

# AIR DEPARTURE TAX (SCOTLAND) ACT 2017

## EXPLANATORY NOTES

### THE ACT

#### Part 2 – Key Concepts

11. **Part 2** defines the concepts that are fundamental to the operation of the tax: in particular, defining who is a chargeable passenger and which aircraft are chargeable aircraft. Other terms are defined elsewhere in the Act, either in the section in which a term is used or in the general interpretation section (section 44). An index of all terms and expressions that are defined or otherwise explained in the Act can be found in schedule 3.

#### Section 2 – Meaning of chargeable passenger

12. The effect of this section is that every person carried on a flight that begins in Scotland is a chargeable passenger, unless the person is working during the flight or qualifies for an exemption as a non-chargeable passenger. Some exemptions are set out in sections 3 to 7. Further exemptions may be set, or existing exemptions modified or removed, by regulations made under section 15.
13. For a person to be treated as working during a flight, the person must be carried on the flight for the sole purpose of carrying out an activity described in section 2(2) during the flight. The activities described in section 2(2)(a), (b) and (d) are self-explanatory. Section 2(2)(c) covers work relating to the safety or security of the aircraft or of passengers or goods carried on the aircraft, and includes escorting a passenger or goods. Not all persons who escort a passenger or goods on a flight would be considered to be working during the flight. The paragraph must be read in its context, which requires that the person is carried for the sole purpose of carrying out the activity in relation to the flight. Persons whose work escorting a person or goods continues after the flight, or whose work has no connection with the aircraft operator, would not be considered to be working during the flight for the purpose of this section: for example, a teacher accompanying students on a school trip or a courier delivering diplomatic documents.

#### Section 3 – Passengers not carried for reward

14. This section creates a tax exemption for the carriage of a passenger who is carried for no reward in the circumstances specified in section 3(2).
15. The circumstances described in section 3(2)(a) and (b) are self-explanatory. The circumstances described in section 3(2)(c) and (d) are intended to enable aircraft operators, without incurring tax, to position their staff before or after they work on any aircraft. The following table provides some examples.

<i>Example</i>	<i>Tax outcome</i>
<i>Example 1 (pre-work positioning)</i> An aircraft engineer located in Edinburgh is needed to work on an aircraft located at London Heathrow, and	No ADT is payable. Under section 3(2) (c), the engineer is a non-chargeable passenger. The exemption is subject to two conditions: there must be no fare or

<i>Example</i>	<i>Tax outcome</i>
is flown from Edinburgh to Heathrow as a passenger.	other reward paid for the carriage of the passenger, and the flight must land at Heathrow no earlier than 72 hours before the engineer's work on the aircraft begins.
<i>Example 2 (post-work positioning)</i> A cabin attendant whose home base is in London works on a flight from Copenhagen to Edinburgh, and is flown from Edinburgh to London Stansted as a passenger.	No ADT is payable. Under section 3(2) (d), the cabin attendant would be a non-chargeable passenger on a flight from Edinburgh to any London airport. The exemption is subject to two conditions: there must be no fare or other reward paid for the carriage of the passenger, and the flight must depart Edinburgh no later than 72 hours after the passenger finishes his or her shift as a cabin attendant on the Copenhagen to Edinburgh flight.

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

16. This section creates tax exemptions for the carriage of persons under the age of 16. Children under the age of two on the departure date of the flight are always non-chargeable passengers, unless they are allocated their own seat before boarding. Children under the age of 16 on the departure date of the flight are non-chargeable passengers only if they have tickets for standard class travel for all the flights covered by their agreement for carriage. The definitions of agreement for carriage and standard class travel are set out in sections 12 and 14 respectively.

