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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Air Departure Tax (Scotland) Bill at Stage 1



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Contents

Introduction	1
Overview of the Bill	2
Delegated powers provisions	3
Recommendations	4
Annexe	8

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on:

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meetings on 31 January 2017, 21 February 2017 and 28 February 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Air Departure Tax (Scotland) Bill at Stage 1 (“the Bill”)ⁱ. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government has produced a Delegated Powers Memorandum (“DPM”)ⁱⁱ on the delegated powers provisions in the Bill.

ⁱ Air Departure Tax (Scotland) Bill [as introduced] is available here:
<http://www.parliament.scot/Air%20Departure%20Tax%20Scotland%20Bill/SPBill03S052016.pdf>

ⁱⁱ Air Departure Tax (Scotland) Bill Delegated Powers Memorandum is available here:
http://www.scottish.parliament.uk/ADT_Bill_DPM.pdf

Overview of the Bill

3. This Government Bill was introduced on 19 December 2016 by the Cabinet Secretary for Finance and the Constitution, Derek Mackay MSP. The lead Committee is the Finance and Constitution Committee.
4. Air Passenger Duty (APD) is currently charged throughout the United Kingdom by virtue of provision in the UK Finance Act 1994.
5. The Scottish Parliament acquired the competence to legislate for a tax on the carriage of passengers by air under provision in the Scotland Act 2016. The transfer of power to the Scottish Parliament in the 2016 Act gave effect to a Smith Commission recommendation. The tax is proposed to have effect from 1 April 2018, subject to the passage of the Bill.
6. The Bill makes provision for such a tax to be known as Air Departure Tax (ADT) and charged on the carriage of chargeable passengers on chargeable aircraft from airports within Scotland. The tax is to be payable by aircraft operators. Nothing in the Bill prevents or requires the cost of the tax to be passed on to passengers.
7. The Bill is intended to operate alongside the Revenue Scotland and Tax Powers Act 2014. That Act establishes Revenue Scotland as Scotland's tax authority for devolved taxes and provides the general framework for the collection and management of devolved taxes in Scotland. Revenue Scotland currently collects and manages Land and Buildings Transaction Tax and Scottish Landfill Tax, which came into effect on 1 April 2015. The Bill provides that Revenue Scotland will also collect and manage ADT.

Delegated powers provisions

8. At its meeting on 31 January 2017, the Committee considered the eight sections of the Bill which confer delegated powers on Scottish Ministers. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:
 - Section 29(1) – General direction specifying security to validate the appointment of an administrative tax representative
 - Section 36(1) – Ancillary provision
 - Section 37(2) – Interpretation
 - Section 41(2) - Commencement
9. The Committee agreed to write to the Scottish Government to raise questions on four of the sections in the Bill. This correspondence is reproduced at the **Annexe**.
10. Following consideration of the Scottish Government's response to the questions, the Committee is content in relation to the issues raised in two sections of the Bill which are as follows:
 - Section 7(2)(b) and (3) – Guidance on meaning of standard class travel
 - Section 34(1) – Administrative provisions may be modified by regulations
11. The Committee is not content with the Scottish Government's response to questions raised on the two remaining sections of the Bill and makes recommendations which are set out in the next section of this report.

Recommendations

12. The Committee's comments and recommendations on the delegated powers in sections 8(1) and 10(2) are detailed below:

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

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

Provision

13. The Bill provides for Air Departure Tax (ADT) to be charged in respect of the carriage of “chargeable passengers” on “chargeable aircraft” (section 1).
14. 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 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”.
15. 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.

