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Research and Information Service
Bill Paper

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Air Passenger Duty (Setting of Rate) Bill

NIAR 554-12

This Research Paper provides background on the Air Passenger Duty (Setting of Rate) Bill, which is to be debated at Second Stage on 16 October 2012. The Bill seeks to set a rate of duty for air passengers on certain flights departing from Northern Ireland.

Previous Research Papers (NIA 71/12 Legislative Consent Motion: UK Finance (No. 4) Bill 2012 Air Passenger Duty and 82/12 Further information on Air Passenger Duty, deal with many of the surrounding issues of the course of this process and may be referred to for more information.

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Contents

Key Points

- The Air Passenger Duty (Setting of Rates) Bill (the Bill) gives effect to powers devolved in the UK *Finance Act 2012* (the *2012 Act*). These powers allow the Assembly to set its own rate of air passenger duty on direct long haul flights departing from Northern Ireland (otherwise known as Bands 'B', 'C' and 'D' flights).
- The Bill proposes that the rate of duty is to be set to £0 on these flights.
- Under the powers which have been devolved, the Assembly is not able to set rates on the shortest category of flights departing NI (Band 'A'). This power will remain with the UK Parliament at Westminster. Under provisions contained within the *2012 Act*, Band 'A' rates have increased from £12 to £13 in economy class and from £24 to £26 in higher classes of travel from 1 April 2012.
- On a related issue, but beyond the scope of the current Bill, it is noted that the Committee for Finance and Personnel has recommended that APD rates on short haul flights be either abolished or devolved to the Assembly. The Department for Finance and Personnel agrees with this position. The Minister of Finance and Personnel has identified a potential cost to the Northern Ireland block grant of £60 million per annum (in order to comply with EU legislation). Expert research is to be commissioned by the Executive in preparation of a cost-benefit decision on the issue of short haul rates of duty.
- This paper, and its companion paper, may be of particular relevance to Members in the broader context of discussions concerning the devolution of fiscal powers.

1 Introduction

The *Finance Act 2012* was enacted by the UK Parliament and gained Royal Assent on 17 July 2012. Section 190 and schedule 23 of the *Act* grants permission to the Northern Ireland Assembly to set the rate of air passenger duty (APD) on certain long haul flights departing Northern Ireland.[1] Prior to this, on 28 May 2012, the Assembly debated and passed a legislative consent motion (LCM), which noted the Assembly's approval for UK Parliament devolution, to Northern Ireland, of proposed APD rate-setting powers.

The Air Passenger Duty (Setting of Rate) Bill (the Bill) was laid in the Assembly by the Minister of Finance and Personnel on 8 October 2012. It will give effect to the new APD rate-setting capacity of the Assembly. The First Stage of the Bill was debated on the same day. Accelerated passage for the Bill will be requested by the Minister of Finance and Personnel at Second Stage, under Standing Order 42.[2]

This Research Bill Paper is prepared for Assembly Members, to facilitate their consideration of the Bill and the setting of APD rates in Northern Ireland. The paper is arranged into 6 sections which discuss: the provisions enabling the rate-setting powers of the Assembly under the *Finance Act 2012*; the LCM passed by the Assembly on 28 May 2012; the Committee for Finance and Personnel's report into APD and the Department for Finance and Personnel (DFP) response; the provisions of the Bill itself; and the outstanding issue of short haul rates of duty.

A previous Research Paper (NIA 71/12) examines and discusses many of the broader issues surrounding APD around the time when the legislative consent motion (LCM) was debated by the Assembly.[3] This paper may be referred to for background on the wider APD debate and devolution of APD rate-setting powers to Northern Ireland. A further additional Research Briefing (NIA 82/12) addressed the issue of air travel taxation in other European countries, including the Republic of Ireland.[4]

2 *Finance Act 2012*

The *Finance Act 2012* (the *2012 Act*) passed into law on 17 July 2012. It is a "money bill" which makes amendments to the *Finance Act 1994* (the *1994 Act*), which is the primary legislation that gives effect to air passenger duty.[5] These amendments include the devolution of APD rate-setting powers to the Assembly, thereby expanding its legislative competence.

[1] *Finance Act 2012* s 190 and sch 23.

[2] Under Standing Order 42 accelerated passage is defined as one which removes the Committee Stage scrutiny of a Bill http://www.niassembly.gov.uk/Assembly-Business/Standing-Orders/Standing-Orders/#42

[3] Northern Ireland Assembly Research and Information Service (RaISe) (Harper, Bob) (2012a) *Legislative Consent Motion: UK Finance (No. 4) Bill 2012: Air Passenger Duty* (NIA 71/12)

[4] RaISe (Harper, Bob) (2012b) *Further Information on Air Passenger Duty* (NIA 82/12) Issue: Have any European countries successfully attached conditions on airlines in return for reduced Air Passenger Tax?

[5] *Finance Act 1994* ss 28-44, sch 5A and sch 6 (N.B.: amendments to the 1994 Act are still to be updated in this version; the online version still shows the pre-2009 structure and rates of APD).

The relevant section 190 and schedule 23 of the *2012 Act* are annexed to this paper for easy reference.

