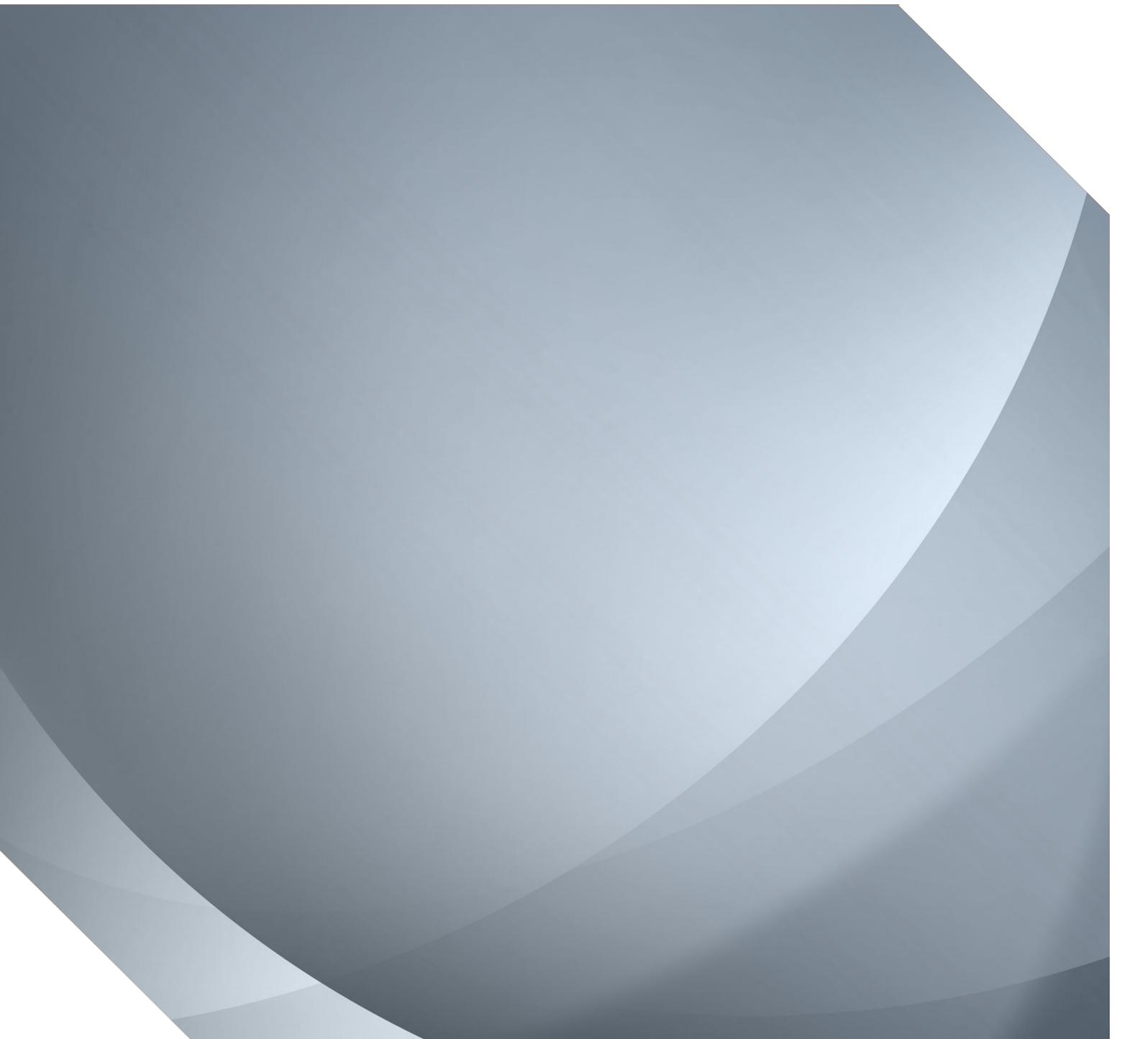


Air Travel Organiser's Licensing and Operating Licences Enforcement Guidance

CAP 1039



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CHAPTER 1

Enforcement Guidance

Introduction

- 1.1 The Civil Aviation Authority's ("CAA's") Regulatory Enforcement Policy¹ describes our enforcement approach in broad terms. This complementary guidance sets out how the CAA regulates compliance with laws relating to the sale of flights and air holidays, and airline operating licences.
- 1.2 It describes the legal framework that we work within and when, why and how we take enforcement action, and includes a number of enforcement scenarios that illustrate our approach. It is intended to inform our stakeholders and enable our staff to implement our enforcement policies effectively.

