

Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation

Summary of Responses to Part 4: Reforming the Scope of the Air Travel Organisers' Licensing (ATOL) scheme

1. Introduction

1.1 In December 2009, the then Government published the consultation "*Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation*" seeking views on proposals to modernise the Civil Aviation Authority's regulatory framework.

1.2 The consultation document was published on the Department's website. Over 300 stakeholders were notified of the consultation publication. Of this, over 200 were sent hard copies with a further 29 sent to general aviation organisations at their request. The consultation ran for 13 weeks, closing on 18 March 2010.

1.3 This document provides a summary of responses to Part 4, which sought views on reforming the scope of the Air Travel Organisers' Licensing (ATOL) Scheme. The Department is grateful to all those organisations that responded to this Part, a list of which is at the end of this document.

2. Executive Summary - Travel company failures: financial protection for air passengers

2.1 The '*Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation*' proposed five measures for reforming the scope of the ATOL scheme. There was general agreement on the need to reform ATOL in order to improve clarity for consumers. However, there was a divergence of views on how this might best be achieved.

2.2 For measure 1, incorporating "flight plus" into ATOL, there was support for the proposal from the travel industry, passenger representative groups and regulators, although many pointed out practical difficulties in implementing it. This was also the case for measure 2, bringing airline sales of "flight plus" products under ATOL. However, airline respondents were less in favour of both measures, suggesting that there was already sufficient protection or that adding "click through" sales would be complex and technically difficult.

2.3 None of the 3 options proposed as the basis for regulating "flight only" sales by 3rd parties 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 flights whilst others, such as regulators, consumer groups and other travel industry organisations supported including all flights. Although it was not an option consulted on, some respondents were in favour of including all flights, including airlines' direct sales, in the ATOL scheme.

2.4 The majority of those responding supported measure 4, the issue of an "ATOL certificate" for passengers, although concerns about costs and burdens on

industry were raised. These concerns were shared by the significant minority, mainly airlines and travel industry organisations, who did not support the proposal.

2.5 Measure 5 proposed allowing existing ATOL licence holders to protect their non-air packages through the Air Travel Trust. This was supported by the majority of those responding.

3. Reforming the Scope of the Air Travel Organisers' Licensing (ATOL) scheme- *Travel company failures: financial protection of air passengers*

Measure 1: closing perceived loopholes by creating "flight plus" protection (NB this measure does not apply to airlines)

Q13.1 Should the legislation be clarified so that 'flight plus' products fall unequivocally within the scope of the ATOL scheme?

3.1 The majority agreed that the legislation needs clarification and that the current position was not acceptable. But there was a divergence of views on how best this might be achieved.

3.2 Passenger representative groups, regulators and many in the travel industry, although not airlines, shared the view that including 'flight plus' products unequivocally within the scope of the ATOL scheme was only an acceptable temporary arrangement. The majority wanted to see further work undertaken to ensure that all airline tickets holders were protected, including those buying flights directly from airlines.

"we would be supportive of the 'flight plus' scheme as a temporary measure but that support is only given on the basis that full protection is introduced in a speedy manner to minimise competitive imbalance. We are also strongly of the view that if any airline is not included in the total protection scheme then business travel agents (Travel Management Companies) should, from an anti-competitive perspective, also be excluded from the total protection scheme."

"...would agree to 'flight plus' being an acceptable temporary alternative provided that legislation is planned to ultimately protect all customers financially"

"we believe that this would enhance clarity for customers as well as helping to create a level playing field between businesses competing for the same customers."

3.3 A number of airlines and their representative organisations did not agree that "flight plus" products should be brought under the ATOL umbrella. They responded by suggesting that there was either already sufficient protection or that the proposals were unachievable:

"Whilst we would support some clarification of the legislation in respect of "flight plus" products, we believe this is best achieved by explaining more clearly to passengers the scope of ATOL coverage via the CAA website, so that they are able to make informed decisions about their purchases"

3.4 A number of those responding from the travel industry suggested that any measures should be risk based to ensure proportionality and competition.

