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|---|---|--|---------------------------|
| Title: Impact Assessment for strengthening the ATOL scheme in order to partially implement the new Package Travel Directive (2015) IA No: DfT00348 Lead department or agency: Department for Transport Other departments or agencies: | Impact Assessment (IA) | | |
| | Date: 25/10/2016 | | |
| | Stage: Consultation | | |
| | Source of intervention: EU | | |
| | Type of measure: Primary legislation | | |
| Contact for enquiries: Stephen Powton (stephen.powton@df.t.gsi.gov.uk) | | | |
| Summary: Intervention and Options | | | RPC Opinion: GREEN |

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2014 prices) | In scope of One-In, Three-Out? Measure qualifies as |
| -£8.45m | -£30.51m | £3.10m | No N/A |

What is the problem under consideration? Why is government intervention necessary?

The statutory Air Travel Organisers' Licensing (ATOL) scheme protects consumers when a travel company becomes insolvent. It is a key mechanism in which the existing Package Travel Directive (1990) is implemented in the UK. Legislative change is necessary to ensure that the ATOL scheme complies with the new Package Travel Directive (2015), when it is brought into force in 2018. The European Commission believes that intervention is necessary to reduce consumer detriment in the holiday travel market. This stems from the considerable information asymmetry that exists in the market, coupled with the fact that money is taken far in advance of delivery of the holiday, and the difficulties consumers face in securing refunds from an insolvent company. The UK Government will need to transpose the new Directive into UK law by 1 January 2018.

What are the policy objectives and the intended effects?

The policy objectives are to strengthen the ATOL scheme and bring it into line with the Package Travel Directive (2015) in a way that ensures it is compliant with EU legislation. The intended effects are to change the coverage of ATOL to make cross-border trade easier for businesses, make information on insolvency protection available for consumers and ensure they receive effective protection when purchasing from an ATOL protected company established in the UK. We also intend to exempt general agreements for Business-to-Business sales from the ATOL scheme in line with the requirements of the new Directive.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. This was considered as a policy option, however due to the potential for legal and financial challenge resulting from ATOL being misaligned with the new Package Travel Directive this was not selected.

Option 2: Strengthening ATOL to be consistent with PTD 2015. This is the Do Minimum option which involves passing legislation to change the tax-raising power for ATOL, and to lay secondary regulations on information provisions, the removal of business to business sales, change information provisions for consumers and to introduce Linked Travel Arrangements into insolvency protection measures.

Option 3 – insolvency protection obligations are covered entirely in the market (e.g. by bonds or insurance). This was dismissed as unfeasible in the timescales, following discussions with the market.

Option 2 is the preferred option as it is the only option that would achieve the objective of ensuring effective transposition of the new Directive in the UK by 1 January 2018.

| | | | | | |
|--|--|---------------------|-----------------------|---------------------|----------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2021 | | | | | |
| Does implementation go beyond minimum EU requirements? | | | No | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | | Micro Yes | < 20 Yes | Small Yes | Medium Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | | Non-traded: |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

| Price Base Year 2016 | PV Base Year 2018 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|-------|----------------------|
| | | | Low: | High: | Best Estimate: -8.45 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|-------------------------------|
| Low | | | |
| High | | | |
| Best Estimate | 2.6 | 3.7 | 34.6 |

Description and scale of key monetised costs by 'main affected groups'

There is a small annual cost to the Civil Aviation Authority (CAA) through loss in income from fewer businesses holding an ATOL and also a transitional cost in updating the ATOL certificate. Businesses face a £2.6m transitional cost to upgrade their systems to provide consumer information and an annual cost of £3.5m in order to provide contractual information to consumers and pay the ATOL Protection Contribution (APC) levy. The ATOL fund (known as the Air Travel Trust Fund or ATTF) has a small cost of £0.2m through loss in income from businesses involved in Business-to-Business (B2B) sales.

Other key non-monetised costs by 'main affected groups'

If the change in scope of the ATOL scheme results in a larger number of businesses having to comply with the scheme there will be; a cost to businesses of a one-off application and an annual renewal of their ATOL; and, a cost to the CAA of issuing an ATOL and ongoing monitoring/renewal costs. If the change in scope of the ATOL scheme results in a smaller number of passengers being covered by the ATOL scheme there will be a cost to the ATTF from a loss of income from APC payments.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | | | |
| High | | | |
| Best Estimate | | 3.0 | 26.2 |

Description and scale of key monetised benefits by 'main affected groups'

There are annual benefits equal to £0.2m for B2B businesses arising from no longer complying with the ATOL scheme and therefore no longer paying APC. For these businesses there is also a benefit to the CAA from no longer monitoring and renewing their licences. There are benefits to the ATTF of £2.7m arising from increased APC payments and a reduction in liability.

Other key non-monetised benefits by 'main affected groups'

If the change in scope of the ATOL scheme results in a smaller number of businesses having to comply with the scheme there will be; a benefit to businesses from no longer renewing their ATOL; and, a benefit to the CAA of no longer monitoring/renewing the licence of these businesses. If the change in scope of the ATOL scheme results in a larger number of passengers being covered by the ATOL scheme there will be a benefit to the ATTF from increased APC payments

| | | |
|---|----------------------|------|
| Key assumptions/sensitivities/risks (%) | Discount rate | 3.5% |
| The main risk arises from the change in scope of the ATOL scheme from the place of sale to the place of establishment. This could result in businesses 'playing the system' in order to either come under or avoid the ATOL protection scheme. We do not know the potential scale of this movement. | | |

BUSINESS ASSESSMENT (Option 1)

| | | |
|--|--------------------------|-----------------------------|
| Direct impact on business (Equivalent Annual) £m: | In scope of OITO? | Measure qualifies as |
| Costs: 3.4 Benefits: 0.2 Net: -3.1 | No | N/A |

Introduction

The Air Travel Organisers Licence (ATOL) is a statutory financial protection scheme managed by the Civil Aviation Authority (CAA) and funded by financial contributions made to the Air Travel Trust Fund (ATTF). Its intention is to protect consumers buying package holidays including a flight and some 'flight only' sales from the insolvency of an ATOL licensed travel company.¹ If a licensed firm goes out of business, the CAA can provide a refund for protected customers or arrange for repatriation. The ATOL scheme partly implements the EU Package Travel Directive 1990 (PTD)² in the UK, which places an obligation on companies selling package holidays to have insolvency protection in place.

The PTD and ATOL were both established as a means of addressing consumer detriment in the travel market. This harm arises as a result of a number characteristics of the market; the time lapse between payment and delivery of the holiday; the lack of consumer awareness of the financial stability of holiday providers; and, the difficulty consumers face in getting a refund from an insolvent company. Consumers may experience both a financial loss from not receiving a refund or facing the cost of travelling home by another means, and the personal loss arising from the inconvenience of a cancelled holiday or from being stranded abroad.

Together the PTD and ATOL have provided an effective framework for regulating the industry for decades, however in recent years it has become apparent that they had become out of touch with changes in the travel market. In particular, the internet has become an increasingly important medium through which travel services are offered. The ATOL scheme was partially reformed in 2012 to ensure it was more capable of meeting the needs of the modern consumer. The scheme now needs to be strengthened further to provide clarity when customers book what appears to be a package holiday and to ensure it meets the mandatory requirements of the revised Package Travel Directive (PTD2), which was published in December 2015³.

