Advice for airlines about the ATOL Regulations and the ATOL scheme

ATOL Policy and Regulations 2017/01
# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td><strong>Chapter 1</strong></td>
<td>3</td>
</tr>
<tr>
<td>Why it’s important the ATOL Regulations are complied with</td>
<td>3</td>
</tr>
<tr>
<td><strong>Chapter 2</strong></td>
<td>4</td>
</tr>
<tr>
<td>Capacities in which businesses can sell air travel in the UK</td>
<td>4</td>
</tr>
<tr>
<td>Aircraft operator</td>
<td>4</td>
</tr>
<tr>
<td>ATOL holders</td>
<td>5</td>
</tr>
<tr>
<td>Agents of ATOL holders</td>
<td>6</td>
</tr>
<tr>
<td>Airline ticket agents</td>
<td>6</td>
</tr>
<tr>
<td>Class and specific exemptions</td>
<td>7</td>
</tr>
<tr>
<td><strong>Chapter 3</strong></td>
<td>8</td>
</tr>
<tr>
<td>Other relevant factors</td>
<td>8</td>
</tr>
<tr>
<td>Fare types and ticket validity</td>
<td>8</td>
</tr>
<tr>
<td>Group bookings</td>
<td>8</td>
</tr>
<tr>
<td>Brokers</td>
<td>8</td>
</tr>
<tr>
<td>Airline packages</td>
<td>9</td>
</tr>
<tr>
<td><strong>Chapter 4</strong></td>
<td>11</td>
</tr>
<tr>
<td>Class exemptions affecting airlines’ activities</td>
<td>11</td>
</tr>
<tr>
<td>Technical problem and code share (02/2012)</td>
<td>11</td>
</tr>
<tr>
<td>Whole plane sales (06/2012)</td>
<td>11</td>
</tr>
<tr>
<td>Flight-only use of consumer’s credit or debit card (10/2012)</td>
<td>11</td>
</tr>
<tr>
<td>IATA accredited agents selling flight-only (01/2014)</td>
<td>12</td>
</tr>
<tr>
<td><strong>Chapter 5</strong></td>
<td>13</td>
</tr>
<tr>
<td>What happens in the event of the failure of a travel organiser?</td>
<td>13</td>
</tr>
</tbody>
</table>
Chapter 1

Introduction

This document provides advice for airlines on the ATOL Regulations and clarifies the capacities in which flight accommodation can be made available. It also sets out certain requirements that airlines must meet when making available flights through ATOL holders or agents.

The sale of air travel in the UK is restricted by UK law to protect consumers through The Civil Aviation (Air Travel Organisers’ Licensing) Regulations 2012\(^1\) (as amended\(^2\), “the ATOL Regulations”).

The ATOL Regulations apply to all air travel sales made in the UK, whether they are for flight-only sales or for combinations of flight seats with other travel components such as accommodation where the period of the services exceeds 24 hours or includes overnight accommodation, and whether these sales are made by travel agents, tour operators, or airlines.

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\(^1\) UK Statutory instrument (SI) 2012/1017
\(^2\) UK Statutory Instrument (SI) 2012/1134
Chapter 2

Why it’s important the ATOL Regulations are complied with

Compliance with the ATOL Regulations ensures that consumers know when they are protected by ATOL and that they receive the financial protection they are entitled to. This also helps maintain confidence in the UK air travel industry.

Anyone advertising, offering or selling flights or flight inclusive trips and not complying with the regulations is committing an offence.

In instances of non-compliance, our approach will be to try and resolve a breach or a suspected / potential breach through a range of measures, as set out in the CAA’s Regulatory Enforcement Policy\(^3\) and the ATOL and Airline Licensing Enforcement Guidance\(^4\). Ultimately this may mean taking regulatory action against someone holding an ATOL (such as restricting or taking away a firm’s licence to trade) or civil/criminal proceedings.

The aim of this document is to make it easier for you to understand the regulations. If you would like to ask us a question about any of the matters referred to in this document, or would like us to check whether you are operating correctly, please call us on 020 7453 6810 or email atolcompliance@caa.co.uk.

