



Department
for Transport

Response to the Call for Evidence on the Review of Package Travel Directive and ATOL Implementation and Funding Arrangements

September 2014

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Executive summary

This Government response document summarises the key responses received to the [Review of Package Travel Directive and the Air Travel Organisers' Licensing \(ATOL\) Implementation and Funding Arrangements](#) Call for Evidence, and highlights the next steps we propose to take.

The Call for Evidence was part of the Government's programme of reform of ATOL that started in 2011 with a consultation on proposals to extend the ATOL scheme to 'Flight-Plus' holidays (composed of a flight and other key components bought together) and to introduce ATOL certificates which were implemented in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the ATOL Regulations).

Given the, then imminent, EU Package Travel Directive (PTD) reform proposals, the Government felt the time was right for a fundamental examination of the current package holiday insolvency protection arrangements in the UK, the first such review since ATOL was introduced in the early 1970s.

ABTA research estimates that the outbound tourism sector directly contributes £31 billion to the UK economy annually.¹ It is vital therefore, that the regulatory regime is appropriate, and that any changes we seek to introduce build on this success.

The Call for Evidence involved a large number of businesses and organisations who are affected by the regulatory requirements on a daily basis. We wanted to know whether the current arrangements were still suitable as a means to regulate the modern package travel industry, and whether the legislation meets the Government's current objectives in respect of Better Regulation.

The findings of the Call for Evidence illustrate the range and complexity of the issues explored. While there was strong support for simplification of the current regimes, the best way in which to achieve this is not clear cut. The Government will build on the evidence provided in the responses to develop its consideration of approaches to the organisation of insolvency protection.

As anticipated, the European Commission published its [proposal](#) to revise the Package Travel Directive in July 2013. The proposals aim to modernise and improve protection for holiday makers, bringing it up to date with developments in the package travel market and the growing use of the internet to tailor travel arrangements (similarly, such changes to the sale of package travel prompted the introduction of the measures described above in the ATOL Regulations 2012). These proposals will have fundamental implications for our approach to implementation of any final directive in the UK.

¹ ABTA report 'Valuing the UK's Tourism Mix' (February 2013)

Last year, the Department for Business, Innovation & Skills (BIS) launched a Call for Evidence on the European Commission's proposal for a new Directive on Package Travel and Assisted Travel Arrangements. They have also published a Government response, in parallel to this document, which sets out fully the UK Government position for this negotiation.

Final decisions on such matters as the scope of the Directive, information provisions, cross border issues (including whether Member States are required to ensure that businesses which are established in their territory obtain insolvency protection that covers all of their trade, rather than the present requirement, which only covers sales within their own territory) will all impact on our consideration of the best way in which to implement in the UK, and on the scope of ATOL reform. This response document therefore sets out our developing thinking for ATOL reform in the context of the Government position on the ongoing EU negotiation. Indeed, we will need to await the final outcome of these EU negotiations before we can make any specific proposals on implementation of the Directive and ATOL reform.

The next steps outlined in this document are designed to develop our consideration of reform of financial protection arrangements in light of the evidence submitted. This will ensure that we are well placed to influence the EU negotiation and also prepared for cost effective implementation once the Directive is agreed.

We have already begun working with EU colleagues and the European Commission to negotiate an effective outcome, taking into account the responses received to the Call for Evidence. We have also identified a number of areas where we will do further work to develop our thinking on implementation and reform, these include:

- Repatriation;
- UK "flight only" protection;
- cost benefits data;
- financial protection mechanisms; and
- implementation, legislation and enforcement issues.

A new Directive is unlikely to be agreed before spring 2015, for subsequent consultation and implementation in the UK. In order to minimise potential disruptive changes to legislation, and to ensure consistency between them, the Government is not proposing to make any changes to legislation for ATOL reform until after a Directive has been agreed. In the meantime, we will seek to work closely with industry and consumer groups through ad hoc stakeholder briefing meetings, the Air Travel Insolvency Protection Advisory Committee (ATIPAC), and by involving travel and trade associations and associated third parties directly in the projects above where appropriate. We will also continue to work very closely with the Civil Aviation Authority (CAA).

1. About the Call for Evidence

- 1.2** The Government's obligation under European law is to ensure that Council Directive 90/314/EEC on package travel, package holidays and package tours, (the PTD) is properly implemented in the UK. This has been done through the Package Travel, Package Holidays and Package Tours Regulations 1992 (Package Travel Regulations) and the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the ATOL Regulations).
- 1.3** The Government has started a wide-ranging and fundamental review of PTD and ATOL implementation and funding arrangements. This involved publishing a Call for Evidence in May 2013 which considered the current UK regulatory regime and those of some other EU Member States and posed a number of questions around these.
- 1.4** The Department for Transport (DfT) sought views and supporting evidence on aspects of the current regime including the potential simplification of what are complex and overlapping protections in relation to ATOL, credit card payments and travel insurance (Part 2 of the Call for evidence). We sought views on possible approaches to organising financial protection for air travel package holidays (Part 3 of the Call for evidence). DfT officials also engaged in direct discussions with a large number of businesses, representative organisations and individuals with an interest in the issues under consideration.
- 1.5** The principles underpinning the review were:
- Recognition of the need for balance between consumer rights and needs and obligations placed on businesses;
 - Reducing Government and taxpayers' exposure so that the cost of insolvency protection should be borne fully by the travel industry and holiday makers that benefit from it;
 - Minimising costs to business, simplifying regulation; and,
 - Proportionate risk based policy.
- 1.6** The Government recognised that there would be trade-offs between how different approaches might deliver these principles.

2. Package Travel Directive

- 2.1** On 9 July 2013, the European Commission published a proposal to revise the current PTD. The proposals aim to modernise and improve protection for holiday makers, bringing it up to date with developments in the package travel market and the growing use of the internet to tailor travel arrangements.
- 2.2** BIS, which leads on PTD as implemented by the Package Travel Regulations, launched a separate Call for Evidence on the Commission's PTD proposals in September 2013.² The Government response to this consultation has been published by BIS, in parallel to this Government response to the Review of PTD and ATOL Implementation and Funding Arrangements.
- 2.3** There are a number of elements of the Government's position on the PTD, as fully set out in the response published by BIS that are directly relevant to this review and will affect the scope of reform of the current UK insolvency protection arrangements going forward, in particular:
- The scope of the Directive must be clear to avoid confusion for both consumers and for the businesses which need to comply with the requirements. Information provisions should inform consumer choices about the level of protection they would like.
 - Cross border issues – The Government opposes the current proposal requiring Member States to ensure that businesses established in their territory obtain insolvency protection regardless of where the package is sold or the place of residence or departure of the consumer. This could undermine consumer protection and lead to organisers avoiding protection by selling from outside the EU, or alternatively lead to complex repatriation and refund arrangements where the insolvency protection scheme in the Member State of establishment of the business, rather than the Member State where the package is sold, is responsible for protecting travellers in a different Member State.
 - Insolvency protection – We are seeking clarification of the expected level of insolvency protection in the proposal. Our understanding is that Member States should be responsible for ensuring that there is an effective scheme in place. The government position is that costs imposed on the industry of providing the protection should be proportionate to the insolvency risk and affordable for consumers so that this does not inhibit what is a dynamic and growing industry. It is important therefore to acknowledge in the proposal that there are limits to the expected level of protection and that the Directive does

²<https://www.gov.uk/government/consultations/package-travel-and-assisted-travel-arrangements-call-for-evidence>

not require travellers to be protected in all circumstances. Provided the reasonable and calculable risks are accounted for to provide protection in the case of insolvency, there should be no obligation in the proposal that Member States are required to ensure there is full protection in every circumstance, no matter how remote the risk.

- 2.4** We highlight ways in which these issues may have a fundamental effect on implementation of the PTD and ATOL reform in the context of the illustrative options on page 12 below.

