



Department
for Transport

Review of Package Travel Directive and ATOL Implementation and Funding Arrangements: Call for Evidence

May 2013

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Introduction

This Call for Evidence is part of the Government's programme of reform of Air Travel Organisers' Licensing (ATOL). The key objectives are to put the financial protection arrangements for the travel industry on a robust basis; to deregulate and have the industry take more responsibility for protecting its own customers' money; and to reduce the Government's financial exposure. The Government may decide either to countenance radical changes or to adapt current arrangements. This document is a key opportunity for stakeholders to make their case as to what direction reform should take.

We welcome industry's commitment to the effective implementation of the 'Flight-Plus' regime¹, including the introduction of ATOL Certificates, and the work the Civil Aviation Authority (CAA) has been doing to improve risk-based pricing and create cost-effective compliance models for small and medium businesses, such as Accredited Bodies.

We are conscious that this has been a period of significant change for tour operators and travel agents selling flight-based holidays. The European Commission's proposal for amendments to the Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (Package Travel Directive), due later this year, is expected to bring further change (although these are unlikely to be implemented in UK law until 2016 at the earliest). The proposals are likely to set, at the very least, the minimum scope for future ATOL legislation in the UK or alternative arrangements for protecting pre-payments and for providing repatriation in the event of insolvency.

In order to minimise potential disruptive changes to legislation, as well as to ensure consistency between them, the Government will seek to ensure that further changes arising from the domestic reform programme are, as far as possible, aligned with the EU reform process. For this reason we do not expect to consult on any new regulations to reform the ATOL scheme, including extension of the ATOL scheme to holidays sold on an 'agent for the consumer'² basis and holidays sold by airlines, until the likely scope of the changes to the Package Travel Directive are known, unless there is a significant delay in publication of the proposals.

¹ Essentially, this is a holiday outside of the UK formed when a consumer requests to book a flight and accommodation, car hire or other tourist services within a day of each other. It resembles a package holiday but does not fall within the legal definition of 'package'. The full definition can be found in the legislation at: <http://www.legislation.gov.uk/ukxi/2012/1017/contents/made>

² When providing holiday products to customers, travel agents can act in different capacities. Traditionally and in many cases, they act as an 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,

This Call for Evidence is genuinely open as to how the objectives might be achieved. We are not making any recommendations at this stage. We are starting this evidence-gathering process so that it can inform our position for the EU negotiation process for any proposals to amend the Package Travel Directive. It is also so that we can carefully consider transitional arrangements and implementation timetables if the evidence suggests a need for more radical changes to the funding of consumer protection arrangements.

In the meantime we will continue to take any action necessary to ensure the current regime remains financially self-sustaining and as transparent as possible for consumers.

Annex 1 and Annex 2 provide more details about the current organisation and the history of the ATOL scheme. Annex 3 provides more detail on the ATOL reform programme.

The Call for Evidence

The Call for Evidence invites views and evidence on potential approaches the Government believes should be considered in reviewing the current scheme. It does not include specific proposals; we want to hear the evidence-based views of all those with an interest in ATOL. This includes the travel industry as well as other stakeholders such as financial institutions, advisors, consumers and consumer organisations. If the evidence suggests that changes would produce a better, more cost-effective way for industry to meet the refund and repatriation objectives of the Package Travel Directive and the ATOL scheme, the Government will develop such options and consult on them. We are willing to look at radical changes, including those that require new legislation where there is a strong justification for it.

The Call for Evidence is structured as follows:

Section 1 - Review Principles

Section 2 - The Current Regime

Section 3 - Possible Approaches to Financial Protection

We have included a series of questions designed to encourage responses to the Call for Evidence but we also welcome more general comments on the issues considered. This document has been sent to relevant organisations for which we have contact details, including representative organisations that have been asked to disseminate the document to their members, but we welcome contributions from others. Annex 4 is a list of the questions. Annex 5 is a list of consultees.

where they technically 'buy' the holiday on behalf of the customer. These holidays are currently outside the scope of the ATOL scheme.

How to Respond

The call for evidence will run from 23rd May until 15th August. Please ensure that your response reaches us before the closing date. If you would like further copies of this document, it can be found at (web address) or you can contact tom.barrett@dft.gsi.gov.uk if you would like alternative formats (Braille, audio CD, etc).

Please send responses to:

ATOL Reform Call for Evidence

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex 5. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this call for evidence, 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.

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.

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.

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.

1. Review Principles

- 1.1** In conducting this review we will be guided by a number of key principles that we will use to examine the current arrangements and, if necessary, develop future options.

Consumer clarity and scope of protection

- 1.2** The Government's consumer policy seeks to achieve a balance between the rights and needs of consumers and the obligations placed on businesses so that markets can operate fairly and efficiently. In general this means:
- explicit contractual or statutory rights for consumers;
 - the prohibition of unfair trading practices;
 - and requirements that ensure consumers are provided with adequate and accurate information so that they are able to make properly informed choices.

Reducing Government financial exposure

- 1.3** An important principle for Government is that the cost of insolvency protection provided through the ATOL scheme should be borne fully by the travel industry and holidaymakers (i.e. those that benefit from it). There should be no, or minimal, exposure for the general taxpayer through potential calls on Government finances in the event of major collapses.

Minimising costs to business

- 1.4** The impact on the travel trade from any possible future approach must be clearly understood. The aim will be to have costs that are no higher than is necessary to achieve the objectives. In developing options we will consider the cost implications of future options on different sizes of business and business models. It will also be important to ensure that any future options do not create perverse incentives or give rise to any material distortions in competition between travel businesses. Any changes should be designed to minimise transition costs where possible.

Simplifying regulation

- 1.5** The Government is committed to reviewing regulation. We are seeking to simplify and avoid regulation where possible. This Call for Evidence will help us meet this requirement for the regulations implementing the

financial protection elements of the Package Travel Directive and the ATOL scheme. Insolvency protection is based in regulation at present and it is difficult to see how this could in future change to a system that does not include a significant element of regulation, particularly as this protection is a requirement of EU law and likely to remain so. However, we are committed to effective UK implementation of EU law without 'gold-plating' (i.e. going beyond the requirements of EU legislation).

Policy should be proportionate, targeted, risk based and deliverable

- 1.6** Where customers' money is exposed, action should be proportionate to that risk. Policy interventions should seek to incentivise behaviour that reduces financial exposure. This is consistent with current CAA policy on Accredited Bodies and the use of escrow and trust accounts.
- 1.7** New ways of performing these functions must be deliverable. Potential constraints on deliverability will be assessed, such as the predicted availability and cost of financial products, legal issues and an adverse reaction from consumers.

Interactions between principles

- 1.8** There will be trade-offs between how different approaches might deliver the principles noted above. For example, seeking to reduce financial exposure to Government may well lead to increased costs to the travel trade. Some options may affect, for example, online travel agents in different ways to large vertically integrated tour operators. One objective of this Call for Evidence is to identify where these differing impacts arise.

