



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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Air Departure Tax (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 31 January and seeks an explanation of the following matters:

Section 7(2)(b) and (3) – Guidance on meaning of standard class travel

Power conferred on:	Revenue Scotland
Power exercisable by:	guidance
Parliamentary procedure:	none

Section 7 provides a definition of “standard class travel” for the purposes of the Bill, including consideration of the size of the seat pitch for a passenger’s seat. Subsection (2) defines seat pitch with reference to the distance between the passenger’s seat and the seat immediately in front of or behind it. If there is no seat immediately in front or behind the relevant seat, the seat pitch is to be determined with regard to any guidance issued by Revenue Scotland.

The Committee asks Scottish Government to explain the following, in connection with section 7(2)(b) and (3):

Q1. Please explain why the Scottish Government considers it appropriate for provision regarding the definition of seat pitch to be made in guidance issued by Revenue Scotland, as opposed to being contained in subordinate legislation. Please also indicate the type of provision it is anticipated that Revenue Scotland might make in exercise of this power.

Subsection (3) provides that whether a class of travel is the only, or the most basic, class of travel available on a flight is to be determined with regard to any guidance issued by Revenue Scotland.

Q2. Once again please explain why the Scottish Government considers it appropriate for provision regarding determination of the class of travel to be made in guidance issued by Revenue Scotland, as opposed to being contained in subordinate legislation. Please also indicate the type of provision it is anticipated that Revenue Scotland might make in exercise of this power.

Section 8(1) – Key concepts may be modified by regulations

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	affirmative

Section 8(1) confers power on the Scottish Ministers to make 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. The terms “chargeable passenger” and “chargeable aircraft” are defined in sections 2 and 3 of the Bill. The power accordingly enables Ministers to amend the definitions contained in the Act by regulations, and also to create definitions of “non-chargeable passenger” and “non-chargeable aircraft”.

Regulations under the section may also add, change or remove any exemption from being a chargeable passenger or chargeable aircraft, and any provision in the Act that defines or otherwise explains a term or expression.

The Committee asks the Scottish Government for an explanation of the following in connection with section 8(1):

Q3. As the Government acknowledges in its Delegated Powers Memorandum, the concepts of chargeable passenger and chargeable aircraft are key to determining the basis on which liability for ADT will arise. Why is it considered appropriate in section 8(1) to take a power to make provision concerning who is a non-chargeable passenger and which aircraft are non-chargeable aircraft, and to create exemptions from being a chargeable passenger or chargeable aircraft, rather than making provision for such matters on the face of the Bill?

Section 10(1) and (2) – Tax bands and rate amounts to be set by regulations

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	affirmative

Section 10(1) requires the Scottish Ministers to define one or more tax bands by reference to the final destination of a chargeable passenger carried on a chargeable aircraft. It also requires the Scottish Ministers, for each tax band so defined, to set the amount or method of calculating the amount of each of the standard rate, premium rate and special rate of tax. (The rate of tax depends upon the passenger's class of travel, as set out in section 9(3)).

Section 10(2) enables the Scottish Ministers to make regulations which make other provision concerning the structure of the tax. Regulations under subsection (1) or (2) may add, change or remove the description of any tax band, tax rate or any provision of the Act that defines or otherwise explains a term or expression.

The Committee asks the Scottish Government for an explanation of the following in connection with section 10(1) and (2):

Q4. Section 10(2) enables the Scottish Ministers, by regulations, to make "other provision" concerning the structure of the tax (i.e. provision other than defining tax bands and setting the amount of tax for each tax rate as required by section 10(1)). Please explain how the power in section 10(2) is intended to be used and why it is considered to be an appropriate delegation of power?

Section 34(1) – Administrative provisions may be modified by regulations

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	affirmative if textually amending primary legislation; otherwise negative

The power proposed in section 34(1) would enable the Scottish Ministers to change any provision in the Bill, once enacted, which concerns the payment, collection and management of ADT (other than provision setting out the circumstances which give rise to the liability to tax itself). This is a wide power to modify the detailed provisions regarding payment, collection and management which appears on the face of the Act.

The Delegated Powers Memorandum states that once ADT is in operation it may be necessary to make changes as to how the tax is administered, for example in light of Revenue Scotland's operational experience of collecting and managing the tax.

The Committee asks the Scottish Government for an explanation of the following in connection with section 34(1):

Q5. Please provide further justification for the taking of such a wide power to alter the detailed machinery which has been set out on the face of the Bill. Please also provide examples of the sorts of changes which might be made in exercise of the power.

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Monday 13 February.

Thank you.

Euan Donald

Clerk to the Delegated Powers and Law Reform Committee