



ATOL Reform:

Further information on a proposal to amend the Civil Aviation Authority's Official Record Series 3, including ATOL Standard Terms

and

Consultation on a proposed change to an ATOL Protection Contribution payment period

Further information on a proposal to amend the Civil Aviation Authority's Official Record Series 3, including ATOL Standard Terms, and consultation on a proposed change to an ATOL Protection Contribution payment period

1 Introduction

- 1.1 This document follows on from and should be read in conjunction with the CAA's 'ATOL Reform: Information paper on possible changes to the Civil Aviation Authority's Official Record Series 3, including ATOL Standard Terms' ("Information paper"), which was published in November 2011¹. That paper provided guidance on:
- 1.1.1 the policies and procedures that the CAA and the Air Travel Trust ("ATT") would pursue when the DfT implements ATOL Reform; and
 - 1.1.2 proposed changes to the CAA's Official Record Series 3 ("ORS3"), reflecting both the ATOL reform proposals and lessons learnt since the last review of ORS3 in 2008. These included proposals on the form and content of ATOL Certificates, Agency Terms and Accredited Body Standard Terms (formerly Approved Body Standard Terms).
- 1.2 The CAA received 14 responses to the Information paper, including feedback from all the main industry membership bodies, which represent travel agents and the majority of ATOL holders, and also from some individual ATOL holders. The CAA has also met the main bodies to discuss their comments in detail. Except where it has been asked not to do so, the CAA has published formal written responses on its website².
- 1.3 This document sets out changes to the content of the Information paper, taking into account feedback received from industry and the Department for Transport's ("DfT") 'ATOL Reform: Summary of consultation responses and Government decision' ("DfT's decision paper"), which was issued on 09 February 2012³. The DfT's decision paper outlines its decisions on ATOL Reform and explains the changes it will make to the draft Regulations that were included in its "Consultation on ATOL Reform"⁴.
- 1.4 The DfT's decision paper confirms changes to the way in which ATOL will be conducted in future and provides clarification where the consultation posed open questions. The CAA understands that the DfT plans to publish the new ATOL Regulations in March 2012 and for them to come into effect on 30 April 2012; the proposals set out in this document reflect in full all changes which the CAA considers necessary to the ORS3 as a result of the DfT's decision paper.
- 1.5 Sections 2 to 6 of this document represent a continuation of the CAA's engagement with industry, consumer representatives and other interested parties on the proposed changes to ORS3. It sets out only those areas where changes have been

¹ <http://www.caa.co.uk/default.aspx?catid=2094&pagetype=90>

² www.caa.co.uk/default.aspx?pageid=13005

³ <http://assets.dft.gov.uk/consultations/dft-2011-17/dft-2011-17-responses-and-decisions.pdf>

⁴ <http://www.dft.gov.uk/consultations/dft-2011-17>

made to the proposals set out in the Information paper, or where the proposals needed further clarification. Sections of the Information paper where no change is reported here stand unchanged. A revised draft ORS3 is at Attachment 1.

- 1.6 Section 7 of this document, Financial criteria for grant / variation of an ATOL, is included for the purpose of providing more clarity to industry. The CAA is not changing its financial criteria, but sets out how the regulatory changes will fit within the existing criteria.
- 1.7 Section 8 of this document constitutes a consultation under the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 ("the ATT Regulations"), by which the CAA is required to consult on any changes to the ATOL Protection Contribution ("APC") payment periods.
- 1.8 Section 9 of this document sets out a proposal for the CAA to consult with the Secretary of State to vary an existing class exemption under the ATT Regulations. This exemption addresses an anomaly in the ATT Regulations relating to APC payments made by Small Business ATOL holders ("SBAs"). The DfT's decision paper confirms that Regulation 8(2) of the ATT Regulations will be amended, the result of which will remove the need for part of the exemption relating to SBA renewals. This section seeks comments on the proposal.
- 1.9 The CAA welcomes further comments on the proposed changes to the ORS3, the consultation on the proposed change to an APC payment period and the proposed change to the Class exemption from the ATT Regulations. Responses should be received by 22 March 2012.