Comment

16. The Bill as introduced contains no provision for chargeable passenger or chargeable aircraft exemptions. This is in contrast to the position for UK Air Passenger Duty (APD) under the Finance Act 1994, where the exceptions for chargeable passengers and chargeable aircraft are for the most part set out in the primary legislation. The delegated powers memorandum (DPM) explains that the Scottish Ministers wish to set out the detail of the exemptions at a later date before the tax comes into effect from 1 April 2018, subject to the passage of the Bill).
17. The Committee noted that the power conferred on the Scottish Ministers by section 8 is a very wide one, enabling Ministers to create exceptions to the key definitions which underpin liability for ADT, as well as to amend those definitions which are on the face of the Act.
18. The Committee considered that the Scottish Government had provided sufficient justification for the need to amend these key definitions, but that it had given no reasons for not including any initial exemptions from the categories of chargeable person and chargeable aircraft on the face of the Bill.
19. In the absence of full information regarding which persons and aircraft are to be subject to liability for the tax (including information regarding whether the current exceptions to liability for the UK APD are to be continued), the Committee

considered that it would be difficult for Parliament to fully and effectively scrutinise the policy behind the Bill. Accordingly the Committee sought an explanation of the approach taken.

20. The Scottish Government's response explains that it is still giving consideration to its overall response to chargeable passenger and chargeable aircraft exemptions under ADT. The Scottish Government plans to set out its detailed proposals at a later date, either via Government amendment brought forward at Stage 2 or Stage 3 of the Bill process, or in subordinate legislation after enactment of the Bill.
21. The Government also commits in its response to taking into account views expressed on exemptions by the Parliament during its consideration of the Bill and in the oral and written evidence given by stakeholders to the Finance and Constitution Committee during Stage 1.
22. Accordingly the Scottish Government appears not yet to have reached a settled view on what the exemptions from liability for ADT should be, with its policy still under development.
23. The Committee takes the view that delegated powers should not be taken as a substitute for policy development. This occurred in relation to a number of Bills brought before Parliament towards the end of Session 4. If Parliament is to have the opportunity to scrutinise effectively the proposals for ADT, the Committee considers that highly significant aspects of the policy, such as which passengers and aircraft give rise to a liability to tax, should be made available at the outset of the Parliament's consideration of the primary legislation.
24. In addition, the Committee notes that exemptions from liability for the other devolved taxes (under the Landfill Tax (Scotland) Act 2014 and the Land and Buildings Transaction Tax (Scotland) Act 2013) were set out on the face of those Acts, with a power taken to modify the exemptions by regulations subject to the affirmative procedure.

Accordingly, the Committee recommends that the Scottish Government bring forward amendments at Stage 2 which make detailed provision for exemptions from the definition of "chargeable passenger" and "chargeable aircraft". This would afford Parliament the best opportunity for full and effective scrutiny of this significant aspect of the Bill's policy.

The Committee also expresses its disappointment that the legislation has been introduced in the absence of full development of the Scottish Government's policy regarding exemptions from the charge to tax.

In the Committee's view, delegated powers should not be taken as a substitute for policy development and the Committee would encourage the Scottish Government to avoid applying this approach to future legislation.

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**

Provision

25. 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)).
26. 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.

Comment

27. On its first consideration of section 10, the Committee was content with the power in section 10(1) to set tax bands, and the amount of tax for each of the three rates of tax within a tax band, by regulations subject to the affirmative procedure. The Committee noted that this approach is consistent with the approach taken for the other devolved taxes, Land and Buildings Transaction Tax and Scottish Landfill Tax. The Committee also found the power to vary the tax rate amounts and bands to be acceptable.
28. However the Committee sought an explanation of how the more general power in section 10(2) (to make other provision concerning the structure of the tax, including modifying provision in the Act itself) is intended to be used and how it can be justified.
29. In its response, the Scottish Government explained that its intention in taking this power is "to provide sufficient flexibility to be able to make other provision relating to the core structure of ADT which does not relate to tax bands or tax rate amounts." It explained that provisions which would, as the Bill is currently drafted, fall into this category include the rates of tax (currently standard, premium and special rates) and the rules for determining the final destination of a chargeable passenger. Provision about those matters is currently set out in section 9.
30. The response explained the Government's view that it is necessary to have sufficient legislative flexibility to change provisions about the rates of tax and the determination of a chargeable passenger's final destination, (i) in order to continue to support key government priorities, (ii) in order to reflect changing market conditions (highlighting that the aviation sector operates in a highly competitive and dynamic market, which means in the Government's view that it is appropriate for rates of tax in particular to be kept relevant and appropriate to the sector) and (iii) in light of Revenue Scotland's operational experience of collecting and managing ADT.
31. The Government gives as an example the issue of whether a premium economy class as provided by some airlines should be treated as a distinct rate of tax, or be incorporated either within the standard or premium rates of tax. The current legislative intention as reflected in the Bill is for the premium rate of tax to apply to