3. Key findings from the Call for Evidence

- 3.1** In view of the large number of responses covering a wide range of issues, it is difficult to summarise the findings in a way that does justice to the full spectrum of the responses received to each question. Unsurprisingly, the responses reflected the direct interests of the various respondents, so for example, the majority of respondents favoured approaches that would reduce costs for them – but views on what would be most cost effective varied.
- 3.2** Annex 1 is a full summary of responses received to each question in the Call for Evidence, with an initial Government response. Annex 2 lists those businesses and organisations who submitted a written response or who were represented at stakeholder discussions. Annex 3 contains links to key background documents including the DfT Call for Evidence document published in May 2013 and the BIS Call for Evidence on the PTD.
- 3.3** The following are some of the key findings.

Potential for Simplification

- A large number of respondents envisaged benefits in simplifying the current arrangements by moving to one regime covering both air packages (currently required to hold an ATOL licence under the ATOL Regulations) and non-air packages (currently subject to requirements in the Package Travel Regulations) with combined legislation and one Government department responsible (currently DfT in respect of the former and BIS in respect of the latter).
- Other suggestions for simplification included having one point of contact for consumers to claim refunds for both air and non-air packages and where they were claiming under the Consumer Credit Act 1974.
- There were split views on the overlap between payments for holidays protected by ATOL and those (over £100) covered by Section 75 of the Consumer Credit Act overlap. It was recognised that the overlap could be confusing for consumers.

Controlling entry to the package holiday industry

- There was strong support to maintain some form of licensing or controlled entry of some kind to reduce exposure to high-risk or fraudulent operators and to ensure new and existing companies were fit to trade.
- There were mixed views on how best to control access to the industry, for example whether it should be controlled by formal licensing by a regulator like the CAA as it is under the ATOL scheme, or supervision by recognised bodies such as trade associations, some form of approved body or standards authority.

Support for different financial mechanisms

- There was varying support for a variety of approaches to organising the financial protection system (including bonding, insurance, trust funds and reserve funds) with views offered on the relative merits of each and with reference to schemes in other EU Member States which implement the Package Travel Directive.
- The idea of businesses being given greater flexibility with how they comply with government-mandated standards, and making this clear to consumers by issuing a document with common branding, was popular.
- Concerns were expressed about the market capacity for a bonding centred regime or a compulsory insurance based scheme.
- Although many felt a need for a reserve fund of some kind, there were varying views on whether the purpose should be confined to fund repatriations (currently accounting for around 20% of total costs) or both repatriation and refunds.
- There were also mixed views on charges based on the risk presented by the business versus a flat rate per passenger fee – including concerns about complexity.
- It was recognised that consumers were sometimes confused between protections in personal travel insurance and other types of protection such as under the PTD or ABTA bonding. The insurance industry in particular noted the different role played by more general travel insurance, which the consumer may elect to buy, and ATOL protection, which a business is required to provide under the Regulations.

Repatriation

- There was a widespread recognition of the advantages of some form of central organisation for large repatriations.
- There was some support for the idea of a repatriation-only fund with industry managing refunds.

4. Guiding principles for the ATOL reform programme

- 4.1** The findings have highlighted a number of potential areas to reform the current arrangements for insolvency protection for package travel holidays.
- 4.2** The guiding principles used to underpin the Call for Evidence were instructive in uncovering the key issues and guiding the continuing consideration of possible future policy options.
- 4.3** The Government will continue to be guided by these principles as the key objectives for the reform programme, including:
- Consumer clarity and an appropriate level of consumer protection;
 - Reducing Government and taxpayers' potential financial exposure;
 - Minimising costs to business and simplifying the regulatory regime.
- 4.4** The UK Government is clear that the taxpayer should not bear the costs of insolvency protection for the travel industry and its consumers, and therefore, Government policy is to seek market-based solutions, where possible. Similarly, any options considered should be proportionate to the risk of failure³ and take into account competition-related issues.

³ Department for Transport: Review of Package Travel Directive and ATOL Implementation and Funding Arrangements – Call for Evidence (May 2013); See failure trend data from 2002/3 to 2011/12; p23.

5. Illustrative approaches to PTD implementation and ATOL reform

- 5.1** Given its continuing review of the evidence submitted, and the ongoing negotiation of the proposed PTD, the Department for Transport is not in a position to put forward specific proposals at this stage. Building on our experience with ATOL and the Package Travel Regulations and the evidence submitted, we have set out below four illustrative approaches to demonstrate a number of possible ways to reform ATOL and implement the new PTD. These draw on material explored briefly in Part 3 of the original Call for Evidence: Possible Approaches to Financial Protection.
- 5.2** These approaches are included for illustrative purposes only. The Department is considering all possible options in its ongoing consideration of approaches to the organisation of insolvency protection. In developing proposals, the Department will examine all of the areas covered in the Call for Evidence including not only the possible approaches to financial protection in Part 3, but also the shape of the current regime in Part 2 of the Call for Evidence.
- 5.3** The outcome of the EU negotiations on the PTD will have a significant impact on the scope of reform. The potential effect of some of the issues under negotiation is demonstrated in the context of the illustrative options below. For example, if Member States are required to ensure that businesses established in their state obtain insolvency protection in respect of all of their trade, any UK insolvency protection scheme would have to support the full costs of refunds and repatriations to travellers from other countries in the event of the insolvency of a company established in the UK that was selling in many markets across the EU and wider. If the approach taken to insolvency protection is cheaper in another Member State, then it is possible that companies may move to the other Member State which may have put in place protections that do not meet UK consumer expectations to avoid the cost of the UK approach (or move outside the EU where they may not consider themselves subject to the insolvency protection provisions).
- 5.4** As noted above, the UK is opposed to a place of establishment approach because the consequences of this approach have not been fully assessed by the Commission. In our view there is a real danger of undermining important protections and convenience for consumers when things go wrong, of rising costs for business and consumers because of the change in the nature of the risk which must be covered, and the consequent cost of refunding and repatriating. If the place of

establishment approach remains, we will lobby for minimum standards across Member States and for a much firmer means by which the Commission can ensure quick compliance where failings in protection in Member States are detected than has been proposed.

- 5.5** The following gives a brief description of some of the potential approaches and some of the issues raised:

Single or combined regime

- 5.6** In general there was support for a single regime – with recognition that this was likely to create opportunities to reduce complexity for consumers and costs for business. A large number of respondents envisaged benefits in simplifying the current arrangements by moving to one system with one set of regulations and one government department responsible. Given that new legislation would be necessary our objective would be to reduce regulatory complexity where possible.
- 5.7** However, we currently have limited information on the actual costs of the current approach involving separate regimes for holidays with and without a flight, against which to benchmark the costs of a potential single combined regime approach. Therefore it is not possible to say whether a single regime would be the most cost effective until the necessary data is obtained and analysed.

Financial mechanisms

Single Fund: Either a regulator or industry managing a single special purpose fund to cover all refunds and repatriation under the Package Travel Directive.

- 5.8** The findings of the Call for Evidence highlighted some reluctance on the part of industry to consider an industry-led fund because of risk of possible sector distortion or bias. For example, there were concerns about the industry making decisions relating to businesses contributing to the fund, although this could be addressed by ensuring appropriate safeguards (for example, the Dutch scheme, though funded and led by the industry, has an independent governance structure). Views on the basis of pricing contributions to a fund varied, and while there was support for pricing which reflected the financial risks presented by a company, it was recognised that this would be complex to manage.
- 5.9** The potential effects of adopting the place of establishment approach proposed by the Commission, noted above, may be particularly apparent in the case of a central fund. For example, if many companies chose to become established outside the UK, a fund might become more expensive or less sustainable with fewer participants.

