

Modernising consumer protection in the package  
travel sector Consultation on Air Travel Organisers  
Licence changes

Department of Transport

Chartered Trading Standards Institute response

23rd November 2016

## **About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website ( [www.businesscompanion.info](http://www.businesscompanion.info) ).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme ( [www.tradingstandards.uk/advice/ConsumerCodes.cfm](http://www.tradingstandards.uk/advice/ConsumerCodes.cfm) ).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 46% in their budgets since 2010 and staff numbers have fallen by 53% in the same period.***  
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## Modernising consumer protection in the Package Travel Sector

### Executive Summary

1. CTSI believe the scope of Air Travel Organisers Licence (ATOL) should be aligned with the PTD 2015, so that ATOL protects eligible flight sales made by businesses that are established in the UK, as compared to the current approach where it applies only to eligible flight sales made available in the UK. This could allow ATOL businesses to trade across the EU, without needing to obtain different insolvency protection for non UK sales.
2. CTSI have discussed the need to introduce a single register where all package operators (flight inclusive and non-flight inclusive) have to record the insolvency protection that they have in place. Trading Standards, ABTA and the Department for Transport agree that if this option was pursued then it would need to be a compulsory list, with penalties for non-compliance.
3. CTSI would like to see total consumer transparency, by including all flight-only sales under the ATOL regime.

### CTSI response

The Chartered Trading Standards Institute (CTSI) welcome the opportunity to respond to the Department for Transport's consultation on the Air Travel Organisers Licence (ATOL) changes ahead of the implementation of the 2015, EU Package Travel Directive (PTD).

CTSI are aware that the implementation of the PTD will require a two stage process. The ATOL changes consultation will be followed by the proposals for implementing the PTD through updating the current Package Travel Regulations of 1992.

CTSI have always had a positive relationship with the ATOL regulators (the Civil Aviation Authority) as the current ATOL licensing scheme ensures only financially sound companies could become tour operators selling package holidays including a flight. Trading Standards have enforced the Package Travel Regulations 1992 for the last 26 years and realise that the internet and budget airlines have changed the face of holidays since the 1992 Regulations. They feel that there is definitely a need to strengthen the law but unless there is a process of educating business, enforcers AND consumers there will be confusion, not certainty, as consumers enter into their biggest financial outlay, after house purchases.

At the end of October 2016 a survey (commissioned by ABTA) found that the most popular reason for choosing a package holiday is 'Having everything taken care of', selected by 73% of consumers, while last year's top reason, 'Best value option for price', has slipped to second place at 59%. This has added to enforcement concerns that unless there is a funded publicity campaign to clarify the issues for consumers, confusion will remain.

### CTSI response to the questions in the consultation document

*Question 1 - What are your views on the proposal to align the scope of the ATOL scheme so that it is consistent with the new definition of 'package' in PTD 2015? This will mean that any UK-established business that offers or sells a 'package' (as defined by PTD 2015), which includes a flight, will need to meet their insolvency protection obligations by holding an ATOL and complying with the scheme.*

CTSI consider that the scope of ATOL should be aligned with the PTD 2015, so that ATOL protects eligible flight sales made by businesses that are established in the UK, as compared to the current approach where it applies only to eligible flight sales made available in the UK. This could allow ATOL businesses to trade across the EU, without needing to obtain different

insolvency protection for non UK sales. In addition, CTSI consider that the ATOL scheme would continue to apply to non-EU businesses where they are selling into the UK. In addition, the ATOL Certificate, appropriately modified, should become a means of complying with the post-sale information requirements

CTSI have discussed the need to introduce a single register where all package operators (flight inclusive and non-flight inclusive) have to record the insolvency protection that they have in place. Trading Standards, ABTA and the Department for Transport agree that if this option was pursued then it would need to be a compulsory list, with penalties for non-compliance. This route would have the advantage of providing transparency to consumers as well as helping the UK to comply with the PTD, particularly Art 18 (4).

One additional point under this question, is that CTSI would like to see total consumer transparency, by including all flight-only sales under the ATOL regime.

