

AIR TRAVEL ORGANISERS' LICENSING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Air Travel Organisers' Licensing Bill 2017 as introduced in the House of Commons on 22 June 2017 (Bill 1).

- These Explanatory Notes have been prepared by the Department for Transport to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Air Travel Organisers' Licensing Bill 2017 is intended to modernise ATOL, the consumer protection scheme for package holidays that include a flight, allowing for UK businesses to trade across Europe more easily, and ensuring a wider body of consumers are protected. It will also provide an ability for the scheme to adapt to future trends, including changes that may be brought about as the United Kingdom leaves the European Union (EU).

Policy background

- 2 The policy background is explained separately in the commentary relating to each clause of the Bill.

Summary

- 3 The Bill comprises four clauses.

Legal background

- 4 The relevant legal background is explained (where relevant) in the policy background sections of these Notes.

Territorial extent and application

5 Clause 4 makes provision for extent.

Commentary on provisions of Bill

Chapter 1: Policy Background

- 6 The Bill amends the Secretary of State's existing powers to regulate the provision of flight accommodation. These powers are the basis of the Air Travel Organisers' Licence ("ATOL") scheme. The current ATOL scheme, managed by the Civil Aviation Authority ("the CAA"), applies to flight accommodation sold in the United Kingdom. It was set up in the 1970s to protect passengers purchasing seats on flights (mainly where these form part of a package holiday or more recently a "flight-plus" arrangement) in the event of insolvency. It protects over 20 million holiday-makers each year, and is one of the ways in which the United Kingdom provides mandatory protection under the European Package Travel Directive. It is necessary to update the ATOL scheme to respond to innovation in the travel market and to ensure the scheme is harmonised with an updated EU Package Travel Directive (2015), when it comes into force in 2018.
- 7 The amendments in this Bill will allow ATOL protection to extend to a broader range of holidays, and make it easier for United Kingdom businesses to sell flight arrangements covered by the new regulations seamlessly across Europe. This will enable the United Kingdom to comply with the Package Travel Directive obligations in the short term while retaining an ability to adapt the scheme as appropriate when the United Kingdom leaves the EU.
- 8 The amendments will also enable the structure of the ATOL scheme to respond more flexibly and effectively to these changes. They will update existing powers to enable separate trust arrangements to be set up for different classes of business model or risk, for example "Linked Travel Arrangements" (a looser combination of travel arrangements than a traditional package, generally booked online). The primary purpose of any new trust will still be consumer protection in relation to the sale of flight accommodation. A further amendment will ensure that the CAA's information powers are aligned with the evolving ATOL scheme, so that they are able to continue to manage and enforce the scheme effectively.
- 9 On 28 October 2016, the Department published a consultation document 'ATOL reform – modernising consumer protection'. <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>. This sought views on proposals to strengthen ATOL and align it with the Package Travel Directive (2015), through: 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 United Kingdom, including sales across the EEA; and potentially amending ATOL to cover emerging business practices regulated under the Directive, including Linked Travel Arrangements.
- 10 The Government published its response on 9 February 2017 and confirmed its intention to bring forward its proposals. Those proposals requiring primary legislation are provided for in this Bill. The consultation and Government response can be found at: <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>

Clause 1: Air travel organisers' licences

- 11 This clause amends section 71 of the Civil Aviation Act 1982 ("the 1982 Act") to enable regulations to be made covering the sale of flight accommodation by United Kingdom established organisers, elsewhere in the EEA. The making of such regulations will support the United Kingdom's

implementation of the Package Travel Directive 2015, which will need to be brought into force by July 2018. Once the Directive is in force, any business established in the United Kingdom and licensed under ATOL for sales within scope of the Directive, will no longer need to comply with the different insolvency protection rules of other EEA States, making cross-border trade easier.

- 12 This clause also inserts new subsection (1E) into section 71 of the 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.

Clause 2: Air Travel Trust

- 13 The Air Travel Trust is the trust arrangement first established by deed dated 5 January 2004 (“the 2004 deed”), under which contributions from ATOL holders are held and CAA trustees are given powers to compensate consumers. The 2004 deed permits amendment of its provisions by the Secretary of State. This clause amends section 71A of the 1982 Act to distinguish the existing and continuing flexibility of the current Air Travel Trust from wholly new qualifying trusts that may be enabled by subsection (2).
- 14 Subsection (2) enables 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 will still be consumer protection in relation to the sale of flight accommodation. Since 2004, the market for flight sales has become increasingly diverse. Both CAA experience and feedback from the consultation on modernising ATOL suggests that in future it may be necessary to enter into separate trust arrangements for different classes of business model, for example “Linked Travel Arrangements”. This will give greater transparency for business and consumers, particularly if there are significant differences between the trust arrangements for different classes of consumer or contributor.
- 15 Subsections (3) and (4) amend section 102 and Schedule 13 of the 1982 Act to provide that the affirmative resolution procedure will apply should the Secretary of State propose to make regulations under the new subsection.

Clause 3: Provision of information

- 16 This clause amends section 84(1) of the Civil Aviation Act 1982, which sets out the powers under which CAA are able to request information from persons. Subsection (2) of this clause extends the scope of the power to request information to ensure it matches the new scope of the power to make regulations introduced by clause 1. Subsection (3) ensures that the information power applies to any airlines selling ATOL licensable holidays in the United Kingdom (and airlines established in the United Kingdom selling such holidays in the European Economic Area), that are not covered by section 84(1)(a). For example, subsection (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 CAA mentioned in section 84(1)(a).

Commencement

17 Clause 4 provides for commencement of the provisions in the Bill. With the exception of clause 3, the provisions of this Bill come into force on the day on which the Bill is passed. Clause 3 will come into force on the day or days appointed by the Secretary of State by regulations.

Financial implications of the Bill

18 Full details of the financial implications of the Bill are set out in the summary Cover Impact Assessment. The cumulative net present value of the policies contained in the Bill is approximately £-15.5 million. Further details of the costs and benefits of individual provisions are set out in more detail in the published impact assessments. The summary Impact Assessment for the Bill and individual Impact Assessments can be found at <https://www.gov.uk/government/publications>.

Parliamentary approval for financial costs or for charges imposed

19 There is one provision in the Bill that has tax implications in relation to the extension of the power enabling ATOL to apply to cross-border sales by United Kingdom businesses (the ATOL scheme is funded by a levy, which was classified as a tax in 2012). Treasury Ministers have approved the ATOL proposals to include powers in this Bill enabling appropriate tax provisions to be made in relation to the transfers provided for in the Bill.

Compatibility with the European Convention on Human Rights

20 The Government considers that the Air Travel Organisers' Licensing Bill is compatible with the European Convention on Human Rights ("ECHR"). Accordingly, the Right Honourable Chris Grayling MP, Secretary of State for Transport, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

Related documents

21 The following documents are relevant to the Bill and can be read at the stated locations:

- Individual Policy Impact Assessments and Regulatory Triage Assessments
- Delegated Powers Memorandum

Annex A - Territorial extent and application in the United Kingdom

All clauses of this Bill apply to England and Wales, Scotland and Northern Ireland. ¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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