- 5.10** Similarly, liability of any fund would increase if companies sought to obtain protection in respect of all of their trade abroad rather than in respect of UK sales only. This would have a significant effect on the necessary level of governance and capitalisation of the fund.
- 5.11** In addition, the Commission's approach could lead to problems for a body governing a fund. It could potentially result in an increase in costs of calculating the risk and managing the wider practical difficulties for organising the repatriation and refunds of consumers from other Member States, who could be holidaying anywhere in the world.
- 5.12** The UK Government is clear that the travel industry and its customers should bear the costs of insolvency protection, including the costs of any fund, and it should not be for the general taxpayer to underwrite the risks of holiday makers.
- 5.13** As several Call for Evidence responses noted, no fund is capable of providing full insolvency protection for all circumstances, and uncertainty about the circumstances in which insolvency protection will be provided, may impose disproportionate costs on the industry and consumers. We will therefore be seeking clarity from the Commission regarding the limits of the insolvency protection requirement in the PTD. We will also continue to consider governance options for any industry-led fund (rather than the current model of a regulator-led fund) to address concerns in responses about risk of bias in its decision making processes.

Insurance: Insurance companies undertake to provide funds to deal with the consequences of a failure.

- 5.14** As noted in the Call for Evidence summary of responses at Annex 1, some companies do offer insurance as one of several means of complying with the Package Travel Regulations, and Germany requires businesses to obtain insurance from one of four companies. Notwithstanding this, some respondents, including the Association of British Insurers stated that there would be insufficient insurance capacity in the market if insurance was the only means of compliance with the insolvency requirements in the PTD, and policies for insolvency had to pay out in all circumstances.
- 5.15** As above we believe that the insolvency protection should be proportionate to the risk and affordable and proportionate for industry and consumers. We will therefore be seeking clarity in the proposal on the extent of the insolvency protection required.

Hybrid

- 5.16** This would see an extension of the current approach under the Package Travel Regulations to air-travel packages. It would mean that businesses were free to choose how to meet the obligations for insolvency protection

from a range of compliance mechanisms including bonding, insurance and trust funds, perhaps with a mandatory requirement to contribute to a reserve fund covering repatriation services only. All these products could be required to meet a minimum standard and businesses required to issue a document with the same function as an ATOL certificate in order to help inform consumer choices.

- 5.17** We note that one way of limiting liability in the Directive might be to recognise that the security required by the Directive should be effective in all reasonable circumstances and perhaps to recognise that in extreme circumstances, repatriation is the priority.
- 5.18** There was some support for having a range of different financial protection mechanisms from a fund to insurance and escrow accounts giving industry greater flexibility with how they comply with government-mandated standards. However, a number of responses to the consultation questioned whether a fund could compete with other financial mechanisms if it was not mandatory (as in the mandatory repatriation fund model above). There was a concern that it might only be the higher risk companies that would choose a fund where other options were too expensive for them. We will continue to consider this issue further.

6. Next steps for the development of proposals for reform

- 6.1 We will continue to develop our thinking on reform in parallel to the PTD negotiations, so that we are in a position to put forward specific proposals for reform taking into account the requirements for implementation, when the revised PTD is agreed.
- 6.2 The Government is acutely aware of the need for certainty for the industry and consumers so that there is sufficient time to prepare for any future changes. We will continue to consider the evidence submitted and work closely with industry and consumer groups to develop evidence-based proposals and will consult on these before any changes are made.
- 6.3 Current UK approaches to financial protection arrangements have worked well to date. In developing proposals we will build on current expertise and best practice. The following are examples of some of the areas directly relevant to the reform objectives where we propose to do further work in order to develop proposals.

Consumer clarity and an appropriate level of consumer protection

Repatriation

- 6.4 We need to ensure that UK citizens receive prompt and effective repatriation in the event of a failure. When the ATOL regime was first developed this was a particularly sensitive issue as there were limited alternative flights available. This remains an issue if, for example, there is a failure in high season to holiday destinations where alternative flights are all fully booked. However, repatriation arrangements go wider than PTD requirements. For example, the Foreign and Commonwealth Office have a role in ensuring effective repatriation of UK citizens in the event of political instability around the world.
- 6.5 We therefore intend to undertake an examination of the existing repatriation arrangements used by CAA, FCO, Package Travel Regulations and the open market (used by travel organisers directly) to consider the viability of each system as a means to repatriate UK (and possibly other) holiday makers following implementation of new PTD provisions. We also intend to consider whether a fund dedicated to repatriation is a viable option.

Flight Only

6.6 The UK ATOL scheme includes protection for some “flight only” sales such as where tickets are sold by agents that have not been appointed by an airline. Tickets sold directly by airlines and their agents are not ATOL protected. Arguably this is confusing for consumers and a measure which is effectively going beyond the requirements of EU legislation. More fundamentally, the Government will consider whether to maintain the existing requirement for licensing of some flight-only sales under ATOL when the existing and proposed PTD require insolvency protection in respect of packages (and ‘assisted travel arrangements’) only. In doing so, we will take account, among other matters, of the Commission’s position⁴ on passenger protection in the event of airline insolvency. The Commission supports a strengthening of the existing licensing oversight of air carriers⁵ to put in place measures to protect passengers⁶ should they lose their Operating Licence before deciding whether to propose new legislation requiring insolvency protection for flight-only ticket holders. We note that the Commission proposes to review this approach after March 2015.

Minimising costs to business and simplifying the regulatory regime

Cost Benefit Data project

6.7 While the Call for Evidence respondents generally welcomed simplification of the current arrangements, the evidence to support this view was very limited. In fact very little supporting data was provided in relation to any of the questions. It is important that we are aware of the cost benefit implication of all options before we take a decision on how to proceed. We will therefore undertake a project to identify the requisite data requirements to assess cost implications of all ATOL reform options. We expect to work with others including trade bodies on this project.

Reducing Government and taxpayers’ financial exposure

Financial mechanisms project

6.8 Government policy is to favour market based solutions unless there is good reason for Government to intervene. We would like to understand more about the pros and cons of market based financial mechanisms in this context, and for example what changes might be necessary to the draft PTD for this to become a more attractive market for insurers, as well as an area where the market can be relied upon to deliver an appropriate level of protection for consumers, without exposing the general taxpayer. Similarly we would like to consider potential

⁴ COM(2013) 129 final - dated 20 March 2013 - Communication from the Commission on passenger protection in the event of airline insolvency.

⁵ Regulation (EC) 1008/2008 governing the licensing of European air carriers

⁶ Passenger rights required under Regulation (EC) 261/2004

governance options for an independent industry fund approach. Further, we will consider any charging made to a fund, taking into account the issue of flat-rate, risk-based or value-based pricing contributions.

Practical implementation and enforcement issues

- 6.9** We will identify where proposals are likely to require legislative change. This work will also examine the case for a single lead department, as well as the possible supporting enforcement arrangements, (currently the CAA and Trading Standards are the enforcing bodies), and include a review of the current offences.

Annex 1: Summary of responses by question

Introduction

The Call for Evidence ran from the 23 May to the 15 August 2013. The Department for Transport's (DfT) document was sent to 84 recipients and we received 43 written responses. Around a quarter of these were from tour operators, though a broad range of other types of organisations were also represented including consumer groups, trade bodies, airlines, online travel agencies and others involved in the travel industry in a financial, legal or consultancy capacity.

In addition, DfT undertook an extensive stakeholder engagement programme. We attended seven Association of British Travel Agents (ABTA) regional meetings, consisting of members from the travel industry in London, Manchester, Bristol, Belfast and Glasgow and participated in an online webinar. The seven meetings reached a total of 131 ABTA members. The webinar was viewed by 123 ABTA members.

We extended our engagement to other relevant sectors, organising a series of stakeholder workshops:

Table 1 - Sector specific stakeholder workshops		
Sector	Invited	Attended
Insurance and bonding	30	13
Airlines	7	3
Online travel agents	14	5
Credit Card and Transaction Systems	7	3
Accredited bodies and franchises	7	4
Trade bodies	6	5
Consumer groups	7	3

In total, 78 stakeholders were invited and 36 attended.

We also organised a series of in-depth interviews with 10 key industry players in order to get a deeper understanding of some of the issues under consideration.

