing for the holiday elements to be purchased within 24 hours or over a much longer period. The Department's view is that a short time period is appropriate. The aim of including Flight-Plus in ATOL is to protect holidays including a flight that resemble package holidays. Allowing a long time period between the requests for the holiday elements would not be consistent with this - it seems unlikely that a consumer would believe they were buying a package holiday (and so benefit from ATOL protection) if they bought hotel accommodation say two weeks after buying a flight.
- 4.17** The draft regulations don't prevent a travel trade business creating an ATOL protected Flight-Plus if the second request from a consumer were to be made outside the specified time period, but the already arranged element would need, in essence, to be rebooked in order to fall within the time period.
- 4.18** The choice of a day either side of requesting a flight, rather than 24 hours, should make it simpler for the travel trade and consumers to determine when a Flight-Plus has been created. There is a risk that some businesses may seek to avoid the regulations by encouraging consumers to request Flight-Plus elements just outside the proposed period. However, there are also likely to be strong commercial incentives for businesses to encourage consumers to book with them in a short period of time or risk losing the sale entirely.

Q1: Do you agree with the proposed definition of a Flight-Plus as outlined above and set out in regulation 22? If not, what alternatives do you propose and why?

Q2: The Department's view is that a short time period between requesting elements of a Flight-Plus is most appropriate. Given this, do you agree with the proposed time period in which elements of a Flight-Plus must be

requested by a consumer? If not, what alternative do you propose and why?

Definition of a Flight-Plus arranger

4.19 A further key element of the reforms is the definition of a Flight-Plus arranger.

4.20 Regulation 23 sets out the criteria for being a Flight-Plus arranger. It is proposed that this should be a business that carries out two activities:

- It makes available flight accommodation, either as a principal or an agent of another ATOL licensed business, in response to a request from a consumer, and
- 'takes any steps' to include the flight as part of a Flight-Plus.

A variation is where a member business of an 'Approved Body' carries out these tasks, in which case the Approved Body will be the Flight-Plus arranger, not the member. An 'Approved Body' is a new concept in the draft regulations and is discussed further below.

4.21 The Flight-Plus arranger is therefore the business that interacts with the consumer in meeting a request to provide a flight, and also acts to include that flight as part of a Flight-Plus. The draft regulations require a business to hold an ATOL licence in order to make available flight accommodation in these circumstances, whether they are acting as a principal or as an agent of another ATOL licence holder for the flight (see regulation 13). By requiring Flight-Plus arrangers to have an ATOL licence, the ATOL scheme can protect all elements of a Flight-Plus: consumers will get a full refund or be repatriated at no extra cost to them if the Flight-Plus arranger becomes insolvent.

4.22 Although it is not set out explicitly in the draft regulations, we intend that the part of the definition about a Flight-Plus arranger taking any steps to include a flight as part of a Flight-Plus should be interpreted widely. It could cover a range of steps, including:

- Procuring the various Flight-Plus elements through contracts with one or more suppliers.
- Entering into arrangements with another unrelated supplier to pass the customer's details through to them, including by electronic means, so that the consumer does not have to re-enter details such as for example, the holiday dates and destinations, when searching for a hotel on the other supplier's website.
- Setting up separate companies (under common ownership or control) to provide the different elements of a Flight-Plus

Q3: Do you support the proposed definition of a Flight-Plus arranger in regulation 23? If not, what are your reasons? What alternatives might be proposed?

Liabilities of a Flight-Plus arranger

4.23 As well as the protection against the insolvency of the Flight-Plus arranger provided by the ATOL scheme, our intention is for consumers also to be protected against the insolvency of any of the suppliers of elements of the Flight-Plus (an airline or other flight provider, or a car hire business for example). This will be the responsibility of the Flight-Plus arranger to provide, as set out in regulations 24 to 29. To summarise, these regulations provide:

- If a supplier of a flight or accommodation or car hire becomes insolvent before the consumer departs on a Flight-Plus, the Flight-Plus arranger must make alternative arrangements to replace these at no extra cost to the consumer.
- If one of these suppliers become insolvent after the start of the holiday, the Flight-Plus arranger has to arrange for the consumer to return home (if the return flight will not be provided) and/or provide alternative living accommodation or car hire of the same standard.
- Under both the above bullets, the Flight-Plus arranger has to provide compensation if the alternatives offered are of a lower standard from those initially part of the Flight-Plus. If it is impossible to make alternative arrangements, or a consumer does not accept them, then the Flight-Plus arranger must provide a refund.
- If any tourist service (other than the flight, accommodation and/or car hire) that forms part of the Flight-Plus can't be provided due to insolvency of a supplier, the Flight-Plus arranger's responsibility is to provide a full refund for that service.

4.24 These protections are similar to some of those that tour operators selling package holidays are required to provide consumers under the PTRs. We are not proposing that all the protections in the PTRs should apply to Flight-Plus. This recognises that Deals will in most cases be sold by businesses acting as an agent for suppliers of flights and hotel accommodation, rather than as a principal for a holiday. Given this, it does not seem appropriate to require Flight-Plus arrangers to take on the wide ranging liabilities in the PTRs, for example liability for the proper performance of the contract by 3rd parties (such as hotel owners), or providing care and assistance to consumers if part of their holiday is disrupted due to extreme weather.

