



ATOL Reform consultation Government response

Moving Britain Ahead



ATOL Reform consultation Government response

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

May 2018



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

ISBN 978-1-5286-0436-9

CCS0518688172 05/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

- 1. Executive Summary 4
- 2. Introduction 5
- 3. Key changes in response to the consultation 7
- 4. Full list of questions and a summary of responses 8
- Annex A: List of respondents 11

1. Executive Summary

- 1.1 The Air Travel Organisers' Licencing (ATOL) scheme has provided consumer protection for people booking flight-inclusive package holidays since the 1970s. The scheme is managed by the Civil Aviation Authority (CAA) to provide either a refund or a ticket home for stranded consumers, in the rare situation that their travel business fails. It has become a key way in which the UK delivers the European Package Travel Directive, providing peace of mind to more than 20 million holiday makers each year. The Government is currently taking forward a programme of reform to ensure the ATOL scheme remains fit for today's world and aligns with the protection across Europe.
- 1.2 In recent years we have taken steps to update the ATOL scheme and bring it in line with modern trade practices. In 2012 we updated the scheme to address gaps in consumer protection including the introduction of the "Flight-Plus" category. Flight-Plus is the term used in the ATOL Regulations 2012 to describe the type of holiday sale where a consumer requests to book a flight with accommodation and/or car hire at the same time or within a day, but where the way in which it is sold means that it is not a package holiday. We began the process necessary to align the ATOL scheme with the Package Travel Directive (PTD 2015), amending the primary powers governing the scheme through the ATOL Act 2017.
- 1.3 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.
- 1.4 It is important that we build on these steps to ensure that the scheme can continue to respond to innovation in the travel market, and enhancements to the UK and European package travel regulations.
- 1.5 On 23 February 2018 the government launched a consultation on proposals to align the ATOL secondary legislation with the PTD 2015. This was the final stage of consultation on the implementation of the PTD 2015.
- 1.6 The consultation closed on 23 March 2018 and received 30 responses from a range of UK stakeholders including; leisure travel businesses, airlines, finance, legal and consumer protection agencies. The broad range of respondents provided government with a rounded opinion on the proposals as well as the updated ATOL regulations.

2. Introduction

- 2.1 This document sets out the government response to the consultation, 'Updating consumer protection in the package travel sector: Consultation on ATOL'.
- 2.2 The Department for Transport (DfT) received 30 responses to the consultation. This document provides a summary of those responses and sets out the Government's conclusions and next steps.
- 2.3 The consultation invited views on the following proposals to update the ATOL Regulations to align with the main elements of the PTD 2015:
- 2.4 **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.
- 2.5 **Linked Travel Arrangements (LTAs)** - insolvency protection for flight-LTAs will be implemented through the Package Travel and Linked Travel Arrangements Regulations, through bonding, insurance or trust arrangements, or for the flight element through selling an ATOL protected seat.
- 2.6 **Extension of 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.
- 2.7 **Agent for the consumer** - we will extend ATOL to businesses that are acting as agents for the consumer.
- 2.8 **ATOL Flight-Plus** - we will revoke Flight-Plus, as these business models will be regulated under the new definitions of package and LTAs.
- 2.9 **Exemption of business-to-business sales** from the ATOL scheme.
- 2.10 **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.
- 2.11 **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 and the Package Travel and Linked Travel Arrangements Regulations using measures in their own Member States.
- 2.12 **Agents for EEA Traders** – will 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.
- 2.13 **Sanctions** – we will update the existing enforcement provisions to align them with the changes we are making to the scope of ATOL. We also invited 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.

2.14 **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.

3. Key changes in response to the consultation

- 3.1 Respondents agreed with the need to update the ATOL regulations and broadly supported the proposals. However, a number of concerns were raised with our suggested implementation.

Intermediaries selling flight-inclusive holidays

- 3.2 Concerns were raised in relation to intermediaries selling flight-inclusive holidays, it was thought that the provision was too broad and would bring businesses, such as comparison sites, who are not selling flights into scope. The government has therefore narrowed the regulation to make clear that intermediaries who are organising a package or facilitating a flight sale and receive payment from the consumer are within scope of ATOL. This will ensure consumers remain protected and that the relevant businesses are regulated.

Agents acting on behalf of an ATOL holder

- 3.3 A number of consultation responses expressed a concern that the effect of part of the regulation restricting when flight accommodation may be available by agents acting on behalf of an ATOL holder was to prohibit multi-contract holiday sales via agents. The policy intent was to require retailers selling multi-contract packages to have insolvency protection through ATOL, in addition to the tour operator. This is not required by PTD 2015 and a number of consultation responses highlighted that this could create a disproportionate burden on the travel sector. The government has decided that retail agents will not be required to hold their own ATOL when selling multi-contract packages organised by an ATOL holder. The government is satisfied that removal of this requirement is appropriate. Consumers will continue to be protected by the ATOL holder who has organised the package.

