



# Air Departure Tax (Scotland) Act 2017

## 2017 asp 2

### PART 2

#### KEY CONCEPTS

##### *Chargeable passengers and exemptions*

#### **2 Meaning of chargeable passenger**

- (1) Every person carried on a flight that begins at an airport in Scotland is a chargeable passenger unless—
  - (a) the person is working during the flight, or
  - (b) the person is a non-chargeable passenger in relation to the flight under any of sections 3 to 7 or regulations made under section 15.
- (2) A person is to be regarded as working during a flight only if the person is carried on the flight for the sole purpose of doing any of the following during the flight—
  - (a) acting as a member of the flight crew or as a cabin attendant,
  - (b) ensuring the hygienic preparation and handling of food and drink,
  - (c) carrying out work relating to the safety or security of the aircraft or of passengers or goods carried on the aircraft (which includes escorting a passenger or goods),
  - (d) carrying out repairs or maintenance on the aircraft.

#### **3 Passengers not carried for reward**

- (1) A passenger is a non-chargeable passenger in relation to a flight if—
  - (a) the passenger is carried on the flight in one of the circumstances set out in subsection (2), and
  - (b) the passenger is not carried for reward.
- (2) The circumstances are—
  - (a) the aircraft operator is required by an enactment to carry the passenger (for example, where immigration legislation requires the operator to repatriate a person who is refused entry to the United Kingdom),

- (b) the aircraft operator carries the passenger to facilitate an inspection, by the passenger, of the aircraft or its flight crew (for example, where the person is a Civil Aviation Authority flight operations inspector),
  - (c) the flight lands within the period of 72 hours before the passenger starts working in relation to any aircraft, and the passenger is carried on the flight for the sole purpose of positioning the passenger to undertake the work,
  - (d) the flight departs within the period of 72 hours after the passenger finishes working in relation to any aircraft, and the passenger is carried on the flight for the sole purpose of repositioning the passenger to where the passenger ordinarily operates or is ordinarily stationed.
- (3) A person is to be regarded as working in relation to an aircraft only if—
- (a) the passenger is working during a flight of the aircraft (as defined in section 2(2)), or
  - (b) the passenger is doing anything specified in section 2(2)(b) to (d) in relation to the aircraft before or after a flight of the aircraft.
- (4) In this section, “reward”, in relation to the carriage of a passenger, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been or is to be given.

#### **4 Passengers under the age of 16**

A passenger is a non-chargeable passenger in relation to a flight if—

- (a) the passenger is a child who—
  - (i) has not reached the age of 2 before the departure date of the flight, and
  - (ii) is not allocated a separate seat before first boarding the aircraft, or
- (b) the passenger is a child who—
  - (i) has not reached the age of 16 before the departure date of the flight,
  - (ii) is issued with a ticket for the flight and for every other flight (if any) that is covered by the same agreement for carriage, and
  - (iii) will, according to the agreement for carriage, have standard class travel on every flight covered by the agreement for carriage.

#### **5 Passengers carried on connected flights**

If a passenger is carried on two or more connected flights, the passenger is a non-chargeable passenger in relation to the second connected flight and each subsequent connected flight.

#### **6 NATO passengers**

- (1) A passenger is a non-chargeable passenger in relation to a flight if—
- (a) the passenger is a NATO passenger who is carried on the flight in that capacity,
  - (b) one of the following applies—
    - (i) the aircraft operator is a NATO visiting force or NATO IMHQ,
    - (ii) the passenger is carried on a charter flight, where the aircraft and its crew have been chartered by a NATO visiting force or NATO IMHQ,
 or