Scope

- 1.3 This guidance covers two distinct categories of legislation:
 1. Legislation governing the sale of flights and air holidays:
 - The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("ATOL Regulations");
 - The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 ("ATT Regulations"); and
 - The Package Travel, Package Holidays and Package Tours Regulations 1992 ("PTRs").
 2. Legislation relating to Operating Licenses:
 - Council Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community (Recast);
 - Civil Aviation Act 1982;
 - Civil Aviation Authority Regulations 1991 - Statutory Instrument No 1672 1991;

¹ Available on the CAA website: www.caa.co.uk

- Operation of Air Services in the Community Regulations 2009 - Statutory Instrument No 41 2009; and
 - The Civil Aviation (Allocation of Scarce Capacity) Regulations 2007.
- 1.4 Annex A sets out full details of the legislation that we enforce and the sanctions available to us.
- 1.5 The CAA's Air Travel Organisers' Licensing (Official Record Series 3) and Licencing Airlines in the UK (Official Record Series 1) contain more comprehensive guidance about the framework and criteria for granting Air Travel Organisers' Licences and Operating Licences, Route Licences and Air Transport Licences.

Outcomes

- 1.6 Our licensing of travel firms, stewardship of the ATOL scheme and management of repatriation, refund and fulfilment activities are intended to give effect to European and UK government policy ensuring consumers of air holidays are protected from the adverse effects of travel firms becoming insolvent. We maintain an effective scheme of consumer protection by:
- controlling entry to the market;
 - limiting and reducing the impact on consumers of insolvencies that occur;
 - ensuring sufficient security is in place to cover the liabilities of failed firms;
 - making sure that businesses pay correct levels of ATOL Protection Contributions ("APC") in a timely fashion;
 - ensuring that consumers know when they are protected and when they are not; and
 - by taking steps to ensure that repatriation and refund activities can be handled efficiently and effectively.
- 1.7 A key element of our strategy to protect consumers is enforcement action against firms making licensable sales without holding an ATOL.
- 1.8 Our airline operating licensing activity ensures that we meet CAA's obligations under European and UK law for the licensing of all aspects of UK carriers with the exception of finance and safety (although finance and safety are preconditions for the retention of such licences). By

doing so, we ensure that those carrying passengers, cargo or mail for payment meet a number of requirements including insurance, ownership and control and fitness (of accountable managers and shareholders).

Enforcement, breach and actions

- 1.9 The CAA defines enforcement as any activity that we carry out to seek to remedy a breach, or a suspected or potential breach, of rules.
- 1.10 A breach is a failure to comply with legal obligations or licence conditions. Our general approach, where we suspect non-compliance is to seek to bring the offender back into compliance by using a range of enforcement options including:
- publishing guidance;
 - providing advice;
 - requesting information from businesses;
 - inspections;
 - issuing warning letters;
 - imposing fines for late payments;
 - securing undertakings;
 - refusing licence applications;
 - withdrawing, not renewing a licence and imposing additional conditions on a licence;
 - seeking criminal prosecutions (where Courts can impose penalties, up to an unlimited fine and imprisonment, depending on the offence).

