



ABTA response to the Department for Transport Consultation

Modernising consumer protection in the package travel sector

Consultation on ATOL changes

October 2016

About ABTA

This response is submitted on behalf of the membership of ABTA – The Travel Association. ABTA was founded in 1950 and is the largest travel trade association in the UK, with almost 1,200 members and over 4,400 retail outlets and principal offices. Our Members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel, through to publicly listed companies and household names.

ABTA Members provide 90% of the package holidays sold in the UK, with Members also selling millions of independent travel arrangements. Annually, ABTA Members' turnover is in excess of £33.07 billion. ABTA's focus is ensuring that Members can operate their businesses in a sustainable and successful manner, enabling their customers to travel with confidence.

ABTA is a BEIS 'Approved Body' under the 1992 Package Travel Regulations which, along with the ATOL Regulations, implement the 1990 Package Travel Directive (PTD) and the 1992 Package Travel Regulations (1992). ABTA is the largest of the three BEIS Approved Bodies, the others being the Confederation of Passenger Transport (CPT) Bonded Coach Holidays (BCH) scheme and the Association of Bonded Tour Operators Trust (ABTOT). ABTA has absorbed the Federation of Tour Operators (FTO) Trust Fund and the majority of the Members of the Passenger Shipping Association (PSA) and Association of Independent Tour Operators (AITO) Approved Body operations.

ABTA protects some £2.6 billion of turnover through its financial protection scheme for the 441 Members who undertake non-licensable package, and non-package travel arrangements as principal.

ABTA also administers an arrangement for some 181 Members who utilise the ABTA-ATOL Joint Administration Scheme (JAS) in order to utilise their ATOL licences. This agreement was put in place following the 2012 ATOL Regulations in order to provide a solution for Members requiring an ATOL. The scheme allows Members to deal with one organisation (ABTA) in relation to their licensable (ATOL) and non-licensable obligations. Where security is required, a single combined requirement is achieved and provided to ABTA.

ABTA also operates a scheme of financial protection in relation to retail agents under its own rules. The purpose of the scheme first and foremost, is to provide pipeline protection to ABTA's tour operator Members in the event of an ABTA travel agent failure, so that consumer payments reach their tour

operator and the consumer may travel without difficulty. The scheme will also consider claims from consumers in the exceptional event that the agent has not booked the consumer's holiday, or in certain cases, where the customer's contract with the principal is unenforceable and the customer is otherwise likely to suffer a financial loss.

ABTA holds some £536 Million in financial security from Members in relation to its schemes of financial protection. This is generally in the form of Bonds and insurance instruments.

ABTA Insurance PCC Limited is a wholly owned subsidiary of ABTA and has provided the vehicle for the reserve fund required by virtue of Regulation 18 of the 1992 Package Travel Regulations since 1993, in the form of a captive insurance protected cell company. The total assets of ABTA Insurance are some £20 million and of the ABTA Group are £36 Million.

ABTA and the FTO have operated financial protection schemes for UK consumers since the late 1960s, before the ATOL scheme was introduced in the 1970s or the PTD/PTRs in the 1990s. ABTA is therefore the longest standing as well as a highly experienced financial protection organisation operating within the UK.

ABTA also operates a Code of Conduct for the protection of consumers with standards of conduct exceeding the legal minimums, which is monitored and enforced by a full time team within our Legal branch. The Code is overseen by a disciplinary Code of Conduct Committee, who have powers to reprimand, fine and terminate Membership. ABTA also works in times of international or destination crisis to support consumers, working with key stakeholders including the FCO Consular and Crisis teams.

ABTA's 1,168 Members comprise:

795 Members who act as a 'Principal', of which 654 hold ATOL licences. Within the 795 Members, 386 are also travel organisers within the scope of the 1992 Package Travel Regulations (PTRs) in relation to non-ATOL packages and utilise ABTA as their BEIS Approved Body under the PTRs.

751 Members who act as an 'Agent', of which 399 hold ATOL licences.

377 Members are dual Members, which operate both as Principal and Agent for different services, within the same legal entity, of which 350 hold ATOL licences.

1. Executive summary

- 1.1. ABTA welcomes the Department for Transport Consultation on ATOL changes – Modernising consumer protection in the package travel sector.
- 1.2. Travel is an industry which is uniquely dependent on consumers having confidence in their purchasing decisions. For this reason, the UK travel industry needs the UK Government to maintain a cost effective, compliant and sustainable regime for implementing the EU package travel regime.
- 1.3. There is currently a need for stability and continuity within the industry, given global geopolitical and economic uncertainties and the impact of the 'Brexit' process throughout the 2015 PTD implementation timeline. Reform is important and necessary, but significant changes must be carefully planned and phased in to avoid shocks to the system.