Terminology used within this document

- 1.10 This document and the draft ORS3 use the terminology that the DfT has used in its DfT's decision paper and which will be used in the ATOL Regulations 2012. This includes:
 - 1.10.1 **ATOL Standard Terms ("ASTs")**, which are terms that will apply to ATOL holders;
 - 1.10.2 The Schedule of **Agency Terms**, which are terms that ATOL holders must ensure their agents adhere to in respect of ATOL transactions; and
 - 1.10.3 **Accredited Body Standard Terms ("ABST")** are terms that will apply to ATOL holders who have been granted accreditation by the CAA to be an Accredited Body.

2 Class Exemptions from the ATOL Regulations (*Section 3 of Information paper*)

- 2.1 Proposed exemptions are included within Section 1.2 of the draft ORS3.
- 2.2 **Whole Plane and Corporate Sales** (*paragraphs 3.3 – 3.5 of Information paper*). The corporate sales exemption will exclude from the ATOL Regulations 2012 sales to businesses, as opposed to individual consumers, except where required by the Package Travel Regulations. This is consistent with Better Regulation principles and reflects a business's greater ability to mitigate against the risk of supplier default; ATOL is primarily to protect holidaymakers, whose ability to mitigate against

those risks is lower. Following trade feedback the exemption has been revised so that it also applies to organisations other than corporate bodies where the end user is not a holidaymaker (including executive agencies, non-departmental public bodies, ministerial departments, non-ministerial departments etc.).

- 2.3 The current exemption that covers Whole Plane and Corporate Sales (Exemption 5) does not apply to sales in which the purchaser is a business selling the flight on. This provision has been re-inserted into the latest draft ORS3.
- 2.4 **Code Share Exemption** (3.6.2 of the *Information paper*). This has not changed, but for further clarity it should be noted that the proposed exemption has been drafted to apply to IATA airlines only, in acknowledgement of IATA rules which provide a specific framework for code share arrangements, and provide comfort that consumers are not disadvantaged by such arrangements. The CAA could consider widening this exemption to other schemes if the organisations operating these can demonstrate that they have arrangements to give the consumer equivalent assurance.
- 2.5 **Overseas Exemption** (3.6.3 and 3.6.4 of the *Information paper*). Some industry respondents expressed concerns that exempting flight-inclusive packages that depart outside of the UK would require them to seek alternative financial protection arrangements, which would be an unwelcome, and arguably unnecessary, burden. The CAA has accepted this point and the exemption no longer excludes such packages from ATOL.

3 ATOL Certificate (Section 4 of *Information paper*)

- 3.1 The requirement for an ATOL Certificate to be issued is a major development for the ATOL scheme and has the potential to make a significant impact on consumer understanding of ATOL protection. The DfT and CAA believe that the visually distinctive ATOL Certificate will lead to a material improvement in public awareness of ATOL.
- 3.2 The CAA has worked closely with industry and consumer stakeholders to develop the design and content of the ATOL Certificate into a format that the industry can use to prepare for implementation. The ATOL Certificates published in Section 1.3 of the draft ORS3 are the versions that the ATOL Regulations 2012 will require to be provided to consumers when payment is accepted for an ATOL booking. The ATOL Certificate has been endorsed by the Campaign for Plain English, which has awarded it a crystal mark for clarity and ease of understanding. The CAA has developed an electronic template of the ATOL Certificate which will be made available to ATOL holders shortly.
- 3.3 The design of the ATOL Certificate is uniform for all types of licensable sales, but the content has been tailored for package, Flight-Only and Flight-Plus to provide the consumer with the appropriate level of information about the booking and their protection. There is a change to the version in the Information paper and this is a requirement to include the name of the airline on the ATOL Certificate for Flight-Only and Flight-Plus. For package sales it will be a requirement for this information to be included in the Confirmation (see paragraph 3.4 of this document). This change is

consistent with the requirement under the Carrier Identity Regulations⁵, which requires a seller to identify the carrier at all times. If the identity is not known at the time of booking, the likely carrier should be stated and the identity confirmed when it is known.

