

ATOL REFORM: FURTHER INFORMATION ON THE POTENTIAL IMPACT ON ATOL HOLDERS AND APPLICANTS

1. The DfT's consultation document outlines the reasons why financial protection in the UK holiday market needs reform and the steps proposed to achieve it. The main concepts are described in detail in that document and are not repeated here.
2. This Annex provides further information on how the Government's policies on consumer protection for holidays and in particular its proposal to amend the ATOL Regulations to require Flight-Plus to be licensed will impact on CAA's policies and procedures and are likely to affect the Air Travel Trust's payment policies.
3. The inclusion of Flight-Plus into ATOL will broaden the scope of the scheme to include sales previously conducted without the need to comply with the ATOL Regulations or the specific requirements set down by the CAA. The arrangement of a Flight-Plus will become 'licensable' business, in the same way that flight inclusive package sales and certain Flight-Only sales are licensable now. Some ATOL holders will need to seek additional authorisation from the CAA (by applying to vary the authorisation on their licence) to undertake these sales, and other companies currently operating without an ATOL will need to consider whether they need to apply for a licence or comply through membership of an Approved Body (see paragraph 4.29 of the DfT consultation document).
4. The CAA is happy to answer questions from individual travel companies about how they may be affected by the reform proposals and to provide individual advice on our licensing processes. Current ATOL holders should speak to their normal contact at CAA. Other companies should call 020 7453 6361 for advice.
5. More details on the timetable for implementation will be made available when the outcome of the consultation is known.

Financial Criteria

6. One consideration the CAA makes when assessing an application for a new ATOL, or a variation to add business to an existing ATOL, is whether the ATOL applicant has sufficient financial resources to meet its obligations, including those to consumers.
7. The degree of scrutiny of an applicant's finances generally increases with the size of ATOL (measured in turnover and passenger numbers) for which it applies and/or where CAA's analysis of the business and financial risks of the company indicate a potential higher likelihood of failure. The aim is that the CAA's application process and assessments be proportionate to the risk posed by the company, and consider the potential impact of that company's failure, in terms of consumer detriment and cost to the ATT.
8. A company which intends to operate on a small scale (less than 500 ATOL protected consumers annually) may apply for a Small Business ATOL (SBA). Others will require a Standard ATOL and will need to provide latest audited accounts and a company budget and, dependent on the scale of the application made, more detailed financial and risk management information to support the application. Further details of the CAA's Financial Assessment Criteria can be found on the CAA website.

9. If the Government decides to implement the draft ATOL Regulations, the CAA will revise its published criteria to include reference to Flight-Plus. As the proposed ATOL Regulations place obligations on the Flight-Plus company to protect its consumers from the insolvency of its suppliers, the CAA intends to assess Flight-Plus on the same basis as package holidays when conducting its financial assessments.
10. However, when making its assessment, the CAA will take into account measures taken by the company to mitigate risk. If a company can clearly demonstrate that all risks associated with supplier failure in respect of all elements of Flight-Plus arrangements have been successfully mitigated, the CAA will reflect this in its assessment.

Bonding Criteria

11. An ATOL holder is normally required to provide a bond for the first four years it holds an ATOL. There are exceptional circumstances, such as where an ATOL holder obtains a high percentage of its flights or accommodation from one supplier or where the CAA has concerns over its ability to fulfil its obligations to consumers, where the CAA may require bonding for a longer period. The implementation of new ATOL Regulations will not impact on these existing requirements, set out in detail on the CAA website.
12. Nevertheless, in response to concern expressed by Industry about the availability of bonding since the obligation to pay the APC was introduced (by the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007) in 2008, the CAA has introduced alternative approaches to bonding. These alternatives include placing cash in a designated ATOL holder's account over which the Trustees of the ATT have a first fixed charge (termed a "Charged Deposit Account") and trust accounts. In both cases the CAA has developed approved templates which must form the basis of any agreed approach. These alternatives have previously only been considered for ATOL holders that have held an ATOL for four years or more. In the light of experience gained since these alternatives were introduced the CAA will, in future, consider requests from all ATOL applicants, on a case-by-case basis.

Other changes under consideration

13. In addition to the changes consequential on the proposed amended ATOL Regulations, the CAA is also considering the following aspects of its policies and procedures in the event that Government decides to implement new ATOL Regulations.