- 1.4. ABTA acknowledges the current challenges faced by DfT in planning and delivering the consultation and legislative process. However, ABTA is very concerned that this four-week consultation period is not adequate to fully and properly consult on some of the major issues within its scope. We are particularly concerned that, whilst the DfT Call for Evidence process commenced in 2013, and the final 2015 PTD text has been available since December 2015, the industry has been given just four weeks to submit views on many areas of the consultation that are dealing with longer term aspects of the reform process.
- 1.5. ABTA therefore recommends that all matters that are not critical to the preparation of primary legislation, which is required to be laid before Parliament early in 2017, should be included within a full three-month consultation as early as possible in 2017. This would allow for a full consideration of the issues that then inform the implementing Regulations and longer term reform.
- 1.6. Given the overall 2015 PTD timeline requirement to implement the required Regulations by 1 January 2018 and the industry's need for planning certainty, ABTA strongly recommends that the full Consultation process in relation to implementation and the required Regulations is started as early as possible during 2017. That process should not wait for the completion of primary legislation before it starts.

2.0 Engagement with Members

- 2.1 ABTA has taken a number of steps to support Member participation in the Consultation and to inform our own response. The DfT Consultation was launched at close of business on Friday, 28 October.
- 2.2 An 'ABTA Today' email bulletin was sent to all Members on Monday, 31 October, highlighting the consultation and linking through to the DfT's consultation webpage.
- 2.3 An analysis paper for Members was prepared and sent to all Members on 3 November. In addition, the weekly 'ABTA Today' on this date carried the ATOL consultation as one of three headline stories and provided Members with the ABTA analysis to support their response.
- 2.4 A reminder email was sent to all Members after one week.
- 2.5 Members were consulted at a scheduled North Eastern Regional Meeting in Gateshead on 3 November.
- 2.6 The ABTA Policy Advisory Group of Members was specially convened and met on 8 November.
- 2.7 The Air Travel Insolvency Protection Advisory Committee (ATIPAC) meeting on 10 November received a presentation from the DfT to industry representatives.
- 2.8 Members were consulted at the scheduled Northern Ireland Regional Meeting on 15 November and received a presentation from the DfT.
- 2.9 The Federation of Tour Operators (FTO) Policy Group discussed the consultation on 16 November.
- 2.10 The ABTA Board met on 17 November and considered the Consultation.

2.11 Senior representatives of ABTA have attended the three DfT stakeholder workshops held in Manchester (9 November) and London (14 and 21 November).

3.0 Additional responses on the future of UK financial protection for holidays

3.1 ABTA calls for all aspects of the reform of the ATOL system that are not required to be settled now in the context of the need for primary legislation, to be taken forward in a full three-month consultation if they are to be included within the Regulations that will be required for 2018.

3.2 ABTA supports the Government's strategy of progressing the 2015 PTD implementation process as a priority given the requirement for implementation of Regulations by 1 January 2017 and the industry's need for certainty. However, many of the issues are too important and complex for effective consultation in a four week period.

3.3 This should include the resolution of questions around the inclusion of flight only and LTAs within ATOL; any initial reforms to the APC regime; the retention and function of ATOL certificates.

3.4 ABTA believes that consumer financial protection in the travel industry benefits consumers and businesses alike, with the Air Travel Organiser's Licensing scheme (ATOL) and the Package Travel Regulations (PTRs), playing a vital role in underpinning consumer confidence in the industry. The UK has had consumer financial protection schemes in place since the early 1970s, and ABTA would wish to place on record our continued support for the existence of consumer financial protection within the industry.

4.0 Opportunities arising from Brexit

4.1 ABTA's consultation with its Membership over the summer has shown a strong degree of support for the existing schemes of consumer financial protection within the UK.

4.2 However, once the UK has left the EU, should UK businesses no longer be subject to the rules of the EU internal market, or a specific or sector-led exemption be agreed, it could be possible to revise the UK's current system of financial and other protection for holidays.

4.3 We call on the DfT to include a review provision in the new legislative arrangements that would allow Government to act independently of any wider review process for EU related or originated legislation.

5.0 Responses to specific consultation questions

Section 1 – Strengthening ATOL protection in line with the Package Travel Directive 2015

5.1 DfT 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. Please explain your reasoning.

ABTA Response

- 5.1.1 ABTA supports the DfT's 'preferred' approach (Approach 2: Strengthening ATOL to be consistent with PTD 2015, at paragraph 21 of the Consultation document) to implement the Directive.
- 5.1.2 This support is on the basis that it is now too late to take forward the full reform of the ATOL scheme consulted on by the DfT in the 2013 Call for Evidence¹. With this in mind, we believe the current focus, in the time available, should now be on the effective implementation of the 2015 PTD.
- 5.1.3 ABTA believes that all holidays that include a flight (but not flight-only sales) should be regulated through the ATOL scheme. The ATOL licensing regime, through the resources of the CAA as a statutory regulator, is best placed, at this stage, to deliver the necessary protection for consumers.
- 5.1.4 ABTA believes that this should include both packages and LTAs, notwithstanding the concerns in relation to LTAs. Our reasoning is that to the extent that flight-related travel arrangements are required to be regulated, they should be regulated together, by one scheme. The consequence of doing otherwise would be to introduce another layer of confusion for consumers and businesses about the protection of monies in the travel sector.