In aligning the scope of the ATOL scheme to the PTD, CTSI agree that under the PTD, traditional package holidays including a flight are covered as well as combined travel services, for example dynamic booking, where the travel services are purchased from different traders through a linked online booking process (where there is a transfer of the traveller's name, email address and payment details)

CTSI recognise that regulation is necessary, not only to protect consumers, eliminate fraud and unfair trading, but also to eradicate businesses with criminal intent. The ATOL licencing scheme benefits from the requirement for business to meet strict financial regulation, which will always be of benefit to consumers.

In aligning the scheme to the new PTD, CTSI again reference the point that there should be a compulsory register of all operators selling package holidays.

*Question 2 - What would be the impacts on your business if Flight-Plus and agent for the consumer business models need to comply with the same terms as an ATOL flight-inclusive package?*

CTSI would like to see both elements compliant with ATOL licencing.

*Question 4 - Do you think businesses should be required to licence their LTA flight bookings and source their protection from the ATOL scheme (option a), or should protection be implemented through a market solution (option b), or through another mechanism entirely? Please explain the reasons for your preference.*

In the PTD it is clear that Linked Travel Arrangements (LTA's) provide less protection for consumers than package holidays. Unlike the current PTR's, the LTA "facilitator", must cover insolvency protection for payments they receive from travellers. This would not, however, cover all payments as a facilitator (for example Travel Agent) may still be trading but one of the linked travel arrangements it booked on behalf of the consumer (for example a hotel) goes into liquidation with the consumers payments being transferred previously to the hotel by the Travel Agent.

Repatriation is another issue. Unless the facilitator is an airline in an "online click-through" arrangement, the consumer will not benefit from any repatriation.

CTSI consider that businesses should be required to licence their "flight inclusive" LTA bookings and source their protection from the ATOL scheme. CTSI have long considered that this proposal could lead to a lack of consumer transparency but continue to state that the use of different coloured logo's or badges for the different schemes, coupled with a clear publicity campaign, would benefit the consumer. CTSI reiterate that this form of protection should be aligned to the requirement to introduce a compulsory list or register of those providing packages and LTA's.

*Question 5 - If LTA bookings are included in the ATOL scheme, do you think the less comprehensive protection they offer means that they should attract a different APC contribution rate, and should they be branded differently to ATOL? Please explain the reasons for your preference.*

As stated in the answer to Question 4, CTSI consider that there may be limited consumer confusion if there are clear colour coded badging or logo's to ensure that ATOL licencing loses none of its historical branding or protection.

*Question 6 - What do you think of the proposal to change the scope of ATOL from "place of sale" to "place of establishment" as outlined above? Please, include any views on whether it will encourage your business or others to establish in or out of the UK.*

CTSI feel it was inevitable that "mutual recognition" would be added into the PTD. What this means is that Member States in which operators were established will be responsible for ensuring insolvency measures were in place for all operators selling packages holidays. Consequently, under the PTR's instead of the law relating to "Place of Sale" it now will change to, "Place of Establishment". For the last 26 years the Package Travel Regulations (PTR's) have applied to package holidays sold or offered for sale in the UK (Regulation 3 of the PTR's) However, the new PTD talks of 'Place of Establishment' which is defined by the Services Directive (Directive 2006/123/EC) as being where the travel organiser's centre of activity / infrastructure for providing the services is based. So tour organisers who's place of establishment is outside the UK (but in another Member State) and who target UK consumers can, under the terms of the new PTD, comply with the insolvency provisions in their own Member State, which may not be comparable to the ATOL or PTR protection. By way of example, Trading Standards were powerless to act when a UK Company, LowCostHolidays, moved their Place of Establishment to Palma from Crawley, continuing to "target" online sales to UK consumers highlighting that they were complaint with the Spanish insolvency protection requirements upon moving. It was only when the Company collapsed earlier this year that the UK administrators of LowCostTravel Groups UK arm stated that the Company had collapsed with outstanding bookings of an estimated £50 million but that consumers would receive less than £10 each in compensation. It appears LowCostHolidays had 140,000 customers when it ceased trading. 77,000 of these were British but are unlikely to obtain any compensation as the Company moved their Registered Office to Palma back in 2013, complying with the Spanish and not the UK insolvency protection schemes as required in the UK Package Travel Regulations.

