



## BRIEFING PAPER

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# Air Travel Organisers' Licensing Bill

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## Summary

The [Air Travel Organisers' Licensing Bill](#) (also known as "the ATOL Bill") is a Government Bill, announced in the Queen's Speech on 21 June 2017. Introduced to the House of Commons, the Bill had its Second Reading on 3 July 2017, and completed its remaining stages, passing unamended, on 11 July 2017. The Bill had its First Reading in the House of Lords on 12 July and is expected to receive its Second Reading on 5 September 2017.

This is a very short Bill, comprising just four clauses. It is intended to modernise the ATOL (Air Travel Organisers' Licensing) scheme; a financial protection scheme managed by the [Civil Aviation Authority](#) (CAA) on behalf of the Secretary of State for Transport. At present, the ATOL scheme only applies to sales made in the UK.

The scheme was set up to protect consumers. By law, every UK travel company which sells package holidays that include a flight (or more recently a "flight-plus" arrangement) is required to hold an ATOL. If a licensed firm goes out of business, the CAA can refund protected consumers or, if they are already on holiday, ensure their repatriation home. The scheme is funded by contributions from the travel companies. The ATOL scheme is a key mechanism by which the existing [Package Travel Directive](#) (90/314/EEC) is implemented in the UK. This Directive places an obligation on companies selling package holidays to have insolvency protection in place.

In recent years, there have been significant changes in the travel market with the emergence of new digital business models and changes in consumer purchasing behaviour. Consumers are using the Internet to "mix and match" or "dynamically package" the components of their holiday in a way that often falls outside the scope of ATOL. This had led to a fall in ATOL sales as a share of all leisure flights, from over 90% in 1998 to just under 50% in 2009.

The ATOL scheme was partially reformed in 2012 to create more certainty about when a holiday is ATOL protected. Following a public consultation in 2016, the Government decided that the scheme should be further updated. The measures contained in the ATOL Bill are intended to:

- update the ATOL scheme so that it can respond to innovation in the travel market; and
- to align the scheme with a revised EU Package Travel Directive ([2015/2302/EU](#)), which must be implemented by 1 January 2018.

The Government has said that the Bill will have the following benefits:

- ensure that the ATOL scheme keeps pace with innovation in the online travel market, and that appropriate protection is in place regardless of whether consumers book online or on the high street (in effect, extending ATOL protection to a broader range of holidays);

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- make it easier for UK businesses when selling air holidays across the EU, as they will be able to trade under the UK's ATOL scheme rather than the regimes in each country they sell to; and
- enable the ATOL scheme to adapt to future trends, including changes that may be brought about as the UK leaves the EU.

Proposals to update the ATOL scheme were initially included in Part 3 of the [\*Vehicle Technology and Aviation Bill 2016-17\*](#) (HC Bill 143). The Bill fell at dissolution, after it received Second Reading on 6 March 2017 and had completed its Committee Stage. The ATOL Bill revives the ATOL provisions contained in the previous Bill. All four of its clauses would apply to the whole of the UK.

The ATOL Bill received cross-party support during its passage through the House of Commons. That said a number of amendments were proposed relating to concerns held by opposition parties regarding: the impact of changes; powers within the Bill; and guarantees for existing consumer protections following the UK's withdrawal from the EU.

In addition to an Explanatory Notes, Individual Policy Impact Assessments and Regulatory Triage Assessments accompany the Bill.

# 1. The current ATOL scheme

## 1.1 Background

The [Air Travel Organisers Licence](#) (ATOL) is a statutory financial protection scheme managed by the Civil Aviation Authority (the "[CAA](#)") on behalf of the Secretary of State for Transport. At present, the scheme applies only to flight accommodation sold in the UK (see **Box 1** below).

### Box 1: Statutory requirement for an ATOL licence

An ATOL licence is required by law when a travel company sells a flight package that it has organised itself; a flight from the UK plus overseas accommodation and/or overseas car hire (Flight-Plus); or flights where the seller is not acting as the appointed agent of an airline (flight only).

The ATOL scheme is broadly based around the following three functions:

- licencing by the [CAA](#) to sell a travel arrangement that includes a flight;
- an ATOL levy and reserve fund to finance the scheme; and
- the management of refunds and repatriation in the event of a failure

These obligations are defined in secondary legislation made under the [Civil Aviation Act 1982](#).

Holding an ATOL licence under the [Civil Aviation \(Air Travel Organisers' Licensing\) Regulations 2012](#)<sup>1</sup> is recognised as evidence that the tour operator meets the insolvency protection requirements of the existing Package Travel Directive (90/313/EEC) (the "PTD 1990"). There are three important points to note:

- At present, ATOL only applies to sales made in the UK;
- Airlines are excluded by law from the ATOL scheme when they sell "flights only"; and
- The ATOL scheme predates and is broader than the PTD 1990.

Businesses selling air holiday packages (or 'flight only' sales by third parties)<sup>2</sup> in the UK are required by law to hold an ATOL licence. Should an ATOL-licensed firm become insolvent, the CAA can refund protected customers or (if they are already on holiday) ensure they are safely repatriated home. The scheme is funded by contributions made by travel companies into the [Air Travel Trust Fund](#) (ATTF); these contributions are known as APCs ("ATOL Protection Contributions").

Set up in 1973, the ATOL scheme was designed to cover charter flights and package holidays. However, the holiday market has changed considerably and a rise in online booking means many people now book the components of their holiday separately. As a result, changes were made to the ATOL scheme in April 2012 by the *Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012* ([SI 2012/1017](#)), including:

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<sup>1</sup> [SI 2012/1017](#)

<sup>2</sup> In respect of 'flight-only' sales by third parties, ATOL applies in circumstances where the consumer does not get a valid ticket straight after paying for one. The aim being to protect consumers from so-called 'bucket shop' operators, where there may be lengthy periods between payment for and receipt of an air ticket, so exposing consumers to risk

- The creation of a new “Flight-Plus” category in the ATOL scheme, to make clear that “mix and match”, as well as traditional package holidays, are protected;<sup>3</sup>
- The requirement for flight providers to issue an ATOL certificate to passengers when they book an ATOL-protected holiday or flight; and
- The requirement for a “Post Implementation Review” of the ATOL reforms to take place before the 30 April 2017.<sup>4</sup>

It has been estimated that the ATOL scheme protects over 20 million holiday-makers each year (see **Appendix**).<sup>5</sup>

Airlines are excluded by law from the ATOL scheme in respect of “flight only” sales. This is because airlines are already subject to a separate EU regulation and licensing arrangements, which include financial fitness requirements. That said they are still required by the [Package Travel Directive](#) (90/314/EEC) (the PTD 1990) to provide financial security for any package holidays they sell.<sup>6</sup> In practice, a number of UK airlines have established subsidiary companies with an ATOL licence to sell package holidays.