2.1. Effects of the *Finance Act 2012* on Northern Ireland

In respect to air passenger duty, the *2012 Act* has four provisions, the most important of which – as it applies to this debate – is the third point. These four provisions of the *2012 Act* are:[6]

1 It gives statutory effect (under paragraphs 1-3 of schedule 23) to a rate reduction retrospectively. The reduction had been applied to long haul flights departing from Northern Ireland between 1 November 2011 and 31 March 2012.

  These are the same flights for which the responsibility for setting the rate of APD will be devolved to the Northern Ireland Assembly. Effectively, the rates of 'Band B', 'C' and 'D' flights were held at the same rate as for 'Band A': (at the time) £12 on standard (economy) tickets and £24 on all other classes of travel.

2 It sets the new rates of duty (under paragraphs 4-6 of schedule 23) on all flights throughout the UK from 1 April 2012.

  APD rate increases, which had been proposed for 2011, were deferred for a further year; therefore, the increases for 2012 are quite large, and are as presented in Table 1 below. However, in the case of Northern Ireland, this part of schedule 23 sets rates of duty that are consistent with the prior situation in which all flights departing NI had been held to the 'Band A' rate; in this case £13 on standard (economy) class, and £26 on all other class of travel, under the new set of rates. In effect, this situation is extended until the Assembly uses its new powers to pass a bill setting new rates of duty for direct long haul flights departing Northern Ireland.

  The *Finance Act* contains the increases for each band, as detailed below:

Table 1: Increase in APD rates from 1 April 2012, as contained in the *Finance Act 2012*.[7]

Destination Bands and distance from London†	Standard (economy) rate*		Other rates of travel	
	Previous rate	**Rate from 1 April 2012**	Previous rate	**Rate from 1 April 2012**
Band A (0-2000 miles)‡	£12	**£13**	£24	**£26**
Band B (2001-4000 miles)	£60	**£65**	£120	**£130**
Band C (4001-6000 miles)	£75	**£81**	£150	**£162**

[6] *Finance Act 2012* s 190 and sch 23.
[7] Table compiled by RaISe.

Band D (over 6000 miles)	£85	**£92**	£170	**£184**

* For the purposes of the *Finance Act 1994*, "standard" class is the class available if there is only one class on board a flight, or the lowest class available on other flights with multiple classes of carriage.

† Countries of destination appear in various "bands", depending in which band the capital of the destination country is in distance from London. The various countries are listed in schedule 5A of the *Finance Act 1994;* Part I relate to Band A, Part 2 relate to Band B and Part 3 relate to Band C. Any country not listed in Schedule 5A is treated as Band D.[8]

‡ Band A rates apply to all other destination bands when departing Northern Ireland only.

3 It devolves power to the Northern Ireland Assembly (under paragraphs 7-15 of schedule 23) to set the rates of duty on direct long haul flights (i.e. flights in 'Band B', 'C' and 'D') departing from Northern Ireland. It was for this part of the *Finance (No. 4) Bill* that the LCM was required, as it gives the Assembly autonomy over the rates to be set.

A new section 30A (Northern Ireland long haul rates of duty), is inserted into the *1994 Act* which sets out the detail of how Northern Ireland is to set its own rates, and to which flights this applies. How that is to be done is set out in Section 5, below, which expands on this point. APD, in the more general sense of its structure, remains an excepted matter as it is a UK-wide duty, and is therefore reserved to the UK Parliament under the *Northern Ireland Act 1998.*

4 It closes certain loopholes and provides for the extension of APD to more aircraft (under paragraphs 16-23 of schedule 23) from 1 April 2013.

Currently, aircraft weighing less than ten tonnes or with fewer than 20 passenger seats are not chargeable for the purposes of APD. Under the changes enacted by the *2012 Act*, this *de minimus* weight limit will be dropped to 5.7 tonnes and seat numbers will have no regard to chargeability. As the Chancellor's *Autumn Statement 2011* announced, the narrowing of this limit is intended to encapsulate small business jets within APD, as they may previously have been outside the weight and passenger seating criteria.

Furthermore, the higher class of travel rate of APD will be *doubled* when charged to passengers flying on an aircraft weighing more than 20 tonnes but with fewer than 18 passenger seats. This is intended to include large luxury jets within its boundaries, therefore doubling the duty charged to those flights. An amendment was tabled during the Report Stage of the *Finance (No. 4) Bill* so that the Assembly would be able to determine different rates for these aircraft.

The *Finance Act 1994* is amended so that passengers who had travelled with a provider other than an airline are no longer exempt from APD (for example, a

[8] *Finance Act 1994*, sch 5A as inserted by *Finance Act 2009* sch 5.

private jet owned by a large business). The interpretation of "*passenger*" is altered to include all passengers (save for flight and cabin crew) and "*arrangements for carriage*" to include "*informal agreements or arrangements between, for example, members of a family or friends*". This closes a loophole whereby private passengers – who did not pay for a ticket though the usual channels – will be chargeable for APD.