Responses to Questions

This paper summarises the responses we received to the questions in the written document, although this is supplemented occasionally with views gathered in the discussions with stakeholders. For readers who are unfamiliar with current legislative requirements and terms used the original Call for Evidence document should provide all the necessary background. Key terms in the text are highlighted in bold for ease of reference.

Questions on the current insolvency protection arrangements

Question 1: *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?*

There was a widely held view from respondents that the two financial protection schemes, under the ATOL (Air Travel Organisers' Licensing) Regulations and the Package Travel Regulations, created **extra costs and bureaucracy** through duplicated reporting and compliance procedures. This was expressed by respondents from different parts of the travel sector, including tour operators, online travel agents, trade bodies and consumer groups. Many also mentioned the lack of **clarity for consumers** and some tour operators also referred to market distortions and unfair competition resulting from the current system. A couple of respondents said that the introduction of '**Flight-Plus**' had created another level of complexity. One respondent from the airline industry argued that most online airlines just facilitate transfer to other sites and the customer makes a second contract with them, so airlines should not be liable for the insolvency of these separate businesses.

A common suggested change, particularly among large tour operators and trade/consumer bodies, is to move to **one protection regime for both air and non-air holidays**. This was supported by many respondents but was not universal and some caveats were raised. For example:

- Respondents from the legal and insurance professions suggested a one-size-fits-all system may not work in practice;
- Concern was expressed about implications for small to medium sized enterprises (SMEs); and
- There was also concern that it might reduce consumer choice.

Another common suggestion, particularly from tour operators and online travel agents, is to bring **holidays sold by airlines and on a 'click-through' basis** (i.e. where hotels etc. are suggested online with the consumer's details pre-populated) into the scheme. The views expressed by respondents in favour of this included:

- The current system, where some air passengers are protected while others on the same flight are not, is anomalous;

- Currently online travel agents have to provide double protection, both against their own and also airline insolvency;
- Ease of administering a fee on flight tickets;
- The cost of airline failure is currently met by travel organisers; and
- Airlines have higher financial risks than travel agents.

In contrast, the airline industry generally disagreed on the basis that:

- They are already subject to the Civil Aviation Authority's (CAA) licensing regime;
- It is important that any change does not disadvantage UK carriers;
- According to one airline, customers should realise booking elements of holiday separately may not provide same benefits as package.

There was some support for a **single point of contact** for consumers in the event of a failure, who could deal with claims in terms of both air and non-air sales as well as queries in relation to possible credit card company claims. Some respondents highlighted the CAA's competence and supported its continuing presence in handling all claims. However, some questioned whether an enlarged scheme (for example, to include non-air sales) was compatible with the CAA's aviation remit.

Several respondents called for a **single government department** to be responsible for the scheme, rather than the current split between the DfT and the Department for Business, Innovation & Skills (BIS). Respondents who expressed a preference generally felt this should be DfT on the basis that transport played a fundamental role, although one respondent felt that ATOL should directly regulate companies representing the largest risk, and assign the rest to BIS.

Some respondents suggested that government should consider ways to reduce administrative costs by **standardising information requirements** across different government and financial agencies (e.g. CAA Licensing Scheme, ATOL requirements, Package Travel Regulation requirements, banks, merchant acquirers, insurance companies etc.) in relation to the financial fitness and the risk presented by companies. The CAA has already done some work to standardise auditing standards for small business.

A few respondents submitted estimates of the costs of having more than one level of reporting under the current system ranging from around £3,000 to £40,000. Several said that moving to one scheme would halve their reporting costs. One large tour operator illustrated the inefficiencies within the current system, stating that it held six ATOL licences for its core business, with another two for ancillary businesses (home-workers and franchise travel agencies) and separate arrangements for non-air packages.

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?*

There was strong support for some kind of **barrier to entry** to minimise the number of high-risk companies in the sector. This was expressed by a range of different types of organisations although a couple of online travel agent respondents felt this was not essential. A **single statutory licensing regime** was advocated by many respondents, although there was concern among some organisations currently outside the ATOL scheme, who felt there was a need to understand more about the cost and administrative burdens associated with such a change. Similarly, many organisations cited the importance of ensuring that new and existing companies were **fit to trade**, although several respondents felt the current requirement to provide a bond for the first four years was unfair and unjustifiable.

Respondents were split on how best to control access to the industry, for example whether it should be controlled by formal licensing by a regulator like the CAA as it is under the ATOL scheme, or supervision by recognised bodies such as trade associations, some form of approved body or standards authority. The CAA's expertise was acknowledged, particularly by travel organisations, although some expressed concerns about their suitability for overseeing a scheme with a significant non-flight component. ABTA was suggested by several respondents as a possible alternative.

Several respondents were sceptical of self-regulation, noting that it requires good corporate governance and could be open to commercial pressures or less rigorous enforcement.

The idea of ATOL (or something similar) becoming a kind of government-mandated quality **kite-mark** was popular with a range of organisations (including a number of tour operators), particularly if it gave businesses greater flexibility with how they comply with standards. Many respondents suggested that a single logo should also help improve consumer clarity, as would an extension of the scheme to cover all holidays. One airline suggested that those not in the scheme should be obliged to provide a warning indicating this to customers.

Government response to Question 1 and 2

We note that there is wide support for simplification of the financial protection regime, with views broadly held that the current regimes for non-air and air packages should be merged into one scheme, under the responsibility of one Department. However, data to support this view was very limited.

In order to build the evidence-base, we will undertake further work to assess the cost implications of potential ATOL reform options. As part of this, we expect to look at the costs of the current approach involving separate regimes for holidays with and without a flight, against the costs of a potential single combined regime approach.

On the future arrangements of the financial protection, the Government recognises the need to adopt the best possible approach on organising the regime. However, we firmly believe that the travel industry and its customers should bear the costs of any insolvency protection system. We will therefore look to seek market-led based solutions unless there is good reason for Government to intervene.

We will continue to be guided by the principles underpinning the ATOL reform programme, ensuring that there is consumer clarity and an appropriate level of consumer protection; reducing Government and taxpayers' potential financial exposure; minimising costs to business and simplifying the regulatory regime.

Questions on the current regime

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?*

The responses to this question were wide-ranging and diverse, possibly reflecting complexity of the issues under consideration. For example, although there is some overlap between the different layers of protection, it does not necessarily follow that there are any direct costs associated with this, or that reducing or removing overlap would automatically result in cost reductions. Respondents were uncertain about the impact of changing existing credit card arrangements, whereby 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 services paid for). There were also some concerns about the unintended consequences for travel and potentially other industries of changing the current arrangements.

A number of respondents, particularly tour operators, argued that **duplication led to inefficiencies** as well as unfair competition, with double-protected companies competing against those with no protection at all. There was perceived general support for measures that reduce duplication.

However, other organisations, particularly from the finance/insurance sector, felt that the **cost of overlap was probably negligible** in practice because:

- It helps to spread risk;
- Collaboration between CAA and banks/credit card issuers alongside the Air Travel Trust (ATT) helps maximise the capacity of the ATT Fund; and
- If credit card obligations were removed, bonding levels might be adjusted upwards.

Others expressed uncertainty about the **implications of changing the current system**, with views including:

- A reduction in overlap could shift, rather than reduce, costs to consumers – it was not known how credit card network agreements would respond;
- It could encourage consumers to purchase products with less/no protection;
- It was unclear whether changing Section 75 of the Consumer Credit Act 1974 was feasible;
- Any attempts to reduce overlap should consider implications for other areas as these issues are not exclusive to the travel industry.

Several respondents felt that these issues needed to be explored before any change was considered.

Similarly, respondents were split on how alternative arrangements might work in practice. Many thought that **liability** should sit with the **travel industry**:

- This was proposed by some financial organisations but also had some support among travel organisations, who thought placing additional liabilities on the credit card industry might increase costs to the travel industry and might not provide the protection expected.
- A popular suggestion, particularly among tour operators, was for merchant acquirers to be indemnified by the ATT, in order to reduce costs.
- Some, including some tour operators, felt that claims under Section 75 of the Consumer Credit Act 1974 should be removed in order to lower or eliminate the financial security requirements imposed on the travel industry by the merchant acquirers, though there was a recognition from some that processing costs might not fall.