- 4.25** We expect Flight-Plus arrangers will want to consider taking out supplier failure insurance to protect themselves against the possible cost of these liabilities.
- 4.26** Many Flight-Plus arrangers are expected to procure the flight element of a Flight-Plus through flights provided by other ATOL licensed businesses, continuing their existing business model. Currently, if the ATOL licensed business supplying these flights becomes insolvent, the CAA provides repatriation to customers abroad and those with a forward booking have the right to a refund. The liabilities placed on the Flight-Plus arranger under the draft regulations mean that they would be responsible for these arrangements in future.
- 4.27** The Trustees of the ATT are considering whether the terms of the deed establishing the Air Travel Trust and their payment policies should be amended to allow the Fund to provide a contribution directly to the Flight-Plus arranger to help meet the cost of their obligations under the proposed regulations for refunds for forward bookings. The ATTF will continue to fund and the CAA will continue to manage repatriation where an ATOL holder providing a flight becomes insolvent as this is the most efficient way to help consumers.
- 4.28** This proposal should benefit consumers as the Deal arranger they have booked their flight plus holiday with should be able to provide alternative arrangements more quickly. It also aims to reduce the risk that a business selling flight plus holidays will become insolvent if an ATOL licensed flight supplier fails. Further, it recognises that two APC payments will be made to the Fund for flight plus holidays where the flight is provided by another ATOL licensed business on a retail basis. Further details can be found in the note from the CAA at annex F.

Q4: Do you agree with the proposed liabilities of Flight-Plus arrangers in regulation 24 to 29 to provide alternative or refunds in the event of the insolvency of a supplier? Do you agree with the proposed changes to the ATT payment policy outlined in paragraph 4.27 and annex F? If not, what are your reasons and what alternatives could you suggest?

Approved body

- 4.29** CAA has developed the concept of an 'Approved Body' as part of its commitment to ensuring that the regulatory burden of the ATOL scheme remains proportionate. The Approved Body arrangements will sit alongside existing schemes aimed at reducing the regulatory burden of

ATOL on small businesses, such as franchise arrangements and Small Business ATOLs (SBAs)¹.

- 4.30** Many Flight-Plus arrangers brought into the ATOL scheme as a result of the reforms are likely to be small businesses and also belong to travel agent consortia which provide their members a range of commercial services.
- 4.31** It is anticipated that existing travel agent consortia (as well as other organisations) will apply to become an Approved Body. The Approved Body would hold an ATOL licence, but the member business would not and would also not need to provide a bond to CAA. Any Flight-Plus the business sold when acting as a member of the Approved Body would effectively be under the ATOL licence of the Approved Body. The Approved Body would charge member businesses for the services provided, and would also be required to monitor the finances of its members.
- 4.32** Regulations 34 and 35 set out how an organisation can apply to become an Approved Body and the criteria CAA will use to assess applications. A key factor is that consumers must receive the same level of protection from a business that is a member of the Approved Body as they would dealing with an ATOL licensed business. To ensure that the Approved Body can manage the financial risks from its relationship with member businesses, the CAA will also approve the terms and conditions of membership and its financial arrangements.
- 4.33** The three options for small businesses required to join the ATOL scheme provides a choice of ways in which to meet regulatory requirements. This will allow businesses the opportunity to choose which approach best meets their needs. Overtime, competition between Approved Bodies and with franchise holders may drive improvements in the services and costs to the further benefits of small businesses.

Q5: Do you agree with the proposals to create an Approved Body as a new option for small businesses to meet the requirements of the ATOL scheme?

¹ Franchises enable the CAA to reduce the regulatory burden for members of franchises that contract with the Trustees of the Air Travel Trust to take on the Trust's refund and repatriation role in the event of the insolvency of their member. SBA holders are limited to 500 ATOL protected sales per year in return for reduced regulatory requirements.

Agency agreement

- 4.34** Regulation 30 introduces a new requirement that ATOL licensed businesses that sell flights to consumers through an agent must have in place a written agreement with the agent. The agreement must authorise the sale of flights by the agent. The agent must also agree not to accept payment for a flight unless it is authorised by the ATOL licence holder to do so, and can provide the consumer with an ATOL certificate (see below). The CAA can publish a schedule of terms which it will require to be included in the agreement, and vary these from time to time.
- 4.35** This requirement will help clarify the relationship between ATOL licensed businesses acting as principals, and those acting as their agents. This should avoid the confusion about the nature of the relationships between ATOL businesses that arose following travel company failures in 2010. This confusion led to considerable delay in consumers' claims being assessed and processed while responsibility for meeting claims for refunds was established. The Department and CAA believe that such agreements are best practice in business relationships between principals and their agents. As such they should not represent an undue burden on businesses concerned.

Q6: Do you agree that there should be a written agency agreement between principal and agent ATOL businesses covering the points in regulation 30? If not why not, and what reasons do you have?

Offences

- 4.36** The draft regulations include a number of criminal offences for contravention of some of its provisions, see regulations 69 to 71. There are two groups of offences;
- 4.37** One group of offences (see regulation 69 (2)) covers what we believe to be more serious breaches, such as a business making available flight accommodation when not permitted to or misrepresenting that they hold an ATOL licence. These are punishable by a fine or up to two years in prison or both
- 4.38** The other group covers other breaches (regulation 69 (1)), including issuing an ATOL certificate that does not meet the requirements in the regulations and breaching a condition of an ATOL licence. These are punishable by a fine of up to level 5 on the standard scale of fines, currently £5,000.

- 4.39** Most of the offences in the draft regulations are in the current ATOL regulations, but we are interested to hear stakeholders' views about them. The draft regulations also include a new 'due diligence' defence (see regulation 70). This is available in court action for all the contraventions with the exception of that relating to 'knowingly and recklessly' supplying false information when obtaining or varying an ATOL licence (see regulation 42) where it would not be appropriate.
- 4.40** The Department is considering whether the draft regulations, once they are made, should be designated so that civil enforcement action could be taken by the CAA using the procedures in Part 8 of the Enterprise Act 2002. This is used to enforce a wide range of other consumer protection legislation. In the longer term, CAA might gain powers to use a range of civil sanctions to enforce the ATOL regulations, although this would require new primary legislation.