Expectations

- 1.11 In carrying out our enforcement work we will take enforcement action where non-compliance affects the collective interest of consumers and, in doing so, will:
- behave professionally;
 - be clear about what we require businesses to do;
 - act on information we have about non-compliance;

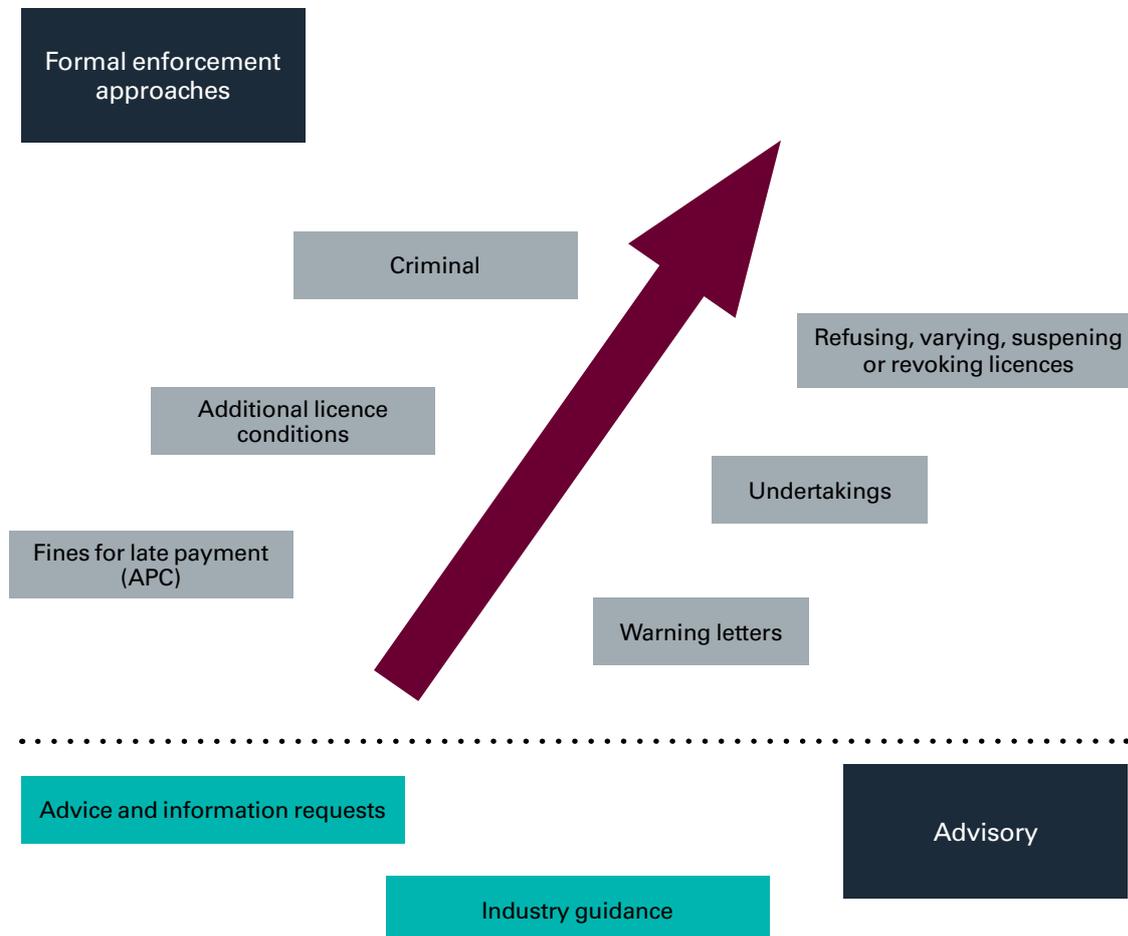
- act transparently, consistently and proportionately;
- at each stage of the process:
 - record our actions and make such records available on request;
 - confirm where matters are in the overall enforcement process;
 - confirm what is expected of you and by when;
- empower consumers to drive compliance, for example by promoting the expectation of receiving ATOL Certificates;
- involve stakeholders in the development of our policies.

1.12 In return we expect industry to comply with their legal obligations and feel that they will be best able to do that by:

- understanding what their legal obligations are and talking to us if they are unsure of those obligations and their legal position. Examples of obligations include:
 - holding a licence;
 - for ATOL holders, appointing an accountable person, satisfactory to the CAA, with authority to ensure that the ATOL holder complies the law and the terms and conditions of its ATOL;
 - holding a licence with sufficient limits;
 - complying with the terms of the licence;
 - paying our charges and any levies, such as APCs for the ATOL scheme;
 - issuing ATOL Certificates as appropriate;
 - not misleading consumers, for example by misrepresenting when ATOL protection is in place.
- preparing for changes to the law to ensure ongoing compliance throughout any transition;
- talking to us when they face difficulties in complying with the law;
- having governance and information management systems that are flexible, resilient and support regulatory compliance.

