

CAA Consultation on a Proposal to amend ATOL Standard Term 6 and Information on other amendments to the CAA's Official Record Series 3

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Executive Summary

Avoiding Consumer Confusion

The CAA has identified a risk to consumer clarity on ATOL protection arising from businesses which are exempt from ATOL but who may sell ATOL holders' protected seats with other components to UK consumers.

These exempt businesses are currently permitted to source ATOL protected seats, and sell them alongside other components to make up a holiday. In this event, the financial protection of that holiday will become confusing for consumers as only part of the holiday may be ATOL protected, and the seller may or may not issue an ATOL Certificate. This reintroduces some of the clarity problems that changes to the ATOL Regulations in 2012 sought to address.

These issues apply to any sales made to exempted businesses such as those businesses based in European Economic Area (EEA) states who are now exempt under the ATOL Regulations as well as those exempt under the class exemptions as published by the CAA in the Official Record Series 3.

The CAA proposes amending ATOL Standard Term 6 in order to prevent ATOL protected seats from being sold to exempt businesses when they will then be sold alongside other components to UK consumers and the whole holiday will not be protected under the ATOL scheme. However, exempt businesses will still be able to purchase these seats in an unprotected capacity on a business to business basis.

This document sets out the proposed changes to ATOL Standard Term 6 that are being consulted on. It also provides details of other amendments to the Official Record Series 3 that will come into force on 1 October 2014, which are included for information and are not being consulted on.

CHAPTER 1

Background to the proposal

The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (ATOL Regulations) require the Civil Aviation Authority (CAA) to set the policies for licensing travel organisers and managing the ATOL scheme and to create specific requirements which ATOL holders must adhere to.

These requirements are published in the CAA's Official Record Series 3 (ORS3). The contents of the ORS3 include the ATOL Standard Terms, which were last reviewed and revised substantially as part of ATOL reform on 30 April 2012.

The key objectives of ATOL reform in 2012 were that there should be improved clarity for UK consumers about financial protection and that consumers should receive whole holiday protection for holidays that look like packages, but don't meet the legal definition. The ATOL Regulations were therefore changed to extend comprehensive financial protection to travel components being sold for the purpose of one holiday or trip but being sold separately, through the introduction of Flight-Plus.

The requirement to supply an ATOL Certificate immediately upon accepting payment from a consumer was also introduced. It provides clarity for consumers on what is protected and includes the necessary information for consumers on what to do in the event of a failure. Other measures were also introduced to complement these changes and to further support the Government's objectives to improve financial protection under the ATOL scheme.

The Government was clear that ATOL should apply in an effective way in the modern holiday market, so that consumers are clear about their financial protection, and travel businesses know which of their products should be and are protected. Whilst the reform of ATOL in 2012 was the biggest change to the industry for many years, it is clear that the market continues to evolve and consequently policies require regular review and updating.

The terminology in this document follows that of the ATOL Regulations and the current ATOL Standard Terms, as published by the CAA in the Official Record Series 3.

CHAPTER 2

Why is the CAA issuing the consultation?

The CAA has identified a risk of consumer detriment arising from businesses which are exempt from ATOL but who sell an ATOL holder's protected seats¹ alongside other components. ATOL reform's key objective was to improve clarity for consumers and to enable consumers to make better buying decisions through having a full understanding of the nature of their purchase. A confused picture of what is financially protected, how and by whom, will hamper consumers' ability to make informed choices.

The risk occurs when ATOL protected seats are sold to any exempt business although it has become more evident recently due to a change in the ATOL Regulations, exempting businesses that are established in another European Economic Area (EEA) state. In these circumstances, when an exempt EEA business sells an ATOL protected seat back into the UK, its protection will be unclear to the consumer. If it is sold with accommodation and/or car hire as a package or a Flight-Plus, the seat would lose its financial protection under the ATOL scheme (as set out in the Air Travel Trust Payment Policy), although if sold as a package, the EEA established business would be required to provide protection under their own member state protection scheme.

In the event of a failure, consumers could be confused, inconvenienced and potentially out of pocket having to pay again for part of their holiday. There is likely to be a mistaken expectation from consumers that ATOL will provide comprehensive protection for their entire holiday if they have received an ATOL Certificate for the flight component, even though there may be no protection in place at all.

This consultation proposes a change which will address this risk. In making this change, the CAA is keen to preserve the principle that where seats are made available as ATOL protected, that they retain their protection when sold in the UK. It is essential to ensure that the integrity of the ATOL scheme is preserved and that ATOL Certificates are not issued for seats that will not ultimately be ATOL protected. This will only undermine the protection arrangements of the

¹ This document uses the term "ATOL protected seat" to refer to licensable flight-onlys (or packages) that are being sold by an ATOL holder on a retail basis, meaning that the exempt business is acting in the capacity of the ATOL holder's agent.

