



Department
for Transport

Updating consumer protection in the package travel sector Consultation on ATOL

Moving Britain Ahead



February 2018

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Contents

Introduction	4
The consultation process	5
How to respond	6
Freedom of Information	6
1. Summary of proposals	7
2. Proposals for updating the ATOL regulations	8
Broadening the scope of ATOL protection – a new definition of a ‘package’	8
Linked Travel Arrangements (LTAs) that require the protection of a flight	9
Changes to the regulations about who needs to hold an ATOL	11
Extending ATOL to Agent for the Consumer (A4C)	12
Exemptions	12
Revocation of Flight-Plus (Part 3)	15
ATOL scheme enforcement	15
Information provisions – ATOL Certificates	17
3. What will happen next?	19
Annex A: Full list of consultation questions	20
Annex B: Consultation principles	22

Introduction

- 1 This consultation invites views on the Government's proposals to update the regulations which govern the Air Travel Organisers' Licencing (ATOL) scheme. It marks the final stage of consultation on the implementation of a new EU Package Travel Directive (PTD 2015)¹, following the previous consultations on modernising ATOL ("the ATOL consultation of 2016") published November 2016, and on updating consumer protection in the package travel sector ("the PTR consultation of 2017") published August 2017.
- 2 The ATOL scheme provides protection to consumers that have booked an ATOL protected flight or holiday involving a flight, from the potential insolvency of their travel provider². In the rare event of a failure, the scheme ensures consumers can complete their holiday, or receive a refund if they are yet to travel. The scheme protects over 20 million holiday-makers each year, and it is a key way in which the UK implements the EU Package Travel Directive (PTD 1990) for package holidays that include a flight.
- 3 In recent years we have taken steps to update the ATOL scheme to bring it in line with modern trade practices. In 2012, we introduced the 'Flight-Plus' category, ATOL certificates, and Agency Agreements to extend consumer protection, and help to improve clarity for all. We now need to build upon these changes to implement the provisions from the PTD 2015, which will bring similar, but further reaching protections across Europe.
- 4 The PTD 2015 has been introduced to provide clearer and more comprehensive protection for holiday-makers. In particular, it broadens the scope of traditional package protection to cover modern methods of buying 'package holidays'. It clarifies areas that have been open to interpretation in the existing Directive, including confirmation that agent for consumer sales are in scope. It also introduces a new concept of 'Linked Travel Arrangements' which will provide new but more limited protection for looser travel arrangements. Finally, there are also new information requirements, to provide consumers with clearer information about the travel product they are buying and the corresponding level of protection.
- 5 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU. In line with this policy the government intends to transpose and implement PTD 2015.

¹ 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

² 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 the seller is not acting as the appointed agent of an airline (flight only).

The consultation process

- 6 We have already consulted on proposals to align the ATOL scheme with the broadened scope of the PTD 2015. A Government response, published in February 2017, confirmed our intent to proceed with these plans, and we have started the process through the Air Travel Organiser's Licence Act (2017), which received Royal Assent in November 2017. The Department for Business Energy and Industrial Strategy (BEIS) have also consulted on the overarching proposals to update the Package Travel Regulations 1992 in line with PTD 2015.
- 7 In this final consultation we are seeking views on the proposed changes to the ATOL regulations³ to transpose the provisions of the PTD 2015. It complements the changes BEIS are implementing through the Package Travel Regulations 1992. The proposals will ensure that ATOL continues to provide effective and clear consumer protection whether they book online or on the high street. They will also make it easier for UK businesses to trade across Europe without needing to comply with insolvency protection requirements in each member state.
- 8 Overall, we intend to implement in a way that will impose minimal additional burdens on business, while enabling the UK to comply with the requirements of the Directive. As the Directive requires maximum harmonisation, the UK does not have flexibility on how it implements the majority of provisions. We will therefore transpose the Directive using a copy out approach, which would mean that the provisions will appear in the UK's Package Travel Regulations as they were set out in the Directive. The changes we are proposing in this consultation are consistent with this approach, and will largely involve minor adjustments to the existing ATOL regulations. We believe this will help consumers, businesses and the CAA to transition to the new Package Travel Regulations in 2018 with minimal impact.
- 9 Your comments are invited and would be welcomed on the changes proposed within this consultation. For clarity, we have also published the following documents alongside this document:
 - draft regulations amending the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the ATOL Regulations);
 - an impact assessment; and,
 - the CAA's proposals to amend the ATOL Standard Terms to meet the new requirements.
- 10 We are also continuing to consider further reforms to ensure insolvency protection works for consumers and business, while minimising the risk for the Government and taxpayer. That is why we announced in the Autumn Budget 2017, our plans to carry out a review led by an independent chair, into consumer protection in the event of an airline or travel company failure. This will draw on lessons from the Monarch collapse and consider both repatriation and refund protection to identify the market reforms necessary to ensure passengers are protected. We are not seeking views on the review in this consultation, however we will engage with stakeholders before the review reports to the Secretary of State in the next twelve months.