This impact assessment attempts to quantify the potential impacts that could arise from strengthening the ATOL regime in order to implement the PTD2 by 1st January 2018.

The ATOL Scheme and the Package Travel Directive

Without regulation, the potential for consumer detriment in this market from the insolvency of a travel company is significant. Payment for holidays and flights is often made many months in advance of travel and before suppliers have to be paid, while barriers to entry can be low with little capital required. This gives rise to a real risk of businesses becoming insolvent between the payment for services and their delivery. If a travel company becomes insolvent while a holiday is in progress, consumers face the risk of being stranded abroad without accommodation or a flight home. This may be compounded where large numbers of other holiday makers are in the same position with limited airline capacity to repatriate them. In addition to the detriment to consumers, there would be large calls on the consular service of the Foreign and Commonwealth Office (FCO) from UK residents stuck abroad.

It was against this background that a statutory ATOL scheme was established in the early 1970s, following the failure of a large travel operator. Insolvency protection for package holidays became a requirement of EU law from 1992 through the Package Travel Directive (PTD).

The ATOL scheme is broadly based around the following three functions: licensing by the CAA to sell travel arrangement that include a flight; an ATOL levy and reserve fund to finance the scheme; and the management of refunds and repatriation in the event of a failure.

ATOL Licensing by the CAA

Businesses selling air holiday packages and some third party sellers of flights in the UK are required by law to hold an ATOL. This allows the CAA to assess the risk of the business failing and take steps to ensure that adequate security is in place. An ATOL is only granted after the company has met CAA's

¹ An ATOL licence is required by law when a travel company sells a flight package which it has organised itself; a flight from the UK plus overseas accommodation and/or overseas car hire (Flight-Plus); or flights where an airline ticket is not issued straight away (flight only).

² Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

³ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, repealing Council Directive 90/314/EEC

licensing requirements, which can include both personal and financial fitness checks, and are carried out over the lifetime of the licence. There are different types of ATOL licence, which allow different ways of entering the scheme. This includes the standard ATOL and Small Business ATOL, which are managed by CAA, and Accredited Bodies, Franchises and Joint Administration Agreements, where some responsibilities are devolved to third parties. An overview of the different licences can be found on the CAA website⁴.

The vast majority of ATOL protected bookings (around 95%) are arranged under a standard ATOL or a Small Business ATOL. The Small Business ATOL is open to businesses selling fewer than 500 flights or holidays a year. This is a relatively light touch approach which ensures an adequate degree of monitoring with a minimal administrative burden. For the largest businesses the CAA adopt more detailed financial monitoring, and can impose requirements, such as fresh capital or a bond, if there is a particular risk. New ATOL holders, regardless of size, are also required to provide a bond or other security as a condition of their licence in the first four years.

Airlines are excluded by law from the ATOL scheme, when they sell “flight only”, as they are subject to a separate EU licensing system, but are still required by the PTD to provide financial security for package holidays they sell. In practice a number of UK airlines have established subsidiary companies with an ATOL to sell package holidays.

Financing the ATOL scheme

Licensed businesses make contributions to the Air Travel Trust Fund (ATTF), which then pays out when a licensed business collapses. The bulk of these contributions are through the ATOL protection Contribution (APC), which is a £2.50 levy per passenger per booking. The ATTF also has a borrowing facility and maintains an insurance policy, which it purchases from the market to provide up to £300m of cover.

For many years the ATTF did not have any income. It was operated as a reserve 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, was introduced to replace the bonding model, other than for businesses whose riskiness justified additional measures. 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.

Managing failures of ATOL holders

Over the last five years, more than 60,000 people have been repatriated by the ATOL scheme and over 230,000 people have received refunds. The CAA manages most failures, and 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 and accommodation providers.

The Package Travel Directive

The Government is obliged under European law to ensure that the Package Travel Directive is effectively implemented in the UK. The Directive introduces a range of consumer protections, which apply across the travel sector. In particular it requires companies to provide evidence of security for refunds and costs of repatriation in the event of insolvency.

The first Package Travel Directive (90/314/EC) (“PTD1”) was transposed into UK law through the Package Travel, Package Holidays and Package Tours Regulations (S.I. 1992/3288) (“PTR”). These regulations require businesses selling package holidays to be able to provide evidence of protection for prepayments and repatriations in the event of its insolvency. While air package travel organisers must use the ATOL licensing scheme summarised above, non-air package travel vendors have a variety of options (including bonding, insurance and trust accounts) available to them to show compliance. The non-air package travel sector is sometimes referred to as the “unlicensed” sector.

PTD1 also requires an organiser to fulfil the entire package when there is a failure involving someone else who is providing a component of the package. For instance, if a package is sold that involves a flight

⁴ Overview of ATOL licences <https://www.caa.co.uk/ATOL-protection/Trade/About-ATOL/Choosing-the-right-ATOL/Overview-of-ATOL-licences/>

component and the airline fails, the package travel organiser is required to arrange an alternative flight or pay compensation.

In 2013 the European Commission commenced work to reform PTD1 and bring it up to date with developments in the travel sector. This process completed with the publication of a revised Package Travel Directive (PTD2) on 11th December 2015. The UK Government will need to transpose PTD2 into UK law before 1 January 2018.

Rationale for Intervention

Consumer protection for the modern travel sector

The ATOL scheme, and the PTD more widely, are designed as consumer protection measures. One of the biggest categories of household expenditure is recreation and culture; in 2011 the ONS found each household spent on average £17.10 a week on package holidays abroad and £1.70 on package holidays in the UK⁵. In the unlikely and unfortunate event of a travel company failure, holidaymakers are particularly vulnerable to cancellations in their travel and accommodation plans when they are abroad. In the absence of a consumer protection scheme, customers may incur significant costs to return back to the UK or to complete their holiday.

ATOL has existed for more than 40 years, and is a recognised consumer protection scheme, but there have been significant changes to the travel industry since it was originally set up. Technical innovation, in particular the introduction of the internet, opened up new ways of buying and selling holidays. It enabled travel companies to allow customers to 'mix and match' or 'dynamically package'⁶ the components of a holiday in a way that often fell outside the traditional scope of PTD1 and ATOL. This saw ATOL sales as a share of all leisure flights fall from over 90% in 1998 to just under 50% in 2009.

This also resulted in a lack of clarity for consumers and industry, as to whether these types of bookings are 'package holidays' as defined in legislation, or are sales of separate holiday components falling outside the requirements for statutory insolvency protection. This has led to an inconsistent approach to insolvency protection, where some holidays are required to be covered by the ATOL scheme and the PTD, while other similar bookings have been sold without these protections. Even where an ATOL licence is held, not all bookings by that ATOL holder will be "licensable transactions" covered by an ATOL.

