

Guidance on the procedure for a decision by a CAA Board Member pursuant to Part 4 (Regulation 38) and Part 5 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

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1. OVERVIEW

1.1. Introduction

This is a practical guide to the making of a decision by the Civil Aviation Authority ('CAA') pursuant to Part 4 and Part 5 of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the ATOL Regulations).

This guidance does not replace any laws or regulations and does not constitute legal advice.

The principles reflected in this guidance apply equally to an applicant or holder of an ATOL as they do to an applicant for or holder of an accreditation as an Accredited Body.

1.2. ATOL decision making by the CAA

The ATOL Regulations give to the CAA a number of discretionary powers in relation to the grant, refusal, variation, suspension and revocation of an ATOL. The CAA must make decisions on these matters according to whether it is satisfied that specified circumstances exist. A decision to grant, refuse to grant, revoke or suspend an ATOL or to vary the terms of an ATOL can be made by an employee of the CAA if that decision was made at the request of, or with the agreement of, the applicant or holder. A decision that is made other than at the request of or with the agreement of the ATOL applicant/holder can only be made by a Member of the CAA Board.

In practice, it is employees of the CAA in the CAA's Consumers and Markets Group (CMG) who deal with ATOL applicants and holders on a day to day basis¹. It is these employees who will assess the circumstances of a particular case and identify what in their view is the appropriate action for the CAA to take.

Where a decision to grant, refuse to grant, revoke or suspend an ATOL or to vary the terms of an ATOL is made by CMG without a request from or agreement of the ATOL applicant/holder as described above CMG must first make a proposal to do so. A decision on the proposal may then only be taken by a panel of one or more CAA Board Members ('CAA Panel').

Unless it is otherwise withdrawn by CMG, a proposal is, in effect, a recommendation to the CAA Panel for a particular decision to be made. The ATOL applicant/holder will have an opportunity to submit its views on CMG's proposal.

¹ In this guidance, employees within CMG are referred to as simply 'CMG'.

Before reaching a decision, the CAA Panel must consider, in addition to the proposal from CMG, any representations and evidence put forward by the affected applicant or holder of an ATOL.

The processes described in this guidance are designed to ensure fairness for the applicant or holder of an ATOL whilst providing the CAA Panel with all the information they require to make a decision.

1.3. When this guidance applies

This guidance applies where:

- a) CMG intends to provisionally vary an ATOL (see section 4 below); or
- b) CMG proposes to—
 - i) revoke, suspend or vary² the terms of an ATOL otherwise than on the application of (or with the agreement of) the applicant/holder; or,
 - ii) grant or vary an ATOL on terms other than those requested by (or agreed to by) the applicant/holder; or,
 - iii) refuse to grant an ATOL.

This guidance also applies, modified as may be necessary, where the requirements differ, where CMG sends a written proposal to an applicant for, or holder of, an accreditation (as an Accredited Body) that it proposes to—

- i) revoke, suspend or vary the terms of an accreditation otherwise than on the application of (or with the agreement of) the applicant/holder; or,
- ii) grant or vary an accreditation on terms other than those requested by (or agreed to by) the applicant/holder; or,
- iii) refuse to grant an accreditation.

² An ATOL holder may, for example, apply to vary its licence by increasing the amount of licensable business it is entitled to undertake.

2. LEGAL FRAMEWORK

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

Part 4 of the ATOL Regulations (**Annex A**) contains the regulations dealing with the grant, refusal, variation, suspension, revocation or provisional variation of an ATOL.

Part 5 of the ATOL Regulations (**Annex B**) contains the regulations dealing with 'Decisions and Hearings'.

2.2. Grant of an ATOL

2.2.1 Fitness

Before granting an ATOL, the CAA must be satisfied that the applicant is a fit person to hold an ATOL.

If the CAA ceases to be satisfied with the fitness of an existing ATOL holder, it must revoke, suspend or vary the ATOL.

