



# 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,
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- (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.

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- (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.