

# Air Departure Tax (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 9	Schedule 1
Sections 10 to 38	Schedule 2
Sections 39 and 40	Schedule 3
Sections 41 and 42	Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 2

#### Derek Mackay

- 1 In section 2, page 1, line 20, after <under> insert <any of sections (*Passengers not carried for reward*) to (*Changes of circumstance beyond passengers' control*) or>

### After section 2

#### Derek Mackay

- 2 After section 2, insert—

#### <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.>

**Derek Mackay**

**3** After section 2, insert—

**<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.>

**Derek Mackay**

**4** After section 2, insert—

**<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.>

**Derek Mackay**

**5** After section 2, insert—

**<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, or

- (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 meaning 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.>

**Derek Mackay**

6 After section 2, insert—

**<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 (*Passengers not carried for reward*) to (*NATO passengers*) or regulations made under section 8.
- (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.>

**Section 3**

**Derek Mackay**

7 In section 3, page 2, line 8, after <under> insert <section (*Aircraft used under public service obligation*) or (*Aircraft used for military, emergency, training or research flights*) or>

**After section 3**

**Derek Mackay**

8 After section 3, insert—

**<Aircraft used under public service obligation**

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is operated under a public service obligation.
- (2) In this section, "public service obligation" means an obligation imposed by a Member State of the European Union in accordance with Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).>

**Derek Mackay**

9 After section 3, insert—

**<Aircraft used for military, emergency, training or research flights**

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is one described—
  - (a) under the heading “Aviation” in the Annex to the Directive identified in subsection (3), and
  - (b) in a paragraph under that heading that is specified in subsection (2).
- (2) The relevant paragraphs (which list aviation activities excluded from the greenhouse gas emission allowance trading scheme of the European Union) are—
  - (a) paragraph (b) (which covers military flights performed by military aircraft and customs and police flights),
  - (b) paragraph (c) (which covers flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights),
  - (c) paragraph (f) (which covers training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers or cargo, or both, or for the positioning or ferrying of the aircraft),
  - (d) paragraph (g) (which covers flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based).
- (3) The Directive referred to in subsection (1) is Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 as interpreted in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision 2009/450/EC of 8 June 2009.>

**Section 5**

**Derek Mackay**

10 In section 5, page 2, line 28, after <reward> insert <(as defined in section (*Passengers not carried for reward*)(4))>

**Derek Mackay**

11 In section 5, page 2, line 34, after <of> insert <section (*Passengers under the age of 16*)(b)(ii) (chargeable passenger exemption for children under 16), section (*Changes of circumstance beyond passengers’ control*)(3)(b) (changes of circumstance beyond passengers’ control) and>

**Section 8**

**Derek Mackay**

12 In section 8, page 3, line 39, after <make> insert <other>

## Section 9

### Derek Mackay

- 13 In section 9, page 4, line 33, leave out subsection (6)

## Section 10

### Patrick Harvie

- 66 In section 10, page 5, line 6, at end insert—

<( ) The Scottish Ministers must, in making regulations under subsection (1), act in a way best calculated to contribute to meeting the target for the year 2050 as set out in a policy prepared under section (*Section 10 regulations: requirement for aviation emissions policy*).>

### Patrick Harvie

- 67 In section 10, page 5, line 7, leave out <other>

### Patrick Harvie

- 68 In section 10, page 5, line 7, after <provision> insert <, other than provision in relation to the tax bands and tax rate amounts,>

### Patrick Harvie

- 69 In section 10, page 5, line 8, after <tax> insert <as provided for in section 9>

## After section 10

### Patrick Harvie

- 70 After section 10, insert—

#### <Section 10 regulations: requirement for aviation emissions policy

- (1) Before laying a draft of the first regulations under section 10(1), the Scottish Ministers must prepare a policy on the emissions of greenhouse gases from aviation (“aviation emissions”).
- (2) A policy prepared under subsection (1) must include, in particular—
  - (a) a statement about how the policy has been, or is to be, taken into account by the Scottish Ministers in—
    - (i) defining the tax bands, and
    - (ii) setting the tax rate amounts or the method for calculating the amounts,
  - (b) a target for the maximum amount of net aviation emissions for the year 2050, expressed as a percentage lower than 100% of net aviation emissions in 2005,
  - (c) the steps that the Scottish Ministers are taking to ensure, including in particular in relation to the matters mentioned in paragraph (a), that the target is met, and
  - (d) for the purposes of paragraph (b), either—

- (i) a statement providing a scientific basis for using the radiative force factor for the time being specified in accordance with section 16(3) of the Climate Change (Scotland) Act 2009, or
  - (ii) a different radiative force factor to be used for those purposes.
- (3) The Scottish Ministers may revise the policy from time to time.
  - (4) In preparing or revising a policy under this section, the Scottish Ministers must consult—
    - (a) a body designated by order under section 24(1) of the Climate Change (Scotland) Act 2009,
    - (b) communities in the vicinity of airports in Scotland,
    - (c) such other persons as they consider appropriate.
  - (5) For the purposes of this section, “greenhouse gas” has the same meaning as in section 10(1) of the Climate Change (Scotland) Act 2009.
  - (6) The Scottish Ministers must publish the policy (and any revised policy) and lay a copy before the Scottish Parliament.>

