

ATOL Reform: Assessment of funding arrangements and the protection of customer money

CAP 2151

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The latest version of this document is available in electronic format at: www.caa.co.uk/CAP2151

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About this document

1. This document seeks stakeholders' views on the CAA's intention to introduce changes to ATOL. The main changes relate to how ATOL holders fund their operations and how the use of their customers' monies should be considered within the regulatory regime. The document discusses the issues and invites comments on how the regulatory regime might change, but the CAA's expectation is that any proposals for material change would be subject to a further round of consultation.
2. The document also makes specific proposals in respect of i) a changed treatment of mandatory terms to be included in written agreements between ATOL holders and their agents, and ii) changes to the way in which SBA and certain franchisee ATOL holders report and pay their APC returns. The CAA will consider whether to introduce change in these two areas after considering responses to this consultation document only.

Responding to the consultation

3. The CAA is keen to ensure that the above proposals are both effective and appropriate. It is committed to incorporating the views of its stakeholders and the questions in the document provide a structure to enable this.
4. Responses to this consultation document should be submitted via the [Citizen Space page](#). We expect to publish responses we receive on our website as soon as is practicable after the period for representations expires. Any material that is regarded as confidential should be clearly marked as such and included in a separate annex.
5. If you are unable to use the Citizens space page, or if you have any questions about the document please send them to atol.consultation@caa.co.uk by 30 July 2021. Alternatively, you can write to:

Nina Singh
Consumer & Markets Group,
Fifth Floor, 11 Westferry Circus
London
E14 4HD

Given the on-going Covid-19 pandemic, our preference is for responses and questions about the consultation to be submitted electronically where possible.

6. If you require this document to be provided in a different format, please email atol.consultation@caa.co.uk and we will endeavour to accommodate your need.

Chapter 1

Why is the CAA issuing this consultation?

- 1.1 The ATOL scheme, in line with its terms, protects consumers in certain circumstances in the event that their package organiser ceases trading. For consumers who are yet to travel, it provides financial reimbursement for the cost of their licensable booking. For consumers who are abroad at the time of failure, the CAA will ensure that where possible the holiday can continue, and if required will arrange for passengers to return to the UK at no additional cost. As consumers are required to pay in full prior to receiving the services they have paid for, an effective financial protection scheme is also likely to give consumers confidence to book.
- 1.2 The CAA keeps the ATOL system under constant review to identify where improvements can be made. One of the themes we have considered over the years is ATOL holders' financial resilience, for example in "Rebalancing ATOL" from 2014¹. The changes introduced as result of that consultation sought to reduce consumers' exposure to ATOL holder insolvency and improve financial resilience through introducing a risk based financial assessment of smaller ATOL holders.
- 1.3 Whereas Rebalancing ATOL focused on the financial tests for small ATOL holders, we are now mainly focusing in this consultation on another key element of the system, the means by which ATOL holders fund their operations. The experience of the Covid-19 pandemic has amplified the need for change in this area, in that poor capitalisation and in particular the use of customer monies as a primary source of funding working capital can lead to a rapid deterioration of available cash. This can result in a bad consumer experience when refunds in respect of cancelled holidays have taken a long time to be repaid. Businesses that have clearly separated customer monies from their working capital and retained it until the completion of the customer's holiday have often been more financially resilient in the current crisis and better able to pay refunds for cancelled holidays as required by the law.
- 1.4 This consultation therefore sets out to achieve further strengthening in ATOL holders' financial positions alongside better risk pricing, while still facilitating a competitive market that provides choice and value to consumers, and while protecting them appropriately. A key area of focus is the practice of using customers' money to fund working capital, including making sure that the risks

¹ CAP1190

such an approach can pose to consumers are fully taken into account in the licensing arrangements.

- 1.5 We will be looking at changes to the framework which the CAA is able to make through its own regulatory powers. We continue to engage with Government about the wider ATOL regime, and are mindful of the need to consider the interaction between any changes we make and any other changes Government may make or consider including, in due course, how the Government decides to take forward the Airline Insolvency Review².
- 1.6 This initial consultation document sets out the CAA's objectives in relation to this consultation and is seeking feedback on the options and changes that we think best meet our intentions. As set out in "Next steps", we shall take the responses to this consultation into account before issuing a second consultation that includes specific and detailed proposals for change. We will also be undertaking a business impact assessment which will, in part, consider the effect any changes would have on competition, choice, and pricing.
- 1.7 Further, we are aware that the options set out in this consultation will affect differently the wide variety of business models operated by ATOL holders, including larger and smaller sized businesses. We therefore encourage all ATOL holders to share with us their views on how the different approaches would affect their business.
- 1.8 In addition to the main issues, as set out above, we are taking this opportunity to consult on a number of less far-reaching changes to Agency Agreements and SBA APC returns, where stakeholder input would be useful before taking decisions. These are set out in Chapter 5 and Chapter 6.
- 1.9 Finally, we understand that the Covid-19 pandemic is an unprecedented situation which continues to be financially challenging for both tour operators and consumers. We understand that in introducing change industry may require time to adjust for practical reasons. Therefore, as we move to subsequent stages of this work, we will be mindful of the need to consider an appropriate implementation timetable.

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800219/airline-insolvency-review-report.pdf

Chapter 2

Background to the proposals

- 2.1 The main objective of this consultation is to consider moving to a regulatory framework that improves ATOL holders' financial resilience i.e. having adequate capital and liquidity to reduce the risk individual ATOL holders pose to consumer interests. This includes having a robust financial protection system in place. Further, any change in framework would seek to give consumers confidence that they would also get a better overall experience including the payment of refunds where that proves necessary.
- 2.2 There are two principal problems: many travel businesses are highly reliant on customer money as a source of funding working capital and are not strongly capitalised enough in their own right; and the APC they incur may not be reflective of the risk individual ATOL holders or the value of bookings pose.

High reliance on customer monies as a source of funding

- 2.3 Customer money is the money paid in advance by the consumer to the ATOL holder for the licensable booking. The purpose of the money is for the ATOL holder to meet the costs of providing the holiday, whether paid to third party or in-house suppliers.
- 2.4 Issues arise when this money is used by the ATOL holder to fund other business expenditure rather than the specific booking. Meaning that the customer monies are in effect being utilised as a low-cost source of working capital funding for travel companies to finance their operational activities and growth, as opposed to seeking funding from other sources with the appropriate cost of capital attached. This can mean that the ATOL holder does not have the customer's money available when the supplier payments fall due, which is exacerbated by commingling of the business's own cash reserves with customer monies. Further, this leaves monies paid by consumers in advance of receiving their services more exposed to the ATOL holder's insolvency.
- 2.5 This approach can lead to an over reliance upon advanced customer monies and undercapitalised ATOL holder balance sheets.

ATOL Protection Contribution is not currently reflective of risk

- 2.6 The over-reliance on customer money can persist in part because the regulatory system is not set up to efficiently price the risk that such financial structures pose to the system. For each licensable passenger booking ATOL holders currently pay an APC of £2.50 which is used to fund the Air Travel Trust ("ATT"). This flat

rate means that companies which have an increased chance of failure and therefore pose a greater risk to the consumer pay the same per passenger as those companies who pose a lower risk. Further, it means that lower value holidays pay the same for protection as very high value holidays.

- 2.7 At present the flat rate structure, which was set in 2007 after consultation with the industry, is accompanied by the application of a financial testing regime which aims to bring all ATOL holders up to a common standard. Where the CAA is not content with an ATOL holder's finances, it uses its licensing powers to require improvements, perhaps in the form of an injection of capital or a requirement that customer money is protected.
- 2.8 Although this approach means that the system makes heavier demands on less well capitalised businesses, which has a similar effect to risk pricing, this consultation is predicated on a view that the system may still not sufficiently reflect the risk created by individual ATOL holders, and it may be beneficial to introduce change on a more system-wide basis.

