

ATOL Reform: Summary of responses and next steps

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About this document

1. On 29 April 2021 the CAA issued a consultation seeking the views of stakeholders on its proposals to introduce changes to the ATOL framework. The consultation closed on 16 August 2021. This document provides a summary of the responses received to the consultation, structured according to the options presented by the CAA in its consultation.
2. In providing this summary, the CAA has sought to summarise the range of views expressed on the key issues and to identify any new points or points which had previously not been considered in the consultation. The CAA has not sought to reflect in this summary of responses every individual view held by every respondent on every issue. In relation to issues where there could be considered to be a 'majority view' (i.e. where there was a degree of consistency amongst the responses) the CAA has sought to identify this, whilst still reflecting the views of others. Although not every view expressed by respondents is reflected in this summary, every response received by the CAA to its consultation has been reviewed in detail and will be considered as part of the ongoing development of its thinking in this area. In informing its thinking, the CAA will have regard to the quality of the proposals including their impact, and the level of support for various proposals is not necessarily determinative of the steps the CAA proposes to take.
3. In addition to providing a summary of responses to the consultation, this document also sets out the next steps that the CAA intends to take in respect of the proposals put forward in the consultation in line with its statutory duties under the ATOL regime.

Introduction and summary of next steps

4. On 29 April 2021 the CAA issued a consultation seeking the views of stakeholders on its proposals to introduce changes to the ATOL framework, with the objective being to reduce the risk individual ATOL holders pose to consumer interests. The consultation proposed changes related to how ATOL holders fund their operations, how the use of their customers' monies should be considered within the regulatory regime, and how the rate of the ATOL Protection Contribution (APC) should be calculated. The consultation also made specific proposals in respect of i) a changed treatment of mandatory terms to be included in written agreements between ATOL holders and their agents, and ii) changes to the way in which Small Business ATOL (SBA) and certain franchisee ATOL holders report and pay their APC returns. The consultation closed on 16 August 2021.
5. The CAA received in total 305 unique responses to the consultation via both the Citizen's Space portal and directly by email. The CAA received responses from a range of stakeholders, including ATOL holders, travel agents, trade bodies and member organisations representing travel companies, financial stakeholders such as UK Finance, and consumer bodies. The CAA would like to thank stakeholders for the level of their engagement in the consultation.
6. The summary of responses to the changes to the ATOL framework put forward by the CAA is set out in Chapter 1. Chapter 2 provides a summary of responses on the issue of how pipeline monies should be treated under each of the proposed options for change. As can be seen from the summary of responses, for a number of the options respondents expressed a wide range of views, both for and against each option, and no consensus emerged. The exception to this was Option E (restricting when customers can pay their balance) which, as indicated by the CAA in the consultation, it was not minded to pursue and which received almost no support from respondents.
7. In terms of next steps, given the nature of the proposed options for changes to the ATOL framework, the CAA is undertaking an assessment of the different options (except option E). Option D (the financial markets option) is still being considered, however the CAA notes the concerns of many respondents about the availability and coverage of financial products such as insurance for the travel industry, the likelihood that such products will pay out in the event of insolvency¹, and the cost (and volatility) of premiums. The CAA is conducting

¹ In relation to the insolvency of Thomas Cook, the CAA notes the conclusion of the European Commission in

further research on these points, but considers at this time that the financial markets option is most likely to be viable from a practical perspective as one of the options under a tailored approach (Option B) rather than there being a broader financial market model approach for ATOL (Option D).

