

# AIR TRAVEL ORGANISERS' LICENSING BILL

## DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR TRANSPORT

### Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Air Travel Organisers' Bill ("the Bill") introduced in the House of Commons on 22 June 2017. The memorandum has been prepared by the Department for Transport ("the Department"). It identifies the provisions of the Bill that confer powers to make delegated legislation and explains in each case why the power has been taken and explains the nature of, and reason for, the procedure selected.
2. The description of each power appears in the order in which it is contained in the Bill (schedules are addressed at the same time as the clauses which give effect to them).
3. The Bill contains three provisions containing delegated powers, one of which is a Henry VIII power.<sup>1</sup>
4. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

### Overview of the Bill

5. The Bill contains four clauses. In summary, the Bill will provide for:

#### Air Travel Organisers' Licences ("ATOL")

This provision will amend existing powers, to ensure ATOL consumer protection keeps pace with innovation in the travel market. It implements EU obligations under the Package Travel Directive 2015 by extending the geographical scope to allowing the Secretary of State to require United Kingdom companies to sell flight arrangements throughout Europe with ATOL protection, and providing flexibility for the Secretary of State to establish separate trust arrangements alongside the Air Travel Trust; this reflects the increasing diversity of business models and risk profiles in the travel market.

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<sup>1</sup> See clause 2.

## **Delegated Powers created by the Air Travel Organisers' Licensing Bill**

### **Clause 1: Air travel organisers' licences**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

*Parliamentary Procedure: Negative resolution*

#### Context and Purpose

6. The purpose of clause 1 is to extend the Secretary of State's existing powers to regulate the provision of flight accommodation which form the basis of the ATOL scheme. These powers are conferred by section 71 of the Civil Aviation Act 1982. Clause 1 extends the scope of the ATOL powers such that regulations can be made in respect of UK established businesses which are selling not only in the United Kingdom but across Europe. This will enable the Secretary of State to amend the ATOL scheme in line with the EU Package Travel Directive 2015.

#### Justification for taking the power

7. The extension to the power in section 71 of the Civil Aviation Act 1982 is required in order to enable the Secretary of State to make the changes to the ATOL scheme which will form one of the transposition measures for the Package Travel Directive 2015 which the UK is required to transpose by 1 January 2018. Section 2(2) of the European Communities Act 1972 cannot be relied on to make the proposed changes to the ATOL scheme because that power does not enable provision to be made in subordinate legislation imposing or increasing taxation. The proposed changes to the ATOL scheme include extension of the ATOL protection contribution which is classed as a tax.

#### Justification for the procedure

8. The ATOL regulations are currently made using the negative resolution procedure and it is considered that this procedure will continue to afford the appropriate level of scrutiny for these regulations.

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

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

*Parliamentary Procedure: Affirmative resolution*

#### Context and Purpose

9. Clause 2 creates a new power for the Secretary of State to make regulations to extend the definition of 'Air Travel Trust' in section 71A of the Civil Aviation Act 1982 to include one or more new qualifying trusts. The Air Travel Trust is the

trust arrangement first established by deed dated 5 January 2004 under which contributions from ATOL holders are held and trustees are given power to compensate consumers. The new power allows separate trust arrangements to be set up for different classes of business model and incorporated into the ATOL scheme. The primary purpose of any new trust will still be consumer protection in relation to the sale of flight accommodation. However, 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 (e.g. “Linked Travel Arrangements”<sup>2</sup>) as it may not be appropriate to use the same trust for all classes of risk.

#### Justification for taking the power

10. Having the Air Travel Trust limited to one named trust limits the Secretary of State’s ability to respond flexibly to changes in the market for flight sales. The new power will enable the Secretary of State to respond to changes in the market by having different trust arrangements for different classes of business model. This will provide an improved ability to manage different risks more effectively, and greater transparency for business and consumers.

#### Justification for the procedure

11. Regulations made under this new power would have the effect of extending the definition of ‘Air Travel Trust’ as provided for in section 71A of the Civil Aviation Act 1982. Section 71A(1) of that Act confers on the Secretary of State, a power to make regulations requiring those applying for licences under the ATOL scheme to make contributions to the Air Travel Trust. The Department therefore considers it appropriate for regulations changing the trust or trusts encompassed by the term ‘Air Travel Trust’ to be subject to the higher level of scrutiny afforded by the affirmative resolution procedure.

#### **Clause 4: Commencement**

12. Subsection (1) provides for Clause 3 of the Bill to come into force on such day as the Secretary of State may appoint by regulations. As is usual with such commencement powers, it is not subject to any Parliamentary procedure.

**Department for Transport**  
**14 July 2017**

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<sup>2</sup> This term is defined in article 3(5) of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements.