



ATOL REFORM:

Information paper on possible changes to the Civil Aviation Authority's Official Record Series 3, including ATOL Standard Terms

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Introduction

- 1.1 The Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, as amended, ("ATOL Regulations") give the Civil Aviation Authority ("CAA") the power to set its own policies for licensing travel organisers and managing the ATOL scheme, and to create specific requirements which ATOL holders must adhere to. They also place a number of obligations on the CAA to publish certain information to give effect to specific regulatory requirements.
- 1.2 All such information is published in the CAA's Official Record Series 3 ("ORS3"). The contents of ORS3, which includes ATOL Standard Terms, was last reviewed and revised when the ATOL Protection Contribution ("APC") was introduced in 2008. It has now been reviewed again in order to incorporate amendments arising from lessons learnt since 2008 and to introduce changes required to implement the ATOL reform proposals which the Department for Transport ("DfT") set out in its 'Consultation on ATOL Reform', published on 23 June 2011¹.
- 1.3 The CAA produced an annex for the DfT's ATOL Reform consultation, to provide information on how the Government's policies on consumer protection for holidays could impact on both the CAA's policies and procedures and the Air Travel Trust's (ATT) payment policies. This document provides further information on the impact and sets out the proposed changes to ORS3 for comment (Annex 1).
- 1.4 As part of the revision of ORS3 and ongoing consideration as to the possible impact of ATOL Reform, the CAA has been working with various parties in the travel industry² to develop specific concepts, including the design and implementation of the ATOL Certificate, the application of the Approved Bodies proposal and the impact of reform on ATOL Standard Terms.
- 1.5 The CAA's proposed changes to the ORS3, which relate to ATOL Reform, have been drafted based on the proposed ATOL Regulations 2012 contained in the DfT's consultation document (published on 23 June 2011) with an aim of meeting the stated objectives of the Government for the reform. The Minister of State for Transport has stated that she expects to make a further announcement on ATOL Reform before the end of the year³. The DfT has published an ATOL Reform clarification Q&A document on its website⁴, which includes answers to questions that arose during the course of the DfT's consultation on ATOL Reform.
- 1.6 Where the contents of ORS3 reflect a requirement set down in the proposed ATOL Regulations 2012, or a policy issue in the DfT's consultation document, the CAA may need to make further changes following the DfT's final decision on ATOL Reform.

¹ <http://www.dft.gov.uk/consultations/dft-2011-17>

² For the purpose of this document the terms 'travel industry', 'industry' or 'trade' are used in the context of ATOL holders and/or their trade associations / advisers.

³ <http://www.dft.gov.uk/news/statements/villiers-20011025>

⁴ <http://assets.dft.gov.uk/consultations/dft-2011-17/111024-dft-2011-17-clarification-q-and-a.pdf>

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- 1.7 In publishing the proposed changes to ORS3, the CAA is inviting comment on the draft schedules contained within it. Any changes resulting from these comments and any amendments required as a result of DfT policy decisions, will be reflected in a 6 week consultation on ORS3 which the CAA will undertake later this year or early in 2012.
- 1.8 The Trustees of the ATT have also given further consideration to possible amendments to their payment policy. Further detail can be found in Annex 2, which sets out the revisions they intend to make. These changes are in part a response to industry reaction to the proposals put forward in Annex F of the DfT's reform consultation document.
- 1.9 Comments on this document and the revised ORS3 (Annex 1) should be submitted to the CAA by 14 December 2011. Details of how to submit a response can be found in Section 10.

2 Background information

- 2.1 ATOL was established nearly forty years ago by the Government to ensure that holidaymakers whose tour operators ceased trading were looked after in resort and brought home to the UK. Moreover, if they were yet to travel they got their money back so they could book another holiday. Subsequently, European legislation came into force which required financial protection for all package holidays. ATOL provides the means by which the UK meets this obligation for air inclusive package holidays, except those sold by airlines.
- 2.2 Every year, almost 20 million people enjoy holidays which are ATOL protected. Although the majority of them will have no need to call on the protection offered by the scheme, over 100,000 have been looked after by the CAA and brought home following failures since 2008. Over a quarter of a million people have received refunds over the same period and have been able to book replacement holidays.
- 2.3 ATOL was established at a time when the travel industry was very different to how it is today. Most scheduled carriers were nationalised and the structure of agents selling tour operators' package holidays was commonplace, with most holidaymakers travelling on charter flights. However, the market has changed significantly in recent years. Today, most former national carriers are privately owned and an increasing number of travellers and holidaymakers book over the internet and do not use the traditional High Street travel agent. Charter carriers still form the backbone of the holiday market, but increasing numbers of holidaymakers use low cost carriers and arrange their own accommodation when they travel.
- 2.4 The rise in sales on the internet and over the telephone has meant that more people are booking their holiday components separately. As a direct result, the number of people taking holidays which are ATOL protected has fallen and today only around 50% of holidaymakers travel with full financial protection from ATOL. However, because financial protection was traditionally prevalent, the majority of consumers do not realise that the arrangements they buy today may not be ATOL protected and that they run the risk of either losing their money or, worse, having to make their own arrangements to get home if their holiday firm fails.
- 2.5 Around four years ago, just before the global economic downturn, a decision was taken to change the way in which ATOL failure costs were met. For the previous 30 or so years, the primary protection device had been the provision of a bond from

either a bank or an insurance company, with the money available to look after ATOL protected passengers in the event of the ATOL holder's failure. In circumstances where bond monies were insufficient, the Air Travel Trust Fund would meet the cost of claims. By the early 1990s, however, the Fund was in deficit and the ATT had no means of replenishment.