The real problem is the lack of transparency and confusion for consumers and business. This risk may be partly mitigated because organisers are required to state their geographical address in the pre-contractual information they must provide to consumers (The "Standard Information Form"). However, it could be an issue because the geographical address provided may not always reflect the actual place of establishment. Where this is the case, consumers may assume they are protected by the UK regime. So there is uncertainty regarding 'establishment' which will remain as CTSI agree with the DfT that unless European Courts or the Commission issue specific guidance enforcement will be compromised.

There are also legitimate concerns from CTSI, backed by ABTA, regarding the proposed responsibility for enforcing the new Directive against Organisers based outside the EU, but targeting package holiday sales within the EU, specifically the UK. Under the existing Package Travel Regulations, the UK have based enforcement on where the package holidays are sold or offered for sale. Under the new Directive it is proposed that responsibility for insolvency protection will be based upon the organisers established in the UK, rather than the holidays being sold in the UK. A major point in the consultation process concerns the Directive's requirement that organisers based outside the UK and the EU should comply with the insolvency provisions in the country they are targeting.

*Question 7 - What do you think of the proposal that an updated ATOL certificate should continue as a recognised way for ATOL holders to meet some of the after sale obligations? Please explain your reasoning*

CTSI want transparency for the consumer and already consider that the ATOL Certificate provides their clarity of information detailing insolvency protection. CTSI agree that the ATOL Certificate together with the ATOL Confirmation Invoice, appropriately modified or colour coded (for LTA's), should continue to be the recognised way for ATOL holders to meet their post-sale information obligations.

*Question 8 - What are your views on the proposal to exempt business to business sales from the ATOL scheme? Could you also please indicate whether your business currently sells business travel through a general agreement, and if yes whether your business also sells other transport services to consumers that will be in scope of PTD 2015?*

CTSI consider the proposal to exempt business to business travel bookings from the ATOL scheme, should be clarified for traders. It would appear that to be exempt there must be a general agreement or contract in place between the travel company and the buyer, outlining the terms of the business travel service over a period of time or a series of sales. This process will need clarification as it will mean that normal flight inclusive packages, which are purchased by a consumer themselves for business purposes, would continue to be within scope of the proposal and be covered under the ATOL scheme.

*Question 10 - What are your views or preferences on the options for improving financial sustainability of the fund or fairness in the scheme as outline above? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options that could achieve similar policy outcomes, but with lower impacts?*

CTSI consider that for consumers the current ATOL Protection Charge, flat rate system is the simplest system for consumers and business to understand and regulators to enforce.

*Question 11 - What are your views on the options for encouraging market involvement and commercialisation? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options?*

CTSI understand there are proposals to separate refunds and repatriations and their comment would be that there needs to be a clear and transparent system which if changed, will need appropriate publicity.

*Question 12 - What are your views on the financial impacts or benefits of streamlining the regulatory framework? Please explain your reasoning, including any particular views on a single set of regulations, a single regulator or moving to a single scheme covering both air packages and non-air packages*

Consumer transparency is paramount. CTSI consider that whilst consumers should be expected to take responsibility for their own decisions, they can only do so if the protection regime is easy to understand. CTSI members have, as stated above, been enforcing the PTR's for the last 26 years and have already considered, in the BEIS working party on the PTD, that the new Consumer Rights Act provides for fixed penalties for breaches of the legislation where businesses have deliberately misled the consumer. CTSI state that consideration should be given to a joint regulatory approach to enforcing the rules under the PTD, which will be of benefit to the current two regulators under the PTR's.

*Question 13 - Do you have any views on whether the ATOL scheme should: a. Continue to include certain Flight Only sales; b. remove Flight Only sales, without any mitigations; c. remove Flight Only, but only following the introduction of new mitigations; d. or be extended, potentially to offer repatriation protection on all seats (this might be optional)?*

CTSI agree that ALL UK originating air travel should be protected and extended to offer repatriation protection.

CTSI consider that if "Flight-only" protection was removed then this would represent huge consumer detriment and would again provide a lack of consumer transparency.

**Chartered Trading Standards Institute 23rd November 2016**