5.2 DfT 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?

ABTA Response

- 5.2.1 ABTA has asked its Members to respond directly to the DfT on this question, which is an impact assessment question that only individual businesses can respond to.
- 5.2.2 ABTA notes that it believes, under current business models, the majority of current ATOL Flight Plus arrangements will be captured by the 2015 PTD as packages.
- 5.2.3 ABTA strongly believes that the so called 'agent for the consumer' business model is an avoidance mechanism that should be brought in to the scope of regulation.
- 5.2.4 If reference to 'the same terms' in the question simply means that those businesses have the same obligations and liabilities as a package travel organiser or linked travel arranger, then ABTA would agree that there should be equality of obligation. However, the costs of compliance (for example the cost of the ATOL Protection Contribution – APC) should reflect the risk and exposure a trader represents to the scheme. This will be dependent on a number of factors such as terms of payment, the value of arrangements and the strength of the trader's business.

5.3 DfT Question 3

Do you currently offer or facilitate travel arrangements that are likely to fall into the Linked Travel Arrangements category? If so, what percentage of your bookings would likely fall into the Linked Travel Arrangements category?

¹ Review of Package Travel Directive and ATOL implementation and funding arrangements: call for evidence, Department for Transport, May 20013, <https://www.gov.uk/government/consultations/atol-call-for-evidence>

ABTA Response

- 5.3.1 This is a question for Members to answer directly according to their business model in terms of the provision of data.
- 5.3.2 We would highlight two significant industry sectors that are likely to be impacted. These are travel agencies (including high street, online and call centre operations) and airlines.
- 5.3.3 Travel agencies will often assist consumers with the booking of a single priority element, while the consumer contemplates options for other elements of the trip. In some cases the travel dates and flight times will be critical to secure, with the consumer then researching and shopping around for accommodation choices and offers. The reverse may also be true, where the consumer is driven by where to stay, but has flight choices to compare. All models of agency: high street, call centre and online will be motivated to capture as much of the consumer value chain as they are able.
- 5.3.4 Airlines also now utilise targeted communications, by email, text and telephone as well as part of the online booking experience to capture additional complimentary sales through their own controlled systems and targeted partner offers. Given the growth of no frills airlines and the expansion of the airline route network generally, the majority of leisure air travel now sits outside of the ATOL system. It is therefore likely that a significant proportion of the flight bookings made directly with airlines will also then be subjected to targeted offers of accommodation and other travel services, a proportion of which will convert in to LTAs.
- 5.3.5 Other sectors, for example, the expanding so called ‘sharing economy’ sector could also be captured as they expand their business offering, incorporating other value chain of components typically purchased by consumers to combine as a trip or holiday.
- 5.3.6 It will be important to ensure that organisers who should be regulated as providers of packages, with all of the financial and other protections associated, cannot simply convert the arrangements in to an LTA through the use of payment technologies. For example, on line, it is intended that the ‘shopping basket’ model resulting in the purchase of a package following a single visit and payment check out should not be too easily disaggregated in to an LTA by multiple component checkouts and payments. Historically, this might have been a cumbersome process, resulting in an unattractive customer journey, but emerging payment technologies may allow a single click payment from a payment service for each component in a much more elegant manner.
- 5.3.7 The 2015 PTD Article 3(5)(b) definition of ‘in a targeted manner’ requires very careful definition and guidance in domestic regulations.

5.4 DfT 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.

ABTA Response

- 5.4.1 ABTA believes that all flight related arrangements, where there is more than one element booked, should be regulated through one scheme. Proper, effective enforcement of the consumer information provisions will be vital to ensure consumer clarity.
- 5.4.2 Flight packages, flight LTAs and, if retained within the ATOL system, flight only arrangements will place consumers on the same aircraft. They may be booked through the same trader. An enquiry starting as a potential package or flight only sale, may transact in the event as an LTA. A flight only sale made today as an ATOL seat sale, may become a Flight Plus if accommodation is booked within 24 hours. The same will be true of an LTA in the future. It would seem very odd if the UK operated more than one scheme for the implementation of one directive in respect of flight related consumers booking the same flight in different ways.
- 5.4.3 We believe that there is also an important practical and political issue at stake. On the day of a failure, package and LTA travellers will be on the same flights, alongside airline flight only travellers. We do not think that it is good policy, or operationally efficient or politically sensible for the consumers to be treated differently depending on the type of arrangement booked.
- 5.4.4 In the past, Government has tended to repatriate all passengers, even when protected by no scheme at all. The XL Group failure was an example of this. Package consumers and some LTA consumers will be entitled to be assisted in their repatriation and should receive it as part of the CAA response to the same failure.
- 5.4.5 From a regulator's perspective, when seeking to effectively licence and monitor a business, it would appear to be a very strange concept that regulated sales of flights in one category (LTAs) should be separated and taken out of sight of the ATOL package regulator.
- 5.4.6 ABTA has consistently argued that, as a better regulation measure, any single trader should have all of their regulated business overseen at a single point, whether by the CAA through the ATOL team or by a BEIS type Approved Body. The single point of contact should sit within a single regulatory framework, implementing a single set of regulations. We think that this should still be the objective of longer term reform.
- 5.4.7 It does not follow from this analysis that all types of protected transaction are equal or that the protection available should be evidenced in the same way. So, for example, the current ATOL Certificate if retained might only apply to sales of packages or sales where a repatriation was guaranteed in the event of a failure.
- 5.4.8 ABTA wishes to see market options opened up to the industry for all types of regulated travel sale and calls for that aspect of longer term reform to be included in future consultations, following up on the matters considered in the 2013 DfT Call for Evidence² process.
- 5.4.9 Primary legislation currently exempting airline operators from providing flight only cover under ATOL should be reviewed to ensure that there is no exemption for packages and LTAs.

