

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL AVIATION (AIR TRAVEL ORGANISERS' LICENSING) REGULATIONS**  
**2012**

**2012 No. 1017**

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument reforms the Air Travel Organisers' Licensing (ATOL) scheme, which protects consumers against the insolvency of package tour operators and travel agents in certain circumstances. The main aim of the reforms is to provide greater clarity to consumers and the travel industry about which holidays are financially protected against travel company insolvency under the scheme, and which are not.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This statutory instrument includes a provision which takes into account the Government's policy for an automatic sunset of new regulations that do not implement EU obligations. Regulation 1(3) provides that regulation 10(f), which provides an exemption for the need to hold an ATOL licence (and comply with the regulations) for those businesses selling Flight-Plus holidays, does not come into force until 30 April 2019, as this is not an EU obligation. This approach was used as many parts of the regulations do not differentiate between Flight-Plus holidays, package holidays and Flight-Onlys that are protected under the ATOL scheme. Excluding Flight-Plus holidays from these provisions would have made the regulations more complex and less easy to understand.

4. **Legislative Context**

- 4.1 The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the 2012 ATOL regulations) will revoke and replace the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, as amended in 1996, 1997, 2002 and 2007.

- 4.2 Article 7 of the EU Package Travel Directive (PTD), which is implemented by the Package Travel, Package Holiday and Package Tours Regulations 1992 (PTRs), states that businesses selling package holidays must, 'provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency'. Through the PTRs, businesses other than airlines selling flight-inclusive package holidays in the UK comply with this article by holding an ATOL licence.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The ATOL scheme, which is run by the Civil Aviation Authority (CAA), has been in place since the 1970s, and protects those buying flight-inclusive package holidays and certain flights against the insolvency of their tour operator, through the provision of refunds if the holiday has not yet commenced or repatriation if the passenger is already abroad. In the year ending March 2011 18.5 million passengers were protected by ATOL, with over 190,000 benefiting from refunds or repatriations under the scheme.

7.2 Recently there have been changes in the way that holidays are sold, particularly on the internet, where it is becoming increasingly popular for agents to sell, or individuals to create for themselves, what are sometimes called 'dynamic packages'. These are holidays consisting of individual components (such as flights and accommodation) which are available for purchase separately, but are bought together. Such holidays do not currently fit in with the definition of a 'package', and so do not require ATOL protection.

7.3 As a result there is now considerable confusion for consumers, the travel trade and the CAA about which holidays are ATOL protected, and which are not. It can be that out of two very similar holidays, with the same flight or hotel, one is and one is not ATOL protected, depending on which businesses the holiday was bought from or how it was put together.

7.4 In the event of travel company insolvency the Air Travel Trust Fund (ATTF) provides the money for consumers' refunds and repatriations under the ATOL scheme. The ATTF is funded through the £2.50 ATOL Protection Contribution (APC) which is paid by travel companies for each ATOL protected holiday or flight sold. Due to historic reasons the ATTF has been in deficit for a number of years - £42 million as of March 2011. The ATTF continues to meet its obligations through the use of a commercial borrowing facility which is supported by a Government guarantee.

7.5 To address these issues, the Government consulted on reforms to the ATOL scheme in summer 2011, with the aims of :

- Providing greater clarity for consumers and the travel industry about which holidays are protected by the ATOL scheme, and which are not.

- Returning the ATTF to a financially self-sustaining position, so that the Government guarantee can be withdrawn and the risk to taxpayers' money removed.

Following consideration of the consultation responses, the Government decided to reform the ATOL scheme through the 2012 ATOL regulations. Through the inclusion of Flight-Plus sales in the ATOL scheme, the introduction of the new ATOL Certificate, and the other measures outlined in the paragraphs below, the regulations will ensure that it is easier for consumers and the travel industry to know which holidays are ATOL protected. By bringing more holidays into the ATOL scheme the 2012 ATOL regulations will ensure that more passengers can benefit from full ATOL protection, whilst also bringing more APC payments into the ATTF to help it reach a financially self-sustaining position.