### 1.2 ATOL objectives

For the financial year ending March 2016, the [Office for National Statistics](#) (ONS) found each household spent on average £22.80 a week on package holidays abroad.<sup>7</sup> The potential for consumer detriment from the insolvency of a business selling air holiday packages is significant. It arises from a number of characteristics of the travel market, notably:

- The time lapse between payment and delivery of the holiday - payment for holidays and flights is often made many months in advance of travel and before suppliers have to be paid; and
- The lack of consumer awareness of the financial stability of holiday providers - barriers to entry can be low with little capital required.<sup>8</sup>

For the consumer, the risk is two-fold:

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<sup>3</sup> [Flight-plus](#) is a form of “dynamic packaging” where a business sells (1) a flight and (2) either accommodation or car hire, where (2) is within 24 hours of (1) (e.g. Expedia, ebookers.com etc.)

<sup>4</sup> The Review to also be informed by responses to the Department for Transport’s 2016 consultation paper, “[Modernising consumer protection in the package travel sector – Consultation on ATOL changes](#)”, 28 October 2016, [online] (accessed 26 June 2017)

<sup>5</sup> [Explanatory Notes to the Vehicle Technology and Aviation Bill](#), para. 57, (Bill 143-EN) (56/2), 21 February 2017, [online] (accessed 26 June 2017)

<sup>6</sup> [Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours](#), Official Journal of the European Communities, L158/59, 23.06.1990

<sup>7</sup> Office for National Statistics (ONS), “[Family spending in the UK: financial year ending March 2016](#)”, published 16 February 2017

<sup>8</sup> Department for Transport, [Primary legislation to strengthen the ATOL scheme in order to partially implement the new Package Travel Directive \(2015\)](#), IA No. DfT00375 (Final), 16 January 2017

- First, there is a risk that a business will become insolvent after payment has been made but before the holiday is taken. Consumers may face a financial loss from not receiving a refund.
- Second, there is the risk of a tour operator becoming insolvent while a holiday is in progress, leaving consumers stranded abroad without accommodation or a flight home. The situation may be compounded where large numbers of other holiday makers are in the same position with limited airline capacity to repatriate them, leading to large calls on the consular service of the Foreign and Commonwealth Office (FCO).

The ATOL scheme is a consumer protection measure. Detailed information on the operation of the ATOL scheme (including its funding arrangements) is provided below.

## 1.3 Operation and funding of ATOL scheme

### Licensing arrangements

The current ATOL scheme is the key mechanism by which the UK implements the [PTD 1990](#) in respect of holiday packages that include a flight (see section 2, below).

The ATOL scheme is defined in law and contributions to pay for it are provided for under the [Civil Aviation Act 1982](#), as amended. Those contributions are classified by the ONS as a tax. Other key points to note about ATOL licensing arrangements are outlined in **Box 2** below.

#### Box 2: ATOL licensing by the CAA

- An ATOL licence is only granted after the company has met the CAA's licensing requirements, including financial fitness checks.
- New ATOL licence holders, regardless of size, are also required to provide a bond (or other security) as a condition of their ATOL licence for the first four years.
- There are different types of ATOL licence, which allow different ways of entering the scheme. An overview of the different licences can be found on the CAA website.<sup>9</sup> However, the vast majority of ATOL protected bookings (around 95%) are arranged under a Standard ATOL or a Small Business ATOL.<sup>10</sup> The aim of the Small Business ATOL is to ensure adequate monitoring of small businesses but with a minimal administrative burden. In contrast, for very large businesses, the CAA can adopt more detailed financial monitoring. For example, if there is concern about a particular risk, the CAA can impose requirements (such as fresh capital or a bond).

### Funding of the scheme

The payment of refunds and repatriation expenditure due under ATOL is met by the [Air Travel Trust Fund](#) (ATTF). Since April 2008, the ATTF has been principally funded by contributions (known as ATOL Protection Contributions or APCs) from the travel companies (who must currently pay £2.50 into the scheme for each person they book). In respect of some business failures, the ATTF may also receive recoveries such as bond monies. According to the CAA, an insurance policy and a credit

<sup>9</sup> CAA, [Overview of ATOL licences](#) [online] (accessed 26 June 2017)

<sup>10</sup> A Small Business ATOL is available to businesses selling fewer than 500 flights or holidays a year

facility have also been arranged to provide additional liquidity. Other key points to note about ATOL funding arrangements are outlined in **box 3** below.

### Box 3: Funding arrangements for ATOL

- Under the [Civil Aviation \(Contributions to the Air Travel Trust\) Regulations 2007](#) (SI 2007/2999), for each passenger booked on an ATOL-protected holiday or 'flight only' seat, an ATOL-licensed company has to pay an APC (ATOL Protection Contribution) into the ATTF (Air Travel Trust Fund) (currently charged at £2.50 per booking).
- The ATTF is administered on behalf of the Air Travel Trust by the CAA.<sup>11</sup> As at 31 March 2016 the ATTF had a surplus of £139 million.<sup>12</sup>
- For historic reasons, the ATTF operated at a deficit for many years from the mid-1990s. Until the APC (ATOL Protection Contribution) was introduced in April 2008, the fund had had no source of income. It operated as a reserve fund under the previous ATOL universal bonding model, to be called on only in the event that the bonds held by businesses (as a condition of getting a licence) proved inadequate to repay or repatriate their customers. As it turned out, some bonds were insufficient to meet the full costs of a number of tour operator failures resulting in the ATTF operating at a deficit from the 1990s. The ATTF was only able to meet its obligations through commercial credit facilities, supported by a Government guarantee.
- In April 2008 the APC levy (at £1 per booking) was introduced to replace the bond model (except for businesses where a perceived risk justified additional measures). The intention was to pay off the ATTF deficit (which was then £21m) and so allow the Government guarantee (of up to £30m) to be phased out over 3 years. This was consistent with the policy of the then Labour Government that, "insolvency protection should be funded by the travel industry and its customers, rather than general taxpayers".<sup>13</sup>
- However, the failure of XL Leisure Group in September 2008 led to a call on the ATTF in the region of £27m. Business failures in the summer of 2010 placed further unanticipated costs on the Fund.<sup>14</sup> With the realisation that the ATTF would remain in deficit for far longer than previously anticipated, the APC was increased to £2.50 per booking from October 2009. The Government's guarantee was also increased and extended.

<sup>11</sup> Expenditure paid from the ATTF is not a cost *on* business; payments to the fund through APC contributions are a cost *to* business

<sup>12</sup> Op cit., [Primary legislation to strengthen the ATOL scheme in order to partially implement the new Package Travel Directive \(2015\)](#), IA No. DfT00375 (Final)

<sup>13</sup> Ibid.

<sup>14</sup> The CAA estimates that the failure of Goldtrail Travel Ltd and Flight Options Ltd, combined, cost the ATTF approximately £43m, see: Department for Transport, [ATOL reform consultation: Government response](#), 8 February 2017, [online]



## 2. ATOL and the EU Package Travel Directive

The PTD 1990 was implemented in the UK by the [Package Travel, Package Holidays and Package Tours Regulations 1992](#) (known as the “Package Travel Regulations 1992”).<sup>15</sup> The Regulations require businesses selling package holidays to provide evidence of protection for consumer prepayments and repatriations in the event of its insolvency. An ATOL licence is accepted as evidence.