Standard Terms

14. All ATOL holders are required to comply with the Standard Terms of their ATOL. These are published in the CAA's Official Record Series 3 (available on the CAA website). The CAA will revise these terms to ensure alignment with the revised ATOL Regulations.
15. A new Standard Term will be needed to implement the requirement in the draft ATOL Regulations for agency agreements to be in place between principals and agents. The Regulations states that these agreements must comply with the requirements set down by the CAA in its Standard Terms. These are likely to require clear statements on the basis of the appointment, the duties of the agent and the specific responsibilities related to booking arrangements.

16. Amendments to, and new, Standard Terms are also being considered with the objective of clarifying (for consumers, trade and CAA as regulator) the nature of transactions that occur between different parties, including agents, other ATOL holders and consumers.
17. The failure of an ATOL holder, Goldtrail Travel Ltd in 2010 highlighted issues concerning corporate governance, compliance and financial management. The CAA has undertaken a 'lessons learned' exercise whose findings are also likely to result in amended Standard Terms.
18. The CAA will be taking this work forward with industry over the summer, and will conduct a formal consultation on new proposals and the consequential amendments required to the Standard Terms when the results of the DfT's consultation is known.

Exemptions

19. The CAA has the power to exempt companies (or types of business activity) from the need to obtain an ATOL, and does so where it is satisfied that it would not undermine the Government's aims for and purpose of consumer protection envisaged in the ATOL Regulations. Details of current exemptions are published in the CAA's Official Record Series 3. If the ATOL Regulations are amended, these exemptions will need to be revised where appropriate. The CAA is also considering removing or amending exemptions to recognise changes in sales techniques and other commercial practices since the exemptions came into force. Furthermore CAA is currently considering introducing a new class exemption set out below. There may be further proposals subject to Government policy and stakeholder feedback.

Possible 'Credit' Sale Exemption

20. A number of travel companies make sales to corporate entities. In many cases these sales are made on credit, with no money taken by the travel company until after the business trip is concluded. The primary policy objective of the ATOL scheme is to protect consumers and to ensure that holidaymakers are not impacted by the failure of their holiday company. These credit sales are business transactions and the payment mechanism means there is no money at risk. The CAA is proposing that an exemption be applied. The obligations set out in the Package Travel Regulations mean that this exemption could not be extended to package sales, but this exemption could allow for otherwise licensable Flight-Only sales and Flight-Plus to be excluded.
21. Stakeholder feedback regarding existing and proposed exemptions is welcome. It may also be necessary for the CAA to exempt micro businesses, in line with new Government policy (see Paragraph 4.47 in the DfT's Consultation Document).

Failure Management

22. The CAA manages ATOL holder failures on behalf of the Air Travel Trust (ATT), and adheres to the ATT Payment Policy when making repatriation arrangements and refunding passengers affected by the failure of an ATOL Holder. The ATT Payment Policy is published on the CAA's website. The CAA has been advised by the Trustees of the ATT that they are currently reviewing the terms of their Payment Policy to establish whether any changes should be made as a consequence of Government's policy objectives reflected in the draft ATOL Regulations which are being consulted upon.

Proposed Changes to the ATT Payment Policy

23. The Trustees are considering two areas for amendment to their payment policy:
- Limit the financial protection for ATOL Flight-Only bookings to repatriation; and
 - Provide a contribution to ATOL holders who have obtained flights (which are incorporated in a holiday along with another component) on a retail basis from an ATOL holder who has failed.

Limiting financial protection for Flight-Only bookings

24. A consumer makes a Flight-Only booking when they purchase a flight from an ATOL holder that is not part of a package or a Flight-Plus when the ATOL holder needed an ATOL to make that sale.
25. The Trustees propose that consumers who purchase an ATOL Flight-Only will continue to receive repatriation protection under the ATOL scheme.
26. However, the Trustees are considering changing the provisions made for consumers who have booked a Flight-Only with an ATOL holder (i.e. not part of a package or Flight-Plus) so that they would no longer be entitled to a refund for a booking with a departure date after the ATOL holder's failure
27. The CAA anticipates that this proposed change to the ATT payment policy could result in more consumers making fully protected holiday arrangements; travel companies would be encouraged to outline the benefits of the more comprehensive protection which would result from purchasing more than one travel service at the same time.
28. The CAA has also advised the Trustees that this measure may help address concerns around the practice of companies acting as the agent for the consumer and the subsequent potential for confusion. When disclosing information about financial protection provisions, companies acting as the agent for the consumer will need to make it clear that the consumer will only be covered by the ATOL scheme for repatriation. This will highlight the difference between holidays booked on an agent for consumer basis and those sold as Flight-Plus or packages, supporting the objective for consumer clarity.
29. The CAA has advised the Trustees that the number of consumers affected by this change will be limited by a number of factors:
- i. First, based on information provided by consumers in recent ATOL holder failures the overwhelming majority of Flight-Only bookings in those failures were sold with other travel services and would, if the ATOL Regulations are reformed, have benefitted from complete financial protection (as they will be Flight-Plus).
 - ii. Secondly, most airline tickets sold on their own are already outside the ATOL scheme (either sold direct by airlines or in circumstances where a ticket is issued at the point of sale) and are likely to continue to be so if the ATOL Regulations are amended.
 - iii. Thirdly, in the case of sales of Flight-Onlys on scheduled airlines under ATOL, present arrangements between ATOL holders and airlines means that the time between the consumer paying the ATOL holder and the consumer receiving the document required to complete their journey as planned is typically only a few