### Flight-Plus

- 7.6 The inclusion of Flight-Plus holidays in the ATOL scheme is one of the key measures for providing greater clarity to consumers and the travel trade about which holidays are protected by the ATOL scheme, and which are not. A Flight-Plus holiday will be created when a customer requests a business to book accommodation or car hire on the day before, the same day, or the day after requesting to book a flight.
- 7.7 In the event of the supplier of a holiday component becoming insolvent the Flight-Plus arranger would be obliged to arrange an alternative for the customer. If a suitable alternative could not be arranged, a refund for the Flight-Plus holiday will be provided by the Flight-Plus arranger. If the Flight-Plus arranger becomes insolvent the ATOL scheme will provide a refund for the holiday, if the passenger is yet to travel, or will arrange for repatriation if the passenger is already abroad.

### ATOL Certificate

- 7.8 The regulations also create a new ATOL Certificate which will provide additional clarity about the extent to which ATOL protection applies. From 1 October 2012 the ATOL Certificate will be supplied to customers immediately on receipt of payment for any part of an ATOL-protected package, Flight-Plus holiday or flight. The Certificate will provide details about the holiday components and the level of protection afforded by the ATOL scheme. It will also act as proof of ATOL-protection, and may expedite claims for refunds or repatriation through the CAA.
- 7.9 Transitional arrangements for the ATOL Certificate will be in place from 30 April 2012, in recognition of industry concerns that travel businesses would not have the necessary IT and other systems in place to comply with the new requirements. From 30 April 2012 businesses will be required to provide customers with information about the details of the booking and the associated ATOL-protection, as stipulated by the CAA.

### Other reforms

- 7.10 The regulations introduce the requirement for formal agency agreements between ATOL licensed businesses acting as principal and their agents. This agreement must authorise

the sale of flights by the agent, and the agent must agree not to accept payment for a flight unless it is authorised by the ATOL licence holder to do so. These agreements will help to clarify the relationship between ATOL licensed businesses acting as principals, and those acting as their agents, and should reduce delays in the payment of refunds to consumers.

- 7.11 The new concept of Accredited Bodies is created in the regulations. This provides a further option for compliance with the ATOL regulations for small businesses. An Accredited Body would hold an ATOL licence on behalf of its members and would be required to monitor the finances of its members. Members would not be required to apply for an ATOL licence, or provide a bond to the CAA, though it is likely that they would pay the Accredited Body for the services provided.
- 7.12 The new regulations include an Airline Ticket Agent exemption for businesses selling Flight-Only tickets. Businesses selling Flight-Only tickets do not have to provide ATOL protection if they can demonstrate that they are an agent appointed by the appropriate airline (through an agency agreement), and supply a confirmed ticket to the customer immediately on receipt of payment. This exemption reduces the regulatory burden on agents who wish to sell Flight-Only tickets in this way, and yet should ensure that the customer is in the same position as if they had purchased the ticket directly from the airline.
- 7.13 The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 will revoke and replace the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, as amended in 1996, 1997, 2002 and 2007.

## **8. Consultation outcome**

- 8.1 The ATOL reform consultation took place between 23 June and 15 September 2011. Key stakeholders were consulted (including tour operators, travel agents, airlines, industry representative bodies and consumer groups) and eighty two responses were received. Responses broadly welcomed the principle of the reforms, but raised a number of points of detail.
- 8.2 Many of the responses raised the concern that it would be difficult to have the necessary systems in place to comply with the regulations if they were implemented in January 2012, as proposed in the consultation. In response the Government announced on 25 October that the new regulations would not come into force in January, but that it was intended for them to be implemented in April. This was to ensure that the new regulations were implemented fully and consistently and in a way that minimised scope for error and subsequent confusion amongst passengers.
- 8.3 Many of the responses supported the proposal to bring Flight-Plus holidays into the ATOL scheme in principle, but raised a number of questions about how the definition of a Flight-Plus would work in practice. In response to comments, the definition of a Flight-Plus was modified so that a Flight-Plus would be formed when a consumer 'requests to

book' a flight and other key holiday elements within the two consecutive day period, rather than just 'requests' them.

