

## EXPLANATORY MEMORANDUM TO

### THE AIR PASSENGER DUTY (AMENDMENT) REGULATIONS 2012

2012 No. 3017

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

#### 2. Purpose of the instrument

2.1 This instrument amends the Air Passenger Duty Regulations 1994 (S.I. 1994/1738) (“the principal Regulations”).

2.2 The Finance Act 2012 amends Chapter 4 of Part 1 of the Finance Act 1994 to extend air passenger duty (APD) to aircraft with a maximum take off weight of 5.7 tonnes or more and to change the definition of “passenger” in relation to an aircraft. It also devolves to the Northern Ireland Assembly (NIA), rate setting powers for direct long haul flights (destinations more than 2000 miles from London) taking off from Northern Ireland and makes provision for the keeping of a register of operators of aircraft making such flights. This instrument amends the principal Regulations as a result of the change in the definition of “passenger” and to extend the definition of “the register” to include a Northern Ireland register.

#### 3. Matters of special interest to the Select Committee on Statutory Instruments

None

#### 4. Legislative Context

4.1 APD was introduced by Chapter 4 of Part 1 of the Finance Act 1994. Finance Act 2012 amends that Act by introducing provisions that:

- extend the duty to smaller aircraft by reducing the current de minimis weight limit from 10 tonnes to of 5.7 tonnes or more;
- amend the definition of a passenger; and
- devolve the power to set rates for direct long haul flights departing from Northern Ireland to the NIA.

4.2 Finance Act 2012 also provides that HMRC may require operators who operate direct long haul flights from Northern Ireland to register separately. Regulations 2 and 3 of, and Schedule 1 to, the principal Regulations define and make reference to the register of operators. This instrument amends the principal Regulations so that the register includes the Northern Ireland register.

4.3 Finance Act 2012 amends the definition of “passenger” in section 43 (1) of the Finance Act 1994 to bring into the scope of APD any person carried on an aircraft other than a member of the flight crew, a cabin attendant or a person who is not carried for reward and who satisfies prescribed requirements.

4.4 Regulation 12 of the principal Regulations prescribes requirements in relation to employees of an aircraft operator. The amendment to section 43(1) of the Finance Act 1994 removes the reference to employees. This instrument therefore amends regulation 12 so that the prescribed requirements that must be satisfied to exclude a person not carried for reward from the definition of a passenger apply to any person not carried for reward and not just employees of the aircraft operator.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 APD is a self assessed tax, and registered operators are required to calculate, declare and account for the tax due on a monthly basis, on the APD return. This calculation is based on the number of chargeable passengers on board a chargeable aircraft at take off from a UK airport. Excluded from the definition of “passenger” are certain passengers who are carried for no reward.

7.2 The definition of “passenger” is contained in primary legislation, and previously APD was not charged on the carriage of certain employees of aircraft operators carried for no reward. The details of who these employees were, is contained in the principal Regulations. As many passengers on flights made by smaller aircraft (such as private jets) are carried for no reward it was necessary to amend the definition of “passenger” in the primary legislation in order to bring such passengers into the scope of APD. However, where any person (and not just an employee of an aircraft operator) is not carried for reward and satisfies the prescribed conditions that previously only applied to employees, they are excluded from the charge to duty. The amendments made by this instrument to regulation 12 of the principal Regulations provide for this.

7.3 Finance Act 2012 also contains legislation devolving the powers to set rates for direct long haul flights departing from airports in Northern Ireland to the NIA. As part of the care and maintenance of the tax regime, the Commissioners may require operators who operate direct long haul flights from Northern Ireland to register separately. This instrument makes consequential amendments to reflect this new provision.

- *Consolidation*

7.4 There are currently no plans to consolidate the principal Regulations.

## **8. Consultation outcome**

These are consequential amendments being made as a result of changes in primary legislation. No consultation on these consequential changes was conducted; however the key changes under APD reform was announced at Budget 2011 and was followed by a consultation which sought the industry's view on how best this reform could be implemented. The consultation closed on 17 June 2011, and a summary of responses was published in December 2011.

## **9. Guidance**

Guidance on the changes will be included in the HMRC Public Notice 550, Air Passenger Duty.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note was published on 6 December 2011 alongside draft clauses of the Finance Bill 2012 and is available on the HMRC website at <http://www.hmrc.gov.uk/tiin/tiin708.htm>. It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to make only the minimum changes required to be in line with primary legislation.

11.3 The basis for the final decision on what action to take to assist small business was that no additional regulatory requirement other than that which is necessary is to be introduced.

11.4 APD makes allowances for small businesses, with a de minimis exemption for flights made in aircraft of less than 5.7 tonnes. HMRC do not expect small businesses that do pay APD to be disadvantaged by the changes relative to larger airlines, as in general they are less likely to operate the direct long haul flights affected by the changes.

## **12. Monitoring & review**

HMRC will work with the industry to ensure effective monitoring of the wider impact of the policy and it would be appropriate to review this instrument as part of this process.

### **13. Contact**

Wing Edmundson at the Transport Taxes Team, HMRC Tel: 0207 147 0410 or email: [wing.edmundson@hmrc.gsi.gov.uk](mailto:wing.edmundson@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.