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STATUTORY INSTRUMENTS

2018 No. 670

CIVIL AVIATION

**The Civil Aviation (Air Travel Organisers' Licensing)
(Amendment) Regulations 2018**

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| <i>Made</i> | - - - - | <i>4th June 2018</i> |
| <i>Laid before Parliament</i> | | <i>8th June 2018</i> |
| <i>Coming into force</i> | - - | <i>1st July 2018</i> |

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by sections 7(1), 71 and 71A of, and paragraph 15 of Schedule 1 and Part 2 of, and paragraphs 1 and 2 of Part 3 of Schedule 13 to, the Civil Aviation Act 1982(a).

In accordance with section 71(2) and 71B of that Act, the Secretary of State has consulted with the Civil Aviation Authority and the trustees of the Air Travel Trust before making these Regulations.

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Air Travel Organisers' Licensing) (Amendment) Regulations 2018 and come into force on 1st July 2018.

Amendment of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

2. The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012(b) are amended as follows.

Citation and commencement

3.—(1) In regulation 1—

- (a) in paragraph (2) omit “With the exception of regulation 10(f)”, and
- (b) omit paragraph (3).

(a) 1982 c.16. Sections 71A and 71B were inserted by section 10 of, and relevant amendments were made to Part 2 of Schedule 13 by Schedule 2 to, the Civil Aviation Act 2006 (c. 34). Sections 71, 71A and 71B were then amended by the Civil Aviation Act 2012 (c. 19), section 94. Section 71 was further amended by section 1 of, and section 71A and Part 2 of Schedule 13 were further amended by section 2 of, the Air Travel Organisers' Licensing Act 2017 (c. 33). The expression “prescribed” is defined in section 105(1).

(b) S.I. 2012/1017, as amended by S.I. 2012/1134.

Review

4.—(1) In regulation 2(2) for “Council Directive 90/314/EEC of 13th June 1990 on package travel, package holidays and package tours” substitute “Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004(a) and Directive 2011/83/EU of the European Parliament and of the Council(b) and repealing Council Directive 90/314/EEC(c)”.

(2) In regulation 2(4) omit “(other than regulation 10(f))”.

Interpretation

5.—(1) In regulation 4(1)—

(a) in the definition of “consumer” before “means” insert “includes a traveller and”;

(b) for the definition of “package” substitute—

““package” has the meaning specified in regulation 4A;”;

(c) insert the following definitions in the appropriate place—

““organiser”, in relation to a package means—

(a) a trader who combines and sells, or offers for sale, packages, either directly or through another trader or together with another trader; or

(b) the trader who transmits the traveller’s data to another trader in accordance with regulation 4A(1)(b)(v);”;

““Package Travel Regulations” means the Package Travel and Linked Travel Arrangements Regulations 2018(d);”;

““retailer” means a trader other than the organiser who sells or offers for sale packages combined by an organiser;”;

““trader”, in relation to a package, means any person who is acting, including through any other person acting in their name or on their behalf, for purposes relating to their trade, business, craft or profession in relation to contracts covered by the Package Travel Regulations, whether acting in the capacity of organiser, retailer, trader facilitating a linked travel arrangement or as a travel service provider;”;

““travel service” means—

(a) the carriage of passengers;

(b) the provision of accommodation which is not intrinsically part of the carriage of passengers and is not for residential purposes;

(c) the rental of—

(i) cars;

(ii) other motor vehicles within the meaning of Article 3(11) of Directive 2007/46/EC of the European Parliament and of the Council establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles(e); or

(a) OJ No L 364, 9.12.2004, p.1.

(b) OJ No L 304, 22.11.2011, p.64.

(c) OJ No L 326, 11.12.2015, p.1.

(d) S.I. 2018/634.

(e) OJ No L 263, 9.10.2007, p. 1. In Article 3(11), “motor vehicle” is defined as any power-driven vehicle which is moved by its own means, having at least four wheels, being complete, completed or incomplete, with a maximum design speed exceeding 25 kilometres per hour.

- (iii) motorcycles requiring a Category A driving licence in accordance with point (c) of Article 4(3) of Directive 2006/126/EC of the European Parliament and of the Council on driving licences^(a);
 - (d) any other tourist service not intrinsically part of a travel service within the meaning of paragraph (a), (b), or (c);”;
- ““traveller” means any individual who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of the Package Travel Regulations;”;
- (d) omit the definitions of “Flight-Plus” and “Flight-Plus arranger”.
- (2) In regulation 4(3) omit “and 74”.

