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Air Departure Tax (Scotland) Bill: Consideration prior to Stage 3

Anouk Berthier

This briefing summarises the main recommendations made by the Finance and Constitution Committee in its Stage 1 report and the Scottish Government response. It also looks at the key amendments passed at Stage 2 and considers the areas of debate where no amendments were passed. Stage 3 will take place on 20 June 2017.

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Introduction

The [Air Departure Tax \(Scotland\) Bill](#) ("the ADT Bill") was introduced in the Parliament on 19 December 2016 by Cabinet Secretary for Finance and Constitution, Derek Mackay MSP ("the Cabinet Secretary"). This is the latest bill to arise from measures enacted in the Scotland Act 2016. It is an enabling bill that makes provision for Air Departure Tax (ADT) to be charged on the carriage of chargeable passengers on chargeable aircraft by air from airports in Scotland. Air Passenger Duty (APD) will stop applying in Scotland on 1 April 2018 and if this Bill is passed, ADT will replace APD in Scotland.

SPICe briefing 17/05 [Air Departure Tax \(Scotland\) Bill](#) provides more detail on the provisions in the Bill as introduced.

Parliamentary consideration

The Finance and Constitution Committee ("the Committee") was appointed lead committee for parliamentary consideration of the Bill.

Table 1 lists the key dates for parliamentary consideration of the Bill.

Table 1: Summary of Parliamentary Consideration

Stage	Date
Bill introduced	19 December 2016
Stage 1 - general principles	
Committee	1 February (evidence), 8 February (evidence) 22 February (evidence), 1 March (evidence), 22 March (private), and 29 March (private) 2017
Delegated Powers and Law Reform Committee	31 January , 21 February , 28 February (private) and 16 May 2017
Stage 1 report: Committee	1 April 2017
Scottish Government's response to Finance Committee Stage 1 report	21 April 2017
Stage 1 debate	25 April 2017
Stage 2 – detailed consideration	17 May 2017
Bill (as amended at Stage 2)	posted online 18 May 2017
Stage 3 – final consideration (plenary)	20 June 2017

Stage 1 - Key issues

At stage 1, the Committee took oral evidence over four meetings (dates noted in Table 1).

Recognising that such a bill is necessary to ensure that a tax on the carriage of air passengers from Scottish airports can be levied from 1 April 2018, the Committee supported the general principles of the Bill, while raising a number of issues requiring further consideration. The main issues raised through stage 1 scrutiny are considered briefly below.

Secondary legislation

Rates and bands

Section 10 of the [Bill as introduced](#) provides for tax bands and rates to be set through secondary legislation (affirmative procedure). The Committee noted this approach in its Stage 1 Report and that it is consistent with the one taken in relation to other devolved taxes.

Section 10(2) of the Bill allows for provisions other than rates and bands concerning the structure of the tax to be made by regulations. During Stage 2 proceedings, the Cabinet Secretary to the Committee that a change under this section "will be mainly about rates and bands; any other amendments might be around terminology or the understanding of that terminology in relation to the tax."¹

The Delegated Powers and Law Reform Committee raised concerns that section 10(2) appeared to have been drafted more widely than necessary to give effect to the Government's stated policy intention.

Key concepts and exemptions

Section 8 of the [Bill as introduced](#) provides that the definition of chargeable passengers and chargeable aircraft as well as exemptions would be legislated for by regulations, and that regulations under this section may modify this Act.

A number of witnesses giving evidence to the Committee voiced concern over the absence of specification of exemptions in the Bill. Concern was also raised over the use of secondary legislation to modify primary legislation, whereas current APD exemptions are specified in [section 31 of the Finance Act 1994](#). Exemptions for a devolved Scottish tax, Land and Buildings Transaction Tax, are also specified in primary legislation - the [Land and Buildings Transaction Tax \(Scotland\) Act 2013](#).

Asked why exemptions were not included in the Bill, the Cabinet Secretary stated:²

"The reason for our decision is that we want consistent flexibility and the ability to adapt as it is the Government's intention to match the current exemptions for passengers and ministers have previously agreed to retain under ADT all the current UK APD exemptions."

An exemption for flights departing from airports in the Highlands and Islands has been in place under current APD since 2001. [Section 19 of the Finance Act 2000](#) provided that exemptions for flights departing from any region which has a population density of not more than 12.5 persons per square kilometre could be specified by order. The exemption for the Highlands and Islands was specified in [The Air Passenger Duty \(Designated Region of the United Kingdom\) Order 2001](#).