Assessment of the current arrangements

Current ATOL holders

- 2.9 Under the current system, the CAA takes an individualised approach to the assessment of risk. When an ATOL is due to be renewed, all ATOL holders except small franchise ATOLs are subject to a financial assessment as set out in the CAA's [financial criteria](#). We have observed that ATOL holders with a weak financial position often see other financial stakeholders withdrawing financial support or tightening their terms, which in turn can create further financial pressure by reducing the amount of cash available to the ATOL holder. A specific instance of this is seen in ATOL holders' relationships with the credit card industry. The credit card industry is potentially exposed to ATOL holder insolvency by Section 75 of the Consumer Credit Act 1974 and relevant chargeback rules. Therefore, the merchant acquirers that issue card payment facilities to ATOL holders will sometimes require additional security or changes to terms and conditions. This is more likely to occur at a time when the merchant acquirer is concerned about the ATOL holder's insolvency risk and this may impact the business's liquidity and therefore make it harder for them to meet the CAA's financial requirements.
- 2.10 The CAA seeks to use its existing powers to put in place risk mitigation measures in the conditions for granting ATOL licences. Companies that do not meet the financial criteria may have additional licensing conditions imposed on them prior to their licence being renewed, in order to mitigate the additional risk posed by them to the consumer. This can include measures such as a cash injection into the business, or the provision of financial security (such as a bond,

fixed charge accounts or trust accounts) which is in favour of the ATT and is accessed for the benefit of consumers if the ATOL holder becomes insolvent.

- 2.11 If the conditions are met, then the licence is renewed and the ATOL holder can continue to trade for the duration of the licence period within the terms set out during the renewal. These conditions mean that there is an individualised risk adjusted cost mechanism in place, but it is often tailored to each business.
- 2.12 Under the current arrangements, there is no generally applicable requirement for customer monies to be segregated from the business's operational funds with the exception of Accredited Bodies who are required to operate trust accounts. Under their agreement with the ATT, ATOL franchises must have in place an arrangement to provide consumer protection.
- 2.13 Some of the proposed frameworks would affect Accredited Bodies and Franchises differently to regular ATOL holders, because in those frameworks the entire ATOL model would move more closely to that already operated by the Accredited Bodies and Franchises.

New ATOL applicants

- 2.14 New businesses are considered to pose more of a risk to consumers, therefore new ATOL applicants are required to provide a bond of 15% of annual licensable revenue, subject to a minimum of £50,000, during their first year. Where appropriate, this can then be stepped down over the subsequent three years. In addition, new applicants are required to meet the relevant financial criteria to be granted a licence.

The Air Travel Trust

- 2.15 The ATT was created by the Secretary of State for Transport as the principal source of funds for payments to be made to consumers in respect of licensable transactions where the ATOL holder from which they bought their holiday has become insolvent. It is governed by a Trust Deed and the Trustees are four CAA Board Members. Its purpose extends only to making payments in that regard and it plays no role in CAA licensing activities.
- 2.16 As at November 2020, the ATT had cash reserves of £35 million and a borrowing facility of £75 million. In addition, the Secretary of State for Transport recently reaffirmed that the Government will stand behind the ATT. The resources currently available to the ATT (apart from the Secretary of State guarantee) would be sufficient to meet insolvency costs in a typical year, but insufficient to meet very high levels of cost that might arise from a single large failure or a number of failures in quick succession.

Failures

- 2.17 The number of failures over the 5-year period 2014-2019 has remained relatively stable, with an average of 13 per annum. Excluding the two largest ATOL holder failures, the number of consumers affected over this period was approximately 72,000. Including the two largest ATOL holder failures, the number is approximately 980,000. These figures do not account for the number of consumers of other businesses which were also affected by the failures. The cost of an ATOL holder failure comprises repatriating passengers who are abroad at the time of the failure to the UK, as well as securing any other ground arrangements, the payment of claims from consumers who have forward bookings, and the costs of administering the failure. The APC is the ATT's key source of funding. Over time, the ATT seeks to build up sufficient funds held within the Trust to meet the significant amount of failure costs. However, for those ATOL holders most at risk, some will have provided a bond or other type of financial security in favour of the ATT which is used to contribute to the cost of the failure. Where this security is insufficient to meet those costs, the ATT meets the remaining cost directly from its funds.
- 2.18 Every holiday company insolvency leads to stress and disruption for its customers. In some instances it can cause significant financial loss and inconvenience through having to claim a refund and rearrange their holiday plans. The ability for the CAA to issue refunds in a timely manner is also impacted by the quality and availability of the documents and records held by consumers and ATOL holders. Please see chapter 7 below in regard to the CAA's ongoing online ATOL Certificate project. Further, customers who are abroad at the time of failure face additional difficulties in continuing their holidays and during the repatriation process.

Case for change

- 2.19 Many ATOL holders operate a business model which allows customer money to be commingled with operational cash in advance of providing services. Where the business does not have its own cash reserves to meet operating costs, commingling can mean that customer monies are used to fund these costs.
- 2.20 This can cause businesses to face additional risk as it requires a constant inflow of new customer monies to meet the costs of providing the original services sold, where these funds are no longer within the business. In other words, it can create an environment of perpetual refinancing in order to discharge a previously incurred liability, for example using the deposit paid by customer 3 to pay the suppliers for customer 2's holiday.

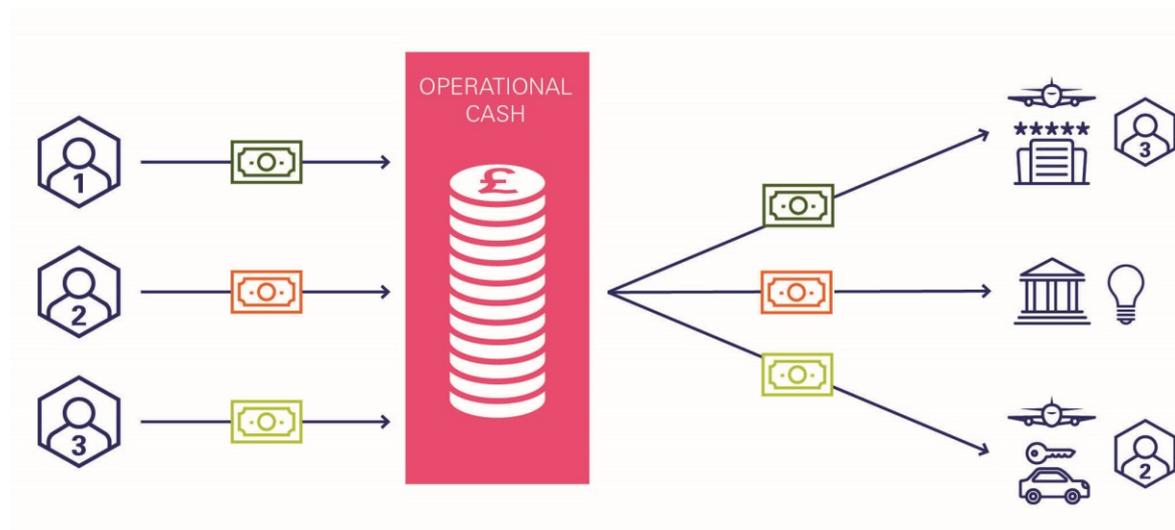


Figure 1: Comingling customer monies

- 2.21 Through its licensing process the CAA has sought to reduce some ATOL holders' reliance upon customer monies by means of various licensing terms and conditions, such as minimum cash requirements or ring-fencing funds. This is achieved as part of the individual financial assessment of ATOL holders when they apply for or renew their licence.
- 2.22 The CAA is now of the view that the current framework has not done enough to restrict the use of customer monies as a source of low-cost financing. Under the individualised approach, the licensing terms and conditions mean that ATOL holders which pose a greater risk to consumers effectively incur higher costs to a hold a licence, e.g. the cost of putting in place a bond etc. However, this has failed to sufficiently incentivise ATOL holders to put in place more robust financing structures and protection of advance customer monies. Further, the use of a non-individualised i.e. a flat rate APC contribution of £2.50, has failed in some cases to sufficiently reflect the risk individual ATOL holders pose to consumers. Where businesses face increased risk of failure, they still pay the same contribution as other businesses which are financially more robust³.
- 2.23 Although this practice itself has not led to large numbers of ATOL holder failures⁴, commingling and the use of customer monies to fund working capital contributed to financing structures which may have factored into the failure of two of the largest ATOL holders. These alone impacted circa one million consumers.