- 2.6 A mechanism for replenishment came into effect in 2008 when the requirement for ATOL holders to make a per passenger ATOL Protection Contribution (APC) was introduced. This is now the primary way in which ATOL failures are financed.
- 2.7 Shortly after the APC's introduction, the large integrated holiday group, XL Leisure, failed. This failure and others in recent years demonstrated that people were booking holidays in different ways, meaning that some passengers on the same flight were fully financially protected while others on seemingly identical trips, had only part, or no protection at all. The Government recognised that this was very difficult to explain to consumers and that greater clarity was needed to enable people to understand whether they were protected or not. The XL failure also demonstrated that it was increasingly difficult to run an efficient refund system that would swiftly allow people to book new holidays.
- 2.8 Responding to this situation, the Government has proposed a series of reforms to the ATOL scheme designed to deal with the issues raised. Between June and September this year the DfT consulted on these proposals. They include the introduction of the concept of 'Flight-Plus' arrangements, whereby certain holidays which are not covered by the current ATOL provisions would become financially protected. The DfT also consulted on the important proposal that everyone booking ATOL protected holidays would be provided with a standard 'ATOL Certificate' at the point of purchase, which would make it clear to them what their rights were and what was protected. In addition, the Government said that it wanted to ensure that the ATT was returned to a sustainable financial footing and that in future the protection system should be financed by the industry and not through the public purse. Draft ATOL Regulations to give effect to these changes were included as part of the consultation.
- 2.9 The Government also asked respondees to consider whether, when the opportunity became available, the Government should seek to bring Flight-Plus and package holidays sold by airlines into ATOL, to remove any remaining confusion, and to legislate on the practice of travel firms acting as 'agents for consumers', which is a further way in which people can find they do not have the financial protection they expect.
- 2.10 On 25 October 2011, the Minister of State for Transport announced a change to the planned implementation date for the proposed reforms, from 1 January 2012 to April 2012, and a further announcement about the Government decisions on the ATOL Reform proposals in the consultation is expected before the end of this year.

3 Class Exemptions from ATOL Regulations

- 3.1 The current ATOL Regulations give the CAA the power to exempt anyone from the need to comply with the ATOL Regulations as a whole. This is replicated in the proposed ATOL Regulations 2012, and a new power has been included to allow the CAA to exempt anyone from specific Regulations. When considering exemptions, the CAA will ensure that any potential consumer detriment is minimised.
- 3.2 In Annex F to the DfT's Consultation on ATOL Reform, the CAA explained that the current exemptions would need to be modified and modernised to ensure that they remained relevant. Additional minor changes are also required to make reference to the revised ATOL Regulations, and a new exemption is being considered for certain corporate sales.
- 3.3 The ATOL Regulations apply to all sales regardless of the purpose for the trip. The protection provided is available equally to those travelling for leisure and for business. Often, business arrangements are made by a corporate entity for its own employees and consequently there is little or no scope for consumer harm. The CAA had been considering an exemption from ATOL to cover credit sales, but following discussions with the trade it is planning to introduce an exemption to exclude Flight-Only and Flight-Plus sales made to a corporate entity from the ATOL Regulations. For the avoidance of doubt, ATOL to ATOL sales are not part of the exemption. A draft exemption is at ORS3, Section 1.2.
- 3.4 The CAA has been advised by the trade that limiting this exemption to credit sales (as put forward in Annex F to the DfT's consultation on ATOL Reform) would fail to meet its objective, as general invoicing practices would result in inconsistency and complexity when applying the exemption. The exemption therefore refers to sales made to a limited company or limited liability partnership.
- 3.5 An ATOL will still be required for business package sales that include a flight, because the ATOL Regulations provide the means by which persons in the UK selling air packages comply with the Package Travel Regulations and there is no exclusion for business or corporate travel in the European Directive which these regulations originate from.
- 3.6 Other amendments to the exemptions include:
- 3.6.1 The removal of the exemption which allows IATA agents to;
- 3.6.1.1 issue a Miscellaneous Charges Order (MCO) or Multi Purpose Document (MPD) instead of providing a valid ticket as defined by the current ATOL Regulations. The advent of electronic ticketing means that it is no longer required.
- 3.6.1.2 issue scheduled tickets to ATOL holders without the need for that IATA agent to obtain an ATOL. This exemption is consistent with the proposed ATOL Regulations 2012.
- 3.6.2 The removal of references to MCOs and MPDs from the exemption which allows airlines to make available flight accommodation on another airline's aircraft. The remaining part of this exemption covers circumstances where the aircraft that the airline intended to operate is unavailable for technical reasons or where, as a member of IATA, the airline takes responsibility for a ticket issued on another airline, such as code-share arrangements. (See ORS3, Section 1.2).

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- 3.6.3 Amendments to the non-UK sales exemption to remove reference to where payment is made. The CAA believes that current sales practices mean that the location of purchase is both irrelevant and difficult for industry and trade to determine (See ORS3, Section 1.2).
- 3.6.4 Separating out of the non-UK sales exemption, sales in the Republic of Ireland (RoI) in recognition that local protection provisions exist and there is potential for firms to be subject to separate statutory protection requirements for the same consumer (See ORS3, Section 1.2). Whether the consumer payment was made in or outside the UK has been removed from this exemption. The purpose of the exemption remains to prevent firms having to comply with the ATOL Regulations when consumers are protected under the RoI scheme. However, as the RoI does not have a specific scheme to protect consumers that have bought a Flight-Plus the sale of any flight which is made available in the UK as part of a Flight-Plus that departs the RoI will not be exempt.
- 3.7 For the avoidance of doubt, because of the individual nature of Specific Exemptions these have not been included within the draft ORS3 accompanying this paper.