2. Current Regime

The Scope of EU Legislation and UK Implementation of EU Legislation

- 2.1** The current regime for implementation of the Package Travel Directive in the UK involves a separate approach for holidays including a flight to those that do not include a flight. There is also consumer credit legislation that provides consumers with financial protection. This section considers the potential to simplify the regulatory regime and seeks views on the potential costs and benefits of such simplification.
- 2.2** Almost 20 years after the creation of the ATOL scheme, the European Union passed the Package Travel Directive. This Directive includes a range of consumer protections for all package holidays sold in the EU. These include information requirements, liability for services (e.g. sub-standard hotels) and reimbursement of sums paid or repatriation in the case of a travel organiser going bankrupt. The Package Travel, Package Holidays and Package Tours Regulations 1992 (the Package Travel Regulations) implement the Package Travel Directive in the UK.
- 2.3** Holding an ATOL licence under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 is recognised as evidence that the tour operator meets the Package Travel Directive's insolvency protection requirements.
- 2.4** There have been major changes in the way holidays are bought and sold since the Package Travel Directive was implemented. Low cost airlines and on-line travel agents have facilitated both an increase in independent travel and greater choice for consumers, but at the same time led to issues with the definition of a package. Tour operators and agents may arrange holidays that consumers think are the same as a package holiday but that do not necessarily meet the current legal definition under the Package Travel Directive and, therefore, may not be protected. The European Commission is aware of this and is currently considering proposals both to improve consumer clarity and to extend the Package Travel Directive to cover these types of 'dynamic packages'.
- 2.5** The ATOL Regulations require financial protection for some flight-only sales, package holidays including a flight and 'Flight-Plus' holidays. The aim is to ensure that arrangements that look like a holiday from the consumer's perspective have the same level of financial protection. A certificate is issued for all package and 'Flight-Plus' holidays and flights protected by ATOL confirming the level of protection offered. For non-

flight package holidays protected by other means, no certificate is issued but businesses are required to provide information on the arrangements in place to meet the insolvency requirements for consumers in advance of any agreement.

- 2.6** The current ATOL scheme does not apply to airlines (although the Civil Aviation Act 2012 allows holidays sold by airlines to be included in the ATOL scheme through future ATOL regulations). That said, under the Package Travel Directive, airlines are required to provide financial protection for the sale of package holidays. In practice, many airlines have decided to sell package holidays with ATOL protection through subsidiary companies, while others protect their holidays through the other approaches permitted under the Package Travel Regulations.
- 2.7** In the event of a business failure, the financial protection and repatriation arrangements for package holidays not covered by ATOL are different from those that are. The Department for Transport leads on ATOL policy and the Civil Aviation Authority manages the ATOL scheme including licensing ATOL holders, ensuring they comply with the terms of their licences, managing the ATT, managing failures and enforcing any breaches of the ATOL Regulations.
- 2.8** The Department for Business, Innovation and Skills (BIS) has lead responsibility for Government policy on the Package Travel Directive. BIS therefore leads on the policy that provides for the means by which organisers of non-air packages can meet their obligations under the Package Travel Regulations and the Package Travel Directive in respect of insolvency.
- 2.9** Several responses received by the 2011 consultation on ATOL reform supported the proposal to allow non-air packages sold by ATOL licensed businesses to be protected by the ATOL scheme, as a way of reducing burdens on business. Some responses also expressed the view that the ATOL scheme and the Package Travel protections could be better coordinated with one Government department being responsible for both.

Questions on the Current Regime:

Q1: How has the existence of different financial protection regimes for holidays with a flight and for other Package Travel Regulation arrangements affected your business? Can you estimate the cost impact? What changes, if any, would you like to see and why?

Q2: Should entry to the package holiday industry be controlled, as at present for flight-inclusive holidays, through a licensing scheme, or would other sorts of arrangements be preferable? If the latter, how might those arrangements work?

Overlapping Layers of Protection

2.10 Currently companies selling holidays may be required to hold bonds or pay to protect their consumers through a number of overlapping protection regimes:

- ATOL requirements include per passenger payments plus cash protection measures for new entrant and higher risk companies.
- Under Section 75 of the Consumer Credit Act 1974, issuers of credit cards may be jointly and severally liable for the performance of contracts where the cash price exceeds £100, for example where the consumer does not receive the goods or service paid for.
- Companies may also be required to provide bonds and other protections by approved bonding bodies such as ABTA, or put in place other permitted arrangements to protect holidays that fall outside the ATOL scheme.
- Additionally, consumers may also buy travel insurance, which may in part duplicate protection they already receive through one of the other arrangements above.

2.11 The CAA has arrangements in place with ABTA that seek to avoid duplicating bonding requirements and confirm where financial obligations reside in the event of a failure. The CAA has similar arrangements in place with the credit card industry, intended to preserve choice in the industry by reducing cash security demanded by merchant acquirers, under which:

- The ATOL scheme's reserve fund, the Air Travel Trust (ATT), pays all repatriation costs, to avoid any delays in repatriations while costs are allocated between the ATT and the card industry.
- For refunds, the ATT presently pays all claims up to a certain level and all agency sales, and passes only the rest to the card industry.

2.12 It may be possible for a future ATOL scheme to take a different stance. One option might be that all consumers who pay by credit card are passed to the card issuers for claims. The other extreme would be for the ATOL scheme to pay all valid claims. We are interested in hearing views as to the likely impact of changes to the current policy.

Questions on Overlapping Regimes:

Q3. What would be the costs and/or benefits of reducing overlapping layers of protection (i.e. ATOL requirements in addition to Section 75 of the Consumer Credit Act 1974 and/or bonding and/or travel insurance) while ensuring that there is sufficient cover for consumers?

Q4. How might such arrangements work in practice? How practical would they be for consumers, business and/or the credit card and insurance and bonding industries?

Other EU Member States

2.13 Annex 6 summarises approaches to the implementation of the Package Travel Directive in other Member States. For example the Germans have an insurance based model while the Dutch use an industry fund approach, both touched upon in Section 3. Once the Commission's proposals on the Package Travel Directive are published and discussed, we will be able to gain a fuller understanding of alternative approaches in other Member States.

Questions on EU Member States' Approaches:

Q5. Which elements of other EU Member State approaches to implementing the requirements of the Package Travel Directive could make the UK regime more effective, if any?

Q6. Please submit any data you might have on the costs and benefits of these alternative approaches.

3. Possible Approaches to Financial Protection

- 3.1** Section 3 is split into three parts:
- a. How should the financial protection system be organised?
 - b. Financial mechanisms for a central reserve fund, and
 - c. Financial mechanisms for company-specific protection arrangements.
- 3.2** Part one seeks views on the overall regulatory approach while the second and third parts seek detailed evidence on the approach to risk and financial instruments available.

a. How should the financial protection system be organised?

- 3.3** This part outlines three possible approaches to organising the financial protection system: market-led, industry-led or regulator-led. In principle these approaches might apply regardless of whether we keep a separate scheme for holidays including a flight or move to a single regime for all holidays as discussed in Section 2 above. We are interested in views that may combine the best elements from the different examples and would also welcome evidence on alternative ways to fund or to ensure compliance with Article 7 of the Package Travel Directive, even if not covered here. In responding it would also be helpful if, where proposed changes impact on your business, you could indicate how long you believe it might take for your business to adapt, and how transitional costs could be minimised.
- 3.4** These approaches are not mutually exclusive and the evidence may support the retention of a range of approaches. We will also need to consider how the approaches meet the principles in Section 1, in particular the objective of reducing Government exposure.