Air package travel organisers must by law use the ATOL licensing scheme. (In contrast, non-air package travel organisers have a number of compliance options available to them including: bonding, insurance and trust accounts.)

On 25 November 2015 the EU adopted a revised Directive on package travel and linked travel arrangements ([2015/2302/EU](#)) (PTD 2015).<sup>16</sup> Member States have until 1 January 2018 to implement the Directive. It will apply from 1 July 2018.

A revised Directive is deemed necessary to take account of the major changes that have occurred in the way holidays are bought and sold over the past 20 years. In particular, the Internet has enabled consumers to “mix and match” or “dynamically package”<sup>17</sup> the components of their holiday in a way that often falls outside the scope of ATOL and PTD 1990. This has led to a fall in ATOL sales as a share of all leisure flights, from over 90% in 1998 to just under 50% in 2009.<sup>18</sup>

One of the aims of PTD 2015 is to bring greater clarity on what constitutes a package holiday and to harmonise protection within the EU. It includes the following key elements:

- An enhanced definition of a “package” holiday as being a combination of at least two different types of travel service for the same holiday or trip. Extending consumer protection beyond traditional package holidays organised by tour operators to other forms of travel combinations, such as: pre-arranged packages,<sup>19</sup> and customised packages.<sup>20</sup> In effect, this broad definition would catch traditional flight packages, Flight-Plus and some click-through sales.

Revised Package Travel Directive to be implemented by 1 January 2018

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<sup>15</sup> SI 1992/3288

<sup>16</sup> Directive [2015/2302/EU](#) amends Regulation (EC) 2006/2004 and Directive 2011/83/EU and repeals *PTD 90/314/EEC*

<sup>17</sup> Dynamic packaging is a method of selling holidays, whereby a consumer is able to build their own package holiday from a combination of travel components (e.g. flights, accommodation, and car rental) instead of purchasing a pre-defined package

<sup>18</sup> Op cit., [Primary legislation to strengthen the ATOL scheme in order to partially implement the new Package Travel Directive \(2015\)](#), IA No. DfT00375 (Final)

<sup>19</sup> **Pre-arranged packages:** ready-made holidays from a tour operator made up of at least 2 elements: transport, accommodation or other services, e.g. car rental

<sup>20</sup> **A customised package:** where components of the same trip or holiday are selected by the traveller from a single business online or offline

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- A new concept of “package lite” known as “linked travel arrangements” (LTAs)<sup>21</sup> applies to looser combinations of travel services, which will ensure some payments are protected in the event of the insolvency of the trader.
- Clearer information to be given to travellers, before and after booking, on the travel product they are buying and the level of protection that applies.

Importantly, PTD 2015 introduces a ‘single market approach’ to insolvency protection. This means that:

- Each EU Member State will recognise the insolvency protection regimes of the others and avoid imposing additional burdens upon travel companies in their territories; and
- EU-established companies will have to comply solely with the insolvency protection rules of the Member State in which they are ‘established’, as opposed to the ‘place of sale’. Businesses outside of the EU will be required to comply with the different rules of each Member State in which they sell. At present, the ATOL scheme only applies to sales made in the UK.

A single market approach to insolvency protection

Following the outcome of the EU referendum on 23 June 2016, the UK will continue to be a full Member of the EU until exit negotiations are concluded.<sup>22</sup> This means that all the rights remain in place, and our obligation to transpose EU law, including the PTD 2015, will remain at this time.

The impact of Brexit was raised during the Committee Stage of the [Vehicle Technology and Aviation Bill](#), before the Bill fell at dissolution (see below to Section 5 of this paper). Looking forward to how protection under ATOL and ATOL-like arrangements might unfold after the UK leaves the EU, John Hayes, Minister of State (DfT) said that in the short term, the Bill would ensure that ATOL Regulations and the PTD 2015 were properly aligned:

Impact of Brexit on the ATOL scheme

To put it bluntly, I think that this is an example of where something has been agreed across the European Union for good reason and with good purpose. Although I cannot anticipate the negotiations, my view is that incorporating the provisions into British law will provide a baseline of support, which we would hesitate in any way to undermine.<sup>23</sup>

In effect, the Government’s expectation is that the ATOL measures now contained in the [Air Travel Organisers’ Licensing Bill](#) would enable the UK to comply with the Package Travel Directive obligations in the short term while retaining an ability to adapt the scheme as appropriate when the UK leaves the EU.

<sup>21</sup> Linked travel arrangements: where a consumer is guided, once they have booked one travel service on one website (such as a flight), to book another service (such as accommodation or car rental) through a targeted online link. New rules will offer some protection – provided that the second booking is made within 24 hours.

<sup>22</sup> Department for Transport, [“Modernising consumer protection in the package travel sector – Consultation on ATOL changes”](#), 28 October 2016

<sup>23</sup> [HC Deb 21 March 2017, c.187 PBC](#)

### 3. UK Government consultation on ATOL reform, 2016-17

As outlined above, together ATOL and the PTD 1990 have provided a framework for regulating the travel industry for decades. However, in recent years there have been significant and rapid changes in the travel market. The [ABTA Holiday Habits Report 2016](#) identified that more than three quarters (76%) of UK consumers booked their holiday online in 2016.<sup>24</sup> Despite partial reform of the ATOL scheme in 2012, the Department for Transport (DfT) believes that consumers and businesses are left confused as to whether or not a holiday is ATOL protected:

This has led to an inconsistent approach to insolvency protection, where some holidays are required to be covered by the ATOL scheme and the PTD, while other similar bookings have been sold without these protections. Even where an ATOL licence is held, not all bookings by that ATOL holder will be “licensable transactions” covered by an ATOL.

This gap in protection has led to consumer detriment as consumers buying a non-ATOL protected holiday often face the same risks from the insolvency of their travel company as those who have purchased an ATOL protected holiday. It has also led to confusion for the consumer in trying to understand whether a particular holiday has ATOL protection, both when booking and in the unlikely event of the failure of their travel company.”<sup>25</sup>

Potential consumer detriment

On 28 October 2016, the DfT published a consultation paper, [ATOL reform – modernising consumer protection](#)<sup>26</sup> on enhancing consumer protection. Views were sought on proposals to strengthen the ATOL scheme and align it with the PTD 2015 by:

- ensuring ATOL is consistent with the new definition of “package” in the Directive;
- ensuring ATOL is consistent with the scope of the Directive, so that it can protect all eligible flight sales made by businesses established in the UK, including sales across the European Economic Area (EEA);<sup>27</sup> and
- potentially amending ATOL to cover emerging business practices regulated under the Directive, including linked travel arrangements.