Others disagreed, arguing that:

- Section 75 of the Consumer Credit Act 1974 is an important piece of consumer legislation;
- The ATT Fund should not be underwriting the cost of Consumer Credit Act claims;
- The government or regulator should not effectively prop up weaker companies;
- Credit card companies were better at pricing risk than government.

Other **suggested improvements from respondents** included:

- Promoting dialogue with banks/merchant acquirers to educate them in relation to the actual risks.
- Clearer agreements between the central licensing body and credit card issuers.
- Better signposting to consumers of the best solution for them.
- Improved regulations so that consumers can see where liability lies.
- Sufficient time for travel companies to review credit card ‘charge-backs’.⁷ One company estimated that the cost of charge-backs for them as a result of two recent insolvencies was £60,000 without any administrative costs.
- A single point of claim for the consumer in the event of insolvency whether they were making a claim under ATOL, the Package Travel Regulations or Section 75 of the Consumer Credit Act 1974.

Several tour operators commented that **more transparency** in CAA/ATT arrangements with merchant acquirers was necessary to allow an objective response to this question.

Aside from Section 75, overlap with IATA (International Air Transport Association) protection requirements was raised as a key issue by some respondents. IATA protects airline members in the event that an IATA ticketing agent becomes insolvent without having passed the payment due to the airline. An ATOL holder might sell a holiday package which includes an IATA protected flight, so the flight element is protected twice. It was suggested that DfT should engage directly with the UK IATA decision-making council on potential structures that could protect both parties.

⁷ A (consumer) chargeback is a mechanism that enables a consumer to request money back if they fail to receive goods or services paid for with credit and debit cards. When a chargeback is raised, the (consumer’s) Card Issuer (CCI) tries to recoup the (disputed) money from relevant business’ merchant acquirer. Card issuers only have a limited period of time in which to initiate a chargeback and, while this varies from scheme to scheme, it does generally not exceed 120 days. If the card issuer’s claim to the merchant acquirer is unsuccessful, the card holder’s claim will normally be rejected. Consumers who pay using a credit card have additional, more comprehensive protection pursuant to Section 75 of the Consumer Credit Act. This protects the personal losses of credit card holders following a breach of contract by the firm they paid. This statutory right is unaffected by the success or failure of the card issuer’s claim to the merchant acquirer.

One respondent also felt that more cohesive working practices between ATOL and **ABTA** should be encouraged.

Other comments from respondents included:

- Travel insurance should be seen as ‘enhanced’ rather than overlapping protection.
- Incidental protection, for example travel insurance, should not be a substitute for insolvency protection, unless that cover has no caveats, but it also needs to avoid overlapping layers of protection.
- A wider consumer protection scheme, extending the protections provided under Section 75 of the Consumer Credit Act 1974 to the rest of Europe.

Government response to Questions 3 and 4.

Limited data was provided in respect of overlapping regimes. We recognise that the diversity of responses are an indicator of the complexity of this area which will need to be fully considered. We will be conducting further work into the actual cost of the current system and comparing those against the likely costs of regimes with reduced overlap.

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?*

There was support from some respondents for other EU schemes – or elements of them. Several respondents suggested a scheme which could offer a selection of compliance methods reflecting the range of options available in other Member States (e.g. insurance, industry funds) under a single kite-mark accreditation system. One respondent felt other EU schemes had the advantage of being simpler than the UK’s. However, a number of respondents cautioned against importing other structures without considering the different context and the distinguishing features of the UK market (e.g. Section 75 consumer protection). It was also recognised that a number of arrangements utilised in other countries are already employed here.

Several respondents supported aspects of the financial protection scheme in **Germany** which requires travel businesses to buy insurance against insolvency from one of four insurance companies. However, views were divided on the lack of a guaranteed full refund for consumers because the amounts paid out in any one year are limited by a liability cap. Some thought that this was unacceptable, however others supported limiting liability, arguing that it could drive down the cost of protection for business.

Similarly, some recognised the benefits of the system in **Sweden**, based on licensing subject to bonding and guarantees but expressed reservations about the acceptability of limited liability to consumers.

The schemes in the **Netherlands** and **Denmark**, based on industry-led funds to cover repatriation and refunds, had some popularity among tour operators although it was noted that the UK would need a significantly larger fund and that it might not be suitable for the largest operators because the cost of failure could be unsustainable for any fund.

Several tour operators commented favourably on the scheme in **Ireland**, which was described as being similar to ATOL pre-2008. A couple of respondents from the online travel agent sector commented that the definition of licensable turnover encourages a more risk-based approach.

One respondent suggested giving consideration to limiting the amount of exposure. They cited **other schemes and reserve funds** with limited pay-outs (e.g. Pension Protection Fund). Alternatively liability could be capped like the schemes in Germany and Sweden.

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

We received little representative data in response to this request and will need to do more work in this area to support any future reforms.

Government response to Question 5 and 6

We will continue to look at certain elements of financial protection schemes adopted by other Member States – including Germany and the Netherlands – to identify the advantages and disadvantages of these systems and their viability in the UK market.

Questions on approaches to financial protection

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?*

Company-specific approach: Reactions to this approach were mixed. It would involve a high level framework specifying a number of different ways in which industry could meet financial protection requirements but where there was no central regulator of licensing authority. Many respondents, from different parts of the sector, argued that businesses should be given choice and flexibility to provide financial protection in a way that best suits their circumstances, as it reflected the variation within the system and maintains competition. However, most felt that there was a need for the involvement of a licensing system or regulator to police the system effectively and avoid abuse. There were also concerns conveyed by some respondents that this model might be confusing for consumers and it was unclear who would organise repatriation.

Regulator-led approach: This approach was a popular option among respondents. It would see a regulator continue in a central role in managing a special purpose insolvency protection fund to cover both refunds and repatriation. On the other hand, some respondents felt the role of the regulator should be to approve and monitor different financial mechanisms (bonds, insurance, trusts etc.) and allow choice and competition. This was supported by many. Additionally, many respondents also noted the benefits of having a centrally-managed fund that was independent from industry. These included improved consumer confidence in an independent scheme and avoiding difficulties in setting the level of contributions to the fund due to potential bias and determining responsibility if the fund did not have sufficient reserves. One airline argued that the CAA could have a repatriation function but that this does not require the CAA to be financially responsible for repatriation. Two respondents argued that it was essential for any fund to be of an adequate size to cover a proportion of the costs, in order to attract the most cost-effective insurance.

Industry-led central reserve fund: This approach would see industry create and manage a reserve fund similar to the approach in the Netherlands. While some respondents were keen for industry to have involvement, perhaps through a role in governance such as sitting on boards, it was felt important to have regulator involvement. This would ensure impartiality.

Central fund covering repatriation only: This approach, which would see a central fund covering only repatriation and industry managing refunds, had some support. Perceived advantages included that CAA could continue to manage repatriation in respect of air packages and non-air packages. It was suggested contributions could be determined by the ATOL holders' flight commitments and closed once the fund was big enough. Several respondents commented that repatriation was the key issue – all travellers should know they can rely on being repatriated if necessary – although others, including from the insurance/financial sector, argued it was important to keep refunds and repatriation together. One respondent was concerned that some refund claims would shift to merchant acquirers and banks, increasing their costs.

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?*

There were a wide variety of suggestions as to how the system could be organised but several elements were common to many of the responses:

Nearly all respondents were in favour of a **regulator-led approach** to ensure oversight. Most respondents argued that businesses should be able to choose from a **range of approved financial protection arrangements**, particularly when protecting customer money. This would encourage competition among the various products and lower costs. The regulator could also **control market entry** and provide a **single point of contact for consumers**. It could hold a central register of licensed businesses. Most respondents who commented thought the management of **repatriation** should remain with the regulator, rather than also being moved to a purely market-led approach, and should be funded by contributions to a central fund. Many supported a **levy** system of some kind.