- 3.4 An ATOL Standard Term has been drafted (see paragraph 6.3 below) which requires principal ATOL holders to issue additional documentation for package sales. The draft published with the Information paper, referred to this as a 'Schedule of Information'. In the light of industry feedback this has been changed to a 'Confirmation' to reflect current industry terminology.
- 3.5 As stated above, the design and content of the ATOL Certificate have been developed with industry and consumer stakeholder input. This process has resulted in proposals designed to ensure consistency and clarity regarding the issuing of ATOL Certificates. These include:
- 3.5.1 the requirement for an ATOL Certificate to be reissued if any of the information entered on the ATOL Certificate changes (see paragraph 6.5 of this document);
- 3.5.2 the requirement for the details of a flight inclusive package to be listed as such in the 'flight details' field of the ATOL Certificate, where a package or a Flight-Plus consists of a flight inclusive package and, for example, car hire (see Section 1.3 of the draft ORS3); and
- 3.5.3 the development of guidelines by the CAA and industry on how to issue an ATOL Certificate, including advice on how to complete the different fields in an ATOL Certificate and what to do when an ATOL Certificate has been produced by both the principal and the Flight-Plus arranger.
- 3.6 The CAA would welcome feedback as to whether there are any aspects of the policy regarding the ATOL Certificate that remain unclear and which should be covered in the guidelines. The CAA expects to issue these guidelines shortly.

Transitional Arrangements for ATOL Certificate

- 3.7 The DfT's decision paper confirms that the requirement for ATOL holders and their agents to issue an ATOL Certificate in a standard form and content will not come into force until 1 October 2012. This will allow the industry time to make the necessary changes to their systems to be able to produce and issue standard ATOL Certificates in accordance with the requirements.
- 3.8 In the interim, it is proposed that ATOL holders and agents must issue ATOL protection documentation that specifies the minimum information set out in Section 1.3 of the draft ORS3. For package and Flight-Only sales, the CAA will accept the continued production of existing documents – the ATOL confirmation invoice and the ATOL receipt provided the minimum information is included.
- 3.9 Flight-Plus arrangers are permitted to use existing ATOL and other documents, but these must be supplemented as necessary to meet the requirements of Section 1.3

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:344:0015:0022:EN:PDF>

of the draft ORS3. For example, if some parts of the sale or money paid by the consumer are NOT ATOL protected, this must be clear to the customer.

- 3.10 In the event that an ATOL holder is able to develop its systems' capability to be able to issue an ATOL Certificate before 1 October 2012, in the form and content set out in paragraph 1 of Section 1.3 of the draft ORS3, the CAA may consider a request from the ATOL holder for authorisation to do so.

4 **Agency Terms** (*Section 5 of Information paper*)

- 4.1 Proposed Agency Terms are included within Section 1.4 of the draft ORS3.

- 4.2 **Agency Term 1** (*paragraph 5.8 of Information paper*). The text printed in the Information paper required agency agreements to be signed and returned to the initiating party. It was included to provide comfort that both parties had read the terms of the agreement and to provide evidence of acceptance. However, industry respondents stated that this requirement would be onerous and was unlikely to meet the objective of ensuring that all parties read the terms: they believed that direct education of agents would be more effective in making sure that they were aware of and understood the terms.

- 4.3 The CAA still believes that both parties should read and understand the agreements, but in order to minimise the burden on ATOL holders and to accommodate the possibility that some agreements will not be signed, the term has been redrafted. There must still be a written agency agreement and it must contain CAA's standard Agency Terms, but the parties will be regarded as having agreed to their obligations under the agreement if the agent continues to make available the ATOL holder's flight accommodation to consumers. The CAA will discuss with the trade associations how they can assist in educating their agent members about the new standard Agency Terms.

- 4.4 **Agency Term 3.** This sets down a requirement for agents to report to ATOL holders unique reference numbers for ATOL Certificates they have issued. In response to industry feedback, the CAA has changed this requirement so that it will be mandatory only where the CAA specifically requires it.

- 4.5 **Pipeline monies** (*5.4 – 5.5 and 7.7 – 7.8 of the Information paper*). The CAA included an agency term setting out the status of money held by agents on behalf of the ATOL holder in the event of the ATOL holder's failure.

- 4.6 The agency term and the AST were drafted to ensure that, in the event of failure of the principal ATOL holder, the monies being held by travel agents in respect of licensable bookings with the failed principal would be identified by the agent to the CAA and either (as directed by the trustees of the ATT) returned to the consumer or forwarded to the ATT.