The DfT had supported the rationale for updating the PTD 1990 on the basis that the EU’s proposals were broadly consistent with its own ambitions for further ATOL reform:

Overall, the new Directive has the potential to provide a greater level of protection to UK consumers, whether they purchase from a company established in the UK or overseas. It is the

<sup>24</sup> [The ABTA Holiday Habits Report 2016](#), [online] (accessed 26 June 2017)

<sup>25</sup> [Primary legislation to strengthen the ATOL scheme in order to partially implement the new Package Travel Directive \(2015\)](#), IA No. DfT00375 (Final)

<sup>26</sup> Department for Transport, [“Modernising consumer protection in the package travel sector – Consultation on ATOL changes”](#), 28 October 2016, [online] (accessed 26 June 2017)

<sup>27</sup> The EEA includes EU countries and also Iceland, Liechtenstein and Norway

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Government's view that the amendments in PTD 2015 will also help to bring a level playing field for companies, whether they operate on the high street or online.<sup>28</sup>

The DfT stated that its overarching aim was to reduce burdens on UK business and to increase the flexibility of the ATOL scheme:

[...] to get the regulatory framework right so that the market works better for business and consumers, while minimising the risk for the Government and taxpayer. This is particularly relevant as we consider the options and opportunities that arise from exiting the EU.<sup>29</sup>

The Government published its [response](#) to the consultation on 9 February 2017 and confirmed its intention to bring forward its proposals.<sup>30</sup>

Measures were initially included in Part 3 of the [Vehicle Technology and Aviation Bill 2016-17](#) (HC Bill 143). This Bill fell at dissolution, after it received Second Reading in the House of Commons on 6 March 2017 and had completed its Committee Stage. The Bill's ATOL provisions (clauses 18-20) were considered by the Committee during the fifth and sixth sittings (both took place on 21 March 2017). Although amendments to the ATOL provisions were moved, they were essentially probing amendments - there were no divisions.

The current Bill revives the ATOL provisions previously contained in Part 3 of the *Vehicle Technology and Aviation Bill*. Since they are identical provisions, relevant commentary from the Committee Stage debates on Part 3 is included in the following analysis of the new Bill.

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<sup>28</sup> Ibid, para 4

<sup>29</sup> Ibid, para 10

<sup>30</sup> Op cit., [ATOL reform consultation: Government response](#)

## 4. The Air Travel Organisers' Licensing Bill

### Overview of the Bill

The Bill amends the Secretary of State's existing powers to regulate the provision of flight accommodation (by which it means the carriage of passengers on flights). These powers are the basis of the ATOL scheme.

The Bill seeks to change the ATOL scheme, to ensure that:

- it keeps pace with innovation in the travel market; and
- is harmonised with the revised Package Travel Directive (PTD) 2015 when it comes into force

This requires primary legislation, in part because the ATOL levy is classified as a tax and also because current primary legislation needs to be amended.

Taken together, **clauses 1 to 4** of the Bill would:

- Expand the geographical scope of ATOL so that businesses established in the UK can protect their sales across the EEA through ATOL – making it easier for UK businesses to trade overseas. According to the DfT, this would enable the UK to comply with the revised PTD 2015 in the short term, while retaining an ability to adapt the scheme as appropriate when the UK leaves the EU.<sup>31</sup>
- Update existing powers to enable separate trust arrangements to be set up for different classes of business model or risk (e.g. "linked travel arrangements", a looser combination of travel arrangements than a traditional package, generally booked online). Importantly, the primary purpose of any new trust will still be consumer protection in relation to the sale of flight accommodation.
- Ensure that the CAA's information powers are aligned with the evolving ATOL scheme, to enable the CAA to continue to manage and enforce the scheme effectively.

### 4.1 Clause 1

**Clause 1** of the Bill would enable the Secretary of State to make regulations to broaden the scope of the ATOL scheme in line with the PTD 2015.

At present, ATOL protection and the accompanying levy generally only apply to relevant flight bookings where the first leg departs from a UK airport. The new PTD 2015 introduces a single market approach to insolvency protection, whereby EU-established companies will be required to comply solely with the insolvency protection rules of the State in which they are "established" as opposed to the "place of sale". However, businesses outside of the EU will be required to comply with the different rules of each Member State in which they sell.

Clause 1 would amend section 71 of the [Civil Aviation Act 1982](#) to enable regulations to be made covering the sale of flight accommodation by UK-established organisers elsewhere in the EEA. Clause 1 would also insert new subsection (1E) into section 71 of the

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<sup>31</sup> Department for Transport, [Modernising consumer protection in the package travel sector – Consultation on ATOL changes](#) 28 October 2016

1982 Act to clarify that the Secretary of State may make regulations to exempt any form of 'flight only' arrangement from the ATOL licensing arrangements.

In effect, clause 1 would allow travel companies established in the UK (and selling flight-inclusive packages) to use their ATOL to cover all EU-wide sales, without needing to comply with the insolvency protection rules of any other Member State. The DfT sees this as a positive step for UK businesses, which would make cross-border trade easier:

We believe that place of establishment rules brought in by the PTD 2015 could allow business, currently established elsewhere in the EU, to establish themselves in the UK and protect their sale through the ATOL scheme. Likewise, businesses currently established in the UK will be able to trade across the EEA and protect their sale through ATOL.

As a result, the Air Travel Trust may need to react quickly to changing risk profiles and exposures if large businesses join the scheme, or existing ATOL holders expand the number of consumers they wish to protect through their licence. This may require the CAA to make more use of their ability to request additional security if it considers that the increased risk, or exposure, is too high for the Air travel Trust to bear.<sup>32</sup>

Clearly, clause 1 has tax implications. Since the ATOL scheme is currently funded by a levy (Protection Contributions, or APCs)<sup>33</sup>, this tax-raising power would need to be amended to cover businesses "established in" the UK, as opposed to businesses "directing sales in" the UK. This would ensure that the tax-raising powers of ATOL would also apply when UK companies were selling directly to consumers in an EEA country. The Exchequer Secretary to the Treasury has approved the ATOL proposals.<sup>34</sup>

### Box 4: Committee Stage: Vehicle, Technology and Aviation Bill

An identical clause in the *Vehicle, Technology and Aviation Bill* (clause 18) was considered by the Public Bill Committee. The Labour spokesman, Richard Burden, moved a probing amendment to require the Government to publish a review within one year of the Bill receiving Royal Assent. Mr Burden raised concerns about the level of protection given by EU-based companies selling in the UK and whether UK holidaymakers could lose out by this change.<sup>35</sup>

He said that if consumers purchase a trip from a business established elsewhere in the EU and the company subsequently becomes insolvent, there may be costs to the consumer of processing a claim with a non-UK insolvency practitioner.<sup>36</sup> He argued that based on the latest CAA figures, this could affect more than half a million holidaymakers<sup>37</sup>

Responding on behalf of the Government, John Hayes, Minister of State (DfT), pointed out that the *Small Business, Enterprise and Employment Act 2015* already requires the Government to review the impact of any regulatory measure within five years of it being made.