2.2. Legislative competence

Under schedule 2 of the *Northern Ireland Act 1998*:

> *Taxes or duties under any law applying to the United Kingdom as a whole*[9]

are excepted matters. This means that the Northern Ireland Assembly is unable to make any changes to taxes or duties which it does not have responsibility for. APD is such a duty which applies to the UK as a whole.

However, a provision of the *Finance Act 2012* made an exception in the case of long haul rates of APD. Paragraph 9(11) of schedule 23 states that:

> *(11) None of the following applies to any matter in respect of which this section authorises provision to be made by an Act of the Northern Ireland Assembly —*
>
> *(a) any paragraph of Schedule 2 or 3 to the Northern Ireland Act 1998 (excepted and reserved matters);*
>
> *(b) section 63 of that Act (financial acts of the Assembly).*

Therefore, for the purposes of that part of the *2012 Act*, excepted and reserved matters (found respectively in schedules 2 and 3 of the *NI Act 1998*) do not apply.

Section 63 of the *Northern Ireland Act 1998*, which is also disapplied in this instance, relates to how financial acts of the Assembly are passed, i.e. they are made by the Minister of Finance and Personnel and passed by cross-community support.

Hence, the Minister of Finance and Personnel states that the Bill (set out below in Section 5) is within the legislative competence of the Assembly.[10]

3 Legislative Consent Motion

Under Standing Order 42A[11] the Minister of Finance and Personnel tabled a LCM relating to the Finance (No. 4) Bill 2012, which proposed:

> *That this Assembly agrees that the provisions in clause 189 of, and Schedule 23 to, the Finance (No. 4) Bill, as introduced in the House of Commons on 26 March*

[9] *Northern Ireland Act 1998* sch 2 para 9(a)
[10] *Air Passenger Duty (Setting of Rate) Bill,* Explanatory and Financial Memorandum para 22
[11] *Northern Ireland Assembly*, Standing Order 42A

> *2012, dealing with the devolution of Northern Ireland long haul rates of air passenger duty should be considered by the UK Parliament.*

In effect, this motion, which was approved by the Assembly, consented to the provisions contained within the then Finance (No. 4) Bill (the enacted provisions of which are discussed in detail in Section 3). It also allowed the House of Commons to proceed with its consideration and enactment of the Bill as the *Finance Act 2012*.

On 28 May 2012 a debate took place on the LCM. The Chairperson of the Finance and Personnel Committee commended the LCM to the House. He also added that, in the Committee's deliberations, they had heard a wide range of evidence on the application of APD as a whole, in addition to the implications of the proposed provisions in the Finance (No. 4) Bill. The Committee's recommendations, contained within its *Report on the Legislative Consent Motion*, is summarised in section 4 of this paper.

4 Committee for Finance and Personnel Report

The Committee for Finance and Personnel published a *Report on the Legislative Consent Motion: UK Finance Bill (Air Passenger Duty)* on 16 May 2012, before it was due to be debated in the Assembly Chamber.[12] This made a summary of the evidence sessions which the Committee had received during the course of its deliberation. The Committee *Report* recommended the passing of the LCM.

4.1. Key conclusions and recommendations

The Committee recommended that:

1. The Executive should continue to press for the *abolition* of APD throughout the UK, in partnership with other devolved regions, as it is a regressive tax which is particularly disadvantageous to business and the NI economy.
2. The devolution of rate-setting powers of APD on direct long haul flights departing Northern Ireland should take place.
3. The Minister of Finance and Personnel should develop a coordinated action-plan to maximise opportunities from the rates devolution (such as new routes and to business and tourism hubs), in cooperation with other Executive Ministers.
4. A strong case had been presented for reducing APD rates on Band 'A' flights. This is most likely to be achieved by the future devolution of power over these rates.
5. A cost-benefit decision on the devolution of Band 'A' rates, and subsequent reduction to £0, should take account of a potential £60m p.a. cost to the

[12] Committee for Finance and Personnel (2012) [Report on the Legislative Consent Motion: UK Finance Bill (Air Passenger Duty)]

Executive budget. An evidence-based decision, taken on the basis of the future return on investment, should be made.

6. The Executive should commission independent expert research into the business case for reducing, or abolishing, APD on Band ‘A’ flights departing NI in order to inform decision-making and policy. This research should include: the opportunity cost of non-action; economic modelling and forecasting of options; lessons from other EU states on the benefits of rate reduction.

7. Due to the time constraints which would arise from seeking to include the recommended devolution of Band ‘A’ rates within the Finance (No. 4) Bill, the Committee decided to support the passing of the LCM by the Assembly.

4.2. Department of Finance and Personnel response to the Report

On 3 October 2012 the Minister and an official from the Department of Finance and Personnel (the Department) briefed the Committee on its response to the Committee Report, in part with a pre-introductory briefing on the *Air Passenger Duty (Setting of Rates) Bill.*

This session, and information which the Department provided to the Committee beforehand, addressed the key conclusions and recommendations identified above:[13]

1. The Minister of Finance and Personnel confirmed that the Department’s preferred position was the abolition of APD, as outlined in an earlier submission to a Treasury consultation. Failing that effort, a significant reduction in APD rates would be pursued. It was noted that a Department for Transport (UK) formal consultation on the UK Government’s draft aviation policy framework is currently taking place, and that it was intended that the First and deputy First Minister would raise the issue of short haul rates from NI at a forthcoming Joint Ministerial Council meeting.