- 4.7 The term was proposed to benefit both consumers and the trade. For consumers, it would reduce the delays which occur on failure when the refund payments from the ATT are delayed while the administrator or liquidator reach an agreement with the agent over the amounts due to them. The benefit for the trade is that it would reduce calls on ATT funds, as refunds will be provided by agents from the monies held, or monies will be passed on to help meet the cost of the failure. This would

reduce the ATT's expenditure in many cases. The monies held would still be available to agents to use as working capital and there is no intention to require this money to be held in trust, or to be in any way controlled or restricted by the CAA/ATT prior to failure of the relevant ATOL holder.

- 4.8 Comments received in response to the Information paper demonstrated that industry were concerned that these measures may have adverse implications for agents' arrangements with banks and credit card companies, and that it could act as a disincentive to administrators or liquidators from taking on the role of managing a travel firm's failure. Agents have also expressed concern that they may lose commission under the proposal.
- 4.9 The CAA acknowledges the input from industry and is continuing to work with stakeholders to assess the consequences of this proposal and is keeping its proposed policy under review. The relevant Agency Term and AST have been retained in the draft ORS3 as this represents the CAA's current policy intention. The CAA will consider further representations in response to this document and would welcome evidence that as a result of these proposals, banks or merchant acquirers will materially change their stance with regard to ATOL holders and/or travel agents.
- 4.10 **Agency Term 8** (*5.6 of the Information paper*). This stated that the agent must make it clear to the consumer in writing any mark-up, service fee or any other charges which are not payable by the agent to the ATOL holder. The intention of this term was to ensure that consumers would be advised if any part of their payment would not benefit from ATOL protection. This has been replaced by a new Agency Term 2.3 which is intended to meet the same objective more directly.
- 4.11 **Agency Term 10.** Feedback from industry has highlighted the practice of ATOL holder's agents appointing sub-agents and the uncertainty that may exist regarding the relationship that the consumer and sub-agent has with the principal ATOL holder. It is proposed that an Agency Term is introduced to require written agency agreements to be in place between agents and sub-agents that clarifies the relationship between the consumer and the ATOL holder. It also means that unless a sub-agent has the authority to bind the principal ATOL holder, it may not make available flight accommodation. AST2.3 has also been introduced to require an ATOL holder to confirm whether an agent is able to appoint a sub-agent and if so the basis on which it may do so (see paragraph 6.9 below).

5 Accredited Bodies (*Section 6 of Information paper*)

- 5.1 These arrangements, which were formerly referred to as Approved Bodies, are unchanged other than a name change to Accredited Bodies.
- 5.2 A definition of a licensable transaction has been added to Section 1.9 of the draft ORS3 to improve clarity.
- 5.3 An agent of an ATOL holder who arranges Flight-Plus, will either need its own ATOL or need to be an Accredited Body Member ("ABM"). The DfT's decision paper confirms that the ATOL Regulations 2012 will identify certain officers, employees and some workers of firms who will not need an ATOL or will not need to become an ABM.

6 ATOL Standard Terms (*Section 7 of the Information paper*)

6.1 Proposed ASTs are included within Section 1.8 of the draft ORS3.

6.2 **Advertising** (*paragraph 7.1 of the Information paper*). The provisions discussed in the Information paper set out the required wording for publicity material. There was considerable feedback from industry to the effect that the obligation to include the required information on all publicity material was impractical. The CAA does not want to lose the important message for consumers that is contained in the text, so while the proposed requirement to include that text will stand, the CAA will adopt a pragmatic approach to advertising in certain media formats. Where the space available to the ATOL holder is limited due to the medium used to advertise, e.g. a small box advertisement in a newspaper, the CAA will take into account other methods used by the ATOL holder to bring this information to the consumer's attention, e.g. a prominent direction to check important information via a website hyperlink.

6.3 **ATOL Certificate and Schedule of Information** (*7.2 of the Information paper*). The Information paper set out a proposal that would require the details of a Package (or a Flight-Plus where the flight element provided already forms part of a package) to be included within a 'Schedule of Information'. Comments from industry suggested that it would be more cost effective if the existing confirmation invoice document could be used for this purpose. In recognition of this, the CAA proposes that the 'Schedule of Information' is renamed 'Confirmation'. AST1.11 within the draft ORS3 reflects this change.