<sup>32</sup> Op cit., *Modernising Consumer Protection in the Package Travel Sector – Consultation on ATOL Changes – Moving Britain Ahead*, paras. 63 & 64

<sup>33</sup> Provided for under section 71(1) of the *CAA1982*

<sup>34</sup> *Explanatory Notes to the Vehicle Technology and Aviation Bill*, (Bill 143-EN) (56/2), 21 February 2017, [online] (accessed 26 June 2017)

<sup>35</sup> HC Deb 21 March 2017 c.181-183 PBC

<sup>36</sup> HC Deb 21 March 2017 c.182 PBC

<sup>37</sup> HC Deb 21 March 2017 c.182 PBC

Looking forward to how protection under ATOL and ATOL-like arrangements might unfold after the UK leaves the EU, the Minister said that in the short term, the Bill would ensure that [ATOL Regulations](#) and PTD 2015 were properly aligned. There would also be the ability to adapt the scheme when the UK leaves the EU.

Although Mr Burden did not press his amendment to a vote, he said that outstanding issues must be addressed by the Government:

The simple fact is that we do not know how Brexit will affect the issues covered by the clause. We do know that ATOL will still be here and that ATOL protection will be extended wherever holidays from companies established in the UK are sold abroad. We do not know how sales into the UK to UK holidaymakers by companies that are established in other EU member states will work [...]

That is why it is really important that, as part of the Brexit discussion, the UK Government look forward at this issue and try to look forward to what will happen to our relationship with the Package Travel Directive. That could affect many thousands of UK holidaymakers. That is why it is important that the whole operation of ATOL and parallel protection regimes, with which we may or may not have a relationship such as the Package Travel Directive, are reviewed properly at an appropriate time after the Bill is enacted.<sup>38</sup>

## 4.2 Clause 2

**Clause 2** of the Bill deals with the creation of new forms of qualifying trust within the ATOL trust arrangement.

The funding arrangements of ATOL are outlined in detail in **Box 3** (see section 1.3, above). In a nutshell, the Air Travel Trust (established by a “2004 deed”) holds all ATOL Protection Contributions (APCs) collected from ATOL holders, and CAA trustees are given powers to compensate consumers. Under the provisions of the “deed”, these arrangements can be amended by the Secretary of State.

ATOL Trust  
Arrangement

Given the significant developments in the travel sector since 2004, the DfT recognises that in the future it may be necessary to enter into separate trust arrangements for different classes of business model (for example “linked travel arrangements”). This would give greater transparency for business and consumers.

Clause 2(2) would enable the Secretary of State to incorporate, by way of regulations, new forms of qualifying trust into the ATOL trust arrangement. The primary purpose of any new trust would still be consumer protection in relation to the sale of flight accommodation, as provided for by new clause 7(b) inserted by clause 2(2):

b) the primary purpose of the trust is the assistance of persons who suffer losses or incur costs as a result of failure by contributors to the trust to fulfil obligations with regard to the provision of flight accommodation in connection with those persons’ trips or holidays.

Clauses 2(3) and 2(4) amend section 102 and Schedule 13 of the [Civil Aviation Act 1982](#) to provide that the affirmative procedure (i.e. approval by both Houses of Parliament) would apply should the Secretary of State propose to make regulations under clause 2(2).

<sup>38</sup> HC Deb 21 March 2017, c.191-192 PBC

Clause 2(1) of the Bill would amend section 71A of the [Civil Aviation Act 1982](#) to distinguish the existing and continuing flexibility of the current ATT from wholly new qualifying trusts that may be established under clause 2(2).

### Box 5: Committee Stage: Vehicle, Technology and Aviation Bill

An identical clause in the [Vehicle, Technology and Aviation Bill](#) (clause 19) was considered by the Public Bill Committee. Richard Burden moved an amendment to require the Government to undertake a full impact assessment and consultation before bringing forward regulations to create any new air travel trusts (ATTs) through an affirmative resolution.

Mr Burden argued that the clause created a dormant power that the Government would hold in order to make future changes to ATOL and the ATT. He argued that the use of this power without scrutiny of further changes that may come down the track in relation to ATOL protection, was a cause of concern:

During one of the evidence sessions, we heard from Richard Moriarty of the CAA, a trustee of the current Air Travel Trust. He recognised the possible merit of separating up the trust to reflect variations of products and changes in the market, so I do not rule out further reforms having potential merit. The point is that we are simply not there yet, and I think it would be wrong of the Government to use this Bill as a way of giving themselves the power to make wholesale changes without due consideration [...]

The Impact Assessment that the Government have undertaken for the Bill explicitly states that it, "does not consider proposals for ATOL reform, beyond what is required in the Package Travel Directive. It would therefore be rather inappropriate for Ministers to go beyond that without providing assurances at this stage that proper consultation and scrutiny will take place if they are minded to go beyond the changes currently envisaged".<sup>39</sup>

In response, the Minister, Mr Hayes, stated that the amendment would make it difficult for the Government to act quickly in the interest of consumers and that it was "unnecessary to bind the Government's hands as described, potentially fettering our ability to act rapidly in the light of the circumstances of a dynamic market".<sup>40</sup>

Mr Hayes gave a commitment that the Government would conduct a thorough impact assessment and consultation before implementing the power. He said: "That is a binding assurance, and I am more than happy to support that in writing".<sup>41</sup> In addition, he highlighted the fact that section 71A of the [Civil Aviation Act 1982](#) already requires the Government and the CAA to consult.

## 4.3 Clause 3

Section 84(1) of the [Civil Aviation Act 1982](#) sets out the powers under which the CAA are currently able to request information from persons.

**Clause 3(2)** of the Bill would extend the scope of this power.

Specifically, sub-clause (3) would ensure that the information power applied to any airlines selling ATOL licensable holidays in the UK (and airlines established in the UK selling such holidays in the EEA), that are not covered by section 84(1)(a) of the Civil Aviation Act 1982. By way of example, the DfT suggests that new clause 3(3) would apply to European airlines that have an air service operator's licence from another EU Member State and therefore do not need any of the licenses granted by the Civil Aviation Act.<sup>42</sup>

Provision of  
information

<sup>39</sup> HC Deb 21 March 2017, c.192 PBC

<sup>40</sup> HC Deb 21 March 2017, c.194-195 PBC

<sup>41</sup> HC Deb 21 March 2017, c.194 PBC

<sup>42</sup> [Air Travel Organisers' Licensing Bill – Explanatory Notes](#) (Bill 1-EN) (57/1)



### Box 6: Committee Stage: Vehicle, Technology and Aviation Bill

An identical clause in the [Vehicle, Technology and Aviation Bill](#) (clause 20) was considered by the Public Bill Committee. Labour backbencher Rob Marris sought reassurance from the Minister that the improvements that the Government believes would come from this new European approach to regulation, would not be compromised by Brexit.<sup>43</sup>

In reply the Minister, Mr Hayes, said:

It is clear to me that there is strong mutual interest across the EU in maintaining a system that is consistent, reliable and comprehensible. Those seem to me to be the things that underpin the regime that Europe has been working to try to bring about and that Britain has long had. While I cannot anticipate the outcome of those negotiations, [...] I can stress our determination to ensure that, for us and others, those protections will remain in place. Certainly we would not want to be in a circumstance where any holidaymaker from the UK was worse off than they are now.<sup>44</sup>

## 4.4 Clause 4

Finally, **clause 4** provides for commencement of the provisions in the Bill. Clause 3 comes into force on whatever day or days the Secretary of State appoints by regulations. The other provisions of the Bill come into force on the day on which the Bill receives Royal Assent.