³ The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

How to respond

The consultation period began on 23 February 2018 and will run until 23 March 2018. Please ensure that your response reaches us before the closing date and can contact us if you need alternative formats (Braille, audio CD, etc.).

Please submit consultation responses using the response form on the ATOL consultation page, which you can find at https://www.gov.uk/government/publications?publication_filter_option=consultations

Responses can also be emailed using the form provided on our webpage to ATOLconsultation@dft.gsi.gov.uk or by post to:

ATOL consultation
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1/25 Great Minster House
33 Horseferry Road
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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

1. Summary of proposals

The consultation invites views on the following proposals to update the ATOL Regulations to align with the main elements of the PTD 2015:

- **Broader scope** - we will update the ATOL regulations to adopt the new definition of a 'package' from PTD 2015. This clarifies who needs to hold an ATOL and has the potential to bring some business models into the scope of protection.
- **Linked Travel Arrangements (LTAs)** - insolvency protection for flight-LTAs will be implemented through the Package Travel Regulations, through bonding, insurance or trust arrangements, or for the flight element through selling an ATOL protected seat.
- We will extend ATOL protection to sales from UK businesses when they sell in Europe. **The requirement to hold an ATOL will apply to UK businesses when they sell packages to consumers in Europe.** This will make it easier for UK businesses to trade across Europe, without needing to comply with different insolvency protection regimes in each state.
- **Agent for the consumer** - we will extend ATOL to businesses that are acting as agents for the consumer when they sell a flight as part of a package.
- **ATOL Flight-Plus** - we will revoke Flight-Plus, as these business models will be regulated under the new definitions of package and LTAs.
- We will exempt **business-to-business** sales from the ATOL scheme.
- **Agents for ATOL holders** - we will clarify that "Agents for ATOL holders" are not exempt from having to hold an ATOL if they are organising package holidays in their own capacity. Under the PTD 2015, if a business is organising a package, they should be responsible for its performance, including the provision of insolvency protection.
- **EEA Traders** - in accordance with PTD 2015, EEA traders will be able to sell packages to consumers in the UK without an ATOL, though they will need to comply with the PTD 2015 using measures in their own Member States.
- **Agents for EEA Traders** – we propose to exempt UK Agents that sell packages organised by EEA Traders, as the EEA Trader would already be responsible for providing insolvency protection under PTD 2015.
- **Sanctions** – we will update the existing enforcement provisions to align them with the changes we are making to the scope of ATOL. We also invite views on the inclusion of **civil sanctions** in CAA's enforcement toolkit to provide a more flexible and effective response to routine compliance in the ATOL scheme.
- The **ATOL certificate** will be retained to support the information requirements in PTD 2015. This can be provided electronically, even if the customer is present, to help streamline the process for business and allow greater convenience for the consumer.

2. Proposals for updating the ATOL regulations

- 2.1 This section outlines the proposed changes to the ATOL Regulations to implement the insolvency protection requirements set out in PTD 2015 for the flight sector. The existing Package Travel Regulations (1992) require businesses selling package holidays in the UK to have insolvency protection. This is generally provided through ATOL for the flight-sector, and through bonding, insurance or trusts for the non-flight sector. In the ATOL consultation of 2016 we proposed to maintain this arrangement for the immediate future, on the basis that it would not be in the interest of the consumer, business or regulator to rush to a new system by 2018. The Government response, published on 9 February 2017, confirmed our intention to bring forward legislation to align ATOL with the scope and requirements of the PTD 2015.