This gap in protection has led to consumer detriment as consumers buying a non-ATOL protected holiday often face the same risks from the insolvency of their travel company as those who have purchased an ATOL protected holiday. It has also led to confusion for the consumer in trying to understand whether a particular holiday has ATOL protection, both when booking and in the unlikely event of the failure of their travel company. This confusion can also extend to the travel trade itself.

The gap in protection and clarity regarding ATOL protection was evident in a number of travel company failures, including XL Leisure Group in September 2008 and Goldtrail, Sun4U and Kiss flights in summer 2010.

In recent years, successive governments have recognised the need to strengthen the ATOL Scheme which will bring it into line with the new trade practices and provide clarity when customers book what appears to be a package holiday. This led to substantial reforms to the ATOL scheme in 2012 to make it easier for everyone to understand which holidays are covered, and to restore protection to what looks like a package holiday but fell outside the legal definition. The ATOL Regulations were changed on 30 April 2012, to extend the scope to include "Flight-Plus" arrangements⁷, and also to introduce ATOL Certificates and Agency Agreements to help improve clarity.

⁵ <http://www.ons.gov.uk/ons/rel/family-spending/family-spending/family-spending-2012-edition/sum-headlines.html>

⁶ Dynamic packaging is generally considered to be a method of selling holidays, whereby a consumer is able to build their own package holiday from a combination of travel components (e.g. flights, accommodation, and car rental) instead of purchasing a pre-defined package.

⁷ Flight-plus is a form of "dynamic packaging" where a business sells 1) a flight and 2) either accommodation or car hire, where 2) is within 24 hours of 1).

Compliance with EU law

The European Commission has also recognised the need to reform PTD1 and to bring it up to date with developments in the travel sector. The new PTD2 introduces rules which extend protection to cover not only traditional package holidays, but also to offer protection to consumers who book other forms of combined travel. It covers 3 different sorts of travel combinations:

- **pre-arranged packages** - ready-made holidays from a tour operator made up of at least 2 elements: transport, accommodation or other services, e.g. car rental;
- **customised packages** - selection of components by the traveler and bought from a single business online or offline;
- **linked travel arrangements** - if the consumer, after having booked one travel service on one website, is invited to book another service through a targeted link or similar, the new rules offer some protection – provided that the second booking is made within 24 hours

The first two of these amount to an enhanced definition of “package” and all obligations in PTD2 apply to package organisers. Linked travel arrangements are slightly different in that not all of the PTD2 obligations are applicable - only the disclosure provisions and limited insolvency protection obligations apply.

PTD2 also introduces some changes to the scope of insolvency protection from where the sale occurs to where the business is established, which is designed to make it easier for businesses and consumers to trade across borders. It will also require businesses to provide clearer information to travellers on the sort of travel product they are buying and the corresponding level of protection.

HM Government will need to transpose PTD2 into UK law by the 1st January 2018, because this is an obligation under the EU treaties. If ATOL is to continue beyond 2017 as a means of complying with the PTD2, it will need to be strengthened. Only HM Government can intervene to achieve this.

ATOL scheme defined in law

Finally, the ATOL scheme is defined in law, and contributions to pay for it are enabled by primary legislation under the Civil Aviation Act (1982). Those contributions are classified by the Office for National Statistics as a tax. Any changes to the scheme which are necessary to implement EU obligations arising from PTD2 would normally be made through secondary legislation using powers in section 2(2) of the European Communities Act (1972). However, in this case, we have to amend the tax raising power in section 71(1) Civil Aviation Act (1982), to cover businesses “established in” the UK, as opposed to businesses directing sales in UK. We anticipate that primary legislation will be used for this which requires intervention from the Government. It is currently planned that the primary legislation needed to alter the tax raising powers of ATOL will be part of the Modern Transport Bill⁸.

Scope of this impact assessment

This impact assessment and consultation exercise considers the transposition of PTD2 into UK law, in so far as it influences the design of the ATOL scheme. It focusses solely on the insolvency protection related changes from PTD2 that affect the ATOL scheme and the travel companies that it is set up to cover. The impact assessment is at consultation stage, which means that some areas of evidence are missing. We invite consultation respondents to help us build the evidence base.

While this document marks the first step in consulting on PTD2 proposals, it is not the end of the process. The Department for Business, Energy and Industrial Strategy (BEIS) has responsibility for the transposition of PTD2 as a whole. BEIS and DfT will publish a separate impact assessment and consultation covering the non-flight based travel sector and the wider requirements of the PTD2 in Winter 2016.

It also remains this Government’s view that further ATOL reforms may be necessary in the longer term to place financial protection arrangements for the air travel industry on a more robust and commercial basis. A call for evidence in 2013-14, suggested that the Government may either adapt current ATOL arrangements or to countenance more radical changes. Some of these options, if chosen, may involve

⁸ The Modern Transport Bill is due to be published in early 2017

significant changes that could potentially have impacts on the travel and finance sectors. It is important that we have a more complete understanding of the costs and benefits of these options and to be clear that they are feasible and sustainable, both now and in the long term. This Impact Assessment does not put forward proposals for longer term ATOL reform, beyond what is required in PTD2. The consultation does however, seek information and evidence to help inform the development of options for longer term reform, which we will consult on at a later date.

Description of options considered

DfT have been working closely with BEIS and the CAA to consider the new requirements of PTD2 and the changes that would need to be made to ATOL, to ensure it remains an effective way of transposing the new Directive by January 2018 (Option 2). This has also considered whether the scheme could remain unchanged (Option 1), or whether it would be possible to transition fully to a market based approach by 2018 (Option 3). A summary of the considerations is as follows:

Option 1: Do nothing. Under this option, there would not be any change to the ATOL scheme or regulations in order to implement PTD2. The ATOL scheme, its structure and the regulations would remain the same as now. This would mean that the scheme would not be fully or optimally aligned with the new requirements of the PTD2. This would carry the potential for legal challenge and financial cost from not complying with the new Directive. It would also lead to detriment to both consumers and businesses, if they are unable to access the potential benefits that the PTD2 has been designed to bring. It is for these reasons that this option has not been selected for further consideration.

Option 2: Strengthen ATOL to be consistent with PTD2. This is the Do Minimum option which involves passing legislation to ensure the ATOL scheme and structure is adjusted as required to align with the requirements of PTD2. This would involve a mix of primary and secondary legislation, which would broaden the scope of the tax-raising power for ATOL, change the information provisions for consumers, remove business to business sales, and introduce Linked Travel Arrangements into insolvency protection measures. This option would enable ATOL to provide effective consumer protection within the new PTD2 regulatory framework, and it would be feasible to do so within the transposition timescales. It will also allow ATOL members and consumers to access the benefits that the PTD2 is designed to bring, while avoiding gold-plating.

Option 3: Full market approach. This would remove the existing ATOL regulations and scheme, so that insolvency protection obligations arising from PTD2 are covered entirely in the market from 1 January 2018. This would place a requirement on businesses to meet their insolvency protection obligations, through a range of products in the market (for example, bonds and insurance). The ATOL levy and fund would no longer be required, and therefore would not need to be amended to meet the requirements of PTD2.