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<sup>43</sup> HC Deb 21 March 2017, c.195 PBC

<sup>44</sup> HC Deb 21 March 2017 c.196-197 PBC

## 5. House of Commons stages

### 5.1 Second Reading

During [Second Reading](#), there was cross-party consensus on the need to update the ATOL scheme to ensure more protection for holidaymakers and to align it with the latest EU Package Travel Directive.<sup>45</sup>

Opening the debate, John Hayes, Minister of State at the DfT, stated that the Bill would ensure greater consumer protection:

[There was] recognition across the House that the consumer protection measures in respect of holidays and holidaymakers need to keep pace with changing circumstances and conditions in the travel market.<sup>46</sup>

Andy McDonald, Shadow Secretary of State for Transport, said that the Opposition supported the Bill but with reservation:

We welcome the changes that will harmonise UK law with the latest EU Package Travel Directive, which will have many benefits for UK consumers and UK travel operators. However, we have concerns about the levels of protection given by EU-based companies selling in the UK and about whether UK consumers could lose out following the change. We will be pressing ministers for reassurances on that during the passage of the Bill. As we did with the Vehicle Technology and Aviation Bill, the Opposition will seek further detail from ministers on the assimilation of the directive, the impact of Brexit, and government accountability as the Bill progresses through this House.<sup>47</sup>

Patricia Gibson, SNP Spokesperson for Consumer Affairs at Westminster, also welcomed the initiative to update the ATOL scheme but asked whether existing EU passenger protections would continue after the UK leaves the EU. She summarised the SNP's position as follows:

Although we absolutely welcome the move to update the ATOL scheme to ensure that a maximum number of travellers are protected when they go on holiday and to align it with the EU travel directive 2015, passenger rights have been enshrined in EU law and consumers and businesses deserve clarity on how Brexit will affect them. The UK Government must provide more flesh on the bones and explain how such rights will be written into our laws. The updating of the scheme is to be welcomed, but the post-Brexit world poses a range of challenges on which consumers and airline business require clarity.<sup>48</sup>

Alan Brown, SNP Spokesperson for Transport at Westminster, also expressed concern about whether existing air passenger rights and compensation would continue post-Brexit.<sup>49</sup>

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<sup>45</sup> [HC Deb. 3 July 2017, cs.928-93](#)

<sup>46</sup> [HC Deb. 3 July 2017, c.928](#)

<sup>47</sup> [HC Deb. 3 July 2017, c.939](#)

<sup>48</sup> [HC Deb. 3 July 2017, c.946](#)

<sup>49</sup> [HC Deb. 3 July 2017, c.957-60](#)

## 5.2 Committee Stage

The ATOL Bill had its Committee Stage, Report and Third Reading all on the same day, 11 July 2017.

The Bill was considered on the floor of the House of Commons in a [Committee of the whole House](#). In total, there were three divisions – two on tabled amendments and one on a proposed new clause – all of which were defeated.

### *Clause 1: review of the impact on UK consumers*

There was a very lengthy debate on an amendment to **clause 1**, which would have had the effect of requiring the Government to review (within a year of the Bill receiving Royal Assent) the impact of provisions under the clause to ensure that they were not adversely affecting UK consumers using EU-based companies.<sup>50</sup> Speaking to this amendment, Karl Turner MP, Shadow Minister for Transport, said that the Opposition was nervous about whether UK holidaymakers could lose out:

The changes made through the directive will now mean that EU-based companies selling in the UK will have to adhere to ATOL-equivalent insolvency protections laid out in the member state where the business is based. In practice, this could lead to unintended consequences and, more significantly, costs for UK consumers. Processes and timescales for recompense may be distinctly different from what many travellers would expect under the current ATOL provisions, which are in many ways regarded as the gold standard.<sup>51</sup>

Mr Turner said that a review of the impact on UK consumers using EU-based companies, would help to inform whether the UK Government should consider issuing further guidance.<sup>52</sup> He confirmed that the Opposition's amendment was supported by the Association of British Travel Agents (ABTA) and other travel organisations.

In response, John Hayes, Minister of State, Department for Transport, reminded the Committee of the context in which the amendment was being considered:

The whole House shares the view that it is right for ATOL to continue and to respond to changing market conditions, and that the Government must do their part by ensuring that the necessary framework is in place.<sup>53</sup>

The Minister stated that the Government would shortly be launching a "series of consultations on the detailed regulations that will follow, including on this particular issue". He undertook that the Government would produce impact assessments and consultations at each stage of this process. He also drew attention to the Air Travel Insolvency Protection Advisory Committee ("ATIPAC"), set up in 2000, to provide advice for the Civil Aviation Authority (CAA), the Air Travel Trust and the Secretary of State for Transport on policies that should be pursued to protect consumers. Consisting of representatives of industry,

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<sup>50</sup> [HC Deb. 11 July 2017, c.223](#)

<sup>51</sup> [HC Deb 11 July 2012 c.224](#)

<sup>52</sup> *Ibid*

<sup>53</sup> [HC Deb 11 July 2017 c.225](#)

consumers, the CAA and Trading Standards, its remit is to provide an informed and independent review of policies and to submit an annual report to the Secretary of State.<sup>54</sup> The Minister made a commitment to write to the independent ATIPAC to ask it to specifically review the impact of changes arising from the provisions in clause 1:

So, not only are we going to have impact assessments and full and comprehensive consultations, not only have I committed to subjecting any further regulations to that kind of transparent and open debate with the appropriate scrutiny, and not only does the Committee exist for the very purpose of producing an annual report in the interests of defending consumers in this field of work, but, further to that, I will write to the Committee to tell it that it should do exactly as the hon. Member for Kingston upon Hull East has asked.<sup>55</sup>

Patricia Gibson, Shadow SNP Spokesperson on Consumer Affairs sought from the Government cast-iron guarantees that the rights of, and protections for, travellers would not be diminished after Brexit.<sup>56</sup> On the substance of the amendment, she asked why, if the ATIPAC was already conducting yearly reviews, there should not be a requirement written into legislation.

Karl Turner said that the Minister's attempts to "pacify" the Opposition with his promise of a letter to the ATIPAC were not enough. The amendment was pushed to a vote. On division, the amendment was disagreed to by 305 votes to 271.<sup>57</sup>

### ***Clause 2: Air Travel Trust***

In a nutshell, the Air Travel Trust is the legal vehicle that holds the money that is then used to refund consumers under ATOL protections.

**Clause 2** gives the Secretary of State the power to define separate trust arrangements to reflect different market models, prefiguring some of the changes in the package holiday market.

Patricia Gibson moved an amendment to Clause 2 that would have required the Government to undertake a "full impact assessment and consultation before bringing forward regulations to create any new air travel trusts through an affirmative resolution."<sup>58</sup> This amendment was withdrawn after the Minister confirmed that this was his intention.<sup>59</sup>

Karl Turner moved a similar amendment that was debated at the same time. He said that unlike clause 1, clause 2 did not seem directly relevant to harmonising EU and UK regulations, but rather would create a dormant power for the Government to make "considerable changes" to ATOL, and particularly to the Air Travel Trust. He argued that his amendment would guarantee proper scrutiny of any changes that may "come down the track" regarding ATOL protection.<sup>60</sup> The amendment

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<sup>54</sup> The report is submitted to the Secretary of State within four months of the end of each financial year

<sup>55</sup> [HC Deb 11 July 2017 c.231](#)

<sup>56</sup> [HC Deb 11 July 2017 c.235-236](#)

<sup>57</sup> [HC Deb 11 July 2011 c.236-237](#)

<sup>58</sup> [HC Deb 11 July 2017, c. 241](#)

<sup>59</sup> [HC Deb 11 July 2011 c.242](#)

<sup>60</sup> Ibid

was pushed to a vote. On division the amendment was disagreed to by 307 votes to 274.<sup>61</sup>

***New Clause 1: potential impact of Brexit on consumer protection***

Patricia Gibson moved new **clause 1**, which would have required the Government to report regularly on the effect of Brexit on consumer protection under the ATOL scheme. Outlining the rationale behind the proposed new clause, she said that consumer protections must be safeguarded and that such protections must continue to be enhanced and updated as society and technology evolve, just as has happened during the UK's EU membership; "The UK cannot be left behind, stagnating in a post-Brexit world".<sup>62</sup> Karl Turner spoke in support of the new clause.

Responding on behalf of the Government, John Hayes said that although he fully endorsed the purpose of the new clause, the ATOL scheme was not dependent on the Package Travel Directive. Therefore, he thought the new clause was unnecessary because "ATOL is enshrined in an Act of Parliament, and only this Parliament can change that."<sup>63</sup>

Proposed new clause 1 was pushed to a vote. On division, it was disagreed to by 308 votes to 273.<sup>64</sup> The Bill was then reported without amendment.

### 5.3 Third Reading

At the Bill's [Third Reading](#), John Hayes, Minister of State (Transport), said he was confident that the Bill would "provide the necessary reassurance for travellers, and the necessary measures for businesses".<sup>65</sup> He confirmed that when regulations come before the House, the Government would review their implications in the way recommended by the House.<sup>66</sup>

Karl Turner reiterated the Opposition's support for the Bill and said they would vote in support of it. However, he said that they continued to have concerns about the impact of some parts of the Bill. Summing up their position, he said:

We support the Bill because it brings ATOL up to date and will ensure that it is harmonised with the latest European Union Package Travel Directive, extending to a wider range of holidays and protecting more consumers as well as allowing United Kingdom travel companies to sell more seamlessly across Europe. While we harbour some real concerns over whether UK consumers will be sufficiently protected by EU-based companies, as they will no longer be subject to ATOL but to member state equivalents, we welcome changes that will ultimately help to protect more holidaymakers.

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<sup>61</sup> Ibid

<sup>62</sup> [HC Deb 11 July 2017 c.248](#)

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> [HC Deb. 11 July 2017 c253](#)

<sup>66</sup> Ibid

The implications for ATOL after Brexit are also a cause for concern. Hidden in the Bill are proposals that the Secretary of State should require only an affirmative resolution to significantly reform ATOL and the Air Travel Trust Fund. Labour recognises the merit of some reforms, but we believe that an impact assessment, full consultation and full scrutiny should have been required before any fundamental changes are made to these consumer protections.<sup>67</sup>

Mr Turner also said that the Government must not waste the opportunity this Bill presents to clarify their intended future arrangements for the UK's aviation industry.<sup>68</sup>

Speaking for the SNP, Patricia Gibson also welcomed the measures contained in the Bill to update the ATOL scheme and to align it with the new Package Travel Directive.<sup>69</sup> However, she called on the Government to heed the concerns raised regarding consumer protections post-Brexit.<sup>70</sup>

The Bill then passed unamended to the House of Lords, where it had its First Reading on 12 July 2017. It is expected to receive its Second Reading on 5 September 2017.

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<sup>67</sup> [HC Deb 11 July 2017 c.253-254](#)

<sup>68</sup> [HC Deb 11 July 2017 c.254-255](#)

<sup>69</sup> [HC Deb 11 July 2017 c.257](#)

<sup>70</sup> *Ibid*

## 6. Views of interested groups

As indicated in section 3 above, in February 2017 the Government published its [response](#) to its 2016 consultation paper on ATOL reform.<sup>71</sup>

Speaking about regulation in general, [ABTA](#) (The Travel Association)<sup>72</sup> said that ATOL and the [Package Travel Regulations 1992](#), played a vital role in underpinning consumer confidence in the travel industry. However, it stated that the industry needed the Government to maintain a cost effective, compliant and sustainable regime for implementing PTD 2015:

There is currently a need for stability and continuity within the industry, given global geopolitical and economic uncertainties and the impact of the 'Brexit' process throughout the 2015 PTD implementation timeline. Reform is important and necessary, but significant changes must be carefully planned and phased in to avoid shocks to the system.<sup>73</sup>

In respect of opportunities arising from Brexit, ABTA said:

ABTA's membership had shown a strong degree of support for the existing schemes of consumer financial protection within the UK. However, once the UK has left the EU, should UK businesses no longer be subject to the rules of the EU internal market, or a specific or sector-led exemption be agreed, it could be possible to revise the UK's current system of financial and other protection for holidays. We call on the DfT to include a review provision in the new legislative arrangements that would allow Government to act independently of any wider review process for EU related or originated legislation.<sup>74</sup>

ABTA supported the Government's strategy of making the Package Travel Directive 2015 implementation process a priority, given the requirement for Regulations by 1 January 2018. However, it thought that many issues were too important and complex for effective consultation in a four-week period (e.g. questions around the inclusion of flight-only sales and linked travel arrangements within ATOL; reform of the ATOL Protection Contributions (APC) regime; and the retention and function of ATOL certificates.)

### 6.1 Aligning ATOL with the PTD 2015

According to the DfT, there was broad support from the majority of respondents to the October 2016 consultation to proposals to maintain the existing ATOL licensing regime and align it with the scope and definitions of PTD 2015.<sup>75</sup> This would mean that any UK-established business that sells a package which includes a flight would need to

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<sup>71</sup> Department for Transport, [ATOL reform consultation: Government response](#), January 2017

<sup>72</sup> ABTA is an "approved body" under the Package Travel Regulations 1992 which, along with the ATOL Regulations, implement the Package Travel Directive 1990

<sup>73</sup> ABTA, [ABTA response to the Department for Transport Consultation](#), 24 November 2016, p2

<sup>74</sup> Ibid., p4

<sup>75</sup> Op cit., [ATOL reform consultation: Government response](#)

meet their insolvency protection obligations by holding an ATOL. The DfT said:

It was widely agreed that this would bring greater clarity and protection for consumers and help to level the playing field for businesses selling similar holidays.<sup>76</sup>

ABTA's view was that the existing ATOL licensing regime, through the resources of the CAA as a statutory regulator, was best placed, at this stage, to deliver the necessary protection for consumers.