4 ATOL Certificate

- 4.1 The documentation provided to consumers is vital in ensuring that they are aware of the protection status of their booking. The CAA makes requirements on ATOL Holders to issue specific documentation to customers, and requires them to take responsibility for documentation issued by their agents.
- 4.2 To strengthen the effectiveness of the documentation requirements, the proposed ATOL Regulations 2012 introduce a requirement for ATOL holders and/or their agents to issue an ATOL Certificate for all protected sales. This will replace the current requirements made by the CAA for Confirmation Invoices and ATOL Receipts, and new requirements governing the format and content of the ATOL Certificate are set out in the ORS3, Section 1.3 and ATOL Standard Term 1.
- 4.3 In developing the ATOL Certificate, the CAA has worked with stakeholders to ensure that the content is appropriate for consumer needs, whilst taking into account industry practices. The CAA will continue to work with these stakeholders to ensure that the design of the document effectively presents this content and that the ATOL Certificate is distinctive and recognisable for consumers.
- 4.4 The examples of the ATOL Certificate included in the draft ORS3 and the requirements set down in the ATOL Standard Terms aim to achieve these objectives. All ATOL Certificates will be uniform in appearance but allow for different content, depending on whether the consumer is booking a package, Flight-Plus or Flight-Only. The CAA would like an agreed position on the format and content of the Certificate by the end of the year, in order that ATOL holders have sufficient time to make necessary changes to their systems for an April 2012 implementation date. Further measures to help facilitate implementation include the development of a secure, editable electronic template which the CAA plans to make available to ATOL holders for the production of ATOL Certificates.
- 4.5 The ATOL Certificate for package sales will need to contain the names of the passengers, basic information about the package and the booking reference. A 'Schedule of Information' will accompany the ATOL Certificate and will contain more detailed information about the booking. It is proposed that the requirement to issue

a 'Schedule of Information' for package sales will be an ATOL Standard Term, which will specify the minimum information that it must contain, but it will not specify the format (See ATOL Standard Term 1.10). This structure will allow tour operators to reissue schedules to detail changes to holidays, without the need to reissue the ATOL Certificate.

- 4.6 The CAA proposes that in instances where the sale is made through an agent, the ATOL Certificate must be issued by the agent but can be produced by the ATOL holder. However, the Schedule of Information must be produced by the ATOL holder although it can be provided by either party. Whilst the ATOL Certificate must be produced on receipt of payment, the 'Schedule of Information' is required to be provided within 3 days of the ATOL Certificate being issued.
- 4.7 The ATOL Certificate for Flight-Plus sales will need to contain the names of the passengers and full details of what is protected, including price and individual travel service booking references. The CAA expects that contractual documentation from the principals for the travel services which make up the Flight-Plus sale will also be passed to the consumer, but these will not be subject to a specific requirement.
- 4.8 The CAA is conscious that a Flight-Plus can be arranged by adding relevant additional tourist services, such as car hire, to a package. In these instances, the Flight-Plus arranger will issue its ATOL Certificate and the package organiser should provide a Schedule of Information (as described in paragraph 4.5). It is proposed that the issuing of a Schedule of Information will be a requirement within the ATOL Standard Terms (AST1.10).
- 4.9 The ATOL Certificate for Flight-Only sales will need to set out the names of the protected passengers and the flight details in full. It will also contain a clear message referring to the revised ATT Payment Policy (see Annex 2) to remove refunds for Flight-Only bookings where other elements have been requested by the consumer at the same time for use in connection with the flight and the sale has been made on an agent for the consumer basis.
- 4.10 Each ATOL Certificate also contains a designated space for the inclusion of a unique reference number. This may be the booking reference (for package and Flight-Only) or another reference which applies solely to the booking. In the longer term, the CAA may develop this requirement further so that the issuer assigns a designated serial number to an ATOL Certificate which the consumer and/or the CAA could use to validate its authenticity.

5 Agency Terms

- 5.1 Where ATOL holders sell their products through agents, it is important that the relationship between the two parties and their responsibility to the consumer is clearly understood. This is best achieved through written agreements between ATOL holders and agents. It is widely acknowledged that this is industry best practice, although the CAA's experience of managing ATOL holder failures where sales have been made through agents suggests that written agreements are often not in place.
- 5.2 The proposed ATOL Regulations 2012 place an obligation on ATOL holders to have a written agency agreement in place that contains specific requirements. It also places this requirement on agents by stating that the ability of a person to act as an agent and benefit from the exemption in the ATOL Regulations is dependent on the

agent acting in accordance with the terms of a written agency agreement with an ATOL holder.

- 5.3 The Regulations allow the CAA to publish a Schedule of Agency Terms to be included in all agency agreements. This may be amended by the CAA, and those amendments would apply to all agency agreements by default on publication. As an agency agreement is a commercial agreement between the parties involved, the CAA proposes to keep the number of compulsory terms to a minimum.
- 5.4 A draft Schedule of Agency terms has been included in ORS3, Section 1.5. This contains terms which clarify the basis on which money is held and seeks to ensure that both parties to the agreement are clear on what is expected in the event of insolvency.
- 5.5 The schedule contains a term which states that, subject to the agent or member's obligation to pay it to the ATOL holder, money accepted by the agent from the consumer is held on behalf of the ATT. This requirement is intended to ensure that money held by agents is available to provide consumer protection under the ATOL scheme (see paragraph 7.8).
- 5.6 Another proposed Agency Term requires the agent to make it clear to the customer that any mark-up, service fee or other charge made by the agent must be clearly identified to the consumer (and would not in any event be included on the ATOL Certificate) so that the consumer is aware what part of their payment is not subject to the terms of the protection of the ATOL scheme.
- 5.7 Other Agency Terms will require agents to:
- 5.7.1 adhere to ATOL Standard Term 1 (Providing Information to Consumers);
 - 5.7.2 report information about ATOL Certificates issued to the ATOL holder; and
 - 5.7.3 provide information on customer monies held in respect of an ATOL holder to the CAA immediately following the failure of an ATOL holder with whom they have an agency agreement.
- 5.8 It is general practice for agency agreements to be signed and returned to the initiating party (usually the principal). This provides comfort that both parties have read the terms of the agreement and also provides evidence of acceptance of the terms. Some trade members have expressed concern over the practical issues associated with this process. The CAA believes that there are clear advantages to this practice and has included a term to make this a requirement. However, it will welcome comments and suggestions for alternative measures which might achieve the same outcome.
- 5.9 Agents should also retain a copy of the agency agreements for a minimum of 12 months after their expiration and be prepared to provide these to the CAA if it requires evidence that an agent was acting in that capacity.