Stages of enforcement

- 1.13 We aim to achieve the right balance of approach to maximise outcomes for consumers.
- 1.14 Figure 1 shows the range of enforcement tools available to us, in addition to our day-to-day interaction (“Collaboration & Facilitation”), and an indication of the order in which we deploy them. In general we start off providing advice and seeking to restore a business to compliance, but the speed of escalation will be guided by the severity of the breach and will be determined by our assessment of the risks of consumer detriment and the best approach to achieve a return to compliant behaviour or minimise those risks. It may be that we need to start with a formal enforcement approach. Factors that we take into consideration include previous history of non-compliance, overtrading, significant misreporting and provision of misleading information.
- 1.15 Where unlicensed businesses are creating significant risks of consumer or trade detriment we will also take more urgent and intensive action.

Figure 1: Enforcement tools

Industry guidance

- 1.16 We provide general information and policy advice notes to make it easier for businesses to understand their obligations and to comply with the law. We encourage businesses to approach us promptly if they have difficulties interpreting what they need to do or if they are having difficulty in complying with the law.

Providing advice and requesting information from businesses

- 1.17 When we identify a possible breach of law or licence conditions we normally provide advice to the business and provide the opportunity for them to move into compliance without resorting to our powers.
- 1.18 We may request information from businesses or to inspect business systems to assist us in considering whether enforcement action is required and we will normally ask businesses to provide this when we are providing our initial advice to them. We only expect to use our legal

powers to obtain information where businesses are unwilling to provide the information voluntarily.

Issuing warning letters

- 1.19 If we are unable to resolve an issue following the provision of advice and guidance, we will write to the business setting out the nature of the breach(es) concerned, explaining the steps they need to take in order to comply and the consequences of non-compliance.

Imposing fines for late payments

- 1.20 Where firms fail to pay ATOL Protection Contributions ("APC") that are due or pay late, the ATT Regulations provide the power to seek recovery of what is owed plus interest.

Undertakings

- 1.21 We may seek an undertaking from a business to move into compliance with the law.
- 1.22 CAA has powers under Part 8 of the Enterprise Act for enforcement of the PTRs and certain other European consumer protection legislation. Where, for example, we have evidence that firms are making available packages without holding an ATOL we may use these powers to stop them from doing so or to ensure that they become licensed.
- 1.23 In addition, where an airline licence holder is unable to demonstrate compliance with certain requirements to hold a licence we may initially seek an undertaking from them that they will not use the aircraft until, for example, insurance is forthcoming.

Additional licence conditions

- 1.24 For ATOL licence holders, where CAA has particular concerns about the risks posed by the business, we may seek additional licence conditions, such as a bond or Trust account to address these. Failure to reach agreement with the business on these additional conditions could result in CAA refusing a licence or taking steps to suspend or revoke a licence.

Refusing, varying, suspending and revoking licences

- 1.25 Decisions to refuse, vary, suspend and revoke an ATOL are dependent on considerations surrounding fitness, the naming of an Accountable

Person and financial criteria². Failure to satisfy these criteria may, and in the case of fitness, will, result in refusal of an ATOL application and failure to maintain compliance may lead to revocation or suspension of an ATOL or new licence conditions being set. Triggers for us considering a firm's ATOL status include consumer complaints, inability to meet reporting requirements, provision of inaccurate information and adverse risk reports and financial information.

- 1.26 For Airline Operating Licences, decisions to refuse, revoke and suspend are taken based on airlines meeting all relevant requirements including ownership and control, insurance, financing, fitness and safety. Triggers for suspension or revocation of licences include inability to demonstrate insurance cover for their entire aircraft fleet, change in ownership and control, suspension of a carrier's Aircraft Operating Certificate ("AOC") and failure to meet previous undertakings.