Q7: Do you agree with the offences and penalties created? If not what alternatives do you propose? Are prison sentences appropriate for any breach of the ATOL regulations? Do you agree with the due diligence defence?

Devolved Administrations

- 4.41** The ATOL scheme is primarily concerned with regulating civil aviation, but has as a key purpose the protection of consumers of flight inclusive package holidays. Regulating civil aviation and consumer protection are reserved matters for both Scotland and Wales. In Northern Ireland, while regulating civil aviation is reserved, consumer protection is transferred to Northern Ireland Ministers.
- 4.42** Northern Ireland Ministers have agreed that the draft regulations should apply in Northern Ireland as they do in the other parts of the UK. The issues that consumers in Northern Ireland face when purchasing Flight-Plus are likely to be very similar to those elsewhere in the UK, so it makes sense to have a UK wide scheme run by the CAA. This is the basis on which the ATOL scheme has operated for many years.

Related issues

VAT treatment

- 4.43** We have discussed the Flight-Plus proposals with colleagues from HM Revenue and Customs (HMRC) to understand better if the proposals have any bearing on the VAT treatment of businesses that are selling Flight-Plus.

- 4.44** Some travel agents have been concerned that the proposals might change their status under VAT rules so they would in future be liable to pay VAT under the Tour Operators' Margin Scheme (TOMS). This concern is thought to arise from the additional obligations that will be placed on those selling Flight-Plus by the draft regulations, such as providing consumers with alternative flights, accommodation or car hire in the event of the insolvency of a supplier (see paragraph 4.24 above).
- 4.45** HMRC have said that whether a business is liable to pay VAT under TOMS depends on a number of factors. These include whether in supplying travel services a business is acting as a disclosed agent - in which case TOMS is not applicable - or as a principal or undisclosed agent, where TOMS may be relevant depending on other conditions being met.
- 4.46** HMRC's general view is that the Flight-Plus proposals taken on their own are unlikely to change whether a travel trade business is or is not subject to TOMS. The draft regulations impose legal obligations on travel agents but do not alter the underlying commercial relationships between travel agents and other businesses which determine if a business is a disclosed agent or not. Businesses that sell Flight-Plus will want to consider obtaining their own advice on VAT issues to take account of their particular circumstances and business model.

Micro-businesses moratorium from new regulations

- 4.47** On 24 March 2011, the Government announced a moratorium on all new regulations that affect micro businesses - that is those with fewer than 10 employees - including 'start up' businesses while they meet this criterion. The aim of the moratorium, which lasts from April 2011 to April 2014, is to reduce the burden of regulation on very small businesses as part of encouraging economic growth.
- 4.48** The draft regulations to reform ATOL are intended to come into effect in January 2012, and introduce new regulatory requirements that we believe would affect a significant number of micro businesses. As such, the draft regulations would be in the scope of the moratorium. The main new regulatory requirement is bringing Flight-Plus into the ATOL scheme. Other aspects of the draft regulations re-state or slightly amend requirements from the current ATOL regulations and do not therefore fall within the scope of the moratorium.
- 4.49** Our view is that a large number of businesses that currently sell Flight-Plus holidays are micro-business. These include businesses that already hold an ATOL licence and those that would be brought into ATOL as a result of the reforms.

4.50 CAA estimates between 500 and 700 of the 2,500 currently ATOL licensed businesses are micro businesses. Although it is difficult to estimate, we believe that 600 businesses will be brought into ATOL as a result of the reforms, and a significant proportion of these are also likely to be micro businesses, perhaps between 400 and 550. It is very difficult to estimate the number of Flight-Plus that will be sold by these micro businesses.

4.51 The purpose of applying the moratorium would be a reduction in the regulatory burden on micro businesses which may allow these businesses to grow more quickly than they otherwise would have, so contributing to wider economic growth. For example micro businesses would not have to pay the APC on sales of Flight-Plus and those that are currently outside ATOL would not need to seek a licence or become a member of an Approved Body until the moratorium ended in 2014.

4.52 There are potential disadvantages however:

- exempting micro businesses goes against the reforms' objective of improving consumer clarity about which holidays are in the ATOL scheme, if this now also depended on the number of employees in a business which would be unlikely to be known to consumers.
- as in other sectors, there are risks of businesses changing their business model to become micro businesses simply to take advantage of the moratorium. An appropriate enforcement approach would be needed to ensure this did not happen, and also to ensure that businesses benefitting from the moratorium did have less than 10 full time equivalent employees.
- some micro businesses may see commercial advantage in being able to sell ATOL protected holidays with the accompanying ATOL certificate in order to provide peace of mind to consumers, notwithstanding the additional costs. Many consumers are price sensitive and less concerned about insolvency protection so may be attracted to micro businesses if they offer lower prices. But others may decide to book holidays with larger businesses that are ATOL protected rather than risk a booking with an unprotected micro business. Larger businesses may market themselves as providing protection for Flight-Plus, in contrast to micro ones.

4.53 In order to reduce the burden of the ATOL scheme on small businesses, CAA have put in place the SBA aimed at businesses selling up to 500 holidays and flights per year, which has a lower cost, no financial assessment and reduced reporting requirements compared to a full ATOL licence. Franchise arrangements offer a further option for a lower cost way to meet ATOL requirements. As set out above, CAA has also developed the Approved Body concept specifically aimed at keeping regulatory costs as low as practicable for the small businesses,

predominantly travel agents, that are expected to be brought into ATOL as a consequence of the reforms.

- 4.54** In light of the above, we have decided to seek stakeholders' views on applying the moratorium to the Flight-Plus aspects of the draft regulations.
- 4.55** If the moratorium was introduced, our expectation is that it would be managed and enforced by CAA. One option may be to allow micro-businesses to choose whether to take advantage of the moratorium or to protect Flight-Plus under the ATOL scheme, although how this might be effectively implemented would need careful consideration.