Option 3 has been explored through workshops and ongoing discussions involving the CAA and stakeholders from the travel, financial services and insurance sectors. Views on similar themes were also sought in an earlier ATOL call for evidence, launched in September 2013. The general view is that this would constitute a fundamental and abrupt change for the travel sector. It appears to be a widely held view that it would not be possible to transition immediately to a full market approach, where every business is able to cover its insolvency obligations through insurance, bonding or other market based schemes. There were concerns raised that there may not be sufficient appetite or capacity in the market to cover some of the larger companies or risks. Others suggested that companies are likely to face disproportionate costs or barriers, unless they and the market are given sufficient time to transition and develop.

Overall, there was a common view that it would not be feasible or desirable to move insolvency protection fully into the market in time to implement the PTD2 on 1 Jan 2018. It is for these reasons that this option has not been selected as a feasible way of ensuring effective transposition of the new Directive by January 2018.

Option 2 is therefore the **preferred option** as it is the option that would ensure the most effective transposition of the new Directive in the UK by 1 January 2018. This option therefore forms the basis of the Impact Assessment and consultation exercise.

This approach is also consistent with the longer term process of ATOL reform. It is apparent that some of the more radical options, if chosen, would require a longer period for industry, the market and regulators

to adjust to. Transitional arrangements may need to be in place in order to minimise disruption to the sector and provide continuity of protections. In the longer term, ATOL may remain, either as the preferred option; or be used as a means of supporting transition to an alternative approach. In either case, it is essential that steps are taken now to ensure that legislation is in place on 1 Jan 2018, so that the ATOL scheme is compliant with the minimum requirements of PTD2.

The Proposal: Strengthen ATOL to be aligned with PTD2

The proposal is that for the time being at least, the ATOL scheme would remain in operation, with alterations made to reflect the new requirements of the PTD2. The ATOL scheme would continue to operate as outlined above, however changes are needed so that;

- The definition of "package" is modified to cover a broader range of booking models
- A new definition of "Linked Travel Arrangements" (LTAs) is introduced to cover sales of connected holiday elements purchased from separate suppliers
- Insolvency protection applies to sales by businesses established in the UK
- The obligation on businesses to provide information on insolvency protection is expanded
- The application of insolvency protection for Business-to-Business sales is removed

Maintaining the existing approach is attractive in that it is likely to involve the least disruption to industry, consumers and the regulators in transitioning to the new PTD. However, even making as few changes as possible will change how the ATOL scheme operates.

New definition of 'Package' Holidays

The definition of 'package' will broadly remain the same whereby the combination of at least two different types of travel service for the purpose of the same trip or holiday constitutes a package. The scope of when the combination of trip elements constitutes a 'package' is extended from the more traditional booking channel where the services are combined by one trader to a dynamic booking channel where the travel services are purchased from separate traders through linked online booking processes.

The insolvency protection for package holidays shall remain the same. Organisers of packages will be required to provide effective security for the refund of all payments made by travellers insofar as the relevant services are not performed as a consequence of their insolvency. If the carriage of passengers is included in the package they must also provide security for the travellers' repatriation.

The change in definition will almost wholly cover sales made under the traditional flight-inclusive package and Flight-Plus categories in the existing ATOL scheme. Travel organisers currently making Flight-Plus sales will need to extend the protection they offer to comply with the insolvency protection obligations for packages. The change in definition, may need to be supplemented by anti-avoidance measures, for example to capture businesses who have previously considered themselves out of scope as they present themselves as an agent acting for the consumer.

Introduction of Linked Travel Arrangements (LTAs)

In order to ensure fair competition the PTD2 introduces Linked Travel Arrangements (LTAs) to extend protection to cover holiday arrangements falling outside of the definition of package. LTAs, as with packages, are the combination of at least two different types of travel services purchased for the purpose of the same trip or holiday, but unlike packages, they result in separate contracts with individual travel service providers.

An LTA is formed, where a customer purchases one travel component through one vendor, then receives a link to another component sold by another vendor. If the customer then purchases a second travel component via that link within 24 hours, then this forms a linked travel arrangement. This can apply, regardless of whether the transactions are made online or through a visit to a shop.

An LTA holiday is differentiated from a package if it involves the separate selection and payment of each travel service, and results in separate contracts. They will provide customers with a lower level of protection than a "package", with consequently fewer obligations on the travel company offering them. The key requirements are:

- **Refunds** - There will be some refund cover for insolvency protection, however only in circumstances where the provider of the first service goes bankrupt.
- **Repatriation** – this cover is only required where the LTA provider is also responsible for the carriage of the consumer (e.g. an airline).
- **Information** - Companies facilitating linked arrangements will be required to provide information on the level of protection prior to the booking / contract.

For example, a price comparison website directs a customer to Company F who take money for a flight, the price comparison website then directs the customer to Company H who take money for a hotel which will complete the customers trip. The price comparison website has facilitated this LTA, but needs hold no security as they have received no payment from the customer.

In another scenario, the customer books a hotel from Company H who then pass on their name and email address to Company F who target the customer and make a sale within 24 hours for a flight to complete the trip. Company H are the facilitators of the LTA, and must hold security for the refund of the payments taken for the room. If Company H fails to perform their part of the LTA (the room) as a result of their insolvency the customer can get a refund for the room but still has a flight with Company F. If Company F becomes insolvent the customer has no protection.

In a final scenario the customer books a flight from Company F, and is then directed to book a hotel from Company H. Company F is the facilitator and must hold effective security to provide a refund if the flight is not performed as a consequence of their own insolvency. As they are responsible for the carriage of passengers the security must also cover the traveller repatriation.

The above examples are all based on combinations including a flight and a hotel, however LTAs can apply to many different combinations of trip elements. For the purposes of this DfT consultation document we are only considering LTAs who make arrangements that include a flight. As such, it might be appropriate for these arrangements to also require some form of ATOL and security for repatriation. Alternatively, there might be benefits in allowing businesses more freedom to choose how to cover their LTA obligations. **We would like to explore this in the consultation.**

'Place of sale' to 'Place of establishment'

The application of UK insolvency protection will be changed from the location of the sale of the trip, to sales made by businesses established in the UK. Travellers buying trips from businesses elsewhere in the EU will not be entitled to ATOL protection, but should be offered the insolvency protections as laid out in the Member State within which the business making the sale is established. Traders established outside of, and, making sales into the EU will be obliged to comply with the domestic insolvency protection systems of each State in which relevant activities are directed.

Information Provisions

PTD2 includes new information provisions which are designed to improve consumer awareness and clarity. This places obligations on the organiser to provide specific information before and after the sale has been made.

Before the traveller is bound by a contract, traders will be required to clearly, comprehensibly, and prominently state whether they are offering a package or a LTA, and provide information on the corresponding level of protection through standard information provisions. They must provide the traveller with a prescribed set of information including but not limited to; the main characteristics of the package; total price of the package; name and details of the organiser; and, information on their cancellation policy.

Upon the conclusion of the travel contract, or without undue delay thereafter, the organiser shall provide the traveller with a copy or confirmation of the contract. This shall set out the full content of the agreement including information provided before the contract was concluded and further information detailing insolvency protection responsibilities. It must also include the name and contact details on the entity providing the insolvency protection. The ATOL certificate, with some minor modifications, will continue to be the recognised way for ATOL holders to meet this obligation.