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\(^3\) [www.caa.co.uk/CAP1326](http://www.caa.co.uk/CAP1326)

\(^4\) [www.caa.co.uk/CAP1039](http://www.caa.co.uk/CAP1039)
Chapter 3

Capacities in which businesses can sell air travel in the UK

The ATOL Regulations include a list of capacities which describe how businesses must act when they sell air travel in the UK. This section describes these capacities:

1. Aircraft operator
2. ATOL holder
3. Agent for ATOL holder
4. Airline ticket agent
5. Class and specific exemptions

Aircraft operator

The operator of the ‘relevant aircraft’ is a reference to airlines and any airline holding either an appropriate Air Transport Licence or Operating Licence that offers seats under its own licence. The operator of a ‘relevant aircraft’ does not need to hold an ATOL.

Airlines that are community air carriers\(^5\), which sell seats on their services to consumers via an agent or to tour operators or other travel businesses for resale in the UK, must ensure that the agent, tour operators and/or other travel businesses are acting in one of the capacities mentioned in this chapter. This is a consequence of Regulation 10 of the Operation of Air Services in the Community Regulations 2009\(^6\).

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\(^5\) A ‘community air carrier’ is an air carrier with a valid operating licence granted by a competent licensing authority in an EU or EEA member state in accordance with Chapter II or Regulation (EC) No. 1008/2008.

\(^6\) UK Statutory Instrument (SI) 2009/41 - Regulation 10 makes it an offence for a community air carrier to carry a passenger if the passenger has booked air travel with a firm which is not complying with the ATOL Regulations.
Similar obligations apply to air carriers based on the Channel Islands and the Isle of Man, and is a consequence of the conditions of the Foreign Carrier Permits issued by the CAA to non-UK airlines.

**ATOL holders**

ATOLs are Air Travel Organisers’ Licences, and are issued solely by the CAA. ATOLs may be held by firms who sell flight-onlys (i.e. flight accommodation only, without any associated travel services), and must be held by traders who organise packages that include flights\(^7\) or who act as a Flight-Plus arranger\(^8\). There are five types of ATOL:

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<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard ATOL</td>
<td>Authorised to sell flights and/or flight inclusive trips to more than 500 passengers per annum (subject to its licence authorisation limits) under its own ATOL.</td>
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<tr>
<td>Small Business ATOL (SBA)</td>
<td>Authorised to sell flights and/or flight inclusive trips to up to 500 passengers per annum to the public under its own ATOL.</td>
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<tr>
<td>Accredited Body (AB)</td>
<td>Firms who are members of an AB are able to sell flights and/or flight inclusive trips under the AB’s ATOL.</td>
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<tr>
<td>Franchise ATOL</td>
<td>Authorised to sell flights and/or flight inclusive trips up to 1,000 passengers per annum under its own ATOL. ATOLs are granted to firms on the basis of membership of the approved franchise scheme.</td>
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<td>Trade ATOL</td>
<td>Restricted to selling flight accommodation or flight inclusive trips to other ATOL holders only. Such businesses are commonly referred to as consolidators, seat wholesalers or General Sales Agents.</td>
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\(^8\) ‘Flight-Plus’ and ‘Flight-Plus Arranger’ are defined in ATOL Regulations 24 and 25 respectively. In brief, Flight-Plus relates to where a flight out of or into the UK is made available and living accommodation and car hire abroad are requested to be booked at the same time, or within a day of the flight booking, but where the way in which it is sold means it is not a package holiday.
ATOL holders are limited by the authorised passenger and revenue limits on their licences. ATOL holders acting beyond their authorised limits are acting in breach of the ATOL Regulations.

**Agents of ATOL holders**

An ATOL holder may appoint an agent to sell package holidays and flights on its behalf to consumers under a written agency agreement. Customers book with and pay the agent, who must immediately notify the ATOL holder of the booking and issue an ATOL Certificate to the customer.