³ This is mitigated to some extent by the use of bonds or other forms of financial security for the benefit of the ATT

⁴ Prior to the Covid-19 pandemic

- 2.24 This view has further been reinforced by the experience of the travel industry during the Covid-19 pandemic and has further been exacerbated by the recent challenges faced with customer refunds.
- 2.25 To rebalance how the ATOL scheme is funded to protect consumers, the CAA is considering moving to a framework that takes a more systematic approach to ATOL holder risk, and that better prices any residual risk an ATOL holder poses to the consumer. The objective would be to encourage and incentivise ATOL holders to reduce their reliance on customers' money as a source of funding working capital thereby requiring them to pursue a more robust funding structure and financial policy. The CAA recognises that requiring ATOL holders to obtain a separate source of funding of working capital rather than using customer monies incurs an additional cost. This consultation is looking at how ATOL holders finance their operations rather than restricting certain types of business models. The CAA is seeking to strike a better balance between a more financially robust set of arrangements with better risk pricing, and still facilitating a competitive market that provides choice and value to consumers, while protecting them appropriately. The CAA is not seeking to completely remove the risk that ATOL holders will fail. However, we are seeking to minimise the impact of failures on all relevant stakeholders where possible.

Other changes

Pipeline monies

- 2.26 The CAA is also seeking feedback on issues surrounding pipeline monies. Pipeline monies are the customer monies paid to and held by an agent on behalf of the ATOL holder responsible for the booking. Currently, there is no requirement under the Agency Terms stating when customer monies held by a travel agent need to be passed on to the ATOL holder. This can mean that significant amount of customer monies can be held by the travel agent prior to departure. During this period the ATOL holder is exposed to the risk of the travel agent failing which can cause additional financial pressure to the ATOL holder. In the event of agency insolvency the ATOL holder is obliged to meet its contractual obligations to the customer irrespective of whether it received the funds from the agent.

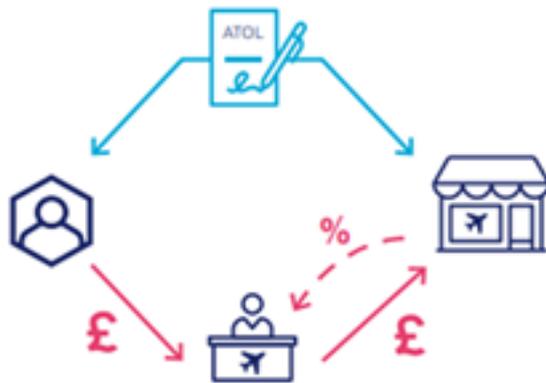


Figure 2: Pipeline monies

Agency agreements

2.27 In addition to the main theme of this consultation, the CAA wishes to consult on proposed changes to Agency Term 11, which will make it easier for ATOL holders to comply with the requirement to maintain valid agency agreements. It may also make it easier for agents to ensure that they are able to comply with the Regulations.

APC returns

2.28 We are also consulting on changes to the current reporting requirements of APC returns for those who hold small business ATOLs and certain franchise ATOL holders. The intention is to bring these in line with the APC returns submitted by standard ATOL holders to ensure consistent reporting.

Online ATOL Certificates

2.29 Also included in the document is an update on the ATOL Online Certificate project, which has previously been consulted on in CAP: 1631 “Modernising ATOL” published in 2018.

Chapter 3

The options

- 3.1 In order to better protect customer monies, the CAA is consulting on the options set out below as potential methods to change the way in which financial protection under ATOL is funded.
- 3.2 We are considering moving to a framework which has the aim of reducing reliance on customer monies as a source of funding working capital and will also take into account, and price accordingly, any residual risk of failure the ATOL holder poses to the consumer interest.
- 3.3 The CAA may choose to review its [financial criteria](#) to take into account the changed framework and would be likely to consider the operational cash requirements to be held by a business. Depending on the outcome, ATOL holders may need to re-evaluate their capital structure and sources of funding.
- 3.4 There is no intention to reduce the financial protection that consumers currently receive under ATOL. Whichever framework is chosen, in the event of a failure consumers would need to be protected to the same standard they are protected in the current model i.e. if abroad they will be returned to the UK (where appropriate) and those with forward bookings will be able to claim for the cost of their licensable transaction.
- 3.5 The proposals are set out in a number of different groupings, not all of which are mutually exclusive:
- A- Options that would be **mandated** by the CAA to apply uniformly across all licence holders.
 - B- Options that would represent an enhanced version of the **tailoring** that the CAA allows now, in which different solutions could be agreed for different licence holders.
 - C- Potential changes to the **APC** that could be used to reflect the different financial risk profiles created by the above options.
 - D- Options that require greater legislative change.
 - E- Potential options for change that the CAA has considered but is **not minded to take forward**.

A - Potential mechanisms to be mandatory across ATOL holders

- 3.6 The CAA could change the specific requirements in relation to holding an ATOL by choosing to implement one form of financial security as mandatory for all ATOL holders⁵. Choosing a uniform approach for all ATOL holders would create a framework which is simple, and consistent. This would allow us to better direct our regulatory efforts to those cases which pose the highest risk to consumers.
- 3.7 A standardised approach would be simpler; a framework with different approaches could make it harder for businesses to understand how the system applies to them and could impact their ability to meet regulatory requirements. Further, there is a fairness in applying a uniform approach to every business given the diverse nature of the ATOL holder portfolio. The options considered are the segregation of customer monies, and bonds.

Segregation of customer monies

- 3.8 ATOL holders would be required to segregate customer monies from their operational cash balances. The CAA would define within the regulatory framework what constitutes customer monies and, on that basis, would require ATOL holders to segregate that money away from their operational cash. Segregated funds (which could be full or partial) could not be used until the licensable transaction had completed. ATOL holders would therefore be required to fund operational activities from alternative sources.
- 3.9 At the most basic level, all segregated funds would have to be arranged such that they do not form part of the general estate of a company that enters insolvency and are held to the benefit of the ATT for consumers in the event of a failure. The existence of segregated monies may also provide comfort to merchant acquirers that they will be less exposed to insolvency risk and hence may make reduced or zero demand for security, depending on the circumstances. Segregation of customer monies could be required on a total or partial basis as described next.

Total segregation

- 3.10 All monies paid by the customer (either directly or indirectly through an agent) would be held in a secure segregated account. This could be done through either a customer escrow, or trust account (see [below](#)). The ATOL holder would be able to remove the cash from the segregated account the day after the customer returned from their holiday. No monies could be paid from this account prior to

⁵ Adjustments to the amount of financial security to be provided would be subject to the risk profile of the ATOL holder

the customer's return, including prepayments to suppliers such as airlines or any release of the ATOL holder's profit.

- 3.11 For example, if customer A had a package holiday worth £3,000 with a return date of 21 March, then all customer receipts when received would need to be placed into the segregated account until 22 March.
- 3.12 The CAA would set mandatory requirements for the method of segregation adopted. For example, if monies were to be held in a trust account, then the CAA may require that the trust would need to be maintained by an independent trustee.
- 3.13 Although this structure would cover all customer monies paid in advance, there remains some exposure to the ATT as a result of fraud or repatriation and administration costs of an ATOL failure. This option would be accompanied by either a flat risk, value, or hybrid priced APC (see [C- ATOL Protection Contribution](#) below).

Partial segregation

- 3.14 ATOL holders would be required to segregate customer monies at the point of payment (either directly or indirectly through an agent) but some monies would be allowed to leave the segregated account in advance. This could include payment for flights, or other types of payments related to the booking (up to a percentage of the total value of the amount paid). Payments made to suppliers owned by an ATOL holder (e.g. an airline) would be limited to the same amount that ATOL holders could pay to third party suppliers.
- 3.15 For example, the CAA could stipulate that up to 20% of the total value of the licensable package holiday could be removed from the segregated account in advance of the customer's return. If customer B had a package holiday costing £1,000 and a return date of 1 February, then under this model a maximum of £200 would be available to the ATOL holder to pay suppliers for costs incurred for the customer's holiday prior to 2 February. From 2 February onwards, any remaining funds (a minimum of £800) could then be removed from the segregated account.

Costs

- 3.16 Depending on the type of the segregation, APC could be charged on a value, risk, or hybrid-based model (see [APC](#)). Whichever was used, the rates would be higher than for full segregation because the risk posed to consumers would be higher.