Business-to-Business Sales

Business travel will become exempt from the ATOL scheme in the case when travel services are sold to someone buying for business purposes. In order to be exempt there must be a general agreement in place between the travel company and the buyer outlining the terms of the business travel sales for a period of time or a series of sales. This means packages purchased by a consumer themselves for

business purposes would continue to be within scope of the proposal and be covered under the ATOL scheme.

Sectors and groups affected

The main sectors and groups that will be affected are as follows. It is important to recognise that in BEIS' assessment of the impacts on the non-flight based travel industry there may be effects on other sectors and groups:

Passengers: PTD and PTD2 are aimed at providing enhanced protection for consumers in the event of an insolvency in the sector. Passengers will find the protection they receive, and who provides it, may change under PTD2. They will also be affected through changes in information provision and clarity about the financial protection of packages they buy. ATOL sales as a share of all leisure flights have fallen from over 90% in 1998 to just under 50% in 2009. The absolute number of annual ATOL sales has risen slightly in recent years, perhaps owing to the widening of scope in packages falling under ATOL in the 2012 Regulations. However, the scale of the impact is still considerable; in 2014/15, the CAA protected 23.7 million passengers⁹.

Travel companies/package operators: The biggest effect will fall on the package travel sector, in particular on tour operators, travel agents or other vendors involved in making available travel combinations, either as package or linked travel arrangements. The policies may change the way they sell their products, or where they sell those products from. There are an estimated 4,030 travel agency businesses in the UK (according to the 2014 UK Business Register¹⁰), with an estimated 3,450 businesses currently licensed under the ATOL scheme. The other businesses may provide non-air based travel and therefore sit outside of this impact assessment.

In the 2014 calendar year ATOL licensed businesses had a total turnover of 17.1bn in the protected market¹¹ in which they operate. It is not possible to quantify the unprotected market but we anticipate it to be larger than the protected market.

CAA: The CAA is the regulator of the ATOL scheme in the UK, thus any changes affecting the ATOL scheme will have an effect on CAA operations. It is responsible for licensing businesses and ongoing monitoring and enforcement. The CAA also administers the Air Travel Trust Fund and manages the refund and repatriation obligation of failed ATOL holders.

Government (Department for Transport): Ultimately, under EU law the Government is responsible for ensuring that the insolvency protection obligations in the PTD are met and are effective. The CAA manage the ATOL scheme on behalf of the Secretary of State for Transport, and the fund is integrated within the Department for Transport's accounts. Changes to the structure of the ATOL scheme could have an impact on the viability and sustainability of the fund, which may lead to calls on Government to consider a loan or other intervention, subject to state aid rules. (PTD2 does not require cover to extend to highly remote risks.)

Local Authority Trading Standards: Local Authority Trading Standards departments have responsibility for the enforcement of the Package Travel Regulations. If LTAs are introduced under the PTR regime instead of an ATOL-equivalent scheme, there would be an impact on trading standards resources to reactively enforce the regulations.

⁹ Air Travel Trust Report and Financial Statements 2014; <http://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=6260>

¹⁰ SIC code 7911. Source: <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/2014/index.html> table BGb

¹¹ By protected market we mean the package travel holiday market which requires sellers to hold an ATOL licence

Costs and benefits of the Proposal: Do Minimum

As detailed above, the do minimum option is the continuation of the ATOL scheme with some adjustments to bring the scheme into compliance with the Package Travel Directive 2015. This will involve making changes such that;

The obligation for businesses to have an ATOL licence will move from relevant flight sales occurring in the UK, to sales made by businesses established in the UK;

- The definition of “package” is made consistent with the text in the PTD 2015 and we adopt the definition for Linked Travel Arrangements (LTAs);
- The obligation on ATOL licensed businesses to provide consumers with details of the insolvency protection in place, will extend to include pre-sale as well as post-sale information;
- Travel services that are sold to someone buying for business purposes will be exempt from the ATOL scheme.

The impacts of each of these measures is explored in isolation (for simplicity) below.

Measure 1: ‘Place of sale’ to ‘Place of establishment’

Changing the scope of the ATOL scheme will have both immediate, and longer term impacts. In the short term the transposition legislation will result in the ATOL scheme extending to cover passengers booking packages in the EEA with a company established in the UK, and ceasing to be responsible for companies based in other member states selling packages into the UK. It will continue to apply to companies based outside of the EEA who are selling into the UK.

Changing incentives for businesses choosing a Member State for establishment

The new PTD2 aims to promote a level playing field for businesses by harmonising rules and removing obstacles to cross-border trade. If we assume that all member states transpose the PTD2 at an equivalent level, there should not be much difference in attractiveness to businesses across Europe purely on the basis of insolvency protection. In the short term it may be difficult for a business to move their place of establishment due to factors such as property rents or server locations. In the longer term, however, businesses may make strategic decisions on their place of establishment, which may lead some companies to leave or establish in the UK. These decisions will be based upon a broad range of factors, which may include, but not be limited to, a consideration of the relative costs and benefits of insolvency schemes across Europe.

We cannot know whether companies will decide to establish or leave the UK, so in the short term we assume a net migration of zero.

We welcome views on whether businesses will decide to move their place of establishment in order to comply with other member states’ insolvency schemes.

Companies currently making sales under the ATOL scheme within the UK

There are two categories of business to consider in this circumstance; businesses established in the UK and selling solely in the UK; and, businesses selling across Europe.

For businesses established and selling solely in the UK there will be no change in insolvency protection following the change in regulation from place of sale to place of establishment as these are one and the same. These are likely to be smaller businesses selling specialist or niche holiday packages. For this subsection there will be no change in costs. The amendment will bring potential benefits to these businesses as they should find it easier to sell into other Member States without the need to comply with various insolvency protection schemes.

Businesses operating across Europe will have a number of options available to them in order to comply with the PTD2 as transposed by Member States:

- Establish the business in one Member State and sell under that Member States insolvency protection to customers across Europe
- Structure the business such that it can establish in two or more separate Member States, with each distinct entity complying with the corresponding Member State insolvency protection of where it is established, and selling to consumers either solely in that member state, or across Europe, under different insolvency protection schemes.

- Establish outside of Europe, and sell into Member States, complying with the insolvency protection of the Member State into which they sell.

Without an indication from businesses on how they will choose to operate under the PTD2 as transposed across Europe we do not know the scale of the impact of this measure. There could be an increase or decrease in the number of businesses operating under ATOL leading to a rise or fall in the number of passengers paying APC into the ATTF.

The impact will be felt by businesses, the CAA, the ATTF and passengers:

- Impact on Business

If businesses choose to establish in the UK or outside of Europe and sell in the UK they will be required to comply with the ATOL scheme. This will mean familiarisation costs, the cost of applying for a licence from the CAA, and the APC rate paid on each licensable holiday sold.

Businesses will have to become familiar with the ATOL scheme in order to comply in the correct manner. There is guidance available on the CAA website but businesses will likely have to spend time reading this guidance and seeking further information where they need clarity.