One organisation reported that its members strongly supported an **insurance-based scheme** as the primary method of financial protection. They estimated that the policy would cost an average of £2.50 per head subject to maximum claim (across the whole of the ATOL scheme) of £350m per year. Companies would all pay premiums for this policy, possibly at a variable rate. Repatriation would still be organised centrally by a regulator and funded by a back-up fund. 20 per cent of covered businesses' annual profits would go into the fund.

Bringing airline seats, or at least **airline holidays**, into the scheme received some support. This was reinforced at some of the stakeholder events, where many advocated putting a 50p or £1 levy on all flights (or all modes of transport) out of the UK to cover repatriation and possibly refunds, although it was recognised that this would require a change under EU law. Airlines opposed this, with some suggesting that airlines should be allowed to self-regulate, in recognition of their low failure rates and in light of the European Commission's position on passenger protection in the event of airline insolvency, whereby it supports a strengthening of the existing licensing oversight of air carriers under Regulation 1008/2008 and proposes to engage with the airline industry to formalise existing voluntary arrangements before deciding whether to propose new legislation requiring insolvency protection for flight-only ticket holders.⁸ Some in the airline sector also supported self-insurance, with one commenting that customers should have the option of purchasing SAFI (Scheduled Airline Failure Insurance) and another that travellers can buy travel insurance which covers them for airline failure.

Applying different approaches to **differently sized businesses** was mentioned by several respondents. One suggested that monitoring should be tailored to company size. It was argued that the existing ATOL Accredited Bodies system is not a workable solution for a significant number of smaller companies. One suggestion was to increase the **small business ATOL threshold** to 1,000 passengers with more self-certification below this, together with significantly reduced financial information provision. Another respondent thought that while large companies might need a central fund most others did not; most of their risk could be taken by bonds and insurance. Conversely, some argued in favour of **removing the largest tour operators from the scheme** and requiring them to make their own arrangements, on the basis that they were so large and their requirements so different from the rest of the industry that they could not be accommodated in a single scheme for the whole industry.

A number of other variations or elements were proposed by respondents including:

- A **'lighter touch'** regime, with the actual mechanism being less important than an emphasis on clear, workable definitions, a level playing field, a risk-based approach and proportionality;
- **A mix** of a regulator-led approach and an industry-led central reserve fund;
- **Segregation of client funds** plus a small safety net (e.g. the Solicitor's Compensation Fund);
- Covering **repatriation only** and excluding refunds or only protecting a percentage of these. This was a popular suggestion in the stakeholder discussions;
- **Scrapping ATOL** or using it only where providers are not subject to any other form of licensing as it is considered outdated and

⁸ COM (2013) 129 final - dated 20 March 2013 - Communication from the Commission on passenger protection in the event of airline insolvency.

exacerbates risk by propping up weaker businesses. Instead, the PTD obligations could be met by private providers;

- Government oversight of **repatriations** with a possible role for FCO;
- More **rigorous monitoring** to ensure more timely identification and intervention with respect to struggling companies;
- A robust **enforcement** body.

A number of options were put forward by respondents for further consideration, on the basis that they may be worth pursuing but the details and implications needed further investigation:

- Maintaining the current division of financial protection options between current ATOL system and Package Travel Regulations. This would restrict choice but could maintain a critical mass of participants in a mutualised ATOL Protection Contribution (APC) style fund;
- A hybrid system with APC type contributions, giving each licence holder a fixed APC value for the following year, possibly on a scale using a formula, for example based on risk, average product price, payment terms etc;
- Covering repatriation costs only and excluding refunds of those yet to travel;
- Providing less than 100% protection in event of failure, if this is allowed under the Package Travel Directive.

Two respondents considered an approach allowing companies to make their own arrangements for meeting the financial protection requirements in addition to a central reserve fund and concluded it would not work as only companies that were bad risks would stay in the fund making it unsustainable.

Other comments from respondents included:

- Whatever mechanism is chosen must be future-proofed, although one respondent made the point that this question was difficult to answer without seeing the revised Package Travel Directive;
- Concerns relating to maintaining a viable/competitive mutual fund option should be a key focus for any working group of experts.

Government response to Questions 7, 8 and 9

We recognise that there were a spectrum of views on the organisation of future financial protection systems. However, limited data was submitted to support these views.

At present, we are not in a position to make specific proposals given our continuing review of the evidence submitted, and the ongoing negotiation of the proposed Package Travel Directive (PTD).

We will therefore continue to develop our thinking on reform taking into account the evidence submitted, in parallel to the PTD negotiations, so that we are in a position to put forward specific proposals for reform taking into account the requirements for implementation, when the revised PTD is agreed.

Current UK approaches to financial protection arrangements have worked well to date. In developing proposals, we will build on current expertise and best practice, working with the industry and consumer groups. In particular, we will be undertaking work in a number of areas to develop evidence-based proposals:

- **Repatriation** – Examining existing repatriation arrangements used by the CAA, FCO, Package Travel Regulations (used by travel organisers directly) and the open market including looking further into a dedicated fund for repatriation-only;
- **UK “Flight only” Protection** – Examining whether to continue the inclusion of certain flight only sales under the ATOL scheme when the existing and proposed PTD requires insolvency protection in respect of packages (and ‘assisted travel arrangements’) only;
- **Cost Benefits Data** – Identifying the requisite data requirements to assess the cost implications of potential ATOL reform options;
- **Financial Protection Mechanisms** – Examining the advantages and disadvantages of market-based financial protection mechanisms in this context, and whether the market can be relied upon to deliver an appropriate level of protection for consumers, without exposing the general taxpayer, including potential governance options for an independent industry fund approach;
- **Implementation, Legislation and Enforcement issues** – Identifying where proposals are likely to require legislative change as well as examining the case for a single lead department, and the possible supporting enforcement arrangements (currently the CAA and Trading Standards are the enforcing bodies). We will also be undertaking a review of the current offences.

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?*

There was no consensus on the funding basis and some respondents proposed a number of alternatives suggesting they did not have a strong preference for one option. Overall, there appeared to be a slight preference for including a **risk-based element**. Pros and cons identified in the responses were as follows:

- **Flat-rate:** This has the benefit of simplicity and was an attractive option at a low level but effectively results in cross-subsidy and reduces the effect of market forces. Several tour operators supported a flat-rate levy on all flights passengers.
- **Risk-based:** A number of respondents from different parts of the sector supported having some element of risk-based pricing. This has higher administrative costs but it was generally considered fairer and that it would reduce the risk to the fund by making businesses liable for their own risk. However, several respondents felt it would be difficult to assess risk in such a way as to reflect it rationally in the funding charge. Some factors suggested by respondents included the length of time between payment and fulfilment, size of potential failure and business strength.
- **Value-based:** This has a marginally higher administrative cost than a flat-rate but was also considered fairer. It would reflect the aggregation of risk to the fund. However, one respondent wondered whether there was a possibility that it could be 'gamed' by holiday price manipulation. Another felt it might be overpriced for a strong business with low risk. A couple of respondents supported this principle with one arguing that those with no exposure should not contribute.

Other points made by respondents included:

- **Airlines should contribute** to the fund and agents should only be responsible for funds they hold. However, at least two airlines opposed charging airlines, on the basis that it would 'destabilise the commercial status quo', in view of the fact that competitors established elsewhere in the EU would not be subject to the same charges;
- Several respondents mentioned a **flexible levy** that could be reduced when the fund had built up to a sufficient level.

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

Most respondents had difficulty responding to this question without more detailed data.

Two companies thought bonding and insurance costs would be roughly comparable to ATOL costs.

Other comments included:

- Any simplification would reduce costs (and increase competition);
- A flat-rate is simplest for the regulator but a rate based on risk/holiday value could benefit companies with low level risks.