In relation to the Highlands and Islands exemption, the Scottish Government noted in its response to the Committee's Stage 1 Report: ³

“...the Scottish Government strongly supports retaining a like-for-like exemption under ADT and is interested in suggestions made to the Committee for enhancing the exemption. As ADT is a new tax devolved under the Scotland Act 2016, this means that the Scottish Parliament is legislating for the first time on this matter. After careful consideration, the Scottish Government considers that such an exemption has to be notified to and assessed by the European Commission (EC) under State Aid rules before it is implemented in compliance with European Union (EU) law.”

Both the Delegated Powers and Law Reform Committee and the Committee recommended that the Scottish Government bring forward amendments at Stage 2 to include exemptions in the Bill.

50% reduction and impact

Although the Bill provides for rates and bands to be specified by secondary legislation at a later date, the [Policy Memorandum to the Bill](#) notes the Scottish Government's commitment to reducing by 50% the overall tax burden by the end of the fifth session of the Scottish Parliament, starting to implement that reduction in 1 April 2018, and also abolishing the tax when resources allow.

While the Committee did not seek responses on the proposed 50% reduction in the ADT tax burden given that rates and bands are to be set in secondary legislation, it noted that most respondents to the call for written evidence and witnesses did consider this commitment. A number of witnesses questioned and/or raised concerns over it on the basis of potential environmental, economic, fiscal, distributional impacts and displacement effects, as well as the lack of evidence on each of these effects. Asked at Stage 1 by Patrick Harvie MSP whether he was asking the Committee to pass a bill "that places no requirements or constraints on ministers regarding the issues that they must consider in proposing rates and bands", the Cabinet Secretary responded: ²

“I do not agree. I have told the committee that I think that there should be economic and environmental consideration in advance, as we put our tax position across. What I am asking the Parliament to consider right now is the ability to raise the tax.”

Measuring outcome achievement

Questions were raised around how outcomes arising from the Bill would be measured. The Chartered Institute of Taxation (CIOT) and the Institute of Chartered Accountants of

Scotland (ICAS) both suggested in written evidence provided to the Committee that there should be provision in the Bill regarding the monitoring of outcomes. Asked by the Committee whether there should be some form of monitoring to assess whether the Bill's "intended outcomes actually deliver the objectives in the policy memorandum" the Cabinet Secretary responded:

“ Yes, I think that it would be helpful to consider an evaluation of the economic outputs that the fiscal policy has achieved. There will, of course, also be the environmental assessment, but I am open to that kind of evaluation of tax policy and intervention.”

Payment, collection and management arrangements

Major differences in terms of tax administration between the current APD and the proposed regime for ADT include:

- Revenue Scotland to administer and collect the tax (under APD this is HRMC) and maintain an "ADT register".
- Aircraft operators to make quarterly tax returns (under APD this is monthly).
- Aircraft operators who do not have a business establishment, or other fixed establishment be required to appoint a tax representative based within the European Economic Area (EEA) (under APD this is the the UK).
- Online administration and possibility of paying by credit or debit card (this is not currently possible under APD).

There was general support for the payment, collection and management arrangement provisions contained in Part Four of the [Bill as introduced](#). However the Committee questioned whether there was a potential conflict between keeping an ADT Register and Revenue Scotland's legal obligations, under the Revenue Scotland and Tax Powers Act 2014 on taxpayer confidentiality. Revenue Scotland stated to the Committee in response to a question on this point: ⁴

“ We are mindful of our obligations under the Revenue Scotland and Tax Powers Act 2014 to protect taxpayer information. Therefore, we would absolutely not wish to be put in a situation, or indeed to put any aircraft operator in a situation, where we were breaching those obligations. Our current thinking—we have not finalised it yet—is that we will move to a similar model to what we have for landfill tax, so the name of the aircraft operator will be on the register. It most certainly will not be the individual passengers.”

A number of technical questions were raised in written evidence to the Committee by organisations such as the CIOT and ICAS. These are listed in the [Summary of written evidence, Air Departure Tax \(Scotland\) Bill, Finance and Constitution Committee](#).

Committee recommendations

On completion of stage 1 evidence gathering, the Committee supported the introduction of legislation to ensure that a tax upon the carriage of air passengers from Scottish airports can be levied from 1 April 2018.