6 Approved Bodies

- 6.1 The proposed ATOL Regulations 2012 introduce the concept of the Approved Body as a compliance option. An Approved Body is a membership organisation that provides its members with the means to conduct licensable business without the need to obtain their own licences.
- 6.2 In order to become an Approved Body, an organisation or trading entity must be an ATOL holder and meet specific requirements. The CAA must be satisfied that the Approved Body's staffing, financial arrangements, conditions of membership and arrangements for supervising members are such that the consumer dealing with a member will receive the same level of protection as if they were dealing with an ATOL holder.
- 6.3 An assessment of an Approved Body applicant will be made by the CAA or by a third party appointed by the CAA. Details of this assessment can be found in ORS3 under 'Requirements for an application for an approval as an Approved Body' (ORS3, Section 1.8).
- 6.4 Once approval has been granted, the Approved Body as well as complying with the ATOL Standard Terms must also comply with specific requirements as set down by the CAA in the form of Approved Bodies Standard Terms. These are included in ORS3 at Section 1.10.
- 6.5 The Approved Body Standard Terms will set out specific clauses which must be included in membership agreements. These include reporting arrangements and documentation requirements, and an Approved Body must also be content with the business systems and financial controls that members have in place. It is proposed that an Approved Body must also be content with the fitness of owners and/or directors of an Approved Body member and it will not be permitted to grant membership to any person that in its opinion would not be considered fit by the CAA to hold an ATOL⁵.
- 6.6 The membership agreements must prohibit membership if a business holds its own ATOL or is a member of another Approved Body. They must also require members to allow the CAA to audit financial records, business records, financial systems and business systems of members at any time.
- 6.7 The specific obligations set down for the Approved Body include a requirement to provide the CAA with a summary of licensable transactions and to allow the CAA to instruct a third party to carry out an inspection of the Approved Body. They also require the Approved Body to ensure that their members comply with the appropriate ATOL Standard Terms, as if they applied directly to them, and that they must not grant membership to any person or business that the CAA has notified them may not be a member.
- 6.8 On 28 September 2011, the CAA published a consultation on proposed changes to its Scheme of Charges, including those relating to the ATOL scheme⁶. This includes the proposed fee structure for Approved Bodies. The fees proposed reflect

⁵ The CAA judges fitness based on honesty, integrity, competence and capability measured by reference to the member's past activities in the travel industry or any other field

⁶ <http://www.caa.co.uk/docs/1352/ATOL%20Enclosure%201213.pdf>

the cost of due diligence that applicants must undergo before being approved to grant ATOLs as an Approved Body.

7 ATOL Standard Terms

Providing information to Consumers

7.1 At present the Standard Terms require ATOL holders to provide information to consumers about the extent of ATOL protection they can expect to receive, covering marketing material, booking terms and conditions and information provided immediately prior to a contract being concluded. It is proposed that these obligations continue.

ATOL Certificate and Schedule of Information

7.2 To raise awareness of the ATOL Certificate and of ATOL protection it is proposed that ATOL holders make it clear to consumers that if they [the consumers] do not receive an ATOL Certificate, or a travel service that has been purchased but is not listed on an ATOL Certificate, then the consumer does not have ATOL protection in relation to those services not included on an ATOL Certificate.

7.3 In relation to marketing through broadcast media, it is proposed that a clear audible message is included where appropriate and stating 'ATOL Protected'. The clear visual use of the ATOL logo and number would also be required in relevant broadcasts (AST1.3).

7.4 As set out in Section 4 of this paper, it is proposed that details of Package Sales and Flight-Plus sales (where additional tourist services have been added to a package supplied by another ATOL holder) should be itemised within an accompanying Schedule of Information, to be issued within three days of the initial booking or subsequent changes being made. The Schedule of Information:

7.4.1 will provide consumers with certain details of their booking (ATOL Standard Term 1.10);

7.4.2 will help the CAA in failure management; and

7.4.3 is likely to be, in part, in line with the requirements placed on ATOL holders under the Package Travel Package Holidays and Package Tours Regulations 1992.

Possible fulfilment arrangements

7.5 In the event of the insolvency of a Flight-Plus arranger, it should be possible for consumers to make use of the elements of the arrangement, since the principal(s) in the transaction will normally still be trading. In such scenarios, the CAA will consider whether a third party (fulfilment partner) should take on the Flight-Plus arranger's role. The concept of fulfilment partners will be developed further with the ATT Trustees and through consultation with the trade.

7.6 An ATOL Standard Term has been drafted to ensure ATOL holders inform consumers that they may benefit from fulfilment and that the consumers agree to this, unless fulfilment is not possible and a claim for a refund would be applicable. (AST1.6).

Pipeline monies

- 7.7 The current Standard Terms require firms to confirm that any monies taken by an agent are at all times held on behalf of the ATOL holder. The CAA's experience of failures has shown that there is often considerable confusion surrounding the ownership of monies held, which leads to delays in processing consumers' claims.
- 7.8 The CAA proposes a change to the ATOL Standard Terms to make it a requirement for ATOL holders to confirm to consumers that, subject to the agent or member's obligation to pay it to the ATOL holder, any monies paid by the consumer to the ATOL holder's agent or Member are held for the benefit of the Trustees of the ATT at all times. The agent therefore collects and holds money for the principal but ultimately owes this to the ATT if the ATOL holder fails, on the basis that the ATT becomes liable for the consumer at that point. The ATT would then determine the amounts due to the consumer, agent or administrator. This requirement is also reflected in the Agency Terms (see paragraph 5.5).