"If these proposals are taken forward we urge Government and the CAA to look again at three specific issues:

- *the cost and relevance of ATOL bonding for well-established companies;*
- *where liabilities lie in ATOL to ATOL sales; and*
- *where risk lies when we as agents buy flights up front from low cost airlines.*

We wholly accept the need to respond to the risks facing consumers, but the measures taken to do so need to be proportionate and accurately reflect the risk of failure. Without satisfactory changes to the proposed reforms to the consumer protection regime companieswill be financially weakened, and possibly forced out of the market by the larger tour operator businesses. This would have an extremely unfortunate and adverse impact on consumer choice, since it would narrow the range of options in the marketplace and so limit competition”

“... estimates that 600 ABTA Members will be brought within the scope of the ATOL scheme for the first time as a result of this proposal and this is a significant concession by those members in support of the government’s objective for greater clarity and protection for consumers.the contractual and trading flexibility that they currently enjoy should not be affected by their future licensing by the CAA.

Unless there is clarity and certainty about the ATOL holder’s ability to trade as an agent there will be significantly increased cost burdens for these ATOL holders as a result of materially increased contractual and tax liabilities.

The trading models that such members operate may present a markedly different risk to the ATTF than those operated by existing ATOL holders who are largely package organisers.the security and protection requirements imposed on all ATOL holders should properly reflect the risk to the ATTF.

In particular, the trading and payment terms between ATOL holders, their customers and the service suppliers present significantly different risk profiles depending upon the trading model operated by individual ATOL holders. ... the CAA must ensure that the financial criteria, bonding and security requirements and the level of any ATOL Protection Contribution should accurately reflect the actual risk to the ATTF.”

Q13.2 How should we determine which products sold with flights are merely ancillary and should not therefore turn a ‘flight only’ sale into ‘flight plus’ holiday with financial protection? Please give examples.

3.5 There was no consensus amongst those who responded on how to determine which products sold with flights are merely ancillary and should not therefore turn a ‘flight only’ sale into ‘flight plus’ holiday with financial protection. Some suggested that further consultation or debate be undertaken to establish a list whilst others set out lists of things to cover.

“would like to see a definition which captures all air holidays where the consumer could reasonably believe that one entity is responsible for the provision of the services booked.”

“ the additional element which turns a ‘flight only’ sale into a ‘flight plus’ sale should not be merely ancillary (car parking at airport for example) and proposes that once a flight plus sale has been made, all elements booked for use after the flight has departed should be covered”

“We believe that the “plus” elements are more easily defined than those “ancillary” products. We see the “plus” elements as:

- lodging*
- car hire*

Anything outside of this is probably ancillary to the primary travel products and may not be a significant part of the travel costs i.e. travel insurance, car parking, etc. Please note we don't think the cost of the ancillary product should be the test as to whether or not it is the “plus” element”

3.6 An alternative suggestion was not to have a list, but for a direct relationship test be applied relating to the purpose of purchasing the flight as a means for deciding whether or not any product was ancillary:

“If a consumer purchase a 24 hour flight to Italy with tickets to a rugby match, then it is reasonably clear that the ancillary item the rugby match is the whole “purpose” of travelling to Italy. Similarly taking the children of a day to Lapland to see Santa Claus or taking a flight to Paris for the day might be similar.It also seems to me that the test should include a direct relationship between the provider of the ancillary product and the flight provider either financial, agency, advertisement, invitation to treat etc. So if I buy my flight from a provider and go book my ancillary product elsewhere then that might meet the purpose test but fail on the relationship test”

Q13.3 Should there be a cut-off time period after which the purchase of further significant holiday elements would no longer create a ‘flight plus’ or package holiday? If so, how long should this period be? Please explain your answer.