Q8: Do you believe that micro businesses and start ups should be exempt from the parts of the draft regulations dealing with Flight-Plus? What would the impact of the moratorium be on the micro businesses concerned?

Flight-Onlys

- 4.56** In addition to the reforms to include Flight-Plus holidays in ATOL, the draft regulations also make some changes to the regulations dealing with the sale of 'Flight-Only' seats under the ATOL scheme.
- 4.57** In the RAT consultation, three options were proposed for reform of this aspect of the ATOL scheme; i) excluding all Flight-Only sales from ATOL; ii) including all Flight-Only sales and iii) keeping the status quo whereby some sales are included, where a ticket is not received within 24 hours of payment for it. None of the three options received overwhelming support. A few favoured the status quo with support for the other options split. A number of airline and travel industry organisations favoured excluding all Flight-Only sales whilst others, such as regulators, consumer groups and other travel industry organisations supported including all Flight-Only sales. Although it was not an option consulted on, some respondents were in favour of including all flights in ATOL protection, including those sold directly by airlines.
- 4.58** In light of the above and subsequent discussions with stakeholders we have decided not to significantly alter the scope of Flight-Only sales that come under the ATOL scheme. However, two changes in this area are proposed that we are seeking views on.
- 4.59** The Trustees of the Air Travel Trust (ATT) are considering changes to their payment policy, to be made if the draft regulations are implemented, which would help achieve the Government's objectives for the ATOL scheme. These are outlined in the CAA's annex to this consultation (see

annex F). In relation to Flight-Only bookings, the Trustees are considering changing the provision for consumers who book a Flight-Only so that they continue to benefit from repatriation in the event of the ATOL holder's insolvency, but could no longer claim a refund for advance bookings.

- 4.60 The rationale for this change, outlined in annex F, demonstrates that it should help achieve improved clarity, as the distinction between an ATOL protected holiday (either Flight-Plus or package) and other travel arrangements (e.g. a holiday provided by a company acting as the agent for the consumer which includes an ATOL Flight-Only) would be clearer.
- 4.61 The proposed change would result in a reduction in ATOL protection for some consumers, but the impact will be limited by a number of factors as explained in annex F.

Q9: Do you agree with the proposal to amend ATOL protection for Flight-Only sales in this way and the rationale behind it?

- 4.62 Secondly, the draft regulations do make some changes that affect which Flight-Only sales are exempted from the scheme. The main one is replacing the current 'ticket provider' exemption from having to have an ATOL licence with one that exempts businesses that sell Flight-Onlys as a 'right to fly provider'.
- 4.63 A right to fly provider is a business that gives a consumer who has paid for a Flight-Only ticket either information or a document that gives the consumer the right to travel on a specified flight without any further payment. The information or document has to be handed over as soon as payment is made, or sent immediately by email or other electronic means (see definitions in regulation 4 and regulation 16). This better reflects how flight-only tickets are sold today; the ticket provider exemption allows 24 hours between a consumer paying for a valid ticket and it being received, which is not in step with how tickets are sold today using the internet.
- 4.64 A further change is that to qualify for the exemption, right to fly providers must sell Flight-Only tickets on flights provided by 'specified operators' (i.e. airlines). To be a specified operator, an airline must confirm to the CAA that it issues to right to fly providers the documents or information that allow consumers to travel without further payment (see definitions in regulation 4 and regulation 20). The intention is to address the problem where some airlines have refused to accept tickets issued by travel agents when the agent has subsequently failed.

Q 10: Do you support the 'right to fly provider' exemption as set out in the draft regulations, including the concept of a 'specified operator'? If not what changes would you propose?

IMPROVED INFORMATION FOR CONSUMERS

- 4.65** The majority of RAT consultation responses supported the proposal for an ATOL certificate to improve information for consumers. Currently, there are two ways in which ATOL licensed businesses must provide information to consumers who have purchased an ATOL protected holiday or flight:
- Consumers buying a holiday directly from an ATOL licensed business must be issued with an ATOL confirmation invoice when payment for the holiday is made.
 - When a consumer buys an ATOL protected holiday or flight from an agent for an ATOL licensed business, the agent must provide the consumer with an ATOL receipt, to be followed by an ATOL confirmation invoice once that has been received from the ATOL licensed business.
- 4.66** The details that must be included in an ATOL confirmation invoice or an ATOL receipt are set out by CAA. This includes basic information such as the name of the ATOL licensed business, details of the flight and passenger's name. The documents must also include a statement which says that the consumer is entitled to ATOL protection and sets out the monies paid for the protected holiday or flight.
- 4.67** We and the CAA believe that the above arrangements do not provide consumers with sufficiently clear and prominent information about their rights under the ATOL scheme. Experience has shown that businesses may not always provide the correct, or any, document or there may be differences between a receipt and a confirmation invoice for the same holiday. Also the documents may not contain the right information. Even when they do, consumers may not recognise their significance and so not be informed fully of their rights in the event of insolvency. This is supported by the Trustees of the Air Travel Trust. In a press release in March 2011, the Trustees noted the poor standards of documentation provided to consumers in some sections of the travel trade, which had lead to considerable delays in paying claims to consumers who had been affected by the failure of an ATOL licensed business.
- 4.68** To complement the Flight-Plus reforms outlined above, in future we believe that consumers must be provided with much clearer, standardised information and documentation whenever they purchase an ATOL protected package, Flight-Plus holiday or Flight-Only.