this class of travel. However the Policy Memorandum explains that other options have been considered and the Scottish Government will monitor the position once the tax is in operation, to determine whether any changes are required. The power in section 10(2) would enable such a change to be made by regulations subject to the affirmative procedure, without the need for further primary legislation.

32. In light of the Scottish Government's explanation, the Committee accepts in principle the justification for taking a power, in regulations subject to the affirmative procedure, to modify rates of tax and the rules concerning determination of a passenger's final destination.
33. However the Committee considers that the power in section 10(2) appears to be drafted more widely than necessary to give effect to the Government's stated policy intention. The power enables the Scottish Ministers to "make other provision concerning the structure of the tax". The stated intention however is to enable Ministers to make other provision relating to the core structure of the tax (as currently provided for in section 9 of the Bill) which does not relate to tax bands or tax rate amounts. Accordingly the power could be more closely aligned with the policy intention.

The Committee therefore recommends that the Scottish Government considers 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.

Annexe

Correspondence with the Scottish Government

On 31 January 2017, the Committee wrote to the Scottish Government as follows:

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.

On 13 February 2017 the Scottish Government responded as follows:

Thank you for the recent letter sent on behalf of the Delegated Powers and Law Reform Committee ("the Committee") requesting further explanation from the Scottish Government on the delegated powers contained in the Air Departure Tax (Scotland) Bill ("the Bill") as introduced.

The Scottish Government's responses to the Committee's five questions are set out below.

Section 7(2)(b) – Revenue Scotland guidance on determining the seat pitch of a passenger's carriage

Question 1: 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.

Scottish Government response: In relation to question 1, the Scottish Government has proposed, in section 7(2)(a) of the Bill as introduced, a general statutory rule for determining the seat pitch of a passenger's carriage which it is expected will be relevant to the vast majority of seat layouts on aircraft departing from Scottish airports. However, as is the case with UK Air Passenger Duty ("APD"), it is expected that there will be a small number of situations where this general statutory rule will not be easily applicable, in particular for some seats on private jets which may be configured to face each other or are bench or side-facing seats that face onto an aisle.

The Scottish Government considers that for these types of seat arrangements, which may vary from aircraft to aircraft, it would be more appropriate and efficient to provide further clarity on determining the seat pitch in guidance issued by the body responsible for collecting and managing the tax, Revenue Scotland, and not in legislation. By providing guidance, Revenue Scotland can also respond quickly to any changes in the aviation

sector relating to seat arrangements that might create uncertainty about determining the seat pitch of a passenger's carriage.

Although the Scottish Government's proposal is that it would be for Revenue Scotland to determine what guidance (if any) is necessary for determining the seat pitch (beyond the general statutory provision in section 7(2)(a)), in making its determination it is likely that Revenue Scotland will have regard to the guidance that Her Majesty's Revenue and Customs ("HMRC") has already issued in this area for UK APD – see section 2.6.7 of HMRC's Excise Note 550 guidance on APD: <https://www.gov.uk/government/publications/excise-notice-550-air-passenger-duty/excise-notice-550-air-passenger-duty#rates-and-structure-of-duty>.

Section 7(3) – Revenue Scotland guidance on determining the class of travel of a passenger's carriage

Question 2: 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.

