



Travel law: proposed changes to ATOL

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The Air Travel Organisers' Licensing (ATOL) scheme, introduced in the 1970s, is managed by the CAA. Currently, it protects those buying flight inclusive package holidays and certain flights against the insolvency of their tour operator. In recent years, the market for holidays has changed significantly with the emergence of low cost carriers and the use of the internet to book holidays. As a result many consumers now book holidays that appear to them to be packages, but are, in fact, sold with either limited, or no financial protection.

On 3 February 2011, Theresa Villiers, Minister for Aviation, announced the Government's 'in principle' decision to reform the ATOL scheme in order to increase clarity and consumer protection. An additional aim is to make the Air Travel Trust Fund (ATTF) financially sustainable, allowing the existing Government guarantee to be withdrawn. A Department for Transport (DfT) consultation document was published in June 2011.

It is proposed by the government to introduce ATOL reform by way of secondary and primary legislation. New regulations to extend the ATOL scheme to 'Flight-Plus' sold by travel agents and tour operators are expected to come into force on 30 April 2012. A 'Flight-Plus' is a booking for a flight which is sold together with accommodation and/or car hire at the same time or within a day of each other. It is anticipated that a new ATOL certificate will be introduced at the same time.

The *Civil Aviation Bill* (clause 94) would provide the Secretary of State with the regulation-making powers needed to implement reforms to include holidays sold by airlines and 'agent for the consumer' arrangements in the ATOL scheme. The Bill had its Second Reading in the House of Commons on 30 January 2012, has now completed its Committee Stage and is expected to have its Report and Third Reading on 25 April 2012.

This note looks at the ATOL scheme, focusing on the weaknesses of the ATOL model and the deficit funding of the ATTF. It considers in detail the proposed ATOL reforms contained in secondary and primary legislation. Finally, it also considers EU initiatives for reform to travel law.

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1 Current position in the UK

1.1 The ATOL model

Statutory travel insolvency protection in the UK is based on two separate strands of legislation:

- The *Civil Aviation (Air Travel Organiser’s Licensing) Regulations 1995* (known as the ATOL Regulations) made under the Civil Aviation Act 1982; and
- The *Package Travel, Package Holidays and Package Tour Regulations 1992* (known as the Package Travel Regulations 1992) which implement the Package Travel Directive in the UK.

The ATOL scheme provides financial protection for consumers who purchase air package holidays in the event of a travel company going into insolvency. Affected passengers are entitled to a full refund if they are yet to travel or repatriation, after completing their holiday, if they have already reached their destination. The payment of refunds and repatriation expenditure due under ATOL is met by the Air Travel Trust Fund (ATTF), managed by the CAA.

The basis of the ATOL scheme is that any UK business selling a package holiday including a flight or a flight on its own where the ticket is not issued within 24 hours, has to have an

ATOL licence. However, exempt from this requirement are businesses acting as an ‘agent’ of an ATOL licensed business.

Before an ATOL licence is granted, each operator is examined by the CAA to ensure it is properly managed and financially sound. There is not a general requirement for ATOL licensed businesses to lodge a bond (i.e. a financial guarantee provided by a bank or insurance company) with the CAA, although this is required for businesses that are new to the ATOL scheme for their initial 4 years of trading and other businesses where the CAA consider that there is a high risk to the ATTF. However, it is a general requirement for each business to pay £2.50 per booking ATOL Protection Contribution (APC) into the pooled ATTF. If the travel operator’s business collapses, it is generally the ATTF that meets all repatriation and refund costs (except in the circumstances noted above where a bond is available).

The current ATOL scheme does not apply to airlines; they are specifically excluded from it under legislation.¹ Airline ‘agents’ are only exempt from the ATOL scheme if they meet the conditions of the ‘ticket provider’ exemption, essentially that they provide a valid ticket within 24 hours of receiving payment from a passenger.

That said, under the *Package Travel Directive* (see section 1.2 below), airlines are required to provide financial protection for the sale of package holidays. In practice, some airlines have decided to sell package holidays with ATOL protection through subsidiary companies, whilst others protect the holidays through private insurance arrangements or other permitted options under the Package Travel Directive. At present there is no requirement for any business to protect ‘Flight Plus’ holidays under the ATOL scheme, although as announced by the Government on 9 February 2012, tour operators and travel agents will be required to do so from 30 April 2012.