Broadening the scope of ATOL protection – a new definition of a ‘package’

- 2.2 One of the principal changes introduced by PTD 2015 is a broadening of the definition of package holidays so that it clearly includes new, commonly used dynamic packaging arrangements. This new definition is explained in more detail in the PTR consultation of 2017. It is intended to cover arrangements where there has been considerable debate and confusion over whether they fell within the current definition. The UK supported this broadening of the definition as it will provide greater clarity to travellers and business over what constitutes a package.
- 2.3 The PTD 2015 obliges us to adopt this wider definition and associated terms of a package holiday. In the previous consultations we have proposed that we will copy out the new definition of package from PTD 2015 into the Package Travel Regulations⁴, and will also ensure the ATOL scheme is consistent with the new definition⁵. We have drafted updates to Regulation 4 of the ATOL regulations to achieve that. This will replace the definition of package in the existing Regulation 4 with a proposed new regulation 4B, which will adopt the same definition used in PTD 2015 and the updated Package Travel Regulations.
- 2.4 As part of this updated definition, the PTD also introduces new definitions for other important terms including ‘organiser’, ‘traveller’, ‘trader’ and ‘travel service’, which we have adopted in the draft ATOL regulations. The draft ATOL Regulations have also retained the term ‘consumer’, in addition to the new definition of “traveller”, as ‘consumer’ retains a wider meaning which extends to ATOL flight-only.
- 2.5 We are obliged to align with the definitions in the directive to support the maximum harmonisation requirement. In practice we believe that aligning the scope of ATOL

⁴ <https://www.gov.uk/government/consultations/updating-consumer-protection-in-the-package-travel-sector>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590636/atol-consultation-response.pdf

protection with the new wider definition of package in the Directive could bring more holidays into the scope of ATOL package holiday protection.

Question 1

We are updating the ATOL regulations to adopt the new definition of a 'package' from PTD 2015. Do you think the way the new definitions are drafted will cause any issues?

Linked Travel Arrangements (LTAs) that require the protection of a flight.

- 2.6 The PTD 2015 has introduced a new concept of Linked Travel Arrangements (LTAs), which will apply to looser combinations of travel than a “package”, and offer less protection.
- 2.7 This new category is explained in more detail in the PTR consultation of 2017. In general, an LTA is formed when a business ‘facilitates’ the sale of two or more travel services (e.g. a flight and hotel booking), but does so in a way that does not fall into the definition of a package.
- 2.8 The Directive places fewer requirements on the LTA facilitator compared to package organisers. The facilitator only needs to have insolvency protection in place to provide a refund if a travel service from the LTA is not performed as a consequence of their insolvency. In many cases this protection will be partial (i.e. it will only protect the travel service that the facilitator has sold) and in most cases it will be temporary, and could last a short time (i.e. only for as long as the facilitator is holding on to the consumers money). The facilitator will only have to provide insolvency protection for repatriation if they are responsible for the carriage of passengers. Although LTAs do not offer the same level of protection as a package, traders facilitating LTAs will be required to inform travellers before and after they buy a product that they will not benefit from the full protections associated with a package.
- 2.9 In the ATOL consultation of 2016 we sought initial views on whether the facilitator of an LTA, which requires the protection of a flight (flight LTA), should be protected through ATOL or a market solution. The response to the consultation highlighted an overall preference for the inclusion of flight LTAs within the ATOL scheme, however there were conflicting views on how this should be implemented within ATOL. Around 20% of respondents suggested all flight LTAs should be handled in the market (through the Package Travel Regulations). Of the remainder, the preference was to treat a flight-LTA in the same way as any ATOL protected product, with the same ATOL licencing requirements, same protection and same levy. Other respondents suggested an ATOL-light approach with less comprehensive protection, a lower levy and different brand, while others suggested flight LTAs should only be included where there is an existing overlap with ATOL flight-only.
- 2.10 We indicated in the ATOL consultation of 2016 that we will work with the CAA to consider how best to implement flight-LTAs within the ATOL scheme. Our considerations have broadly focussed on the approaches mentioned above. In considering the options, we have to be mindful of two important policy constraints. First, as PTD 2015 is a “maximum harmonisation” Directive, we need to ensure we do not exceed or under-implement the requirements of the Directive. Second, there is an exemption for airlines in the Civil Aviation Act (1982) and ATOL Regulations

(2012), as they are already subject to separate licensing under the EU's airline licensing regime. This means that if an airline sells a package or LTA they would need to comply with the PTD 2015 through the PTRs (insurance, bonds, trusts or ATOL), however they are not required to hold an ATOL licence to do so.