5.5 DfT 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.

² DfT Review of Package Travel Directive and ATOL Implementation and Funding Arrangements: Call for Evidence, May 2103, <https://www.gov.uk/government/consultations/atol-call-for-evidence>

- 5.5.1 No, we do not believe that LTA sales should attract a different APC rate simply by virtue of the sale being an LTA. We do not accept the assumption that all LTA sales will necessarily represent lower risk.
- 5.5.2 If the APC is retained as the primary security mechanism, APC rates should be set by virtue of the risk and exposure posed by the sale in question, and should not be driven by a regulatory label. A high value LTA sale, booked well in advance of travel, with a weak trader, might represent a much greater risk to the Air Travel Trust (ATT) than a low value late package booking, made with a strong trader, for example.
- 5.5.3 A more sophisticated risk based APC does not need to be complex or set at booking level, nor does the level of APC set and its methodology need to be visible to any other party. This can be dealt with as part of the annual licence review and renewal cycle and set each year as a company level 'average' required rate. Such an approach would appear to be more compatible with Article 17³ of the 2015 PTD.
- 5.5.4 ABTA has long been concerned that different APC 'deals' have been struck by the CAA with individual traders. These are not transparent, they have not been consulted on under the APC Regulations and the rates are not published in order to allow others to see and understand their availability. It may very well be that the variations that exist are logical, risk based and fair – but they have not been consulted on and are not transparent.
- 5.5.5 Turning to the second part of the question, we do believe that consideration should be given to branding sales differently. In our view, consumers may assume that refund and repatriation protection is equivalent in any scheme branded as part of the ATOL scheme. ATOL messaging will require a major review if it is not to be misleading.
- 5.5.6 We have argued that the machinery of the ATOL system should be utilised to licence LTA sales, but we do not think that it follows that an ATOL Certificate should necessarily be a feature of these sales. The Directive and therefore regulations will require standard pre-sale information and clear post-sale information. Whether there is a necessity for a specific form of post-sale certificate is therefore unclear.
- 5.5.7 We recommend that this issue is considered carefully along with the use of the 'ATOL protected' logo device, which can already be very misleading when applied to a whole website, brochure, advertisement, etc., where not all arrangements are protected under the ATOL scheme or, indeed, at all. The previous 'ATOL No. 1234' branding simply showed the trader was licenced and this approach may need to be developed to take account of the more complex landscape and nature of protection.

5.6 DfT 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.

ABTA Response

³ 2015 PTD of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

- 5.6.1 The UK has no alternative but to implement the Directive on this basis. There are clearly issues with the place of establishment model in an EU where the consistency of implementation of the Directive and its enforcement, along with Commission infraction arrangements, are weak.
- 5.6.2 While ATOL does not necessarily have to be the mechanism through which the UK companies sell in other Member States (this could be achieved through other financial protection mechanism), we believe not enabling compliance through ATOL adds an unhelpful, and additional, level of complexity to the UK's regime. We would also stress the need for effective enforcement, including cross-border enforcement mechanisms, to underpin the place of establishment model.
- 5.6.3 ABTA has asked Members to give their views in relation to their own business and mobility of establishment. ABTA's view is that the factors that will contribute to any decisions are still largely unknown. We believe that there is a chance of 'forum shopping' if significant differences in costs of compliance develop.
- 5.6.4 There is perhaps a greater chance of forum shopping where a group of companies are already established in a number of different jurisdictions. This raises the possibility of significant volumes of regulated arrangements moving from one jurisdiction to another. This could have a material effect on the viability of any particular scheme and, in a mutualised fund scheme, on the mix of quality of risk in the pool.
- 5.6.5 The UK implementation must therefore balance the need and desire to maintain a quality solution for travellers, while recognising that the cost of compliance must remain competitive relative to an increasingly international market.
- 5.6.6 ABTA calls on the UK Government to establish if there is a mechanism that would be compatible with Article 18 1 of the 2015 Directive and make sense of the intention of Article 18 4, whereby mutual recognition can be denied in relation to a trader or scheme that is not compliant with the Directive. A Member State should not have to give recognition to a trader or scheme that is clearly non-compliant and, as a result, knowingly give recognition to a trader which poses a risk to its own consumers.