2. The Minister welcomed and agreed with the Committee comments commending the Department and Treasury’s responsive action on long haul rates of APD, enabling the continuation of the sole direct long haul flight route from NI (to New York).

3. The Minister agreed with the need for a coordinated action plan to maximise benefits arising from a reduced rate of APD, and added that DFP officials are liaising with DETI and DRD officials to take the issue forward. In evidence given to CFP, the Minister noted that DETI has been in touch with Belfast International Airport on the opportunities for new long haul routes, and has engaged with some airlines.

4. The Minister reiterated that it was DFP’s clear view that APD is an unfair tax that disproportionately damages regional economies with limited transport

[13] References can be found in *Minister of Finance and Personnel letter to Committee for Finance and Personnel, 11 September 2012* and Northern Ireland Assembly Official Report, *Committee for Finance and Personnel, 3 October 2012*.

options, like NI. He noted the concern of other devolved Finance Ministers, as well as national opposition and a campaign of lobbying against APD in Parliament. He added that DFP would continue to press the UK Government for abolition, or a significant reduction in the rates, of APD.

5. The Minister agreed that substantial costs, as cited, could be incurred following a decision to reduce short haul rates of APD to zero (identified by the Government as £60 million per annum rising to £90 million over time). This would mean that any decision would have to be based on evidence, as there may be better ways of spending that money e.g. on an air transport strategy, or improving rail links with Dublin airport. The Minister agreed that research should be undertaken to inform decision-making.

6. The Minister agreed on the need for research and a DFP official confirmed that the Department was in the process of drafting terms of reference in cooperation with DETI, though it had not developed into a project with a timetable.

7. The recommendation was noted and the Committee thanked for its support. The Minister added, in a briefing to CFP, that the route followed – of devolving long haul flights – was taken due to time constraints surrounding the airline connection to New York.

5 Air Passenger Duty (Setting of Rates) Bill

Under the *Finance Act 2012*, the Assembly is permitted to set the rate of Air Passenger Duty for flights departing Northern Ireland in Bands 'B', 'C' and 'D' (otherwise known as long haul flights). The flights to which these rates are applied must not be followed by a connecting flight within the UK or a Band 'A' destination.

During the legislative consent motion debate on 28 May 2012, the Finance Minister announced his intention (once the LCM was accepted and the *Finance Act* enacted) to:

> *[…] bring a Bill to the Assembly for approval, which will give effect to the second stage of the devolution process: the setting of the direct long haul rates at zero. I hope that the Bill will be passed before the end of the year, subject to the Assembly's agreement to the use of accelerated passage.*[14]

The Bill is relatively short as it addresses only two main issues:

1. the setting of the devolved rates; and,

2. payments to be made to HM Revenue and Customs (HMRC) in respect of the new powers.

The provisions of the Bill are discussed in the following.

[14] Northern Ireland Assembly Official Report, *Monday 28 May 2012*

5.1. Setting of rate of air passenger duty

Clause 1 of the Bill sets the rate of APD for the purposes of subsections (3)(a) and (b), 4(a) and (b), (5)(a) and (b) and (5A)(a),(b) and (c) of section 30A of the *Finance Act 1994*. Each rate is to be set to £0.

The table below defines which flights these subsections relate to:

Table 2: Rates of APD on direct long haul flights departing Northern Ireland, as proposed by the Air Passenger Duty (Setting of Rate) Bill.[15]

Subsection of *Finance Act 1994* section 30A	Destination Band	Class of travel	Rate
(3)(a)	Band B	Standard*	£0
(3)(b)	Band B	Other*	£0
(4)(a)	Band C	Standard*	£0
(4)(b)	Band C	Other*	£0
(5)(a)	Band D	Standard*	£0
(5)(b)	Band D	Other*	£0
(5A)(a)	Band B	Luxury private jets	£0
(5A)(b)	Band C	Luxury private jets	£0
(5A)(c)	Band D	Luxury private jets	£0

*"Standard" classes of travel are defined as those on aircraft which have only one class of travel, or where there is more than one class of travel i.e. the lowest (or "economy") class. "Other" is therefore understood to mean those which are not the lowest class of travel i.e. business or first class.

Finally, this section sets out that the charge will have effect from the relevant day. As defined in the provisions of the *2012 Act* considered for consent by the Assembly, this is the day such as is proposed by a Commencement Order of the Department of Finance and Personnel.

5.2. Payment to HMRC

Clause 2 permits that the Department of Finance and Personnel may pay sums to HMRC in respect of any expenditure incurred by HMRC in connection with the setting of rates at £0. These costs may relate to:

- information collected on the Department's behalf by HMRC (in order to inform policy and returns on rates);[16]

[15] Table compiled by RaISe.

- any extra administration costs which are incurred as a result of the rates change; and,
- the registration of airlines with the revenue commissioners.