2.2.2 Other factors

The CAA will also need to be satisfied that the ATOL applicant/holder—

- a) is competent to hold an ATOL;
- b) has sufficient financial resources to discharge its actual and potential obligations;
- c) has appointed an Accountable Person acceptable to the CAA;
- d) if it is an existing ATOL holder, has paid its required contributions (APCs) to the Air Travel Trust; and
- e) is compliant with any term or condition of its ATOL.

If not, the CAA may refuse to grant an ATOL or a variation to an ATOL applied for, or may revoke, suspend or vary the terms of an ATOL.

In determining whether the applicant/holder is a fit and competent person, the CAA must have regard to the past activities generally of the applicant/holder, its employees, and (if a company) those appearing to the CAA to control the company.

The CAA's published policies on the Criteria for an Application for and Grant of, or a Variation to, an ATOL: Fitness, Competence, Accountable Person and Financial, can be found at: www.atol.org.uk

2.3. The Human Rights Act

The Human Rights Act 1998 applies to the procedures for a decision pursuant to Part 4 and Part 5 of the ATOL Regulations. They require compliance with the European Convention on Human Rights (ECHR).

Article 6 of the ECHR guarantees the right to a fair trial. More specifically, it provides that *"in the determination of his civil rights everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law."*

This process, combined with the right for the applicant/holder to apply to the High Court to seek a judicial review of the CAA's decision, or to the County Court to appeal a finding of fitness, has been designed to satisfy the requirements of Article 6 of the ECHR.

3. PART 5 PROCEDURES

3.1. Key roles

3.1.1 Appointment of the CAA Board Member(s) to the CAA Panel

One or more CAA Board Members will be appointed to consider each case and reach a decision, however, it should be noted that one CAA Board Member may make the decision alone. Where the CAA Panel consists of two or more CAA Board Members, one Board Member will normally act as Chair of the Panel and will have the casting vote in the event the Board Members making the decision disagree.

3.1.2 Appointment of Hearing Manager, CAA Panel Lawyer and CMG Lawyer

Before making a proposal, CMG must—

- appoint a Hearing Manager who will be identified in the proposal letter; and
- request that CAA's General Counsel appoint a CMG Lawyer and a CAA Panel Lawyer.

3.1.3 Role of the Hearing Manager

The Hearing Manager is a CAA employee whose role is to manage the administration of all matters under Part 5 of the ATOL Regulations. The Hearing Manager will have no prior involvement in the CMG proposal and will act as the point of contact for CMG and the ATOL applicant/holder. The Hearing Manager is responsible for receiving documents, ensuring all parties have a copy of all relevant material, handling queries and making the necessary arrangements for the hearing of the decision.

3.1.4 Role of the CAA Panel Lawyer

The role of the CAA Panel Lawyer is to advise the CAA Board Member(s), referred to in this guidance as the CAA Panel, who will make the decision. The CAA Panel Lawyer will have had no prior involvement in the case and will not discuss the case with CMG or with the CMG Lawyer.

Full details of the decision the CAA Panel is required to make will be set out in the Hearing bundle (see section 6.1.7 below).

The CAA Panel Lawyer will provide advice to the CAA Panel on matters of law and procedure.

The CAA Panel Lawyer will consider whether a technical assessor should be appointed and will advise the Panel accordingly.

3.1.5 The role of the CMG Lawyer

The role of the CMG Lawyer is to assist and support the CMG employees responsible for the proposal under review.

3.1.6 Technical assessors

The ATOL Regulations permit one or more technical assessors to be appointed to sit with the CAA Panel. An assessor will advise the Panel Members on technical matters but will not be a decision maker. An assessor must not have had any prior involvement in the case. The CAA Panel Lawyer will discuss with the CAA Panel whether it would be appropriate to appoint a technical assessor in a particular case.