5.7 DfT 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.

ABTA Response

- 5.7.1 We are not against the functional utility of ATOL Certificates, although we have always said that because they are a post booking / post contractual document, they do not directly contribute to consumers making informed decisions about booking ATOL protected arrangements.
- 5.7.2 PTD 2015 contains new pre-sale information requirements so that customers will be aware of the protection or otherwise that applies to the services that they are about to book. This will improve the customer's ability to make informed booking decisions. There are also post-booking information requirements which are largely similar to the current requirements. This tends to reduce the importance of the ATOL Certificate, but ABTA still supportive of a document evidencing and confirming but not defining a consumer's protection.

- 5.7.3 This question therefore asks whether there is any additional value to be gained from continuing to issue the ATOL Certificate alongside the required contractual and PTD 2015 information for those packages that are protected under the ATOL scheme. It should be noted that there is nothing in the current 1990 PTD or 2015 PTD that would allow a Member State to limit the protection of consumers by reference to or through the mechanism of any Certificate issued as part of a scheme. The obligation is to protect, for example, all packages. If it is a package, then the protections and liabilities apply. Certificates might be a useful administrative device to aid awareness and claims administration, but they should not be utilised to exclude consumers entitled to protection.
- 5.7.4 Members are strongly against extending ATOL Certificates to incorporate other post sale information requirements. They do not believe that they should be compelled to meet the other information obligations of the Directive through the vehicle of the ATOL Certificate. Many ABTA Members will need a compliance methodology for sales which are outside of ATOL and do not therefore wish to link compliance with a Certificate that does not apply to all bookings.
- 5.7.5 Members also argue that extending the ATOL Certificate could be counter-productive for awareness of that document. In short, Members believe that it is less likely that travellers will print off an ATOL Certificate if it were to become a multi-page extended document.
- 5.7.6 Members have invested considerable time and resources in to the 2012 implementation of ATOL Certificates in their current form. They see no advantage to effective regulation in extending their role. ABTA's view is that Members should be allowed freedom to comply with the Directive's requirements as is appropriate to their business and communications processes.

5.8 DfT 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?

ABTA Response

- 5.8.1 ABTA welcomes the 2015 PTD provision, which exempts business to business sales made under a general agreement. The requirement for a general agreement will ensure that there is no confusion in a particular case and that private individual consumers, who will generally require different and greater protection to business travellers, will receive the protection intended by the 2015 PTD.
- 5.8.2 There is no clear definition of a general agreement so that will need to be clarified in further regulation or guidance.
- 5.8.3 There is perhaps a further question as to whether businesses should be able to voluntarily continue to protect business arrangements, if they choose to do so.

5.9 DfT Question 9

If you are a business affected by these proposals, what do you anticipate the familiarisation costs (as outlined above) will be for the proposed regulations? Do you anticipate any difficulties with implementing any of the proposed changes? Please explain your reasoning.

ABTA Response

- 5.9.1 This is a question for Members to answer according to their business model taking account of the systems / IT issues with correctly identifying packages and LTAs and complying with all of the information and other requirements.
- 5.9.2 ABTA's view, based on our considerable experience of advising Members, is that it will be the issues around the correct identification of LTA sales that will give rise to the greatest challenges. LTAs require a methodology for positively tracking back to a first booking of a travel service a second and subsequent travel service booking, but only if that second booking is made at the same time but paid for separately; or linked and the result of a targeted procurement within 24 hours. These are complex conditional situations to model in systems and to ensure that packages, LTAs and unregulated sales are correctly identified.

Section 2 – ATOL reform in the longer term

5.10 DfT 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?

ABTA Response

- 5.10.1 This question goes back to the issues raised and addressed extensively in the 2013 Call for Evidence. The question illustrates a number of different options for varying the current flat rate APC to better reflect factors such as risk, price, payment terms and booking patterns. Such changes will inevitably create 'winners and losers' even if they better reflect the true market cost of protection and are arguably fairer.
- 5.10.2 Currently ATOL holders generally pay £2.50 per passenger, although we are aware that some categories of company do pay a different amount. The terms of any reduction or refund are not transparent. The general flat fee is paid whether selling a £99 late deal or a £20,000 luxury round the world tour; it is paid by the strongest or weakest company; it is paid whether the full balance is paid at the time of booking or only a deposit with balance later on; it is paid by a company booking specialist trips 18 months in advance or as a late booking specialist.
- 5.10.3 There are clearly cross-subsidies here and because the ATTF is arguably under-funded and/or under-insured in relation to the larger exposures it faces, the financial structure risks placing some of the costs of failure on the surviving ATOL holders continuing to trade after a failure.
- 5.10.4 The current scheme therefore subsidises the risk posed by some participants and transfers that risk to the competitors of that trader and to the tax payer, through the DfT and Treasury. The reform objectives set out by DfT in the 2013 Call for Evidence addressed this issue.
- 5.10.5 ABTA does not believe that these issues can or should be addressed in the current phase of reform, concerned primarily with the implementation of the 2015 PTD. We strongly believe that these issues require a much fuller consultation process, with the detailed work carried out in 2013/14 Call for Evidence process being refreshed.