- 2.11 Option 1. As a starting point, we have considered whether sales of flight-LTAs can be brought into the ATOL scheme, but only afforded the protection required under the PTD 2015. Several stakeholders, including the CAA, have expressed strong concerns with this option, and the potential to cause consumer detriment and damage to the ATOL scheme. The key problem is the potential for someone to believe they have bought ATOL-like protection (where refund and repatriation protection is provided until the flight takes place) when the reality would be different. In the case of an agent, the PTD 2015 simply requires there to be refund protection for the flight while they are holding on to the customer's money, which could be a matter of seconds. In effect, this limited protection should then fall-away once the agent has passed on the consumer's money to the supplier or airline, as they have no further responsibility to the consumer for the flight. In the case of airline ticket agents, this will happen almost instantaneously as they are already required to pass the flight ticket to the consumer straight away upon receipt of payment⁶.
- 2.12 While it might be possible to minimise consumer confusion by branding LTA protection slightly differently from ATOL, it does not remove it entirely. It would essentially be a heavy-handed regulatory approach where protection is time-limited or non-existent and consumers might reasonably assume that protection is similar to ATOL.
- 2.13 Option 2. As an alternative, we have considered whether we can bring flight-LTAs into the ATOL scheme with the same ATOL licencing requirements, same protection and same levy. The key benefits of this approach is that it would enhance LTA protection, and maintain a consistent level of protection across ATOL to ensure consumers are better protected. This would however, impose obligations on LTA arrangers which are beyond the requirements in the Directive. As the PTD requires maximum harmonisation, we do not have the flexibility to implement LTAs in this way.
- 2.14 Option 3 - Insolvency protection for Flight-LTAs would be implemented under the PTR mechanisms in the same way as non-flight LTAs, through bonding, insurance, trusts or for the flight element through selling an ATOL protected seat. Like option 1, those facilitating LTAs would only be required to provide the level of protection afforded by the PTD 2015, and to clearly communicate this to consumers using the information provisions in PTD 2015.
- 2.15 There would still be some situations under Option 3 where a flight-LTA could involve ATOL protection. This would occur where the flight-LTA contains a flight, which has been sold by an ATOL holder with ATOL flight-only protection. We propose that the ATOL flight-only protection in these situations can be used to demonstrate that an ATOL holder facilitating an LTA has met their insolvency protection obligations of PTD 2015 in respect of the flight. This would manage the overlap of protection between LTAs and ATOL flight-only, without requiring the ATOL holder to duplicate the protection that already exists. The ATOL holder would still need to provide additional security through the PTR mechanisms if they are facilitating an LTA which require insolvency protection for non-flight travel services.
- 2.16 The key benefit of option 3 is that it is consistent with the PTD 2015, and would not breach the maximum harmonisation requirement. It also avoids the risks associated

⁶ <https://www.caa.co.uk/ATOL-protection/Trade/About-ATOL/About-ATOL/Airline-ticket-agents/>

with option 2, to help maintain confidence in the ATOL brand, and a clearer understanding of the protection that is in place. It will also allow greater opportunity for the market to provide insolvency protection, which is consistent with longer term ATOL reform.

- 2.17 On balance, we believe option 3 provides the best solution, and we are therefore proposing to implement in this way.

Question 2

To what extent will the new concept of Linked Travel Arrangements affect the holiday products your business sells?

Question 3

Do you foresee any issues arising from implementing flight-LTAs under the Package Travel Regulation mechanisms through bonding, insurance or trusts?

Changes to the regulations about who needs to hold an ATOL

- 2.18 Regulation 9 of the ATOL regulations sets out who needs to hold an ATOL, while Regulation 10 and Regulation 11 set out who is exempt. We are proposing to update these regulations to align with the new scope of PTD 2015, which will affect who needs to hold an ATOL.
- 2.19 The PTD 2015 seeks to improve and harmonise holiday consumer protection across Europe, to ensure a consistent level of protection and support cross-border sales in the travel market. It has provided a clearer set of rules to prevent insolvency protection from acting as an obstacle to the free movement of services. It expressly requires all Member States to recognise the insolvency protection regimes of others and avoid imposing additional burdens upon travel companies in their territories.
- 2.20 In the ATOL consultation of 2016 we explained that this will require the ATOL scheme to be based upon a “place of establishment” basis, rather than the existing “place of sale” approach. This would broaden the ATOL scheme so that businesses that are established in the UK will need to hold an ATOL, when they are selling eligible holidays in the UK and Europe.
- 2.21 There was broad support for this change, with several respondents identifying that it will enhance their ability to sell ATOL protected holidays across Europe without the regulatory burden of needing to comply with other member states’ schemes.
- 2.22 In our response to the consultation we confirmed that we will introduce legislative to enable ATOL protection to apply to sales from UK businesses when they sell to consumers in Europe. We have already amended the ATOL powers in section 71 of the Civil Aviation Act 1982 to enable the scheme to be broadened in this way, and we now need to update the ATOL regulations to implement the change.
- 2.23 The updated ATOL regulations will maintain the existing requirement in Regulation 9 that anyone (other than airlines) who make available flight accommodation in the UK will need to hold an ATOL or be exempt from holding an ATOL either under Regulation 10 or Regulation 11. We are proposing to extend this requirement,

