



BRIEFING PAPER

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Brexit: ATOL protection scheme

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Summary

The [Package Travel and Linked Travel Arrangements Regulations 2018](#) (S.I. 2018/634) implements in the UK the [EU Package Travel Directive](#) (2015/2302). The Regulations protect consumers buying package holidays or linked travel arrangements (LTAs) and impose obligations on the organisers of package holidays and traders which facilitate LTAs: the degree of protection is greater in the case of packages. Those protections include:

- the provision of information to travellers, so that travellers have clear information about their package holiday or LTA and their statutory rights; and
- a requirement that organisers put in place adequate insolvency protection to cover, in the event of the organiser's or trader's insolvency, the refund of payments made by or on behalf of passengers and, if necessary, their repatriation.

The ATOL (Air Travel Organisers' Licensing) scheme is a key mechanism by which the exiting Directive is implemented in the UK. This Directive places an obligation on companies selling package holidays to have insolvency protection in place.

In brief, ATOL is a UK financial protection scheme managed by the [Civil Aviation Authority](#) (CAA) on behalf of the Secretary of State for Transport, it protects most air package holidays sold by travel businesses that are based in the UK. The scheme also applies to some flight bookings, usually those where you book flights but do not receive your tickets immediately.

The ATOL scheme was set up in 1973, after several high-profile travel business failures left people stranded overseas. The ATOL scheme is designed to reassure consumers that their money is safe and will assist in the event of a travel business failure.

The UK Government has been publishing Technical Notices in several areas for UK citizens and businesses in the event of a "no-deal" Brexit. In tandem, it has also begun an overhaul of the UK's legal and regulatory environment and has published statutory instruments (SIs), to ready UK law for Brexit. Of importance in relation to the ATOL scheme are:

- Technical Notice on "[Consumer rights if there's no Brexit deal](#)", and
- The [Package Travel and Linked Travel Arrangements \(Amendment\) \(EU Exit\) Regulations 2018](#) (SI No. 1367)

This Commons briefing paper provides a summary of the impact on ATOL of a "no deal" Brexit. In the process, it also provides an outline of the current insolvency protections provided by ATOL in respect of package holidays and LTAs.

1. Current legislative background

1.1 What is a package holiday and a LTA?

The [Package Travel and Linked Travel Arrangements Regulations 2018](#) (S.I. 2018/634) (“the PTR 2018”) implement the [EU Package Travel Directive](#) (2015/2302) (“the Directive”).

The [PTR 2018](#) protect consumers buying package holidays (see **Box 1**) or linked travel arrangements (LTAs) (see **Box 2**) and impose obligations on the organisers of package holidays and traders which facilitate LTAs: the degree of protection is greater in the case of packages. Those protections include:

- the provision of information to travellers, so that travellers have clear information about their package holiday or LTA and their statutory rights; and
- a requirement that organisers put in place adequate insolvency protection to cover, in the event of the organiser’s or trader’s insolvency, the refund of payments made by or on behalf of passengers and, if necessary, their repatriation.

Box 1: What is a package holiday?

For the purposes of the [Package Travel and Linked Travel Arrangements Regulations 2018](#), a holiday is probably a package if:

- It was advertised as a package or all-inclusive deal.
- The consumer bought the holiday for an inclusive or total price.
- The consumer bought more than one part of their holiday, such as flights and accommodation, from one company with one payment.
- After booking one part of their holiday, the consumer was prompted to buy another, and their personal and payment details were simply transferred. The consumer completed this all within 24 hours of the first booking.

If the consumer’s holiday was presented as a package deal when they bought it – it probably is.

Box 2: What is a Linked Travel Arrangement (LTA)?

As outlined in Box 1, a package holiday is when a consumer books more than one part of their holiday through the same travel agent or website. If a holiday doesn’t fall within the definition of a package holiday, it could still be a LTA for the purposes of the [Package Travel and Linked Travel Arrangements Regulations 2018](#).

A Linked Travel Arrangement (LTA) is when the consumer buys one part of their holiday and are then prompted to buy another part within 24 hours, but their payment details are **not** transferred.

Main characteristics of a LTA:

- A LTA is when a consumer buys one service from a tour operator and is then prompted to buy another but, crucially, their information and payment details are **not** transferred. For example, if the consumer receives an email confirming their flight information with a link to hotel site which they then book (re-entering their travel dates, location, personal information and payment details).
- To be considered a LTA, the consumer must buy these services within 24 hours of each other.
- The first travel company is obliged to tell the consumer they have been sold a LTA.