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

There was a perceived preference for linking contributions to **risk**, with lower rates for businesses that can demonstrate lower risk and possibly none if they effectively had no risk. Several respondents in the online travel agent and financial/insurance sectors particularly supported this view. For example, it was argued that most travel organisers don't hold consumers funds, or only do so for a short period, so they do not pose a financial risk to the consumer and therefore should not have to bond this payment against their own insolvency.

However, some respondents doubted that there could ever be absolutely no risk and advocated paying at least something into a shortfall fund in case of misuse. It was also pointed out that maintaining an effective trust fund did nothing to provide for repatriations, and so some called for a contribution towards that.

One respondent suggested that Accredited Bodies under ATOL, who provide their members with protection without direct reference to the CAA, should pay a lower contribution if they could demonstrate that they have reduced the risk to the ATT Fund. However, they wondered whether the CAA/government was best placed to price this risk. One organisation suggested giving all associations a lower rate if they could give a 100 per cent protection guarantee. Another respondent called for the regulator to determine the strength of all primary arrangements and assess the contribution rate accordingly.

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?*

There was no consensus on this question. Most respondents wanted a system that was simple and fair, with a **slight preference for simplicity** expressed by a number of different types of organisation. One respondent felt that even defining fairness would be a challenge.

Government response to Questions 10, 11, 12 and 13

Please see the response below which responds to both sets of questions on financial mechanisms for a central reserve fund and company-specific protection arrangements.

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?*

Many views were expressed for and against both insurance and bonds. Table 2 below summarises the main views expressed.

A recurring theme was whether there would be sufficient market provision at a reasonable rate in both cases. Some respondents, including those from the insurance industry did not believe there would be market provision if insurance cover for insolvency had to refund in all circumstances without standard exclusion clauses, for example for fraud etc. One was sceptical that standard travel insurance purchased by consumers could provide a suitable replacement for current protection; the features and coverage of travel insurance policies vary widely depending on what the customer needs and is prepared to pay. See also the responses to Question 17.

Table 2: Views expressed from respondents on advantages and disadvantages of insurance and bonds

Advantages	Disadvantages
<p><i>Insurance & Bonds in general:</i></p> <ul style="list-style-type: none"> ● A wider choice of compliance methods; ● Increased competition and lowered costs; ● Ensures licence-holders carry their own costs with risk only mutualised if there was a backup fund; ● No risk of a fund being exhausted; ● No Government and taxpayer exposure; ● Effective for covering advance payments. 	<p><i>Insurance & Bonds in general:</i></p> <ul style="list-style-type: none"> ● Risk that the company is not 'fit to trade'; ● Need for some kind of back-up fund; ● Annual renegotiation is required; ● Vulnerable to external shocks.
<p><i>Bonds:</i></p> <ul style="list-style-type: none"> ● Easy to administer and good value for strong companies; ● Proven longevity and track record pre-2008 before wholesale bonding requirements were removed. They also work well for the Package Travel Regulation arrangements. 	<p><i>Bonds:</i></p> <ul style="list-style-type: none"> ● Bond levels might be insufficient and can be vulnerable to fraud/overtrading, but this could be mitigated through proper safeguards, an emergency or buffer fund and a catastrophe policy; ● Can be expensive so prices are likely to be proportionately higher per passenger for small businesses; ● Bonds tie up a lot of capital; ● Mutualisation of risk a key issue; ● Under potential future regulatory requirements good risks may go for cheaper insurance, leaving

	bonding for high risk businesses; <ul style="list-style-type: none"> ● Weak companies would be unlikely to get bonds without full cash collateral; ● Not practical for managing repatriation.
<i>Insurance:</i> <ul style="list-style-type: none"> ● Theoretically, they can provide unlimited cover and do not need a bondholder; ● Can do 'pay as you go'; ● Much easier cash flow situation than with bonds and increasing working capital, allowing greater flexibility of trading levels and pricing risk accurately; 	<i>Insurance:</i> <ul style="list-style-type: none"> ● Non-surety insurance would need regulator approval to examine its conditions and make sure it pays out; ● Administration can be complicated and requires a claims process; ● Pay-outs may be limited; ● Insurance policy cover is subject to terms & conditions; ● May be more expensive; ● Weak companies would be unlikely to get insurance, except maybe as part of a portfolio.

In respect of bonding, some organisations felt that following the introduction of the APC in 2008 the bonding market had significantly declined and there was a risk that it was unlikely to be restored. Others felt that the market could be restored if there was sufficient incentive. One concern was that bonding might be too expensive because the low risk companies would be able to secure a cheaper insurance arrangement leaving the 'bad' or higher risk companies only the option of bonding, which would be charged at a premium.

We received relatively little hard data on the **cost implications** of different mechanisms. One company found it could get bonding and insurance at prices comparable to the APC. Another provided estimates that argued that bonding or a hybrid levy-bonding system would result in significantly higher (up to £8 per passenger) costs to industry and consumers.

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?*

Respondents felt that that company-specific arrangements, where a key component of the system is individual businesses making their own financial protection arrangements, present a range of problems but none are insurmountable. Some felt there would be a need for some kind of back-up or buffer fund and an organisation responsible for repatriation.

One organisation argued there is no risk that cannot be covered by company-specific arrangements with an appropriate fund. Another believed that insurance would cover any risk at a price. One respondent noted that there would be no residual risk with a proper reserve fund. However, one flagged up that certain credit risks are uninsurable. Full protection requires regulatory control to ensure weaker companies have sufficient protection.

In relation to **trusts**, some respondents felt these were a viable option if they were well-run with appropriate, independent oversight/regulation. One respondent questioned why escrow accounts were not considered, though the practical distinction between them and trust accounts would need to be explored.

Risks associated with bonds and insurance are dealt with under Questions 14 and 15 above.

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?*

This attracted differing opinions with respondents drawn from the insurance industry generally opposed to the suggestion while representatives from a number of other parts of the sector argued that it was potentially viable. Several commented that it works in the surety market and felt that AITO (Association of Independent Tour Operators) and ABTA had proved this option is feasible. For example, ABTA had overcome this by making a deed with insurers wishing to provide policies for the purposes of the organisation requirements. It overrides any policy conditions that might otherwise operate against the interests of the consumer even in cases of material non-disclosure. It means the policy has to function like a bond and always pay out.

One respondent from the insurance industry was 'vigorously opposed' to the suggestion of an obligation to pay irrespective of fraud, noting that it would lead to market exits as they suggest has happened in the solicitors' professional indemnity insurance market. Another stated that providers would not honour policies where non-disclosure etc. had not been adhered to. Some funded solutions will pay out in the interest of consumer protection, but at additional cost.

One respondent felt that this would necessitate a major change in insurance practices, possibly with a mandated change of wording. They argued that a back-up fund would need to pay consumers promptly in the event of delays with insurers.

Government response to Questions 14, 15, 16 and 17

We will be considering the advantages and disadvantages of the potential market-led financial mechanisms.

We will undertake further work to examine a range of financial protection mechanisms which include insurance and bonding. As part of this work, we will seek to establish whether the market can be relied upon to deliver appropriate consumer protection without exposing the general taxpayer.

In relation to financial mechanisms for a central reserve fund approach, further consideration will be given to flat-rate, risk-based and value-based pricing. Meanwhile, we will be seeking clarity in the PTD proposal on the extent of the insolvency protection required.