through a new regulation 9C, to include UK established traders when they make available flight accommodation in the EEA as a component of a package. This amendment would not require UK traders to hold an ATOL for flight-only sales outside the UK, as those sales are out of scope of PTD 2015.

Question 4

We are updating the ATOL scheme so that the requirement to hold an ATOL will apply to UK businesses when they sell packages to consumers in Europe. Do you foresee any issues from the changes in who needs to hold an ATOL?

Extending ATOL to Agent for the Consumer (A4C)

- 2.24 The PTD 2015 also requires that consumer protection extends to the broad range of businesses that sell holidays. It provides clarity on areas that have been open to interpretation in the existing regulatory framework, including businesses that act as agent for the consumer. At present, the existing ATOL regulations do not specifically require agents acting for the consumer to hold an ATOL. In the previous ATOL consultation we expressed our intention that these businesses will be brought into the full scope of the ATOL scheme by July 2018 where they sell a flight as part of a package. There was widespread support for this move on the grounds that it will improve consumer understanding and remove a gap in protection.
- 2.25 The draft Regulations propose to insert new provisions at 9A and 9B of the ATOL Regulations 2012, which will require that those procuring flights as agent for the consumer or acting as an intermediary in facilitating flight sales are required to hold an ATOL in certain circumstances. Where an intermediary is involved in the payment for a flight in one of the ways listed at Regulation 9B they will have to hold an ATOL or be exempt. This requirement does not apply if the intermediary is only transferring funds and has no other involvement in facilitating the flight sale. The intention is to avoid capturing merchant acquirers. We would be interested in your view on whether this wording achieves the intention.

Question 5

We are updating the ATOL Regulations to require Agents acting for the Consumer to hold an ATOL? Do you expect any issues from the new regulation?

Exemptions

- 2.26 Anyone making flight accommodation available in the UK will need to do so as an ATOL holder; as a member of an ATOL Accredited Body; as the agent of an ATOL holder; or be exempt from the scheme. Regulation 10 of the ATOL Regulations 2012 sets out circumstances in which flight accommodation can be made available without an ATOL. The main proposed changes to that provision are in relation to business-to-business sales and organisation arranging not-for-profit trips. These are discussed below.

Business-to-business sales

- 2.27 PTD 2015 confirms that business trips arranged by business travel management companies will no longer be covered by the PTD regulations. In the response to the ATOL consultation of 2016 there was strong support for the exemption of these sales from the ATOL scheme. We have proposed a new provision at Regulation 10(1)(i), which would exempt business-to-business (not to be confused with ATOL to ATOL sales) sales that are made under a 'general business travel agreement' from needing to hold an ATOL. This will apply to businesses that are selling travel arrangements involving a flight to other businesses through established agreements or contracts between them. A new provision at regulation 10(2) has also been added to allow CAA to set out a schedule of terms. Any such terms must be included in a general business travel agreement in order for the exemption to apply.
- 2.28 Those organisations that sell occasional bookings that are not-for-profit will also be exempted from needing to hold an ATOL. This will apply to persons occasionally arranging charitable trips or school tours but is not a general exemption for charities from holding an ATOL.

Question 6

We are updating the ATOL Regulations to exempt business-to-business sales from the ATOL scheme (regulation 10). Do you expect any issues from the new regulation?

Agent for ATOL Holders

- 2.29 Regulation 15 of the ATOL Regulations 2012 qualifies some of the exemptions in Regulation 10. In particular it establishes when an agent for an ATOL holder, or an airline ticket agent, can make flight accommodation available without needing to hold their own ATOL. We have drafted new provisions in Regulation 15 to refine the application of the exemption in relation to agent for an ATOL holder for package sales and to remove references to Flight-Plus. The draft Regulations maintain the existing position in relation to airline ticket agents but provision for this is now within regulation 10(c) rather than at regulation 15.
- 2.30 We have added an additional provision in 15(2), which is intended to prevent businesses which are in practice organising package holidays from doing so in the capacity of agent for an ATOL holder. Such businesses would need to hold an ATOL in their own right, or be a member of an ATOL Accredited Body. This is consistent with PTD 2015, which envisages that financial protection and responsibility for delivery rests with the organiser of the package.
- 2.31 This provision is an anti-avoidance measure, to ensure that the UK legal framework implements the PTD 2015 (as it affects insolvency protection for flight-inclusive packagers) effectively, with travel businesses meeting the regulatory requirements designed to be appropriate for their business.

