

AIR DEPARTURE TAX (SCOTLAND) ACT 2017

EXPLANATORY NOTES

THE ACT

Part 5 – Final Provisions

67. **Part 5** includes standard final provisions. Setting aside section 46 (Crown application), which is discussed in more detail below, particular points to note in relation to Part 5 include:
- that section 42 sets out the applicable procedures for regulation-making powers in the Act;
 - that section 44(2) provides a power to update, by regulations, references in the Act to other enactments (regulations made under this power will be subject to the negative procedure – see section 42(2)(c)); and
 - that section 48 provides for provisions in the Act to be brought into force by regulations.

Section 46 – Crown application

68. There is a common law presumption that an Act of the UK Parliament does not bind the Crown unless it does so expressly or by necessary implication. The Crown is therefore not subject to the FA 1994, which provides the statutory authority for the APD regime. However, the default position under section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010¹ is that Acts of the Scottish Parliament bind the Crown unless they expressly provide otherwise.
69. For consistency with the approach to other devolved taxes, the Act does not displace the statutory presumption in favour of Crown application. Any aircraft operators that are currently exempt from APD on the basis that they are part of the Crown will not be exempt from ADT on that basis. For example, Marine Scotland currently uses aircraft for maritime surveillance. If Marine Scotland operated chargeable aircraft for this purpose, and carried chargeable passengers, it would be exempt from APD because it is part of the Scottish Government, and therefore part of the Crown, but would not be exempt from ADT unless it attracted another exemption such as a tax exemption in relation to flights that serve a public purpose.²
70. **Section 46** provides that Her Majesty in Her private capacity is not a taxable person. The effect of this is that if Her Majesty, in Her private capacity, were to have the management of any chargeable aircraft carrying chargeable passengers on a flight beginning at an airport in Scotland, Her Majesty would not be required to register for or to pay ADT.

¹ <http://www.legislation.gov.uk/asp/2010/10/section/20>

² The aircraft currently used by Marine Scotland for maritime surveillance are Reims Cessna Caravan IIF-406, which have a maximum take-off weight of less than 5.7 tonnes and are therefore not chargeable aircraft (see the description of section 3).

*These notes relate to the Air Departure Tax (Scotland) Act
2017 (asp 2) which received Royal Assent on 25 July 2017*

71. [Section 46](#) does not exempt Her Majesty from being a chargeable passenger. The effect of this is that if Her Majesty were carried on a chargeable aircraft on a flight departing from an airport in Scotland, the aircraft operator would incur tax at the applicable rate under section 16. This Act does not prevent an aircraft operator from passing on to Her Majesty, or to any other passenger, the cost of the tax, but nor does it require it.