Company-specific approach

- 3.5** The Government could create a high level framework, similar in some ways to the Package Travel Regulations, which specifies a number of different ways in which industry may meet the financial protection requirements but where there is no central regulator or licensing authority. This approach would specify minimum standards for various ways in which passengers could be provided with security for refunds and repatriation, whether through insurance or bonds, segregation of customer cash or industry-created arrangements such as Approved Bodies.

- 3.6** This approach also has parallels with arrangements in Germany, where there is no requirement for licences, although the German system mandates only one method of compliance.
- 3.7** The legal obligation to comply would rest with businesses and enforcement would be principally through existing agencies such as Trading Standards.
- 3.8** The legal framework could also include information requirements. For example, the issuance of a document with the same function as an ATOL certificate confirming what a consumer is covered for and by whom, in a common branding.
- 3.9** The aim would be to give businesses greater flexibility as to how they fulfil their obligations under the Package Travel Directive, in keeping with their business models. Companies would be free to choose the approach best suited to their commercial circumstances. Where they chose to use insurance or bonding products these would be priced on a risk basis by the finance sector. It would need to be clear how repatriations would be managed.

Regulator-led approach

- 3.10** This would see a regulator continue in a central role (the CAA presently fulfils this function) in managing a special purpose insolvency protection fund to cover both refunds and repatriation. It would develop the funding mechanisms to meet appropriate objectives. These options are discussed more fully in part b below. Industry could play a greater role in the management of the fund, perhaps through a specific role in fund governance. This could be structured so that the regulator's role focused more closely on repatriations while industry protected advance payments.

Industry-led central reserve fund

- 3.11** Industry could create and manage a reserve fund similar to the approach adopted in the Netherlands to implement the Package Travel Directive, as described in Annex 6. This would see a central reserve fund entirely managed by industry representatives, or by another private sector body on behalf of industry.
- 3.12** The fund managers would have the discretion to perform the functions required by the legislation, providing they can demonstrate to both the Government and any independent scrutiny that the arrangements fulfil the requirements for refunds and repatriation in the event of the insolvency of its members. Some controls, through governance arrangements or possibly independent monitoring, could also be needed to avoid the risk of bias or competitive advantage arising in decision making processes affecting the fund.
- 3.13** As a non-Government body, the organisation may be better able to set charges for its member businesses at rates reflecting their degree of risk.

It might also offer greater flexibility to adapt the operation of the fund in response to changes in the travel sector.

- 3.14** The degree to which the protection was provided by the fund as opposed to by individual businesses would be for the industry to determine - one model for this might be an industry fund that provided back-up cover only in the event of individual members' arrangements failing, along the lines of other UK compensatory arrangements described in Annex 7.

Central fund covering repatriation only

- 3.15** An alternative high level approach would be to have a hybrid system, in which a central fund covered only repatriation services, while refunds were managed by industry, perhaps along the lines of the first or third possibilities set out above. The central fund could be managed by a regulator or industry.
- 3.16** The central fund would draw income from travel industry contributions in the same way as it does now (perhaps changed from a flat rate charge), but these would be reduced to reflect the fact that repatriation costs account for a much smaller proportion (currently around 20%) of expenditure.

Questions on approaches to financial protection:

Q7. What do you see as the relative strengths and weaknesses of the approaches outlined above, making reference to the principles in Section 1 if relevant?

Q8. Is there another way of organising the system that would be better?

Q9. Which of the approaches would be most attractive in terms of the impact on business? Are any particularly unattractive?

Where relevant, please provide data to support your response.

b. Financial mechanisms for a central reserve fund

- 3.17** The second set of questions are relevant to an outcome in which there is a central fund of some sort, whether run by a regulator or an industry body, and the issue of how it should price contributions.
- 3.18** Although the current flat rate of the ATOL Protection Contribution (APC) is simple to implement, it means that expensive holiday packages cost the same to protect as inexpensive ones and riskier travel companies pay the same levy as more stable ones. The CAA does currently impose other measures on riskier businesses such as bonds, refinancing and

blocked cash similar to escrow arrangements, so the cost to them of obtaining protection is higher. See Annex 1 for more details.

- 3.19** A funding system with the APC based on a percentage of the sale price would mean that, pro rata, expensive packages would cost more to protect than cheaper ones. Because travel businesses with different levels of risk would be paying the same levy, it might be necessary for the riskier businesses to continue to provide some additional security.
- 3.20** It is possible to envisage other ways of pricing contributions to a central fund. These could be the percentage of customer money at risk, or perhaps variation to reflect each business's financial strength or credits where customers receive vouchers for airline tickets or hotel/car hire that are valid with no further payment. For such possibilities, the potential advantage of fairness would need to be balanced against the potential complexity of practical implementation.
- 3.21** Businesses that were able to make adequate arrangements to provide for their customers in the event of their insolvency (such as a robust insurance policy, effective segregation of customer money or membership of an accredited body) could pay a reduced charge. This might address the issue of fairness between travel businesses.
- 3.22** Businesses providing membership services might be incentivised to make the most attractive offering to potential members. Commercial disciplines would be embedded more deeply into the provision of protection services.

Questions on financial mechanisms for a central reserve fund:

Q10. If there were to be a central fund, on what basis should it raise revenue from the industry?

Q11. Would the different approaches have different cost implications for your business? Where relevant, please provide data to support your response.

Q12. If a business puts no customer money at risk, perhaps through maintaining an effective trust fund, should a lower rate of contributions apply?

Q13. In general terms, what is your preference between funding mechanisms that are simple to administer against more complex mechanisms that achieve more in terms of fairness or economic efficiency?

c. Financial mechanisms for company-specific protection arrangements

- 3.23** The third set of questions is relevant to an outcome where a key component of the system is individual businesses making their own arrangements. The background information introduces some different

ways by which this can be achieved and the questions invite responses on their attractiveness or otherwise.

Insurance and Bonds

- 3.24** Where an insurance company undertakes to provide funds to deal with the consequences of a failure, the obvious advantage is that the risk will be priced on an economic basis which will be reflected in the premiums charged. This could be financially beneficial, particularly for many low-risk tour operators.
- 3.25** There are terms that are common to insurance policies but that could be problematic for the travel industry in terms of compliance with regulatory requirements for insolvency cover. They include those specifying circumstances under which the insurer will not pay out, limitations to amounts covered, availability and refusal to renew. However, such conditions could be advantageous by screening and filtering out those companies with a high risk of insolvency.
- 3.26** In order to offer enough protection for taxpayers, and possibly to be sure that insurance products provide the level of protection required under a new Package Travel Directive, policies might need to be more like bonds (see below). This means they would need to provide consumers with a firm guarantee that they will pay out. This would be irrespective of the reason for the insolvency of the premium payer and irrespective of whether the premium payer had properly disclosed whatever material information had been requested by the insurance company. This might require a higher level of diligence on the part of the insurance company in advance of accepting business than at present. The policy would also need to remain active for the duration of all the arrangements made under it even though, for example, the premium payer might not renew for their own reasons or in the event that the insurance company refused renewal.
- 3.27** Bonds provide similar financial guarantees to insurance policies in the event of a failure and could be a more acceptable alternative for the travel industry, especially when insurance policy terms are not suitable or available. We are keen to know more about the potential pros and cons, including the risks for the travel industry, in using bonds.