Note that all the figures above are for illustrative purposes only

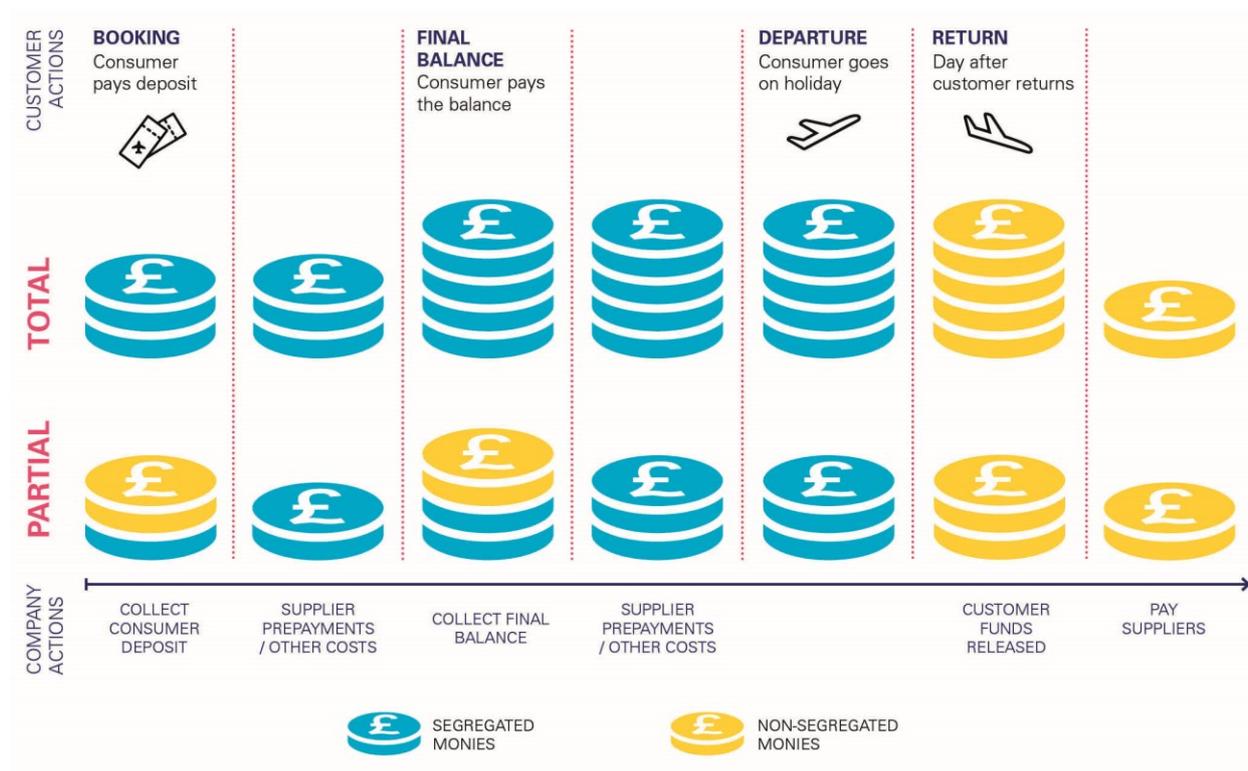


Figure 3: Segregation of customer monies

Methods of segregation

Trust account

- 3.17 A trust account is a segregated account governed by a trust deed and overseen by a trustee. All monies received from individual bookings would be collected and held in the account until the terms and conditions of the account had been met, allowing the funds to be released in accordance with the terms of the trust deed.
- 3.18 The way in which trust accounts are administered vary. There are professional trustees who offer this service to organisations for a fee and hold professional indemnity insurance. Trustees have independent control over approving payments out of the trust account and play an important role in ensuring that appropriate funds are always maintained in the account. If this role is managed internally, there is a higher risk of potential fraud or mistake.
- 3.19 In the event of an ATOL holder failure, customer monies held in the trust account would be made available to the ATT to fund any necessary repatriation effort and claims, including refunds owed as a result of cancellations. If the money in trust exceeded the ATT's total expenditure, any surplus would be returned to the estate of the insolvent company.

Escrow account

- 3.20 An escrow account is a separate bank account where funds paid by customers would be held and administered by an independent third party that would approve the release of funds based on pre-defined conditions set by the CAA. The escrow structure protects the customer money held and in the event of failure would be made available to the ATT in the same way as the trust account above. The amount held in the escrow account would be determined by the CAA and we would be likely to use this to implement partial segregation only. The account would operate on an aggregate basis requiring certain frequency of reporting from the ATOL holder to the independent third party to ensure the correct proportion of advanced customer monies was retained at all times.

Customer monies account

- 3.21 A customer monies account is a separate standard bank account designated to hold funds paid by customers for their licensable transactions. The account does not come with any in-built protection of the funds, i.e. there are no independent trustees or conditions that need to be met in order for money to be removed. However, as a mandatory minimum the account would need to be in the name of the ATOL holder and have an appropriate description to distinguish the funds as customer funds. As these types of accounts are typically internally managed there is an increased risk of error in treatment of funds or incompleteness of transaction compliance. The ATOL holder would therefore be required to obtain appropriate insurance or indemnity to cover the increased risk. There would be a term in the licence which required ATOL holders to demonstrate the account's transactions were compliant with the licensing terms. The same security of the funds as provided by trust accounts and escrow accounts could not be achieved within current legislation.

Costs

- 3.22 If the CAA chose to implement a risk-based pricing option, then it would be likely that those who chose to operate independently administered trust accounts with maximum levels of protection in place to prevent the money from being misused, would pay the lowest level of APC. ATOL holders may be required to obtain appropriate insurance or indemnities to cover risk of fraudulent use of the segregated funds.
- 3.23 Further, the amount the CAA stipulated needed to be kept until the return of the customer (in the above example 80%) would represent the *mandatory minimum* required; ATOL holders would be able to choose a higher figure if they wished which would be represented in the value of their APC payment.

Segregation of monies - agents

- 3.24 Where monies are not paid directly to the principal ATOL holder but are paid to an agent, this money would also need to be segregated upon receipt by the

agent. This could either be done in a segregated account held by the agent, or the monies could be immediately passed to the principal ATOL holder to be held in their segregated account. The terms for payment of commission would be determined through the relevant agency agreement. This is set out in more detail in [Chapter 4](#).

Observations

- 3.25 The standardised approach of segregation of funds best achieves our aim of improving ATOL holders' financial resilience and enabling refunds to be paid to consumers (where appropriate) in a more efficient manner. In combination with either a risk, or hybrid risk and value APC, this would most effectively price the individual risk of failure an ATOL holder poses to consumers. However, we recognise that such an approach could reduce to a degree the choice of business models for ATOL holders albeit, as illustrated above, there can be a variety of different options to segregate funds.



Questions- Segregation of monies

Do you believe that the CAA should adopt segregation of customer monies as a mainstay of the system? Do you have a preference as to what method that should take, and why?

What impact would segregation of funds have on your business?

If the CAA chose partial segregation, what do you think the mandatory minimum which should be segregated until the customer returns should be?

In respect of partial segregation, should some supplier payments be considered as permitted payments? What do you think should be included within the definition of a supplier payment?

In respect of agents that take ATOL holders' bookings, should the ATOL holder's monies be immediately passed on to the principal or is there a case for the agents keeping the money in a form of segregation?

Do you have any other comments about the segregation of monies?

Mandatory bonds

- 3.26 A bond is an irrevocable undertaking provided by a third party (banks or insurance company) in favour of the ATT that will be called upon only in the event of an ATOL holder failure. If the CAA chose to mandate bonds in the new framework, the value required would be set to meet a mandatory minimum of

customers monies collected by the ATOL holder. This would be subject to meeting the CAA's new financial criteria meaning that companies with a weak financial position could be required to provide a bond which has a higher value than the mandatory minimum. Companies which failed to meet these criteria could be refused a licence.

- 3.27 In considering the continuing use of bonds, the CAA is mindful that the current run off period may not be adequate to enable ATOL holders to re-secure adequate new bonding where their risk has increased.

Observations

- 3.28 While the standardised approach of mandatory bonds would provide protection to consumers, it would not help to achieve the aim of improving financial resilience of ATOL holders or allow for consumers to receive their refunds in a timely manner.
- 3.29 If this model was accompanied by either a risk, or a hybrid risk and value APC, it would allow for increased ATOL holder risk to be priced into the system.



Question- Mandatory bonds

Should the CAA mandate the use of bonds? Please explain your response.

What impact would mandatory bonding have on your business?

At what level should the CAA set a mandatory minimum bond?

Do you have any other comments on the mandatory use of bonding?

