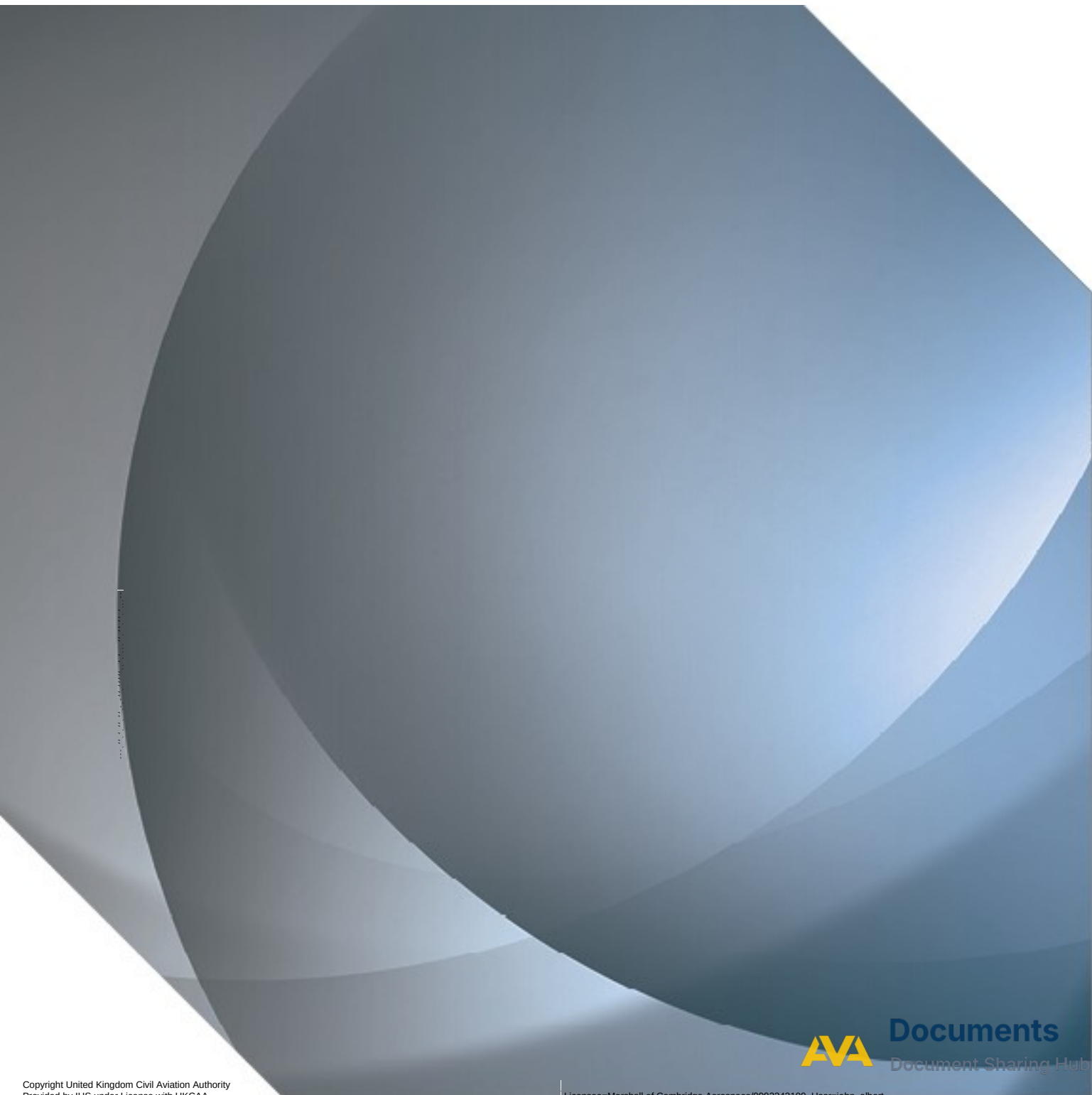


ATOL Standard Term 6: CAA's statement on the consultation on a proposal to amend ATOL Standard Term 6

CAP 1328



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Background

In June 2014, we published a consultation on a proposal to amend ATOL Standard Term 6 (AST 6) to extend the scope of the restrictions on who ATOL holders may sell to.

The amendments were proposed as it had become apparent that consumers could be confused about their ATOL protection when booking with businesses which are exempt from holding an ATOL but who sell ATOL holders' protected seats with other components.