3.7 Approximately a third of those responding to this question thought that there should not be any cut off time period:

“... does not believe there should be a cut-off time period as suggested. We believe that purchase of further ancillary products could be made up to the date of departure and should remain a Flights-Plus holiday combination. The time limit is very important and if the same company sold a flight plus any other service/product at any time up to the day of departure then this would create a flight plus product. ”

3.8 Among the two thirds who thought that there should be a cut-off time period, suggestions ranged widely. The primary reason why respondents wanted to see a cut-off time period was to ensure that connections could more easily be made between component parts.

“support an overriding criteria that where products relate to the same trip i.e. same time period away they should be protected no matter when they were purchased. However, consideration needs to be given as to whether this is

operationally possible and unless this was clearly evidenced, then a time limit of 48 hours should apply.”

Q13.4 Should holidays which are sold by companies purporting to act not as a tour operator but as an “agent for the consumer” be brought into ATOL protection?

3.9 The vast majority of those responding to the question thought that all holidays sold should be brought within ATOL protection.

“whilst we believe that there are some uncertainties in relation to the law of agency, we suspect that an easily exploitable loophole would be created if companies were able to avoid liability by claiming that they were acting as agent for the consumers. As such, we believe that sales of this type should be subject to the same protection arrangements as travel arrangements sold by Principles.”

“anyone acting as an agent in a professional capacity should be brought into ATOL protection in this context. Creating exemptions opens up potential loopholes.”

3.10 Where respondents did not agree it was because they suggested that credit cards and insurance should provide sufficient cover.

“there is also the question raised whether financial protection is needed at all, given that credit cards and travel insurance can now protect most travellers, and are the only protection as you state on direct flight bookings”

3.11 However, it was also suggested that this might not always be the case because liability issues could arise under section 75 of the Consumer Credit Act 1974 if there was no clear debtor – creditor – supplier relationship.

“Yes. For clarity and consistency, if the elements are “brought together” from a common commercial business, these should be ATOL protected. The CAA may wish to bear in mind that if there is no Debtor-Creditor-Supplier agreement then s75 would not apply.”

Q13.5 What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

3.12 Very few respondents answered this question. The majority of those who did so said either that the figures were unrealistic, unknown or did not take account of where the risk lay:

“the CAA should review its financial criteria and the security provision requirements for the different business models that will be brought within the ATOL scheme if the “flight plus” model is adopted. The risk profile of new ATOL holders, and the risk to the Air Travel Trust Fund, may be significantly different to existing ATOL holders.”

3.13 A number of respondents suggested that the premium used for the calculation of bonding costs was too low, and drew attention to the difficulty of obtaining bonds in the current market.

“The premium of 2.5% for bond costs is unrealistic in the current climate.”

“there are now only two insurance companies that write new ATOL bonds and only four insurance companies that write all travel bonds. The annual premium cost range is between 4% and 12.5% depending on the type of company, its balance sheet and management experience. That is if a bond is actually available. There is a serious question as to whether bonds are available.”

3.14 A small number of respondents suggested that some of the figures used in the Impact Assessment may be too low.

“.....agrees that approximately 5 million passengers will be affected by these proposals, but feels the figure given for the number of businesses affected is low. The Committee believes that it is likely that more than 100 businesses will be affected by these proposals.”

“It is unclear as to how the data in the Impact Assessment (Measure1) have been collected and collated. Whilst the CAA believes that just 50-100 medium-large-size firms would require ATOLs, it has not ventured to estimate how many smaller agents would also require one. Yet, and they are in their thousands, it is quite possible that most would, so imposing far more costs on the industry than is suggested by the Impact Assessment.”

3.15 A few respondents suggested that additional costs incurred through the use of credit cards, and the associated transfer of risk, should be reflected in the Impact Assessment.

“A cost which is being increasingly borne by travel companies, and which is not reflected in the Impact Assessment, is the imposition of bonding and other security requirements by credit and debit card merchant acquirers.”

Measure 2: airline sales of “flight-plus” products

Q13.6 Would it be beneficial to consumers to bring package holidays sold by airlines under the ATOL umbrella, rather than providing financial protection through the current alternatives?