8. Once a full impact assessment on the options has been completed, and the CAA has given further consideration to how pipeline monies should be treated, there will be a further consultation on proposals, including consulting on the impact assessment. Depending on the preferred option, the second stage consultation may be a joint consultation with the Department for Transport (DfT), recognising that ATOL is a statutory protection scheme, and some of the potential options would require legislation. We expect the second stage consultation will be published later this year.
9. The consultation also put forward a number of specific proposals on how agency agreements are updated with newly published terms; the reporting and payment of APC for SBAs and Franchise member ATOL holders; and online ATOL certificates. The summary of responses in respect of these proposals is provided in Chapters 3, 4 and 5 respectively, alongside the CAA's response to the views expressed and its next steps.
10. Having considered the views of stakeholders in response to the consultation, the CAA has decided to proceed with the proposed changes to Agency Term 11 and the changes required to bring all quarterly reporting ATOL holders up to the same reporting standard for APC returns. In relation to the changes to Agency Term 11, given the potential for the ATOL Reform project to lead to more significant changes to agency agreements in due course, the CAA has decided to time the implementation of this change to coincide with any other changes required to implement ATOL Reform. In respect of the changes to APC reporting, in order to allow affected ATOL holders the opportunity to put in place systems and processes to comply with the new reporting requirements, the CAA intends to allow a minimum period of six months following the relevant changes to the CAA's Official Record Series (ORS) 3 (expected in May 2022) before the new reporting requirements come into effect.

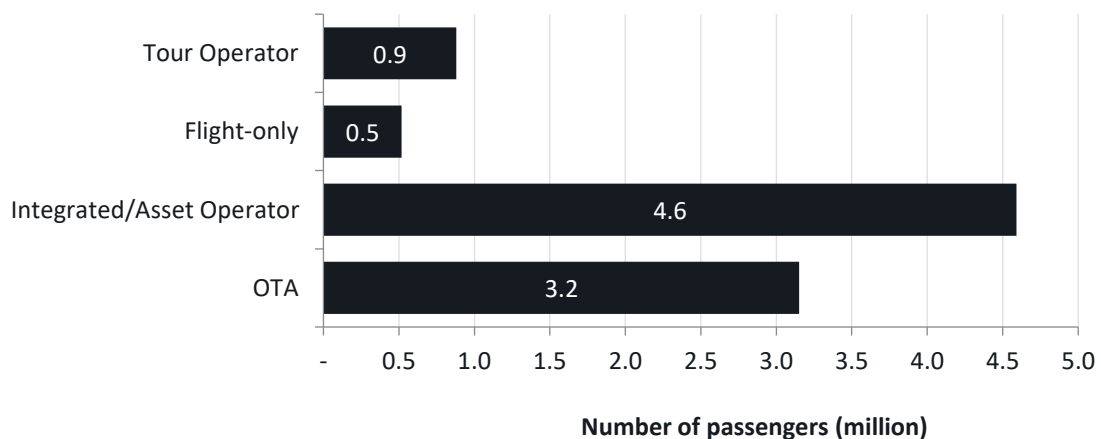
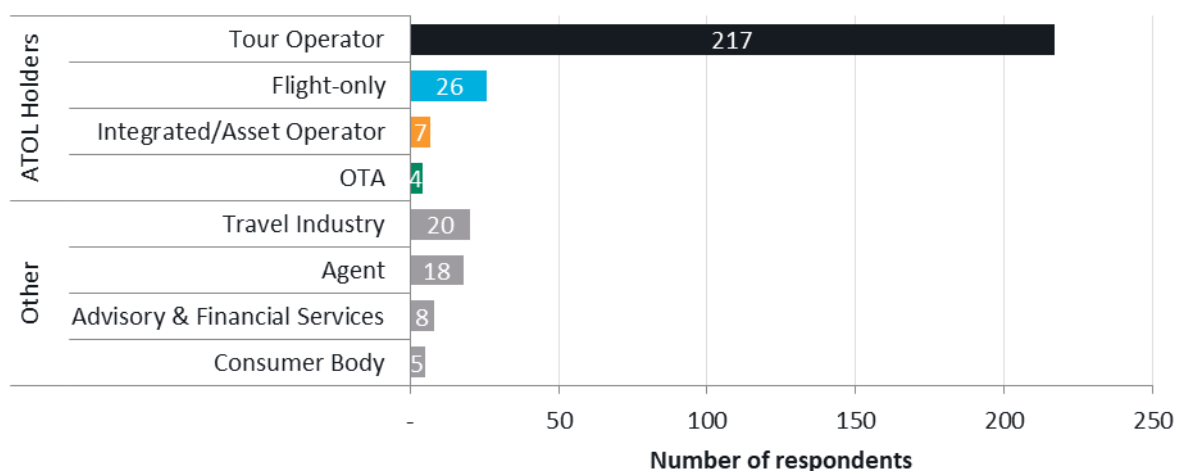
its review of the PTRs that the insolvency protection in place in Germany at the time was insufficient to fully cover the refunds of travellers not yet at their destination (estimated at 287.4 million euros) because of a cap in the liability of insurance companies covering this risk. As observed by the Commission, the federal government in Germany stepped in to cover the shortfall in the amount of refunds received from the insurance company covering the insolvency.