Segregation of customer cash

- 3.28** Some travel businesses already put customer money into a trust so that it is not available as working capital. It is available for refunds or to manage the continuation of customers' holidays should the business become insolvent.
- 3.29** Segregation of money under an escrow or trust account arrangement has a cost in that if these potentially large sums of money are segregated, working capital and therefore liquidity are effectively reduced and would, for some businesses, need to be replaced, perhaps through refinancing.

Industry organisations

- 3.30** This approach could include recognition of industry organisations similar to either the current ATOL Accredited Body or Package Travel Regulations Approved Body. Depending on how it was arranged, small businesses and new entrants might benefit from such a fund as economies of scale and pooled risk could make this lower cost.
- 3.31** It would be open to membership organisations to develop their own scheme rules, terms of membership, and ways of financing and managing insolvency protection activities. These protection arrangements would need 'run-off' cover to ensure that they have sufficient time to find alternative insurance providers if necessary.

Questions on financial mechanisms for company-specific protection arrangements:

Q14. What would be the pros and cons, including the risks, of using insurance or bonds to cover the costs of insolvencies?

Q15. How would the use of these mechanisms impact your business? What would be the costs and benefits?

Q16. What are the specific risks in relation to each of the financial mechanisms for company-specific protection arrangements? Is there any risk that cannot be covered by company-specific arrangements? If so, what is it and why can it not be covered? Who should take that risk and why?

Q17. Would it be viable to have a requirement for insurance policies to provide consumers with a firm guarantee that they will pay out, irrespective of the reason for the insolvency of the premium payer and irrespective of the information they had disclosed? What are the cost implications for policies and for the package travel insurance sector? If this is not a viable option how could these issues be addressed?

Annex 1: Current Organisation of ATOL and Funding Arrangements

ATOL protects consumers from losing advance payments for holidays including a flight and ensures that they are repatriated if their holiday company fails. The scheme has existed since the early 1970s. It is managed by the Civil Aviation Authority (CAA) and is funded by financial contributions made to the Air Travel Trust (ATT).

The Regulatory Environment

The Government's obligation under EU law is to ensure that the Package Travel Directive is properly implemented in the UK, which it has done through the Package Travel, Package Holidays and Package Tours Regulations 1992³ (Package Travel Regulations) and the Civil Aviation (Air Travel Organiser's Licensing) Regulations 2012⁴ (the ATOL Regulations).

The Package Travel Regulations require businesses selling package holidays to be able to provide evidence of protection for prepayments and repatriations in the event of its insolvency. This requirement may be met by a business by holding a licence under the ATOL Regulations.

The ATOL scheme provides comprehensive financial protection because it guarantees in the case of insolvency a full refund if the passenger is yet to travel or repatriation at no extra cost if already abroad.

Separate arrangements are currently available in respect of non-flight package activities. Such products include package travel involving sea transport (cruises), coach and rail packages and packages that do not include a transport element. The options available to organisers of non-ATOL protected arrangements are set out in the Package Travel Regulations and are: bonding via an approved bonding body; obtaining suitable insurance under which the consumer is the insured person; or organising a trust account in accordance with the Package Travel Regulations whereby monies paid in respect of packages are not released to the business until the contract has been performed. The Package Travel Regulations are enforced by local authority Trading Standards officers and the Office of Fair Trading.

³ S.I. 1992/3288

⁴ S.I. 2012/1017, as amended by the Civil Aviation (Air Travel Organisers' Licensing)(Amendment) Regulations 2012 (S.I. 2012/1134)

Currently there is a clear separation between the way air-packages are protected and the way other arrangements can be protected. The Package Travel Regulations provide for more than just financial protection against bankruptcy of the travel company. For example, they provide for additional contractual rights for the consumer and place liability for the proper delivery of the services in the package on the organiser. They also cover packages which have no transport element. Flight bookings where a ticket is not issued immediately on payment may also require ATOL protection. A certificate must then be issued confirming that this protection is in place.

The European Commission is expected to make proposals to reform the Package Travel Directive in late spring and final decisions on the UK approach will need to be taken in the context of these proposals.

Licensing by the Civil Aviation Authority

In order to sell ATOL protected holidays, a business must be licensed by the CAA. This allows the CAA to assess the risk of the business failing and take steps to ensure that adequate security is in place. It adopts a risk-based approach to these decisions and has several licensing options based on balancing the degree of risk to the ATT and consumers against running an efficient operation. For all ATOLs the CAA considers the fitness of the persons controlling the business but it may also look at other aspects of the business, depending on its size.

For the smallest businesses (selling fewer than 500 flights or holidays a year) creating the least financial exposure, there is a Small Business ATOL (SBA), which requires no financial test. This imposes a minimal administrative burden on businesses while ensuring an adequate degree of monitoring. For the largest businesses the CAA has a team of financial analysts who continually monitor the businesses and can impose requirements, such as fresh capital or a bond, if there is a particular risk. For the remaining businesses between these two extremes, there is regular financial monitoring and again licensing action might be taken if the CAA needs additional security.

The table below shows the distribution of ATOL holders by the number of flights or holidays they are licensed to sell annually.

Table 1	
Number of holidays licensed annually	Number of ATOL holders
1 – 1,000	1401
1,000 – 5,000	526
5,000 – 10,000	80
10,000 – 50,000	104
50,000 – 100,000	18
100,000 – 500,000	26
500,000 – 1,000,000	3
1,000,000 – 5,000,000	2

Over the last four years, over 100,000 people have been repatriated by the ATOL scheme and almost half a million people have received refunds. Repatriating this number has cost around £40 million and providing refunds has cost around £130 million. During this time the ATT has had an income of around £146 million.

The CAA manages most failures. Generally it increases its monitoring when it becomes concerned about a company's financial position. This means that when a tour operator does formally collapse the CAA is ready to begin repatriation immediately. Repatriation is managed by obtaining booking records from the failed company and liaising with airlines, hotels, etc.

The CAA is mindful of the need to not impose excessive regulatory burdens on businesses while still maintaining an adequate degree of oversight. There are several structures that can be used to lessen the administrative burden for both tour operators and the CAA. Abta has a Joint Administration Agreement with the CAA, by which it processes applications on behalf of the CAA and provides a guarantee, though the final responsibility rests with the CAA. Accredited Bodies provide their members with protection without direct reference to the CAA. Finally, though members of franchises receive their ATOL from the CAA, the franchisee is responsible for financing the failure of a member and ATT exposure is consequently materially reduced.

Franchises and Accredited Bodies generally manage the failures of their own members, with the CAA performing an assurance role. There are seven accredited bodies in place as of January 2013. Between them they have more than 1,200 members. They also manage their own funding under CAA supervision. They generally pay ATOL Protection Contributions (APC) to account for the possibility of their own failure.