6.4 The information to be included within the Confirmation has been amended to ensure that there is a reference that links the Confirmation to the relevant ATOL Certificate (AST1.11 of the draft ORS3).

6.5 There is a new term (AST 1.6 – Section 1.8 of the draft ORS3) relating to the re-issue of ATOL Certificates. This is to add clarity and consistency on this issue. The new requirement states that ATOL Certificates should be re-issued in all cases, except where the changes occur within 48 hours before departure. This provision applies only to the issue of a new document to customers; it does not remove the obligation to update the relevant data in business systems.

6.6 **Broadcast media** (*7.3 of the Information paper*). In terms of advertising in broadcast media the CAA believes that the audible confirmation of "ATOL protected" and the ATOL protected logo and ATOL number being shown during the broadcast, is the best way to deliver the ATOL protected message. The CAA recognises that this form of advertising is specialised and used by a limited number of ATOL holders and would be interested to hear their views.

6.7 **Pipeline monies** (*7.7 – 7.8 of the Information paper*). Discussion of this issue begins at paragraph 4.5 of this document.

6.8 **Providing information to the Trade (ATOL to ATOL Transactions)** (*7.9 – 7.11 of the Information paper*). The proposals here reflected the CAA's view that it is important that there is no confusion between ATOL to ATOL sales and financially protected sales and, to achieve that, the ATOL to ATOL invoice must make the position clear and the buying ATOL holder should take responsibility when they buy a seat. Having taken industry feedback into account, the CAA has shortened the

proposed wording and removed the requirement to express this in a larger bold typeface (AST2.1 within the draft ORS3). The CAA would welcome views as to whether there are other ways in which the policy objective could be achieved.

- 6.9 As mentioned in paragraph 4.10 above, a new AST is proposed to formalise the relationship between ATOL holders, agents and sub-agents (AST2.3 of the draft ORS3 refers).
- 6.10 **Reporting ATOL Certificate unique reference numbers to the CAA.** A requirement, set out in a number of the ATOL Standard Terms⁶, for ATOL holders to report to the CAA the unique reference numbers of ATOL Certificates issued has been removed. This is in recognition of trade concerns that such a requirement was inappropriate until measures to introduce designated serial numbers have been developed further.
- 6.11 **Requirement to advise CAA of investigations** (7.24 of the *Information paper*). The wording has been changed to make it clear that ATOL holders must inform the CAA only of material investigations and then that the report is to be submitted only if the CAA requests it. The text of AST4.2 within the draft ORS3 has been amended to make this clearer and more aligned to the current Standard Term 2.29 wording.
- 6.12 **Reports prepared by third parties** (7.25.2 of the *Information paper*). Some respondents stated that in respect of AST4.3 this could lead to a great many reports being sent to the CAA. However, the CAA believes that if a report is significant enough that the ATOL holder is aware of it, it is not unreasonable to expect them to provide a copy. Where a number of reports have been produced, the CAA could be provided, in the first instance, with a list.
- 6.13 **Reports required by the CAA** (7.26 of the *Information paper*). This proposed to switch the task of retaining and instructing third parties from ATOL holders to the CAA. The CAA has considered this matter further and now proposes to amend AST4.6 to provide more flexibility so the CAA can either retain and instruct a third party, or require the ATOL holder to do so.
- 6.14 **Reporting changes of ATOL holder details** (7.27 – 7.29 of the *Information paper*). These changed the requirements made on ATOL holders in AST4.10 to advise the CAA of altered particulars and plans. Feedback was received querying whether “contract terms with suppliers” was intended to include all suppliers; the CAA can clarify that this is not intended to capture minor suppliers, but key suppliers such as travel component suppliers and financial service providers.
- 6.15 AST4.7 also proposed a provision that ATOL holders should brief the CAA 10 days in advance of major shareholder changes. Respondents have observed that sometimes they will not know of such changes to enable them to give that period of notice. The CAA accepts this and has altered the requirement so that ATOL holders must advise it of such changes at least 10 days prior to the change occurring or, where they are not aware of such changes with that notice, as soon as they know.

