

# FINANCE ACT 2012

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 190 Schedule 23: Air Passenger Duty*

#### Summary

1. **Section 190** and Schedule 23 provide for APD rate increases. They also extend the scope of APD to private jets by reducing the de minimis weight limit below which aircraft were not subject to APD from 10 tonnes to 5.7 tonnes. In addition, they give statutory effect to the rate reduction applied, since 1 November 2011, to certain flights departing from Northern Ireland, and provides for the long term devolution of these rates.

#### Details of the Schedule

2. **Part 1** gives statutory effect to the rate reduction applied to certain flights departing from Northern Ireland for the period 1 November 2011 to 31 March 2012.
3. Paragraph 1 inserts new sections 30(4B) to (4D) into Finance Act (FA) 1994.
4. New sections 30(4B) and (4C) specifies the rate that will apply to certain 'relevant journeys' (defined in new section 30(4D) from Northern Ireland.
5. New section 30(4D) defines a 'relevant journey' as one which departs from Northern Ireland and, in the case of a journey that involves more than one flight, provides that the second or onward flight must not begin within the UK or any "Part 1 territories" as set out in schedule 5A to FA 1994.
6. Paragraph 2 makes consequential changes.
7. Part 2 of the Schedule provides for the increase in the APD rates to be applied to each destination band.
8. Paragraph 4 amends section 30 of FA 2004. It sets out the rates for the destination bands and inserts new sections 30(4B) to (4D). These new sections provide for the new reduced rates for passengers on flights from Northern Ireland that are 'relevant journeys' as defined in new section 30(4D), with effect from 1 April 2012.
9. Paragraph 5 makes consequential changes.
10. **Part 3** if the Schedule devolves direct long haul rates to Northern Ireland.
11. Paragraph 8 amends section 30 of FA 1994. It inserts new section 30(1A) to disapply rates specified in section 30(2) to 30(4A) in instances where new section 30A (Northern Ireland direct long haul rates of duty) apply. It also omits new sections 30(4B) to 30(4D), which provide for the rates for relevant flights from Northern Ireland for the period from 1 November 2011 to 31 March 2012, and provides for these changes to take effect in relation to the carriage of passengers beginning on or after the relevant day as defined by new section 30A.

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which received Royal Assent on 17 July 2012*

12. Paragraph 9 inserts new section 30A which provides that the rates for certain flights may be set by the Northern Ireland Assembly.
13. New section 30A(1) applies the rates from the relevant day to flights where a passenger's journey begins from a place in Northern Ireland which does not end in the UK or any territory specified in Part 1 of Schedule 5A and, where there is more than one flight to that journey, the first flight is not followed by a connected flight beginning in the UK or any other territory specified in Part 1 of Schedule 5A.
14. New sections 30A(2) to (7) defines what rates are to be devolved and specifies that rates may be set to £0.
15. New sections 30A(8) to (10) apply certain current APD provisions to new section 30A. They also define the 'relevant day' to be the day appointed by Order and make consequential changes to section 42(4) and (5) of Finance Act 1994.
16. New subsection 30A(11) to (14) sets out some of the legislative detail concerning the process under which the Northern Ireland Assembly may vary the devolved rates.
17. New section 30A(15) provides that any duty relating to devolved APD paid to the Commissioners be paid into the Consolidated Fund of Northern Ireland.
18. Paragraphs 10(1) to (5) insert new section 33(2A) which provides that aircraft operators only operating routes from Northern Ireland as specified in new section 30A are not required to register under the provisions of section 33 (but instead will need to register under the provisions of new section 33A). It also makes consequential changes to reflect new section 33A.
19. Paragraph 11 inserts new section 33A which provides that the Commissioners may keep a register of aircraft operators operating routes from Northern Ireland as specified in new section 30A, and require such operators to notify to the Commissioners their liability register by a prescribed time.
20. Paragraph 12 makes consequential amendments to section 34(5) to reflect the insertion of new section 33A.
21. Paragraph 13 inserts new section 41A which provides an information sharing agreement in relation to the devolution of the rate to Northern Ireland.
22. Paragraphs 14 and 15 make consequential amendments.
23. Part 4 of the Schedule provides for the extension of APD to passengers in smaller aircraft by reducing the de minimis weight limit below which aircraft are not chargeable aircraft for APD from the current 10 tonnes to 5.7 tonnes. It also amends the definition of a chargeable passenger and provides for new rates for the carriage of chargeable passengers on certain aircraft.
24. Paragraph 17 substitutes section 28(3) to apply sections 29 and 29A for determining whether an aircraft is a chargeable aircraft for the purposes of APD.
25. Paragraph 18 amends section 29. It redefines a "chargeable aircraft" and extends the scope of APD to smaller aircraft by reducing the former 10 tonne de minimis weight limit to 5.7 tonnes. It also removes the reference to an authorised seating capacity and restricts the scope of APD to aircraft fuelled by kerosene (aviation turbine fuel) only.
26. Paragraph 19 inserts a new section 29A, which extends exceptions to APD to aircraft whose operation is related to military, police, customs, search and rescue operations, humanitarian and research and training operations. It also extends the exception to flights operated under a public service obligation.
27. Paragraph 20 inserts new sections 30(4E) to (4H).