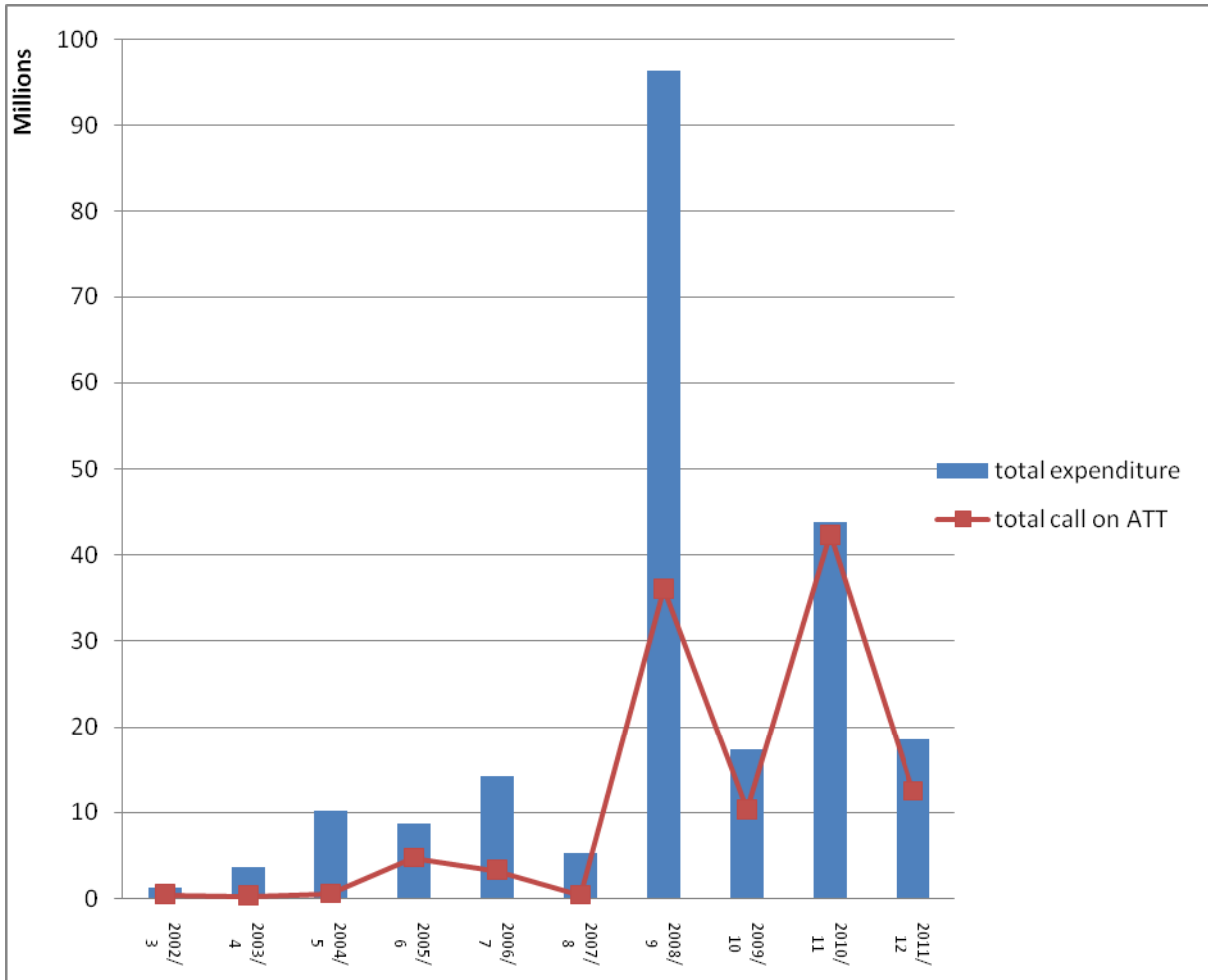
Funding the ATOL scheme

Licensed businesses make contributions to the Air Travel Trust (ATT), which then pays out when a licensed business collapses. The bulk of these contributions are through the APC, which is £2.50 per passenger per booking. The ATT also has a borrowing facility and maintains a £300m insurance policy. The concentration of potential financial exposure among the largest businesses (a business may be a group comprising several licence holders) has increased.

For many years the ATT did not have any income. It was operated as a reserved fund under the previous ATOL universal bonding model, to be called on in the event that the bonds held by businesses proved inadequate to repay or repatriate their customers. It had operated at a deficit since 1996. In 2008 a levy, the APC, currently set at £2.50 per person travelling, was introduced to replace the bonding model. This would gradually eliminate the deficit and build up a self-sustaining central fund that would repatriate and meet all valid claims for refunds by customers of failed ATOL licence holders. The intention is for the travel industry and its customers to support the ATOL fund and the full cost of their own risk, rather than taxpayers.

Failure Trends from 2002/3 to 2011/12

The chart below shows the total costs of ATOL holder failures and calls on the ATT over the last decade. During that period, the most significant losses in the tour operator sector occurred in the years 2008 to 2011, when the UK was experiencing exceptionally challenging economic conditions. There is a marked correlation between GDP growth and the number of consumers travelling overseas, with the numbers slowly increasing as the UK economy begins to recover.



During the 1990s and early 2000s there was significant growth in the outbound market as the economy grew strongly. The mergers of the largest four operators into two groups, Tui and Thomas Cook, during 2007 were the first steps in a major consolidation exercise within the industry. Initial capacity cuts that arose from these mergers have accelerated in recent years and have been a significant factor in the relatively low level of failures since then (notwithstanding the challenging trading conditions). These cuts have helped to lead to an improved alignment between supply (of holidays) and demand, which in turn has supported price stability in the sector.

There have been four significant failures in the last decade, namely XL Leisure Group ('XLLG'), Goldtrail Travel Limited ('Goldtrail'), Flight Options Limited ('Flight Options') and Holidays 4 UK Limited ('H4U'). Together these failures cost £130m, which was partly financed by £57m of bonds, in favour of the CAA, arranged as a condition of the ATOLs. The resulting total call on the ATT of £73m caused by these four failures is 66% of the total ATT expenditure of £111m over the ten year period.

All four licence holders were traditional tour operators specialising in short haul holidays to Mediterranean destinations (XLLG also owned an airline) operating a business model where significant commitments were entered into with key suppliers, in particular in relation to flight capacity.

The failure of XLLG led to the largest call ever on the ATT. There were multiple factors involved. XLLG's problems began with a highly leveraged management buyout at the end of 2006. An attempted refinancing during the summer of 2008 failed to materialise, not helped by the banking crisis building at the time. Ultimately, a cash crisis arose during the second half of 2008 as a result of a combination of weak trading, increased fuel costs, pressures to provide additional security (including to hedging and merchant acquirer providers) and the inability of the group to repatriate significant funds from certain overseas subsidiaries. The Group failed on 12 September 2008.

Goldtrail placed itself into administration on 16 July 2010. A number of issues have emerged since its demise, including compelling evidence that the company had significantly overtraded its licence. Some of these matters are the subject of ongoing litigation by the liquidators of Goldtrail against a number of parties.