Criminal proceedings

- 1.27 For the most serious breaches we will consider whether it is appropriate to pursue criminal sanctions against offending firms. In identifying cases where this may be a suitable course of action, our guiding consideration will be the extent of potential or actual consumer detriment. Our experience has shown us that certain behaviours, such as overtrading on an ATOL, or provision of information that conceals from the CAA facts that would impact a licence decision, carry a risk of greater consumer detriment. CAA pays particular attention to breaches of regulations designed to prevent such behaviours when deciding whether a criminal enforcement route may be appropriate.

² ATOL Policy and Regulations 2010/04 - ATOL Fitness and Financial Criteria for the Grant of Licences

Working with others

- 1.28 Some issues of non-compliance may fall under the responsibility of other organisations such as local Trading Standards Services, the Office of Fair Trading, and other EU Member States and regulators, and we will refer issues to them when appropriate.
- 1.29 In addition, the CAA provides assistance to local Trading Standards investigations and enforcement actions, particularly those to do with breaches of the PTRs and the Consumer Protection Regulations. The CAA also provides professional assistance to police forces in consumer related investigations and to anti-fraud organisations such as the National Fraud Intelligence Authority and Action Fraud.

Prioritisation and escalation

- 1.30 We take care to deploy enforcement tools in a way that will secure the greatest benefit and therefore have maximum impact. When determining where to take action we consider the extent and immediacy of consumer detriment, the potential impact of our action on broader levels of compliance, our chances of success and the resources that will be taken up in the action.

Process

- 1.31 Information about triggers for enforcement action comes from a variety of sources. CPG uses information from the CAAs "whistle blowing" service³ and maintains an illegal trading reporting service for public and other industry members to raise concerns. These methods are supplemented by monitoring, analysis of the range of information that licence holders are required to provide to us and intelligence from third parties (such as our counterparts in other Member States).
- 1.32 An example of our ongoing monitoring of ATOL holders is our analysis of the information returns businesses provide to us. By examining the number of passenger bookings and departures declared on each return with the total number of reported future bookings, it is possible to see if APC is being underpaid or other errors are being made.
- 1.33 If we have a concern about non-compliance we will raise this with the business and seek their commitment to resolve the issue voluntarily.

3 <http://www.caa.co.uk/default.aspx?pageid=9487>

- 1.34 If it is not possible to resolve the issue voluntarily, the CAA may request information from the business using powers derived from the Civil Aviation Act, our licensing conditions and, in the case of selling air package without an ATOL, under Part 8 of the Enterprise Act.
- 1.35 If concerns still exist, normally we will then issue a warning letter. Exceptions to this relate mainly to breaches that would lead to refusal, revocation and suspension of ATOL and airline licences, and circumstances where consumer detriment would be high without more expedited action.
- 1.36 Failure to comply with the requirements of warning letters generally results in a progression to licensing action or the later stages of enforcement process. The route taken depends on the type of regulation that we are enforcing and the nature of the breach:
- For suspected breaches of ATOL Regulations, we assess the case for licensing action and/or evidence base for seeking criminal prosecution and take action accordingly. The triggers for us considering escalation to pursuing criminal sanctions include, but are not limited to persistent lack of engagement/co-operation, clear evidence of high consumer or trade detriment and history of non-compliance.
 - For suspected breaches of the ATT Regulations such as persistent late payment or failure to pay APC, if the business is a current ATOL holder we will seek to reclaim money through prepayment, and will consider whether it is appropriate to vary licence conditions or, in the most extreme case, revoke the licence. If the business's ATOL has lapsed or the ATOL holder has failed we will pursue recovery of any debt.
 - For suspected breaches of PTRs, we will seek an undertaking from a business to move into compliance with the law. Where businesses refuse to sign an undertaking, or breach an undertaking, the CAA may apply to the Court for an Enforcement Order. The CAA will seek approval from the OFT before issuing court proceedings to ensure that it has consulted adequately with the business. It will normally send draft court papers to the business before commencing action.
- 1.37 Non-licensed business will be contacted and given advice about why they appear to be breaking the law and what measures are open to it to resolve the breach. If the business does not co-operate with us, we will consider carrying out an investigation and taking appropriate action.