---

*Status: This is the original version (as it was originally enacted).*

---

- (iii) the passenger is carried on any other flight under an agreement for carriage, and
  - (c) if paragraph (b)(ii) or (iii) applies, the charter agreement or agreement for carriage is accompanied by a declaration that complies with subsection (2).
- (2) The declaration must—
- (a) identify the flight that will carry passengers for whom the exemption under this section is claimed,
  - (b) in the case of the situation referred to in subsection (1)(b)(iii), identify each passenger for whom the exemption is claimed,
  - (c) certify that the passengers for whom the exemption is claimed are NATO passengers,
  - (d) certify that the carriage of the NATO passengers on the flight is for official purposes, and
  - (e) be signed by an authorised officer of the NATO visiting force or NATO IMHQ.
- (3) In this section—
- “authorised officer”, in relation to a NATO visiting force or NATO IMHQ, means a person whose status as an authorised contracting officer has been notified by the NATO visiting force or NATO IMHQ to Revenue Scotland and, in the situation referred to in subsection (1)(b)(iii), to the aircraft operator,
- “NATO IMHQ” means a headquarters or organisation designated for the purposes of any provision of the International Headquarters and Defence Organisations Act 1964,
- “NATO passenger” means a passenger on a flight—
- (a) who is—
    - (i) for the purposes of any provision of the Visiting Forces Act 1952, a serving member of a NATO visiting force,
    - (ii) a person recognised by the Secretary of State as a member of a civilian component of a NATO visiting force, or
    - (iii) a military or civilian member of a NATO IMHQ, and
  - (b) who is not—
    - (i) a British citizen, a British overseas citizen, a British national (overseas), or a British overseas territories citizen (with those terms having the same meanings as in the British Nationality Act 1981),
    - (ii) a person who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act),
- “NATO visiting force” means a visiting force of a country, other than the United Kingdom, which is a party to the North Atlantic Treaty,
- “North Atlantic Treaty” means the North Atlantic Treaty signed at Washington on 4 April 1949.

## **7 Changes of circumstance beyond passengers’ control**

- (1) A passenger is a non-chargeable passenger in relation to a flight if, but for a change of circumstances beyond the passenger’s control, the passenger would be a non-chargeable passenger in relation to the flight under any of sections 3 to 6 or regulations made under section 15.

- (2) Subsection (1) applies only if—
- (a) the passenger has a ticket for the flight, and
  - (b) the change of circumstances arises after the ticket is issued or last amended.
- (3) A passenger is a non-chargeable passenger in relation to a flight (“flight F”) if—
- (a) the passenger is carried on flight F—
    - (i) because of a change of circumstances beyond the passenger’s control, but
    - (ii) in the course of travel that is covered by an agreement for carriage,
  - (b) the passenger has a ticket for every flight that is covered by the same agreement for carriage, and
  - (c) the departure airport, date and time, and the arrival airport, for flight F are not shown on the ticket when the ticket is issued or last amended.
- (4) A change of circumstances is to be regarded as beyond a passenger’s control if it is not attributable to an act or omission of the passenger.

#### *Chargeable aircraft and exemptions*

### **8 Meaning of chargeable aircraft**

- (1) An aircraft is a chargeable aircraft in relation to a flight if it has the characteristics specified in subsection (2), unless the aircraft is a non-chargeable aircraft under section 9 or 10 or regulations made under section 15.
- (2) The characteristics are that the aircraft—
- (a) is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,
  - (b) has a maximum take-off weight of 5.7 tonnes or more, and
  - (c) is fuelled by kerosene.

### **9 Aircraft used under public service obligation**

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is operated under a public service obligation.
- (2) In this section, “public service obligation” means an obligation imposed by a Member State of the European Union in accordance with Article 16 of Regulation (EC) No [1008/2008](#) of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).

### **10 Aircraft used for military, emergency, training or research flights**

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is one described—
- (a) under the heading “Aviation” in the Annex to the Directive identified in subsection (3), and
  - (b) in a paragraph under that heading that is specified in subsection (2).
- (2) The relevant paragraphs (which list aviation activities excluded from the greenhouse gas emission allowance trading scheme of the European Union) are—

- (a) paragraph (b) (which covers military flights performed by military aircraft and customs and police flights),
  - (b) paragraph (c) (which covers flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights),
  - (c) paragraph (f) (which covers training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers or cargo, or both, or for the positioning or ferrying of the aircraft),
  - (d) paragraph (g) (which covers flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based).
- (3) The Directive referred to in subsection (1) is Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 as interpreted in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision [2009/450/EC](#) of 8 June 2009.