The failure of Goldtrail had a knock-on effect on a number of other companies. In particular, Flight Options, which was contracted to share a number of whole plane charters with Goldtrail. Goldtrail's insolvency therefore had a major impact on Flight Options and it had to make decisions on whether to cancel entire flights or attempt to re-sell the remaining seats on the flights shared with Goldtrail. Neither option proved possible in a difficult market and Flight Options went into administration in mid-August 2010.

Finally, H4U failed in August 2011. The failure was precipitated by a highly competitive trading environment in the Turkish market, which forced down already low margins. The high level of flight commitments placed pressure on the company to sell seats at unprofitable prices.

Annex 2: History of the Development of the ATOL Scheme

Table 2		
Date	Event	Note
1960s	No statutory protection for air travellers.	Protection was provided on a voluntary basis by trade associations such as ABTA and the Tour Operators Study Group (TOSG).
1969	Government committee publishes report 'British Air Transport in the Seventies' (Edwards report).	One of its principle recommendations was to set up the Civil Aviation Authority. Functions would include licensing air travel organisers in order to provide control of entry.
1971	Civil Aviation Act 1971 ⁵ .	This Act established the Civil Aviation Authority and required travel organisers to hold a licence.
1973	The Civil Aviation (Air Travel Organisers' Licensing) Regulations 1972 come into force.	As part of the Civil Aviation Act 1971 ⁶ , the first ATOL regulations were made in 1972. They required travel organisers to hold a licence. They did not provide consumer refunds, but were intended to prevent fraud and ensure that consumers were repatriated if failures occurred.
1974	Court Line Group collapses in August.	The Group included the second biggest operator and collapsed in peak season, risking 100,000 people losing advance payments, though the bond covered repatriation. Government promises

⁵ <http://www.legislation.gov.uk/ukpga/1971/75/contents/enacted>

⁶ <http://www.legislation.gov.uk/ukpga/1971/75/contents/enacted>

		to protect all advance payments.
1975	Introduction of the Air Travel Reserve Fund Act 1975 ⁷ .	Establishes the Air Travel Reserve Fund Agency, a separate back-up fund for when liabilities exceed bond limits. Initially financed by Government loan and then levies from ATOL holders based on a % of turnover. Contributions ceased in 1977.
1983	Government commissions review of ATOL and the back-up fund from Sir Peter Lane.	The Lane Report endorsed the scheme and made some recommendations for improvement, such as an advisory body to the Secretary of State and CAA.
1986	Air Travel Reserve Fund Agency replaced by Air Travel Trust (ATT).	The Government considered that a back-up fund was an integral part of the ATOL scheme and that it should be managed by CAA. ATT is managed by Board of Trustees made up of senior CAA officials.
1991/1992	Change in bonding arrangements.	CAA takes over responsibility for holding bonds from trade bodies such as ABTA. This was following the failure of International Leisure Group in 1991. ABTA had recently experienced financial difficulties and they and other trade bodies requested CAA take over responsibility to insulate them from risk.
1992	The Package Travel, Package Holidays and Package Tour Regulations 1992 (known as the Package Travel Regulations 1992 ⁸) come into force.	These implement the EU Package Travel Directive 90/314/EEC ⁹ (PTD), part of which requires businesses selling package holidays to make arrangements for refunds and repatriations in the event of insolvency. ATOL allows sellers of flight-inclusive package holidays to meet this requirement. BIS has overall lead for the PTD.
1995	The Civil Aviation (Air Travel Organisers'	Prior to this charter seats were protected. These regulations

⁷ <http://www.legislation.gov.uk/ukpga/1975/36/contents>

⁸ <http://www.legislation.gov.uk/uksi/1992/3288/contents/made>

⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0314:en:HTML>

	Licensing) Regulations 1995 ¹⁰ come into force.	covered some additional types of 'seat only' sales. It was in response to an emerging source of consumer risk as selling of flights became liberalised. Consolidators and travel agents were also selling tickets at discounted prices not backed by the airlines. This change greatly increased the complexity of the scheme.
1997	Greater financial monitoring by CAA of ATOL holders.	Intended to prevent overtrading. CAA also required personal guarantees from many tour operator principals.
2003	Civil Aviation (ATOL) (Amendment) 2003 ¹¹ .	Amended the definition of a package to align with PTD and bring into the scheme holidays where each component is sold on a separate contract.
2003/2004	CAA consults on future financial protection for air travellers and holidaymakers, the scope of ATOL protection and the mechanisms to provide it. Advises Government in March 2004.	Recommended covering all air travellers flying from UK internationally by single protection scheme. Government decided that costs outweighed benefits but agreed to review bonding system.
2006	Civil Aviation Act 2006.	Provides power to make regulations requiring contribution to ATT.
Nov 2007	Introduction of Civil Aviation (Contribution to the Air Travel Trust) Regulations 2007 ¹² .	Requires contribution to the ATT based on number of bookings.
2008	Wholesale bonding requirements removed.	Reduces regulatory cost for businesses. DfT agrees to review the scheme in 3 years following concern from the Association of British Insurers.
1 Apr 2008	ATOL Protection Contribution (APC) comes into force.	Initial £1 charge for the ATT.
Sept 2008	XL fails.	Then third biggest tour operator. The collapse exposes confusion over who is protected by ATOL as

¹⁰ <http://www.legislation.gov.uk/ukxi/1995/1054/contents/made>

¹¹ <http://www.legislation.gov.uk/ukxi/2003/1741/contents/made>

¹² <http://www.legislation.gov.uk/ukxi/2007/2999/contents/made>

		many were on what would now be covered as Flight-Plus holidays and so then lacked protection. Government decides to repatriate everyone including unprotected airline passengers.
1 Oct 2009	APC rises to £2.50.	A string of failures due to recession, and in particular the failure of XL, increases pressure on ATT so APC raised, with the proviso that the scheme will be re-examined when back in surplus.
Oct 2009	CAA v Travel Republic Ltd.	CAA prosecuted Travel Republic for selling licensable holidays without ATOL protection. Travel Republic had been putting together dynamic packages. Court determines that a holiday is not a package if elements can be purchased separately. Makes it difficult to determine what is covered under ATOL.
Dec 2009	Regulating Air Transport consultation, including ATOL.	Proposed five measures to increase consumer clarity. These included Flight-Plus, a certificate, reforming Flight-Only sales and non-air packages. Government recommended taking forward Flight-Plus and certificate proposals.
June 2011	ATOL Reform consultation.	Following the 2009 consultation, this consultation presented detailed Flight-Plus and certificate proposals and review of medium-term changes to include 'agent for the consumer' and holidays sold by airlines.
Feb 2012	Government response to ATOL Reform consultation.	Government decided to implement Flight-Plus and certificate. For medium term changes, a fuller consultation after gaining new powers in Civil Aviation Act 2012 would be needed.
Feb 2012	Flight-Plus and ATOL Certificate Impact Assessment.	Final IA published online.
April 2012	Flight-Plus reform comes into force ¹³ .	A Flight-Plus is formed when a flight and accommodation/car hire

¹³ <http://www.legislation.gov.uk/ukxi/2012/1017/contents/made>

		are requested within a day of each other. Covers holidays sold on separate contracts and brings clarity for consumers by closing loopholes.
April 2012	Transport Select Committee report on ATOL ¹⁴ .	Generally supportive. It calls for evidence of consumer needs, argues for a fundamental review and separation of refunds/repatriations and calls for industry-financed scheme.
Aug 2012	Impact Assessment (IA) for changes to ATOL using primary legislation.	Published as part of Civil Aviation Act 2012 IAs. Covers holidays sold by airlines and agents for the consumer. More detailed analysis required for implementation via secondary legislation.
Sept 2012	Government response to Transport Select Committee report published ¹⁵ .	Takes account of concerns and notes that the Government has begun work with the CAA to develop options for future funding and organisation of ATOL.
Oct 2012	ATOL Certificate launch.	The ATOL Certificate brings clarity to consumers by providing proof of and details of coverage. Smooth launch.
Dec 2012	Civil Aviation Act 2012 ¹⁶ .	New powers to make regulations to bring into the ATOL scheme holidays sold by airlines, those sold by agents for the consumer and by facilitators.