- 8.4 Not all respondents agreed with the two day 'request to book' period during which a Flight-Plus holiday would be formed. Some would prefer that a Flight-Plus would only be formed when all the holiday components were booked in a single transaction. Others suggested that the 'request to book' period should be 7 days or extend up until the day of departure so that more bookings would benefit from protection. The Government decided to keep the two day 'request to book' period, as consulted on. This should act as a deterrent to potential avoidance, and it is also more likely to be in line with consumers' perceptions that they are buying a package type holiday.
- 8.5 Many consultation responses supported the principle of the new ATOL Certificate, but some from the travel trade were concerned about the practicalities of producing it and the increased cost and burden this would entail. The CAA has been working with the travel trade to develop the form and content of the ATOL Certificate in a way that addresses many of the issues raised in consultation responses.
- 8.6 There were mixed responses to the 'right to fly' provider exemption in the consultation. Although many respondents supported the principle of giving consumers greater confidence that tickets issued by airlines would be honoured by an airline, there was some concern that airlines may be unwilling to agree to the proposals to accept any ticket issued under the right to fly exemption, which might persuade customers to buy tickets directly from the airlines, rather than through an agent. In recognition of these concerns, the Airline Ticket Agent exemption was developed.
- 8.7 Further details of the consultation responses and the decisions taken by Government are available in the 'ATOL Reform: Summary of Consultation Responses and Government Decisions'<sup>1</sup> document, which is available on the Department for Transport's website.

## **9. Guidance**

- 9.1 The Department for Transport does not currently intend to produce formal guidance on the regulations. The CAA has published a 'Guide to ATOL Reform'<sup>2</sup> aimed at affected businesses and is hosting a series of open days to give guidance to businesses about what the reforms of the ATOL scheme will mean for them. The CAA also produced information papers in November 2011<sup>3</sup> and February 2012<sup>4</sup> to provide further details of the reforms for businesses.

## **10. Impact**

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<sup>1</sup> <http://assets.dft.gov.uk/consultations/dft-2011-17/dft-2011-17-responses-and-decisions.doc>

<sup>2</sup> <http://www.caa.co.uk/docs/2094/Guide%20To%20How%20ATOL%20Is%20Changing%201.pdf>

<sup>3</sup> [http://www.caa.co.uk/docs/2094/20111114%20CAA%20ATOL%20Reform%20Information%20Paper%20\(including%20Annexes%202%20and%203\)%20FINAL.pdf](http://www.caa.co.uk/docs/2094/20111114%20CAA%20ATOL%20Reform%20Information%20Paper%20(including%20Annexes%202%20and%203)%20FINAL.pdf)

<sup>4</sup> <http://www.caa.co.uk/docs/2094/20120209FurtherInformationPaperConsultationFinal.pdf>

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk). The Impact Assessment has been awarded a 'Green' rating by the Regulatory Policy Committee.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the regulations include the new concept of 'Accredited Bodies' which has been developed to present an additional lower-cost compliance option for small and micro businesses. This will sit alongside the CAA's current Small Business ATOL and Franchised ATOL schemes which also aim to reduce the regulatory burden of the scheme on small businesses.

11.3 A number of businesses that sell Flight-Plus holidays are likely to be small businesses. However the Government decided that the 2012 ATOL regulations should be exempt from the Micro Business Moratorium, and that they should apply to small and micro businesses. Exempting micro businesses from complying with the regulations would undermine the objective of providing greater clarity to consumers about financial protection for holidays. This decision also reflects the great majority of views expressed in the consultation responses, including those from a number of small businesses that valued the ability to provide ATOL protection.

## **12. Monitoring & review**

12.1 The Secretary of State is required to review the operation and effect of the regulations and publish a report within five years after they come into force and within every five years after that.

## **13. Contact**

Tom Oscroft at the Department for Transport Tel: 020 7944 5488 or email: [tom.oscroft@dft.gsi.gov.uk](mailto:tom.oscroft@dft.gsi.gov.uk) can answer any queries regarding the instrument.