Question 7

We are updating the ATOL regulations to qualify the exemption for Agent for ATOL Holders when they are organising packages (regulation 15)? Do you agree with this approach, and do you foresee any issues with the proposed changes?

EEA Traders

2.32 In accordance with PTD 2015, businesses established outside the UK but within the European Economic Area (EEA) would not be required to hold an ATOL to sell a package in the UK. These businesses are already exempt under Regulation 10(d). Such businesses will need to comply with measures implemented in their own Member States to give effect to the provisions of the Directive. If they do not comply with arrangements in their own Member States, they would need to comply with the arrangements in the UK's Package Travel Regulations if they wish to sell package holidays or LTAs to consumers in the UK.

Agent for EEA Traders

- 2.33 The current ATOL regulations exempt all agents for ATOL holders from the requirement to hold an ATOL, if they meet the restrictions in Regulation 15. However, the regulations do not contain similar provisions in relation to UK agents that are selling packages organised by EEA traders. This means that UK agents for EEA traders would need to hold an ATOL and comply with the scheme even though there is already an obligation on the EEA trader to protect the package. In effect, this would be a duplication of insolvency protection, which is out of step with the proposed implementation in the Package Travel Regulations.
- 2.34 In the PTR consultation of 2017, we explained that PTD 2015 explicitly places an obligation for the performance of the package on the organiser⁷. The Directive does however, also include an option for Member States to make the retailer responsible for the performance of the package as well as the organiser. If implemented, this would mean the retailer would also have to comply with the insolvency protection requirements under PTD 2015. In the PTR consultation we proposed not to implement this provision, as we considered that making the retailer liable in addition to the organiser would confuse the situation. There was strong support for this proposal.
- 2.35 In line with this approach, we would like to explore whether to exempt UK Agents from the ATOL scheme if they are selling packages organised by EEA traders, which are protected by the insolvency regime in the EEA trader's Member State. An exemption of this nature would remove a duplication of protection for UK Agents that would otherwise exist, and might also enable consumers to have access to a wider range of holidays. In addition to these market advantages, there may also be consumer risks, which we would want to understand and address.
- 2.36 It would be possible to implement the exemption by amending Regulations 10 and 15 to replicate the existing exemption for Agents for ATOL holders. Alternatively, it could be implemented by the CAA using their power to grant class exemptions. In either case, the intention would be to exempt agents for EEA Traders from holding an ATOL where they are making available flight accommodation as a component of a

⁷ An Organiser is a trader that combines and sells a package

package, providing that certain conditions are met. We will work with the CAA on the specific drafting of conditions, however we would anticipate that the exemption will require a written agency agreement between the UK agent and EEA organisers, with a mandatory schedule of terms set by CAA.

Question 8

We are updating the regulations to exempt Agents that are selling packages organised by EEA traders from the ATOL scheme. Do you agree with this approach, and do you foresee any issues with the proposed changes?

Revocation of Flight-Plus (Part 3)

- 2.37 Part 3 of the ATOL regulations provides for protection of 'Flight-Plus' holidays, which were introduced in 2012 to protect looser combinations of holidays involving a flight.⁸ When we consulted in autumn 2016, there was broad support and acceptance of the need to harmonise ATOL with the new definitions in PTD 2015. We stated that this would mean removing Flight-Plus, as the types of bookings it was set up to protect will now be regulated under the PTD 2015.
- 2.38 In order to bring this into effect we have proposed removing Part 3 of the ATOL Regulations entirely. In practice, we anticipate that most sales that are currently considered to be Flight-Plus will fall into the broadened definition of a package or the new category of LTA when PTD 2015 comes into force in July 2018. We shall review the situation as the new regulations bed-in and will assess the situation as part of the post implementation review.

Question 9

We propose to remove Part 3 of the ATOL regulations, to revoke ATOL 'Flight Plus'. Do you foresee any issues with this approach?