A technical assessor must not provide his or her own opinion on the matters before the CAA Panel. Rather, the technical assessor may assist the CAA Panel in understanding the evidence and identifying key issues. The technical assessor will not attend the deliberations of the CAA Panel after the hearing.

The role of a technical assessor is set out in more detail at **Annex C**.

3.2. Normal procedure for making licensing decisions under Part 5 of the ATOL Regulations

3.2.1 The proposal

Where CMG considers that the CAA should not grant an ATOL on terms applied for by the ATOL applicant/holder, CMG must send out a notice in the form of a written proposal (the proposal letter). The proposal letter will provide the applicant/holder with at least 21 days notice of the date on which a CAA Panel will make such a decision.

Similarly, where CMG considers there are sufficient grounds for the CAA to suspend or revoke, or vary the terms of an ATOL, CMG must send a proposal letter, providing the ATOL holder with at least 21 days notice of the date on which the CAA Panel will make a decision on CMG's proposal.

Once the proposal letter is sent out by CMG, any letters or communications relating directly to the hearing of the proposal under Part 5 must be addressed to and dealt with by the Hearing Manager.

Other communications, not directly relating to the hearing, between the applicant/holder and CMG may continue normally, although these may be taken into consideration by the CAA Panel before making a decision.

A proposal letter is, in effect, a letter which sets out a recommendation that the CAA Panel make the proposed decision and the reasons why CMG is making that recommendation. The CAA Panel may accept the proposal being made by CMG or it may make a different decision.

Service of documents by CMG must be effected in accordance with Regulations 6 and 7 of the ATOL Regulations (**Annex D**).

3.2.2 The proposal letter

The proposal letter from CMG must include the following –

- CMG's reasons for the proposal;
- any documents supporting the proposal and other relevant evidence; and
- the date by which the applicant/holder must serve their written representations (10 days from the date of CMG's proposal letter, including the date it was sent).

The proposal letter should also include the following —

- the name of the Hearing Manager at the CAA to whom the applicant/holder's written representations should be sent; and,
- where a hearing is to be held, the date on which that hearing will be held. This will be the earliest practicable date at least 21 days after the date on which the proposal letter was sent to the applicant/holder.

3.2.3 Written representations

Where the ATOL applicant/holder disagrees with the proposal from CMG, it should send written representations to the Hearing Manager explaining its reasons. This must normally be done within 10 days from the date of CMG's proposal letter, including the date it was sent, unless a CAA Panel has agreed to an extension of time (see 3.2.4 below).

The written representations of the applicant/holder should include the following—

- a response to CMG's reasons for the proposal;
- any documents supporting the response and other documentary evidence the applicant/holder wants the CAA Panel to take into account (if not already attached to the proposal letter);
- a request to attend the scheduled hearing, if one is wished for;
- if the applicant/holder wants a hearing but cannot attend on the day set out in the proposal letter, it should inform the Hearing Manager as soon as practicable. (The CAA Panel will then decide whether the proposed hearing date will be rescheduled for another date. If the CAA Panel is prepared to move the date of the hearing, it will instruct the Hearing Manager to fix a new date in consultation with the parties); and
- any arrangements the CAA needs to make to ensure the applicant/holder can access the hearing (such as interpreter, restricted mobility access, etc).

3.2.4 Extensions of time

The CAA Panel may agree to extend any time limit imposed by Part 5 of the ATOL Regulations, whether or not it has already expired. It may do this where the CAA Panel considers that it is reasonable to do so, or where by not extending the time limit would result in substantial injustice.

A request for an extension of any time limit by CMG or the applicant/holder must be sent in writing to the Hearing Manager as soon as practicable. The Hearing Manager will copy the request to the other party which may submit comments on the request. Normally, any comments will need to be submitted within 2 working days. The Hearing Manager will then invite the CAA Panel to consider the request and any comments. The CAA Panel's decision will be communicated to both parties in writing by the Hearing Manager.