For the consumer, the ATOL logo on websites and in brochures signify that the business in question holds an ATOL licence and thus meets the CAA’s financial fitness criteria. This does not mean that every holiday they sell is an ATOL protected one. The ATOL holder may also sell holidays and travel arrangements that are not ATOL protected since these fall outside the (legal) scope of the scheme. In effect, it is for the consumer to check whether all of their holiday arrangements are covered by ATOL. The ATTF accounts for 2010/11 estimate that 18.5 million passengers were ATOL protected in that year. This estimate was based on APC payments received.

1.2 Package Travel, Package Holidays and Package Tour Regulations 1992

Almost 20 years after the creation of the ATOL scheme, the European Union passed the [EU Package Travel Directive \(90/314/EEC\)](#).² This Directive requires insolvency protection, and a range of other consumer protections, for all package holidays sold in the EU, both those including a flight and others. [The Package Travel Regulations 1992](#) implements the Directive in the UK. In holding an ATOL licence tour operators also meet the Directive’s insolvency protection requirements.

¹ Airlines are subject to Operating Licences issued under EU law

² [Council Directive 90/314/EEC](#) on Package Travel, Package Holidays and Package Tours

2 Why is reform necessary?

2.1 ATOL has not kept up with changes in the travel industry

The last decade has seen important changes in the UK market for holidays and flights. In particular, a move away from traditional package holidays in favour of independent travel. This has been facilitated by the emergence of low cost 'no frills' airlines and the use of the internet; holidays are often created by consumers buying the various component parts from a range of flight, accommodation and other options. This may involve purchasing from a single provider, or in many instances, through the use of linked websites (an airline website may, for instance, contain a link to an accommodation provider's site). Holidays created and sold in this way are often referred to as 'dynamic packaging', 'mix and match holidays', a 'DIY package' or 'tailor made holidays'. This development could not have been foreseen when either the ATOL scheme or the Package Travel Directive was agreed.

There is a strong case for reforming the ATOL scheme to better reflect today's holiday market, so that consumers can be clear when their holiday is protected. In addition, the scheme has operated with a deficit for some years (see below) and reform is deemed necessary if the scheme is ever to become self-sustainable.

The CAA has summarised the reasons why the current ATOL scheme is no longer adequate:

In recent years, evolving trade practices in the travel industry have resulted in more consumers booking holidays that appear to them to be packages, but are sold with either limited, or no financial protection.

In recent years, there have been significant changes in the way that holidays are sold, principally as a result of the Internet. The Regulations were written prior to these developments and in some instances are not appropriate to the industry as it operates today. This has resulted in confusion for the industry, and consumers, in determining whether holidays should be and are financially protected or not. Government believes that ATOL needs reform to provide clarity and to remove the risk of increasing financial detriment to consumers. The CAA agrees that achieving clarity for consumers must be the main aim of reforms, and there is widespread agreement to that approach from industry.

The problem consumers face is that they are able to buy both package holidays, which have full financial protection under the CAA's ATOL scheme, and holiday arrangements which are sold as separate components and which are not all ATOL protected, and in many instances they cannot tell the difference. In the latter sale the consumer may be offered some form of financial protection, but in most cases it will not be as comprehensive as ATOL and because the customer is buying separate components, if a supplier fails, the customer may lose part of their holiday and have to rebook, often at a higher price. In addition, in the event of an airline failure, holidaymakers may have to pay again for flights to get home, even though they may be able to claim back some of their additional expenditure if they are covered by a specific insurance policy. These issues bring fundamental uncertainty for the consumer in a market where significant sums are expended well in advance of travel.³

The CAA attempted to clarify the definition of a 'package holiday' through the UK court. They argued that 'dynamic' or 'mix and match' holidays should be considered a 'package' holiday

³ Civil Aviation Authority, [ATOL Reform –FAQ](#) [accessed 24 January 2012]

and so covered by the ATOL scheme. However, the court has ruled that holidays made up of components sold at the same time, but separately, are not package holidays.⁴