Packages and procuring or facilitating flight accommodation

6. After regulation 4 insert—

“Definition of package

4A.—(1) In these Regulations, subject to paragraph (2), a “package” means a combination of at least two different types of travel service for the purpose of the same trip or holiday, if—

- (a) those services are combined by one trader, including at the request of, or in accordance with, the selection of the traveller, before a single contract on all services is concluded; or
- (b) those services are—
 - (i) purchased from a single point of sale and those services have been selected before the traveller agrees to pay,
 - (ii) offered, sold or charged at an inclusive or total price,
 - (iii) advertised or sold under the term “package” or under a similar term,
 - (iv) combined after the conclusion of a contract by which the trader entitles the traveller to choose among a selection of different types of travel services, or
 - (v) purchased from separate traders through linked online booking processes where—
 - (aa) the traveller’s name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders; and
 - (bb) a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service,

irrespective of whether the traveller concludes separate contracts with individual travel service providers.

(2) A combination of travel services where not more than one type of travel service as referred to in sub-paragraphs (a), (b) or (c) of the definition of “travel service”, in regulation 4(1), (“the principal travel service”) is combined with one or more tourist services referred to in sub-paragraph (d) of that definition is not a package if the latter services—

- (a) do not account for a significant proportion of the value of the combination and are not advertised as, and do not otherwise represent, an essential feature of the combination; or
- (b) are selected and purchased after the performance of the principal travel service has started.

(a) OJ No L 403, 30.12.2016, p. 18.

(3) In this regulation—

“point of sale” means—

- (a) any retail premises, whether movable or immovable;
- (b) a retail website or similar online sales facility, including where retail websites or online sales facilities are presented to travellers as a single facility; or
- (c) a telephone service.

Procuring flight accommodation and facilitating its availability

4B.—(1) These Regulations (other than regulations 9 and 16) apply to—

- (a) the procuring of flight accommodation on behalf of a consumer in circumstances where regulation 9A(1) applies; and
- (b) facilitating the making available of flight accommodation by another person in circumstances where regulation 9B(1) applies;

as they apply to the activity of making available flight accommodation and references to making available flight accommodation, and similar expressions, in these Regulations (other than in regulations 9 and 16) are to be read as including these activities.”

Manner of publication by the CAA

7. In regulation 8(1) for “is” substitute “must be”.

Who may make available flight accommodation

8.—(1) Regulation 9 is renumbered as paragraph (1) of that regulation.

(2) At the end of regulation 9 insert—

“(2) A person established in the United Kingdom must not, in an EEA State other than the United Kingdom, make available flight accommodation as a component of a package unless that person is a person referred to in paragraph (1)(a), (b), (c) or (d).”

(3) After regulation 9 insert—

“Procuring flight accommodation as agent for the consumer

9A.—(1) Where this paragraph applies, a person (“A”) must not in the United Kingdom procure flight accommodation on behalf of a consumer (“B”) unless A is a person referred to in regulation 9(1)(b), (c) or (d).

(2) Paragraph (1) applies where—

- (a) A is acting in the course of business; and
- (b) A is acting as agent for B.

(3) Paragraph (1) also applies to a person established in the United Kingdom who, in an EEA State other than the United Kingdom, procures flight accommodation on behalf of a consumer as a component of a package in the circumstances referred to in paragraph (2).

(4) For the purpose of paragraph (3), the reference in paragraph (1) to “the United Kingdom” is to be read as “an EEA State other than the United Kingdom”.

Facilitating the making available of flight accommodation by another person

9B.—(1) Where this paragraph applies, a person (“P”) must not in the United Kingdom facilitate the making available of flight accommodation by another person (“Q”) unless P is a person referred to in regulation 9(1)(b), (c) or (d).

(2) Paragraph (1) applies where—

- (a) the flight accommodation is a component of a package of which P is the organiser and one of the arrangements relating to payment specified in paragraph (3) applies; or
 - (b) (i) P is acting in the course of business;
 - (ii) the facilitation is not limited to arranging payment; and
 - (iii) the arrangement relating to payment specified in paragraph (3)(a) applies.
- (3) The arrangements relating to payment are that P—
- (a) receives a payment in connection with the flight accommodation from a consumer which P passes in whole or in part to Q;
 - (b) arranges for a payment in connection with the flight accommodation to be made by a consumer directly to Q; or
 - (c) receives a payment from Q as a consequence of a flight accommodation booking made by a consumer.
- (4) Paragraph (1) also applies to a person established in the United Kingdom who, in an EEA State other than the United Kingdom, facilitates the making available of flight accommodation by another person in the circumstances referred to in paragraph (2)(a).
- (5) For the purpose of paragraph (4), the reference in paragraph (1) to “the United Kingdom” is to be read as “an EEA State other than the United Kingdom”.