- 4.69** This might best be done in the form of an ATOL Certificate, which over time could become a document that consumers would expect to receive on booking an ATOL protected holiday. Consumers would be aware that if they did not receive one then they should consider alternative arrangements for insolvency protection. In the unlikely event of an ATOL business becoming insolvent, the ATOL certificate should make eligibility for repatriation and refunds much clearer to consumers and the CAA. The ATOL certificate would replace the current ATOL receipt and ATOL confirmation invoice.
- 4.70** CAA has already established a working group of travel trade representatives to develop this idea with the objectives of achieving an industry standard document which is easily recognisable and verifiable while also raising consumer awareness of ATOL protection. CAA has also had discussions with consumer organisations to get their input.
- 4.71** The intention is to complete this work in autumn 2011, and for the ATOL certificate to come into use when the draft regulations come into effect, planned for January 2012 (subject to the outcome of consultation). CAA intends to consult stakeholders on the final form and content of the Certificate in Autumn 2011 once that working group has reached its preliminary conclusions.
- 4.72** The draft regulations require ATOL licensed businesses, their agents and members of an Approved Body, to provide an ATOL certificate to consumers when they purchase a protected holiday (either a package or a flight plus) or flight (see regulation 15). The regulations also set out the information to be included in the certificate, and allow the CAA to publish requirements about both its form and content (see regulation 17).
- 4.73** The regulations also propose that an ATOL certificate be provided immediately upon accepting payment (see regulation 16). For this reason an agent must be authorised to commit an ATOL licensed business (its principal) before concluding any transaction as well as being authorised to issue an ATOL certificate (see regulation 30).

Q11: How can it best be ensured that the proposed certificate is effective and proportionate, with costs kept to a minimum? Are there any practical difficulties with the proposals?

'AGENT FOR THE CONSUMER' SALES

- 4.74** When providing holiday products to customers, travel agents can act in different capacities. Traditionally and in many cases, they act as agent for the supplier, where they 'sell' holidays to customers on behalf of travel trade suppliers. However, travel agents can also sometimes act as an agent for the consumer, where they technically 'buy' the holiday on behalf of a customer. It can be very difficult for consumers to know in which of these capacities an agent is acting, but it has significant implications for the level of financial protection that is provided with the holiday.
- 4.75** As agents for the consumer are not legally 'making available' flight accommodation, they are currently not required to have an ATOL licence, or provide any other form of financial protection for holidays. This can create considerable detriment and uncertainty for consumers, as in many cases the holidays provided on an agent for the consumer basis are indistinguishable from ATOL protected holidays i.e. they can consist of the same flight, and the same hotel. Neither the small print on the documentation nor the information given in person or online before booking necessarily makes clear to the consumer that the holiday is unprotected. The consumer may have booked similar holidays in the past which were ATOL protected.
- 4.76** It is not possible to bring agent for the consumer sales within ATOL without amending primary legislation – this is considered further in Part 2 below. A number of small changes to the ATOL regulations are proposed with the aim of making a consumer more aware when they are agreeing to appoint a travel business to act as their agent. For example, (i) a business acting as an agent for the consumer is excluded from the definition of consumer (see regulation 4) together with (ii) the requirement that ATOL Certificates (see Regulation 15) are provided to the consumer. It is intended that these proposals will make it more obvious to a consumer that they have appointed an agent as they will receive their ATOL Certificate from a person other than their agent.
- 4.77** However as agents for the consumer are providing services that make up a holiday which the average consumer might expect to be ATOL protected, we believe the result may well be that consumers are misled in the absence of clear information that financial protection is not provided with the holiday. It is a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) for businesses to mislead consumers so they make a decision to buy something they otherwise may not have done, including by omitting relevant information.
- 4.78** We and the CAA propose, working with the Office of Fair Trading as necessary and the travel trade, to ensure that businesses only say they are acting as an agent for the consumer when this is in fact the case. Where businesses are acting as agents for the consumer (and so are

outside the ATOL regulations), we will be working to educate them about the risk of their communications misleading consumers and consequently breaching the CPRs. We welcome ABTA's intention to issue guidance to their members about agent for the consumer issues. We will also consider what enforcement action is appropriate in the interests of consumers. We believe that businesses choosing to meet a customer's request for a flight inclusive holiday by acting as agent for the consumer need to make certain that their customers are aware that due to the specific way that the transaction is organised, the consumer will not receive statutory financial protection. Consumers will then be able to make an informed decision whether to purchase the holiday on this basis or not and whether to purchase their own insurance.

Q12: We also welcome comments on any other aspects of the draft regulations not mentioned above, including the proposed transitional arrangements.

IMPACT ASSESSMENT

4.79 An impact assessment (IA) for the three main reforms considered in this document is at annex E. It sets out the expected benefits and costs for three reform options:

- Option 1: The reforms announced on 3 February, that is implementing Flight-Plus, steps to address consumer detriment in 'agent for the consumer' sales and introducing the ATOL certificate.
- Option 2: The same as for option 1, but with the further measure of removing all Flight-Only sales from ATOL, one of the options consulted on previously.
- Option 3: Introducing the ATOL Certificate only.

4.80 We welcome comments on any aspect of the IA, in particular the assumptions used to calculate costs and benefits.

4.81 In particular, information would be welcome on the cost of the ATOL Certificate, both the 'one off' costs that might arise from work to adjust IT and other systems in order to produce the certificate as well as the ongoing costs of distributing it to consumers. The ongoing costs will need to be set alongside potential cost savings (benefits) from not having to produce and distribute ATOL receipts and ATOL confirmation invoices.