B - Potential mechanisms to apply to different ATOL holders in a tailored way

- 3.30 The framework could offer a choice between segregation of funds or bonds, allowing ATOL holders the flexibility to choose whichever option best suits their business model. This would likely be accompanied by a variable APC structure that led to the ATOL holders with a higher risk of failure, and/or bookings that would cost more to refund, paying a higher contribution.
- 3.31 By requiring that a mandatory minimum of customer monies was protected regardless of the form of the security, combined with a variable APC, the CAA would be able to ensure that the risk to the consumer was priced into the cost of financial protection.

- 3.32 ATOL holders could have the option of utilising either or both methods of security in order to achieve the minimum level of protection required. For example, if the CAA required ATOL holders to protect a minimum of 80% of the ATOL holder's liabilities to consumers, an ATOL holder may wish to provide a bond which protects 30% and an escrow account for the remaining 50%⁶.
- 3.33 This would be implemented alongside an APC which reflected the risk posed by the ATOL holder and was set to incentivise businesses to arrange their own affairs so that customers' money was safeguarded.
- 3.34 For example, those ATOL holders which segregated all customer monies in an independently administered trust would pay the least APC. This would be compared with a company who, after a financial assessment, was considered to be high risk, and only had in place a bond, would pay more.
- 3.35 It is unlikely that APC would ever be zero, because there will always be costs associated with managing an ATOL holder failure (cost of claims, repatriation and administration) as well as the risk that the company-specific protection arrangements failed. A reserve fund would therefore be necessary, although calls on it would be lower over time.



Figure 4: Examples of a tailored approach to customer money protection

Observations

- 3.36 A tailored approach allows ATOL holders to determine the most cost effective method in providing protection of customer monies. However this approach, even when accompanied by a variable APC rate, may only partially incentivise better financial resilience in the industry. Further, it would not achieve this in a way which was uniform across all ATOL holders.

⁶ Figures are for illustrative purposes only



Questions- Tailored approach

Should the CAA allow ATOL holders to choose between segregation of monies and bonds or a mix of the two?

Should different levels of APC be used to reflect the residual risk not covered by the measures ATOL holders had put in place?

What impact would the setting of a minimum level of security have on your business?

Would it be appropriate for the CAA to adopt different approaches depending on the size of the ATOL holder?

Are there any other considerations the CAA should take account of in determining a tailored approach?



Question- Sections A and B

To what extent might the different options of segregating customer money and/or mandatory bonding assist ATOL holders in negotiating better terms and conditions with merchant acquirers or other financial stakeholders?

Do you have any other comments regarding merchant acquirers or other financial stakeholders that would be relevant for the CAA to consider as part the new framework?

C- ATOL Protection Contribution

- 3.37 In order to address the issue that the current APC is not reflective of risk, the CAA may also seek to change the way in which APC is charged. As part of this initial consultation, we will be taking views on the potential changes that could be made to the APC and discussing the outcomes with the Government.⁷
- 3.38 The current cost of APC is £2.50 per passenger, which does not take account of the financial risk position of the ATOL holder or the value of the booking. One of the intentions behind changing the APC would be to give ATOL holders the incentive to take steps to protect their customers' monies. The likelihood is that

⁷ The power to change the rate of the APC is held by the Secretary of State as set out in The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 ("ATT Regs 2007").

APC payments by ATOL holders that took lesser steps in that regard would be materially higher.

Flat rate APC

- 3.39 The CAA could increase the flat rate APC and apply the new rate to all ATOL holders. The specific rate would be calculated in line with the proposed changes to the financial security framework. However, charging all ATOL holders a single rate would fail to take into account the risk of failure that individual ATOL holders and the value of bookings pose to consumers and would fail to incentivise changes to the approach individual ATOL holders take to protect customer monies.

Alternative approaches to calculating APC

- 3.40 Alternatively, the CAA could seek to change the flat rate APC framework to a variable one that better charges for the additional risk of failure posed to consumers as referred [to above](#). This could be the risk posed by either the individual ATOL holder, the value of the holiday, or both. Changing to a variable rate that better prices risk could ensure that the value of the contribution made by individual ATOL holders came closer to representing the value of the exposure they pose to the system.
- 3.41 The model chosen would be influenced by which financial security framework were put in place.
- 3.42 The three alternative approaches the CAA could take when calculating the value of the APC are;
- ATOL holder risk based,
 - Value based; and
 - Hybrid of risk and value.

Risk priced APC

- 3.43 The CAA could charge a variable APC rate that took into account the risk profile of individual ATOL holders. Each ATOL holder would be risk assessed taking into consideration the following factors (not limited to):
- Financial and business risk profile,
 - capital structure; and
 - whether advance customer monies form part of the source of funding the business's working capital.

A metric would be devised which would calculate the cost of the APC taking into account the risk rating determined through the risk assessment.

- 3.44 The ATOL holders could be charged the calculated APC rate for the duration of their licence period. Outside of the renewal process, where an ATOL holder's risk profile substantially changed, a system of review could allow for the APC to be amended when appropriate. The method of calculating the APC could be utilised with any of the above financial security frameworks.



Figure 5: Risk priced APC matrix

Value priced APC

- 3.45 An alternative option would be to charge APC based on the value of the licensable booking. This would be a proportionate contribution that did not take in to account the individualised risk of the ATOL holder but would seek to reflect the increased cost that higher value bookings pose to consumers. This would create a fairer system, where low value holidays do not contribute the same cost, as high value holidays. For example, the current system means that a city break at a cost of £500, pays £2.50 for the same protection as a £20,000 luxury cruise.
- 3.46 This method of calculating APC would be best suited to the mandatory segregation of funds, where all monies are protected to the same standard. It could be utilised alongside mandatory bonds, and the tailored framework - however it does not reflect the increased risk some ATOL holders still pose to the system.

Hybrid risk and value model

- 3.47 This approach would take into account the value of the holiday and the risk profile of the ATOL holder. We would expect the formula used to calculate the cost of the APC to be weighted more toward risk than value to ensure that those

that represent greater probability of failure are contributing proportionately more than those of lower risk. This methodology should mitigate both the risk of failure and higher value bookings pose to consumers.

- 3.48 This method for calculating APC could be utilised with any of the above frameworks, as it factors in the cost of both ATOL holder risk and value of the holiday.

Implementation

- 3.49 The APC would remain a charge made to businesses holding an ATOL. As within the current system the actual APC rate paid by individual ATOL holders would remain confidential. It would remain within the ATOL holder's power to determine if and how that cost it incurred was reflected in information made available to passengers.
- 3.50 If the CAA were to increase the rate of the APC (keeping the current flat rate format), this would need to be done in accordance with the procedure set out in The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 ("ATT Regs 2007"). If after this consultation it was decided that APC should be calculated using one of the alternative approaches above, then legislative change would be required to the ATT Regs 2007.



Questions- ATOL Payment Contribution

Which model should the CAA implement to determine the value of the APC, and why?
Should the CAA consider any other factors in the methodology to determine APC?

D- Options that require greater legislative change

Financial markets option

- 3.51 In this option the individual ATOL holder would be required to obtain full, ATOL-equivalent consumer financial protection from third party insurance providers, as a condition of taking bookings. Customers would need to be protected to the same standard at which they are currently protected i.e. that in the event of a failure, a consumer with a forward booking would be able to claim the total cost of their licensable booking, and for those overseas they would be able to complete a holiday they had started or be repatriated at no further cost to themselves.
- 3.52 The institutions providing the financial protection would be responsible for determining the financial criteria and conditions applied to the ATOL holder to

provide the consumer the relevant financial protection. The cost of the financial protection levied to the ATOL holder as well as any necessary financial conditions (e.g. minimum capitalisation, funding etc) would be determined entirely by the institution.