In addition, holidays purchased on an ‘agent for the consumer’ basis may also be outside the ATOL scheme. Traditionally, travel agents act as agent for the supplier, where they ‘sell’ holidays to customers on behalf of travel trade suppliers. However, travel agents can also sometimes act as an agent for the customer, where they technically ‘buy’ the holiday on behalf of a customer. This is an important distinction. ‘Agents for the consumer’ are not legally ‘making available’ flight accommodation, so they are currently not required to have an ATOL licence, or provide any other form of financial protection for holidays. However, it can be very difficult for consumers to know in what capacity a travel agent is acting, and this can create considerable detriment and uncertainty for consumers.

According to the Government, some travel companies are not fully aware of what acting as ‘agent for the consumer’ entails, or their obligations to explain to consumers the implications of this for ATOL protection.⁵ Consumers may believe that they are fully ATOL protected, only to discover in the small print of their holiday documents, or when they try to make a claim under the scheme, that they are not.⁶

The conclusion reached is that the ATOL scheme no longer completely fulfils its intended purpose; there are now many holidays which look like packages but do not fall under the legal definition and so do not carry protection. The proportion of holidays with ATOL protection has fallen; 97% of all leisure flights in 1997 were ATOL protected compared to less than 50% in 2010.⁷ According to the CAA, widespread customer confusion over protection arrangements has been apparent following recent travel company failures – making clear the need for reform to bring clarity.⁸ Further, the ATOL Regulations now impose burdens on package operators that some of their competitors are able to avoid.

The Government’s main aim in reforming the ATOL model is to introduce greater clarity, transparency and coherence for consumers. To make it easier for everyone to understand which holidays are covered, and to restore protection to what looks like a package holiday but now falls outside the legal definition. In addition, reform should make it possible for the ATOL scheme to become financially self-sustaining, enabling the Government to withdraw its guarantee.

2.2 Deficit funding of the Air Travel Trust Fund (ATTF)

From the 1990s onwards the ATTF has operated on deficit funding. Bonds provided by ATOL businesses as a condition of obtaining a licence were not sufficient to meet the full costs of tour operator failures. The ATTF could only meet its obligations through commercial credit facilities supported by a Government guarantee.

The introduction of the ATOL Protection Contribution (APC) at £1 per booking in April 2008 was intended to pay off the Fund’s deficit, which then stood at £21m, and so allow the

⁴ In July 2010, the Supreme Court decided not to hear the CAA’s appeal against the High Court’s decision in the Travel Republic case, relating to whether holiday elements sold separately but at the same time were package holidays and so required ATOL protection

⁵ Department for Transport, [ATOL Reform Consultation Document](#), 23 June 2011

⁶ It is a criminal offence under the *Consumer Protection from Unfair Trading Regulations 2008* for businesses to mislead consumers so they make a decision to buy something they otherwise may not have done, including by omitting relevant information

⁷ Ibid

⁸ Following the failure of XL Leisure Group in September 2008, see: [CAA FAQ](#)

Government guarantee of up to £30m to be phased out over 3 years. Continued income from the APC would then be used to meet all refund and repatriation costs in the future. In effect, the ATTF would become financially sustainable.

However, following the insolvency of XL Leisure Group in September 2008, the largest ever failure of an ATOL licensed business, the APC was increased to £2.50 per booking as from October 2009. At the same time, the government guarantee was increased and extended in duration. The guarantee is currently £42m, programmed to reduce to £30m in August 2011, and £20m in August 2012 before being withdrawn in August 2013.