These issues, which apply to any sales of an ATOL protected seat made through an exempted business, have become more apparent recently with businesses based in EEA states that are exempted in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (ATOL Regulations).

The confusion arises as it is often unclear to the consumer making such a booking whether there is any financial protection in place. In fact, if the ATOL protected seat is sold with accommodation and/or car hire as a package or a Flight-Plus, the seat loses its financial protection under the ATOL scheme (as set out in the Air Travel Trust Payment Policy) therefore no ATOL protection is in place. Where the ATOL protected seat is sold as part of a package, the EEA established business is required to provide protection under its own member state protection scheme.

In some of these bookings, consumers will receive a Flight-Only ATOL Certificate from the flight providing ATOL holder. There may therefore be a mistaken expectation from consumers that ATOL will provide comprehensive protection for their entire holiday even though there may be no protection in place at all. In the event of a failure, consumers may be confused, inconvenienced and potentially out of pocket having to pay again for all or part of their holiday.

To prevent this confusion arising, the CAA proposed amending AST 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. However, exempt businesses would still be able to purchase these seats in an unprotected capacity on a business to business basis as the proposed prohibition in AST 6 does not prohibit these sales.

The consultation document sets out the proposed changes to AST 6 and can be found [here](#). The terminology in the consultation document and 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.

Theme of Responses

The consultation period closed on 1 August 2014. The consultation paper posed the following question:

Do you agree that the CAA should introduce a new ATOL Standard Term 6 which has the effect of preventing ATOL holders from making ATOL protected seats available to businesses that are exempt from ATOL, for resale in the UK alongside other components, while still permitting them to sell seats on an unprotected business-to-business basis?

There were nine responses in total, with five in support of the proposal and four opposed to it. The responses have been published in appendix A.

Those in support of the proposal acknowledged the need to make changes in order to improve clarity for consumers on the financial protection of their holiday. However, others queried the scale of the problem and whether there was any evidence of consumer harm.

Some of the respondents asked whether it is the right time to make such changes given the impending implementation of a revised Package Travel Directive. A number of those opposed to the proposals also commented that the current ATOL Regulations are already sufficient to avoid the confusion identified in the consultation document and that the proposals to AST6 are therefore unnecessary. This is explored in more detail below.

The ATOL Regulations

The argument put forward by some of the consultation respondents is that the ATOL Regulations are already adequate to prevent these flights being sold to UK consumers without ATOL protection and this removes any confusion caused by the scenarios in question. In summary, the argument which has been made is as follows:

The main concern identified in the consultation relates to a circumstance where a business (Business A), established in an EEA state other than the UK, wishes to sell an ATOL protected seat on an agency basis together with other travel services, without holding an ATOL. Business A would be exempt from holding an ATOL pursuant to the exemption in ATOL Regulation 10(d).

ATOL Regulation 15(1) states that persons must not make available flight accommodation in the capacity of an agent for an ATOL holder, where it constitutes a package. Since Business A is acting in the capacity of an agent, it cannot therefore be selling packages.

ATOL Regulation 15(3) provides that "Flight-Plus" must only be sold under an ATOL. Consequently, Business A, which is exempt from holding an ATOL pursuant to ATOL Regulation 10(d), cannot be considered to be selling a Flight-Plus arrangement.

Consequently, given that these sales cannot be considered to be packages or Flight-Plus arrangements, some of the respondents state that they must therefore be considered a "Flight-only" sale under the Regulations. Businesses selling "Flight-onlys" are required to hold an ATOL under ATOL Regulation 9(b) and thus if Business A were to undertake this type of business, they would need to hold an ATOL.

However our view is that if a person is making available flight accommodation and taking steps to include it as a component of a Flight-Plus (as defined in ATOL Regulation 25) then that person is not making available "flight accommodation" only. A person cannot be a Flight-Plus arranger and a Flight-only provider at the same time, and thus if flight accommodation is made available by Business A in the capacity of a Flight-Plus provider, it cannot also be made available in the capacity of a Flight-only provider. Thus Business A can benefit from the exemption in Regulation 10(d).

For clarity, ATOL Regulation 15(3) remains subject to the exemptions set out in Regulation 10. Therefore, pursuant to the provisions of ATOL Regulation 15(3), a person selling a Flight-Plus arrangement must hold an ATOL unless exempted from the need to do so by Regulation 10(d).

Thus, we remain of the view that the analysis set out in the consultation document is correct and the introduction of a new ATOL Standard Term 6 will mitigate the potential consumer harm and detriment.

