EXPLANATORY MEMORANDUM TO

THE CIVIL AVIATION (AIR TRAVEL ORGANISERS' LICENSING) (AMENDMENT) REGULATIONS 2018

2018 No. 670

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 To increase the range of flight-inclusive package holidays that are protected by the Air Travel Organisers' Licence (ATOL) consumer protection scheme. This is being done to improve holiday consumer protection in the UK and align the legal framework with the requirements of the updated EU Package Travel Directive (Directive 2015/2302/ EU, the "2015 Directive").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 This instrument corrects errors in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the "2012 ATOL Regulations") which were reported by the Joint Committee on Statutory Instruments in their Fourth Report of Session 2012-13. The instrument is being issued free of charge to all known recipients of the 2012 ATOL Regulations.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 to align the ATOL scheme with the 2015 Directive, which is being implemented in the UK by the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTRs"). The Government's approach to transposing the 2015 Directive is explained in the Transposition Note attached to the Explanatory Memorandum to the PTRs.

4.2 The Proposal for the Directive was considered and cleared by the House of Lords Select Committee on the European Union in 2014 and the House of Commons European Scrutiny Committee in 2015 (published in Report No. 1, Session 15/16).

4.3 The 2015 Directive requires organisers of package holidays to provide security for the refund of payments made in respect of travel services not performed in the event of their insolvency and, where appropriate, security for the traveller's repatriation.

Through the PTRs businesses other than airlines selling flight-inclusive package holidays in the UK comply with the insolvency requirements by holding an ATOL licence.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

What is being done and why

7.1 The ATOL scheme, which is run by the Civil Aviation Authority ("CAA"), provides protection to consumers that have booked a package holiday involving a flight and in some circumstances just a flight. It protects consumers against the potential insolvency of their tour operator. In the rare event of a failure, the scheme ensures consumers can be repatriated if they are abroad, or receive a refund if they are yet to travel. The scheme has been in place since the 1970s and protects over 20 million holiday-makers each year. In the event of travel company insolvency, the Air Travel Trust Fund provides the money for consumers' refunds and repatriations under the ATOL scheme. The Air Travel Trust Fund is funded through the £2.50 ATOL Protection Contribution which is paid by travel companies for each ATOL protected holiday or flight sold.

7.2 In recent years steps have been taken to update the ATOL scheme to bring it in line with modern trade practices. In 2012, the Government introduced the 'Flight-Plus' category, ATOL certificates, and Agency Agreements to extend consumer protection, and help to improve clarity for all. The changes made by this instrument build upon these changes to implement the provisions of the 2015 Directive, which will bring similar, but further reaching protections across Europe from 1st July 2018.

7.3 The changes broaden the scope of traditional flight-inclusive package protection to cover modern methods of buying 'package holidays' by aligning with the wider definition of 'package' used in the 2015 Directive. Other definitions from the 2015 Directive are also introduced, including the term 'traveller' which is used in relation to packages. The existing wider definition of 'consumer' is also retained in the ATOL scheme and has been amended to expressly include travellers. The separate Flight-Plus category is removed as the types of bookings it was set up to protect will now be regulated as packages or as linked travel arrangements under the PTRs.

7.4 In line with the move in the 2015 Directive from a 'place of sale' to a 'place of establishment' approach, the requirement to hold an ATOL has also been applied to package sales made within the EEA by UK established businesses. EEA traders and their UK retail agents will be able to sell packages in the UK without an ATOL but will have to have insolvency protection under their domestic regimes which complies with the harmonised standards provided for under the 2015 Directive. This should ensure that UK consumers benefit from equivalent protection when buying holidays from traders established in the EEA. If an EEA trader does not provide protection

under their domestic regime, they will have to comply with the insolvency arrangements in the PTRs. Although EEA traders are already exempt from the ATOL scheme in relation to sale of packages, some EEA traders hold an ATOL on a voluntary basis for such sales. The CAA intend to cease to issue these voluntary ATOLs in recognition of the move in the 2015 Directive to a 'place of establishment' approach and due to the difficulties in enforcing the scheme against such traders. This change is not an effect of this instrument, but it is expected in practice to result in a reduction in trips covered by the ATOL scheme.

7.5 The 2015 Directive confirmed that it applies not only to those acting as suppliers but also to those who present themselves as acting as an agent for the traveller. The changes extend the ATOL scheme to cover not only those selling flights, but also those acting as 'agent for the consumer' in procuring flights and, in certain circumstances, those acting as an intermediary in facilitating flight sales, thereby closing off regulatory avoidance routes where there is consumer risk.