- 5.10.6 The various options listed at paragraph 67 are certainly valid options for consideration, but they are only some of a much wider set of potential solutions, including market options, that should be considered.
- 5.10.7 This longer term reform is likely to require a transition period of perhaps 5 or more years, particularly if market solutions are introduced in order to reduce the risk to the tax payer and competitors of businesses that fail. This would more closely reflect the BEIS regime under the 1992 PTRs, which requires companies to provide Bonds, Bonds and Insurance; Insurance or Trust Fund based solutions. The BEIS arrangements have never required Government support or assistance or intervention of any kind since their inception in 1993. The BEIS resource required to managed the Approved Body system is less than one person FTE.
- 5.10.8 However, such a transition must be fair to businesses that would potentially need to reconstruct their balance sheets to access market solutions.
- 5.10.9 Paragraph 77 of the consultation document in relation to ‘overlapping protections’ raises the question of the partial duplication of protection in relation to Credit Card payments and s75 of the 1974 Consumer Credit Act. There is no corresponding question in the DfT question set and we have therefore decided to address this point here.
- 5.10.10 A similar issue arises in relation to Debit Card payments because of the chargeback rules operated by the card networks. The consumer’s card issuing bank will generally be able to charge back to the merchant’s acquiring bank the cost of reimbursing a consumer who has made a payment for a service not received.
- 5.10.11 Industry has long complained that this partial duplication of protection leads to increased costs and that as the use of card has developed, there has been no recognition of this within the ATOL system. This is a complex issue, which results in security and additional fee costs being provided to card acquirers who often find it difficult to model the level of protection that will be provided by the ATOL system.
- 5.10.12 ABTA would argue that this is another reason why the longer term reform of the financing and sustainability of the ATOL scheme must be dealt with as a whole and not through piecemeal reform. The outcome of any FCA review of s75 of the Consumer Credit Act 1974 must also be incorporated in to this reform process.
- 5.10.13 This process should also consider the better regulation calls for a consolidation of the current DfT CAA ATOL arrangements and the BEIS PTR Approved Body and unsupervised insurance and trust arrangements in to a single set of compliance options. Many businesses sit across both sets of regulations and this adds unnecessary cost and complexity.
- 5.10.14 In summary, ABTA strongly recommends to Government that reform of the financing and sustainability of the compliance options be considered carefully as a whole, as part of the next phase of reform and not as part of the 2015 PTD implementation.

5.11 DfT 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?

ABTA Response

- 5.11.1 ABTA is supportive of this approach, which was in fact the norm until the CAA withdrew the requirement for primary bonds in 2008 and transitioned the ATTF from being a reserve fund to a primary insurer.
- 5.11.2 ABTA has continued with a Bond and Insurance based system in relation to non-ATOL package risks and non-package risks. This allows ABTA to focus on the scale of the consequences of a failure and to leave the market to price the provision of facilities to cover that exposure.
- 5.11.3 However, the challenge is that after a number of years, the market that previously existed for UK travel bonds has reduced in reaction to the CAA change of policy, which now often leaves the market with the opportunity to provide bonds only in respect of new ATOL holders in the early years and higher risk ATOL holders in the longer term. Many bond obligors and underwriters dislike this selection against the insurer, without access to the pool of all ATOL holder risks.
- 5.11.4 In our opinion, a healthy market can be rebuilt, but this cannot be done without sensible transition arrangements over a period of time.
- 5.11.5 Paragraph 68 a. explores separating the repatriation and refund obligations. This suggests a set of arrangements where market solutions such as bonding, trusts or other instruments might play a greater role with refunds and the CAA ATOL scheme purely manages repatriations.
- 5.11.6 Such a concept would appear not to recognise the fact that both schemes would be protecting the same consumer and the same pre-payments – one from the time of booking and the other after the time of departure.
- 5.11.7 The refund risk and repatriation risk are simply different manifestations of the same financial risk at different phases of the customer journey. The risk starts as a deposit refund risk (or full balance with some business models such as online airline sales); increases as the balance is paid and then transforms in to a repatriation cost risk (at which point the refund risk is gone) which may be less (a one-way flight home) or very occasionally more than the refund risk.
- 5.11.8 ABTA is concerned that this question may conflate two very different issues. The first is how to most efficiently finance a compliant scheme of protection. We would argue that this will always be achieved more efficiently and cost effectively as a single scheme. The second issue is the operational delivery of refunds and repatriation, which are quite different. These may be separated, but in order to do so there is no need to separate out the financial arrangements supporting the two aspects of consumer protection.
- 5.11.9 We do not know and the consultation document does not say why Government believes that it might need to separate the obligations to make the scheme more appealing to the markets. We believe that it is inevitable that a separation of the two duties in to different schemes would inevitably lead to an increase in costs and complexity. We strongly advice Government against going down this road.
- 5.11.10 Paragraph 69 b. contemplates legal regulation limiting when balance payments could be collected, in the given example, to four weeks before departure. Such a move would have implications for most travel companies, their cash flow, and their supply chains. This would be particularly damaging to SMEs and microbusinesses required to prepay their supply chain in

order to secure competitive rates and the best quality supply chain offer for consumers. Moreover, as explained in 5.11.14 below, such a move could in all likelihood also have serious financial consequences for the overall viability of many travel companies.