¹⁴ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/1798/179802.htm>

¹⁵ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmtran/557/55702.htm>

¹⁶ <http://www.legislation.gov.uk/ukpga/2012/19/contents/enacted>

Annex 3: The ATOL Reform Programme

The Government has been committed to a reform of ATOL since it came to power in 2010. The reform process started with the implementation of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (ATOL Regulations) which came into force in April 2012. These Regulations brought more consumers into the scheme by extending the protection provided by ATOL to Flight-Plus (where a consumer requests to book a flight and accommodation or car hire within a two day period) and introduced the ATOL Certificate in order to improve consumer clarity about its coverage.

A second stage of reform began with the 2011 public consultation on extending the scope of the scheme to include flight-inclusive holidays sold by airlines and businesses acting as 'agents for the consumer'. The Civil Aviation Act 2012 extends the existing regulation-making powers in Section 71 of the Civil Aviation Act 1982 to allow future regulations to do so. The largest businesses selling as the agent of their customers have obtained ATOLs and are protecting that business, in anticipation of the change in the law. The Government will take the EU Package Travel Directive proposals into account when consulting on secondary legislation to reform the ATOL scheme.

Drivers for this Review

In 2008 Sir Joseph Pilling carried out a Strategic Review of the CAA. This review recommended that the CAA keep ATOL work under consideration to identify further potential efficiencies from outsourcing within the next 3 to 5 years and that the Department ask the CAA for progress reports in September 2011 and September 2013.

This process was started in the Government's 2011 ATOL reform consultation¹⁷, which invited views on the current ATOL scheme, the funding mechanisms of the Package Travel Directive and possible future changes. The consultation noted that one approach would be to consider moving towards the approaches available in the Package Travel Regulations such as insurance, bonding or the use of trust funds. The consultation also noted possible EU models including funds organised by the travel trade.

In July 2011 ABTA's response to the Government's Red Tape Challenge on legislation affecting the tourist industry recommended:

¹⁷ <https://www.gov.uk/government/consultations/atol-reform-consultation>

Streamlining Government bureaucracy on consumer protection: To reduce bureaucracy in the implementation of the Package Travel Directive, the Taskforce recommends that the different protection regimes (PTR and ATOL) should be rationalised. The lead responsibility for the protection of pre-payments and repatriation in the travel industry should be brought within one Whitehall department, most appropriately, the DfT.

This Call for Evidence also fulfils a commitment for the Government to work with the CAA to develop options for the future funding and organisation of the ATOL scheme given in its response¹⁸ to the Transport Select Committee report, 'Air Travel Organisers' Licensing reform', published on 30 April 2012¹⁹.

It is Government policy that domestic legislation implementing EU law should be reviewed every 5 years. It is also Government policy that the minimum requirements of EU Directives should not be exceeded, unless there are exceptional circumstances, justified by a cost-benefit analysis and consultation with stakeholders.

The Government's EU Guiding Principles also commit us to ensuring that UK companies are not put at a competitive disadvantage compared to EU counterparts. When implementing EU legislation, we aim to compare best practice across the EU to ensure that we are implementing legislation in the most cost-effective way.

¹⁸ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmtran/557/55702.htm>

¹⁹ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/1798/179802.htm>

Annex 4: Summary of Questions

Q1: How has the existence of different financial protection regimes for holidays with a flight and for other Package Travel Regulation arrangements affected your business? Can you estimate the cost impact? What changes, if any, would you like to see and why?

Q2: Should entry to the package holiday industry be controlled, as at present for flight-inclusive holidays, through a licensing scheme, or would other sorts of arrangements be preferable? If the latter, how might those arrangements work?

Q3. What would be the costs and/or benefits of reducing overlapping layers of protection (i.e. ATOL requirements in addition to Section 75 of the Consumer Credit Act 1974 and/or bonding and/or travel insurance) while ensuring that there is sufficient cover for consumers?

Q4. How might such arrangements work in practice? How practical would they be for consumers, business and/or the credit card and insurance and bonding industries?

Q5. Which elements of other EU Member State approaches to implementing the requirements of the Package Travel Directive could make the UK regime more effective, if any?

Q6. Please submit any data you might have on the costs and benefits of these alternative approaches.

Q7. What do you see as the relative strengths and weaknesses of the approaches outlined above [to financial protection], making reference to the principles in Section 1 if relevant?

Q8. Is there another way of organising the system that would be better?

Q9. Which of the approaches would be most attractive in terms of the impact on business? Are any particularly unattractive?

Q10. If there were to be a central fund, on what basis should it raise revenue from the industry?

Q11. Would the different approaches have different cost implications for your business? Where relevant, please provide data to support your response.

Q12. If a business puts no customer money at risk, perhaps through maintaining an effective trust fund, should a lower rate of contributions apply?

Q13. In general terms, what is your preference between funding mechanisms that are simple to administer against more complex mechanisms that achieve more in terms of fairness or economic efficiency?

Q14. What would be the pros and cons, including the risks, of using insurance or bonds to cover the costs of insolvencies?

Q15. How would the use of these mechanisms impact your business? What would be the costs and benefits?

Q16. What are the specific risks in relation to each of the financial mechanisms for company-specific protection arrangements? Is there any risk that cannot be covered by company-specific arrangements? If so, what is it and why can it not be covered? Who should take that risk and why?

Q17. Would it be viable to have a requirement for insurance policies to provide consumers with a firm guarantee that they will pay out, irrespective of the reason for the insolvency of the premium payer and irrespective of the information they had disclosed? What are the cost implications for policies and for the package travel insurance sector? If this is not a viable option how could these issues be addressed?