Decision

We stand by the key objectives of the proposals set out in the consultation document, of improving consumer clarity by enabling better buying decisions for those that wish to ensure their holiday is financially protected. It followed the key objective from ATOL Reform in 2012, to improve clarity for consumers and to provide whole holiday protection.

Furthermore, we remain committed to preserving the integrity of the ATOL scheme, through seeking to ensure that where seats are made available as ATOL protected, that they retain their protection when sold in the UK so as not to undermine the protection arrangements of the ATOL scheme or the clarity provided to consumers by the ATOL Certificate.

We acknowledge the comments made by respondents that the scale of the problem is currently unclear. However, we maintain that the risks exist and that the proposal seeks to protect against potential future consumer detriment.

Nevertheless, we have reconsidered the proposals set out in the consultation document, in the light of wider European developments. We understand that progress has been made on the publication of a new Package Travel Directive and that this should be finalised in the coming months. We therefore consider that it would be inappropriate for us to implement a decision on the AST6 proposal at this time, given that the issues identified as part of the proposal are at the heart of potential revisions to the Package Travel Directive.

We have therefore decided to put the proposals on hold and reconsider the proposal to change AST 6 later this year, at which point the changes to the Package Travel Directive will be clear. However, we may re-visit that decision, whether or not any revised PTD has come into force, if we identify increased consumer risk, or actual consumer harm, in the meantime.

Meanwhile, we will continue to highlight to consumers the risks of booking with non-ATOL travel businesses through our website and media campaigns.

APPENDIX A

Responses to the CAA Consultation on ATOL Standard Term 6

This document contains the responses to the CAA consultation titled “CAA consultation on a proposal to amend ATOL Standard Term 6” (CAP 1196).

This consultation concluded on 1 August 2014.

List of respondents

AAC - Association of ATOL Companies

ABTA – The Travel Association

ATIPAC – Air Travel Insolvency Protection Advisory Committee

Consumer Council for Northern Ireland

Ian Dickson Travel Ltd – ATOL 4242

Seyexclusive Ltd – ATOL 9318

SPAA – Scottish Passenger Agents’ Association

Thomas Cook Group plc

Trading Standards Institute

RESPONSE OF THE ASSOCIATION OF ATOL COMPANIES TO PROPOSALS TO AMEND ATOL STANDARD TERM 6

This is the full and final response on behalf of the AAC (Association of ATOL Companies) to the CAA's proposals in relation to changing ATOL Standard Term 6.

The AAC represents companies, all of whom are required as a condition of membership to hold a valid and current ATOL licence, from the smallest to the largest. Our smallest member holds a Small Business ATOL, our largest member holds a licence for almost 400,000 seats per year. Our membership has a combined sale value approaching £3 billion per year, mainly involving scheduled flights but increasingly in recent years, charter flights and both packages and flight plus sales.

We have taken soundings from all members and overwhelmingly, they support the proposed change to Standard Term 6, we believe anything that improves consumer protection, or at the very least reduces consumer confusion is to be applauded and for that reason alone, support the change. However, the support comes with an element of concern and caution.

The success of the ATOL scheme and in particular the proposed change, is dependent on the awareness of the general consumer that to purchase travel without ATOL protection leaves them at risk. Whilst the issue of an ATOL Certificate makes the consumer aware of the financial protection in place for that purchase, those who make purchases that are not covered by the ATOL scheme and do not get a Certificate are generally in the dark as to what will protect them. Some assume it will be 'ABTA' or another trade association, section 75 of the Consumer Credit Act or some insurance policy which they purchase.

The success of overseas agents suggests that matters other than financial protection are uppermost in consumers' minds when purchasing travel arrangements and therefore we believe it is imperative that further work in improving consumer knowledge in this area is actioned.

Another area of concern is that under the current scheme there may be some element of protection for the consumer who is purchasing travel arrangements from an overseas agent as UK based ATOL holders who are selling on a retail basis do so in the knowledge that they may be at risk if an overseas agent ceases to trade and customers hold an ATOL Certificate issued by them. Under the new rule, they will no longer hold any risk and may possibly be even keener to sell 'risk free'.

We also note the need to change agency agreements for a second time since their introduction 2 years ago. The recent failure of Air Parade Ltd trading as Villa Parade has highlighted the fact that some ATOL holders appear to have not issued agency agreements

for some time and travel agents do not appear to have been insisting on them being issued. Whilst we recognise the need for change, the more often changes are required, the greater the likelihood is that agents will not have updated agreements at the time of any future failure and the greater the possibility for errors to creep in on ATOL holder's production of agreements in the future.