5. Part 2: Holistic review of medium to longer term reforms

- 5.1** The reforms described in Part 1 above can be delivered under existing powers or by means of new secondary legislation.
- 5.2** Once the reforms have been implemented and the ATTF is on track for self-sustainability there is an opportunity for a wider holistic review of how the ATOL scheme operates. This might involve changes to the level of the APC and/or looking at alternative ways in which refund and repatriation obligations can be met and funded.
- 5.3** For example, there are some further reforms that could only be implemented by new primary legislation, that is a new Act of Parliament. These might involve bringing airlines and agent for the consumer transactions into the scope of the ATOL scheme. There are also a number of options for possible changes to how the ATOL scheme operates for example how repatriation and refund obligations are organised and funded, including the level of the APC.
- 5.4** A further strand relates to the EU review of the PTD. This presents an opportunity to consider more fundamental questions about the insolvency and other protections for consumers it currently requires, as well as how they might be provided. The Department for Business, Innovation and Skills (BIS) is the responsible department for the PTD and expects to be seeking stakeholder views to inform a UK position on proposals from the Commission to revise the PTD once these are published, expected to be later in 2011.
- 5.5** The Commission are also looking at options for insolvency protection in relation to all tickets sold by airlines and reviewing passengers' rights as set out in the Denied Boarding and Cancellation regulations. The Department for Transport leads on these regulations and will seek stakeholder views on any proposals which the Commission puts forward.
- 5.6** However responses to this consultation will also provide an early opportunity for stakeholders to express views on the PTD as it relates to packages including flights and on airline insolvency in particular and provide any evidence that you think might be helpful to inform EU thinking on the PTD review and airline insolvency more generally.

Primary Legislation

Introduction

- 5.7** As noted above, primary legislation would be needed to reform ATOL to include agent for the consumer sales and airlines. If this approach was taken, primary legislation would be used to broaden the regulation making powers in section 71 of the Civil Aviation Act 1982, which is the basis for the current ATOL regulations. Once this had taken place, new regulations would then be required to implement changes to the ATOL scheme. The Bill to reform airport economic regulation could provide a vehicle to make the necessary changes to the Civil Aviation Act if Government decided to go ahead with the further reforms to ATOL. This Bill is to be introduced during the second session of Parliament, which starts in May 2012 and is expected to last around a year. If the Bill receives Royal assent in early 2013, new secondary legislation to change the ATOL regulations to implement the reforms might be in place in early 2014.
- 5.8** Government has not decided whether to use primary legislation for ATOL reform, but aims to do so after considering the evidence, including that about its impacts, provided in response to this consultation.

Agent for the consumer

- 5.9** Using new primary legislation it would be possible to require all firms currently acting as agent for the consumer to protect their package holiday and Flight-Plus under the ATOL scheme. This would provide a greater level of consumer financial protection and clarity by ensuring that all package holidays by air and Flight-Plus holidays sold by or purchased through travel agents and tour operators are financially protected by the scheme.
- 5.10** Agents for the consumer might be obliged to provide alternative arrangements or refunds should a downstream supplier of a holiday component become insolvent. The Air Travel Trust Fund would provide a refund or repatriation in the event of agent insolvency.

Airline package holidays and Flight-Plus sales

The current situation

5.11 Airlines are exempt from the requirement to hold an ATOL to sell a flight on air aircraft they operate. They can currently sell flights and Flight-Plus without providing financial protection. However under the Package Travel Directive, they are required to provide financial protection for the sale of package holidays. Some airlines have decided to sell package holidays with ATOL protection through subsidiary companies, whilst others protect the holidays through private insurance arrangements or other permitted options under the PTRs. Some airlines only sell Flight-Plus without any statutory financial protection.

Bringing airlines into ATOL

5.12 Using primary legislation it would be possible to require all airline package holiday and Flight-Plus sales to be ATOL protected. This would provide complete clarity for consumers about financial protection for holidays. All package holidays by air and Flight-Plus sold in the UK would be ATOL protected.

5.13 Many responses to the RAT consultation in 2009 suggested that the current situation is inconsistent, as when selling an identical holiday, airlines are not required to provide ATOL protection, whilst travel agents and tour operators are. This created confusion for consumers and an unlevel playing field for holiday providers, as airlines did not face the costs of providing ATOL protection. Bringing airlines into ATOL would provide a more consistent approach, where each business would pay the same APC for providing ATOL financial protection.

5.14 Not all consultation responses were in favour of including airline holiday sales in ATOL. Some responses suggested that adequate protection was already available. Airlines protect their package holidays through subsidiary businesses that hold an ATOL licence or some other private insurance arrangement. There is also some financial protection available for individuals purchasing airline Flight-Plus sales, through scheduled airline failure insurance, credit card protection and voluntary repatriation arrangements. However as there is currently no standard requirement for Flight-Plus protection, it can be problematic for consumers to work out what level of protection is provided with each holiday.

5.15 We can see the issues caused by the different financial protection requirements in the market for holidays including a flight, and are carefully considering the case for including airlines in ATOL. As new primary legislation is required to do this, which would need to be followed by revised ATOL regulations, it would probably not be possible to do this for 2 or 3 years, say 2014. By that time, it is forecast that the ATTF should have paid off its deficit, or be close to doing so, paving the way for the introduction of changes to how the ATOL scheme operates and is funded.

Q 13: Should holidays sold on an 'agent for the consumer' basis be brought within ATOL? If so, what are your reasons? If not, why not?

Q14: Should airlines be included in ATOL, so that consumers receive the same protection for all Flight-Plus and flight inclusive package holidays sold in the UK? If so, what are the reasons? If not, why not?

Q15: What information do you have that would allow the Department to complete an Impact Assessment on the two options? For example how many holidays are currently purchased on an agent for the consumer basis? How many airlines might be affected, and what volume of package and Flight-Plus they sell?