3.2.5 CAA Panel may request additional information

A CAA Panel can request additional information from CMG or the applicant/holder at any time during the Part 5 process before making a final decision.

4. PROVISIONAL VARIATION OF AN ATOL

The legal test for issuing a provisional variation under Part 4 of the ATOL Regulations is that the CAA is of the opinion that it is in the interests of consumers to do so.³ When issuing a provisional variation the CAA must supply a summary of its reasons. This summary will be served by the CAA in the form of a letter.

A provisional variation may impose such terms or conditions on the ATOL as the CAA considers necessary for the protection of current or potential consumers.

A decision to take provisional variation action must be taken by a CAA Board Member based on a recommendation by a CAA employee.

The decision may be made by a CAA Board Member without consideration of any written representations from the ATOL holder concerned.

The CAA Board Member must supply the ATOL holder with a written summary of the reasons for the provisional variation.

The CAA's policy on the use of a Provisional Variation can be found at **Annex E**.

³ Regulation 38 The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

5. EXPEDITED PROCEDURE FOR SUSPENDING AN ATOL

5.1 The proposal

The CAA may suspend (but not revoke nor vary the terms of) an ATOL without CMG complying with the normal procedure set out in section 3.2, where CMG complies instead with the expedited procedure set out in the ATOL Regulations. The CAA'S policy on the use of an Expedited Suspension can be found at **Annex F**.

Under this procedure, CMG must serve a proposal letter on the holder providing the holder of an ATOL with at least 3 working days notice of the proposed decision.

As with the normal procedure set out in section 3.2 of this Guidance, CMG makes the proposal but the decision must be made by the CAA Panel.

5.2 The proposal letter

Where the CAA uses the expedited procedure set out in this section, the proposal letter from CMG must include the following—

- CMG's reasons for the proposal;
- any documents supporting the proposal and other relevant evidence; and
- the date by which the applicant/holder must serve their written representations.

5.3 The ATOL holder's representations

Upon receipt of the proposal letter, the ATOL holder will have until the expiration of the notice period to submit written representations to the CAA Panel.

The written representations should include—

- a response to CMG's reasons for the proposal; and
- any documents supporting the response and other evidence relevant to the ATOL (if not already attached to the proposal letter).

The CAA panel may consider the merits of the proposal and reach a decision solely on the basis of the information set out in CMG's proposal letter and any written representations received from the ATOL holder, without holding a hearing.

Where a proposal to revoke is served on an ATOL holder simultaneously with the proposal letter to suspend under the expedited procedure, the proposal to revoke must be served in accordance with the normal procedure set out in section 3.2.

6. PREPARING FOR A PART 5 HEARING

6.1 Details of the hearing

6.1.1 Holding a hearing

The decision by the CAA Panel will normally be reached following a hearing at which oral representations will also be considered.

The ATOL applicant/holder may request a hearing at which it may choose to be present by sending a written request to the Hearing Manager. This is done at the same time as written representations are delivered.

In the absence of such a request, the CAA Panel may still choose to hold a hearing if it considers it appropriate to do so in order to make the decision. Both parties have a right to appear and the hearing will proceed with only CMG present if the applicant/holder does not attend.

6.1.2 Date of the hearing

If a hearing is to be held, it should take place on the date set out in the proposal letter unless the CAA Panel has agreed to an extension of time (see section 3.2.4).

6.1.3 Venue of the hearing

The venue will be notified to the parties by the Hearing Manager. It will normally be held at the London offices of the CAA.

6.1.4 Notice of hearing

The ATOL applicant/holder will receive at least 7 days' written notice of the date of the hearing.

However, a hearing may be held with shorter notice having been served where a Member of the CAA Panel is satisfied that for reasons of urgency, it is desirable to do so.

In such a case, CMG must give notice of the date, time and place of the hearing, being notice of such length and by such means as it thinks fit, to the applicant/holder.

Notice of the hearing must clearly identify the matter to which it relates. In practice, this will be achieved by CMG providing details of the hearing in the proposal letter.