- 1.38 A business holding a licence will be contacted and given advice about why it appears to be acting in breach of the terms of its licence. If the business does not take steps to rectify the breach, we will consider the most appropriate licensing action against the licence which may result in the licence being varied, suspended and/or revoked.
- 1.39 For operating licenses, our enforcement approach will vary depending on the type of requirement that the airline is suspected of not meeting. If an airline is unable to demonstrate ongoing compliance with ownership or control requirements our approach will lean more towards continued engagement with a view to being content with a specific period of time, whereas suspension of an airline's AOC or inability to provide evidence of insurance for their fleet may result in immediate suspension of their Operating Licence/Air Transport Licence.

Communication

- 1.40 The CAA adopts a policy of transparency about why it is proposing enforcement action and will provide any businesses we investigate with information about our policies and processes.
- 1.41 Each business we take enforcement action against will be provided with information about:
- the business activity or practice causing concern;
 - the legislation we believe is being breached;
 - the harms that we are wishing to avoid;
 - information we require from them;
 - next steps, including the potential consequences of failure to respond (including appropriate avenues of appeal).
- 1.42 A record of any contact between the business and CAA relating to enforcement matters will be made available to the business concerned on request.
- 1.43 The CAA will publicise its enforcement activity, approaches and priorities, particularly when requirements change or new requirements are introduced.

Publication of actions

- 1.44 CPG publicises its enforcement actions in accordance with the CAA's Regulatory Enforcement Policy.
- 1.45 In particular we routinely publish information about:
- prosecutions resulting in convictions;
 - formal undertakings (in respect of Part 8);
 - suspended, varied or revoked licences or accreditations.

Appealing and challenging our decisions

- 1.46 CAA has a complaints policy that allows stakeholders to provide feedback and comments on our activities. Complaints and comments about the areas covered in this enforcement guidance should initially be addressed to:
- Deputy Director
Consumer Protection Group
CAA House
45-59 Kingsway
London
WC2B 6TE
- 1.47 Appeals against decisions to:
- vary, suspend or revoke an ATOL or accreditation;
 - grant or vary an ATOL or accreditation;
 - refuse to grant an ATOL or accreditation; or
 - provisionally vary an ATOL or accreditation;
- are subject to procedures set out in the ATOL Regulations.
- 1.48 A similar appeals process exists for holders of Operating and Air Transport Licences under the Operation of Air Services in the Community Regulations 2009 - Statutory Instrument No 41 2009 and the Civil Aviation Act 1982.

CHAPTER 2

Enforcement in action

ATOL licensing scenarios

The CAA is informed about a trader who appears to be offering and selling air packages but is not issuing ATOL Certificates as required under the ATOL Regulations. The CAA writes to the trader informing him of our role, the information that we are in possession of, the requirements of the ATOL Regulations, and what we consider the breach to be. We offer advice on how to achieve compliance, point out sources of further information and ask the trader to confirm the steps that he will now take. The trader responds co-operatively and, in due course, we obtain satisfactory evidence that correct ATOL Certificates are being issued properly. The CAA closes the case.

The CAA receives trade and public enquiries concerning a website that promotes trips which include flights. The business operating the website and offering the trips does not hold an ATOL, but the website displays the "ATOL protected" logo. The firm's recent ATOL application has been declined because their director had formerly been convicted of a significant fraud while controlling another ATOL business. The CAA contacts the firm who claim that they are acting as agent of ATOL holders and therefore that they are not required to hold an ATOL. The CAA makes enquiries to establish whether their claim is correct and, while doing so, we receive two separate complaints from customers of the firm which reveal that the invoices the firm supplied to them do not disclose agency capacity. The CAA undertakes an investigation and concludes that there is sufficient evidence to prosecute the director for breaches of the ATOL Regulations. A case is brought and the Director subsequently pleads guilty at Magistrates Court, receives fines of £3,500 and is required to pay legal costs.