Medium term options for reform of the ATOL scheme

- 5.16** The immediate priorities of the three reforms proposed are to improve clarity for consumers and to restore the ATTF to financial self-sustainability. CAA believes that the second of these priorities should be achieved within 3 years of the reforms' introduction, although the precise timing depends on the number and cost of future travel company failures and income to the fund. Once this has been achieved, with the current deficit paid off and Government guarantee removed, the door is open to consider alternatives for how refunds and repatriation obligations under the ATOL scheme could be further reformed and simplified.
- 5.17** The CAA has said that it intends to review the level of the APC and ATOL funding arrangements when it is clear that the Fund is on course to pay off its deficit. The CAA will begin discussing this with stakeholders later in 2011, and expect to conduct a formal consultation on proposals in the first half of 2012.
- 5.18** In advance of that, we believe it would be useful for stakeholders to consider some of the issues in relation to this subject. The views given can inform CAA's development of its more detailed consultation.
- 5.19** Under the current ATOL scheme, all refund and repatriation costs are met from the ATTF. The Fund's main income is the per booking APC supplemented from the proceeds of bonds when some travel companies become insolvent. An insurance policy is also in place to provide additional liquidity in the (highly unlikely) event of the failure of a major travel company.
- 5.20** One exception to the above is the refund costs arising from travel company failures that are met by credit card providers. Under the Consumer Credit Act 1975, credit card providers are liable to consumers

to refund the cost of goods or services bought using a credit card but not provided. This includes package holidays where the tour operator has failed (subject to certain conditions). The ATT has agreements with most major credit card providers that set out how refund costs will be split between the two parties.

5.21 CAA organise the processing and repayment of refund claims as well as repatriation of stranded consumers on behalf of the Fund. This approach has generally worked well, particularly in relation to repatriating stranded consumers. But a number of issues have been raised about possible areas for change. These include:

- Processing claims for refunds for large failures has often proved difficult and time consuming for CAA, largely because of the need to ensure that only claims that are legitimate calls on the ATTF are paid. For some failures, this has led to long delays in consumers receiving refunds.
- Some travel trade stakeholders have questioned the governance arrangements of the ATTF, arguing that there should be more direct involvement of the travel trade given that they are the main source of the Fund's income.
- The current arrangements have exposed both the Government and the CAA to considerable financial risk which both are keen to reduce and/or eliminate.
- The flat rate of APC does not differentiate between businesses that place a high risk or a low risk to the Fund (although the discretionary bonding requirements go some way to address this).
- The sometime overlapping layers of protection between the ATOL scheme, credit card protection and travel industry protection arrangements.
- The Government's better regulation initiatives point to more involvement from industry in general - and the travel trade specifically in this case - in regulating and managing its affairs.

5.22 CAA's thinking about the scope and content of the review is at an early stage. The above list does not contain all the possible issues that the review may look at and it may be that some issues noted above will not be considered further as CAA develops its work. But we would welcome views on how the current ATOL arrangements might be reformed while at the same time maintaining the current level of protection for consumers.

5.23 One possible approach might be to consider moving towards the options available in the Package Travel Regulations to provide insolvency protection to non-air packages, such as insurance, bonding or the use of trust funds. There may also be models from other EU countries that

could be considered, adapted as appropriate to UK circumstances. For example, a number of EU countries have funds such as the ATTF to meet refund and repatriation costs which are organised by the travel trade without involvement from government. It may be possible to envisage responsibility for dealing with refunds and perhaps repatriation transferred to another entity such as an insurance company or travel trade body. CAA's role might be changed to focus on areas where it can add most value or that alternative approaches could not adequately deliver.

- 5.24** The above approaches are illustrative only, and no decisions about potential reform options have yet been taken. But clearly, any changes away from the current arrangements would of course need very careful consideration, for example to ensure that consumer protection was fully maintained, funding flows were matched to responsibilities and that the allocation of risks was appropriate and equitable. Some options might require changes to secondary or primary legislation to implement.

Q16: What are your views on the arguments for or against reforming the way refunds and repatriations are currently organised? What advantages and what barriers do you envisage?

Q17: Do you have any views on what options might be considered in more depth by the Department and CAA?

EU initiatives: Package Travel Directive review and airline insolvency protection

- 5.25** There are two initiatives at EU level that are relevant to ATOL reform: the review of the Package Travel Directive and airline insolvency protection.

The Package Travel Directive

- 5.26** The European Commission have been in the process of reviewing the Directive since 2007, including in late 2009 a consultation to seek stakeholder views on potential areas for reform.
- 5.27** The driver behind the Commission's work appear similar to those behind our plans for ATOL reform, that is that the market for holidays has changed very significantly since the Directive came into force in the early 1990s, for example from the emergence of low cost carriers as well as

the internet becoming a key distribution approach. The legal framework is not well suited to regulating the current market for package holidays, in particular the emergence of 'dynamic packages' has meant it may not be clear what holidays the Directive applies to.

- 5.28** Most recently, the Commission have identified a number of options for reform. These include: No change; a move to self-regulation; and various levels of legislative change. Some of the options include proposals similar to those for ATOL reform, for example by bringing dynamic packages and the broad equivalent of Flight-Plus under the Directive. Changes to the PTD's other provisions, for example about information requirements and the package organiser's liabilities are also proposed.
- 5.29** The Commission is expected to publish proposals to revise the Directive in the last quarter of 2011. The Department for Business Innovation and Skills (BIS) is responsible for the Directive in the UK government and expects to consult UK stakeholders to establish a negotiating position towards the Directive once it has been published. This may provide an opportunity for a more fundamental review of its provisions including those relating to insolvency protection. If the Commission do propose revisions to the Directive, it is expected that it would be negotiated in the course of 2012. Directives typically have a two year period for Member States to transpose them into national law, which suggests a revised PTD would not actually take effect until 2014 at the earliest.
- 5.30** When proposals to revise the PTD are made, we may need to consider any implications they have for the option of using primary legislation to further reform ATOL as discussed above.