We would like to know from current ATOL members the cost or time taken to familiarise your business with the ATOL scheme.

The current licence costs are set by the CAA and shown in table below. Businesses will also need to cover the administrative cost of applying for a licence which is estimated to be 19.5 hours work for senior corporate managers in the case of a Standard ATOL licence; 4.4 hours in the case of other ATOL licences; and, dependent on the Accredited Body in the final case¹². The administrative cost of applying for each type of licence is shown in Figure 1, and is based on an average wage of £26.30 per hour for Corporate Managers and Directors^{13,14}.

| <u>ATOL licence</u> | <u>Cost of licence</u> | <u>Administrative Cost of Application</u> |
|----------------------------------|------------------------------|---|
| Standard ATOL | £1,890 | £618 |
| Small Business ATOL | £1,120 | £139 |
| ABTA Joint Administration Scheme | £710 | £139 |
| Franchise ATOL | £710 | £139 |
| Accredited Bodies | Dependent on Accredited Body | |

Figure 1: Cost of different ATOL licences

Businesses operating under the ATOL scheme will also face the cost of paying the ATOL Protection Contributions at a rate of £2.50 per protected passenger.

We welcome responses from businesses on the administrative cost of applying for an ATOL

- Impact on the CAA

The CAA will face the cost of issuing new licences to businesses who choose to establish in the UK or choose to sell into the UK from outside of Europe. They will also have to change the terms of some licences in order that the holder can sell to customers across Europe. Alongside the cost of issuing licences there will be the cost of ongoing monitoring of new ATOL holders. This may require new legislative powers in order to establish whether a business is established in the UK. As the CAA charges for ATOL licences on a cost-recovery basis this will be a transfer payment from businesses and the net effect is zero.

¹² Based on a telephone survey carried out by the CAA in 2016 on the time taken by 24 ATOL holders to apply for their licence.

¹³ Based on 2014 ASHE, Pay by SOC 4 digit 2010 code, Table 14.6a

¹⁴ The figure of £26.30 is the gross wage rate, adding in non-wage labour costs gives a figure of £31.69. Non-wage labour costs taken from the Labour Cost Survey 2000.

- Impact on the ATTF

The impact on the ATTF is dependent upon the strategic decisions taken by businesses on where to establish. If they move to the UK and decide to operate under the ATOL scheme then the ATTF will grow from increased APC but will need to cover refunds and repatriation for those passengers. If businesses leave the UK then the ATTF will not benefit from those APCs but will also no longer need to cover refunds and repatriations for those passengers.

Whilst the APC contributions represent a benefit to the ATTF they are a cost to business and are hence a transfer payment. The net impact of businesses paying APC is therefore zero.

The potential for companies to extend the scope of consumer protected under the UK scheme will have important consequences for the potential of the ATTF to meet costs through its insurance layer. The insurance purchased by the trustees is currently for flight accommodation made available in the UK, and as the scheme is currently done on place of sale this has always been effective coverage. As the scope of passengers covered under the ATOL scheme changes the ATTF trustees may need to change the way they insure the reserve fund, which could change the insurance premium and terms they are offered.

- Impact on passengers

UK consumers will be protected by a variety of insolvency protection offered across Member States depending on where the business they purchase their trip from, is established. There may be some familiarisation costs to the consumers who are used to the ATOL scheme but may now be protected by insolvency protection in another state. If consumers purchase a trip from a business established elsewhere in the EU and the company becomes insolvent there may be some costs to the consumer of processing a claim with a non-UK insolvency protector.

Measure 2: Change in the scope

The PTD2 changes the definition of a 'package' such that it now extends to cover customised packages, which are likely to bring the following business models into scope:

- Dynamic package models currently considered to be 'Flight-Plus' arrangements in the existing ATOL scheme
- Other similar business models, including where the agent is said to be acting for the consumer

The PTD2 also introduces an entirely new category of Linked Travel Arrangements, which will bring other business models into scope.

'Flight-Plus' are those which are bought from the same vendor within 24 hours of each other, and combine a flight with accommodation and/or car hire. Flight-Plus was included in the scope of ATOL under the 2012 Regulations and addressed in the 2012 impact assessment. The PTD2 now makes this mandatory across Europe; on this basis there are no new impacts arising from this policy.

Agent for the consumer (A4C) models exist where a business buys a package holiday on behalf of the consumer, rather than the business selling a package to a customer. PTD2 has provided clarity that it should make no difference whether a trader is acting on the supply side or they present themselves as an agent acting for the traveller. These models will therefore be considered in scope of ATOL. The CAA currently licence A4C businesses, who receive a 50% cost saving on their APC contributions. The value of these savings was £2.69m in 2014/15¹⁵ which can be redeemed against APC payments in the future. The benefit of bringing A4C models in scope of the ATOL scheme is the retention of these funds which is directly equal to the cost to A4C businesses who now have to pay the full APC. The net effect is therefore zero.

Linked travel arrangements are looser travel arrangements where a customer purchases one component of a package through one vendor, then receives a link to another component sold by another vendor. If the customer then purchases a second travel component via that link, then this forms a linked travel arrangement. Linked Travel Arrangements fall under the scope of the PTD2, however the new rules will only offer some protection in situations where the provider of the first service becomes insolvent.

The impacts arising from the inclusion of ‘agent for the consumer’ and LTAs are:

- New businesses selling products defined as LTAs or on the basis of agent for consumer will incur costs from having to comply with the ATOL scheme. This includes the cost of familiarising themselves with the scheme, the administrative cost of applying for an ATOL, paying CAA fees, and any bonding requirements the CAA require.
- Businesses will incur costs from renewing their ATOL licence on an annual basis, this will be less than the initial cost of applying.
- The CAA will incur costs from processing new ATOLs, running compliance checks and widening the number of businesses under its enforcement regime. If the CAA charges fees on a cost-recovery basis, then this effect is a transfer payment from the above impact and the net effect is zero.
- The ATTF will benefit from increased ATOL Protection Contributions, but with a wider pool of businesses the number of calls on the ATTF is also higher.
- Where relevant, passengers may benefit from the protection that ATOL provides; namely refunds and repatriation, and the value they place on having insolvency protection.

We do not have estimates about how many packages will be sold as LTAs or the number of businesses that will come into scope in the future; we invite consultation respondents to provide a view. The CAA estimate that airline click-through sales¹⁶ where the UK arrangements will apply, account for a very small portion of air-holiday sales at around 0.4%. It is possible that this figure may grow as the market matures in light of the PTD2.

The monetised impact of measure 2 is summarised in the table below.

| <u>Costs</u> | <u>Transitional</u> | <u>Annual</u> |
|-------------------------------------|---------------------|---------------|
| A4C businesses pay the full APC | | 2,690,000 |
| <u>Benefits</u> | <u>Transitional</u> | <u>Annual</u> |
| Additional APC payments to the ATTF | | 2,690,000 |

Measure 3: Information Provisions

The PTD2 regulations introduce new obligations for the travel organiser to provide information on insolvency protection to the consumer before the sale has been completed, and once the package has been sold.