Table 2 draws out the key recommendations made by the Committee in its stage 1 report,⁵ and the Scottish Government's response to these recommendations.³

Table 2: Recommendations in Stage 1 Report and Scottish Government response

FCC recommendations	Scottish Government response
The Committee recommends the Scottish Government bring forward amendments at Stage 2 which make detailed provision for exemptions from the definition of 'chargeable passenger' and 'chargeable aircraft'.	The Scottish Government will bring forward amendments to the Bill at Stage 2 providing for passenger and aircraft exemptions under ADT (except for passengers flying from all Highlands and Islands airports).
The Committee recommends that the Scottish Government respond to the suggestion that flights to Highlands and Islands airports from other Scottish airports should be exempted from the definition of chargeable aircraft.	The Scottish Government stated its support for regional development in Scotland and recognised the importance of air transport for people and businesses in the Highlands and Islands region, particularly in remote areas and island communities, and is determined to find the most effective way to provide the best possible support to Highlands and Islands communities. The Scottish Government is aware of the views raised by some stakeholders that any aircraft or passengers flying to Highlands and Islands airports from other Scottish airports should be exempt from ADT. The Scottish Government will consider this as part of the work it is currently undertaking with regards an exemption for passengers flying from Highlands and Islands airports.
The Committee recommends that the Scottish Government consider bringing forward an appropriate amendment at stage 2 to more closely align the power in section 10(2) with its stated policy intention of enabling the Scottish Ministers to make provision relating to the core structure of ADT, as provided for in section 9 of the Bill, which does not relate to tax bands or tax rate amounts	The Scottish Government wrote that it considers that section 10(2) of the Bill as currently drafted, and when read in its context with section 10(1) and 10(3), is consistent with the policy intention of providing a secondary legislation power to make provision relating to the structure of the tax beyond defining tax bands and setting tax rate amounts, and as such does not plan to bring forward an amendment at Stage 2 with regards to this provision.
While noting that the approach taken by the Scottish Government with regard to the setting of tax rates and bands is, consistent with the approach taken in relation to other devolved taxes, the Committee recommends that the Budget Process Review Group should consider whether a Finance Bill would be a more appropriate means for the setting of devolved tax rates and bands.	The Scottish Government stated it has passed on the Committee's recommendation to the Budget Process Review Group.
The Committee recommends that the Scottish Government note the evidence brought forward in the Committee in finalising its proposals for the rates and bands.	The Scottish Government noted and welcomed the wide range of evidence provided to the Committee, and will take this evidence into account when determining the Government's proposals for the ADT rate amounts and bands that will apply from 1 April 2018.
The Committee recommends that the Scottish Government commission an independent economic impact analysis of the proposed reduction in ADT and that the economic impact analysis be published ahead of or at least at the same time as the Scottish Government proposes its approach in its consultation document on ADT tax rates and bands.	The Scottish Government wrote it had considered evidence provided to the Committee and has commenced the commissioning of an independent economic impact analysis of the Government's plans for a 50% reduction in the overall burden of ADT by the end of the current session of the Scottish Parliament. The analysis will be published in the autumn, no later than when the Government sets out its secondary legislation plans for the ADT tax rate amounts and tax bands that will apply from 1 April 2018. In addition to this analysis, a robust monitoring and evaluation framework will be put in place for assessing the economic impact of ADT in the future.
The Committee recommends that the socio-economic and environmental outcomes arising from ADT be regularly evaluated and reported upon every second year to Parliament and that the Scottish Government bring forward amendments at Stage 2 that will place a duty on Scottish Ministers to this effect.	The Scottish Government highlighted it is already undertaking assessments to consider the environmental impacts that may arise as a result of its ADT plans including a Strategic Environmental Assessment (SEA) and greenhouse gas emissions and noise assessments. It notes it will have to carry out a SEA if it proposes changes to ADT beyond its plans for a 50% reduction under the Environmental Assessment (Scotland) Act 2005. The Scottish Government does not believe that it is necessary or desirable to make duplicate provision in the Bill.