5.11.11 ABTA considers this to be an unnecessary, unwarranted and unprecedented interference in the freedom of the industry to set payment terms and to compete in a highly competitive market place. ABTA would suggest that such a measure is only being contemplated because of a failure to address the need for each ATOL holder to more properly and fully carry their cost of protection. The flat rate APC system transfers all of the cost and risk of collecting balances earlier to the ATT scheme, without cost penalty. This has created a perverse incentive in the system since 2008.

5.11.12 In a reformed system, with traders more fully carrying their own costs of protection, then payment terms would be subject to normal cost benefit analysis. Where a trader collects and aggregates pre-payments earlier, the additional costs of protection would fall on them accordingly. We would suggest that this is the correct way in which to address any ATT scheme exposure concern.

5.11.13 ABTA would also urge the DfT to fully assess other unintended consequences of reducing balance due dates. Generally speaking, and following the ABTA Code of Conduct, travel company terms and conditions provide that travel arrangements cannot be changed or cancelled after the payment of the balance for commercial reasons. Consumers therefore enjoy a considerable degree of certainty, once balances are paid. In European jurisdictions with much later balance due dates, much greater flexibility for organisers to make later changes to flight and holiday programmes goes hand in hand with the payment terms.

5.11.14 A move to restrict final balance collection could have a material adverse effect on net revenue as companies would inevitably find themselves having to resell many more cancelled holidays at heavily discounted rates during the period immediately before departure. In a significant number cases the revenue lost as a result could be the difference between viability and insolvency.

5.11.15 Any such change would also impact on travel insurers and require a reassessment of the cancellation risk.

5.11.16 ABTA strongly recommends that Government addresses this issue through the reform of the ATTF and ATOL financing arrangements and not by the imposition of controls on consumer payment terms.

5.12 DfT 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.

ABTA Response

5.12.1 ABTA has long advocated that consumers, industry and regulation would be better served by a single set of regulatory arrangements. We think that it would be more straightforward for industry to be able to deal with one organisation in order to comply with all PTD based financial protection requirements.

- 5.12.2 We believe that it would also be better and simpler for consumers when assistance is required, in the event of a failure.
- 5.12.3 We also believe that regulatory effectiveness would be improved if a single organisation had responsibility for and oversight of the whole of a regulated business's relevant financial risk activities. There are many businesses which operate in both the ATOL and non-ATOL PTD space and who, as a result, must work with the CAA and one of the BEIS Approved Bodies (ABTA, ABTOT or the CPT BCH) or utilise other forms of unsupervised insurance or trust arrangements.
- 5.12.4 This argues for a single set of Regulations and a single financial protection scheme, operating under a single Government department, probably the Department for Transport. The scheme regulator need not directly licence all businesses – approved bodies could still provide a market solution dealing with the whole of an organisations business – much as was the case until 1992 with ABTA and the FTO in relation to ATOL and non-ATOL packages.
- 5.12.5 ABTA currently operates the ABTA-ATOL Joint Administration Scheme for some 180 Members, as well as dealing with the same Member's non-ATOL PTR compliance and the voluntary protection of many non-packages – a facility and consumer benefit that should not be lost.
- 5.12.6 Members would benefit from providing a single set of quarterly and annual returns and from reduced professional fees. There should be administrative savings. Market providers of security (bonds, insurance, etc.) require sight of the whole of their exposure to a single business. They also find it much easier to deal with a single body and provide a single bond for all activities. This has been proven in the past and through the ABTA-ATOL Joint Administration Scheme.
- 5.12.7 There are some important caveats to our support for better regulation in this way. If you are a business that currently protects its consumers through ABTA, ABTOT or the CPT, you are much more fully carrying the cost of the risk you pose to the scheme through Bonds and/or insurance. You are not mutualised to any great extent to the costs of failure of another Member of the Approved Body. Approved Body Members are only likely to support a consolidation of schemes if there was a clear benefit, without risk of cost transfer to them as a result of the failure of other organisers. So, for example, a coach tour operator currently carrying its own costs within an Approved Body scheme would have no interest in being exposed to the mutualised costs of a major air holiday company failure resulting in a significant increase in APC.
- 5.12.8 Reform of the ATT scheme financial structure or any unified successor scheme must therefore be a condition precedent to a transition to a single scheme of protection.