Airline insolvency protection

- 5.31** The other EU level initiative concerns whether to introduce insolvency protection for all flights, including those that aren't sold as part of a package. This would go further than the current ATOL scheme and the proposed reforms which only protect some Flight-Only tickets bought from 3rd parties. Two studies have been carried out for the Commission on this subject. The Department understands that the Commission may publish proposals on this issue the same time as any proposal to revise the PTD. This reflects the close links between these two issues. If proposals for new regulation are published, the Department expects to seek stakeholders' views on them in order to inform a UK position. This may need to be coordinated with any consultation BIS may undertake in response to proposals to review the PTD.

Q18: We would welcome any preliminary views and evidence on PTD reform as it relates to packages involving air travel, and on EU thinking on airline insolvency.

6. Next steps / implementation

- 6.1** This consultation will end on 15 September 2011. After having read and considered the consultation responses, our current intention is to make an announcement on the way forward with the reforms and on possible primary legislation in late autumn 2011. A summary of consultation responses will also be published then.
- 6.2** The proposed date for new regulations implementing the Flight-Plus reforms to come into force is 1 January 2012, in time for the peak booking season of January and February for summer 2012 holidays.

7. Annexes

A: List of questions

B: List of consultees

C: Government consultation principles

D: Draft regulations - Please see separate document

E: Impact assessment - Please see separate document

F: Changes required to ATOL policies and principles - Please see separate document

G: Summary of responses to 2009 consultation - Please see separate document

Annex A - List of questions

Q1: Do you agree with the proposed definition of a Flight-Plus as outlined above and set out in regulation 22? If not, what alternatives do you propose and why?

Q2: The Department's view is that a short time period between requesting elements of a Flight-Plus is most appropriate. Given this, do you agree with the proposed time period in which elements of a Flight-Plus must be requested by a consumer? If not, what alternative do you propose and why?

Q3: Do you support the proposed definition of a Flight-Plus arranger in regulation 23? If not, what are your reasons? What alternatives might be proposed?

Q4: Do you agree with the proposed liabilities of Flight-Plus arrangers in regulation 24 to 29 to provide alternative or refunds in the event of the insolvency of a supplier? Do you agree with the proposed changes to the ATT payment policy outlined in paragraph 4.28 and annex F? If not, what are your reasons and what alternatives could you suggest?

Q5: Do you agree with the proposals to create an Approved Body as a new option for small businesses to meet the requirements of the ATOL scheme?

Q6: Do you agree that there should be a written agency agreement between principal and agent ATOL businesses covering the points in regulation 30? If not why not, and what reasons do you have?

Q7: Do you agree with the offences and penalties created? If not what alternatives do you propose? Are prison sentences appropriate for any breach of the ATOL regulations? Do you agree with the due diligence defence?

Q8: Do you believe that micro businesses and start ups should be exempt from the parts of the draft regulations dealing with Flight-Plus? What would the impact of the moratorium be on the micro businesses concerned?

Q9: Do you agree with the proposal to amend ATOL protection for Flight-Only sales in this way and the rationale behind it?

Q 10: Do you support the 'right to fly provider' exemption as set out in the draft regulations, including the concept of a 'specified operator'? If not what changes would you propose?

Q11: How can it best be ensured that the proposed certificate is effective and proportionate, with costs kept to a minimum? Are there any practical difficulties with the proposals?

Q12: We also welcome comments on any other aspects of the draft regulations not mentioned above, including the proposed transitional arrangements.

Q 13: Should holidays sold on an 'agent for the consumer' basis be brought within ATOL? If so, what are your reasons? If not, why not?

Q14: Should airlines be included in ATOL, so that consumers receive the same protection for all Flight-Plus and flight inclusive package holidays sold in the UK? If so, what are the reasons? If not, why not?

Q15: What information do you have that would allow the Department to complete an Impact Assessment on the two options? For example how many holidays are currently purchased on an agent for the consumer basis? How many airlines might be affected, and what volume of package and Flight-Plus they sell?

Q16: What are your views on the arguments for or against reforming the way refunds and repatriations are currently organised? What advantages and what barriers do you envisage?

Q17: Do you have any views on what options might be considered in more depth by the Department and CAA?

Q18: We would welcome any preliminary views and evidence on PTD reform as it relates to packages involving air travel, and on EU thinking on airline insolvency.

Annex B: List of consultees

Aberdeen Airport Consultative Committee
Advantage Travel Centres
Air New Zealand Holidays Ltd
BAA
Air Transport Insolvency Protection Advisory Committee
Air Travel Trust (ATT)
Association of ATOL Companies
Association of British Insurers
Association of British Travel Agents (ABTA)
Association of Independent Tour Operators
Board of Airline Representatives UK (BAR-UK)
Birmingham International Airport Consultative Committee
British Air Transport Association
British Airways
British Midland
Carnival UK
Citizen's Advice Bureau
Civil Aviation Authority
Consumer Council for Northern Ireland
Consumer Focus
EasyJet
European Low Fares Airline Association (ELFAA)
European Technology and Travel Services Association (ETTSA)
Eventia (Regulation Committee)
Expedia
Flightbookers Limited
Flybe
Holidaytravelwatch
Honeyguide Wildlife Holidays
Lastminute.com
Leicestershire Aero Club Limited
London Luton Airports Operation Ltd (LLAOL)
Lowcost holidays
Manchester Airports Group
Monarch Airlines
Northern Ireland Assembly & Executive
Office of Fair Trading (OFT)
On The Beach Ltd
Passenger Shipping Association
Ryanair
Scottish Government
Scottish Passenger Agents' Association
The Local Authorities Co-ordinators of Regulatory Services (LACORS)

Thomas Cook
Trading Standards Institute
Transport Select Committee
Travel Republic
Travel Trust Association
Travelling Naturalist
Travelsupermarket.com
TUI Travel
UK Cards Association
Virgin Atlantic Airways Ltd
Welsh Assembly Government
Which
White Hart Associates

Responses are also welcome from any stakeholder affected by the proposed reforms

Annex C: Government consultation criteria

Criterion 1 When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.