Agents acting for European Economic Area (EEA) traders

- 3.4 The responses to the consultation supported exempting EEA agents from needing to hold an ATOL. The rationale behind this exemption is that the PTD 2015 harmonises protection across member states to the same level as the ATOL scheme. Therefore, are making provision in the ATOL regulations to ensure that the scheme is robust and compliant with PTD 2015.

Linked Travel Arrangements

- 3.5 Respondents welcomed the proposal to regulate the PTD 2015 through the concept of Linked Travel Arrangements, however concerns were raised around the complexity of the concept. Government has taken on board these concerns and will be working with the Department for Business Energy and Industrial Strategy on providing guidance to industry.

4. Full list of questions and a summary of responses

- 4.1 **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?
- 4.2 Broadly respondents were supportive of the new definition of a 'package'. Responses to the consultation, however called for further clarity on drafting to mitigate against ambiguity and loopholes. BEIS will be publishing guidance this summer, which will provide further clarity on terminology.
- 4.3 **Question 2** To what extent will the new concept of Linked Travel Arrangements affect the holiday products your business sells?
- 4.4 **Question 3** Do you foresee any issues arising from implementing flight-LTAs under the Package Travel Regulation mechanisms through bonding, insurance or trusts?
- 4.5 Respondents welcomed the Linked Travel Arrangements concept, however concerns were raised around the complexity of it. Respondents cautioned that without further clarity the concept could cause confusion for traders and consumers.
- 4.6 **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?
- 4.7 There was strong support for requiring UK businesses to hold an ATOL when selling packages to consumers in Europe. Many caveated that once the UK leaves the European Union it is important that the Government continues to work with industry to ensure the system is still fit for purpose. Some respondents urged the government to seek continued alignment and cooperation on consumer protection measures, including the PTD.
- 4.8 **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?
- 4.9 There was strong support for provision requiring Agents acting on behalf of the consumer to hold an ATOL as many believed this would bring consistency and level the playing field.

- 4.11 **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?
- 4.12 There was strong support for the proposal to exempt business-to-business sales from the ATOL scheme. Many noted that the PTD 2015 allows for exemption of travel companies that sell packages and LTAs for business travel where there is a general agreement in place between the travel company and the business traveller. However some respondents expressed concern about the CAA's power to publish terms to be included in such agreements for the purposes of the exemption.
- 4.13 **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?
- 4.14 While there was some support for this proposed changed, it was also thought that this would appear to prevent organisers who wish to sell packages under a multiple contract model from selling those packages through their appointed agents.
- 4.15 **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?
- 4.16 There was strong support for this proposal in principle, however some respondents would like to ensure that there are strict conditions in place to ensure that the EEA organiser is fully compliant in their respective member state. There is a general concern that variations in the quality of protection schemes could impact on the effectiveness of repatriation and remuneration.
- 4.17 **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?
- 4.18 Many respondents agreed with the removal of the 'Flight Plus' category, some commented that this was necessary in order to comply with the PTD 2015. However, concerns were expressed with the potential cost implication for businesses moving away from this system.
- 4.19 **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?
- 4.20 There was universal support for this amendment and the majority of respondents do not foresee any issues. However, one respondent raised a concern with omitting regulation 15.

- 4.21 **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.
- 4.22 There was strong support for this proposal, however some respondents requested more detail on the sanctions and how they will be used.
- 4.23 **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.)
- 4.24 **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?
- 4.25 There was a general consensus that the cost would vary considerably depending on the size and methods for each business. At this present time it is difficult for respondents to quantify.

Annex A: List of respondents

ABTA - The Travel Association
Advantage Travel Centres
AITO
Association of ATOL Companies
ATIPAC
Barrhead Travel Service Ltd
Canny Travel
dnata Travel UK
EasyJet
European Technology & Travel Services Association
Fleewinter
Fred. Olsen Travel Limited
Halsbury Travel
Individual
KAYAK
Law Society of Scotland
On thebeach
Online Regional Travel Group
Scottish Passenger Agents' Association
The ATOL (Licence Holder) Insurance panel
The Midcounties Co-operative
The Travel Network Group Limited
Thomas Cook Group
Travel Nation
Travel Nation (ATOL 9828)
Travelsphere on behalf of G Touring
TUI Group
UK finance

CCS0518688172
978-1-5286-0436-9