5.13 DfT 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)?**

ABTA Response

- 5.13.1 ABTA supported earlier calls for an ‘all flights levy’ or all flights protection, which the CAA also supported and proposed. This has not received support at a UK Government or European level.
- 5.13.2 As a result, ABTA has developed our position to be that either all flight-only sales should be protected or no flight-only sales should be protected– the current situation where a minority of intermediaries distributing flights are within the scope of the ATOL regulations in relation to the sale of a product (flight only) that is unprotected when sold direct is unfair and disproportionate. It is not required by any European regulation and is not a feature of other European Member State systems.
- 5.13.3 We understand that there are real difficulties legally in imposing additional requirements not arising from EU legislation on non-UK EU airlines. Unless an EU based all flights solution can be found, ABTA’s ‘all in or all out’ policy position amounts to an ‘all out’ stance.
- 5.13.4 ABTA therefore favours option b. and the full deregulation of Flight Only sales.
- 5.13.5 ABTA would support consideration of a mitigation such as requiring that pre-sale information is provided at the point of sale stating that a transaction is not protected against insolvency, so long as this applies equally to airlines and travel intermediaries.
- 5.13.6 ABTA would support a repatriation only scheme for all seats, but once again this must be on the basis that it applies to all airlines and travel intermediary sales equally.
- 5.13.7 Voluntary opt in or ad hoc arrangements including flight only operations, including those of airlines and their associate companies, should only be permitted in the event that Flight only inclusion in ATOL continues and the organiser fully covers the risk that they represent to the AAT. Inclusion of a high risk participant in a flat rate scheme is a serious market distortion, which selects risk against the ATT, at the expense of the mutual co-funders, who have no say in a decision to include a particular trader.

Section 3 – Review of the 2012 ATOL reform

5.14 DfT Question 14

We welcome responses from businesses on any of the above areas regarding the impact of the ATOL 2012 reform to inform our Post Implementation Review. Please explain your reasoning.

ABTA Response

- 5.14.1 ABTA considers that the introduction of Flight Plus was a success.
- 5.14.2 ABTA believes that the Flight Plus concept is superior to that of the LTA. However, we understand that retention of Flight plus would be ‘gold plating’ and that Flight Plus must fall away as 2015 PTD comes in.
- 5.14.3 ABTA considers the introduction of ATOL Certificates to have been useful. The CAA tell us that ATOL Certificates have played a useful role in reinforcing the ATOL protection message, post-sale.

- 5.14.4 ATOL Certificates are of no value in promoting better informed consumer decisions at the time of booking. The new pre-sale 2015 PTD requirements will assist with this.
- 5.14.5 ABTA has been concerned that ATOL Certificates are used to 'define' and limit protection, rather than to 'evidence' protection. A consumer entitled to package or flight plus or LTA protection is entitled to be protected, whether or not the ATOL holder correctly issues documentation.
- 5.14.6 The absence of an ATOL Certificate as a result of an organiser's error should not exclude a consumer from protection. ATOL Certificates are a useful administrative control measure, helping to track bookings, APC payments and consumers, but should be regarded as useful evidence and no more.
- 5.14.7 The six questions under paragraph 82 of the consultation document are for individual traders to respond to with costs. There is no doubt that UK businesses carried greater responsibilities and costs than European competitors under the Flight Plus regime, although consumers benefited from the extended ATOL protection.
- 5.14.8 ABTA would commend to Government the option of exploring the return to a Flight Plus type regime in the event that this is possible following completion of the UK's exit from the EU. We believe that is a good example of where a review clause hard wired in to the new Regulations would be useful.

6.0 Additional issues

- 6.1 ABTA understands from discussions at consultation events that consideration is being given to limiting the ATOL scheme to UK departing package holidays and leaving the non-ATOL PTR schemes, such as the Approved Bodies, insurance and trusts, to deal with sales in other EU Members states as well as non-flight based packages and LTAs by travel companies established in the UK.
- 6.2 While ABTA understands the operational simplicity of avoiding the complications of dealing with business monitoring, claims and repatriation issues across Europe, such a move appears to undermine certain of the benefits for businesses intended under the 2015 PTD.
- 6.3 A business currently operating completely under the ATOL scheme and only seeking to offer flight packages in other Member States, would then be required to join an Approved Body or insurance or trust scheme in parallel with ATOL, which would appear to undermine at least some of the intended benefit for business. It cannot be good policy making to pass a tricky regulator issue from the ATOL regime to the PTR regime as a solution. The issue remains the same within the PTR regime.
- 6.4 Consideration should be given to the issues relating to the Crown Dependent Territories and their citizens interacting with travel organisers regulated by the PTD and ATOL. Their citizens are largely dependent on UK organisations and departures for travel arrangements.
- 6.5 A future Consultation should also consider the role, governance and oversight of the ATT, in relation to which we believe that its rather artificial separation from the CAA in a Trust structure, but in relation to which all Trustees are closely related to the CAA, is unhelpful. The APC categorisation as a tax also appears to be unhelpful. This should be part of the reform agenda. Once again, please note our 2013 submission to the DfT Call for Evidence.

6.6 The use of ATT funds, contributed by participants in a mutual fund, to fund pre-failure (non-insolvency) contingency costs should be included within the review process.

6.7 The role of ATIPAC should also be reviewed and reformed as part of this process.

7.0 Conclusion

7.1 We are attaching and incorporating in to this response ABTA's response dated 15 August 2013 to the 2013 DfT 'Review of Package Travel Directive and ATOL Implementation and Funding Arrangements: Call for Evidence'.

7.2 ABTA would highlight the design principles and recommendations for ATOL reform made in the submission, which we believe remain highly relevant and valid.

7.3 Please regard that document as being a part of this response to the current ATOL changes consultation.

Further information

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