In the Explanatory and Financial Memorandum (EFM) to the Bill, the Department explains that these costs are expected to be less than £5,000 p.a. The EFM states that a Memorandum of Understanding has been established between the Department and HMRC as to the workings of the new tax regime in NI, including the reimbursement costs to HMRC.

5.3. Other clauses

Clauses 3 and 4 of the Bill simply state the short title and the arrangements for commencement (appointed by Order of DFP in accordance with section 30A(9) of the *Finance Act 1994*). The Explanatory and Financial Memorandum notes that this date will be 1 January 2013, or as soon as possible after that.

5.4. Impact assessments

The Department of Finance and Personnel has carried out equality and regulatory impact assessments, which are described in the EFM.

DFP does not consider there to be any differential equality implications arising from the Bill for the Section 75 sub-groups.

DFP considers the regulatory impact of the changes on businesses to be negligible, as they relate to one-off compliance costs and minimal administrative changes. The expected positive impact of the Bill is set out: helping to rebalance the NI economy, increase the attractiveness of NI to business and tourists, and making the region more competitive. It is also mentioned that the target of a zero-rate of APD on direct long haul flights is a stated aim of the Programme for Government 2011-15.

6 Short haul rates of duty: future consideration

As has been stated previously, the *Finance Act 2012* does not provide for the Northern Ireland Assembly to be able to set rates of duty on the shortest category of APD: Band ‘A’. However, this arose as a key issue during the Committee’s deliberations and the LCM debate in the Assembly.

Band ‘A’ categories are destinations in countries of which the capital city is within 2,000 miles of London, and any destination within the UK itself. Each country to which this applies is specifically defined in the *Finance Act 1994* (as amended). This includes mainly European Countries (including Russia), but also some north African countries which fall under the 2,000 mile radius.

[16] *Finance Act 2012* sch 23 para 13 provides that HMRC would be able to share with Treasury, the Secretary of State and DFP, any information relating to the devolved rates.

Significantly, 98·5% of the passenger flights taken from Northern Ireland are in this Band 'A' category, whereas for the UK as a whole the figure is around 78%.[17] It could be interpreted that this due to a combination of Northern Ireland's reliance on air travel as a link to mainland Great Britain and a current lack of non-Band 'A' routes departing NI airports.

The Committee concluded that a "strong case" had been made for reducing or abolishing Band 'A' rates of APD in NI. This, it was argued, would have the advantages of improve NI's connectivity with GB and Europe, thereby boosting business, competitiveness and tourism.[18]

This approach is not without its qualifications, however, and HM Treasury's insistence on devolution rather than exemption means that there would be implications for the Northern Ireland budget under EU legislation governing state aid (and the "Azores" ruling).[19] Effectively, this means that the NI Executive would have to pay for a different rate of duty within its jurisdiction via a loss to the block grant from the UK Exchequer.[20] Therefore, if the full scale devolution of APD rates were made to NI, it was estimated that the initial cost to the Executive's budget would be £60 million per annum, possibly rising to £90m p.a. in future.[21]

The Committee therefore recommended that the Department undertake a cost-benefit decision on whether to push for devolution of Band 'A' rates, and that this should be informed by independent expect research into the business case for such an outcome. This would look at the opportunity costs of non-action, using economic modelling and forecasting to determine the potential benefit of devolving short haul rates.

The Department responded that it would continue to press for the abolition of APD, and failing that, a signification reduction in APD Band 'A' rates. Any research which the Department was to commission would look at APD and non-APD related actions that could be taken to improve NI's connectivity. The Minister responded that DFP officials were in discussions with counterparts in the Department for Enterprise, Trade and Investment (DETI) and the Department for Regional Development (DRD) on this issue, as well as the wider issue of maximising opportunities and engagement with airlines and airports on improving routes from NI.[22] A watching brief on developments in this area may be appropriate.

The Committee had recommended that looking at the example of the impact of reductions in, or abolition of, APD in other European countries would be beneficial, as it

[17] HMRC (UK Trade Info) *Air Passenger Duty Bulletin June 2012* table 2 (recent chargeable passengers). 78% is UK passengers in Band A as a percentage of total passengers for 2009/10 and 2010/11.

[18] Committee for Finance and Personnel (2012) pp 21-2

[19] For a detailed explanation of State Aid, see RaISe (Pidgeon, Colin) (2012c) *State Aid* (NIA 30/12).

[20] RaISe (2012a) *Legislative Consent Motion: UK Finance (No. 4) Bill 2012: Air Passenger Duty* (NIA 71/12) pp 27-8 (section 5.6.4) for a discussion on the exemption which applies in the case of the Scottish Highlands and Islands and why such an exemption was not available for Northern Ireland.