⁶ AST3.5(c), AST3.8(e) AST3.10(e) AST3.14 (c) and AST3.15(d)

- 6.16 **Ability of CAA to access business systems after failure** (7.33 of the *Information paper*). The Information paper explained that where a business system is managed by a third party supplier, the CAA has frequently experienced difficulty in either securing immediate access to this data or in some cases obtaining access at all without significant cost and delay. This increases the cost of administering failures and causes delay in the processing of customer claims. The Information paper proposed measures to address this, but respondents have raised concerns at the practicability and cost to ATOL holders of the proposed measures. The CAA understands these concerns, but wishes to pursue the objective because of the benefit to consumers. The relevant AST has been retained in the draft ORS3 as this represents the CAA's current policy intention, but suggestions would be welcome as to whether there are alternative ways in which the CAA could access booking data after a failure, for no cost (or a minimal cost) to it and the trade.
- 6.17 **Electronic based business systems** (7.35 of the *Information paper*). This required ATOL holders to maintain computer based business systems. Some concern was expressed that this would require businesses to invest only in dedicated industry-standard systems. This is not the CAA's intention and the requirement is only that records are computerised and that data can be supplied to the CAA in an acceptable electronic format.
- 6.18 **Compliance Manager** (7.39 – 7.42 of the *Information paper*). The Information paper set out details of the CAA's requirements on ATOL holders' appointment of Compliance Managers. These changes remain except that the position is to be renamed Accountable Person.
- 6.19 The CAA has received feedback from trade representatives to the effect that although the principle that the Accountable Person should be a Board member is accepted, in practice larger businesses would find it impractical for a Board member to be sufficiently knowledgeable about the ATOL part of their business to efficiently carry out the duties of an Accountable Person. In some limited cases the CAA may accept this argument provided the ATOL holder can demonstrate an equivalent means of compliance. However, in general the CAA will expect a Board member to be the Accountable Person and to be responsible to sign off all reporting to the CAA.
- 6.20 **Airline Ticket Agent**. The DfT announced that the Right to Fly proposals included in the draft ATOL Regulations published in June 2011 will be replaced with an exemption in the ATOL Regulations for a person acting as an Airline Ticket Agent (ATA), where a written agency agreement exists between the airline and the agent. AST4.16 within the draft ORS3 has been drafted to require ATOL holders who wish to act as ATAs to provide a copy of these agency agreements, if required by the CAA. If this requirement cannot be met, sales will need to be treated as being licensable and reported under the ATOL holder's licence.

7 Financial criteria for grant / variation of an ATOL

- 7.1 ATOL holders and applicants are required to meet the CAA's financial criteria and bonding policy on an ongoing basis, and these will be relevant where the new ATOL Regulations 2012 require companies to apply for an ATOL for the first time or where existing ATOL holders need to increase their ATOL limits.
- 7.2 SBAs are not normally subject to any financial assessment. ATOL holders and new applicants with £5m licensable revenue or more (gross) are subject to a more in-depth financial analysis as well as the free asset test.
- 7.3 The free asset test is an indication of the business's financial stability and shows the relationship between the level of free assets and the projected risk turnover of the business. The asset to turnover ratio provides an indication as to whether the asset base is adequate to support the level of business carried out.
- 7.4 The free asset test is calculated using the total turnover of the business. The CAA indicated in Annex F to the DfT's Consultation on ATOL Reform that, as an ATOL holder would have responsibility for supplier failure in relation to Flight-Plus arrangements, the gross value of Flight-Plus turnover would be included in the free asset test. The CAA will consider any measures put in place by the business to reduce supplier failure risk e.g. trust accounts, supplier failure insurance at a corporate level. However, the CAA will only review the approach outlined if it is fully satisfied that the actions of the applicant or ATOL holder have significantly mitigated supplier risk.

8 Proposed change to an APC payment period (*Section 8 of the Information paper*)

- 8.1 As set out in paragraph 1.7 of this document, the CAA is required by Regulation 6 of the ATT Regulations to consult before changing the payment period. This section comprises that consultation. The information in Section 8 of the Information paper has been updated to provide further clarification of the proposal.