FCC recommendations	Scottish Government response
<p>The Committee noted it intends to fully scrutinise the environmental impacts of the proposed 50% reduction in ADT when the Strategic Environmental Assessment is published alongside the proposed rates and bands for ADT.</p> <p>The Committee recommends that the Scottish Government publish an analysis of the likely increase in carbon emissions arising from the proposed 50% reduction and recommends that the Scottish Government publish this as part of the Strategic Environmental Assessment.</p>	<p>The Scottish Government stated it will ask that the independent economic impact analysis consider the best way to design a robust monitoring and evaluation framework so that this can be put in place for assessing the socio-economic and environmental impacts of ADT in the future.</p> <p>The Scottish Government wrote that it does not intend to bring forward an amendment to the Bill at Stage 2 placing a duty on Scottish Ministers to undertake assessments every two years of the socio-economic and environmental outcomes arising from ADT.</p>
<p>The Committee agrees with the UK Committee on Climate Change, that within the Climate Change Plan there needs to be a credible overall strategy for aviation that is in line with its climate obligations.</p>	<p>The Scottish Government noted the Committee's support for an aviation emissions strategy within the Climate Change Plan, and will respond to the Scottish Parliament in due course on this matter.</p>
<p>The Committee asked that the Scottish Government provide clarification from the Scottish Government on what action it is taking to ensure that any differentiated approach is 'legally compliant'.</p>	<p>The Scottish Government stated that, the Highlands and Islands exemption aside, does not support a differential approach.</p>
<p>The Committee notes the provisions in Part Four of the Bill and requests that Revenue Scotland provide written updates to the Committee on the implementation of ADT.</p> <p>The Committee requests that the Scottish Government consider the specific, technical questions raised in written evidence by organisations such as CIOT and ICAS.</p>	<p>The Scottish Government wrote it understands that Revenue Scotland will provide regular written updates to the Committee on the implementation of ADT.</p> <p>The Scottish Government noted it considered all of the specific technical questions raised in written evidence provided to the Committee, and intends to bring forward a small number of Government amendments to the Bill at Stage 2 as a result.</p>
<p>The Committee seeks the Scottish Government's view on the issues raised with regard to double taxation where a passenger undertakes a journey involving connected flights.</p>	<p>The Scottish Government noted that the current UK APD exemption for a passenger carried on a second or subsequent connected flight is not yet replicated in the Bill; is aware of concerns around double taxation and is willing to consider any suggestions or solutions that stakeholders may have on this matter</p>
<p>The Committee recommends that the forecast impact on the Scottish budget to 2021-22 is provided ahead of or at least alongside the proposals for tax rates and bands that the Scottish Government intends to consult upon and will form the basis for the secondary legislation that the Parliament will be required to consider.</p>	<p>The Scottish Government stated it will provide a forecast impact on the Scottish Budget at the same time as it sets out its secondary legislation plans for the ADT tax rate amounts and tax bands that will apply from 1 April 2018. Separately the Scottish Fiscal Commission will assume responsibility for producing independent forecasts of receipts from ADT to inform the Scottish Government's Draft Budget 2018-19 and the Budget Bill. These forecasts will reflect the Scottish Government's policy for ADT.</p>

Stage 2 - Key amendments

Stage 2 offers an opportunity for any MSP to propose textual amendments to a bill, although only members of the lead committee taking forward the bill can vote on any amendments that are lodged.

A Stage 2, a total of 71 amendments were lodged. Of these:

- 65 were agreed without division
- 3 were disagreed by division
- 1 was withdrawn by agreement
- 2 were not moved.

The full list of amendments is available in the [Marshallled List of Amendments for Stage 2](#) and the [Groupings of Amendments for Stage 2](#).

The amendments were considered in one Committee meeting on 17 May 2017. The vast majority (65) of the amendments were lodged in the name of the Cabinet Secretary. All the Scottish Government's amendments were passed while all the other amendments were not agreed, withdrawn or were not moved.

Agreed amendments

Table 3 provides information on the significant amendments that were agreed, in all cases without division. The major change made at stage 2 was the inclusion in the Bill of exemptions for chargeable passengers and chargeable aircraft (25 amendments).

Table 3: Key amendments agreed

Amendment	Discussion
Chargeable passengers: exemptions 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 51, 52, 56, 57, 58, 60, 61, 62, 63, 64, 65 - Derek MacKay	The Bill as introduced did not include exemptions for chargeable passengers. These amendments introduced the same exemptions as under APD which are: <ul style="list-style-type: none"> • Persons carrying out certain duties (flight crew, cabin attendants, etc.) • Children under the age of 16 on the date of the flight • Passengers carried under statutory duties e.g. Civil Aviation Authority flight operations inspectors, persons refused admission to the UK and required to be repatriated at the airlines expense • NATO passengers • Passengers on connected flights • Passengers on a flight because of circumstances beyond their control
Chargeable aircraft: exemptions 7, 8, 9, 53 - Derek MacKay	The Bill as introduced did not include exemptions for chargeable aircraft. These amendments introduced the same exemptions as under APD for emergency/public service flights but did not introduce exemptions for: <ul style="list-style-type: none"> • Pleasure flights (to and from the same airport, less than 60 minutes) provided under section 31 of the Finance Act 1994 (as amended by Section 13 of the Finance Act 1996). • Flights departing from the Highlands and Islands

The other amendments that were agreed were of a technical nature. This includes amendment 25, which amended section 18 of the [Bill as introduced](#) by changing the specified level of tax liability for being eligible to make occasional returns from £5,000 to £20,000.