Persons exempt from requirement to hold an ATOL

9. For regulation 10 (persons exempt from requirement to hold an ATOL) substitute—

“**10.**—(1) The following persons are exempt from the need to hold an ATOL—

- (a) subject to regulation 15, an agent for an ATOL holder;
- (b) a person who acts as a member of an accredited body and in accordance with the conditions of membership of that accredited body;
- (c) an airline ticket agent, except when making available flight accommodation which constitutes a component of a package;
- (d) a person who is established in an EEA State other than the United Kingdom and who is not a Flight-Only provider;
- (e) a worker for an ATOL holder;
- (f) the CAA;
- (g) the trustees of the Air Travel Trust acting in their capacity as trustees;
- (h) a person who is making available flight accommodation under and in accordance with the terms of a general business travel agreement which includes all current terms that have been published by the CAA under paragraph (2);
- (i) a person making available flight accommodation occasionally on a not-for-profit basis to a limited group of consumers;
- (j) a retailer established in the United Kingdom, who is making available flight accommodation as a component of a package as agent for an organiser who is exempt under sub-paragraph (d).

(2) The CAA may—

- (a) publish terms to be included in a general business travel agreement for the purposes of paragraph (1)(h);
- (b) publish a variation to any such terms, which must not come into force until at least 28 days after the date of publication.

(3) In this regulation, “general business travel agreement” means an agreement which is concluded between a trader and another person, for the purpose of booking travel arrangements in connection with that other person’s trade, business, craft or profession.”

Power to exempt

10. In regulation 11(2) omit “that hold an ATOL”.

Restrictions on when flight accommodation may be made available

11.—(1) For regulation 15 (restrictions on when flight accommodation may be made available), substitute—

“(1) A person cannot, in the capacity of an agent for an ATOL holder, rely on the exemption in regulation 10(1)(a) when making available flight accommodation which constitutes a component of a package unless both of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) the person’s involvement in the creation of the package is limited to selecting or enabling a consumer to select from a closed group of travel services made available by the ATOL holder; and
- (b) the ATOL holder (and not the agent for the ATOL holder) is responsible for and performs the obligations imposed on the organiser of the package under the Package Travel Regulations.”

Supply of ATOL Certificate

12.—(1) Regulation 17 (supply of ATOL Certificate) is amended as follows.

(2) In paragraph (1)—

- (a) omit “(other than the operator of the relevant aircraft or an airline ticket agent)”;
- (b) after “who” insert “, in circumstances in which an ATOL is required to be held by them or another person under these Regulations,”;
- (c) insert “or” after sub-paragraph (a);
- (d) omit the “or” after sub-paragraph (b); and
- (e) omit sub-paragraph (c).

(3) In paragraph (2), sub-paragraph (c), for “Flight-Plus” substitute “package”.

Meaning of specified method

13.—(1) Regulation 18(1) (meaning of specified method) is amended as follows.

(2) In sub-paragraph (a) after “to that consumer” insert “, or sending the ATOL Certificate or the confirmed ticket to that consumer by electronic communication,”.

(3) In sub-paragraph (b) for “email or some other equivalent electronic means” substitute “electronic communication”.

Information to be provided to the consumer when making available flight accommodation

14.—(1) Regulation 20 (information to be provided to the consumer when making available flight accommodation) is amended as follows.

(2) After “makes available flight accommodation,” insert “in circumstances in which an ATOL is required to be held under these Regulations”.

(3) At the end of paragraph (b) insert “and”.

(4) For paragraph (c) substitute—

“(c) the name of the ATOL holder and the ATOL number of the ATOL under which the flight accommodation is being made available.”

(5) Omit paragraphs (d) and (e).

Regulation of Flight-Plus

15. Omit Part 3 (regulation of Flight-Plus).

Decisions to be made by Member

16. In regulation 50, omit paragraph (2).

Exclusions

17. Omit regulation 66 (exclusions).

Offences and penalties

18. In regulation 69(2)—
- (a) after “regulation 9,” insert “9A, 9B,”; and
 - (b) omit “15,”(a).

Due diligence defence

19. In regulation 70(1)—
- (a) after “regulation 9,” insert “9A, 9B,”; and
 - (b) omit “15,”.

ATOL Certificates

20. Omit regulation 74.

Amendment of the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007

21.—(1) The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007(b) are amended as follows.

- (2) In regulation 2(1)—
- (a) in the definition of “consumer” before “means” insert “includes a traveller and”; and
 - (b) after the definition of “SBA renewal” insert—
““traveller” means any individual who is seeking to conclude a contract, or is entitled to travel on a contract concluded, within the scope of the Package Travel and Linked Travel Arrangements Regulations 2018(c).”;

Signed by authority of the Secretary of State for Transport

4th June 2018

Sugg of Coldharbour
Parliamentary Under Secretary of State
Department for Transport

(a) The effect of section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) was to remove the upper limit for fines that a magistrates’ court can impose on summary conviction in England and Wales.
(b) S.I. 2007/2999, as amended by S.I. 2012/1017.
(c) S.I. 2018/634.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (S.I. 2012/1017) ("the principal Regulations") and the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (S.I. 2007/2999). In part these Regulations give effect to Directive (EU) 2015/2302 on package travel and linked travel arrangements ("the Package Travel Directive"). The main changes introduced by these Regulations are the alignment of the definition of package and associated definitions with those used in the Package Travel Directive, removal of the separate Flight-Plus category and the widening of the scope of the ATOL Scheme to extend, in certain circumstances, to the activities of UK established businesses within the EEA, of those who procure flight accommodation on behalf of a consumer, and of other intermediaries.

Regulation 3 makes amendments to regulation 1 of the principal Regulations consequential on regulation 9 of these Regulations.

Regulation 4 updates regulation 2 of the principal Regulations to refer to the Package Travel Directive.

Regulations 5 and 6 make changes to definitions used in the principal Regulations. In particular, the definition of "package" in the principal Regulations is replaced with a new definition in new Regulation 4A, associated definitions are inserted in regulations 4 and 4A of the principal Regulations and redundant definitions related to Flight-Plus are removed. These changes align the ATOL Scheme with the Package Travel Directive and the Package Travel and Linked Travel Arrangement Regulations 2018 (S.I. 2018/634). New regulation 4B of the principal Regulations provides that in most cases the term "making available" in the principal Regulations is to be interpreted as extending to the activities regulated under new regulations 9A and 9B of the principal Regulations.

Regulation 7 makes clear that regulation 8 of the principal Regulations imposes a requirement on the CAA to publish certain things.

Regulation 8 amends regulation 9 and inserts new regulations 9A and 9B into the principal Regulations. New regulation 9A requires an ATOL to be held in certain circumstances when flight accommodation is procured by a person acting as agent for the consumer. New regulation 9B requires an ATOL to be held in certain circumstances when a person facilitates the making available of flight accommodation by another person. In relation to the sale of packages, the regulation of provision of flight accommodation under regulations 9 to 9B of the principal Regulations extends to activities by UK businesses carried out in other EEA States.

Regulation 9 replaces regulation 10 of the principal Regulations with changes to the exemptions from the requirement to hold an ATOL.

Regulation 10 amends regulation 11 of the principal Regulations so that the Civil Aviation Authority's ("CAA") power in regulation 11(2) to exempt persons from any of the provisions of the principal Regulations is not limited to those holding an ATOL.

Regulation 11 substitutes a new regulation 15 of the principal Regulations, which limits the circumstances in which those acting in the capacity of agent for an ATOL holder are able to rely on the exemption from holding an ATOL in regulation 10(1)(a) of the principal Regulations.

Regulation 12 amends regulation 17 of the principal Regulations setting out the circumstances in which an ATOL certificate must be supplied to a consumer.

Regulation 13 amends regulation 18 of the principal Regulations to make provision in relation to the specified method of supply of the ATOL certificate, making clear that it can be sent electronically even when the customer is present.

Regulation 14 amends regulation 20 of the principal Regulations to change the requirements about information to be provided to consumers and to remove redundant references to Flight-Plus.

Regulation 15 revokes Part 3 of the principal Regulations relating to Flight-Plus.

Regulation 16 omits regulation 50(2) of the principal Regulations. The decisions listed in regulation 50(1) of those Regulations can only be made by a Member of the CAA. Decisions under the principal Regulations not listed in regulation 50(1) can be made either by a Member or by a CAA employee.

Regulation 17 omits regulation 66 from the principal Regulations, as regulations 38 and 46 of the principal Regulations make clear that the CAA can provisionally vary an ATOL or accreditation with immediate effect.

Regulation 18 makes provision for contravention of new regulations 9A and 9B of the principal Regulations to be an offence under 69(2) of those Regulations and removes the offence for breach of regulation 15 of those Regulations following the substitution of that regulation.

Regulation 19 provides for the due diligence defence at regulation 70 of the principal Regulations to apply in relation to offences for breach of new regulations 9A and 9B and removes the redundant reference to regulation 15.

Regulation 20 omits regulation 74, which is redundant, from the principal Regulations.

Regulation 21 amends the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (S.I. 2007/2999), to extend the definition of consumer to include a “traveller” (which is given the same meaning as in the principal Regulations).

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector may be obtained from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR and is published with the Explanatory Memorandum alongside the instrument at www.legislation.gov.uk.

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