

AIR TRAVEL ORGANISERS' LICENSING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Air Travel Organisers' Licensing Bill as brought from the House of Commons on 12 July 2017 (HL Bill 58).

- 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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These Explanatory Notes relate to the Air Travel Organisers' Licensing Bill as brought from the House of Commons on 12 July 2017 (HL Bill 58)

Overview of the Bill

- 1 The Air Travel Organisers' Licensing (ATOL) Bill 2017 is intended to modernise the Air Travel Organisers' Licence ("ATOL") scheme, the consumer protection scheme for package holidays that include a flight. The proposed changes will allow for UK businesses to trade across Europe more easily, and ensure 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 This Bill amends the Secretary of State's existing powers to regulate the provision of flight accommodation, which is defined in section 71(5) of the Civil Aviation Act 1982 as accommodation for the carriage of passengers on flights in any part of the world. These powers are the basis of the 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) in the event of insolvency. It ensures that if an ATOL licensed company goes out of business, their customers are able to continue their holiday and return home, or are provided with a refund if they are yet to travel.
- 3 The ATOL scheme has also served an important purpose in implementing the European Package Travel Directive in the UK (Directive 90/314/EC, the "1990 Directive")¹. This Directive was agreed in 1990 and implemented through the UK's Package Travel Regulations in 1992². These regulations place an obligation on businesses to have insolvency protection in place if they are selling package holidays to UK consumers. The ATOL scheme acts as a method of compliance with this obligation.
- 4 It is necessary to update the ATOL scheme to respond to innovation in the travel market and to ensure the scheme is aligned with the updated EU Package Travel Directive (Directive 2015/2302/EU, the "2015 Directive"), when its measures come into force in 2018³. The 2015 Directive was agreed so that consumer protection kept pace with the new ways that people book holidays. The internet now accounts for around 75% of holiday bookings in the UK, providing increasing opportunities for consumers to book a package holiday or looser combinations of travel. Steps had already been taken in the UK to extend ATOL protection to online bookings which combined a flight and overseas accommodation or car hire (this is known as "ATOL Flight-Plus"). The 2015 Directive brings in similar protections across the EU, and also introduces protection to looser combinations of travel, such as Linked Travel Arrangements. Linked Travel Arrangements involve the combination of two different travel services purchased for the purpose of the same trip or holiday. However, unlike packages, they involve the separate selection and payment of each travel service and separate contracts with the individual travel service providers. The 2015 Directive also clarifies that Member States must recognise the insolvency protection regimes in other Member States, so that domestic schemes do not act as an obstacle to cross border trade.

¹ Directive (90/314/EEC) on package travel, package holidays and package tours:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0314:en:HTML>

² The Package Travel, Package Holidays and Package Tours Regulations 1992:
<http://www.legislation.gov.uk/uksi/1992/3288/contents/made>

³ Directive (2015/2302/EU) on package travel and linked travel arrangements:
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:326:TOC>

- 5 This Bill updates the existing powers of the ATOL scheme to reflect the changes in the 2015 Directive. 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 across Europe. This will enable the United Kingdom to comply with the 2015 Directive obligations in the immediate term while retaining an ability to adapt the ATOL scheme as appropriate when the United Kingdom leaves the EU.
- 6 The Bill also makes provision to alter the structure of the ATOL scheme. The Bill 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. The primary purpose of any new trust will continue to be consumer protection in relation to the sale of flight accommodation.
- 7 The Bill also makes a further amendment to ensure that the CAA's powers to require information from businesses are aligned with the evolving ATOL scheme, so that they are able to continue to manage and enforce the scheme effectively.

Consultation

- 8 On 28 October 2016, the Department published a consultation document, entitled 'ATOL reform – modernising consumer protection'.⁴ This sought views on proposals to strengthen the ATOL scheme and align it with the 2015 Directive, through:
 - a. ensuring that the ATOL scheme is consistent with the new definition of "package" in the 2015 Directive;
 - b. ensuring that the ATOL scheme is consistent with the scope of the 2015 Directive, so that it can protect all eligible flight sales made by businesses established in the United Kingdom, including sales across the European Economic Area (EEA); and
 - c. potentially amending the ATOL scheme to cover emerging business practices regulated under the 2015 Directive, including Linked Travel Arrangements.
- 9 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.