The Fund's estimated deficit, as of March 2011 is £42m. The Government believes that the full cost of ATOL protection must be met by holidaymakers and the travel trade, with no on-going risk for taxpayers. The Government's position was given by Theresa Villiers in a Ministerial Statement in February 2011:

Reform is needed to secure the sustainability of the fund so it can continue to provide financial protection for consumers, while reducing and eventually eliminating the exposure to taxpayers. It is envisaged that the ATOL protection contribution (APC) paid into the fund will remain at £2.50 per holiday sale until the fund is restored to health.⁹

3 Consultations on proposals to reform the ATOL model

3.1 Government consultations

The previous Government consulted on options for ATOL reform as part of its '[Regulating Air Transport](#)' (RAT) consultation.¹⁰ The consultation proposed five measures for reforming the scope of the ATOL scheme with the main objective of providing greater clarity to consumers.¹¹

Many responses to the RAT consultation in 2009 were in favour of extending ATOL to airlines¹². The inconsistency of the current situation was highlighted: when selling an identical holiday, airlines are not required to provide ATOL protection, whilst travel agents and tour operators are. It was claimed that this created confusion for consumers and an unlevel playing field for holiday providers, as airlines did not face the costs of providing ATOL protection.¹³ It was claimed that bringing airlines into ATOL would provide a more consistent approach, where each business would pay the same APC for providing ATOL financial protection.¹⁴ However, not all consultation responses were in favour of including airline holiday sales in ATOL:

Some responses suggested that adequate protection was already available. Airlines protect their package holidays through subsidiary businesses that hold an ATOL licence or some other private insurance arrangement. There is also some financial protection available for individuals purchasing airline Flight-Plus sales, through scheduled airline failure insurance, credit card protection and voluntary repatriation

⁹ HC Deb 3 February 2011 cs.79-80WS

¹⁰ Department for Transport, '[Regulating Air Transport: consultation on proposals to update the regulatory framework for Aviation](#)', December 2009

¹¹ Department for Transport, '[Regulating Air Transport: Consultation on proposals to update the regulatory framework for aviation – summary of responses to Part 4: Reforming the scope of the ATOL scheme](#)'

¹² Department for Transport, '[Regulating Air Transport: Consultation on proposals to update the regulatory framework for aviation – summary of responses to Part 4: Reforming the scope of the ATOL scheme](#)'

¹³ Department for Transport, '[ATOL Reform Consultation Document](#)', 23 June 2011

¹⁴ Ibid

arrangements. However as there is currently no standard requirement for Flight-Plus protection, it can be problematic for consumers to work out what level of protection is provided with each holiday.¹⁵

On 3 February 2011, the Government announced its 'in principle' decision to reform the ATOL scheme.¹⁶ This 'in principle' decision was taken forward by the publication of the '[ATOL Reform Consultation](#)' document on 23 June 2011¹⁷, with attached [draft secondary legislation](#).¹⁸ The consultation ran for three months, from 23 June to 15 September 2011. The document is in two parts: short-term reforms to the ATOL scheme that can be implemented by new secondary legislation; and longer term reforms where new primary legislation would be needed.¹⁹

New regulations to extend the ATOL scheme to 'Flight-Plus' sold by travel agents and tour operators are expected to come into force on 30 April 2012. A 'Flight-Plus' is a booking for a flight which is sold together with accommodation and/or car hire at the same time or within a day of each other. It is anticipated that a new ATOL certificate will be introduced at the same time.

The *Civil Aviation Bill* (clause 94) would provide the Secretary of State with the regulation-making powers needed to implement reforms to include holidays sold by airlines and 'agent for the consumer' arrangements in the ATOL scheme. (See section 4 below).

3.2 Transport Committee Inquiry

After the publication of the Transport Committee's report on the draft Civil Aviation Bill in January 2012, the Committee held a short inquiry into the proposed ATOL reforms which were published after the draft Bill. The Committee invited written evidence; it also took oral evidence from various stakeholders on 31 January 2012 and from Theresa Villiers MP, Minister for State, and Kate Jennings, Head of Aviation Policy, Department for Transport, on 22 February 2012. The Committee's report on ATOL is expected to be published on 30 April 2012.