Chapter 1

Summary of responses – how ATOL holders fund their operations and the use of customers' monies

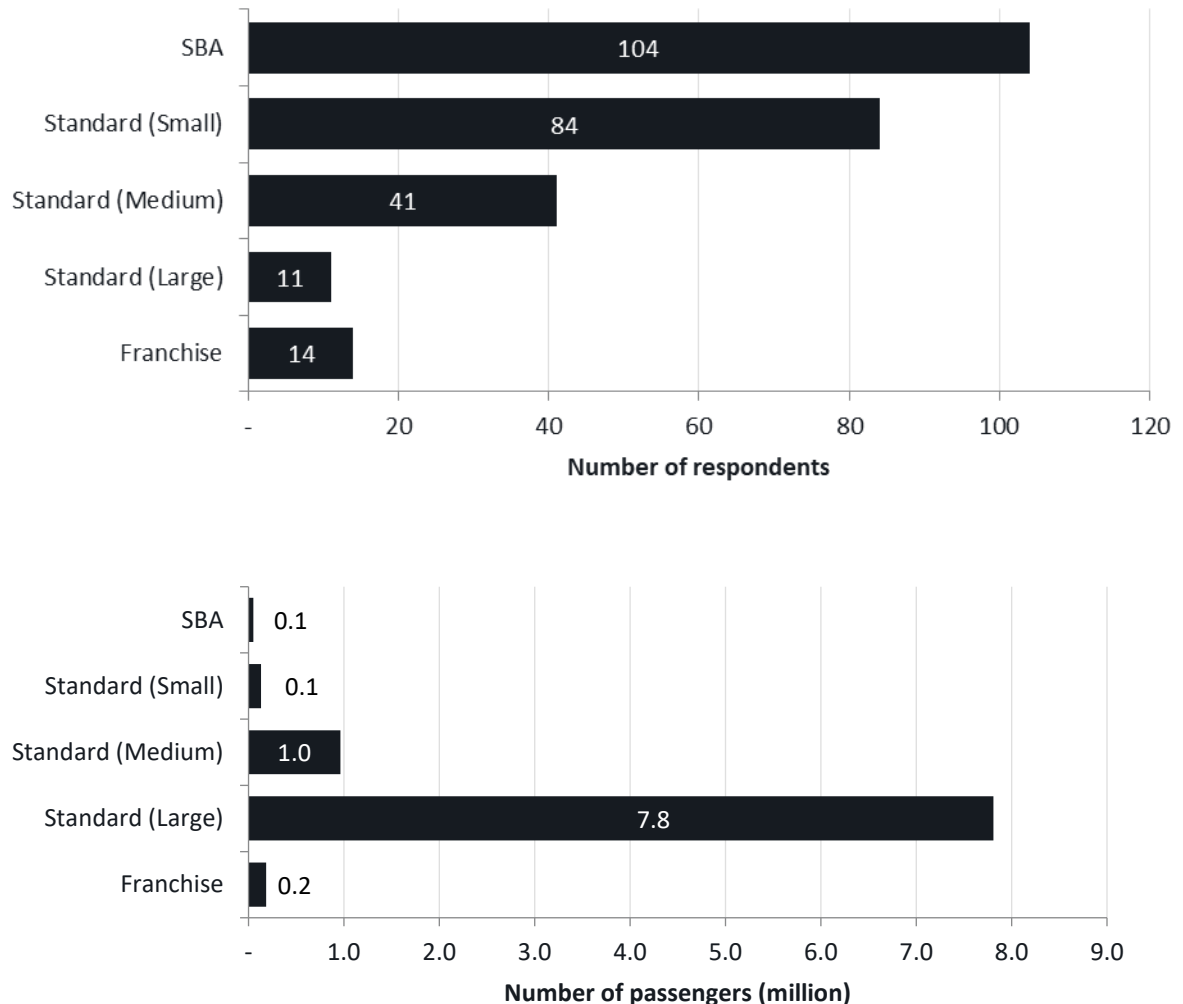
Breakdown of respondents

- 1.1 The CAA received in total 305 unique responses to the consultation via both the Citizen's space portal and directly by email. The full list of respondents can be found in Appendix A.
- 1.2 The charts below show a breakdown of the proportion of responses we received from different stakeholder groups and the number of passengers² per year that are covered by different ATOL holder respondent groups.



² Passenger numbers reflect the ATOL authorisations at the date of ATOL holder response.

The charts below show a breakdown of the number of ATOL holder respondents by licence type and the number of passengers per year that are covered by ATOL holders with these types of licence:



Themes

- 1.3 There were two significant themes across all of the different groups of stakeholders who responded to the consultation:
- Although there was a wide range of views on the best option for how the ATOL framework should be reformed, there was a general consensus amongst respondents that change, in some form, was necessary.
 - There was a general consensus that a variable APC would likely yield a fairer system – i.e. that less risky businesses would not be subsidising riskier ones.

- 1.4 Although there was a general consensus on these two points, in the detail of their responses ATOL holders often expressed support for those options for reform that aligned with their current business practices. For example, ATOL

holders that already operate a trust account tended to favour this option; conversely, ATOL holders that combine customer money with operational cash tended to take the view that this was not as serious an issue as highlighted by the CAA in its consultation. Further, in the context of determining how a variable rate APC should be defined, ATOL holders' views were similarly varied when it came to identifying the characteristics of risky and less risky businesses.