If you have any queries, please do not hesitate to contact us at:

The Association of ATOL Companies
5th Floor
Regal House
70 London Road
Twickenham
TW2 7AD



28th July 2014

ABTA response to CAA Consultation on a Proposal to amend ATOL Standard Term 6

July 2014

Introduction

This response is submitted on behalf of the membership of ABTA – The Travel Association.

ABTA was founded in 1950 - and is the largest travel trade association in the UK, with around 1,200 members and over 4,500 retail outlets and offices. Our members range from small, specialist tour operators and independent travel agencies through to publicly listed companies and household names, from call centres to internet booking services to high street shops.

ABTA Member sales account for 90% of the package holidays sold in the UK annually, accounting for roughly £41.2 million of the Air Travel Trust Fund's (ATTF) £46.2 million annual income. Currently, 631 ABTA Members are Air Travel Organisers' Licence (ATOL) holders. ABTA estimates suggest that our Members are licensed to sell in excess of 18 million ATOL protected holidays. ABTA Members are also responsible for the sale of millions of independent travel arrangements to UK travellers.

ABTA welcomes the opportunity to submit the views of our Members to this consultation. We would also like to offer our continuing support to the Department for Transport and the Civil Aviation Authority (CAA) in developing comprehensive and clear regulations in respect of ATOL reform.

CAA Reasons for the Proposal

The risk that the CAA has identified in the consultation is the risk that consumers might be confused about ATOL protection when buying an airline seat along with other components from a travel company that is exempt from the need to hold an ATOL, where that travel company has sourced that seat from an ATOL holder. The CAA believes that 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 if there may be no protection in place at all. The CAA believe that 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.

The proposed amendment seeks to prevent ATOL protected seats from being sold to an ATOL-exempt business when those seats will then be sold alongside other components to UK consumers, where the whole holiday will thus be unprotected under current ATOL rules. The CAA proposes that exempt businesses will still be able to purchase seats from ATOL holders on an unprotected basis.

The CAA expects the principal benefit to be consumer clarity by enabling better buying decisions for those that wish to ensure their holiday is financially protected. It also expects that the amendment will mitigate against the risk that following a failure, the repatriation and/or claims exercise will be

confused by uncertainty as to who is responsible, with consumers potentially needing to make different claims with regard to different components.

Consultation Question

Do you agree that the CAA should introduce a new ATOL Standard Term 6 which has the effect of preventing ATOL holders from making ATOL protected seats available to businesses that are exempt from holding an ATOL, for resale in the UK alongside other components, while still permitting them to sell seats on an unprotected business to business basis?

Compliance with Existing Regulations

The proposed amendment seeks to prevent ATOL protected seats from being sold to exempt businesses on a retail basis when they will then be sold alongside other components to UK consumers and the whole holiday will not be protected under the ATOL scheme.

Regulation 15(1) of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 provides that a person must not, in the capacity of an agent for an ATOL holder, make available flight accommodation which constitutes a component of a package except where all the components of the package are made available under a single contract between the ATOL holder and the consumer.

This means that any person acting as agent for an ATOL holder, which includes a person who is exempted from the need to hold an ATOL, cannot create their own packages using seats that are protected under another company's ATOL. Therefore there does not seem to be any need for further rules to prevent this when it comes to the sale of packages. This point is emphasised within exemptions 05/2013 and 06/2013.

Regulation 15(2) provides that a person must not, in the capacity of an airline ticket agent, make available flight accommodation which constitutes a component of a package or a Flight-Plus.

This means that any person who is exempted from the need to hold an ATOL for the sale of a particular package or Flight-Plus, cannot sell the flight as an airline ticket agent.

Regulation 15(3) provides that a person (other than the operator of the relevant aircraft or an airline ticket agent) who makes available flight accommodation which constitutes a component of a Flight-Plus must do so under and in accordance with its own ATOL or under an ATOL held by the accredited body of which it is a member.

This means that any person who sells a Flight-Plus must do so under its own ATOL unless they are the operator of the relevant aircraft or an airline ticket agent. The exemption available to persons established in an EEA state other than the UK under Regulation 10(d) is not applicable in this case as the sale of the airline seat, not forming part of a package, must be the sale of a Flight-Only at the time that it is made, a point developed further below.