Providing Information to the Trade (ATOL to ATOL transactions)

- 7.9 Under contract law an ATOL holder who acquires a seat on an ATOL to ATOL basis becomes responsible for the provision of that seat to a consumer (unless the subsequent transaction is also an ATOL to ATOL sale).
- 7.10 Experience suggests that the buying ATOL holder should acknowledge and accept their responsibility at the time they buy the seat. In conversations with trade representatives, there has been a clear acknowledgement that this is an area where ATOL holders need to take more responsibility, but the introduction of a formal requirement to do so may be too onerous.
- 7.11 The CAA currently proposes that ATOL holders selling on an ATOL to ATOL basis are required to produce and supply an invoice that sets out clearly that the transaction is an ATOL to ATOL sale and that the buying ATOL holder accepts responsibility for providing ATOL protection to the consumer and for paying the APC (AST2.1).

Providing Information to the CAA

- 7.12 At present, the Standard Terms include the provision of information to the CAA for business and financial monitoring, and for determining the level of ATOL Protection Contributions ("APC") to be paid.

Reporting of Package, Flight-Plus and Flight-Only arrangements within Public Sales

- 7.13 The DfT's proposals for ATOL Reform bring 'Flight-Plus' holidays within the ATOL scheme⁷ and it is proposed that such sales will be classified as Public Sales.
- 7.14 In order to assist in failure management (particularly as the protection mechanism for Flight-Plus arrangements is different to packages) and to provide better data for the trade, it is proposed that ATOL holders report the different types of transactions conducted within Public Sales i.e. Flight-Plus, Flight-Only and Packages (AST3.3).

⁷ Paragraphs 4.4-4.28 of the DfT's Consultation refers

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- 7.15 The requirement for ATOL holders to have business systems that are capable of producing different versions of the ATOL Certificate and identifying and recording the different types of transactions, should mean that the increase in reporting is consistent with other requirements.

Standard ATOL holders – Quarterly reports

- 7.16 ATOL holders who report on a monthly basis provide information on the amount and value of licensable bookings taken during the preceding month and those held for future travel, broken down by the months when passengers are due to travel. This data is used to produce a profile that shows the likely impact of a failure [of that ATOL holder] on consumers and the ATT. It is also used for industry monitoring purposes, such as comparing booking volumes and average selling prices.
- 7.17 ATOL holders who report on a quarterly basis provide information on the amount and value of licensable bookings taken during the previous quarter, but this is not broken down into future travel dates. The CAA would like to have greater visibility of the likely impact of failure and improve its monitoring of these firms, but it is also mindful of ensuring that reporting requirements remain proportionate to the size of the impact and risk.
- 7.18 To estimate the impact of failure, some form of booking information is necessary but rather than asking for this to be broken down by the months when passengers are due to travel, the CAA proposes that ATOL holders reporting on a quarterly basis report the total number of licensable passengers due to travel in the future and the total value of those bookings (AST3.10).
- 7.19 The current Standard Terms require ATOL holders to maintain systems that, amongst other things, record the date of booking and departure for each licensable passenger. Whilst the impact of the proposed changes would increase the reporting requirement for approximately 600 ATOL holders/ATOL holders' groups, the CAA believes that as the data is already available, it is reasonable to expect firms to be able to provide this information.

*Standard ATOL holders and Franchise Member ATOL holders (>1,000 passengers)
– Annual Accountants' Reports*

- 7.20 At present, the Standard Terms require accountants to confirm the information reported by ATOL holders to the CAA, during the licence period that terminates during the ATOL holder's last financial period. It is proposed that this is amended to accurately reflect that accountants should be confirming information reported during the four calendar quarters immediately prior to the ATOL holder's last financial period. AST3.12, AST3.16 and AST3.18 refer.

Reporting requirements for Franchise Member ATOL holders

- 7.21 Franchise arrangements offer an alternative way for firms to provide financial protection under the ATOL scheme. In such arrangements, the potential costs of failure of a Franchise Member are underwritten, either in part or in full, by the Franchisee. If a Franchise Member fails, the Franchisee will meet the commitments to the consumer.
- 7.22 Although the arrangements offered by Franchisees are similar, separate Standard Terms currently exist for Franchise Members and Travel Trust Association

Members. It is proposed that these are merged to remove unnecessary duplication (AST3.13-3.16).

Financial Monitoring

- 7.23 As a consequence of ATOL reform, there will be a change in the number and size of ATOL holders within the scheme. The CAA needs to ensure it has the appropriate tools to seek information that will allow it to remain satisfied with an ATOL holder's finances and where there are concerns, the powers to be able to inspect financial records and monitor firms closely. It is important that the CAA is made aware at the earliest opportunity if a firm's financial circumstances change in order that it can reassess the risk profile of the firm.
- 7.24 The Standard Terms require an ATOL holder to provide certain information, upon demand, relating to the financial affairs and resources of the ATOL holder. These requirements have been reviewed in the light of experience.
- 7.25 To ensure that the CAA receives sufficient information to undertake an assessment to the appropriate level required, it is proposed that the ATOL Standard Terms make it clear that the frequency, extent and format of information to be provided must be acceptable to the CAA. The CAA also proposes that:
- 7.25.1 if an ATOL holder or a third party seeks or is advised to seek advice on matters of insolvency relating to the ATOL holder, the CAA must be informed immediately and any subsequent reports, draft or otherwise, must be provided to the CAA upon demand;
- 7.25.2 if an ATOL holder or a third party engages someone to produce a report on the financial position of the ATOL holder, the CAA must be informed within 3 working days and any subsequent reports, draft or otherwise, must be provided to the CAA upon demand (AST4.3); and
- 7.25.3 where requested to do so, an ATOL holder will make its financial systems/records available for inspection by the CAA (either with or without the assistance of a third party identified by the CAA). There is at present a requirement for ATOL holders to make their business systems available for inspection, but this ATOL Standard Term will deal specifically with a firm's financial systems / records (AST4.5).
- 7.26 The current Standard Terms allow the CAA to obtain a third party report on an ATOL holder relating to matters the CAA has decided upon, with (reasonable) costs met by the ATOL holder. The current term puts the onus on the ATOL holder to retain and instruct the third party. It is proposed that this is amended to put the onus on the CAA, as it is likely to be a more efficient means of achieving the same aim, i.e. obtaining an independent report on an ATOL holder when the CAA has specific concerns about financial aspects of that firm's operations. In addition, the new proposed terms recognise the confidentiality aspects of a third party appointment, particularly in relation to the release of sensitive information to the third party, which should be addressed upfront. It is also proposed that this is dealt with by the CAA and the third party entering into a standard confidentiality agreement. If the third party signs this agreement, the ATOL holder will be obligated to co-operate with the third party, allowing access to the firm's records and where necessary assisting in the interrogation of those records (AST4.5, AST4.6, AST5.2 and AST5.3).