[21] Northern Ireland Assembly Official Report, *Monday 28 May 2012*

[22] Northern Ireland Assembly Official Report, *Committee for Finance and Personnel, 3 October 2012*. In evidence to the Committee on the Department's response to the Committee Report, a DFP official confirmed that terms of reference for the research were being drafted in coordination with DETI, but a study with a timetable had not yet been developed.

would indicate the likely benefits of such a strategy to a region's tourism and connectivity. A separate RaISe paper addresses this issue.[23]

6.1. Extending the powers: the *Northern Ireland Act 1998*

During the Committee for Finance and Personnel's deliberations, DFP was asked if it would be possible to include Band 'A' within the terms of the Finance (No. 4) Bill before it the LCM was passed in the Assembly. This would require the UK Government to act. However, the Department responded that the Government had not been asked to, nor offered to agree to, the devolution of greater powers than those demarcated by the *Bill*. When asked by the Committee whether there was any scope to devolve broader powers over APD to NI, a DFP official responded:

> *To devolve greater powers, it was considered that we may need to have an amendment to the* Northern Ireland Act 1998 *rather than be able to deliver a reduction solely through the Finance Bill 2012. No parliamentary time for an amendment to the* Northern Ireland Act *has been scheduled before the end of 2013. Ministers consider that period too long to take the action that we want to take on direct long-haul flights.*[24]

DFP confirmed that HM Treasury had taken legal advice on this matter, but by convention legal advice is not shared. DFP has also sought legal advice – but similarly it is not shared.[25] However, the extent of this legal advice received by the Department amounted only to what is possible under the *proposed* legislation (now enacted). Through discussions with Treasury officials, the DFP had been unable to establish whether a constitutional amendment would, in fact, be required. It was, however, firmly established that the provisions within the *2012 Act* do give legislative competence to the Assembly over direct long haul rates of APD.[26]

As a clarification, in order to make such an amendment to the *NI Act 1998* (if it was necessary in respect of devolving powers over short haul flights), a constitutional bill, rather than a finance bill, would have to be passed in Westminster. The Department gave evidence in Committee that, due to Parliamentary timetabling arrangements, it would not be possible to table such a bill to amend the *NI Act 1998* before mid- to late-2013 (though no such intention has been put forward to, or by, the UK Government).[27]

[23] RaISe (2012b) *Further Information on Air Passenger Duty* (NIA 82/12) Issue: Have any European countries successfully attached conditions on airlines in return for reduced Air Passenger Tax?
[24] Northern Ireland Assembly Official Report, *Committee for Finance and Personnel, 14 March 2012*
[25] DFP email to RaISe, 27 April 2012.
[26] Northern Ireland Assembly Official Report, *Committee for Finance and Personnel, 2 May 2012*
[27] *Ibid*

Annex: Section 190 and Schedule 23 of the *Finance Act 2012*, as enacted

Finance Act 2012

2012 CHAPTER 14

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [17th July 2012]

Air passenger duty

190 Air passenger duty.

Schedule 23 amends, and makes amendments connected with, Chapter 4 of Part 1 of FA 1994 (air passenger duty).

SCHEDULE 23 Section 190

AIR PASSENGER DUTY

PART 1

NORTHERN IRELAND LONG HAUL RATES OF DUTY

FROM 1 NOVEMBER 2011 TO 31 MARCH 2012

1 In section 30 of FA 1994 (air passenger duty: rates of duty) after subsection (4A) insert—

"(4B) Subsection (4C) applies if—

(a) the passenger's journey is a relevant Northern Ireland journey, and
(b) apart from subsection (4C), subsection (2) would not apply to the journey.

(4C) The applicable rate in subsection (2) applies to the journey instead of the applicable rate in subsection (3), (4) or (4A) (as the case may be).

(4D) A passenger's journey is a "relevant Northern Ireland journey"—

(a) in the case of a journey which has only one flight, if the flight begins in Northern Ireland, and
(b) in any other case, if the first flight of the journey—

(i) begins in Northern Ireland, and

(ii) is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.”

2 In article 3 of the Air Passenger Duty (Connected Flights) Order 1994 (S.I.1994/1821) for “section 30(6), or section 31(3),” substitute “Chapter 4 of Part 1”.

3 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 November 2011 but before 1 April 2012.

PART 2

RATES OF DUTY FROM 1 APRIL 2012

4 (1) Section 30 of FA 1994 (air passenger duty: rates of duty) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a) for “£12” substitute “£13”, and
(b) in paragraph (b) for “£24” substitute “£26”.

(3) In subsection (3)—

(a) in paragraph (a) for “£60” substitute “£65”, and
(b) in paragraph (b) for “£120” substitute “£130”.

(4) In subsection (4)—

(a) in paragraph (a) for “£75” substitute “£81”, and
(b) in paragraph (b) for “£150” substitute “£162”.

(5) In subsection (4A)—

(a) in paragraph (a) for “£85” substitute “£92”, and
(b) in paragraph (b) for “£170” substitute “£184”.

(6) After subsection (4A) insert—

“(4B) Subsection (4C) applies if—

(a) the passenger’s journey is a relevant Northern Ireland journey, and
(b) apart from subsection (4C), subsection (2) would not apply to the journey.

(4C) The applicable rate in subsection (2) applies to the journey instead of the applicable rate in subsection (3), (4) or (4A) (as the case may be).