3.16 The majority of those responding to the question agreed with the proposal that consumers would be afforded greater protection and clarity if all “flight plus” holidays sold or offered in the UK were financially protected.

“We would support the extension of protection to include airline sales of flight plus arrangements. We believe that the alternative is an unnecessarily complex two tier system of protection. We believe that it has always been an anomaly that airlines cannot protect their packages through the ATOL scheme, and as such, it has to be in the interests of consumer clarity that a single comprehensible system of financial protection for air travellers exists. For the avoidance of doubt, we believe that protection should extend to all flight plus arrangements sold by airlines, not merely those sold by click through or affiliate sales on line”

3.17 A number of respondents, including passenger representative groups, travel agents and operators went further and repeated a number of the points made against

Q13.1 (paras 5.1-5.4 above) wanting to see all airline tickets holders protected, including those buying flights directly from airlines.

“All airline sales should be protected, whether packaged or not”

Q13.7 Do you agree that click-through or affiliate sales (e.g. where consumers are directed from airline websites towards other holiday products) should be brought under ATOL protection?

3.18 The majority of those responding to this question agreed that click-through or affiliate sales should be brought within ATOL protection, although a number suggested that there could be complexities and difficulties in establishing linked sales and therefore some suggested caveats to their agreement.

“Yes, but only where there is common ownership, control or branding. Extending ATOL to any and every “affiliate” could bring services purchased as the result of following a hyperlink where the relationship between buyer and seller was an entirely separate contract and where payment is made to another party. It is important not to place unnecessary constraints on trade.”

“Due to the complexities pertaining to affiliate sales it is difficult to see how such sales could be brought under ATOL protection in a way that was technically seamless and transparent to the customer. Consideration would also need to be given to any privacy or data protection issues. Consumers are often unaware of the commercial relationship (if any) between the originating and any affiliate. We are concerned that including a new category of affiliate sales within the scope of ATOL protection, will simply generate more confusion for trade and consumers as to what constitutes a protected affiliate sale.”

3.19 A small number of respondents, mainly airlines, did not agree. The reasons given were again the perceived difficulties in establishing linked sales and potential liabilities arising from linking companies providing services.

“there are no grounds to extend the requirement for ATOL protection to ‘click through’ web sites which allow the consumer to purchase hotel accommodation, car hire or other related products during or after the flight purchase transaction is complete. This would impose a liability on the airline for a failure for other companies providing such services which is wholly unacceptable in circumstances where consumers would not benefit for this change in any way as they are already protected from scheduled airline failure through insurance, credit card protection schemes and voluntary repatriation agreements between airlines.”

“From a technical perspective, matching flight with a ground booking which are paid for by two separate and distinct transactions through separate sites at different times is a best very difficult and may in fact be technically impossible. Where a customer is using the internet to purchase holiday components from separate websites and for which he pays by two (or more) separate payments he is clearly not engaged in purchasing a package holiday. In the case of linked websites it seems contrary to the intention of the drafters of the legislation that some overall obligation should be placed on one or other of the web site providers – which one would the obligation be imposed upon and how would such a decision be taken.”

Q13.8 With affiliate sales, should there be a cut-off time period after which the purchase of further significant holiday elements would no longer create or be included in, a ‘flight plus’ or package holiday? (See question 13.3).

If so, how long should this period be? Please explain your answer

3.20 There was no consensus on whether there should be a cut-off time period for click-through or affiliate sales. Where respondents thought that there should be a cut-off period this ranged from 1 hour to the day before departure.

“No why should there be? Anything before the actual departure date”

“Within 1 hour of the original flight purchase. Again the logistical issues of tracking consumer bookings between flight bookings and other products will be very challenging. Keeping the window between the bookings to a relatively short period of time will be indicative of the consumer’s intention to purchase a “package” and so they should have the benefit of the ATOL bonding with that.”