Reporting changes of ATOL holder details

- 7.27 The CAA's process of evaluating a firm's financial viability includes an assessment of its business and financial risks. The ATOL Standard Terms require advance notification of changes to specific areas of business activity, and retrospective notification for others.
- 7.28 The CAA considers it important to have greater visibility of an ATOL holder's plans to make significant changes to their terms or contracts with key suppliers, such as airlines. These changes may have a material impact on the risk environment in which the ATOL holder is operating and their level of exposure in the event of failure. It is proposed that the ASTs will be strengthened to require an ATOL holder to provide such information to the CAA (e.g. AST4.10).
- 7.29 The current Standard Terms provide a form of wording for ATOL holders to use in instructing their credit card facilities provider to advise the CAA of any changes to its credit card facilities. The CAA has been advised that the wording does not meet the purpose of the provision and therefore an amendment is proposed to correct the position (AST4.12).

Business Systems Management

- 7.30 The Standard Terms set out requirements relating to business systems management and the maintenance of records. These are intended to help ATOL holders comply with other Standard Terms/licence conditions and ensure information provided to consumers and the CAA is accurate.

ATOL Certificates and Agency Agreements

- 7.31 As a consequence of the DfT's proposals, the ATOL Standard Terms will be updated to:
- 7.31.1 require business systems to produce and record the numbers/types of ATOL Certificates issued and their unique reference numbers; and
- 7.31.2 require the retention of all current Agency Agreements, as well as those that expired during the previous 12 months.

Records relating to non-ATOL transactions that include a flight

- 7.32 In order to assist with the financial assessment of an ATOL holder's business and to verify, where necessary, that transactions are indeed non-licensable, the CAA proposes to introduce a requirement for ATOL holders to retain records of all non-ATOL transactions that include a flight.

Ability of CAA to access business systems in the event of failure

- 7.33 At the time of a failure, it is important that the CAA gains access to the failed ATOL holder's booking data to determine at the earliest possible opportunity, the details of ATOL protected passengers who need to be repatriated or refunded. It also enables the CAA to determine any potential areas of concern, such as whether a firm had overtraded prior to failure.
- 7.34 Frequently, where a business system(s) is managed by a third party supplier, the CAA has experienced difficulty in either securing access to this data or securing

access without significant additional cost. It is proposed that a requirement is introduced to ensure that where an ATOL holder's business system(s) is provided, managed and maintained by a third party, the terms and conditions of the contract between the ATOL holder and the business system(s) supplier will include a term that enables the CAA to have access to the system(s) up to one month after the date of failure and at no cost. Where ATOL holders are unable to provide evidence of this, it is proposed that the CAA may require a specific bond to cover the potential cost of accessing data in the event that the ATOL holder fails (AST5.8).

Electronic based business systems

- 7.35 The CAA believes the vast majority of ATOL holders, if not all, maintain computer based business systems, which are used by the management of ATOL holders to oversee and control the business operation. It is proposed that ATOL holders should maintain electronic based systems (AST5).

Format of documents/records to be provided to the CAA

- 7.36 At present, when requested to do so, ATOL holders are required to provide copies of documentation and/or records of bookings either by post (i.e. hard copy) or electronically. The CAA has found that where large volumes of booking documentation has been provided in hard copy format, it has been difficult to review and/or take action in a timely manner. The CAA proposes to amend the relevant Term(s) to enable the CAA to specify in which format the records should be provided. This will be determined on a case by case basis, although it should be assumed that it is likely that in most cases the CAA will wish to be provided with this information in electronic format.

Sales Restrictions (AST6)

- 7.37 To support the DfT's drive to bring clarity to the consumer, particularly in agent for consumer transactions (and to assist the CAA in determining liability at the time of failure) it is proposed that a new ATOL Standard Term is introduced to require ATOL holders only to:
- 7.37.1 accept payments from other ATOL holders [for ATOL to ATOL transactions];
 - 7.37.2 authorised agents [of the ATOL holder]; or
 - 7.37.3 a consumer as defined in the proposed ATOL Regulations 2012.

- 7.38 Therefore, an ATOL holder cannot accept payment from an entity acting as agent for the consumer. In these sales, the consumer's payment details will be provided directly to the ATOL holder. The aim of this policy is that the consumer will be aware they are transacting with more than one firm and not buying their whole holiday from the entity that is acting as an agent for the consumer.

Compliance Manager

- 7.39 The proposed ATOL Regulations 2012 will require ATOL holders to appoint a Compliance Manager who is acceptable to the CAA and this person is defined as:

"an officer of the company, sole trader or partner in a partnership with authority to ensure that the ATOL holder complies with the

terms and conditions of its ATOL, these Regulations and the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007”

- 7.40 The CAA sees this as an opportunity for improved compliance within the industry and believes that Compliance Managers should be responsible for the accuracy of information given to the CAA and be competent to understand and comply with the ATOL Regulations.
- 7.41 To ensure this role is undertaken by a person with sufficient authority and control, the CAA has suggested to the DfT that either the definition in the proposed ATOL Regulations 2012 is amended so that in the case of a limited company the Compliance Manager must be on the Board of Directors of the company or an ATOL Standard term is introduced to meet this objective (AST7).
- 7.42 The CAA is also considering requiring Compliance Manager training and proposals for this will be discussed with the trade.