(4D) A passenger’s journey is a “relevant Northern Ireland journey”—

(a) in the case of a journey which has only one flight, if the flight begins in Northern Ireland, and
(b) in any other case, if the first flight of the journey—

(i) begins in Northern Ireland, and
(ii) is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.”

5 In article 3 of the Air Passenger Duty (Connected Flights) Order 1994 (S.I. 1994/1821) for “section 30(6), or section 31(3),” substitute “Chapter 4 of Part 1”.

6 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 April 2012.

PART 3

DEVOLUTION OF NORTHERN IRELAND LONG HAUL RATES OF DUTY

7 Chapter 4 of Part 1 of FA 1994 (air passenger duty) is amended as follows.

8 (1) Section 30 (rates of duty) is amended as follows.

(2) After subsection (1) insert—

"(1A) Subsection (1) does not apply to the carriage of a chargeable passenger to which section 30A below (Northern Ireland long haul rates of duty) applies."

(3) Omit subsections (4B) to (4D) (as inserted by paragraph 4(6) above).

(4) The amendments made by this paragraph have effect in relation to the carriage of passengers beginning on or after the relevant day as defined in section 30A of FA 1994 (as inserted by paragraph 9 below).

9 After section 30 insert—

"30A Northern Ireland long haul rates of duty

(1) This section applies to the carriage of a chargeable passenger if—

(a) the carriage begins on or after the relevant day,

(b) the only flight, or the first flight, of the passenger's journey begins at a place in Northern Ireland,

(c) the passenger's journey does not end at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A, and

(d) if the passenger's journey has more than one flight, the first flight is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.

(2) Air passenger duty is chargeable on the carriage of the chargeable passenger at the rate determined as follows.

(3) If the passenger's journey ends at a place in a territory specified in Part 2 of Schedule 5A—

(a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and

(b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.

(4) If the passenger's journey ends at a place in a territory specified in Part 3 of Schedule 5A—

(a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and

(b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.

(5) If the passenger's journey ends at any other place—

(a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and

(b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.

(6) The rate of £0 may be set for the purposes of any paragraph.

(7) The same rate may be set for the purposes of two or more paragraphs.

(8) Subsections (5) to (7) and (10) to (12) of section 30 apply for the purposes of this section as they apply for the purposes of that section.

(9) "The relevant day" means the day appointed as such by an order.

(10) Section 42(4) and (5) does not apply to an order under subsection (9).

(11) None of the following applies to any matter in respect of which this section authorises provision to be made by an Act of the Northern Ireland Assembly —

(a) any paragraph of Schedule 2 or 3 to the Northern Ireland Act 1998 (excepted and reserved matters);

(b) section 63 of that Act (financial acts of the Assembly).

(12) A Bill containing provision authorised by this section may not be passed by the Northern Ireland Assembly except in pursuance of a recommendation which—

(a) is made by the Minister of Finance and Personnel, and

(b) is signified to the Assembly by the Minister or on the Minister's behalf.

(13) A Bill containing provision authorised by this section may not be passed by the Northern Ireland Assembly without cross-community support (as defined in section 4(5) of the Northern Ireland Act 1998).

(14) "Passed", in relation to a Bill, means passed at the final stage (at which the Bill can be passed or rejected but not amended).

(15) Duty paid to the Commissioners in respect of the carriage of chargeable passengers to which this section applies must be paid by the Commissioners into the Consolidated Fund of Northern Ireland."

10 (1) Section 33 (registration of aircraft operators) is amended as follows.

(2) After subsection (2) insert—

"(2A) If the Commissioners decide to keep a register under section 33A below, an operator of a chargeable aircraft does not become liable to be registered under this section just because the aircraft is used for the carriage of chargeable passengers to which section 30A above applies."

(3) In subsection (3)(b) after "passengers" insert "or, if the Commissioners have decided to keep a register under section 33A below, that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers apart from the carriage of chargeable passengers to which section 30A above applies".

(4) In subsection (4) after "registered" (in both places) insert "under this section".

(5) In subsection (7) after "section" insert "or section 33A below".

11 After section 33 insert—

"33A Registration of Northern Ireland long haul aircraft operators

(1) The Commissioners may under this section keep a register of aircraft operators.

(2) If the Commissioners decide to keep a register under this section, the operator of a chargeable aircraft becomes liable to be registered under this section if the aircraft is used for the carriage of chargeable passengers to which section 30A above applies.

(3) A person who has become liable to be registered under this section ceases to be so liable if the Commissioners are satisfied at any time—

(a) that he no longer operates any chargeable aircraft, or

(b) that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers to which section 30A above applies.

(4) A person who is not registered under this section and has not given notice under this subsection shall, if he becomes liable to be registered under this section at any time, give written notice of that fact to the Commissioners not later than the end of the prescribed period beginning with that time.

(5) Notice under subsection (4) above shall be in such form, be given in such manner and contain such information as the Commissioners may direct."

12 In section 34 (fiscal representatives) in subsection (5)—

(a) omit "under section 33 above", and

(b) in paragraph (a) for "that section" substitute "section 33 or 33A above".