ATOL scheme and cause considerable confusion for consumers and the UK travel industry.

CHAPTER 3

The proposal

The change, if implemented, will be achieved via a redrafted ATOL Standard Term 6 (AST 6). This currently sets out who ATOL holders may make flight accommodation available to. The purpose of the current AST 6 is to protect the integrity of the ATOL scheme by restricting ATOL holders to making sales only to consumers or businesses who can lawfully sell on, e.g. persons who act in the capacity of agent of the ATOL holder and other ATOL holders.

Under AST 6, ATOL holders are permitted to make available flight accommodation to exempt businesses who then sell this on to consumers. These seats may in some instances be sold on a business to business basis. In these circumstances, the seat is sold in an unprotected capacity meaning it is not ATOL protected by the original ATOL holder. Alternatively, they can be sold as an ATOL protected seat in the capacity of a retail agent, for which an ATOL Certificate must be issued. It is in the latter scenario that the risk detailed above occurs for consumers.

Consequently, the CAA is proposing to extend the scope of the restrictions in AST 6 by prohibiting sales of ATOL protected seats to UK consumers through intermediaries (such as agents) who are exempt from the need to hold an ATOL (for example, because they are established in another EEA state) and who makes those seats available to a UK consumer with other components as part of a package or Flight-Plus.

The restriction would require an ATOL holder that wanted to sell a seat to a UK consumer through an exempt business to sell it to them on a business to business sale basis. The exempt business may then, if permitted under the exemption, sell it on as part of a package or Flight-Plus but this would not be ATOL protected and an ATOL Certificate must not be issued by the ATOL holder.

Sales through intermediaries are examples of indirect sales, as referred to in the proposed AST 6. Business to business sales are examples of direct sales, as that term is used in the proposed AST 6.

The proposed AST 6 is a list of permitted sales. The direct sale (business to business sale), as described above is permitted by AST 6 (4). The indirect sale is prohibited as it is not on the list of permitted sales in AST 6. The proposed

AST 6 adopts a new format in order to incorporate the new terminology although the prohibition of indirect sales to exempt businesses as referred to above is effectively the only real change to this ATOL Standard Term.

If a business makes available flight accommodation that could be classed as exempt, but chooses to hold an ATOL and protect those sales under their ATOL, the prohibition referred to above will not apply. It will be a permitted sale under AST 6(6).

In addition, the proposed changes only seek to restrict the sale of ATOL protected seats where the seat is then sold on without ATOL protection. ATOL holders would still be permitted to make available ATOL protected seats to businesses who will be acting as their agent, under a valid agency agreement if:

1. The agent will be selling the ATOL protected seat on its own (Proposed AST 6(7) & (8)); or
2. The agent will be selling it in combination with accommodation and/or car hire and will be making that sale available under their own ATOL, either as a package or Flight-Plus. In these circumstances, the ATOL holding agent is required to issue a new ATOL Certificate for the entire trip (Proposed AST 6(6)).

ATOL holders may have concerns as to how they will be able to establish if a seat will be combined with accommodation and/or car hire by their agent. The ATOL Standard Term requires ATOL holders to take reasonable steps and exercise due diligence to ensure that the agent will not be combining the seat with other components. The CAA recommends that such steps may include a clause within their agency agreements to this effect.

The proposed amended AST 6 is at Appendix A. A table illustrating which persons ATOL holders may sell ATOL protected sales to is at Appendix B.

A summary of the affects on stakeholders is set out below.

This group	 are affected because
Consumers	They will be better able to understand the financial protection on their product and, following a failure, the claims process will be more transparent.
ATOL holders	They may need to make changes to the way in which they sell seats to businesses which are exempt from the need to hold an ATOL so that the seat is not sold to them as ATOL protected. They will need to take reasonable steps to ensure that seats sold on a retail basis will not be sold on by the agent as part of an unprotected trip.
Travel businesses exempt from the need to hold an ATOL who sell air holidays in the UK and who do not hold an ATOL.	They will not be able to source ATOL protected seats.

CHAPTER 4

Expected benefits and impact

The principal benefit is to consumer clarity, by enabling better buying decisions for those that wish to ensure their holiday is financially protected. It also mitigates against the risk that following a failure the repatriation and/or claims exercise will be confused by uncertainty as to who is responsible, and consumers potentially needing to make different claims with regard to different components.

The only “cost” is a restriction in how an ATOL holder may trade: they will only be able to sell non-ATOL protected seats to exempt businesses. This will actually cost the ATOL holder £2.50 less as it will incur no APC on these sales.