#### *Other key concepts*

### **11 Meaning of flight**

- (1) In this Act, “flight”, in relation to a person, means the person’s carriage on an aircraft.
- (2) For the purpose of this Act, a person’s flight is to be regarded as—
- (a) beginning when the person first boards the aircraft, and
  - (b) ending when the person finally disembarks from the aircraft.

### **12 Meaning of carriage and agreement for carriage**

- (1) In this Act—
- “agreement for carriage”, in relation to a person, means any agreement or arrangement under which the person is carried, irrespective of—
- (a) whether the carriage is by a single carrier or successive carriers,
  - (b) whether the agreement or arrangement was made by or on behalf of the person,
  - (c) whether the person is carried for reward (as defined in section 3(4)),
  - (d) whether the agreement or arrangement is in writing, and
  - (e) whether a ticket is issued for any flights covered by the agreement or arrangement,
- “carriage” means carriage wholly or partly by air, and “carried” has a corresponding meaning.
- (2) For the purpose of section 4(b)(ii) (chargeable passenger exemption for children under 16), section 7(3)(b) (changes of circumstance beyond passengers’ control) and schedule 1 (connected flight rules), two or more flights are to be regarded as being covered by the same agreement for carriage only if—
- (a) a ticket is issued for all the flights (whether a single ticket for all the flights or separate tickets), and

- (b) the departure time, departure airport and arrival airport for each flight are specified—
  - (i) if a single ticket is issued, on the ticket, or
  - (ii) if separate tickets are issued, on a written summary that forms part of the agreement for carriage.

### **13 Meaning of maximum passenger capacity and maximum take-off weight**

- (1) In this Act—
  - “maximum passenger capacity”, in relation to an aircraft, means the allowable maximum number of persons who may be seated on the aircraft, excluding members of the flight crew and cabin attendants,
  - “maximum take-off weight”, in relation to an aircraft, means the allowable maximum weight of the aircraft and its contents when taking off (assuming the most favourable circumstances for take-off).
- (2) The allowable maximums referred to in subsection (1) must ordinarily be determined by reference to the certificate of airworthiness that is in force for the aircraft.
- (3) However, if an allowable maximum referred to in subsection (1) is stated in a notice published by Revenue Scotland in relation to a class or description of aircraft, or in a notice issued by Revenue Scotland to an aircraft operator in relation to a particular aircraft, the allowable maximum is as stated in the notice.

### **14 Meaning of standard class travel**

- (1) For the purposes of this Act, carriage on a flight is to be regarded as standard class travel if—
  - (a) the seats for passengers whose agreement for carriage provides for that class of travel have a pitch no greater than 1.016 metres, and
  - (b) the class of travel is the only, or the most basic, class of travel available on the flight.
- (2) The pitch of a seat (“seat A”)—
  - (a) is the distance between a fixed point on seat A and the same point on—
    - (i) the seat immediately in front of seat A, or
    - (ii) if there is no seat immediately in front of seat A, the seat immediately behind seat A, and
  - (b) if there is no seat immediately in front of or behind seat A, is to be determined with regard to any guidance issued by Revenue Scotland for that purpose.
- (3) Whether a class of travel is the only, or the most basic, class of travel available on a flight is to be determined with regard to any guidance issued by Revenue Scotland for that purpose.

#### *Modification of key concepts*

### **15 Key concepts may be modified by regulations**

- (1) The Scottish Ministers may by regulations make other provision concerning—
  - (a) who is a chargeable passenger,

- (b) who is a non-chargeable passenger,
- (c) which aircraft are chargeable aircraft,
- (d) which aircraft are non-chargeable aircraft.

(2) Regulations under this section—

- (a) may add, change or remove—
  - (i) any exemption from being a chargeable passenger or chargeable aircraft, and
  - (ii) any provision that defines or otherwise explains a term or expression, and
- (b) may modify this Act.