**Patrick Harvie**

**71** After section 10, insert—

**<Section 10 regulations: requirement to publish impact assessment**

- (1) Before laying a draft of regulations under section 10(1), the Scottish Ministers must prepare and publish an assessment of the projected economic, environmental and social impacts of the proposed tax bands and rate amounts.
- (2) An assessment prepared under subsection (1) must include information, in particular, about—
  - (a) the estimated revenue to be raised,
  - (b) the projected impact on—
    - (i) the number of passengers on flights that begin at an airport in Scotland,
    - (ii) the number of flights that begin at an airport in Scotland,
    - (iii) the Scottish economy,
    - (iv) jobs and employment opportunities,
    - (v) greenhouse gas emissions,
    - (vi) air quality and noise levels in the vicinity of airports and flightpaths in Scotland,
  - (c) in relation to each income decile group, the share of the increase or decrease in tax (as the case may be) which each group is estimated to pay,
  - (d) any indirect fiscal impacts, including on other taxation and public spending.
- (3) For the purposes of this section, “greenhouse gas” has the same meaning as in section 10(1) of the Climate Change (Scotland) Act 2009.
- (4) The Scottish Ministers must lay a copy of each assessment before the Scottish Parliament.>

## Section 14

### Derek Mackay

- 14 In section 14, page 6, line 3, leave out <a taxable person> and insert <liable to make quarterly returns under section 17>

### Derek Mackay

- 15 In section 14, page 6, line 5, leave out <a taxable person> and insert <liable to make quarterly returns under section 17>

### Derek Mackay

- 16 In section 14, page 6, line 6, leave out subsection (2)

### Derek Mackay

- 17 In section 14, page 6, line 9, leave out <In every other case,>

### Derek Mackay

- 18 In section 14, page 6, line 9, leave out <subsection (1) first applies to the operator> and insert <a situation described in subsection (1) arises>

## Section 15

### Derek Mackay

- 19 In section 15, page 6, line 15, at end insert <and>

### Derek Mackay

- 20 In section 15, page 6, leave out line 16

### Derek Mackay

- 21 In section 15, page 6, line 18, leave out <a taxable person> and insert <liable to make quarterly returns under section 17>

### Derek Mackay

- 22 In section 15, page 6, line 20, leave out <a taxable person> and insert <liable to make quarterly returns under section 17>

### Derek Mackay

- 23 In section 15, page 6, line 21, leave out <the situation referred to> and insert <a situation described>



## Section 18

### Derek Mackay

- 24 In section 18, page 7, line 23, leave out <only infrequent or irregular taxable activities> and insert <taxable activities on no more than 12 days in total>

### Derek Mackay

- 25 In section 18, page 7, line 25, leave out <£5,000> and insert <£20,000>

### Derek Mackay

- 26 In section 18, page 7, line 27, after <returns> insert <for any taxable activity>

### Derek Mackay

- 27 In section 18, page 7, line 27, leave out <7 days after each day on which the taxable person carries out a> and insert <30 days after the date of the>

### Derek Mackay

- 28 In section 18, page 8, line 7, at end insert—  
<( ) To avoid doubt, a taxable person that is required under subsection (3) to make quarterly returns, or that intends to move to making quarterly returns (see subsection (5)(b)), must comply with section 14 (duty to register for the tax).>

## Section 19

### Derek Mackay

- 29 In section 19, page 8, line 9, after <include> insert <—  
(a)>

### Derek Mackay

- 30 In section 19, page 8, line 10, at end insert <or  
(b) where the taxable person authorises an agent to complete the return, a declaration by the agent that the taxable person has declared to the agent that the information provided in the return is, to the best of the taxable person's knowledge, correct and complete.>

### Derek Mackay

- 31 In section 19, page 8, line 11, leave out subsection (2)

## Section 20

### Derek Mackay

32 In section 20, page 9, line 10, at end insert—

<( ) A notice under subsection (5) has effect from the date specified in the notice.>

## Section 21

### Derek Mackay

33 In section 21, page 9, line 16, leave out subsections (2) and (3)

### Derek Mackay

34 In section 21, page 9, line 26, at end insert—

<(4A) A taxable person that is not required by subsection (1) to appoint a tax representative may appoint one voluntarily, but the appointment does not have effect for the purposes of this Act unless the details of the appointment are notified to Revenue Scotland.