Supplemental Financial Security

- 7.43 The current Standard Terms set out certain supplemental financial security that the CAA may request as additional protection against the possible failure of an ATOL holder e.g. bonds. These are no longer included as specific Standard Terms, as the CAA sets out these requirements elsewhere within its CAA Policy Notes, which can be found on the CAA’s website⁸.

8 APC payment periods

- 8.1 The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (“ATT Regs”) require ATOL holders to pay APC and state that the rate of contribution and payment periods must be published by the CAA.
- 8.2 Changes to the rate of contribution and payment periods are subject to consultation with the trustees of the ATT, ATOL holders and persons appearing to represent ATOL holders.
- 8.3 The frequency that ATOL holders are required to provide historical booking data under the ATOL Standard Terms is linked to the relevant Payment Periods.
- 8.4 The CAA wishes to improve its visibility of ATOL holder trading and is considering changing the threshold that determines which firms are required to report (and pay) on a monthly basis. Consequently, the additional information to be provided is the amount and value of licensable bookings taken during the preceding month and also held for future travel, broken down by month of travel.
- 8.5 Historical booking information is used for collecting APC and future booking information is used by the CAA to produce profiles that show the likely impact on consumers and the ATT in the event of the failure of the ATOL holder during each month of the year. Both sets of data are also used for monitoring and comparing booking volumes and average selling prices.

⁸ <http://www.caa.co.uk/default.aspx?catid=1038&pagetype=90&pageid=6227>

- 8.6 The CAA believes it to be appropriate to change to a revenue threshold and that this is set at £5 million (see Table 1) for the following reasons:
- 8.6.1 consistency - the CAA already uses revenue thresholds for determining the degree of financial scrutiny applied to ATOL holders when licensing them;
 - 8.6.2 improved analysis - a revenue threshold of £5m would:
 - 8.6.2.1 afford the CAA far greater visibility on the trading of mid-sized ATOL holders; and
 - 8.6.2.2 improve the quality of the CAA's risk analysis work and profiling of the impact of failure of ATOL holders;
 - 8.6.3 proportionate - there would be an increase in the reporting requirement for around 100 ATOL holders that would now be included in monthly APC reporters. This should not be too onerous, as the CAA would expect firms of this size to already have systems capable of producing such information. If introduced, it is estimated that roughly 10% of all ATOL holders would be required to report on a monthly basis;
 - 8.6.4 ATT – increasing the number of ATOL holders that are analysed in more detail, should reduce the risk of exposure for the ATT, as the CAA would be able to make more informed licensing decisions as a result. In addition, more ATOL holders would be paying their APC monthly, which means the ATT would be receiving funds earlier.

Table 1

Class of ATOL holder (current)	Class of ATOL holder (proposed)	Payment Period
Licence holder with a passenger limit of 30,000 or more	ATOL holder with a revenue limit of £5 million or more	Monthly
Licence holder with a passenger limit above 500 and below 30,000	ATOL holder with a passenger limit above 500 and a revenue limit below £5 million	Quarterly

9 Proposed change to Class Exemptions from the ATT Regulations

- 9.1 When the rate of APC was increased in 2009 it was recognised that a change to the APC rate would impact upon Small Business ATOL holders (SBAs). After consultation with the Secretary of State, the CAA introduced two class exemptions to the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007. These are set out in Section 7 of the current ORS3⁹.
- 9.2 The part of the exemption relating to SBA renewals addressed an anomaly in the ATT Regulation 8(2) that when there is a change to the rate of APC, those renewing their ATOLs would be required to pay for all bookings taken during the previous licence period, at the rate in force at the commencement of the new licence period.

⁹ <http://www.caa.co.uk/docs/33/ORS3.pdf>

The exemption means that SBAs only pay the rate in force at the time a booking was made.

- 9.3 The CAA has asked the DfT to consider making a change to Regulation 8(2) to remove the anomaly. If this change is made the exemption can be removed.

10 Process for submitting comments

- 10.1 Please send any comments you have by Wednesday, 14 December 2011 to atolresponses@caa.co.uk or write to:

Mark Rayner
Consumer Protection Group
K3, CAA House
45-59 Kingsway
London WC2B 6TE

- 10.2 The CAA will review all of the responses received and may publish them on its website (www.atol.org.uk), within three weeks of the closing date.
- 10.3 This document has been sent to those parties listed in Annex 3. The CAA invites responses on this document from any source. If a response is provided on behalf of a representative body, the response should summarise the parties that body represents. If you consider the view of a stakeholder not listed at Annex 3 should be sought, please notify the CAA at the address in paragraph 10.1.

November 2011

ANNEX 2 – REVISIONS TO THE AIR TRAVEL TRUST PAYMENT POLICY

1. Annex F of the DfT's ATOL Reform Consultation document contained a summary of the ATT Trustees' ("Trustees") proposed changes to their payment policy. This Annex sets out the revisions that the Trustees plan to make in the light of industry reaction to the original proposals.
2. Subject to the Government's decision on implementation of the proposed ATOL Regulations, these policy changes will be incorporated into the ATT payment policy and published on the CAA website.