**Airline ticket agents**

An Airline Ticket Agent (“ATA”) must act in accordance with a written agency agreement under which it is entitled to issue a document, referred in the ATOL Regulations as a ‘confirmed ticket’, which will allow the consumer to travel on the flight(s) referred to on that document without having to make any further payment. The standard practice is for the written agreement to be in place between the ATA and the airline. There is no standard format for this.

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9 See ATOL Regulation 13.
ATA’s acting in that capacity may only deal with consumers and not businesses. They must issue the confirmed ticket directly to the consumer in immediate exchange for any payment accepted. The ATA can only make available the flight seat and cannot accept a booking from the consumer for either overseas living accommodation or overseas car hire in conjunction with the consumer’s flight booking.

IATA accredited agents are exempt from the written agency agreement requirement provided they act in accordance with IATA agency rules and under the ticketing authority of the airline concerned. This is because of class exemption 01/2014, as published within the CAA’s Official Record Series 3. Airlines do not therefore need to have a specific written agency agreement in place with IATA agents that meet the terms of exemption.

Class and specific exemptions

The ATOL Regulations give the CAA the power to exempt persons from the need to hold an ATOL, provided the CAA is satisfied that consumers will receive a level of consumer protection equivalent to that which would otherwise be required under the ATOL Regulations. There are two types of formal exemption:

- Class exemptions, which apply to classes of persons in various circumstances. Chapter 5 describes some Class exemptions that apply to airline activities.
- Specific exemptions, which apply to individual persons and bodies but are only occasionally issued by the CAA.

Exemptions from the need to hold an ATOL are published in the CAA’s Official Record Series 3 (ORS3), available at www.caa.co.uk/ors3.
Chapter 4

Other relevant factors

Fare types and ticket validity

The ATOL Regulations do not differentiate between airline fare type or booking class. However they include the following definition of ‘a confirmed ticket’:

“a document or information which gives to every person specified in the document or information access to the flight specified in the document or information without the need for any further payment”.

Airlines must honour bookings where the consumer holds a confirmed ticket.

Group bookings

If a travel business wants to place a group booking with an airline, the airline must ensure the business holds an ATOL or appoint it as its ATA. The airline must also ensure that its ATA is complying with the terms set out in the airline ticket agency agreement under which it is entitled to act as such.

Where an individual or non-travel organisation wishes to make a group booking, provided they are not doing so in the course of a business or for profit (e.g. a booking for a group of friends), they do not need to hold an ATOL.

Brokers

This is where an airline is approached by a broker, whether it is for a series of flights or ad-hoc flights such as for corporate consumers or special interest groups.

The CAA recognises two types of ‘broker’:
1. A ‘Commission broker’ is not itself party to any contract with either a flight seat supplier or purchaser, but acts as intermediary between the contracting parties, for which service it receives commission payments. The CAA’s view is that brokers who trade in this way are not making available flight accommodation within the scope of the ATOL Regulations and therefore do not need to hold an ATOL; and

2. A ‘Contracting broker’ typically enters into a contract to supply seats to a purchaser, and by doing so is making available flight accommodation within the scope of the ATOL Regulations. In circumstances where the broker is supplying seats to a purchaser who intends to take the flight themselves, the broker needs to hold a Standard ATOL; and where the broker is supplying seats to purchasers who themselves intend to sell the seats on, the broker needs to hold a Trade ATOL.

Our separate ATOL Policy and Regulations publication “Advice for Brokers about the ATOL Regulations and the ATOL Scheme” includes detailed information on how the ATOL Regulations apply to brokers.

**Airline packages**

The 1990 EC Package Travel Directive defines a package as “a pre-arranged combination of two or more items (including transport, accommodation or other tourist services) sold or offered for sale at an inclusive price either covering a period of over twenty-four hours or including overnight accommodation”. This definition is repeated within the ATOL Regulations and also within The Package Travel, Package Holidays and Package Tours Regulations 1992 (‘PTR’). See note at end of this section.