Consolidation

7.6 This instrument is the second instrument to amend the 2012 ATOL Regulations. The Department does not currently intend to consolidate this legislation.

8. Consultation outcome

8.1 The government ran a public consultation between 23rd February and 23rd March 2018 which set out the proposal to update the regulatory framework to implement the 2015 Directive and the accompanying draft ATOL regulations. Key stakeholders including tour operators, travel agents, airlines, trade associations and financial institutions made up the 30 responses received. They broadly accepted the proposals but some expressed a number of detailed areas to consider making changes to the draft ATOL regulations.

8.2 A number of responses raised concern that provision to require intermediaries to hold an ATOL, which forms part of anti-avoidance measures associated with closing the 'agent for consumer' loophole, was drawn too widely. In response to this, the drafting has been revised so that it only captures businesses which are organising a package or facilitating the sale of flight accommodation and receiving payment from the consumer. Those organisations purely offering price comparisons or marketing will be excluded.

8.3 Another area of concern was that as drafted, the regulations would require retailers selling multi-contract packages to have insolvency protection through ATOL as well as the organisers of such packages. The separate requirement on retailers has now been removed to ensure consistency with the 2015 Directive and PTRs. Consumers will still be protected by insolvency protection required of the package organiser.

9. Guidance

9.1 The Department for Transport does not intend to produce formal guidance on the regulations. The Department for Business, Energy and Industrial Strategy are working with the CAA to publish guidance on the PTRs.

10. Impact

10.1 The impact on business, charities or voluntary bodies is mitigated as much as possible.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

10.4 The Impact Assessment accompanying the ATOL Act 2017 and these regulations estimates that the amount of consumers covered by the ATOL scheme will reduce by approximately 287,000. There are four reasons for this overall reduction, which are: a reduction in voluntary licenses, the reduction of business to business sales, an increase in UK firms using the ATOL scheme to cover EU sales, and an increase in Linked Travel Arrangements (LTAs). The CAA intends to cease issuing voluntary ATOLs, because of the move in the 2015 Directive to a 'place of establishment' approach, which will see a reduction of approximately 468,000 trips. However, in turn, there will be an increase in UK firms using the ATOL scheme to cover EU sales by approximately 228,000 trips

10.5 Additionally this instrument removes the requirement for business to business sales to be covered by an ATOL Licence. This will see a reduction of up to 80,000 trips per annum. Businesses that make travel arrangements on the basis of a general agreement contract, often used for numerous travel arrangements for a specified period, do not require the level of protection designed for consumers. These passengers would be covered under any contingency arrangements agreed between the two businesses. This exemption has no impact on typical consumer or leisure packages.

10.6 LTAs are looser combinations of travel services than a package. The concept of LTAs was introduced by the 2015 Directive and is implemented under the PTRs. If an LTA includes a flight, the flight element may be protected under ATOL. In the impact assessment accompanying these regulations we envisage growth in the number of LTAs sold; we estimate an additional 33,000 holiday arrangements per annum will be sold as LTAs with a flight protected under ATOL, on top of those sold already.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to mitigate the impact to assist small business by maintaining some flexibility in how compliance is achieved.

11.3 The transposition of EU law as a maximum harmonisation provision prevents small business exemptions, even on a partial or temporary basis. However, small businesses are able to take advantage of two (less burdensome) approaches to achieve compliance with the ATOL scheme. These are through small business ATOLs which involve a simpler financial test and lower fee; and Accredited Body membership which removes the need for a business to apply for and hold its own separate licence.

11.4 The CAA, Accredited Bodies and other trade bodies (such as ABTA) would be able to assist small businesses in meeting their obligations under the 2012 ATOL Regulations.

12. Monitoring & review

12.1 This instrument amends provision in the 2012 ATOL Regulations which is already subject to review by virtue of existing provision in regulation 2 of those Regulations. The Secretary of State is required to review the operation and effect of the 2012 ATOL Regulations as amended by this instrument and publish a report at intervals not exceeding five years. The report of the latest Post Implementation Review was dated 26th January 2017 and can be found at the following link: http://www.legislation.gov.uk/uksi/2012/1017/resources.

13. Contact

13.1 Jade Harford at the Department for Transport (Telephone: 07584 884762 or email: Jade.Harford@dft.gov.uk) can answer any queries regarding the instrument.