The CAA receives a trade complaint regarding a website allegedly offering flight arrangements sold as the agent of ATOL holders. The CAA contacts the firm, referring them to the requirement for compliant written agency agreements to be in place when selling as an ATOL holders' agent and asking them for the names of ATOL holders that they work with and copies of their agency agreements. The firm does not provide either and subsequently claims that they are acting as a 'ticket provider'. The CAA advises the firm that under the ATOL Regulations, the concept of "ticket provider" has been replaced by that of the "airline ticket agent" and what is required in order to act in this capacity. The firm

decides that it is unable to meet these requirements and subsequently applies for an ATOL.

The CAA has been unable to collect APCs due from an ATOL holder. The CAA writes to the firm referring them to the requirement to pay APC, confirming the outstanding amount and seeking payment by a certain date. The firm fails to pay. The CAA commences action to recover the monies through the courts. The ATOL holder responds by offering pay the full debt and the Court and legal costs that CAA has incurred. The CAA exceptionally agrees and the debt is recovered. In future CAA requires the ATOL holder to make APC payment on a monthly rather than quarterly schedule.

Airline licence scenarios

The CAA decides to suspend the Air Operating Certificate of an Operating Licence holder. The CAA informs the licence holder that they are not longer in compliance with the terms of their licence and that it has been suspended. The CAA publishes the suspension of that licence to inform the public, other traders and our counterparts in other Member States. We offer advice to the trader on how to return to compliance, point out sources of further information and ask him to confirm the steps that he will now take. The trader responds co-operatively, takes remedial action to permit reinstatement of the AOC and, once satisfactory evidence is provided that the other licensing requirements can be met, CAA reinstates the Operating Licence and publicises the fact.

The CAA receives evidence that an Air Transport Licence holder can no longer demonstrate that is owned and controlled by qualifying nationals, but does not represent a risk to consumers. The CAA contacts the firm, referring them to the relevant requirements for compliance and engages with the licence holder to discuss options for returning to compliance. Agreement is reached with the licence holder on the way forward, evidence of compliance is obtained and the case closed.

The CAA is advised that an Operating Licence holder can no longer demonstrate it has adequate aviation insurance in place to support a single aircraft in the fleet it operates. The CAA contacts the licence holder referring them to the relevant requirements for compliance. The licence holder cannot confirm that it has adequate insurance in place and the CAA asks the licence holder to offer an undertaking not to use that aircraft until it can do so. Agreement is reached with the licence holder, evidence of insurance compliance is subsequently obtained and the case closed.

APPENDIX A

Legislation enforcement by the CAA's Consumer Protection Group

A1 The Consumer Protection Group enforces legislation governing the sale of flights and air holidays and the licensing of airlines.

Table 1

Legislation	Criminal Sanctions	Part 8 EA02
The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012	Up to Unlimited fine and/or up to 2 years imprisonment	N/A
The Package Travel, Package Holiday and Package Tours Regulations 1992	Up to unlimited fine	Yes
The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007	Up to £5,000 fine	N/A
The Council Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community (Recast)	Sanctions are set out in The Operation of Air Services in the Community Regulations 2009 - Statutory Instrument No 41 2009, not in the EU Reg itself. (see * below)	N/A
The Civil Aviation Act 1982 (as amended)	N/A (after the bill has royal assent there are no criminal sanctions in the Act)	N/A
The Civil Aviation Authority Regulations 1991 - Statutory Instrument No 1672 1991	N/A no criminal sanctions in 1991 regs	N/A
* The Operation of Air Services in the Community Regulations 2009 - Statutory Instrument No 41 2009	Up to Unlimited fine and/or up to 2 years imprisonment	N/A

Legislation	Criminal Sanctions	Part 8 EA02
The Civil Aviation (Allocation of Scarce Capacity) Regulations 2007 - Statutory Instrument No 3556 2007	Up to Unlimited fine and/or up to 2 years imprisonment	N/A
Civil Aviation (Provision of Information to Passengers) Regulations 2007 - Statutory Instrument No 3303 2006	Up to £5,000 fine	N/A