Scottish Government response: In relation to question 2, in determining the class of travel of a person's carriage the Scottish Government's view is that the varied nature of the aviation sector's commercial offering to passengers would be impractical to exhaustively cover in legislation, and that it would instead be more appropriate to provide further clarity in guidance issued by the body responsible for collecting and managing the tax, Revenue Scotland.

The Scottish Government considers guidance to be the most efficient way to provide certainty and flexibility on this matter, because the range of variables that need to be addressed do not lend themselves to formulating general rules. By providing guidance, Revenue Scotland can respond quickly to changes in the aviation sector that create uncertainty about the rate of tax that should apply.

We would expect Revenue Scotland to give guidance on whether a person doing any of the following would be considered to be travelling in a higher class of travel:

- obtaining a better seat at no extra cost and on a first-come first-served basis;
- purchasing goods and services on board;
- paying extra for the right to choose a seat, for a seat with extra legroom, to be seated next to an empty seat or for an empty seat;
- paying extra for benefits such as pre-booking, reduced check-in times, priority boarding, access to a VIP lounge, additional bag allowances or for transport to and from the airport.

Although the Scottish Government's proposal is that it would be for Revenue Scotland to determine what guidance (if any) is necessary for determining the class of travel on a person's carriage (beyond the general statutory provision in section 7(1)(b)), in making its determination it is likely that Revenue Scotland will have regard to the guidance that HMRC has already issued in this area for APD – see sections 2.6.1 to 2.6.4 of HMRC's Excise Note 550 guidance on APD: <https://www.gov.uk/government/publications/excise->

[notice-550-air-passenger-duty/excise-notice-550-air-passenger-duty#rates-and-structure-of-duty](#).

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

Question 3: 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?

Scottish Government response: In relation to question 3, the Scottish Government is still considering its overall approach to chargeable passenger and chargeable aircraft exemptions under ADT, and will set out its detailed proposals in this area at a later date but well in advance of ADT coming into effect in Scotland on 1 April 2018. This will either be via Government amendments brought forward at Stage 2 or Stage 3 of the Bill process, or in subordinate legislation after enactment of the Bill.

In setting its legislative proposals for these exemptions the Scottish Government will take into account views expressed on exemptions by the Parliament during its consideration of the Bill and in the oral and written evidence given by stakeholders to the Finance and Constitution Committee during Stage 1.

As the UK Government has done several times with APD since it came into effect in 1994, once ADT has come into effect it will be necessary to have sufficient legislative flexibility to make changes to tax exemptions in order to continue to support key government priorities, to reflect changing market conditions (the aviation sector operates in a highly competitive and dynamic market and it will be important that tax exemptions for ADT are kept relevant and appropriate to the sector) or in light of Revenue Scotland's operational experience of collecting and managing ADT.

The Scottish Government considers that it would be a more effective use of resources by the Scottish Parliament and the Scottish Government if this need for future flexibility was delivered through a subordinate legislation power which can, if considered necessary, amend primary legislation and is therefore appropriately subject in all circumstances to the affirmative procedure.

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

Question 4: 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?

Scottish Government response: In relation to question 4, the Scottish Government's intention behind the scope of section 10(2) of the Bill as introduced is to provide sufficient flexibility to be able to make other provision relating to the core structure of ADT which does not relate to tax bands or tax rate amounts. Provisions in the Bill as introduced which fall into this category include the rates of tax (i.e. standard, premium and special) and the rules for determining the final destination of a chargeable passenger. Definitions of terms

used in section 10 may also need to be amended in a way that affects the structure of the tax.

It will be necessary to have sufficient legislative flexibility to make changes to provisions on the rates of tax and the determination of a chargeable passenger's final destination in order to continue to support key government priorities, to reflect changing market conditions (the aviation sector operates in a highly competitive and dynamic market and it will be important that rates of tax in particular are kept relevant and appropriate to the sector) or in light of Revenue Scotland's operational experience of collecting and managing ADT.