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

17. [Section 5](#) provides a tax exemption for the carriage of passengers who are travelling on connected flights, but only in relation to the second or any subsequent connected flight. Schedule 1 sets out the rules for determining which flights are to be treated as connected for ADT purposes. The rules prescribe maximum connection times between flights: 24 hours if connecting to an international flight and either six, 10 or 17 hours for connecting to a domestic flight, depending on what time of day the preceding flight is scheduled to arrive. The rules also prescribe that the flights must be covered by the same agreement for carriage (and for that definition, see section 12(2)).
18. The status of the passenger (chargeable or non-chargeable) on the first connected flight, and the status of the aircraft used for that flight (chargeable or non-chargeable), determines whether tax is chargeable, and at what rate, for the carriage of the passenger on the whole series of connected flights (see section 16). For example:
- if the passenger is a non-chargeable passenger on the first connected flight, or if that flight is on a non-chargeable aircraft, no tax will be incurred for any of the connected flights;
  - if the passenger is a chargeable passenger on the first connected flight, and if that flight is on a chargeable aircraft, the aircraft operator for the first connected flight incurs tax at a rate that is determined by, among other things, the place where the last connected flight ends.
19. The connected flight rules are intended to have the same effect as, and therefore dovetail with, the rules that currently apply for APD under The [Air Passenger Duty \(Connected Flights\) Order 1994 \(S.I. 1994/1821](#), as amended). Any difference between the rules that apply in Scotland and the rules that apply in the rest of the UK would create a risk of aircraft operators being taxed more than once for the carriage of a single person on connected flights.

20. The following examples illustrate the ADT that would be payable in respect of the carriage of a passenger on any series of connected flights that includes a flight beginning in Scotland. The examples assume that:
- the flights concerned are connected flights under the rules in schedule 1;
  - the passenger would be a chargeable passenger in relation to the first connected flight; and
  - the first connected flight is on a chargeable aircraft.

<i>Example</i>	<i>Tax outcome</i>
<p><i>Example 1</i> The passenger's first connected flight leaves from a Scottish airport, e.g.:</p> <ul style="list-style-type: none"> <li>• Aberdeen # London Heathrow # Bristol, or</li> <li>• Edinburgh # London Heathrow # Sydney</li> </ul>	ADT is payable by the aircraft operator carrying the passenger on the first connected flight, at the rate determined under section 16 by reference to the destination of the passenger's last connected flight.
<p><i>Example 2</i> The passenger's first connected flight leaves from an airport within the UK but outwith Scotland, and a subsequent connected flight leaves from a Scottish airport, e.g.:</p> <ul style="list-style-type: none"> <li>• London Gatwick # Glasgow # Stornoway, or</li> <li>• Newcastle # Glasgow # New York</li> </ul>	No ADT is payable because the first connected flight begins outwith Scotland, and the passenger is a non-chargeable passenger, under section 5, on any subsequent connected flight from an airport in Scotland.
<p><i>Example 3</i> The passenger's first connected flight leaves from an airport outwith the UK, and a subsequent connected flight leaves from a Scottish airport, e.g.:</p> <ul style="list-style-type: none"> <li>• Brussels # London # Inverness # Stornoway, or</li> <li>• New York # Edinburgh # Kirkwall</li> </ul>	No ADT is payable because the first connected flight begins outwith Scotland, and the passenger is a non-chargeable passenger, under section 5, on any subsequent connected flight from an airport in Scotland.

### ***Section 6 – NATO passengers***

21. This section provides a tax exemption for the carriage of passengers on NATO business. This mirrors the extra-statutory concession provided in relation to APD under paragraph 3.2.5 of Her Majesty's Revenue and Customs Excise Notice 550: Air Passenger Duty<sup>1</sup>.

### ***Section 7 – Changes of circumstance beyond passengers' control***

22. This section provides a tax exemption for the carriage of a passenger on a flight where, for reasons beyond the passenger's control:
- an exemption that would otherwise apply to the passenger (under section 3 to 6 or regulations under section 15) ceases to apply to the passenger (section 7(1)); or
  - the passenger, in the course of a journey that includes only flights for which the passenger has a ticket, departs from a Scottish airport on a flight that is not shown on the passenger's ticket (section 7(3)).