In a nutshell, a package holiday is when a consumer books more than one part of their holiday through the same travel agent or website. A LTA is when a consumer buys one part of their holiday and then are prompted to buy another part within 24-hours, but their payment details are not transferred. The important point to note is that a LTA doesn't give the consumer the same level of protection if something goes wrong, but they will benefit from insolvency protection.

1.2 What if one of the companies in my package holiday or LTA goes bust?

If the organiser or retailer becomes insolvent, the consumer's payment for their package holiday will be refunded through ATOL protection (see below).

LTAs have separate insolvency protections.

2. ATOL scheme in the UK

ATOL stands for Air Travel Organiser's Licence and is a UK financial protection scheme backed by the Government. In brief, the scheme protects consumers when they book a holiday with a UK ATOL holder. The benefit of the scheme is as follows:

- If the business collapses (i.e. goes into insolvency) while the consumer is on holiday, the scheme will make sure they can finish their holiday and return home.
- If the business collapses before the consumer is due to travel, the scheme will provide a refund or replacement holiday.

The scheme, introduced in 1973, was substantially overhauled in 2012 and again in 2018.

2.1 What is covered by an ATOL?

Under the [PTR 2018](#), a holiday must be protected if the consumer books an **air package holiday** from a UK travel business. Specifically, the law says that a holiday must be protected if the consumer books a holiday with a single travel firm that includes:

- flights and accommodation (including a cruise), or
- flights and car hire, or
- flights, accommodation and car hire.

The scheme also applies to some **flight only bookings** - usually those where a consumer books flights (including UK domestic flights) but do not receive their tickets immediately. This is most common with charter flights but can also apply to discounted scheduled flights or where a consumer pays for flights in instalments.

However, it is important to note that ATOL does not protect flights if a consumer purchases an airline ticket from an airline or travel business and receives a valid ticket in exchange for payment, **ATOL does not cover this flight sale**.

As outlined above, a LTA is formed when a business facilitates the sale of two or more travel services (e.g. a flight and hotel booking) but does so in a way that it is not classed as a package. As an LTA does not constitute a package it does not need to be protected under ATOL. However, an LTA may include an ATOL protected element within it, such as an ATOL protected "Flight-Only" or an ATOL protected flight inclusive package. If a travel business sells an LTA, it must inform the consumer that this is the case and what protection they may have.

2.2 How can a consumer tell if their holiday is covered by ATOL?

UK and European law require travel businesses to financially protect their package holidays in the countries in which they are established. Businesses based in the UK provide their protection under the ATOL scheme while those based in other European Member States provide their own financial protection schemes. Travel businesses are required to tell the consumer which country will be responsible for financially protecting their booking.

2.3 How is ATOL funded?

ATOL is funded by travel businesses, which are required to pay £2.50 per consumer into a central ATOL fund. This money is used to allow consumers to complete their holidays or issue refunds should a travel business collapse. This charge is not a tax on individuals or an insurance premium - the law requires travel businesses to pay it, not consumers.

2.4 Current mutual recognition requirements

Box 3: Mutual recognition: insolvency protections

- The [PTR2018](#) requires, in line with the [EU 2015 Package Travel Directive](#) (2015/2302), that the UK must accept insolvency protections put in place under the rules of the relevant Member State by traders established in other Member States.
- In turn, traders established in the UK benefit from recognition of their insolvency protection by other Member States.
- The Directive requires Member States to establish **central contact points**, the main purpose of which is to facilitate administrative cooperation between Member States in relation to insolvency protection and the exchange of information concerning national insolvency requirements. Accordingly, regulation 19(11) of the [PTR 2018](#) appoints the CAA as the lead UK central contact point.

Under mutual recognition requirements in **Article 18** of the [EU 2015 Package Travel Directive](#) (2015/2302), Member States must recognise the insolvency protection put in place by organisers /traders under the law of the Member State in which they are established.

Accordingly, under regulations 19 and 26 of the UK's [PTR 2018](#), organisers/traders established in other EU Member States are exempt from having to comply with the UK insolvency rules (the UK rules require organisers / traders to have ATOL protection or have in place insurance cover, a bond or a trust fund). In return, UK organisers / traders benefit from the equivalent recognition and exemption in other Member States.

The Directive and [PTR 2018](#) place obligations on organisers of packages (the trader which combines the relevant travel services creating the package holiday) as opposed to the retailer (agent) which might sell the package.