Pre-contractual information

The travel organiser will have to provide information on insolvency protection through standard information provisions before a package is brought. Traders will be required to state clearly and prominently whether they are offering a package or a Linked Travel Arrangement (LTA), and provide information on the corresponding level of protection before the traveller agrees to pay.

The effects of this change are:

- Impacts on business

There will be a cost to ATOL licensed businesses to the order of making alterations in their booking systems to make information available for the consumer. Where a passenger books their holiday online the information will have to be made available in writing and passengers booking via the telephone or face to face will likely be given the information verbally. A recent survey carried out by the CAA¹⁷ found that around 55% of passenger booked a package holiday via a website and 35% booked either face-to-face or via the phone.

¹⁶ A click-through is the sale of two (or more) distinctly separate contracts for travel components facilitated by one of the contracting parties – typically an airline.

¹⁷ Consumer research for the UK aviation sector – Final Report 2015;

<http://publicapps.caa.co.uk/modalapplication.aspx?appid=11&catid=1&id=6781&mode=detail&pagetype=65>

| <u>Method of booking</u> | <u>Proportion of responses</u> |
|--|--------------------------------|
| Airline/Holiday Company website | 47% |
| Price Comparison/Travel Agent website | 8% |
| In person at a Travel Agent | 25% |
| Phone booking with Airline/Holiday Company | 10% |
| Other | 10% |

Figure 2: Booking Channel for Package Holidays

The cost to businesses of providing information on a website is taken from the Business Engagement Assessment run by the CAA in 2014 which found that the total cost of providing “static” information is approximately £1,200 per business. This is comprised of £700 for one working day of appropriate policy officer and £500 for one working day of a skilled web developer to practically amend the website. As the information provisions need to be tailored to each individual purchase the information will need to be “dynamic” and may entail higher costs, £1,200 is therefore a conservative estimate.

There are currently around 3,450 businesses authorised to sell ATOL protected holidays. Of this number some are members of Accredited Bodies who will bear the cost of carrying out this provision on behalf of its members. There are therefore 2,200 entities who will need to meet the cost of upgrading software in order to meet the information provision at a cost of £2.64 million. The cost of having compliant systems will also fall on any new entrants to the travel market.

We welcome views from businesses on the cost to change their websites in order to comply with these regulations.

The cost to businesses of providing information either face-to-face or via the telephone can be estimated using average wages. The median hourly wage for Travel Agents is £9.58^{18,19}, assuming it takes 2 minutes²⁰ to relay the additional information to the customer the regulations will result in an extra cost of £0.38 per person. In 2014/15 ATOL businesses covered 23.7 million passengers, assuming these passengers are travelling in groups of four with one person responsible for booking we assume that 5.93 million people booked a holiday in 2014/15. If 35% of these people book their holiday in person or over the phone the additional cost of providing information will be £0.79 million. As the number of holidays booked via the telephone falls (and the number booked online rises) this cost will fall.

There will also be an impact on businesses as they familiarise themselves with the information provisions regulations. We anticipate that the CAA will issue guidance on what businesses need to do in order to comply with the information provisions so the cost to business will be minimal. However, **we welcome views from business on the cost or time taken in order to familiarise themselves with the information provisions.**

The total cost to business is therefore a one-off initial cost of £2.64 million, and an ongoing cost of £0.79 million per annum.

The main benefit to business is the ‘levelling of the playing field’ that comes from consumers being made aware of insolvency protection before making the decision to purchase the package. As the consumer will be made explicitly aware of the insolvency protection included within a package they will be able to make more informed decisions regarding holiday selection. Assuming insolvency protection is attractive to consumers it may result in higher demand for packages with ATOL protection.

- Benefit to the consumer

Consumers will now be made aware of the insolvency protection on the package they are looking to book and will be able to make more informed decisions about their purchase and hopefully shift demand

¹⁸ Travel agent time at £9.58 per hour (based on 2014 ASHE, Pay by SOC 4 digit 2010 code, Table 14.6a)

¹⁹ The figure of £9.58 is the gross wage rate, adding in non-wage labour costs gives a figure of £11.54. Non-wage labour costs taken from the Labour Cost Survey 2000.

²⁰ 2 minutes is taken as the time taken to read the prescribed information set out in the PTD 2015 EU Directive.

to lower risk holidays. We do not attach a monetary figure to this as we do not know the value consumers place on awareness.

Post-sale contract

Businesses selling packages covered under the PTD2 will have to supply consumers with a prescribed set of information before the start of the package or LTA. In the case of businesses covered by the ATOL scheme this is already partly achieved via the distribution of the ATOL certificate. There will have to be some changes made which will have the following effects:

- Impact on Business

As much of the information required to be made available before the holiday commences is already provided or collected by businesses the cost is likely to be negligible. There may be a very small one off cost to business of gathering some details but this is likely to be insignificant.

Making insolvency protection information available to consumers is currently done through the use of the standard ATOL certificate. The method of distributing the ATOL certificate to consumers will remain the same for businesses so there will be no change in cost to business.

- Impact on the CAA

There may be some cost to the CAA to change the form-field pdf to enable the additional information to be included on the ATOL certificate. The CAA have estimated this will take 100 person hours, at an average wage of £18.80²¹²² for business and public service professionals the cost to the CAA is estimated to be £2,300.

- Impact on the consumer

As ATOL certificates are already distributed following the sale of a package holiday there will not be a significant change in benefits to consumers. There will be a very small benefit arising from the additional information on the certificate.

The monetised impact of measure 3 are summarised in the table below.

| <u>Costs</u> | <u>Transitional</u> | <u>Annual</u> |
|--|---------------------|----------------|
| Business update booking systems to provide pre-contractual information | 2,640,000 | 789,000 |
| CAA change the ATOL certificate | 2,300 | |
| TOTAL | 2,642,300 | 789,000 |

Measure 4: Business to business

Article 2 of the Package Travel Directive sets the scope of which packages fall under its remit. PTD2 removes packages that cover business travel from scope. As a maximum harmonisation directive, under Option 1 the CAA would no longer cover these packages under the ATOL scheme.

The CAA estimate that the number of packages sold for business purposes is around 0.4% (approximately 80,000), with approximately 30 ATOL holders specialising in business travel.

The effects of this change are:

- Fewer ATOL licences processed by the CAA each year. A reduction in the processing of 30 ATOL licences will save CAA £36,000 per annum²³, as the CAA operate on a cost recovery pricing scheme this will be equal to the loss in income from no longer collecting the licence application fee.
- Savings to CAA monitoring and compliance costs (less than the input of one employee). Since CAA would shift their compliance activities to other businesses, it is unlikely they would reduce

²¹ Business and Public Service Associate Professionals time at £18.77 per hour (based on 2014 ASHE, Pay by SOC 4 digit 2010 code, Table 14.6a)

²² The figure of £18.80 is the gross wage rate, adding in non-wage labour costs gives a figure of £22.65. Non-wage labour costs taken from the Labour Cost Survey 2000.

²³ Equal to the cost of 30 Standard ATOL licence renewal fees at £1,185.

monitoring and compliance resources on the basis of this exclusion. Therefore we assume no cost saving arising here.