In written evidence to the Committee provided at Stage 1, the Institute of Chartered Accountants of Scotland raised concerns on a number of administrative arrangements. These are listed in the [Summary of written evidence, Air Departure Tax \(Scotland\) Bill, Finance and Constitution Committee](#).

The following summarises the points for which amendments were not proposed.

ICAS referred to Part 4 Section 28 (6) of the [Bill as introduced](#) which states: “In this Act, “security” means security for the payment of any amount of the tax which is or may become due from a taxable person (including any penalty or interest that is recoverable as if it were an amount of the tax).”

ICAS noted in its written submission to the Committee: ⁶

“ ... it is an unusual stance for [Revenue Scotland] to assume future non-compliance by charging interest and penalties on a security withholding. Surely it must be the case that penalties and interest are only chargeable after an incidence of non-compliance has been proven, and not on the assumption that non compliance has taken place by default. Quite apart from the matter of equity, business cash flow could be at risk in the event of such a stance being taken by [Revenue Scotland].”

No amendment was put forward on this point and Section 28 (6) of the [Bill as amended](#) is the same as the [Bill as introduced](#).

ICAS also discussed Part 4 section 31 (3) of the [Bill as introduced](#) on the liability of handling agents which states: “(3) However, Revenue Scotland— (a) must not give notice under this section to a handling agent who is an individual, and (b) must not give notice on the ground referred to in subsection (2)(a) unless Revenue Scotland considers it necessary for the protection of the revenue.”

ICAS sought clarification ⁶ “on whether the Scottish Government considered the scope for evidence if a taxable person is in financial difficulty and appoints an individual to be his handling agent.”

No amendment was put forward on this point and Section 31 (3) of the [Bill as amended](#) is the same as the [Bill as introduced](#).

Amendments not agreed, withdrawn or not moved

Table 4 shows the amendments that were not agreed, were withdrawn or were not moved.

Table 4: Stage 2 amendments - not agreed, withdrawn or were not moved

Amendment	Discussion	Outcome
Regulations under section 10(1): requirement for aviation emissions policy/ impact assessment 66, 70, 71 - Patrick Harvie	These amendments would require the Scottish Government, before proposing rates and bands, to consult on and adopt an aviation emissions policy including a target for aviation emissions in 2050; that it would act in the way "best calculated" to help to meet this target; and that it would be required to produce an assessment that covers the fiscal, economic, environmental and social impacts.	66: not agreed (For 3, Against 8, Abstentions 0) 70: not agreed (For 3, Against 8, Abstentions 0) 71: not agreed (For 3, Against 8, Abstentions 0)
Regulations under section 10(2): scope of power 67, 68, 69 - Patrick Harvie	These amendments propose to modify section 10(2). Patrick Harvie stated at stage 2: "I have lodged amendments 67, 68 and 69 only because the Delegated Powers and Law Reform Committee made a recommendation following its consideration of the bill, which the Finance and Constitution Committee agreed with in its stage 1 report (...) I discussed with the legislation team what amendments might be necessary to give effect to it. I am interested to hear what the cabinet secretary has to say in response." The Scottish Government responded that it considered these amendments "either unnecessary or too wide (...) The purpose of the power in section 10(2) is to revise the structure of the tax when necessary. Because the structure of the tax currently comprises bands and rates, it is difficult to imagine what section 10(2) could in practice be used for if amendments 67 and 68 were accepted." ¹ Patrick Harvie withdrew the amendment, stating: "I will consider how the issue that it relates to might be addressed, if necessary, at stage 3 in light of the cabinet secretary's remarks." ¹	67: withdrawn 68 and 69: not moved

In a letter to the Committee following Stage 2, ⁷ the Scottish Government clarified that Section 10(1) allows Scottish Ministers to set rates and bands by regulation whereas Section 10(2) allows for further adjustments to be made to the structure of the tax by regulations. Provision which could be made under section 10(2) but not under Section 10(1) includes for instance:

- Adding or removing a tax band.
- Amending the tax base (for instance by changing the definition of "special category aircraft" or "standard class travel").
- Changing the meaning of other terms such as "final destination" or connected flight rules.
- Amending the Act to change the way in which the tax is determined, for instance setting tax bands by reference to the size of aircraft on which a passenger is carried rather than by the passenger's final destination.

Stage 3

Stage 3 of the Bill will take place on 20 June 2017. The deadline for lodging amendments with the Scottish Legislation Team is noon on Tuesday 13 June 2017.

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