Background

- 8.2 The CAA uses historical booking information for collecting APCs and future booking information 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.
- 8.3 The CAA continually looks at ways in which it can improve its monitoring of ATOL holder trading. Previously, where an ATOL holder had an ATOL revenue limit of more than £5 million and an ATOL passenger limit of less than 30,000, it would be required to report on a quarterly basis the number and value of ATOL bookings taken during the preceding quarter (current Standard Term 2.7).

8.4 Over the past year the CAA has moved to requesting that all ATOL holders who have an ATOL revenue limit of £5 million or more⁷ report on a monthly basis, the amount and value of ATOL bookings taken during the preceding month and also held for future travel, broken down by month of travel. This has provided the CAA with far greater visibility on the trading of mid-sized ATOL holders and has improved the quality of the CAA's risk analysis work and profiling of the impact of failure of ATOL holders.

Proposal

8.5 The ATT Regulations require ATOL holders to pay APCs and state that the rate of contribution and payment periods must be published by the CAA. The existing payment periods are published in Section 4 of the ORS3⁸. Changes to the payment periods are subject to consultation with the trustees of the ATT, ATOL holders and persons appearing to represent ATOL holders.

8.6 The CAA is proposing to change the threshold that determines the APC payment period for those required to pay on a monthly basis, bringing into line the APC payment period with the reporting periods for those ATOL holders referred to in paragraph 8.4. This is set out in Table 1 and it is proposed that this would become effective on 1 July 2012.

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 ATOL holders that are assessed by the CAA as part of a group where ATOL holders within the group together have an ATOL 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

8.7 This change would mean that more ATOL holders would be paying their APCs monthly and the ATT would be receiving funds earlier. The financial impact is considered to be minimal for the small number of ATOL holders affected (approximately 100) as there will be no actual change to the amount of APC due; the change will mean that a proportion of the amount due will be collected one or two months earlier than at present.

8.8 The CAA would welcome comments on its proposals to change the threshold for ATOL holders required to pay on a monthly basis.

⁷ including those ATOL holders who are assessed as part of a 'group' where the ATOL holders within that group have a combined ATOL revenue limit of £5 million or more

⁸ <http://www.caa.co.uk/docs/33/ORS3.pdf>

9 Class Exemptions to ATT Regulations (Section 9 of the Information paper)

- 9.1 The Information paper notified ATOL holders of the CAA's intention to clarify one part of the legal framework relating to APC payments made by SBAs by asking the Secretary of State to vary an existing class exemption under the ATT Regulations and to amend the ATT Regulations. This remains the CAA's intention and the following text is reproduced from the Information paper.
- 9.2 When the rate of APC was increased in 2009 it was recognised that a change to the APC rate would impact upon SBAs. After consultation with the Secretary of State, the CAA introduced two class exemptions to the ATT Regulations. These are set out in Section 7 of the current ORS3.
- 9.3 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. The exemption means that SBAs only pay the rate in force at the time a booking was made. This approach therefore brings SBAs in line with other ATOL holders.
- 9.4 In its decision paper, the DfT has confirmed Regulation 8(2) will be amended to remove the anomaly. If the Secretary of State agrees, the exemption can be varied to remove the clauses designed to address the anomaly set out in paragraph 9.3 of this document (draft ORS3, Section 2.1). The CAA would welcome comments on this proposal.

10 Process

- 10.1 The ATOL Regulations require the CAA to publish the ATOL Standard Terms and Accredited Body Standard Terms at least 28 days before coming into effect. The schedule of Agency Terms must also be published before coming into effect.
- 10.2 The ATT Regulations require the CAA to publish a payment period 4 weeks before coming into effect.