Combinations of flight seats and stopovers including accommodation offered for sale by airlines may be considered to be packages, and airlines that organise and offer

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10 Trade ATOL holders are not permitted to sell flight seats to the public either directly or through agents.

packages for sale in the UK, including seats on their own services, are required to comply with the PTR.

Regulation 16 of the PTR is concerned with the financial protection of customers in the event of a package organiser’s insolvency. Flight package organisers comply with this section by holding ATOLs but, as indicated above, airlines are not required to hold an ATOL and consequently an airline offering its seats as part of package organised by the airline itself will have to comply with Regulation 16 of the PTR by means other than by holding an ATOL. In order to provide ATOL protected packages based on their flights, some airlines choose to form or appoint an associated business, sell the flight to that business, and that business organises and sells the packages that includes seats on the airline’s services. That business is then contractually responsible for the whole package to the consumer and must hold an ATOL.

NOTE: The EU Package Travel Directive 2015\(^\text{12}\) (which is expected to be implemented in the UK by 2018) defines a package as “a combination of at least two types of travel services for the purpose of the same trip or holiday if the services are either combined by one trader under a single contract or, if arranged by the trader under separate contracts, offered by the trader at an inclusive or total price”.

Chapter 5

Class exemptions affecting airlines’ activities

Exemptions from the need to hold an ATOL are published in the CAA’s Official Record Series 3 (ORS3). There are a number which may apply to an airline’s activities or activities of firms airlines do business with and those in effect when this document was published are summarised below.

Technical problem and code share (02/2012)

This exemption allows airlines to advertise, offer and sell flights on another airline’s aircraft in circumstances where the aircraft that the airline intended to operate is unavailable due to technical reasons or where, as a member of IATA, the airline takes responsibility for a ticket issued on another airline such as in code-share scenarios.

Whole plane sales (06/2012)

This exemption applies to businesses who provide the entire capacity of an aircraft to a consumer and the consumer will not sell any of that capacity to another entity and nor will the consumer accept any payment for it.

Flight-only use of consumer’s credit or debit card (10/2012)

This exemption applies to businesses who, with authorisation, use a consumer’s credit or debit card details to pay the full cost of a flight booking, directly with the airline concerned. However, this exemption does not apply if the business is also booking accommodation or car hire for the consumer.
IATA accredited agents selling flight-only (01/2014)

As set out in Chapter 3, IATA accredited agents are exempt from the requirement to operate under a written agency agreement (as required by ATOL Regulation 13.3) provided they act in accordance with IATA agency rules and under the ticketing authority of the airline concerned.

None of the above exemptions apply when the flight seat is being supplied as part of a ‘package’, or in respect of 10/2012 and 01/2014 arranged as part of a Flight-Plus, as defined within the ATOL Regulations and The Package Travel, Package Holidays and Package Tours Regulations 1992.¹³

Chapter 6

What happens in the event of the failure of a travel organiser?

The ATOL scheme protects consumers from losing money or becoming stranded abroad if their travel organiser fails (“fails” is a term used in the ATOL Regulations and the failure of an ATOL holder has the meaning specified in ATOL Regulation 23). Consumers may make claims under the scheme if they have booked ATOL protected flights or holidays with an ATOL holder that has since failed.

Where a confirmed ticket has been issued to the consumer, as defined in the ATOL Regulation 4 and referred to in Chapter 3, airlines must honour the confirmed ticket since a contract for carriage exists between the consumer and the airline.

When a confirmed ticket has been bought as part of a package from an ATOL holder which has failed, unless advised otherwise, the CAA would expect airlines to honour bookings for inbound consumers so that they are able to return to the UK at the end of their trip. For consumers due to start their trip after the ATOL holder has failed, we would expect airlines to honour confirmed tickets if the consumer elects to travel; however, there may be circumstances when consumers will be advised by the CAA not to travel because suppliers of hotel accommodation or other significant components have not been booked or paid for. In these circumstances the consumer will be able to claim a refund under the ATOL scheme.

When an ATOL holder fails, the CAA publishes information and advice to consumers and suppliers on the ATOL section of its website: www.caa.co.uk/ATOL (or www.atol.org.uk).