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<sup>1</sup> <https://www.gov.uk/government/publications/excise-notice-550-air-passenger-duty/excise-notice-550-air-passenger-duty>

<i>Example</i>	<i>Tax outcome</i>
<p><i>Example 1</i> A passenger is flying from New York to Edinburgh to Kirkwall. Under section 5, the passenger is a non-chargeable passenger on the Edinburgh to Kirkwall flight because it is a second connected flight. However, a flight delay caused by poor weather results in the passenger's Edinburgh to Kirkwall flight being delayed beyond the maximum allowable connection time.</p>	<p>No ADT is payable for the carriage of the passenger on the Edinburgh to Kirkwall flight. Under section 7(1), the passenger continues to be a non-chargeable passenger on the delayed flight, but only if the delay arose after the passenger's ticket was issued or last amended.</p>
<p><i>Example 2</i> A passenger has a ticket for a flight from Aberdeen to London Heathrow. However, the plane develops a mechanical problem and makes an unscheduled stop in Edinburgh. The passenger is transferred to a scheduled Edinburgh to London Heathrow flight.</p>	<p>No ADT is payable for the carriage of the passenger on the scheduled Edinburgh to London Heathrow flight, but only if the passenger is carried on that flight without his or her ticket being amended to reflect the changed flight details. (ADT will already have been incurred for the carriage of the passenger from Aberdeen to London Heathrow at the point when that flight began.)</p>

### ***Section 8 – Meaning of chargeable aircraft***

23. The effect of this section is that ADT is only charged in respect of chargeable passengers carried on certain aircraft, referred to in the Act as chargeable aircraft. A chargeable aircraft is a fixed-wing aircraft, fuelled by kerosene (equivalent to aviation turbine fuel, or "Avtur"), with a maximum take-off weight of 5.7 tonnes or more. Every aircraft that meets those criteria is a chargeable aircraft, unless the aircraft qualifies for an exemption as a non-chargeable aircraft.
24. Rotary aircraft such as helicopters, and aircraft not fuelled by kerosene (such as piston-engine aircraft which are typically fuelled by aviation gasoline, or "Avgas") are not chargeable aircraft.
25. Chargeable aircraft exemptions are set out in sections 9 and 10. Further chargeable aircraft exemptions may be set, or the existing exemptions modified or removed, by the Scottish Ministers by regulations made under section 15.
26. The following examples show the maximum take-off weights of some aircraft currently used in Scotland. Maximum take-off weight is defined in section 13.

<i>Example</i>	<i>Tax outcome</i>
<p><i>Example 1 (aircraft with a maximum take-off weight of less than 5.7 tonnes)</i></p> <ul style="list-style-type: none"> <li>• BN-2 Islander: used on intra-island routes in Orkney, and between Oban and Coll, Colonsay and Tiree, this small turboprop plane has a maximum take-off weight of 2.994 tonnes.</li> <li>• Viking Twin Otter 400: used on routes between Glasgow and Barra, Campbeltown and Tiree, this small</li> </ul>	<p>No ADT is payable for the carriage of passengers on these aircraft. Both are too light to be chargeable aircraft. In addition, the BN-2 Islander is fuelled by Avgas, not Avtur (kerosene).</p>

<i>Example</i>	<i>Tax outcome</i>
turboprop plane has a maximum take-off weight of 5.670 tonnes.	
<p><i>Example 2 (aircraft with a maximum take-off weight of 5.7 tonnes or more)</i></p> <ul style="list-style-type: none"> <li>Let L-410: used on flights between Glasgow and the Isle of Man, this aircraft has a maximum take-off weight of 7 tonnes.</li> <li>Saab 340: used on most Highlands and Islands routes, this aircraft has a maximum take-off weight of 13.99 tonnes.</li> <li>Boeing 777-300ER: with a maximum take-off weight of 251.29 tonnes, this is the largest aircraft currently used on long haul routes from a Scottish airport.</li> </ul>	ADT is payable for the carriage of chargeable passengers on these aircraft because each aircraft has a maximum take-off weight of more than 5.7 tonnes.