weeks or in some cases only days. The number of these consumers whose money is at risk at any given time is therefore limited.

Providing contributions to ATOL holders

30. There are two ways in which an ATOL holder can source a flight from another ATOL holder; either on an ‘ATOL to ATOL’ basis, where the acquiring ATOL holder becomes the principal in the sale, or on a retail basis, where the flight supplying ATOL holder remains the principal.
31. If the ATOL Regulations are reformed, where the flight is obtained on a retail basis and included in a holiday sale, the ATT would receive two APC payments for the booking, one from each ATOL holder. (See provisions of the Civil Aviation Authority (Contributions to the Air Travel Trust) Regulations 2007).
32. In the event of the failure of the flight supplying ATOL holder prior to the consumer’s departure, the Flight-Plus ATOL holder will be liable to provide and pay for an alternative arrangement for their consumers. (Note: The Trustees intend to continue providing and pay for repatriation if failure occurs after departure to minimise the detriment caused to consumers abroad and to allow for the efficient management of the failure of the flight supplying ATOL holder).
33. The Trustees are considering providing contributions towards the cost to these ATOL holders of meeting the obligation to make alternative arrangements. This policy will require a review of the terms of the Air Travel Trust Deed.
34. Such contribution should reduce the likelihood of systemic ATOL holder failures arising from the failure of a large ATOL holder specialising in wholesale seat distribution (“ATOL wholesaler”), to the overall benefit of consumers (and the ATT). It may also encourage travel companies to arrange their business affairs to remain within the ATOL scheme, to the benefit of consumers.
35. The CAA has produced the following table to demonstrate the above proposal and how it compares with the existing arrangements:

Scenario	APC Payment	Responsibility for consumer in the event that ATOL Holder A becomes insolvent:	
		Currently	Post Reform
Holiday sold by ATOL Holder B where the flight has been obtained from ATOL Holder A:	APC Payment made by:		
on an ATOL to ATOL basis	ATOL Holder B (ATT receives £2.50)	ATOL Holder B	ATOL Holder B
on a retail basis	ATOL Holder A and ATOL Holder B (ATT receives £5)	ATOL Scheme (ATT Payment)	ATOL Holder B (contribution available from ATT)

36. Many travel companies currently buy from ATOL wholesalers on a retail basis in the knowledge that the ATT will meet the cost to the consumer in the event of the ATOL wholesaler's failure. The ATOL wholesaler bears the entire risk of selling the seat commitments it has entered into and of the impact of the failure of the airlines that provide it with the seat capacity. There is little, if any, onus at present on the travel company who obtains the seats to manage the risks, which are ultimately being underwritten by industry which makes APC payments into the ATT.
37. If the proposal to provide a contribution to ATOL holders is pursued, the Trustees will consider appropriate models for determining how the level of any contribution should be calculated. Initial discussions suggest that this may be based on a percentage of the original flight cost, the cost of the original flight booking minus an excess or administrative fee, or an amount linked to the licensed authorisation of the failed flight supplier. The Trustees welcome comments on these different methods or alternative proposals.
38. Independent of any Government reforms, the CAA has taken additional steps when licensing ATOL holders to manage the risks that arise from ATOL wholesalers, in particular where those commitments are on overseas airlines for which the CAA has limited financial information. These changes arise from a lessons learned exercise following the failure of ATOL holder Goldtrail Ltd in July 2010.
39. The Trustees will be considering these proposals in detail before deciding whether to make these amendments. In doing so, they will seek views from stakeholders and will work closely with the Air Travel Insolvency Protection Advisory Committee (ATIPAC) to assess the impact of these changes.

Next Steps

40. The changes outlined above will be developed further once the outcome of the DfT's consultation is known and Government policy is refined. Comments on the details included in this annex should be submitted to the DfT with consultation responses.