However, implementing **Article 20** of the Directive, regulation 27 of the [PTR 2018](#) requires that where a UK-established retailer sells a package holiday combined by an organiser established outside the EEA the retailer is subject to the obligations in Part 4 (performance of the package) and Part 5 (insolvency protection) of the [PTR 2018](#) unless the retailer provides evidence that the organiser complies with those Parts.

3. Brexit position in respect of ATOL

The UK Government has been publishing a steady flow of Technical Notices on several areas for UK citizens and businesses in the event of a “no-deal” Brexit. In tandem, the UK Government has begun an overhaul of the UK’s legal and regulatory environment and has published statutory instruments (SIs), to ready UK law for Brexit. Of importance in relation to the ATOL scheme are the following:

- Technical Notice on “[Consumer rights if there’s no Brexit deal](#)”, and
- [Package Travel and Linked Travel Arrangements \(Amendment\) \(EU Exit\) Regulations 2018](#) (SI No. 1367)

The Technical Notice highlights some specific changes to certain aspects of consumer law, including package Travel. In the event of a no deal Brexit, consumers who purchase package holidays from EU-based traders who are **not** targeting activities at the UK may be unprotected if the provider becomes insolvent. The notice indicates that consumers will be responsible for ensuring they are provided with clear information, including of the applicable insolvency protection, before purchase.

The [Package Travel and Linked Travel Arrangements \(Amendment\) \(EU Exit\) Regulations 2018](#) (SI No. 1367) would amend the PTR 2018 to make them work effectively after exit. The BEIS explained the need for the new Regulations as follows:

Why is it being changed?

2.3 The 2018 Regulations are being changed to make them to work effectively, for the protection of travellers, after exit. In particular, the changes are made because, on EU exit, the UK, as it ceases to be a Member State to which the Directive applies, will no longer benefit from the mutual recognition provisions of the Directive. In consequence, the remaining Member States will no longer be required to recognise the insolvency protection put in place under the 2018 Regulations by UK organisers / traders (requiring them to comply, potentially, with multiple regulatory regimes) and it is also unclear whether the insolvency protection put in place by organisers / traders established in the remaining EU states will continue to protect UK travellers. As a result, the Department does not consider it appropriate to continue to recognise the insolvency protection put in place by traders established in remaining Member States.¹

Further detailed information is provided below.

¹ [Explanatory Memorandum](#), Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018

3.1 If there is a no deal Brexit

Box 4: What happens in the event of a no deal?

- The insolvency protections remain the same for UK consumers buying a package holiday and/or a linked travel arrangement from UK based traders.
- However, the mutual recognition element of insolvency protection will cease, as the mutual recognition requirements of the Package Travel Directive will not apply to the UK with the consequence that other Member States are unlikely to recognise the UK's insolvency protection.
- Consequently, the UK's exit Statutory Instrument will amend the PTR 2018 so that, after exit, EU traders selling packages or LTAs in the UK, or directing such activities to the UK, will be required to comply with the insolvency protection requirements under the PTR 2018 (ATOL protection, insurance, trust fund or bond) in the same way as all other traders.

Specifically, the [Package Travel and Linked Travel Arrangements \(Amendment\) \(EU Exit\) Regulations 2018](#) (SI No. 1367) would amend the PTR 2018 in the following areas:

- [Insolvency protection](#) – revocation of the exemption of EU-established organisers/traders from the insolvency protection requirements of the UK's PTR 2018.
- [Central contact point](#) – The Civil Aviation Authority (CAA) would cease to be designated as the UK's central contact point.
- [Obligation on retailers](#) – extension of regulation 27 of the PTR 2018 to ensure adequate protection of travellers.

Insolvency protection

The statutory instrument would remove the exemption for organisers/traders established in Member States, so that, if they were to sell or offer for sale package holidays or LTAs in the UK, or direct such activities at the UK, they would be required to comply with the UK insolvency protection rules – on the same basis as UK organisers/traders and traders established elsewhere in the world.

The policy justification is that it is not considered appropriate for the UK to continue to recognise the insolvency protection put in place by those organisers/traders when it is unlikely that UK-established traders will continue to benefit from that recognition in remaining EU Member States. According to the government, continuing that exemption would unfairly minimise barriers to trade for EU businesses trading into the UK with no guarantee that UK-established organisers/traders can continue to enjoy the same benefit in trading into EU Member States. The Government also thinks it is important to ensure that UK travellers are adequately protected in the case of insolvency of an EU-established organiser / trader.

Central contact point

The statutory instrument would revoke regulation 19(11) of the PTR 2018 so that the CAA would cease to be designated as the central contact point. This would not affect the CAA's other statutory functions in relation to package travel, as an enforcer under Part 8 of the [Enterprise Act 2002](#) and Schedule 5 (investigatory powers) to the [Consumer Rights Act 2015](#).