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

27. This section provides a tax exemption for the carriage of passengers on an aircraft that is being operated under a public service obligation (“PSO”) imposed under European Union law. PSOs enable routes to isolated communities to be sustained by the provision of government subsidies. The effect of section 9(1), in the light of the PSOs that are currently in place in Scotland, is that no ADT would be payable for the carriage of passengers on aircraft used:
- on flights subsidised by the Scottish Government on routes that connect Glasgow with Barra, Tiree or Campbeltown;
  - on flights subsidised by Scottish local authorities on routes within Shetland, Orkney and the areas of Comhairle nan Eilean Siar and Argyll and Bute Council; or
  - the Dundee to London Stansted service subsidised by a partnership of Dundee City Council, the UK Government and Transport Scotland.

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

28. [Section 10](#) provides a tax exemption in relation to flights that serve a public purpose and which would not ordinarily be considered to be commercial or chartered passenger flights. For consistency with the exemption provided in respect of APD under section 29A of the FA 1994, the exemption in section 10 is defined by reference to flights that are exempt from the greenhouse gas emissions allowance trading scheme in place under Directive [2003/87/EC](#) of the European Parliament and of the European Council of 13 October 2003.
29. Directive [2003/87/EC](#) has been amended several times since it was originally made. Under section 12 of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>2</sup> (asp 10), the version of the instrument that will apply for the purposes of this exemption is the version that is in force immediately before the day on which this Act received Royal Assent. A consolidated version of the Directive, as in force when this explanatory note was prepared, is available<sup>3</sup>.
30. The relevant paragraphs in Annex I to the Directive, which describe the exempt flights, are listed in section 10(2). To aid the reader, a description of what each

<sup>2</sup> <http://www.legislation.gov.uk/asp/2010/10/section/12>

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1478510634870&uri=CELEX:02003L0087-20151029>

relevant paragraph covers has been included in bracketed text. However, this text is indicative only. The flights which are exempt are the flights described in the identified paragraphs of the Directive. Section 10(3) requires those paragraphs to be interpreted in accordance with Commission Decision [2009/450/EC](#)<sup>4</sup> of 8 June 2009, which gives detailed guidance on how to interpret the aviation activity paragraphs in Annex I to the Directive.

### ***Sections 11 to 14***

31. **Sections 11 to 14** define other concepts that are key to the operation of the tax: flight, carriage, agreement for carriage, maximum passenger capacity, maximum take-off weight and standard class travel. Key points to note include the following:
- a person's flight begins when the person first boards the aircraft and ends when the person finally disembarks from it: a flight does not end nor a new flight begin if, for example, a person disembarks from an aircraft temporarily while it refuels (see section 11);
  - an agreement for carriage need not be formal or commercial in nature (see section 12); accordingly, the operators of a private jet would be liable for ADT if the jet is a chargeable aircraft and carries passengers who are chargeable passengers, even if the passengers are carried on an informal basis and do not have tickets for their travel;
  - whether a passenger is carried on an aircraft in standard class travel (which is relevant to the structure of the tax in section 16 and the exemption for children under the age of 16 in section 4) depends on the seat pitch, the number of different classes of travel available on a flight, and any guidance issued by Revenue Scotland (see section 14).

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

32. This section provides for regulations to make other provision concerning who is a chargeable passenger, who is a non-chargeable passenger, which aircraft are chargeable aircraft and which aircraft are non-chargeable aircraft. Regulations under this section will be subject to the affirmative procedure (see section 42(1)).

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<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1478508844459&uri=CELEX:32009D0450>