One example relating to the rates of tax which might involve the need for future legislative change is the issue of whether the provision of a premium economy class by some airlines should be treated as a distinct rate of tax or be incorporated within the lower charge standard rate of tax (under the Bill as introduced the premium rate of tax will be applied to chargeable passengers travelling in this class of travel). For reasons outlined in paragraphs 58 to 60 of the Policy Memorandum the Scottish Government has chosen not to take this matter forward for the moment, but will continue to monitor it after ADT has come into effect.

The Scottish Government considers that it would be a more effective use of resources by the Scottish Parliament and the Scottish Government if this need for future flexibility was delivered through a subordinate legislation power which can, if considered needed, amend primary legislation and is therefore appropriately subject in all circumstances to the affirmative procedure.

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

Question 5: 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.

Scottish Government response: Unlike APD, where payment, collection and management provisions are set out in both primary and subordinate legislation, the Scottish Government chose to place the vast majority of such provisions for ADT in primary legislation in order to maximise Parliamentary scrutiny of this important and detailed area and to make these provisions more accessible. In order to ensure that this power does not enable the modification of provisions which are fundamental to the nature of the tax (what and who is taxable), regulations under this power cannot modify section 11 (taxable activity) and section 12 (taxable persons).

In relation to question 5, the Scottish Government's view is that the provisions in the Bill relating to the payment, collection and management of ADT (predominantly contained within Part 4 of the Bill) are sufficiently inter-linked with each other that a single regulation making power, rather than multiple such powers, is a more appropriate and efficient means of providing the legislative flexibility required to add to, change or remove these provisions after ADT has come into effect in 1 April 2018.

The Scottish Government does not anticipate using this power before ADT comes into effect. However, after this point it may be necessary to make changes in light of Revenue Scotland's operational experience of collecting and managing the tax, to reflect changing market conditions (the aviation sector operates in a highly competitive and dynamic market and it will be important that the administration and compliance arrangements for ADT are

kept relevant and appropriate to any changes in the sector), as a consequence of the passage of new legislation or to reflect amendments to existing legislation referred to in the Bill.

Examples of the sorts of changes which might be made in exercise of the power include:

- changing the tax registration system (provided for across multiple sections in the Bill – sections 13-15 and 37 and schedule 3 of the Bill) to, for example:
 - modify provisions relating to the ADT register which Revenue Scotland is required to keep, such as specifying particular information which the register must include
 - modify provisions relating to the duty to register for ADT, such as changing the period by which aircraft operators are required to have applied to register with Revenue Scotland;
 - modify provisions relating to the duty to deregister for ADT, such as extending the duty to aircraft operators making occasional returns.
- changing the tax return system (provided for across multiple sections in the Bill – sections 14-19, 21, 24 and 37 and schedule 3 of the Bill) to, for example:
 - provide more tax return options for taxable persons beyond the proposed quarterly and occasional return;
 - modifying the frequency of tax returns;
 - modifying the criteria and rules for occasional returns;
- changing the system of tax representatives (provided for across multiple sections in the Bill – sections 19-29, 31, 33 and 37 and schedule 3 of the Bill) to, for example:
 - provide for additional types of tax representatives beyond the fiscal and administrative tax representatives contained in the Bill at introduction;
 - modify the duties placed on either or both of taxable persons and tax representatives when complying with an appointment;
 - modify the eligibility conditions for tax representative appointments;
 - modify the conditions regarding the duration of tax representative appointments;
 - modify the rules regarding the requirement to provide security to Revenue Scotland in certain circumstances;
- changing the definition of a handling agent and the rules determining the tax liability, in certain circumstances, of such agents;
- making new administrative provision to improve the efficiency of systems for the payment, management and collection of the tax.

Conclusion

I hope this response is helpful, and the Scottish Government looks forward to receiving a copy of the Committee's report on the Bill in due course.