Q13.9 What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

3.21 Very few respondents gave comments. The majority said that there was insufficient information to give a view. Where they felt able to comment they suggested that the costs were too low.

“The Impact Assessment does not provide enough data but I would believe given the passenger numbers of the low cost carriers and depending on the introduction of the APC this could have the greatest economic impact of any of the other measures on both the consumer and the airline industry.”

“the projected costs of such bonding [carrier] should be included in the Impact Assessment even if the CAA currently assesses that cost at £0 due to the reliance upon existing financial fitness checks”

Measure 3: ‘flight only’ sales by 3rd parties

Q13.10 Which of the 3 options should be the basis for regulating ‘flight only’ sales by 3rd parties (i.e. all parties excluding airlines):

Option A: exclude all ‘flight only’ sales from the ATOL scheme? Would this option create an unacceptable increase in consumer detriment?

Option B: include all “flight only” sales in the ATOL scheme but exempt all bona fide airline agents from paying the ATOL Protection Contribution (APC)?

Option C: retain the current arrangements?

Please explain your answer, elaborating where possible the pros and cons of the three options.

3.22 None of the 3 options received overwhelming support from respondents. A few airlines and travel industry representative organisations (approx 8) favoured Option A suggesting that it would ensure a level playing field for agents and carriers.

“the airline community has a tradition of “going above and beyond” to help repatriate travellers who have been stranded because of an airline or tour operator failure. This has involved a variety of actions from facilitating an easy transfer of tickets to operating additional flights to bring people home. There is no reason why airlines would not continue to offer this service in future, should the need arise, andis one of many airlines who is part of the Foreign Office’s Exceptional Operations workforce set up specifically to address repatriation of UK nationals due to airline or tour operator failure or any similar extreme event.”

“whilst not a perfect distinction the sale of airline seats on a flight only basis (as distinct from sales of seats as part of packages or linked arrangements) constitutes a distinct market or sub-market. Option A represents the best regulatory response to provide an efficient market in the sale of airline seats. Government must also be mindful of the European law principles of equal treatment. We see no objective justification for treating airlines and third parties differently to one another when they are competing with one another in the sale of flight seats on a stand alone basis. Airlines have been shown to be no less likely to fail than tour operators or agents and existing ATOL holders also undergo financial monitoring.”

3.23 A small number of travel industry and travel representative organisations, regulators and consumer representative organisations (approx 13) supported Option B, although often with the caveat that tickets sold directly by airlines and airline agents should be included.

“Option B provides a little more clarity for both consumer and third parties. But the agent exemption would potentially reintroduce confusion and opportunities for non-compliance. It would be simpler and safer to require all such sales to be treated as straightforward ATOL transactions (ie, with APC payable in all cases)”

“Option B, though we would question why there needs to be an exemption for bona fide airline agents (or why airlines should be covered by a different scheme). That will simply cause confusion in the consumers minds. Ultimately we think that all flight only sales (sold through the airlines direct channel or through travel agents) should be covered by the ATOL scheme. That is where the biggest risk currently lies and to have different schemes covering these risks will simply continue to cause confusion for consumers.”

3.24 There was limited support for Option C from a small number of airline operators, airlines and travel industry representative organisations (approx 5)

suggesting that existing regulation and consumer protection through insurance and credit provided sufficient protection.

“including flight only sales is seen as undue market interference and is wholly disproportionate. Passengers booking flights would be paying a levy for which they would receive no benefit. In essence they would be cross-subsidising passengers travelling on carriers that may default A recent Association of European Airline survey reveals 0.01% of passengers on bankrupt carriers did not recover their costs following the bankruptcy of airlines during 2008 and 2009. Passengers are well informed and able to make choices and accept some risks as with any purchase in any other sector. Compulsory insurance removes freedom of choice. Passengers who want to be fully protected opt for a package travel but know it comes at a price – a price that other passengers may not be ready to pay. Passengers know that there is already a level of protection available on the market via payment via credit card, IATA Bank Settlement Plan protection.