(4B) A tax representative—

(a) must be a person eligible under section 25 to hold that position, and

(b) may be appointed as a fiscal or an administrative tax representative (see section 22).>

### Derek Mackay

35 In section 21, page 9, line 27, at end insert—

<( ) specify whether the tax representative is appointed as a fiscal or an administrative tax representative,>

## Section 23

### Derek Mackay

36 In section 23, page 10, line 27, at end insert—

<( ) To avoid doubt, subsection (1)(a) does not authorise a fiscal tax representative, in relation to any tax return that is required by section 16, to make a declaration that the taxable person is required to make under section 19(1)(a) or (b).>

## Section 24

### Derek Mackay

37 In section 24, page 10, line 36, after <arise> insert <in relation to the tax>

**Derek Mackay**

- 38 In section 24, page 11, line 2, leave out <to make a tax return or amend a tax return on behalf of the taxable person> and insert <, in relation to any tax return that is required by section 16, to make a declaration that the taxable person is required to make under section 19(1)(a) or (b)>

**Section 26**

**Derek Mackay**

- 39 In section 26, page 12, line 4, at beginning insert <where the appointment is required by section 21(1),>

**Derek Mackay**

- 40 In section 26, page 12, line 4, leave out <and dated>

**Derek Mackay**

- 41 In section 26, page 12, line 5, at end insert—  
<( ) where the appointment is made by the taxable person voluntarily, rather than being required by section 21(1), the day on which the details of the appointment are notified to Revenue Scotland,>

**Derek Mackay**

- 42 In section 26, page 12, line 6, at beginning insert <in either case,>

**Section 28**

**Derek Mackay**

- 43 In section 28, page 13, line 12, leave out <under subsection (1)(a), the taxable> and insert <or fiscal tax representative under subsection (1)(a), that>

**Derek Mackay**

- 44 In section 28, page 13, line 21, after first <the> insert <taxable>

**Section 30**

**Derek Mackay**

- 45 In section 30, page 14, line 12, at end insert—  
<( ) the handling of the baggage of the passengers,>

**Section 33**

**Derek Mackay**

- 46 In section 33, page 15, line 16, leave out <notified> and insert <provided>

**Derek Mackay**

- 47 In section 33, page 15, line 16, leave out <(2) or>

**Derek Mackay**

- 48 In section 33, page 15, line 17, after <21(4)(b)> insert <or (4A)>

**Derek Mackay**

- 49 In section 33, page 15, line 20, at end insert—
- <(3) For the purpose of this section, an inaccuracy is material if it affects Revenue Scotland’s ability—
- (a) to collect and manage the tax, or
  - (b) to protect the revenue against tax fraud and tax avoidance.>

**Section 35**

**Derek Mackay**

- 50 In section 35, page 15, line 36, after <amounts> insert <or making other provision concerning the structure of the tax>

**Section 37**

**Derek Mackay**

- 51 In section 37, page 16, line 32, at end insert—
- <“connected flights” means flights that are connected in terms of the rules that are set out in schedule 1,>

**Derek Mackay**

- 52 In section 37, page 17, line 2, leave out <section> and insert <sections (*Passengers not carried for reward*) to (*Changes of circumstance beyond passengers’ control*) and>

**Derek Mackay**

- 53 In section 37, page 17, line 3, leave out <section> and insert <sections (*Aircraft used under public service obligation*), (*Aircraft used for military, emergency, training or research flights*) and>

**Schedule 2**

**Derek Mackay**

- 54 In schedule 2, page 23, line 30, leave out <(2) or>

**Derek Mackay**

- 55 In schedule 2, page 25, line 21, leave out <notified> and insert <provided>

### Schedule 3

**Derek Mackay**

- 56 In schedule 3, page 27, line 32, at end insert—  
<authorised officer section (*NATO passengers*)(3)>

**Derek Mackay**

- 57 In schedule 3, page 27, line 32, at end insert—  
<beyond a passenger's control section (*Changes of circumstance beyond passengers' control*)(4)>

**Derek Mackay**

- 58 In schedule 3, page 28, line 4, leave out <9(6)> and insert <37(1)>

**Derek Mackay**

- 59 In schedule 3, page 28, line 15, at end insert—  
<material inaccuracy section 33(3)>

**Derek Mackay**

- 60 In schedule 3, page 28, line 17, at end insert—  
<NATO IMHQ section (*NATO passengers*)(3)>

**Derek Mackay**

- 61 In schedule 3, page 28, line 17, at end insert—  
<NATO passenger section (*NATO passengers*)(3)>

**Derek Mackay**

- 62 In schedule 3, page 28, line 17, at end insert—  
<NATO visiting force section (*NATO passengers*)(3)>

**Derek Mackay**

- 63 In schedule 3, page 28, line 19, at end insert—  
<North Atlantic Treaty section (*NATO passengers*)(3)>

**Derek Mackay**

- 64 In schedule 3, page 29, line 2, at end insert—  
<reward section (*Passengers not carried for reward*)(4)>

**Derek Mackay**

- 65 In schedule 3, page 29, line 16, at end insert—  
<working in relation to an aircraft section (*Passengers not carried for reward*)(3)>

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