- 3.53 The CAA would specify certain minimum requirements for financial protection instruments. These would be likely to include the following:
- Once a booking had been taken, the protection could not be cancelled until after the consumer had returned from the holiday, or received a full refund of costs they incurred as a consequence of the ATOL holder's insolvency including, where appropriate, costs incurred in completing their holidays and returning to the UK.
 - The policy could not be subject to exclusions that might prevent consumers from claiming.
 - The insurance provider would be fully liable for the cost of failure (including repatriation costs) irrespective of the amount of cover agreed with the ATOL holder at the beginning of the policy. The insurance provider would only be released from its liability once the ATOL holder had arranged a replacement policy or the ATOL holder had ceased trading and all consumer liabilities had been settled.
 - The insurance provider may also be required to arrange the repatriation of customers already on holiday overseas.
- 3.54 This approach would remove the need for the Air Travel Trust and any CAA involvement in handling failures. This would happen during a transition period which would see the ATT and the financial protection it provides being wound down.
- 3.55 The CAA would remain responsible for issuing an ATOL. The CAA's licensing function would refocus away from financial testing and on to requiring the ATOL holder to demonstrate to the CAA that the ATOL holder had obtained sufficient protection for its licensable holidays. If an ATOL holder was unable to obtain adequate protection through a third-party provider, it would be refused a licence and would need to exit the market for licensable travel since making additional sales would be illegal.

Claims and repatriation

- 3.56 The claims and repatriation framework could be set up in the following ways:
- the CAA could retain and solely provide these functions in the event of a failure;
 - the CAA as above could continue to provide these services, alongside third-party providers in the market; or

- these functions could be sought from third-party providers only.

3.57 In all of the above models, the cost of the claims and repatriation services would be funded by the provider of the financial protection. Options 2 and 3 would drive competition in the claims and repatriation services market.

Observations

3.58 This option would fully transfer the funding of the cost of failures to the financial markets. However, this option would be reliant on the capacity within the insurance markets. Further, the changes to a company's financial resilience would be dependent on the terms and conditions set out by the insurer. The CAA observes that this option may lead to an improvement in ATOL holders' ability to pay consumer refunds in a timely manner.



Questions- Financial markets option

Should the CAA explore further the financial markets model?

What risks do you see in implementing such a model?

If the CAA were to implement the financial markets model, should they retain their claims and repatriation services?

E- Options that the CAA has considered but does not propose to consider further

3.59 The CAA also considered other potential frameworks in the development of this consultation document. Although we have considered the below framework and its potential benefits, we do not intend to pursue these ideas any further. However, stakeholders are invited to share their opinions on the above ideas and provide reasons as to why they should be considered further.

Restricting when customers can pay their balances

3.60 It would be possible to change licensing conditions so that ATOL holders could only hold the total sale value for a fixed period prior to departure. This would then limit the amount of customer monies that ATOL holders would have collected at any given period, and therefore reducing the risk of consumers losing money for their forward bookings. However, we considered that this would impact consumers who wish to pay for their holidays up front as part of their own budget management, as well as significantly on the ability for airlines and tour operators to develop their future schedules.



Questions- Options that the CAA has considered but does not propose to consider further

Do you have any comments on whether or not the CAA should give further consideration to restricting when ATOL holders should be permitted to take balance payments?

Next steps and transition period

- 3.61 The CAA understands that whichever framework is chosen, there will be an impact on the funding needs of ATOL holders, and this needs to be considered carefully in the context of the impact that the pandemic continues to have on the travel industry's financial position.
- 3.62 In evaluating the options, the CAA will undertake a business impact assessment across the portfolio of ATOL holders to ensure that the proposals are proportionate across all sizes of licence holders. This will include ensuring that the requirements for new businesses to obtain an ATOL are proportionate as well as considering the effect any changes would have on competition, choice, and pricing.
- 3.63 In order to minimise disruption there may be a transition period from when the current approach ends, and the new framework is put in place. There may be incentives for early compliance. The duration of the transition period will be decided upon once we have determined which framework will be put in place. The frameworks which represent the most impactful changes to the system would have longer transition periods.
- 3.64 Before finalising consequential regulatory changes, we intend to publish another consultation. This will set out in further detail the chosen framework, how the APC would be charged, and any other relevant changes being made such as updating the financial criteria. It will also contain the proposed transition period and the steps ATOL holders would need to take before the new framework is implemented.



Questions- Transition period

Do you have any comments on the incentives the CAA could offer for early compliance?

Do you have any comments on the duration of the transition period and implementation of the new framework?

Chapter 4

Other risks

Pipeline monies

- 4.1 Some package tour operators allow their holidays to be sold via travel agents. In this model, a consumer books the holiday with the travel agent as opposed to directly with the ATOL holder, however the contract for the holiday is between the consumer and the ATOL holder. The travel agent will take the deposit (and other balance payments) from the consumer and pass them on to the ATOL holder. Monies paid by consumers to, and held by, an appointed agent on behalf of an ATOL holder are called “pipeline monies”.



Figure 6: Pipeline monies

- 4.2 As the contract for the holiday is between the ATOL holder and its customer, the ATOL holder is responsible for supplying the holiday. This means that where the agent is holding the pipeline monies, the ATOL holder is exposed to the agent’s risk of failure during that time. During this period, the customer is exposed to the risk of both the agent and the ATOL holder failing. Further, if the agent fails, and the pipeline money has not been passed to the ATOL holder, the ATOL holder is still responsible for providing the holiday for its customer.
- 4.3 Over time, this has resulted in a number of ATOL holders losing significant sums of customer money when agents have gone out of business. Typically, the ATOL holder has no visibility of how much pipeline money an agent is holding and only after an agent failure event requiring the ATOL holder to contact its customers for ‘balance’ payments they discover the full amount was paid to the agent up front.

- 4.4 Further, even though pipeline monies are held by agents on trust for the ATT (by virtue of the Agency Agreement term 5 ORS3⁸) when an ATOL holder fails the ATT has to spend significant resources collecting in these pipeline monies from agents including, in some instances, litigation, which limits the monies available to consumers in the fund.
- 4.5 The failure of Thomas Cook highlighted the consumer detriment caused by this approach. A number of consumers who bought holidays from Thomas Cook, where they were acting as an agent on behalf of another ATOL holder, faced additional challenges in having their holiday fulfilled.
- 4.6 This approach means that agents can be in possession of significant amounts of pipeline monies which causes additional financial risk for ATOL holders. Further, given the potential for additional consumer detriment in the event of a failure, there is a case for change in how advanced customer monies collected by agents should be protected.

Questions-Pipeline monies

Do you have any comments on how pipeline monies should be treated under the different frameworks presented above?

Should the ATOL holder's monies be immediately passed on to the principal and remove the need for agents to hold any pipeline monies?

If agents continue to hold pipeline monies should agents be required to use a form of segregation?

⁸ https://publicapps.caa.co.uk/docs/33/ORS3-Update_Feb2020_complete.pdf

Chapter 5

Agency agreements

- 5.1 This chapter proposes a change that will make it easier for ATOL holders and agents to comply with the requirement to maintain valid agency agreements, and in so doing reduce the industry's administrative burden.

Background

- 5.2 The requirement for ATOL holders to have written agreements with their agents was introduced with the implementation of new ATOL regulations in 2012. One of the aims was to provide more clarity on what was ATOL protected, who was providing the protection and the relationship between ATOL holders and other businesses.
- 5.3 ATOL Regulation 12 of the ATOL regulations defines the term 'agent for an ATOL holder' and includes the requirement that a person does not act in the capacity of an agent unless they act in accordance with the terms of a written agency agreement which complies with ATOL Regulation 22.
- 5.4 ATOL Regulation 22 requires ATOL holders selling licensable⁹ trips to consumers via agents to have in place a written agreement with the agent, which must include the Schedule of Agency Terms ('Schedule') published by the CAA in its [Official Record Series 3](#).
- 5.5 Occasionally, the CAA must amend the Schedule, and ATOL holders are then required to incorporate those changes into their agreements with agents. In 2018, the CAA amended the Schedule to allow ATOL holders a period of three months to incorporate any changes (see box below). The amendment also provided clarity on the meaning of Agency Term 11, which had previously been misinterpreted by some ATOL holders and their agents.
- 5.6 However, the CAA recognises that ATOL holders still have the burden of having to incorporate any changes in all written agency agreements, albeit that they have three months in which to do so. If an ATOL holder does not incorporate any changes made to the Schedule by the CAA, the agreements with its agents would no longer comply with the requirements of the ATOL regulations, and the agents would not meet the definition of an 'agent for an ATOL holder'. If the ATOL holder subsequently fails, there may be a detrimental effect on consumers since the terms of the Air Travel Trust Payment Policy does not cover payments where the ATOL holder and its agent cannot demonstrate compliance with ATOL

⁹ An activity in respect of which an air travel organiser is required to hold an ATOL.