ATOL scheme enforcement

Sanctions

- 2.39 We stated in the ATOL consultation of 2016 that we aim to harmonise the ATOL scheme and ensure it aligns with the PTD 2015. Part of this is providing the regulator (the CAA) with the necessary tools for the smooth operation of the scheme. A sizable selection of the consultation responses stressed the need for effective enforcement, particularly given the change in scope to embrace new business models and the move to place of establishment. Part 7 of the regulations prescribes the penalties for non-compliance with the ATOL regulations. As a consequence of the changes proposed to regulations 9A and 9B (paragraphs 2.24 - 2.25 above), we propose to

⁸ 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 a day of 1).

make minor amendments in regulation 69 and 70 so that the penalty provisions are fully aligned with the expansion to include EEA sales, agent for consumer sales and facilitation of flight sales by intermediaries.

Question 10

We are making minor amendments to the ATOL Regulations so that CAA's existing enforcement provisions are fully aligned with the changes we are making to the scope of ATOL (e.g. to include agent for consumer sales). Do you foresee any issues with the proposed amendment to regulation 69 and 70 to achieve this?

The CAA's powers to secure routine compliance

- 2.40 More generally, we are also considering whether to enhance CAA's current enforcement options to ensure they are able to respond more effectively to routine compliance issues. The CAA's powers to deal with compliance issues are currently quite limited. It can either take a criminal prosecution or it can take action to revoke, suspend or amend a licence. Criminal powers are clearly important for serious offences, such as cases where a business is trading without an ATOL or is committing fraud. The ability to revoke a licence for significant shortfalls in financial resources is also important. The CAA considers that these are imperfect for tackling some infringements they encounter. They would like to improve their ability to respond in a proportionate manner through the inclusion of civil sanctions (for example, variable monetary penalties, stop notices and undertakings) available under the Regulatory Enforcement and Sanctions Act 2008 ("RESA 2008") and Part 8 of the Enterprise Act 2002 (EA 2002).
- 2.41 There are three areas in which the CAA believe the current regulatory toolkit can restrict their ability to secure routine compliance and thereby protect consumers. These are set out briefly below:
- a. The current sanctions can be relatively severe for some non-compliance issues that the CAA has to deal with. For example, taking a criminal prosecution for a business that is poor at providing information on time, or is breaching licence standard terms may not be appropriate or the best use of the judicial system. However, it is important to deal with these issues as a failure to do so has a collective impact that is detrimental to the scheme's reputation and to consumers and can result in a race to the bottom.
 - b. There is a lack of an appropriate forum in which the CAA can clarify the law. Occasionally the CAA may need to clarify a grey area in the law so that it can properly discharge its duties and protect consumers. Currently the only option available would be to take a criminal case.
 - c. The CAA has already adopted an approach to using civil enforcement powers in its work on price transparency, flight disruption and passengers with reduced mobility. It has found this works well and, in many cases, allows the CAA to commence its investigation informally. This is not possible in a criminal case where investigations are necessarily formal and can be seen as confrontational.

- 2.42 The ATOL scheme has close parallels with other regulated sectors where the regulators oversee a broad and varied set of businesses through a licensing scheme or its equivalent in that sector. Other regulators have a much more flexible toolkit to address compliance issues. This includes the ability to require the provision of information to the regulator to review compliance issues. It also provides for fines to be administered to tackle poor administration, such as late returns or a failure to provide returns that impacts on the ability of the regulator to effectively oversee the business. Most have the ability to obtain undertakings or compliance notices along with the ability to deal with really serious issues through criminal sanctions or action against the licence.
- 2.43 In September 2015 we consulted on proposals to grant CAA access to the civil sanction powers in the Regulatory Enforcement and Sanctions Act 2008 (“RESA 2008”), to give it a greater range of enforcement options across the UK, enabling it to regulate more flexibly, proportionately, and cost-effectively. The RESA 2008 provides for the following civil sanctions to give a regulator flexible and proportionate enforcement powers:
- a. Fixed monetary penalties;
 - b. Discretionary requirements, including variable monetary penalties, compliance notices, and restoration notices;
 - c. Stop notices; and
 - d. Enforcement undertakings;
- 2.44 The Government response to that consultation identified broad support for the proposals. We would be interested in views on the inclusion of civil sanctions, like those from RESA 2008 and EA 2002, in the CAA’s enforcement toolkit to provide a more flexible and effective response to compliance within the ATOL scheme. We have not drafted any changes to the ATOL regulations at this stage, however we propose to bring forward separate legislation early in 2019 to introduce civil sanctions. Your feedback will help us to shape that legislation. The CAA will also consult on their proposed use of any new enforcement powers to ensure that the tools operate in the best way possible for the sector.