Timeline

- 10.3 The proposed timeline is outlined below:

Action	Timeline
Comments on proposals in Sections 2-6 & 9 Responses to Consultation in Section 8	09 February – 22 March 2012
Publication of revised APC payment periods that will become effective 1 July 2012*	on / before 01 June 2012
Publication of changes to ORS3 that will become effective 30 April 2012*	on / before 02 April 2012

** As set out in paragraphs 10.1 and 10.2 of this document, for legal reasons, the date by which any changes must be published are different for the ORS3 and the APC payment period.*

Responses

- 10.4 The CAA invites responses from any source to the proposals outlined in its Information paper and this document. When responding please provide as much detail of your reasoning as possible. If a response is provided on behalf of a representative body, the response should summarise the parties that body represents.
- 10.5 This document has been sent to the persons listed in Annex 1. If recipients of this document consider the view of a stakeholder not listed should be sought, please notify the CAA at the address in paragraph 10.6.
- 10.6 Please send all responses by Thursday, 22 March 2012 to consultations@caa.co.uk or write to:
- Mark Rayner
Consumer Protection Group
K3, CAA House
45-59 Kingsway
London WC2B 6TE
- 10.7 If you have any queries relating to this document please contact Mark Rayner at the above address.
- 10.8 The CAA will review all of the responses received and a summary of the replies to the questions may be published on its website (www.atol.org.uk).

Freedom of information

- 10.9 Information provided in response to this document, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 10.10 If you want the information that you provide to be treated as confidential, please be aware that under the FOIA there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 10.11 In view of this it would be helpful if you could explain to us why you regard the information you have provided as being confidential. If we receive a request for disclosure of information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CAA.
- 10.12 The CAA will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties

Government Code of Practice

- 10.13 This document draws on version 3 of the Government Code of Practice on Consultation⁹ (the "Code"), which was published in July 2008 and became effective on 1 November 2008. The Code contains seven criteria. These criteria are listed and, where applicable, detail is provided on how they have been taken into account, below:
- 10.13.1 Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- 10.13.2 Consultations should normally last for at least 12 weeks. Taking the following factors into account the CAA believes a shorter period is acceptable, both for formal consultation and also invitation to comment on policy:
- 10.13.2.1 In its Information paper, the CAA advised industry that 6 further weeks would be allowed for responses on proposed changes to the ORS3 and that this would take into account both comments received in response to the Information paper and the DfT's policy decisions on ATOL Reform. Sections 1-7 and 9 of this document reflect a continuation of the engagement that the CAA has had with industry, consumer representatives and other interested parties since June 2011.
- 10.13.2.2 The proposed change to the APC payment period was referred to in the Information paper and has previously been discussed with the industry working group and the trustees of the ATT.
- 10.13.3 Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals. The CAA believes it has met this criterion.
- 10.13.4 Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach. The CAA believes it has met this criterion.
- 10.13.5 Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained. The CAA believes it has met this criterion.
- 10.13.6 Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation. The CAA will meet this criterion.
- 10.13.7 Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience. The CAA has met this requirement.
- 10.14 If you have any queries or comments on the consultation process itself, as opposed to responses to the consultation, please contact David Bourne of the CAA at atolconsultationqueries@caa.co.uk.

February 2012

⁹ <http://www.bis.gov.uk/files/file47158.pdf>

ANNEX 1 – LIST OF RECIPIENTS

All ATOL holders	Haines Watts Group
All Trustees of the Air Travel Trust	Institute of Chartered Accountants for England and Wales
ASB Law LLP	K&L Gates LLP
ABTA – The Travel Association	KPMG LLP
Advantage Travel Centres Ltd	Longi Associates
Air Travel Insolvency Protection Advisory Committee	MacIntyre Hudson LLP
Association of Chartered Certified Accountants	Passenger Shipping Association
Association of ATOL Companies	PricewaterhouseCoopers
Association of Greek-Cypriot Travel Agents	Sam McKee Ltd
Association of Independent Tour Operators	Scottish Passenger Agents Association
Barclays Bank Plc	Sharman Associates
BAR UK	Smith & Williamson Ltd
Bird & Bird LLP	The Air Travel Consultancy Ltd
British Bankers Association	The European Low Fares Airline Association
Confederation of Passenger Transport	The UK CARDS Association
Deloitte LLP	Trading Standards Institute
Elman Wall Ltd	Travel and General Management Services Ltd
Ernst & Young Global Ltd	Travel Trade Consultancy Ltd
Eventia	Travel Trade Management
Federation of Small Businesses	TTA Travel t/a Travel Trust Association
Field Fisher Waterhouse LLP	Travlaw LLP
Gates & Partners	Vantis Plc
Guild of Travel Management Companies	White Hart Associates LLP
	Worldchoice (UK) Ltd