Annex 2: Respondents and participants

The Department for Transport would like to thank all those that contributed to the Call for Evidence, including:

Written Responses

AIG Europe Ltd

Air Travel Consultancy Ltd

Air Travel Insolvency Protection Advisory Committee (ATIPAC)

Alfa Travel Ltd

Association of ATOL Companies

Association of Bonded Travel Organisers Trust Ltd (ABTOT)

Association of British Insurers (ABI)

Association of British Travel Agents (ABTA)

Association of Independent Tour Operators (AITO)

Barrhead Travel Service Ltd

Board of Airline Representatives in the UK

C&G Tours Ltd

Civil Aviation Authority (CAA)

E Waterways Ltd

Easyjet Ltd

Ecco Tours Ltd

Equinox Global Ltd

Euler Hermes World Agency/XoL Underwriting team

European Low Fares Airline Association (ELFAA)

European Technology & Travel Services Association (ETTSA)

European Tour Operators Association (ETOA)

Flightbookers Ltd (ebookers.com and Orbitz Worldwide)

Giles Insurance Brokers

HolidayTravelWatch

Isram (Israel) Touring Ltd

Jet2holidays Ltd (Jet2)

Kestrel Luxury Travel Ltd

Last Minute Network Ltd (lastminute.com)

Leisure By Appointment Ltd

Markel International Insurance Company Ltd
Martins World Travel and Anglers World Holidays
Midcounties Co-operative Ltd
Monarch Airlines Ltd
Off the Beat Ltd
Office of Fair Trading (OFT)
Scottish Passenger Agents' Association (SPAA)
Statesman Travel Group
Sunvil Group
Thomas Cook Group
Towergate Underwriting Travel Solutions
Trading Standards Institute (TSI)
Travel Counsellors'
Travel Republic Ltd
Travel Trade Consultancy
Travel Trust Association
Travlaw LLP and Travlaw Trust
TUI Travel PLC
UK Cards Association Ltd
Virgin Atlantic Airways Ltd
Welsh Government
Which?
White Hart Associates (London) Ltd
Willis Ltd
Zurich Insurance PLC

**Stakeholder Events, Association of British Travel Agents (ABTA) Webinar
& Workshops and Interviews**

Acromas Holidays Ltd
Actionstride Ltd
Advantage
Advantage Financial Services
Advantage Travel
Advantage Travel Centres
African Pride

AIG Europe Ltd
Air Travel Insolvency Protection Advisory Committee (ATIPAC)
Al Fresco Holidays SAS
Alfa Travel Ltd
All Leisure
Alpha International Accommodation
alpharooms.com
Alpine Action
Ambassador Holidays Limited
American Express
Anemone Travel & Holidays Ltd
Anzcro UK
APT
Argos Travel Service Ltd
asb law LLP
Association of ATOL Companies
Association of Bonded Travel Organisers Trust Ltd (ABTOT)
Association of British Travel Agents (ABTA)
Association of Independent Tour Operators (AITO)
Association of Travel Agents
Atlantic Holidays Ltd
Avios
Avios Group (AGL) Ltd
Barclaycard
Barrhead Travel Service Ltd
Black Tomato
Bluebird Travel
Brightsun
Britaly Travel
British Airways
Broadbent Travel Worldchoice
Buffalo Tours Uk Limited
Cambourne Travel Ltd
Camping & Caravanning Club
Cannon Travel
Carnival UK Ltd

Charter Travel
Citybond Holdings
Classic
Club Med
Compass Classics Ltd
Concepts for Travel
Co-Operative Travel
Cork Bays & Fisher
Corporate Pay
Corporate Travel Services
Cresta World Travel Ltd
Crumlin Travel
Dalton Travel Dunmow
David Urquhart Travel
Dawson & Sanderson Ltd
Delmar World
Downe Travel
DP & L Travel Management
E&R Abbotts Ltd
Eastravel
Easyjet
Elgin Hotel
Elman Wall
Equinox Global Ltd
Euler Hermes World Agency/XoL Underwriting team
Expedia
Far & Wide
Feherty Travel
First data merchant solutions
Flight Centre
Flightmaster Travel
Fred Olsen Cruise Lines
Freedom Travel Group
Funway holidays
Galina international Study Tours Ltd
Gallagher Travel

Giles Insurance Brokers
Global Pay
Go Travel
Golfbreaks Limited
Grandstand Motor Sport
Great Days Holidays Ltd
GTS Events Ltd
Hamkins
Hays Travel
Holiday Flight Company
Holidayshed
HolidayTravelWatch
Hotelplan UK
HRG
Hurtigruten
If Only...
Iglu.com Ltd
Imp travel Ltd
Inntravel Ltd
Inspire Sport
International Passenger Protection (IPP)
Interval Travel
Isles of Scilly Inclusive Holidays
Jet2.com & Jet2holidays
JetAir Travel Logistics Ltd
Jetline Travel
Journey Latin America
JTB UK Ltd
Just The Flight
Kanoo Travel
Kennedys
Kerala Connections
Kingston Smith
Knock Travel
Kuoni Travel UK
LAH Travel

lastminute.com
Light Blue Travel
LM Travel Services
Lupus Travel
Mann Link Travel Ltd
McNeill & Thrifteway Travel
Mercator Travel
MidCounties Co-Operative Ltd
Millred Ltd
Morecambe Bay Travel Co Ltd
MSC Cruises UK Ltd
Mundy Cruising
NCL (Bahamas) Ltd.
Norma Hill Travel
Nortlander Ski Tours
Oasis Travel (NI) Ltd
Oceania Cruises
Omega Holidays
ON24
Orr's Travel Ltd
P&MM Travel Ltd
P&P Associates Ltd
Peacock Travel
Piper Smith Watton
Powder Byrne International Ltd
Premier Holidays Ltd
Prestbury Travel
Protected Travel Services
Qwerty Travel
Reader Offers Ltd
Real Holidays
REB Travel Services Limited
Regency Travel
Riviera Travel
Roy Taber Ltd
RSD Travel Ltd

Sabre Holdings
Scandinavian Travel Ltd
School Trips Ltd
Scottish Passenger Agents' Association (SPAA)
Shearings Group
Sovereign Travel & Leisure Ltd
Spa Travel Bureau
Spanish Tourist Office
Spear Travels
STA Travel
Statesman Travel Ltd
Stella Travel Services Ltd
STG Travel Ltd
Strachan Travel Ltd
Students On Broadway LLC
Sunspot Tours
Sunvil Group
Superstar Holidays
Switzerland Travel Centre Ltd
Ten Lifestyle Management
The Air Travel Consultancy Ltd
The City Break Company
The Curzon Corporation Ltd
The Holiday Place
The Midcounties
The Walt Disney Company Ltd
Thomas Cook Group
Thompson Travel International
Thorntons Travel
TMG
Towergate Underwriting Travel Solutions
Travel & General
Travel Bonding
Travel By Design
Travel Club Elite
Travel Counsellors'

Travel Nation
Travel Republic
Travel Trade Consultancy
Travel Trust Association
Travelwise Group Ltd
Tucan Travel
TUI UK
TUI UK Ltd
UK Cards
UK Premier Leisure Ltd
Uni Travel Ltd
USAirtours
Viking River Cruises
Virgin Atlantic Airways Ltd
Virgin Flightstore
Virgin Holidays
Wendy Wu
Wexas
WHA (London) Ltd
Which?
White Hart Associates (London) Ltd
WhiteConcierge
Willis Ltd
Willis Management (Guernsey) Limited
Worldpay (UK) Ltd
Worldspan International
WST Ltd

Annex 3: Web links to relevant key documents

Department for Transport: Review of Package Travel Directive and ATOL Implementation and Funding Arrangements: Call for Evidence (May 2013)

<https://www.gov.uk/government/consultations/atol-call-for-evidence>

Department for Business, Innovation and Skills: The European Commission's Proposal for a New Directive on Package Travel and Assisted Travel Arrangements: Call for Evidence (September 2013)

<https://www.gov.uk/government/consultations/package-travel-and-assisted-travel-arrangements-call-for-evidence>

Department for Business, Innovation and Skills: The Government's Response to the European Commission's Proposal for a New Directive on Package Travel and Assisted Travel Arrangements: Call for Evidence (April 2014)

<https://www.gov.uk/government/consultations/package-travel-and-assisted-travel-arrangements-call-for-evidence>

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0314:EN:NOT>

The European Commission's proposal on the revision of the Package Travel Directive (90/314/EEC)

http://ec.europa.eu/justice/newsroom/consumer-marketing/news/130709_en.htm