ATOL Flight-Only bookings

3. The Trustees proposed in Annex F that refund protection for Flight-only bookings should be removed. Industry expressed concern that this move would weaken the ATOL message with the public and that it would have a disproportionate impact on those ATOL holders selling scheduled Flight-Onlys, who would still pay the APC but whose consumers would receive limited financial protection under ATOL.
 4. The Trustees have now decided, subject to the exception outlined in paragraphs 6 to 8, that where a consumer makes a Flight-Only booking under ATOL, that person should benefit from both repatriation and refund protection.
 5. The reason the Trustees proposed a restriction to refund protection in Annex F was to help address concerns around the practice of firms acting as agent for the consumer, which results in holidays being sold with limited financial protection. These concerns remain and the Trustees are keen that consumers booking through businesses, who are acting as the agent for the consumer, are aware of the status of their booking.
 6. The exception to the Flight-Only policy will apply where a consumer requests flight accommodation and car hire or living accommodation at the same time from a travel business which is acting as agent for the consumer and the flight is purchased from an ATOL holder on behalf of the consumer.
 7. In this scenario, the flight sale will be a direct sale from the ATOL holder to the consumer and the consumer will receive a Flight-Only ATOL Certificate from the ATOL holder which will contain no reference to living accommodation or car hire. As the consumer has effectively bought a holiday through a travel business in such a way that the ATOL Regulations do not apply, the ATT will not provide a refund for forward bookings to these consumers, but will provide repatriation only so that consumers are not stranded abroad.
 8. In these circumstances, the agent should make the consumer aware that they are acting as their agent, and consumers will therefore know that they should obtain alternative protection. For the avoidance of doubt, the consumer will know from the absence of the
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non-flight elements on the ATOL Certificate that a Flight-Plus or package has not been created. The ATT Trustees have asked the CAA to consider including appropriate wording on the Flight-Only ATOL Certificate to ensure that consumers are aware of the consequences of this type of sale.

Contributions to ATOL holders

9. The Trustees intend to make contributions towards the costs incurred by ATOL Flight-Plus arrangers in meeting their obligations to make alternative arrangements in the event of the failure of the flight supplying ATOL holder.
10. First, the Trustees intend to continue to provide and pay for repatriation, to minimise the detriment caused to consumers abroad and allow for the efficient management of the failure of the flight supplying ATOL holder.
11. Second, the ATT will make contributions to Flight-Plus arrangers to help meet the cost of their liabilities to consumers where the Flight-Plus contains flights obtained on a retail basis from an ATOL holder who becomes insolvent.
12. Following discussions with the CAA, who have carried out an analysis of recent ATOL holder failures, the Trustees have decided to offer contributions to individual Flight-Plus arrangers, capped at 2% of their annual licensed revenue. This cap would be subject to a minimum of £50,000, i.e. each (relevant) ATOL holder would be entitled to claim up to that level regardless of licensed revenue, and an upper limit of £2.5 million.
13. The cap would be applied annually to each ATOL holder and would be the maximum payable by the ATT in any one financial year (Year to 31 March) in relation to the flight supplying ATOL holders that have become insolvent during that financial year.
14. Separately, the ATT intends to charge the Flight-Plus arranger £25 for each passenger, who is included in the bookings that are the subject of a claim. This charge is intended to meet the cost in administering the contribution claims. It will be charged independently and will not be netted off against the contributions made by the ATT.
15. The Trustees consider this a reasonable cost for the Flight-Plus arranger to incur, given the statutory obligations on the arranger as well as the Trustees' policy on repatriation and contributions. In addition, the Trustees consider the typical charge is unlikely to be materially more than the commission payments or booking fees that agents typically earn on Flight-only bookings.
16. When considering claims for contributions from ATOL holders, the CAA (on behalf of the ATT) are likely to require appropriate evidence of entitlement (including proof that the flight was obtained on a retail basis and proof of payment to the failed ATOL holder) and of the consumer's booking.
17. This policy provides clarity to ATOL Flight-Plus arrangers on the level of contribution they can expect from the ATT and allows them to make alternative (insurance or other)

arrangements, if they so wish, to cover any exposure over and above the individual calculated cap. In addition, it provides more clarity to the Trustees when calculating their exposure were a flight supplying ATOL holder to become insolvent, whilst also ensuring that Flight-Plus arrangers take responsibility for the products and services they sell.

ATOL Package holidays sold with another element (also a Flight-Plus booking)

18. In response to a query from industry, the DfT has said it believes that arrangements where an agent obtains a package including a flight and then sells it with relevant additional travel services would be a Flight-Plus under the proposed ATOL Regulations. In acknowledgement of the responsibility placed on the package organiser by the Package Travel Regulations, where the package was obtained from an ATOL holder and that ATOL holder fails, the ATT will meet the full cost of the package to the Flight-Plus arranger that is responsible to the consumer, and will not deduct fees or apply a cap.

Fulfilment Partners

19. The Trustees have asked the CAA to start work on developing the concept of fulfilment within ATT payment policies so that consumers are able to continue to go on holiday as planned if a Flight-Plus arranger fails, and the appointment of Fulfilment Partners to manage these arrangements.

ANNEX 3 – LIST OF RECIPIENTS

All Licence holders
All Trustees of the Air Travel Trust
AB Law
ABTA – The Travel Association
Advantage Travel Centres Ltd
Air Travel Consultancy
Air Travel Insolvency Protection Advisory Committee
Association of Chartered Certified Accountants
Association of ATOL Companies
Association of Greek and Cypriot Travel Agents
Association of Independent Tour Operators
Barclays Bank plc
Bird & Bird LLP
British Bankers Association
Confederation of Passenger Transport
Deloitte & Touche LLP
Elman Wall
Ernst & Young Global Ltd
Eventia
Federation of Small Businesses
Field Fisher Waterhouse
Gates & Partners
Guild of Travel Management Companies
Haines Watts
Institute of Chartered Accountants for England and Wales
Kirkpatrick & Lockhart Preston Ellis Gates LLP
KPMG
Longi Associates
MacIntyre Hudson LLP
Passenger Shipping Association
PricewaterhouseCoopers
Sam McKee Ltd
Scottish Passenger Agents Association
Sharman Associates
Smith & Williamson Ltd
Trading Standards Institute
Travel and General Management Services

Travel Trade Consultancy
Travel Trade Management
Travel Trust Association
Vantis PLC
White Hart Associates Ltd
Worldchoice