13 After section 41 insert—

"41A Northern Ireland long haul rates of duty: disclosure of information

(1) An officer of Revenue and Customs may disclose to the Secretary of State, the Treasury or the Department of Finance and Personnel in Northern Ireland any information for purposes connected with the setting of rates of duty under section 30A above, including (in particular) to enable the setting of rates under that section to be taken into account for the purposes of section 58 of the Northern Ireland Act 1998 (payments by Secretary of State into Consolidated Fund of Northern Ireland).

(2) Information disclosed under subsection (1) above may not be further disclosed without the consent of the Commissioners (which may be general or specific).

(3) In section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) references to section 18(1) of that Act are to be read as including a reference to subsection (2) above."

14 In section 44 of CRCA 2005 (payment into Consolidated Fund) after subsection (2) (c) insert—

"(ca) sums required by section 30A(15) of the Finance Act 1994 (air passenger duty: Northern Ireland long haul rates of duty) to be paid into the Consolidated Fund of Northern Ireland,".

15 In column 2 of the Table in paragraph 1 of Schedule 41 to FA 2008 (penalties for failure to notify), in the entry relating to air passenger duty, after "33(4)" insert "or 33A(4)".

PART 4

OTHER PROVISION

16 Chapter 4 of Part 1 of FA 1994 (air passenger duty) is amended as follows.

17 In section 28 (introduction to air passenger duty) for subsection (3) substitute—

"(3) Sections 29 and 29A below set out how to determine if an aircraft is a chargeable aircraft for the purposes of this Chapter."

18 (1) Section 29 (chargeable aircraft) is amended as follows.

(2) For subsection (1) substitute—

"(1) For the purposes of this Chapter an aircraft is a chargeable aircraft if—

(a) it is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,

(b) its authorised take-off weight is not less than 5.7 tonnes, and (c) it is fuelled by kerosene (as defined in section 1(8) of the Hydrocarbon Oil Duties Act 1979)."

(3) In subsection (2) for "ten" (wherever occurring) substitute "5.7".

(4) Omit subsection (3).

19 After section 29 insert—

"29A Chargeable aircraft: exceptions

(1) This section applies for the purposes of this Chapter.

(2) An aircraft is not a chargeable aircraft whenever its operation falls within an exemption set out in sub-paragraph (b), (c), (f) or (g) under the category of activity "Aviation" in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 (as amended by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008).

(3) Those exemptions are to be read in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision 2009/450/EC of 8 June 2009.

(4) An aircraft is not a chargeable aircraft whenever it is being operated under a public service obligation imposed under 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)."

20 In section 30 (rate of duty) before subsection (5) insert—

"(4E) In relation to the carriage of a chargeable passenger on an aircraft to which subsection (4F) applies—

(a) if the rate which (apart from this subsection) would apply is the rate in subsection (2)(a) or (b), a rate equal to twice the rate in subsection (2)(b) is to apply instead,

(b) if the rate which (apart from this subsection) would apply is the rate in subsection (3)(a) or (b), a rate equal to twice the rate in subsection (3)(b) is to apply instead,

(c) if the rate which (apart from this subsection) would apply is the rate in subsection (4)(a) or (b), a rate equal to twice the rate in subsection (4)(b) is to apply instead, and

(d) if the rate which (apart from this subsection) would apply is the rate in subsection (4A)(a) or (b), a rate equal to twice the rate in subsection (4A)(b) is to apply instead.

(4F) This subsection applies to an aircraft if—

(a) its authorised take-off weight is not less than 20 tonnes, but

(b) it is not authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants).

(4G) In subsection (4F)(a) “take-off weight” is to be read in accordance with section 29(2) but as if “20” were substituted for “5.7” wherever occurring. (4H) For the purposes of subsection (4F)(b) an aircraft is authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants) if—

(a) there is a certificate of airworthiness (as defined in section 29(4)) in force in respect of the aircraft showing that the maximum number of persons who may be seated on the aircraft (excluding members of the flight crew and cabin attendants) is more than 18, or

(b) the Commissioners are satisfied that the aircraft is designed or adapted to seat more than 18 persons (excluding members of the flight crew and cabin attendants) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.”

21 In section 30A (as inserted by paragraph 9 above) after subsection (5) insert—

“(5A) In relation to the carriage of a chargeable passenger on an aircraft to which section 30(4F) applies—

(a) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (3)(a) or (b), the following rate is to apply instead—

(i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or

(ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (3)(b),

(b) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (4)(a) or (b), the following rate is to apply instead—

(i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or

(ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (4)

(b), and

(c) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (5)(a) or (b), the following rate is to apply instead—

(i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or

(ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (5) (b).”

22 (1) Section 43 (interpretation) is amended as follows.

(2) In subsection (1) for the definition of “passenger” substitute—

““passenger”, in relation to any aircraft, means any person carried on the aircraft other than—

(a) a member of the flight crew,

(b) a cabin attendant, or

(c) a person who is not carried for reward and who satisfies such other requirements as may be prescribed.”

(3) After subsection (1) insert—

“(1A) The agreements and arrangements covered by the definition of “agreement for carriage” in subsection (1) include informal agreements or arrangements between, for example, members of a family or friends.”

23 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 April 2013.