Annex 5: List of Consultees

Table 3
Advantage Travel Centres
Air New Zealand Holidays Ltd
Air Transport Insolvency Protection Advisory Committee
Air Travel Trust (ATT)
All Leisure Group
Association of ATOL Companies
Association of Travel Agents (ATA)
Association of Bonded Travel Organisers' Trust
Association of British Insurers
Association of British Travel Agents (ABTA)
Association of Independent Tour Operators
Aviva
Barclays
Barrhead Travel
Board of Airline Representatives UK (BAR-UK)
Bonaire Fun Travel
British Air Transport Association
British Airways
British Banking Association
British Chamber of Commerce
British Hospitality Association
British Retail Consortium
Chartered Airlines Group
Citizen's Advice Bureau
Civil Aviation Authority
Confederation of Passenger Transport
Consumer Council for Northern Ireland
Consumer Credit Trade Association
Consumer Focus
Co-operative Travel
Credit Services Association
Department for Business, Innovation and Skills
EasyJet
European Low Fares Airline Association (ELFAA)
Expedia
Federation of Small Businesses
Finance and Leasing Association
First Choice Airways
Flightbookers Limited
Flybe
Foreign & Commonwealth Office

Guild of Travel Management Companies
Hillgate Travel
Holidaytravelwatch
Honeyguide Wildlife Holidays
H.M. Treasury
International Air Transport Association
IPP Insurance
Lastminute.com
Lending Standards Board
London Chamber of Commerce and Industry
London Luton Airports Operation Ltd (LLAOL)
London Travel Watch
Lowcost Travel Group
Manchester Airports Group
Monarch Airlines
MoneySupermarket
Northern Ireland Assembly & Executive
Office of Fair Trading (OFT)
On The Beach Ltd
Passenger Shipping Association
Ryanair
Scotland Office
Scottish Government
Scottish Passenger Agents' Association
Southall Travel
The Local Authorities Co-ordinators of Regulatory Services (LACORS)
Thomas Cook
Tourism Alliance
Trading Standards Institute
Transport Select Committee
Travel & General Insurance
Travel Republic
Travel Trust Association
Travelling Naturalist
Travelsupermarket.com
TUI Travel
UK Payments
Virgin Atlantic Airways Ltd
Visit England
Welsh Assembly Government
Welsh Office
Which?
White Hart Associates

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

Annex 6: Implementation of the Package Travel Directive Requirements for Insolvency Protection in some other EU Member States

Throughout Europe, countries have put in place different arrangements to ensure that travel companies meet the Package Travel Directive (PTD) requirements. These provide useful examples of how various roles can be carried out.

The Netherlands

In the Netherlands, travel businesses meet PTD insolvency requirements by participation in one of two schemes, the SGR and GGTO (Dutch abbreviations), with the SGR covering 95% of the market. These organisations control market entry through solvency tests on companies that wish to join one of the schemes. The Dutch National Consumer Authority (NCA) enforces against non-compliant firms. Funding for refunds and repatriations is provided from the guarantees in place and through the SGR fund, which is currently in surplus of 80 million Euros. The surplus was built up through a per passenger levy, which was discontinued in 1999 once there was a sufficient amount. Consumers are fully refunded for advanced payments and repatriations and the arrangements to do so are managed by the SGR/GGTO.

Germany

In Germany, firms meet PTD insolvency requirements by buying insurance from one of four insurance companies. The insurance companies can impose additional requirements or refuse to insure companies and without insurance they cannot trade. Beyond this, there is no specific control of entry to market for travel firms, but there are local trading licensing mechanisms that do the same thing. Non-complaint firms are prevented from trading by local enforcement bodies. Funding for refunds and repatriations comes from the insurance arrangements but the amounts protected are limited by a liability cap of €110 million. If the total payouts in any one year under one of the four policies breach this limit then the money available is distributed on a pro rata basis. Refund and repatriation arrangements are managed by the four insurance companies.

Sweden

In Sweden, firms meet PTD insolvency requirements by being licensed and registered by the Legal Financial & Administrative Services Agency and by meeting their requirements in relation to bonding and guarantees. The agency sets the level of guarantee required and controls entry to the market and takes enforcement action against non-compliant firms. Funding for repatriations and refunds in the event of firms failures is provided from the guarantee that they have lodged. If liabilities exceed the amounts provided under the guarantee then consumer payouts are limited. Refund and repatriation arrangements are managed by the Travel Guarantees Board, which forms part of the Legal Financial & Administrative Services Agency.

Denmark

In Denmark, firms meet PTD insolvency requirements by compulsory participation in a Travel Guarantee Fund. This fund controls market entry and imposes minimum capital structure requirements on firms. The funding to meet obligations when firms fail is provided from the guarantee fund, which is currently self-sufficient but has levy raising powers should these be necessary in future. There is no limitation on payouts to consumers. Refund and repatriation arrangements are managed by the Travel Guarantee Fund, though they outsource some of this.

Ireland

In Ireland, firms meet PTD insolvency requirements by compulsory participation in a licensing scheme run by their Commission for Aviation Regulation. The scheme controls market entry and sets the minimum financial requirements for firms to be licensed. Funding for repatriations and refunds in the event of firms failures is provided primarily from the bonds that firms have had to provide to become licensed, though there is a backup fund, built up previously from a per passenger levy, that covers any shortfall. There is no limitation on payouts to consumers and refund and repatriation arrangements are managed by the Commission.

Annex 7: Other UK Compensation Funds

Car Insurance

The Motor Insurers' Bureau (MIB) operates the UK Guarantee Fund, which compensates victims of uninsured and untraced drivers who have no other source of compensation. It is a central fund established in 1946.

Under the Road Traffic Act 1988, it is compulsory for drivers to have insurance.

Under an agreement between the Government and the motor insurance industry (the Uninsured Drivers' Agreement), the MIB is required to meet unsatisfied Civil Court Judgments against uninsured motorists. Under a separate agreement, the Untraced Drivers' Agreement, the MIB must consider applications for compensation from victims of unidentified motorists.

Motor insurers are only allowed to operate if they belong to the MIB and pay a share of its costs. Ultimately these costs are passed on to motorists via insurance premiums. The cost is about £15-30 per policy.

In 2006 the MIB levy was £360 million. Compensation payments totalled £356 million with administration costs of £19 million.

Solicitors' Compensation Funds

The Solicitor's Regulation Authority runs the Compensation Fund, which was also created under statute. Its Board comprises a balance of solicitors and lay people.

Compensation is paid where customers have lost money because of solicitors' dishonesty or their failure to account for money they have received. The maximum grant is for £2 million.

The levy is a flat rate charge made per sole practitioner or per business. For 2012/13 those levies were £92 and £1,340 respectively. Solicitors are required to segregate customer money from working capital, so in most circumstances exposure will be lower.

The Financial Services Compensation Scheme

The Financial Services Compensation Scheme (FSCS) is a statutory fund of last resort for customers of financial services firms. Typically, it pays compensation in the event of the regulated firms' insolvency. It is constituted as a non-profit making company limited by Guarantee, and the Directors are appointed by the Financial Services Authority. The non-Executive Directors typically have a background in the financial services industry.

The basis for the levy is each business's net income in relevant activities, so excluding overseas activities for example. The charging base is the firm's income, net of commissions and related charges.

The FSCS protects up to a maximum amount per person making a claim, depending on the class of business – for example, deposit protection is limited to £85,000.

The Pension Protection Scheme

The Pension Protection Fund is not really a compensation scheme in that it does not pay compensation for loss so much as take on the liabilities and assets of pension schemes that cannot meet their obligations. To meet the funding shortfall, it raises levies. Most of the funding is raised from the Risk Based Levy, which is calculated as a multiple of (among other factors) the business's likelihood of insolvency as assessed using Dun and Bradstreet data, and the amount of each business's underfunding.

More information on each of these schemes can be found on the web sites of the organisations concerned.