Current EU regulation enables member states licensing authorities to assess their airlines financial situation and suspend airline operations in case of financial problems. Member states should enforce existing regulation (namely, Regulation 1008/2008) before considering implementation of a wholly different and costly alternative.”

Q13.11 Option B: do you agree that the ‘ticket provider’ category is no longer fit for purpose in terms of clarity and consumer protection?

If so, should the ‘ticket provider’ category be removed entirely (and therefore, all third party sales of flights would require ATOL protection). Or, should it be removed in conjunction with the introduction of an ‘airline agent’ category, so that sales by ‘airline agents’ would not be required to make an APC payment but could carry the ATOL brand in return for alternative safeguards provided by the airline and its agents?

3.25 A small number of respondents addressed this question. Some of these had already suggested that Option B was not an appropriate option and that the term would therefore be redundant. However, even amongst these respondents there was a recognition that the term ‘ticket provider’ was confusing and should be removed if Option B was taken forward.

“...recognises that the ticket provider category causes difficulties for consumers industry and should be revised if Option B or C are adopted. It should be clear that, when a consumer purchases an airline ticket with the travel company acting as a mere conduit for immediate funds transfer, or where the consumer pays for the ticket after the ticket has been received, the consumer’s rights are against the airline in all respects including in respect of airline failure. If Option B is adopted the financial criteria and security provision requirements imposed on ATOL holders should properly reflect the risks to the consumer and to the ATTF This might be by way of recognition of the contractual arrangements between third parties and carriers or recognition of the payment policies between the third parties and the

carriers and taking account of any pipeline money protection arrangements.”

“for the sake of transparency for the consumer and also to ensure that there is no loss of consumer protection, all third party sales of flights should require ATOL protection, so the ticket provider category should be removed”

3.26 There was no agreement about whether if the category ‘ticket provider’ were removed, it should be replaced with the category ‘airline agent’. Some respondents agreed, some disagreed.

Q13.12 How would you define an “airline agent”?

3.27 Respondents had not agreed about whether the category ‘ticket provider’ should be replaced with the category ‘airline agent’ and therefore, not surprisingly, the views on how to define the term ‘airline agent’ ranged from;

“We would not agree with the proposal to create the concept of an airline agent, and as such, believe that there is no need for a definition to be formulated.”

to suggested wording for a definition such as:

“an agent who has an agreement with the relevant airline whereby the airline agrees to honour all tickets issued by the agent”

Q13.13 What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

3.28 Very few respondents answered this question. The majority of those who did so said either that that costs were underestimated or that there was not enough information for them to form a view.

“.....is concerned that costs involved under Option B in obtaining bonding might well be understated and that the availability of such bonds might not be sufficient to allow the expansion of the ATOL scheme in this way.”

“The significant cost benefit to the existing ATOL holders identified by the Department in respect of Option A argues for the inclusion of an equality of treatment factor to be taken into account. If existing ATOL holders stand to benefit by such an amount it is inequitable that they should currently be carrying that cost where carriers are not. Taking the figures and assumptions used as read, and taking account of the obvious benefit in terms of consumer clarity, it is very clear that Option A should be the preferred option. The costs in relation to Option B to the travel industry are understated”

“it is not possible to provide any objective view to this Impact Assessment due to the unsubstantiated estimates used.”

Measure 4 – a new “ATOL Certificate” for passengers

Q13.14 What are your views on the proposal that all consumers should receive an ATOL Certificate when booking an ATOL-protected flight or holiday?

3.29 The majority of respondents answering this question supported the issue of certificates as a way of improving clarity and raising awareness. However, a number raised issues of costs or were unclear about the potential increased burdens of providing documentation and what it would cover and thought that if a certificate was to be launched the Government should run an extensive publicity campaign.