4 New secondary legislation

In respect of secondary legislation, the Government intends to extend the ATOL scheme to 'Flight-Plus' holidays (i.e. holidays which resemble but are not 'package holidays' as currently legally defined under EU law). This would require tour operators and travel agents who are selling 'Flight-Plus' to have an ATOL licence or belong to a consortium organisation or approved body which holds an ATOL licence on behalf of its members. A 'Flight-Plus holiday would include the following elements:

- a flight out of the UK, or an inbound flight where the outbound trip from the UK was not by air (return flights would also be protected as part of the Flight-Plus where applicable); and
- hotel (or other) accommodation and/or car hire, both outside the UK and supplied under the same contract as or in connection with the flight; and

¹⁵ Department for Transport, '[Regulating Air Transport: Consultation on proposals to update the regulatory framework for aviation – summary of responses to Part 4: Reforming the scope of the ATOL scheme](#)'

¹⁶ HC Deb 3 December 2011 c.s56-57WS

¹⁷ Department for Transport, '[ATOL Reform Consultation Document](#)', 23 June 2011

¹⁸ [Draft Civil Aviation \(Air Travel Organisers' Licensing\) Regulations 2011](#), Draft date 15 June 2011

¹⁹ A CAA document, outlining how ATOL policies and procedures would need to change to incorporate the proposed short and long term reforms, was also annexed to the consultation document

- where overnight accommodation is not included (that is where the Flight-Plus comprises a flight and car hire) the arrangements must cover more than 24 hours
- in order to form part of a Flight-Plus, the various elements of a holiday such as hotel accommodation, car hire or other tourist services must be requested by a consumer either the day before, on the same day, or the day after the flight was requested

Ultimately, the legal definition of a Flight-Plus holiday sold by travel agents will depend on what a consumer requests and not what a retailer makes available. Any firm selling this type of Flight Plus holiday would be required to obtain an ATOL. They will also be required to pay the £2.50 APC for the booking to guarantee their customers' protection against their failure. It has been predicted that the collection of this additional APCs should help the ATOL scheme become financially self-sustaining within three years.²⁰

A further requirement is that every consumer booking an ATOL protected holiday (i.e. a package and Flight-Plus) should receive an ATOL Certificate at the point of purchase, confirming their right to a refund, replacement or repatriation as appropriate should their travel company fail.²¹

It was originally proposed that new regulations to bring Flight-Plus holidays sold by travel agents and tour operators into the ATOL scheme would come into force on 1 January 2012, in time for the peak booking season of January and February for summer 2012 holidays.²² However, on 25 October 2011, the Minister announced that the date would be postponed to April 2012 in order to give the industry enough time to respond to these new consumer protection requirements.²³ It is anticipated that the new ATOL certificate will come into force at the same time as the new regulations.²⁴

5 New primary legislation - Civil Aviation Bill

5.1 Clause 94 – the ATOL provisions

The purpose of clause 94 of the Bill is to bring airlines and 'agent for the consumer' transactions into the scope of the ATOL scheme.

Clause 94 of the Bill amends section 71 of the CAA 1982 to broaden the Secretary of State's powers to regulate the provision of flight accommodation, the legal basis for the ATOL scheme.²⁵ The amendments enable the Secretary of State to make regulations requiring airlines to hold and act in accordance with an ATOL licence when making available flight accommodation except where they are doing so on a flight-only basis on air-craft which they operate. For the purposes of this clause, 'flight accommodation' is taken to mean accommodation for the carriage of persons on flights in any part of the world. In effect, all airline package holiday and Flight-Plus sales are to be ATOL protected. However, the

²⁰ Department for Transport, '[ATOL Reform Consultation Document](#)', 23 June 2011

²¹ The proposed ATOL certificate would replace the current ATOL receipt and ATOL confirmation invoice

²² [Written Statement by Theresa Villiers](#), Minister of State for Transport, 23 June 2011

²³ [Written statement by Theresa Villiers](#), Minister of State for Transport, 25 October 2011

²⁴ On 14 November 2011 the CAA published an Information Paper for industry about how proposed reforms to the ATOL scheme, which provides financial protection for holidaymakers, could be enacted by the regulator when they come into force next year, [CAA publishes more information about ATOL reform plans](#)

²⁵ Section 94(5) of the Bill

Government has also stated that such a step would only be taken following full consultation with stakeholders including an impact assessment.²⁶

The amendments also enable the making of regulations requiring businesses acting as an ‘agent’ for another person (i.e. a consumer) in procuring flight accommodation to be licensed, unless exempted by the regulations. This would provide a greater level of consumer financial protection and clarity by ensuring that all package holidays by air and Flight-Plus holidays sold by or purchased through travel agents and tour operators are financially protected by the ATOL scheme.