Legal background

- 10 The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012, together with the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, which were made by the Secretary of State under sections 71 and 71A of the Civil Aviation Act 1982 respectively, set the legal framework for the ATOL scheme. The scheme applies to package holidays including a flight, to a Flight-plus arrangement (see above) and to some flight-only sales.
- 11 The air travel organiser and/or retailer ("organisers") of a package is required under the 1990 Directive to provide sufficient evidence of security for the refund of money paid over to the consumer and for the repatriation of the consumer in the event of insolvency. The Package Travel, Package Holidays and Package Tours Regulations 1992 which apply to all package holidays, not just those by air, provide for various means of fulfilling this requirement including bonding, obtaining insurance and organising a trust account. These Regulations recognise that the requirement for organisers under the 1990 Directive is fulfilled where a package is covered by the ATOL scheme.

⁴ <https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>

- 12 The 2015 Directive widens the definition of a holiday “package”, extending the reach of the insolvency protection requirement. It also introduces limited insolvency protection for Linked Travel Arrangements and shifts the focus of insolvency protection from place of sale to place of establishment, with each Member State responsible for ensuring that appropriate insolvency protection is provided by businesses established in their territory.
- 13 This Bill amends the powers in the Civil Aviation Act 1982, under which the ATOL scheme is regulated, to enable it to be aligned with the changes outlined above.

Territorial extent and application

- 14 Clause 4 makes provision for extent. The Bill’s provisions would apply to the whole of UK and are reserved matters and no legislative consent motions are needed.

Commentary on provisions of Bill

Clause 1: Air travel organisers’ licences

- 15 This clause amends Section 71 of the Civil Aviation Act 1982 (“the 1982 Act”) to enable regulations to be made protecting 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 2015 Directive, which will need to be brought into force by July 2018. Once the 2015 Directive is in force, any business established in the United Kingdom and licensed under ATOL for sales within scope of the 2015 Directive, will no longer need to comply with the different insolvency protection rules of other EEA States, making cross-border trade easier.
- 16 This Clause also inserts a 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

- 17 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 Air Travel Trust from wholly new qualifying trusts that may be enabled by subsection (2).
- 18 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 the ATOL scheme 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 businesses and consumers, particularly if there are significant differences between the trust arrangements for different classes of consumer or contributor.
- 19 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 subsection (2).

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Clause 3: Provision of information

- 20 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. These powers are used by CAA to determine whether a person or business needs to hold an ATOL licence. 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 EEA), 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 licences granted by the CAA mentioned in Section 84(1)(a).

Commencement

- 21 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

- 22 The cumulative net present value of the policies contained in the Bill is approximately £15.5 million over a period of 10 years. The main impacts identified include familiarisation costs to business, changes in licensing and renewal costs and a change in ATOL Protection contribution payments/receipts. Further details of the costs and benefits of individual provisions are set out in more detail in the published impact assessments.

Parliamentary approval for financial costs or for charges imposed

- 23 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

- 24 The Government considers that the Air Travel Organisers' Licensing Bill is compatible with the European Convention on Human Rights ("ECHR"). Accordingly, Lord Callanan, Parliamentary Under Secretary of State for Transport, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

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Related documents

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

- The consultation and Government response can be found at:
<https://www.gov.uk/government/consultations/atol-reform-modernising-consumer-protection>.
- The summary Impact Assessment for the Bill and individual Impact Assessments can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590723/atol-consultation-response-impact-assessment.pdf.
- A copy of the Delegated Powers Memorandum can be found in the Printed Paper Office.

Annex A – Territorial extent and application in the United Kingdom

All clauses of this Bill apply to England and Wales, Scotland and Northern Ireland.⁵

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

⁵ 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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