The policy justification is that the role of a central contact point would serve no purpose once the mutual recognition requirements of the Directive cease to apply to the UK.

Obligation on Retailers

The statutory instrument would extend regulation 27 of the PTR 2018 so that, where they sell a package combined by a non-UK established organiser (as opposed to a non-EEA established organiser as at present), UK-established retailers would be required to comply with Parts 4 and 5 of the PTR 2018 unless the UK-established retailer were to provide evidence that the organiser complies with those Parts.

According to the Explanatory Memorandum, the policy justification for this measure is as follows:

The application of regulation 27 of the PTR 2018 is extended to ensure adequate protection of travellers. In particular, once the Directive ceases to apply to the UK it is important that UK retailers selling packages combined by an EU-established organiser can ensure that there is adequate insolvency protection in place to protect travellers – whether the retailer provides that protection itself or is satisfied, on the basis of evidence, that the organiser has adequate protection in place. This may place additional obligations on UK retailers although the Department considers that these will be negligible in practice.

3.2 Implications for UK consumers

According to the government, consumers should be protected when purchasing packages or LTAs from those traders required to comply with the PTR 2018 insolvency protection requirements.

However, it will **not** protect consumers who purchase packages from EU based traders which are not targeting business activities at the UK.

As a result, consumers should ensure that they are provided with clear information, including on the applicable insolvency protection (if any), before their purchase. Furthermore, in practice, taking enforcement action against any seller based outside the UK is likely to be more difficult than is currently the case.

3.3 Implication for UK businesses

According to the government, since it is unlikely that remaining Member States will recognise UK insolvency protection, traders may need to comply with multiple insolvency regimes across the EU. Therefore, they will have to make themselves familiar with the consumer regime of the country they are selling to.

4. Independent Airline Insolvency Review

The Department for Transport published on 9 May 2019 the final report from the independent Airline Insolvency Review, which was chaired by Peter Bucks. The report has been published online on the [Gov.UK website](#).²

The Transport Secretary Chris Grayling commissioned the review following the collapse of Monarch Airlines in October 2017, when 85,000 passengers were repatriated by the Civil Aviation Authority, but at a cost to the taxpayer.

The review has considered both refund and repatriation protection in the event of an airline or travel company failure. The key recommendations from the report are as follows:

- The introduction of a new **Flight Protection Scheme**, a privately funded repatriation scheme which would protect passengers if an airline became insolvent while they were abroad. The cost of the protection is estimated at less than 50p per passenger.
- The introduction of a new Special Administration Regime (SAR) for airlines, enabling an insolvent airline's own aircraft to be used to repatriate its passengers.
- Enhancing the commerciality of ATOL.
- Providing CAA with the necessary powers and capability to coordinate repatriation operations for all sizes of airline.
- Improving awareness and take up of safeguards which protect the future bookings of customers, when airlines collapse.

These recommendations are designed to assist repatriation in the event of an airline's insolvency, without the need for government intervention and without a huge cost to tax payers. Stakeholders were encouraged to respond to the recommendations as part of the ongoing [Consultation on Aviation 2050](#), which closed on 20 June 2019.³ Detailed information about the background to the Review and its recommendations is provided in a separate Library briefing paper, "[Airline Insolvency Review](#)" (CBP 8722).

The Government has yet to publish a formal response to the Review's final report. However, on 25 September, in response to questions about the collapse of Thomas Cook, the Secretary of State for Transport, Grant Shapps, told the House that the Government would be looking at the reforms proposed by the review. In a subsequent letter to Lilian Greenwood, Chair of the Transport Committee, the Secretary of State wrote that he was determined to bring in a better system for dealing with airline insolvency and repatriation.⁴ The Queen's Speech delivered on 14 October 2019 included proposals for legislation on airline insolvency.⁵

² Department for Transport, "[Airline Insolvency Review – Final Report](#)", 9 May 2019, [online] (accessed 14 May 2019)

³ HM Government, "[Aviation 2050 – The Future of UK Aviation – A Consultation](#)", CM 9714, December 2018, [online] (accessed 14 May 2019)

⁴ Department for Transport, [letter from the Secretary of State, the Rt.Hon. Grant Shapps to Lilian Greenwood MP, Chair of the Transport Committee](#), dated 11 October 2019 [online] (accessed 29 October 2019)

⁵ Prime Minister's Office, [The Queen's Speech and associated background briefing](#), 14 October 2019, [online] (accessed 1 November 2019)

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