Regulation 22. In this case, the only recourse for consumers would be to approach the business (agent) they booked with for a refund of their payments. This situation may arise, notwithstanding the ATOL holder and its agent are able to demonstrate compliance with the ATOL regulations in all other aspects.

Current 'Agency Term 11'

"If a new or revised Schedule of Agency Terms is published by the CAA in its Official Record Series 3 those new or revised terms will immediately take effect and must be included in the terms of the agency agreement between the principal ATOL holder and the agent within 3 calendar months of the publication date.

Note: a written agency agreement will be deemed to be compliant with ATOL Regulation 22(2)(c) provided that it contains all relevant parts of the schedule of agency terms published by the CAA in its Official Record Series 3 within 3 calendar months of the publication date."

Proposed change to Schedule of Agency Terms

- 5.7 To reduce the administrative burden on ATOL holders and mitigate the risk of otherwise compliant agents holding non-compliant written agency agreements, we propose to change the Schedule.
- 5.8 We would amend Agency Term 11 to reflect that any future changes to the Schedule will take effect on the date of publication by the CAA and apply immediately from that date to the terms of all agency agreements between the principal ATOL holder and the agent, without the requirement for ATOL holders to incorporate those changes into their written agreements with agents¹⁰ (see box below). When necessary, ATOL holders and their agents would be expected to demonstrate compliance with the new or revised agency terms with effect from the date of publication. For this proposal to take effect, all ATOL holders would initially be required to reissue written agreements to all of their agents

¹⁰ By entering into licensable transactions under the ATOL Scheme, ATOL holders and their agents agree to be bound by the requirements of the Scheme which exist independently of the contract, and which provide for their own variation or amendment.

incorporating the new Agency Term 11. We would give ATOL holders a certain period of time to do this (such as three or six months from the time the new Agency Term 11 is published by the CAA).

- 5.9 From time to time, the CAA may be required to publish a fundamental change to the Schedule, in which case the CAA would reserve the right to mandate that all ATOL holders reissue their written agency agreements. This would be in circumstances where the CAA deems a change to be extensive or alters the meaning of the Schedule significantly, or where a change has a considerable impact on ATOL holders, agents of ATOL holders, consumers or the Air Travel Trust.
- 5.10 We realise the past year has been difficult for the travel industry and that, for this proposal to take effect, ATOL holders would be required to initially reissue all their agency agreements. However, once that is done, the administrative burden on ATOL holders and their agents in future is likely to be greatly reduced without reducing the protection offered to consumers.

Proposed new 'Agency Term 11'

"If a new or revised Schedule of Agency Terms is published by the CAA in its Official Record Series 3 those new or revised terms will take effect on the date of publication and apply immediately from that date to the terms of all agency agreements between the principal ATOL holder and the agent.

Note: a written agency agreement will be deemed to be compliant with ATOL Regulation 22(2)(c) provided that it contains all relevant parts of the schedule of agency terms published by the CAA in its Official Record Series 3. Where a new or revised Schedule of Agency Terms is published by the CAA in Official Series 3, there is an expectation that principal ATOL holders will be able to demonstrate compliance with the new or revised agency terms with effect from the date of publication. Furthermore, ATOL holders are encouraged to amend the terms of all existing agency agreements between principal ATOL holder and agent as soon as practicable, but no more than 6 months from the date of publication."

Proposed change to ATOL Standard Terms

- 5.11 The CAA would place ATOL holders on notice each time the Schedule is changed so that ATOL holders are aware of the change even if, in the future, they are not required to immediately incorporate most changes in their written agency agreements. We would expect ATOL holders to continue to inform their agents of any proposed changes to the Schedule on the date of publication by the CAA and to comply with those changes. We would also expect ATOL holders to amend or reissue their agency agreements at the next available opportunity.

Agents

- 5.12 Although ATOL holders would be required to notify agents of changes, it is also important that agents have systems in place to ensure the agreements they hold remain compliant with the requirements of the ATOL regulations. For a business to be an agent of an ATOL holder, the business must have, and act in accordance with, an agreement that complies with ATOL Regulation 22. Without this, the business would not be considered an agent under the ATOL scheme.

Agency agreements and online ATOL Certificates

- 5.13 Chapter 7 refers to a proposal to introduce online ATOL Certificates. This may mean that ATOL holders would no longer have to issue physical (or electronic) written agreements to their agents so, the administrative task of issuing, updating and storing agency agreements would cease.
- 5.14 In the meantime, it is important that ATOL holders and agents continue to ensure the agreements they hold are up-to-date and comply with the ATOL regulations.



Questions- Agency agreements

What are your views on the proposed changes to the Schedule Agency Terms and to the ATOL Standard Terms?

Do you envisage any practical difficulties for your business if these changes were implemented with a requirement that ATOL holders must reissue their agency agreements within 3 (or 6) months of publication of the new Schedule by the CAA? Please explain how any difficulties or obstacles might impact on the timing of implementation.

Chapter 6

Changes to APC returns and payments

- 6.1 This chapter proposes changes to the way in which SBA and certain franchisee ATOL holders report and pay their APC returns to align the information required with the quarterly returns submitted by standard ATOL holders. The changes will include a requirement for SBA holders to provide forward booking information and will also change the payment terms to those that are required by standard ATOL holders.
- 6.2 Currently, most ATOL holders are required to submit an “APC Return” to the CAA every quarter, reporting within 14 days the number and value of licensable ‘sales’ (Part A), the number and value of licensable ‘departures’ (Part B), and the number and value of ‘forward bookings’ held at the end of the quarter (Part C). They are subsequently required to pay the associated APC to the ATT within six weeks of the reporting period. The largest ATOL holders are required to both submit their returns and pay APC on a monthly basis, and to submit a greater level of detail in Part C of their APC Return.
- 6.3 SBA ATOL holders operate under a slightly different set of rules. The APC Return they submit has no ‘Part C’ (which reduces the CAA’s visibility of their forward bookings) and they are only required to pay APC annually, despite reporting quarterly. Further, certain franchisee ATOL holders submit their APC Return to their franchisor, together with their APC payment, and the franchisor both reports and pays APC ‘in bulk’ on behalf of all their members.
- 6.4 The CAA is proposing requiring all ATOL holders to submit the same format of APC Return (including Part C) direct to the CAA for each calendar quarter. This change to the reporting requirements will apply to SBA ATOL holders and all franchisee ATOL holders.
- 6.5 Further, SBA ATOL holders will be required to pay APC direct to the ATT within six weeks of each quarterly reporting period (instead of the current annual payment). Franchisee ATOL holders may continue to pay their franchisor, but they will be required to pay the franchisor within six weeks and the franchisor will be required to pay the aggregate APC to the ATT within eight weeks.



Questions- Agency agreements

What are your views on the proposed changes to the submission of SBA and franchisee APC Returns? What are your views on the changes to APC payment terms for these ATOL holders and for franchisors?

Chapter 7

Online ATOL Certificates

- 7.1 The CAA has previously consulted on a proposal to introduce online ATOL certificates. Due to the failure of the Thomas Cook group, and subsequently the Covid-19 pandemic the timeline for this project has been significantly delayed. However, ATOL holders should note that work on this project has been recommenced.
- 7.2 For ease of reference, the content of the chapter “Proposal to introduce online ATOL certificates” from consultation CAP 1631 have been included in Appendix 1. Due to the change in circumstances within the industry, the project is currently undertaking a review of the feasibility study before commencing with the discovery phase and engaging with industry.



Questions- Online ATOL certificates

In addition to the responses submitted to consultation CAP 1631, do ATOL holders have any other comments on the proposals to introduce online ATOL certificates?

Chapter 8

Summary of questions

- 8.1 Responses to this consultation document should be submitted via the [Citizen Space page](#). Any material that is regarded as confidential should be clearly marked as such and included in a separate annex.
- 8.2 If you are unable to use the Citizens space page, or if you have any questions about the document please send them to: atol.consultation@caa.co.uk by **30 July 2021**.

Mandatory segregation of monies

Do you believe that the CAA should adopt segregation of customer monies as a mainstay of the system? Do you have a preference as to what method that should take, and why?

What impact would segregation of funds have on your business?

If the CAA chose partial segregation, what do you think the mandatory minimum which should be segregated until the customer returns should be?

In respect of partial segregation, should some supplier payments be considered as permitted payments? What do you think should be included within the definition of a supplier payment?