Question 11

Please set out your views on the proposal to introduce civil sanctions (e.g. those provided for in RESA 2008) to give the Civil Aviation Authority more effective and flexible enforcement powers for the ATOL scheme.

Information provisions – ATOL Certificates

- 2.45 The PTD 2015 introduces new information provisions, before and after a sale, which are designed to improve consumer awareness. The aim is to provide clearer information to travellers on the product they are buying and the corresponding level of protection. In the first ATOL consultation, we invited views on whether the ATOL certificate (appropriately modified) should continue after the PTD 2015 comes into force in July 2017. Respondents were generally in favour of retaining the ATOL certificate as it helps reinforce consumer awareness of protection and the ATOL

brand. We have therefore decided to retain the ATOL certificate, as a means of compliance with some of the after sales information requirements of PTD 2015. This does not require any amendments to the ATOL regulations, however it does require an update to the ATOL Standard Terms, which are outlined in the CAA consultation alongside this document, <https://consultations.caa.co.uk/>

2.46 We are also proposing to amend Regulation 18 of the ATOL Regulations to clarify that the ATOL certificate can be delivered electronically (rather than printed) even when the consumer is present at the time of sale (i.e. in a shop). This is not a requirement of PTD 2015, however it is a change that industry has previously asked for to help streamline the process for traders and allow greater convenience and usability for the consumer.

Question 12

How much do you expect the cost to familiarise your business with the updated ATOL regulations to be? (e.g. training, interpreting guidance etc.)

Question 13

How much do you expect implementation cost to be for updating your businesses systems, tools and processes to comply with the changes we are implementing?

3. What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on www.gov.uk

If you have questions or would like to discuss any points raised in this consultation, then please email us at ATOLconsultation@dft.gsi.gov.uk to arrange a convenient time.

Alternatively, write to us at:

ATOL consultation
Department for Transport
1/25 Great Minster House
33 Horseferry Road
London
SW1P 4DR

Further background information can be found at <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>

Annex A: Full list of consultation questions

Question 1

We are updating the ATOL regulations to adopt the new definition of a 'package' from Package Travel Directive 2015. Do you think the way the new definitions are drafted will cause any issues?

Question 2

To what extent will the next concept of Linked Travel Arrangements affect the holiday products your business sells?

Question 3

Do you foresee any issues arising from implementing flight-LTAs under the Package Travel Regulation mechanisms through bonding, insurance or trusts?

Question 4

We are updating the ATOL scheme so that the requirement to hold an ATOL will apply to UK businesses when they sell packages to consumers in Europe. Do you foresee any issues from the changes in who needs to hold an ATOL?

Question 5

We are updating the ATOL Regulations to require Agents acting for the Consumer to hold an ATOL? Do you expect any issues from the new regulation?

Question 6

We are updating the ATOL regulations to exempt business-to-business sales from the ATOL scheme (regulation 10). Do you expect any issues from the new regulation?

Question 7

We are updating the ATOL regulations to qualify the exemption for Agent for ATOL Holders when they are organising packages (regulation 15)? Do you agree with this approach, and do you foresee any issues with the proposed changes?

Question 8

We are updating the regulations to exempt Agents that are selling packages organised by EEA traders from the ATOL scheme. Do you agree with this approach, and do you foresee any issues with the proposed changes?

Question 9

We propose to remove Part 3 of the ATOL regulations, to revoke ATOL 'Flight Plus'. Do you foresee any issues with this approach?

Question 10

We are making minor amendments to the ATOL regulations so that the CAA's existing enforcement provisions are fully aligned with the changes we are making to the scope of ATOL (e.g. to include agent for the consumer sales). Do you foresee any issues with the proposed amendment to regulations 69 and 70 to achieve this?

Question 11

Please set out your views on the proposal to introduce civil sanctions (e.g. those provided for in RESA 2008) to give the Civil Aviation Authority more effective and flexible enforcement powers for the ATOL scheme.

Question 12

How much do you expect the cost to familiarise your business with the updated ATOL regulations to be? (e.g. training, interpreting guidance etc.)

Question 13

How much do you expect the implementation cost to be for updating your business systems, tools and processes to comply with the changes we are implementing?

Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk