

Consultation: Modernising ATOL

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Introduction

Background

The air travel industry in the UK continues to evolve and change. Last year over 38 million people departed from the UK by air, up from around 28 million during the height of the recession in 2010 and this year holiday travel is expected to be more popular than ever before.

The Civil Aviation Authority (CAA) aims to ensure that consumers can make fully informed buying decisions, are aware of their rights and can exercise them effectively, and are protected from disproportionate risks where necessary. Insolvency protection is the core of ATOL and in implementing it the CAA is also mindful of the other aims. Because it is difficult for consumers to be fully informed about insolvency risk the UK and the European Union have introduced regulation to manage it in some areas of air travel. The Air Travel Organisers' Licence (ATOL) Regulations first came into force in 1973. They have evolved since then and were updated following the introduction of the first Package Travel Directive (PTD: see glossary) in 1990. Financial protection for package holidays is now expected. The ATOL scheme remains a central pillar of consumer protection in the UK travel industry and protected over 21 million holidaymakers last year.

Since ATOL's introduction, the travel industry has changed significantly. The introduction of internet technology and the advent of low-cost air carriers has changed consumer preferences and the way in which holidays are purchased. Regulation must be updated to keep pace of change to reduce new risks that consumers face. The CAA needs to ensure that consumers remain appropriately protected and this means ensuring that protection is periodically reviewed. The proposed changes set out in this consultation are part of this ongoing process of modernising holiday protection.

The implementation of the new PTD on 1 July 2018 will require changes to be made to the ATOL Regulations. The Department for Transport (DfT), as one of the departments responsible for implementing the PTD, sets the legal framework in which the CAA regulates the industry and protects consumers. Their consultation on the necessary changes to the ATOL and APC Regulations for the implementation of the PTD should be read in conjunction with this consultation. The CAA's consultation covers more detailed changes, for example to the ATOL Standard Terms, and other policies by which Government policy reflected in the Regulations are implemented. This includes important changes such as the CAA's approach to licensing ATOL holders established in European Economic Area countries (EEA: see glossary). We also provide information on how new ways of selling such as Linked Travel Arrangements (LTAs: see glossary) fit within the travel protection system.

DfT's consultation also proposes the introduction of civil sanction powers for the CAA. That consultation document includes the rationale and seeks views on this proposal. The CAA supports this because it will improve our ability to intervene in a more targeted way against ATOL holders whose compliance is inadequate, which will benefit consumers as well as the majority of ATOL holders who do comply.

This consultation seeks the views of stakeholders on a major change in how the ATOL Certificate will be issued. The proposal is that, rather than being issued by the trader from which the consumer buys their holiday, there will be a new online certificate which will be issued through an online CAA system based on data that the seller submits to the CAA. Moving to an online system is expected to deliver benefits for both consumers and for the running of the ATOL scheme. Consumers benefit from being able to easily access their Certificates and independently verify that they have booked an ATOL product. Other benefits include a greater ability for the CAA to access passenger data in the event of a travel insolvency. Direct access to customer data enables better repatriation and refund processing. Updating Certificates in this way will keep consumers at the centre of ATOL while also improving our understanding and monitoring of travel businesses.

The UK has a dynamic travel industry which is expanding as greater numbers of people seek to travel. This is underpinned by modern protection arrangements which form the core of the ATOL scheme. It is important to review regulation and ensure that it is comprehensible for travel businesses, and that it delivers the clear and robust protection which holidaymakers expect. The changes proposed in this consultation will help ensure that the holiday protection landscape is updated to reflect innovation and change in the travel market, and that future arrangements satisfy the obligations of the PTD.

The position of this consultation within the UK's implementation of the Package Travel Directive

A revised EU directive on package travel came into force in 2015 and the UK is required to implement and bring into force UK regulations to give effect to the Directive by 1 July 2018. As before, the UK is doing so via changes to the Package Travel Regulations (PTRs: see glossary) (which are the responsibility of the Department for Business, Energy and Industrial Strategy (BEIS: see glossary) and the ATOL Regulations (which are the responsibility of the DfT). The aspects of this consultation relating to the PTD form part of a broader UK picture:

- BEIS is the sponsoring Department for the PTD and the proposed PTRs implement it in full in the UK. Those Regulations specify that some businesses may meet the requirement to provide insolvency protection by holding an ATOL granted by the CAA.
- DfT is the sponsoring Department for ATOL and has responsibility for the ATOL Regulations. Its consultation covers the ATOL Regulations that set the legal scope within which the CAA can regulate and provide protection.
- The CAA implements ATOL within the parameters set by the legal framework. To the extent that it relates to implementing the PTD, this consultation sets out what detailed requirements the CAA will make to achieve that.

The CAA and the DfT have released simultaneous consultations, which follow on from the consultation issued by BEIS in 2017. BEIS is expected to publish the PTRs after Easter 2018.

Chapter 1

Implementing the Package Travel Directive into ATOL

Schedule of ATOL standard terms – what and why?

The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ('ATOL Regulations') provide the CAA the power to determine the policies and criteria it applies when granting ATOL licences and to set the rules ATOL holders must follow as a condition of holding an ATOL. These rules are known as the ATOL standard terms (AST: see glossary) and, among other things, are designed to ensure that consumers - who are at the heart of the ATOL scheme - are made more aware of ATOL and can understand the extent to which financial protection applies to their booking. The ATOL standard terms are published in the CAA's publication - Official Record Series 3 (ORS3: see glossary).

Another function of the standard terms is to improve standards and ensure that ATOL holders have in place good governance arrangements and follow sound business practices. This is achieved, for example, by requiring ATOL holders to maintain effective business systems and records and to provide information to the CAA on a regular basis or when a material change occurs to the business. ATOL holders must also ensure that they appoint suitably knowledgeable staff and that their appointed agents and any other businesses they transact with adhere to a high standard of clarity.

Collectively these measures help the CAA to monitor ATOL holders and assess the likely impact of failure on consumers and the Air Travel Trust (ATT: see glossary). They also ensure that the CAA has the necessary tools to obtain the information and data it needs, including the ability to manage ATOL holder failures as efficiently as possible and to assess ATOL holders' compliance.

ATOL standard term 1 (Providing information to consumers before and after sale)

This standard term aims to ensure that consumers know when they are protected and what that protection means for them. This is achieved through a number of specific measures including the requirement for ATOL holders to provide consumers with key information about ATOL and the extent to which this protects them. To improve consumer awareness ATOL holders are additionally required to refer to ATOL in broadcast media and to use set wording.

ATOL holders must advise consumers of the protection arrangements that would apply if the business failed before or during their trip. The result is that consumers receive their entitlement to a repatriation, a replacement or a refund as expediently as possible. It also ensures the ATT can mitigate its costs, hence reducing overall system costs.

Some of the requirements in this standard term satisfy the information requirements of the current PTD and the information that must be given to consumers (although the PTRs contain additional information requirements).

Changes arising from the new PTD mean that selling models that currently give rise to a Flight-Plus will typically become packages (unless the selling model is changed). Some traders may arrange their selling model such that consumers will be presented with a new type of protected booking - an (LTA). More detail on LTAs is set out in DfT's consultation.

However, facilitating an LTA will not be a licensable transaction, so a trader facilitating an LTA need not hold an ATOL (unless the flight component of the LTA gave rise to an ATOL licensable transaction). Appendix B to this document includes some illustrations of the relationship between ATOL protection and LTAs.

To take account of the new means by which a trader may organise a package (including those holidays that currently would be Flight-Plus), it follows that the information ATOL holders must provide to consumers must change and the CAA therefore proposes to amend this standard term. This includes removing all references to Flight-Plus. Businesses will also be required to provide clearer information than before to consumers before they commit to booking and paying for a package.

ATOL disclosures

To improve the clarity of pre-booking information and meet the requirements of the PTD, it is proposed to amend AST1.4 so that in all cases where an ATOL product is offered for sale, the ATOL holder must additionally state clearly and prominently and in close proximity to the advertised price that the product is ATOL protected. For bookings made on-line, the CAA envisages that the ATOL disclosure should be at the point where the protected product is offered for sale, either because it is a single contract sale and already includes protection, or where multiple products have been offered in such a way that the subsequent combination would become protected. As a result, the CAA believes there will no longer be a need for generic statements in ATOL holders' publicity material including websites and so proposes to remove the requirement for the statements in AST 1.1(c) and 1.2. However, the requirement to clearly show the ATOL holder's name (or trading name), ATOL number and the ATOL logo on all publicity material for licensable products (AST 1.1 (a) and (b)) will remain.

We will also take the opportunity to revisit the language used in this AST, particularly that which is aimed at consumers, to ensure it is as clear and comprehensible as possible.

Other disclosures

We propose to make some changes to improve more general information provided to consumers when searching for holidays on websites. This would include holidays advertised by the ATOL holder, by travel agents or on price comparison websites. This change does not flow directly from the amended PTD, but is expected to improve choice

and value for consumers and will help to ensure that ATOL holders meet their liabilities to consumers, by making it clearer exactly what they have bought.

First, we want to ensure that wherever holidays are advertised online consumers should be given sufficient information to allow them to make a fully informed choice. We therefore propose ATOL holders must ensure that once consumers have made an initial search for a flight or a holiday (whether on the website of the ATOL holder, a travel agent or a price comparison website), the search results must include a minimum set of information based on the details that are known at the time about the flight or holiday that is being advertised. This minimum set of information is i) the details of the ATOL holder and financial protection, ii) flight dates, and departure and arrival times at each airport, and whether the flight is direct or indirect, iii) departure and arrival airports (including any connecting airports if the flight is indirect) and iv) the name of the airline. ATOL holders should also provide information on the cost of key extras such as baggage and transfers that consumers can book with or through the ATOL holder. This would not include peripheral additions such as travel insurance, airport car parking or attraction tickets.

Second, consumer research has shown that features such as the time of day of the flight and the identity of the operating airline play an important role in consumer choice and value. It is therefore important that in situations where holidays are advertised as including a specifically identified flight (i.e. where information on the flights, departure and arrival times, the departure and arrival airports, and the name of the airline, has been presented to the consumer), that consumers are assured that the identified flight will form part of their holiday. Therefore, where this is the case we propose that ATOL holders must take all necessary steps to secure that flight immediately after they enter into a contract for a licensable transaction.

This obligation will be in addition to the consumer's simultaneous rights under the PTRs in cases where the ATOL holder is seeking to make significant changes to the package travel contract. Separately, this will also mitigate risk to the ATT and consumers in the event of the ATOL holder's insolvency. This is because where the ATOL holder books and pays for the scheduled seats immediately it will be more feasible for the CAA to manage the insolvency as a fulfilment exercise, in which case i) the consumer will get the holiday they had planned and paid for, thereby avoiding the need to claim then rebook, and ii) the cost to the ATT will be less because it will not be necessary to pay refunds for the flights.

It is therefore proposed that AST 1 will be adjusted to impose the information requirements above and AST 6 (Sales Restrictions) will be added to prevent ATOL holders:

- from advertising or selling flights or flight inclusive holidays through a web-site or price comparison site that does not comply with AST1; and
- from contracting to sell specific flights, either as a Flight-Only or as part of a flight inclusive holiday unless they can confirm that the booking has been accepted at the time of taking the consumer's booking and deposit/payment.