In addition, clause 94 further amends section 71 of the CCA 1982 by adding a power for the Secretary of State to make regulations imposing statutory obligations on licence holders and conferring rights of action for contravention of those regulations, as well as imposing criminal sanctions for their breach.²⁷

As a tidying-up exercise, clause 94 also removes elements of the current regulation-making power that are no-longer required.

Taken as a whole, clause 94 enables the inclusion of holiday sales by airlines and ‘agent for the consumer’ transactions into the scope of the ATOL scheme. In so doing, the aim is to improve consumer financial protection and ensure a fair and workable solution for the travel industry.

5.2 Progress of the Bill through Parliament

Second Reading

The Second Reading of the Civil Aviation Bill took place in the House of Commons on 30 January 2012. In respect of the ATOL provisions of the Bill, the Secretary of State for Transport, Justine Greening, explained that their purpose was to widen the Secretary of State’s powers so that holidays sold by airlines or arranged on an ‘agent for the consumer’ basis could be included in the ATOL scheme, but confirmed that such a step would only be taken following full consultation with stakeholders.

Maria Eagle, the Shadow Secretary of State for Transport, recognised that there was a strong case for reforming the ATOL scheme in order to broaden consumer protection and to better reflect today’s holiday market. However, questions were asked by other Members about why the Government was not going further, by giving ATOL protection to all people on all flights.²⁸ In response, Justine Greening said that the Government’s proposals were measured; would increase the number of customers that were ATOL protected; and would make the ATOL scheme more financially sustainable in the longer term.²⁹ Questions were also raised about the timing and level of scrutiny of the Bill, and the fact that the ATOL clauses were only introduced after the Transport Committee had considered the Bill in draft form.³⁰

²⁶ HC Deb 19 January 2012 c.46WS

²⁷ On summary conviction, a fine of the statutory maximum; on conviction on indictment, a fine and imprisonment for a term not exceeding 2 years

²⁸ HC Deb 30 January 2012 c.571

²⁹ Ibid

³⁰ HC Deb 30 January 2012 c. 586

Following the Second Reading debate, the House passed a carry-over motion which would enable scrutiny of the Bill to continue into the next session of Parliament.³¹

Public Bill Committee Stage

Taking the Bill as a whole, the Committee received nine written memoranda and took oral evidence from seventeen witnesses representing the aviation industry, environmental, freight and consumer interests, including the Minister for Transport, Theresa Villiers MP.³² During questioning of witnesses, the Public Bill Committee (PBC) focused on the issues that would be of most concern during their scrutiny of the Bill, including ATOL.³³

In Committee, there was broad cross-party support for clause 94 of the Bill and the proposal to extend ATOL protections to more consumers.³⁴ Amendment 83 (taken with amendments 71 and 72 all tabled by the Opposition) sought to bring all flight-only sales into the ATOL scheme without the need to wait for secondary legislation. However, Theresa Villiers MP, Minister for State, rejected the amendment, arguing that the issue needed to be fully considered:

Requiring the Secretary of State to make new ATOL regulations regardless of the outcome of the consultation or the results of an impact assessment would not be appropriate. It is important that those matters are fully considered before a decision is taken to go ahead with secondary legislation.

The permissive power for the Secretary of State to make ATOL regulations in the Civil Aviation Act 1982 appears to have worked reasonably well over the past 30 years in allowing the scheme to be amended as and when necessary. It would be difficult to bring airlines in directly via primary legislation without potentially having to repeal the existing ATOL secondary legislation and putting everything in a Bill. It would also mean that updating ATOL legislation in the future could be made more difficult, because more of it would be hard-coded into primary legislation. This is why we have stuck with how ATOL is currently delivered, with permissive powers in primary legislation followed up by decisions in secondary legislation.³⁵

Amendments 71 and 72 were to probe when secondary legislation might be brought in so that airlines are incorporated into the ATOL scheme, and to probe if new regulations to extend the ATOL scheme to 'flight-plus' were still scheduled to be introduced in April 2012.