Where a hearing is adjourned, a new notice will be sent to the applicant/holder, again normally providing it with at least 7 days' notice. As with the original hearing, this notice period will not apply where the CAA Panel is satisfied that for reasons of urgency a shorter period should be given.

Where less than 7 days' notice is given, the CAA must give such notice as it thinks fit.

The CAA must publish details of the hearing at least 7 days in advance unless the hearing is to be held in private (see section 7.2).

6.1.5 Existing ATOL holders

Where a matter concerns an existing ATOL holder, if for any reason the hearing is delayed or adjourned, it may be necessary for CMG to consider—

- seeking a provisional variation of the ATOL under the procedure set out at section 4; and/or
- proposing to suspend the ATOL under the expedited procedure set out at section 5.

pending the outcome of the hearing.

6.1.6 Additional material

In most cases, any evidence or material that the ATOL applicant/holder wishes to submit in addition to its written representations after the expiry of 10 days from the date of CMG's proposal letter, but before the hearing, (or after such longer period as may have been agreed by CMG or the CAA Panel in the particular case) will be considered by—

- CMG, who will consider whether this further material affects the basis of the proposal (which may need to be withdrawn or supplemented with further information to the CAA Panel making the decision); and
- the CAA Panel.

The CAA Panel may allow further evidence from CMG where it considers that the interests of a fair decision would benefit from that evidence.

The submission of any significant new material by one party close to the hearing date (outside the 10 day limit) may require an adjournment of the hearing to a later date to enable adequate consideration by the other party and the CAA Panel of that material.

In such cases, the CAA will consider whether in its view it is necessary to issue a provisional variation. See Annex E.

6.1.7 The Hearing Bundle

The Hearing Bundle will comprise one or more of—

- the CMG proposal letter with supporting documents and any other evidence;
- the written representations of the applicant/holder with supporting documents and any other evidence;
- any additional information or evidence submitted by the parties and accepted by the CAA Panel;
- answers to questions posed by the Panel in writing.

CMG and the ATOL applicant/holder will be supplied with a copy of the Hearing Bundle by the Hearing Manager as soon as practicable and before the hearing date.

This will normally be at least 3 working days before the hearing unless the disclosure of supplemental material by CMG or the applicant/holder has delayed completion of the Hearing Bundle.

6.1.8 Legal representation

All parties have the right to be legally represented and may attend with whatever witnesses (persons with evidence or information relevant to the terms of CMG's proposal or the applicant/holder's disagreement with the proposal) it wishes.

The applicant/holder should be aware that if any significant new material is submitted or new point raised at the hearing, the CAA Panel may need to adjourn the hearing to provide time for CMG and the CAA Panel to consider it.

6.1.9 Interpreters

The Hearing Manager, rather than the ATOL applicant/holder, will arrange an interpreter. The Hearing Manager should check that the interpreter and applicant/holder understand each other. The Hearing Manager should be alert to the possible need for a particular dialect. It will be important to record the hearing where an interpreter is used to assist in dealing with a challenge concerning the quality of the interpretation.

6.1.10 Vulnerable persons

Questioning will be slow and steady providing several seconds for the witness to consider and respond. Other reasonable adjustments will be considered and it may be necessary to have more frequent breaks.

6.1.11 Attending the hearing

A hearing may be attended by—

- a) The CAA Board Member(s) comprising the CAA Panel;
- b) A CAA legal adviser providing legal advice to the CAA Panel (CAA Panel Lawyer);
- c) A technical assessor, where appointed by the CAA Panel;
- d) The ATOL applicant/holder;
- e) A legal adviser or other representative of the applicant/holder;
- f) Witnesses requested by the applicant/holder to give evidence;
- g) CMG employee/s responsible for the proposal letter;
- h) A CAA legal adviser providing legal advice to CMG;
- i) Witnesses requested by CMG to give evidence;