“...an ATOL certificate is necessary, as it will provide a clear message to the consumer that their holiday arrangements are protected. However, there are several points to consider:

i. At what point is the certificate issued (relates to the cut-off period for making protected holiday arrangements and at the point payment is made)?

ii. Where part of the overall holiday arrangements are cancelled is an amended certificate issued?

iii. What should appear on the certificate?

iv. Should unprotected arrangements be indicated on the certificate?

v. If there is a financial failure before the certificate is issued is financial protection affected and will it make it more difficult for a consumer to make a claim?

.... a certificate should be issued at the point a ‘flight plus’ protected sale is made, but that the certificate is subject to amendment and can be reissued following the cancellation of an arrangement or an addition to the arrangements made within the defined timescale ... consumers must be made aware of the significance and importance of the certificate and must be accustomed to ensuring they are provided with the certificate and it contains the necessary information.”

“The use of a standardised ATOL certificate with clear information about a customer’s entitlement would significantly improve consumers understanding of the ATOL scheme and should allow the CAA to further improve its provision of assistance in the event of a failure and simplify claims handling.”

3.30 A significant minority of airlines and travel industry organisations did not agree with the proposal to issue ATOL certificates suggesting that it would be open to abuse, be difficult to administer and have environmental and financial costs.

“A new ATOL certificate would entail yet another piece of paper to go in with all documentation, which would have an environmental and financial cost and we would not support this. The consumer may well neglect to take this certificate with him/her. Is the certificate required to show proof of cover at airports in the event of a failure? The ATOL symbol on confirmation and accounts should be sufficient. A European Health Insurance card approach would not work as such cards give an annual blanket cover which would not apply to booking tickets as the cover would be different if booked via an agent or direct with an airline.”

“we do not believe that the ATOL Certificate would replace existing documentary requirements, and as such, would constitute an additional cost of production and distribution”

Q13.15 What are your views on the costs and benefits of this

Measure as set out in the Impact Assessment?

3.31 Very few respondents answered this question. A small number thought that the costs and benefits presented were about right

“There would be some one-off costs to implement production of the certificate but these are unlikely to be material provided the certificate can be part of an existing document rather than requiring a completely new piece of documentation.”

3.32 The majority said either that cost estimates were too low, or unclear or that there was not enough information for them to form a view.

“the Impact Assessment is nebulous on detail but I cannot imagine that SME’s will welcome an additional administrative burden.”

“There would be some resource and enforcement implications to creating and maintaining a Certification scheme.”

Measure 5 – Non-air packages

Q13.16 Would the proposal to allow existing ATOL-licence holders to protect their non-air package holidays through the Air Travel Trust bring benefits to these companies (through simplifying their procedures) without creating undue risk to the Air Travel Trust itself?

3.33 The majority of respondents answering this question agreed with the proposal that allowing existing ATOL-licence holders to protect their non-air package holidays through the Air Travel Trust would bring benefits to these companies (through simplifying their procedures) without creating undue risk to the Air Travel Trust itself. However, some wanted such a move to be voluntary, whilst others said that this should happen only if sufficient bonding arrangements were in place.

“...allowing existing ATOL holders to protect their non-flight holiday arrangements through ATOL is beneficial to them, removing duplicated administrative costs. There is no additional risk to the Air Travel Trust as these are already ATOL holders and the CAA and ATT Trustees are aware of their financial status and have the necessary bonding, insurance policy etc in place to protect the Fund. Although it is not specified in the consultation document it would seem reasonable to give the Trustees power to refuse entry to the scheme if they felt it was inappropriate for a business to join. The option to protect non-flight holiday arrangements should be voluntary, allowing businesses that can see advantages to protecting their non-air business through ATOL to do so, but giving the flexibility to the Trustees to refuse to accept a business into the scheme.”

“support the proposal to extend the scope of ATOLs to non-air packages... to offer protection to consumers but to keep costs low and bureaucracy simple by being able to include a small number of non-air package holidays within the ATOL.”

“Yes – so long as the costs for bonding through ATOL are less than the existing market cost of the protection currently in place. It would also help simplify things for consumers, as they'll be more familiar with the ATOL brand and will know where to go to make a claim.”