The Minister confirmed that should clause 94 become law, she would expect to consult in 2013 on new draft regulations to bring airlines into the scope of the ATOL scheme. The Minister also confirmed that the Government expects to bring secondary legislation into force on 30 April 2012 to bring 'flight-plus' holidays sold by travel agents into ATOL. From 1 October 2012, consumers will also get a standardised ATOL certificate when they buy a protected holiday or flight. In the interim period 30 April and 1 October 2012 consumers should still be informed if they are ATOL protected. The amendment was withdrawn.

The Civil Aviation Bill is expected to have Report and Third Reading on 25 April 2012 and then pass to the House of Lords.

³¹ [HC Deb 30 January 2012, c647](#)

³² Memoranda available to view on the [Parliament website](#) [accessed 5 April 2012]

³³ [PBC 21-23 February 2012, cc1-88](#)

³⁴ PBC 13 March 2012 c324

³⁵ PBC 13 March 2012 c325

6 EU initiatives for reform

Two closely inter-related EU initiatives are relevant to how the ATOL scheme may be reformed in the longer term:

- the review of the *Package Travel Directive*³⁶; and
- options for airline insolvency protection

The Package Travel Directive is currently under review as part of the European Commission's [Review of the Consumer Acquis](#). In 2007 the Commission published a [Commission Working Document](#), which set out the main regulatory problems in the area of package travel and to consult stakeholders on issues related to the Directive.

The consultation showed strong support for the Directive's revision. It was recognised that the legal framework is not well suited to regulating the current market for package holidays, in particular, the emergence of 'dynamic packages', has meant it may not be clear what holidays the Directive applies to. The outcome of the consultation is presented in this [summary of responses](#).

In January 2009 the Commission initiated a study [on Consumer Detriment in the area of Dynamic Packages](#)'. Against this background, the Commission launched a public consultation on the revision of the Package Travel Directive in November 2009. While the consultation in 2007 sought to identify the problems with the existing Directive, this consultation focused on possible ways of solving the main problems with the existing package travel rules. It also aimed to quantify the impact of various possible legislative options. The outcome of the consultation is presented in this [summary of responses](#).

The Commission is now developing policy options. Momentum appears to be behind reform and broadening of the scope of the Directive. EU consumer research indicates consumer desire for air ticket sales to be brought into the protection regime. The Commission is particularly mindful of the fact that the [Consumer Rights Directive](#), adopted on 10 October 2011, does not include holiday travel.³⁷ This new Directive will lead to different levels of protection between customers booking package holidays and those booking other forms of travel arrangements.

The Commission is also looking at whether to introduce insolvency protection to consumers in relation to sales of all flight tickets, including those that aren't sold as part of a package but are sold directly from airlines. According to the DfT, this would go further than the current ATOL scheme and the proposed reforms which only protect some 'Flight-Only' tickets bought from third parties. The Commission is also reviewing passengers' rights as set out in the [Denied Boarding and Cancellation Regulations](#). It has initiated two studies on this subject.³⁸

In terms of a timetable, proposals for a revised Package Travel Directive are expected by late 2012. It's understood that the Impact Assessment Board will consider proposals alongside the Airline Insolvency proposals (i.e. coordination with DG MOVE on air passenger rights). This would be followed by the drafting and committee process with potentially a new directive being agreed in 2013/14.

³⁶ [Council Directive 90/314/EEC](#) on Package Travel, Package Holidays and Package Tours

³⁷ [Directive 2011/83/EU](#) - once implemented, consumers across the EU will have uniform rights to withdraw from online and distance purchases under new consumer rights laws that are required to be implemented in all Member States before 13 December 2013

The DfT has said that while the expected proposals to revise the Directive may cover similar ground to the options for ATOL reform, any proposals published by the Commission would be unlikely to be agreed and transposed into UK law before 2014 at the earliest. The Government believes that it cannot wait until then to address today's problems with the ATOL scheme in terms of its finances and the potential detrimental effects on consumers.³⁹

³⁸ Department for Transport, '*ATOL Reform Consultation Document*', 23 June 2011

³⁹ Ibid