- Reduction in ATOL Protection Contributions (APC) each year. A reduction in APC on the 80,000 trips would be a loss of approximately £200,000 per year in income to the ATTF. This is also a benefit to business from APC payments no longer made.
- Savings to exclusively business package travel traders from no longer adhering to the ATOL scheme. This is estimated at £1,400 per business²⁴ giving an annual saving of £42,000.
- Travel company failures no longer covered by the Air Travel Trust Fund. It was assumed in the 2012 impact assessment that 0.3% of passengers have historically been affected by travel operator failure, and that the average cost of refund and/or repatriation is £302. Removing 80,000 packages from the scope of ATOL would save the ATTF approximately £72,000 per year in pay-outs.
- Cost to business passengers from no longer being covered by the ATOL scheme. In practice, business passengers are likely to book packages as part of a general agreement with a travel agency (or agencies). Such agreements will likely take account of the travel agent's insolvency risk and is taken into account when forming a commercial relationship. On this basis, we do not believe this cost will materialise, hence we set it to zero.

The monetised impact of measure 4 is summarised in the table below.

| <u>Costs</u> | <u>Transitional</u> | <u>Annual</u> |
|--|---------------------|----------------|
| Business passengers no longer being covered | Negligible | Negligible |
| Reduction in APC receipts to the ATTF | | 200,000 |
| Loss in income to the CAA for ATOL licence renewals | | 36,000 |
| TOTAL | Negligible | 236,000 |
| | | |
| <u>Benefits</u> | <u>Transitional</u> | <u>Annual</u> |
| Businesses save from reduction in APC payments | | 200,000 |
| Savings to the CAA from processing ATOL licence renewals | | 36,000 |
| Savings to business from compliance with the ATOL scheme | | 42,000 |
| Reduction in ATTF pay-outs | | 72,000 |
| TOTAL | | 314,000 |

²⁴ £1,185 licence renewal fee published by the CAA + 8.25 hours of senior corporate manager time at £26.31 per hour (based on 2014 ASHE, Pay by SOC 4 digit 2010 code, Table 14.6a) and uplifted to include non-wage costs to £31.70.

Summary & monetised impacts of preferred option

The preferred option is the Strengthen ATOL option whereby;

- The definition of “package” is modified to cover a broader range of booking models
- A new definition of LTAs is introduced to cover sales of connected holiday elements purchased from separate suppliers
- Insolvency protection will apply to sales made by businesses established in the UK
- The obligation on businesses to provide information on insolvency protection is expanded
- The application of insolvency protection for general agreement Business-to-Business sales is removed

This option will help to protect consumers in the travel industry whilst strengthening the ATOL scheme and complying with EU law.

Costs and Benefits

Please note that we have assumed that all ATOL businesses are UK based and would therefore fall within consideration of this Impact Assessment. A percentage of these businesses may be based abroad and complying with the ATOL scheme on the basis of sales made in the UK. The costs and benefits to business are therefore likely to be smaller when just considering UK businesses.

| <u>Costs</u> | <u>Transitional</u> | <u>Annual</u> |
|--|---------------------|------------------|
| Agent for Consumer sales made by businesses now pay the full APC | | 2,690,000 |
| Business update booking systems to provide pre-contractual information | 2,640,000 | 789,000 |
| CAA change the ATOL certificate | 2,300 | |
| Business passengers no longer being covered | Negligible | Negligible |
| Reduction in APC receipts to the ATTF | | 200,000 |
| Loss in income to the CAA for ATOL licence renewals | | 36,000 |
| Total Costs | 2,642,300 | 3,715,000 |
| <u>Benefits</u> | <u>Transitional</u> | <u>Annual</u> |
| Additional APC payments to the ATTF from Agent for Consumer holidays | | 2,690,000 |
| Businesses save from reduction in APC payments made for B2B trips | | 200,000 |
| Savings to the CAA from processing ATOL licence renewals | | 36,000 |
| Savings to business from compliance with the ATOL scheme | | 42,000 |
| Reduction in ATTF pay-outs | | 72,000 |
| Total Benefits | | 3,040,000 |

One-in-Three-Out and the Business Impact Target (BIT)

The proposals outlined above are a direct transposition of an EU directive into UK law. Under the Better Regulation Framework Manual paragraph 1.9.9, European Directives that are transposed without any gold-plating are exempt from the One-In, Three-Out framework²⁵. For the same reason the proposals are also a Non-Qualifying-Regulatory-Provision (NQRPA) and therefore the EANDCB will not score against the BIT.

Supplementary tests (including Small and Micro Business Assessment)

Small and Micro Business Assessment (SaMBA)

There will be an impact on small and micro businesses. The package travel industry is heavily skewed with two large companies having considerable market power, a group of 10-15 medium-large companies followed by a 'tail' of thousands of small and micro businesses.

The Better Regulation Framework Manual sets out a range of mitigation actions that Departments can take to reduce the impact of Government policy on small and micro business. This is because impacts of government policy on small business tend to be disproportionate and prevents entrepreneurship in setting up and running companies.

In this context, the policy goes some way to mitigating impacts on small business. On this basis we do not believe there is a case for partial or full exemption. The list below of mitigating actions explains what has been done to assist small business.

Full, partial or temporary exemption: The transposition of EU law as a maximum harmonisation provision prevents small business exemptions, even on partial or temporary basis.

Extended transition period: The transposition of PTD2 requires that there is a six month period from enactment to implementation. There is no provision in the PTD2 to extend this period for small businesses.

Varying requirements by type and/or size of business: Small businesses are able to take advantage of two (less burdensome) approaches to achieve compliance with the PTD2: these are through small business ATOLs; and using Accredited Bodies.

Specific information campaigns or user guides, training and dedicated support for smaller businesses: The CAA, Accredited Bodies and other trade bodies (such as ABTA) would be able to assist small businesses in compliance with the proposal.

Direct financial aid for smaller business: Reimbursement or financial support for compliance would likely cause a breach of EU rules on state aid, so this route is not available.

Opt-in and voluntary solutions: There is no scope for small businesses to comply with PTD2 on an opt-in or voluntary basis.

Family Test

Whilst this policy does not explicitly or implicitly target families we have considered how it may inadvertently impact on family relationships. We do not anticipate that there will be a differential impact on families as the policy will apply equally to all UK citizens.

Equalities Assessment

We do not anticipate that this policy will lead to negative or adverse impacts on equality. This is because the scope of the policy will apply equally to all UK citizens regardless of their race, gender, age, disability, pregnancy and maternity status, gender reassignment, religion or belief, sex and sexual orientation.

²⁵ <https://www.gov.uk/government/publications/better-regulation-framework-manual>

Post Implementation Review

This Impact Assessment covers the consultation we intend to conduct regarding the possible changes to the ATOL legislation and scheme. Accordingly, the Department will review the impact of any changes that are implemented shortly after they have taken effect to gain further insights regarding the impacts of these changes. The Package Travel Directive itself must be reviewed by the European Commission and a report produced for the European Parliament by 1 January 2021. It is anticipated that we will include a statutory duty in our regulations that will require a review of the UK implementation to the same timetable.