Q13.17 What are the implications of this proposal for those organisations which currently provide financial protection for non-air package holidays sold by ATOL-licence holders?

3.34 The majority of respondents who answered this question were not sure what the implications would be, and had some concerns about the market for bonds and the ability of the travel market to obtain bonding.

“Whilst supporting this proposal in principle, ... concerned about its future impact on the security mechanisms used by package organisers and other travel companies at present. This concern follows the experience of the introduction of the ATOL Protection Contribution in 2008. The APC was introduced at a rate of £1 and largely took the place of bonding for the purposes of security provision. The rate of APC has since increased to £2.50. Since the introduction of the APC, the market in bonds for travel companies has reduced significantly and travel companies have found it increasingly difficult to obtain bonding required for compliance with the ATOL regulations, the Package Travel Regulations or the requirements of other bodies. ...concerns that the removal of the non-licensable package business from the bonding regime will further reduce the bonding available to the market generally.”

Q13.18 What are your views on the costs and benefits of this Measure as set out in the Impact Assessment?

3.35 Very few respondents answered this question. Respondents either suggested that they would need more information to form a view, or suggested that it would depend on how the proposal was implemented.

3.36 A few respondents made suggestions for additional costs or benefits to be included or thought that some of the costs were not quite right.

“There is no doubt that, for an ATOL holding tour operator which also makes available a certain number of non-licensable and accommodation only packages, the administrative expense of having to bond these arrangements separately entails unnecessary expense and time expenditure. We estimate that the average cost per passenger for those companies bonded ...is £4.50 including the administration time taken to complete an additional bonding application. However this hides big variations. For instance a licence holder carrying 29 non licensable passengers per annum out of 443 total carryings actually pays £34.93 per passenger. At the other end of the spectrum a licence holder carrying 18,500 non licensable passengers only pays £0.312 per person.”

“We note that the Impact Assessment contains no commentary on the costs and benefits. We would suggest that the costs involved in the change would be marginal. It is our understanding that the numbers of failures of companies selling non air packages are relatively small. We also note that in the event of

a failure of a company undertaking both ATOL and non air package business, administration of the failure would need to be undertaken in 2 parts, by the CAA and the relevant Approved Body. This would create significant administrative inconvenience in handling the failure. Furthermore, currently it is not possible for bond or other monies to be shared in the event of a failure. This could mean that there was a cost to the Air Travel Trust whilst at the same time not all of an existing bond would be used. We believe that this is illogical, and adds another monetary benefit to bringing together the 2 arrangements.”

Annex A: List of those who responded to Part 4: Reforming the Scope of the Air Travel Organisers' Licensing (ATOL) scheme

Aberdeen Airport Consultative Committee
Advantage
Air New Zealand Holidays Ltd
Air Transport Users Council
Air Travel Insolvency Protection Advisory
Air Travel Trust
Association of ATOL Companies
Association of British Travel Agents (ABTA)
Association of Independent Tour Operators
BAA
BAR UK Ltd
Birmingham International Airport Consultative Committee
British Airways
CAA
Carnival UK
Citizen's Advice Bureau
Eventia
Expedia
Flightbookers Ltd
General Consumer Council of Northern Ireland
Holiday TravelWatch
Honeyguide Wildlife Holidays
Leicestershire Aero Club Limited
Local Authority Coordinators of Regulatory Services (LACORS)
London Luton Airport Operations Ltd (LLAOL)
Manchester Airports Group
Office of Fair Trading (OFT)
On the Beach Ltd
Passenger Shipping Association
Ryanair
Scottish Passenger Agent's Association
The Travelling Naturalist
The UK Cards Association
Thomas Cook
Trading Standards Institute
Travel Trust Association
TUI Travel PLC
Virgin
WHICH
White Hart Associates LLP

The Department for Transport also received a response to the consultation questions in Part 4 from 8 individuals.