In respect of agents that take ATOL holders' bookings, should the ATOL holder's monies be immediately passed on to the principal or is there a case for the agents keeping the money in a form of segregation?

Do you have any other comments about the segregation of monies?

Mandatory bonds

Should the CAA mandate the use of bonds? Please explain your response.

What impact would mandatory bonding have on your business?

At what level should the CAA set a mandatory minimum bond?

Do you have any other comments on the mandatory use of bonding?

Tailored approach

Should the CAA allow ATOL holders to choose between segregation of monies and bonds or a mix of the two?

Should different levels of APC be used to reflect the residual risk not covered by the measures ATOL holders had put in place?

What impact would the setting of a minimum level of security have on your business?

Would it be appropriate for the CAA to adopt different approaches depending on the size of the ATOL holder?

Are there any other considerations the CAA should take account of in determining a tailored approach?

Questions about Sections A and B

To what extent might the different options of segregating customer money and/or mandatory bonding assist ATOL holders in negotiating better terms and conditions with merchant acquirers or other financial stakeholders?

Do you have any other comments regarding merchant acquirers or other financial stakeholders that would be relevant for the CAA to consider as part the new framework?

APC

Which model should the CAA implement to determine the value of the APC, and why?

Should the CAA consider any other factors in the methodology to determine APC?

Financial markets option

Should the CAA explore further the financial markets model?

What risks do you see in implementing such a model?

If the CAA were to implement the financial markets model, should they retain their claims and repatriation services?

Options that the CAA has considered but does not intend to pursue further

Do you have any comments on whether or not the CAA should give further consideration to restricting when ATOL holders should be permitted to take balance payments?

Transition period

Do you have any comments on the incentives the CAA could offer for early compliance?

Do you have any comments on the duration of the transition period and implementation of the new framework?

Pipeline monies

Do you have any comments on how pipeline monies should be treated under the different frameworks presented above?

Should the ATOL holder's monies be immediately passed on to the principal and remove the need for agents to hold any pipeline monies?

If agents continue to hold pipeline monies should agents be required to use a form of segregation?

Agency agreements

What are your views on the proposed changes to the Schedule Agency Terms and to the ATOL Standard Terms?

Do you envisage any practical difficulties for your business if these changes were implemented with a requirement that ATOL holders must reissue their agency agreements within 3 (or 6) months of publication of the new Schedule by the CAA? Please explain how any difficulties or obstacles might impact on the timing of implementation.

APC returns

What are your views on the proposed changes to the submission of SBA and franchisee APC Returns?

What are your views on the changes to APC payment terms for these ATOL holders and for franchisors?

Online ATOL Certificates

In addition to the responses submitted to consultation CAP 1631, do ATOL Holder's have any other comments on the proposals to introduce online ATOL certificates?

Chapter 9

Glossary

Phrase	Definition
Accredited Bodies	An ATOL-holding organisation that allows its members to lawfully make ATOL protected sales under their licence without the member holding an ATOL. Accredited Bodies have specific conditions attached to their licence.
Agency Agreements	A written contract between an ATOL holder and a travel agent, setting out the terms on which the agent may sell the ATOL holder's licensable holidays and which must include standard contractual terms specified by the CAA.
APC	ATOL Protection Contribution
ATOL	Air Travel Organiser's Licence
ATT	Air Travel Trust
Balance sheet	A statement of assets, liabilities, and shareholders' equity at a particular point in time.
Bond	A type of irrevocable financial security arrangement whereby an insurer/bank/specialist obligor agrees to pay the ATT a pre-determined sum in the event of the ATOL holder's failure.
Capital	The money available to meet day-to-day operations and fund growth. The primary sources of capital are working capital, debt and equity.
Commingling	Where customer money and the business's other sources of cash are held together without any differentiation.
Customer money/customer monies	The money paid in advance by consumers to the ATOL holder for the licensable booking.
Failure	When an ATOL holder ceases trading and becomes insolvent.

Financial criteria	The criteria used by the CAA when assessing applications for an ATOL.
Flat rate	All ATOL holders pay the same fee.
Franchise ATOL holder	A business that holds its own ATOL on the basis of its membership of an ATOL franchisee. An ATOL franchisee is a business that has reached agreement with the ATT under which it will provide the financial protection in respect of its franchise members.
Funding structure/financial structure	How a business finances its assets and operations via a mix of debt and equity.
Licensable booking	A booking which falls within the scope of ATOL and requires APC to be paid
Liquidity	Refers to the level of cash (or other liquid assets that can be quickly converted to cash) to allow a business to pay its financial obligations as they fall due.
Operational cash	The cash required by an ATOL holder to fund their day-to-day overheads and other administrative costs not including the bookings paid for by their customers.
Pipeline monies	These are the customer monies paid to and held by an agent on behalf the ATOL holder responsible for the booking.
Principal ATOL holder	The ATOL holder who is responsible for the booking i.e. the organisation named on the ATOL certificate as providing ATOL protection.
Supplier payments	Payments due to the suppliers of a customer's holiday, e.g. airline, accommodation provider, transfers etc.
Trust deed	The document which governs the relationship between the ATT, the ATOL holder and the trustee. In particular setting out the responsibilities the trustee has over the assets held in trust.

Trustee	A person under a legal duty to administer assets held in trust, for specified purposes, on behalf of a third party.
Working capital	The amount of available capital that a company has readily available to meet its day-to-day operations. It represents the difference between a business's current assets and current liabilities.

Appendix A Chapter 2 “Proposal to introduce online ATOL Certificates” CAP 1631

Chapter 2

Proposal to introduce online ATOL Certificates

- A1 As noted in the consultation on “Rebalancing ATOL”¹¹ the CAA is introducing an online ATOL licensing system. That system has been deployed on a trial basis to around 270 ATOL holders for renewal of their ATOLs by the end of March 2018. The intention is then to deploy it to all ATOL holders whose ATOLs come up for renewal at the end of September 2018.
- A2 The next phase of IT development is to change the way in which ATOL Certificates are to be issued, from being issued by the ATOL holder or agent which made the sale, to being issued by the CAA, based on data provided to us by the ATOL holder or agent.
- A3 The full details of the scheme are yet to be developed and there is no scheduled timetable for delivery, but the main characteristics of the system are expected to be as follows.
- a) ATOL holders and/or their agents will no longer have to issue ATOL Certificates on making a licensable sale, but will have to submit the data that would have populated the Certificate to the CAA instead, by electronic means.
 - b) The CAA would also consider additional data requirements such as contact details for consumers, for use during the repatriation or refund management exercise following an ATOL holder insolvency.
 - c) Data submission would need to be more frequent than current requirements. We would investigate the feasibility of real-time submissions, or daily.
 - d) Consumers will receive a reference number, enabling them to go onto the CAA’s web site and check the details of their protection.
 - e) APC returns will still be determined by the CAA based on these new returns.
 - f) Working with the industry, the CAA would investigate whether aggregated, anonymised data could be made available to licence holders.
- A4 The key advantages of the new arrangements would be as follows.

¹¹ <http://publicapps.caa.co.uk/docs/33/CAP%201190%20Rebalancing%20ATOL.pdf>

a) Consumers would have more certainty that a holiday sold to them as ATOL protected was indeed protected – they would be able to check independently. This will also make it more difficult for a travel company to issue a fraudulent ATOL Certificate.

b) Consumers would also benefit because the CAA would have immediate access to real time data on where consumers were, and also better data on how to contact them. This mitigates the risk that on insolvency the passenger data proves difficult to obtain, which can considerably hamper the CAA's effectiveness especially of a repatriation. It will also enable a smoother refund process.

c) ATOL holders would benefit to the extent that the greater consumer visibility would discourage some ATOL holders from under-reporting bookings, to reduce their APC costs.

d) Improved CAA ability to monitor the prospects of ATOL holders through developing an improved understanding of performance within the markets that those ATOL holders specialised in. To the extent this mitigates potential calls on the ATT, ATOL holders will benefit from a reduced requirement for ATT funding.

- A5 Introduction of this system would require ATOL holders to submit data electronically to the CAA. The CAA would work in conjunction with representatives of ATOL holders, trade bodies and travel booking system suppliers to determine the set of data to be sent, and also to determine a range of different means by which returns could be made.
- A6 Question 12: The CAA would welcome consultees' views on this proposal, while it is still in the early stage.