Elsewhere, respondents showed a clear preference for including flight-related linked travel arrangements (LTAs) within the ATOL scheme, to ensure a consistent approach to the protection of holidays.<sup>77</sup> However, there were differing views on how LTAs should be implemented within ATOL. Some respondents raised concerns about diluting the ATOL brand with a 'lighter' version of it for LTAs; increasing regulatory and administrative burdens on business; as well as potentially causing confusion for UK consumers. Others suggested a need for clear guidance to be issued so that businesses and consumers could be fully aware of the package protections offered and what would *not* be covered under a new LTA category.

The DfT said that it would ensure that there was sufficient flexibility in the Bill to be able to introduce a separate levy and trust arrangements for flight-led LTAs, should it decide to implement in that way.<sup>78</sup> The DfT also reported support for the principle that Flight-Plus and agent-for-consumer models should be brought into line with ATOL flight-inclusive packages if they are considered a "package" under PTD 2015.

## 6.2 Place of establishment model

The majority of respondents accepted the need to change the scope of ATOL protection from "place of sale" to "place of establishment". The DfT highlighted the fact that several respondents had reasoned that this would help to promote cross-border trade and minimise burdens for UK companies. There was also broad support for the proposal to maintain the requirement for businesses established outside the EEA to obtain ATOLs when selling to UK consumers.<sup>79</sup>

However, several respondents identified risks in the "place of establishment" model. ABTA thought there were issues with this approach in an EU where the consistency of implementation of the PTD 1990 and its enforcement, along with Commission infraction arrangements, were weak. ABTA asked if a mechanism might be established (compatible with PTD 2015) whereby mutual recognition could be denied in relation to a trader or scheme that was not compliant with the new Directive:

A Member State should not have to give recognition to a trader or scheme that is clearly non-compliant and, as a result, knowingly

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<sup>76</sup> Ibid., para 1.8

<sup>77</sup> Op cit., [ABTA response to the Department for Transport Consultation](#), p7

<sup>78</sup> Op cit., [ATOL reform consultation: Government response](#), para 1.10

<sup>79</sup> Ibid., para 2.19-2.23



give recognition to a trader which poses a risk to its own consumers.<sup>80</sup>

Other respondents felt that it might be difficult to determine whether a company is established in the UK or another Member State. It was suggested that there would need to be effective monitoring and enforcement across borders, to determine where a company is based and ensure that protection is correctly applied.

There were differing views as to whether the place of establishment model would have a positive or negative impact on the ATOL scheme. Some respondents suggested that this change of scope could see an increase in the amount of business covered by ATOL, which could bring more funding in to the ATTF. Others felt that this could place undue risk or exposure upon the ATTF, and potentially hamper CAA's ability to respond to a failure. It was also suggested that UK businesses might consider moving their place of establishment, having "shopped around" for a cheaper insolvency protection regime.<sup>81</sup> To counter this, the ATOL scheme would need to remain cost-competitive to minimise the likelihood of this happening.

### 6.3 CAA's powers to request information

Some respondents to the consultation raised concerns relating to effective cross-border implementation, enforcement and communication of protection. To address these concerns, the DfT made a commitment to strengthen the CAA's powers to request information from UK established businesses on the products they make available across the EEA.<sup>82</sup> This would enable the CAA to monitor and provide effective enforcement of the ATOL scheme across borders.

The DfT said that it thought concerns relating to other Member States' schemes, including issues around strength of protection and communication, would be addressed through the harmonisation of the consumer protection set out in the PTD 2015.<sup>83</sup>

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<sup>80</sup> Op cit., [ABTA response to the Department for Transport Consultation](#), p9

<sup>81</sup> Op cit., [ATOL reform consultation: Government response](#), para 2.23

<sup>82</sup> Ibid., para 2.25

<sup>83</sup> Ibid., para 2.25

## Appendix: ATOL numbers

According to CAA statistics, ATOL protection was provided to approximately 18.5 million passengers in the year ending March 2011.<sup>84</sup>

Some 2,500 businesses are ATOL-licensed, ranging from major publicly quoted companies to a large number of very small enterprises selling less than 500 ATOL holidays per year.

**Table 1** shows the numbers of consumers who have benefited from ATOL protection over the period 2005 to 2011.

Table 1: ATOL Protected Passenger Bookings

<b>Table 1 ATOL Protected Passenger Bookings Year to end March</b>	<b>Total ATOL bookings</b>	<b>ATOL company failures</b>	<b>Passengers repatriated</b>	<b>Passengers refunded</b>	<b>Total Expenditure £000</b>
2005	28.3m	14	11,634	21,960	10,294
2006	26.7m	25	1,754	21,858	8,792
2007	26.7m	27	4,706	54,116	14,251
2008	25.7m	12	1,650	20,771	5,321
2009	20.3m	46	47,482	236,691	84,215
2010	20.9m	29	2,445	45,114	18,866
2011	18.5m	29	47,013	145,809	49,739

Table 2 provides details of failures of ATOL licence-holders for the period April 2015 to March 2016.<sup>85</sup>

<sup>84</sup> Department for Transport, [Reforming the Air Travel Organisers' Licensing \(ATOL\) Scheme](#), IA No: DfT 00092, 3 February 2012

<sup>85</sup> [Air Travel Trust Annual Report and Accounts - 31 March 2016](#), [online] (accessed 27 June 2017)

### Details of ATOL Holder Failures April 2015 – March 2016

ATOL Holder Name	Date of Failure	Licensed Passengers	Security Provided	Number of Passengers Repatriated	Cost of Repatriation & Overseas Costs	Expected Number of Passengers to Refund	Estimated Refund Cost	Estimated Total Expenditure	Estimated Call on Air Travel Trust
			£'000		£'000		£'000	£'000	£'000
Awimaway.com Ltd	01/04/2015	500	-	-	-	-	-	-	-
Travel Incentives Meetings Exhibitions	20/05/2015	509	-	-	-	-	-	-	-
Holiday Routes Ltd	22/05/2015	501	34	-	-	211	89	89	55
Fone N Fly Ltd	18/08/2015	500	40	-	-	450	210	210	170
Exclusive Escapes Ltd	02/09/2015	7,754	-	339	327	2,693	3,164	3,491	3,491
Flights & Fly Ltd	10/11/2015	500	55	-	-	138	70	70	15
A & M Travel Ltd	15/01/2106	740	-	-	-	165	78	78	78
Mirecki M	19/01/2016	500	-	-	-	9	16	16	16
Elixir Holidays Ltd	17/02/2016	1,495	-	-	-	227	338	338	338
Travel Definitions Ltd	04/03/2016	1,237	-	-	-	498	603	603	603
			129	339	327	4,391	4,568	4,895	4,766

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