- 1.5 On this latter point, although not forming part of the CAA's consultation, a number of respondents expressed the view that the riskiest businesses were those that posed the greatest financial risk to the Air Travel Trust (ATT) in terms of the impact of their failure. On a related point, a number of respondents considered that the existence of the ATT fund means that, as consumers would be protected in terms of refunds and repatriation, ATOL holders should be free to use the customer monies they hold as they see fit (and not just to purchase the specific elements of the booked holiday).
- 1.6 When formulating the consultation proposals, the CAA's objectives were to further strengthen the financial framework to better ensure that ATOL holders meet their obligations towards consumers and, in doing so, mitigate the risk they pose to the customer monies they hold through implementing measures to enhance their financial resilience.

Option A – Potential mechanisms to be mandatory across ATOL holders

- 1.7 Option A proposed moving toward a financial framework which would require all ATOL holders to provide a minimum level of security using the same method. In the consultation we put forward the view that moving to uniform requirements across all ATOL holders could help us to achieve a fair, simple, and consistent framework.

Segregation of monies

- 1.8 The CAA defined segregation of customer monies as keeping customer monies separate from operational cash. We proposed that the CAA could define what customer monies should be considered to be and, on that basis, require ATOL holders to segregate those funds. We further stated that this could be achieved by different means on either a total (i.e. 100% of customer monies) or a partial basis (i.e. 99% or below of customer monies). We also stated that segregation could be achieved through several different methods including trust, escrow, and client accounts.
- 1.9 Question 5 asked whether the CAA should adopt segregation as a mainstay of the system. There were 271 responses to this question. Many respondents appear to have interpreted this question to mean the CAA adopting *total*