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28. New section 30(4E) provides for new rates to be applied to the carriage of chargeable passengers on certain aircraft.
29. New section 30(4F) defines these aircraft as being of an authorised take-off weight of not less than 20 tonnes, and with an authorised seating capacity of not more than 18 (excluding members of the flight crew and cabin attendants).
30. New section 30(4H) provides that an aircraft's authorised seating capacity is considered to be more than 18 (and consequently not liable to the rate set out in new section (4F)) if there is a certificate of airworthiness in effect showing this, or if the Commissioners are satisfied that the aircraft has been designed or adapted to seat more than 18 (excluding flight and cabin attendants).
31. Paragraph 21 inserts new section 30A(7A) and provides for how the rates to be devolved and detailed in new sections 30A(4) to (6) are to apply to aircraft defined in new section 30(4F) (ie aircraft with an authorised take-off weight or not less than 20 tonnes, and with an authorised seating capacity of not more than 18).
32. Paragraph 22 amends section 43(1). Previously this section placed outside the scope of APD passengers not carried for reward if the operator was not an air transport undertaking (i.e. an aircraft operator whose main business was not carrying passenger for hire or reward). The change now brings these passengers into the scope of APD, and brings the exclusions in line with those for air transport undertakings where these are restricted to flight and cabin crew. It also excludes certain passengers not carried for reward who perform specific services or duties. These specific services and duties are prescribed in regulation 12 of the Air Passenger Duty Regulations 1994. Furthermore it inserts new section 43(1A) which extends the term 'agreement for carriage' to also include informal arrangements and agreements, such as those between friends and family members.

## **Background Note**

### **Part 1 of Schedule 23 - Northern Ireland direct long haul rates of duty from 1 November 2011 to 31 March 2012**

33. This rate reduction was introduced in recognition of the unique position of Northern Ireland's airports, and means that the carriage of passengers on certain flights taking off from an airport in Northern Ireland will attract the short haul rate of APD.
34. These flights are those where the journey is direct to long haul destinations or, in a case where there are one or more flights involved, the first connection is made in a long haul destination. For these purposes long haul destinations are those not listed in Part 1 of Schedule 5A.
35. This rate reduction applies to flights that take off from Northern Ireland for the period beginning on or after 1 November 2011 to 31 March 2012.

### **Part 2 of Schedule 23 - Rates of duty from 1 April 2012**

36. As announced at Budget 2011, APD rates are now to be increased annually and in line with inflation. These increases, which also take into account the increase deferred from April 2011, apply to the carriage of chargeable passengers on chargeable flights taking off from UK airports from 1 April 2012, irrespective of when the flight was actually booked or purchased.

### **Part 3 of Schedule 23 - - Devolution of Northern Ireland direct long haul rates of duty**

37. On 27 September 2011, at the same time that it announced the reduction in APD rates for passengers on direct long haul flights from Northern Ireland, the Government announced that, in order to provide a more lasting solution, aspects of APD would be

devolved to Northern Ireland. Part 3 of Schedule 23 includes changes which devolve to the Northern Ireland Assembly the rate of APD to be applied to passengers on direct long haul flights that take off from Northern Ireland, on or after a day to be appointed by order.

38. **Part 3** also makes provision for the setting up and maintenance of a separate register of aircraft operators with routes from Northern Ireland. The Commissioners may keep a register of aircraft operators operating routes from Northern Ireland, and if they do, operators currently registered for APD with routes that begin in Northern Ireland will need to register a second time and will need to account for APD on their Northern Ireland routes separately from their other routes. Operators who only operate routes that begin in Northern Ireland will only be required to register on the Northern Ireland register.
39. In addition, to allow for more effective management of the tax, Part 3 introduces provisions for HMRC to disclose information to the Secretary of State, the Treasury or the Department of Finance and Personnel in Northern Ireland.

#### **Part 4 of Schedule 23 - Other Provisions**

40. At Budget 2011 the Chancellor announced that, instead of replacing air passenger duty with a per plane tax, the Government had instead decided to extend the scope of APD to private jets and consulted on how this could be done.
41. There is no ready definition of a private jet, so, in order to extend the scope of APD to private jets, changes to the de minimis weight limit for APD are needed in order to bring smaller aircraft (including private jets) within the scope of the tax.
42. In recognition of the fact that private jets may be customised to provide exceptional standards of luxury travel, new rates of APD will be introduced to apply to these aircraft. These aircraft are to be defined on the basis of weight and seating capacity, so that large aircraft with an authorised weight of more than 20 tonnes and authorised to seat fewer than 19 passengers will attract new rates of APD.
43. Changes are also required to the definition of a passenger. Under the current APD structure, exemptions apply to passengers who are not carried for reward. As private jet passengers are often carried for no reward or fare (for example, an aircraft owner may be flown in their own private jet) changes to the definition of a passenger are required.
44. Equally private jet passengers are not always flown as part of a formal arrangement or agreement, but instead may be flown as part of an informal agreement such as the type that may exist between family members or friends. In order to ensure that these types of passengers are included in the scope of APD, the interpretation of 'agreement for carriage' will be amended.
45. Part 4 of the Schedule also includes changes to reflect the devolution of direct long haul APD rates to the Northern Ireland Assembly and provides that the new rates to be applied for carriage on aircraft considered to provide exceptional standards of luxury travel (as defined by weight and seating capacity – see para 50 above) are to be twice those to be applied to non standard class travel.
46. These changes apply to flights that take off on or after 1 April 2013.