

# LEGISLATIVE CONSENT MEMORANDUM

## FINANCE (NO. 4) BILL

### Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Finance and Personnel, is:

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

### Background

2. This memorandum has been laid before the Assembly by the Minister of Finance and Personnel under Standing Order 42A(2). The Finance (No. 4) Bill was introduced in the House of Commons on 26 March 2012. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2010-12/financeno4.html>

### Summary of the Bill and its policy objectives

3. The UK Finance (No. 4) Bill was introduced by the Government shortly after the Budget to bring its tax proposals into law. The Bill will act to reduce Air Passenger Duty (APD) rates for direct long haul passengers travelling from Northern Ireland and also devolves responsibility for setting the rate of APD for direct long haul flights to the Northern Ireland Assembly.
4. The Bill gives statutory effect to the rate reduction applied to certain flights departing from Northern Ireland for the period 1 November 2011 to 31 March 2012 (the same APD rate applies for Band B, C and D direct long haul flights as applies to short haul Band A flights (£12 and £24) for that time period). The relevant flights are those where the journey is direct to long haul destinations or, where more than one flight is involved, the first connection is made in a long haul destination. The rates for 1 November 2011 – 31 March 2012 and from 1 April 2012, as provided for in the legislation, are set out below - for Northern Ireland flights there is currently only one band rate (A) for all flights.

5. The Bill also provides for a general increase in APD rates from 1 April 2012 (as set out below) as well as a rate reduction for certain flights departing from Northern Ireland for the period from 1 April 2012 (the same APD rate will apply to Band B, C and D long haul flights as will apply to short haul Band A flights – £13 and £26). The relevant flights are as previously set out.

Destination Bands and distance from London	Reduced rate (for travel in the lowest class of travel available on the aircraft) [from 1 April 2012]	Standard rate (for travel in any other class of travel)* [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]
Band D (over 6000 miles)	£85 [£92]	£170 [£184]
* However, if a class of travel provides for seating in excess of 1.016 metres (40 inches) then the standard (rather than the reduced) rate of APD applies.		

### Provisions which deal with a Devolution Matter

6. On 27 September 2011, at the same time that it announced the reduction in APD rates for passengers on direct long haul flights from Northern Ireland, the Government announced that, in order to provide a more lasting solution, aspects of APD would be devolved to Northern Ireland. Part 3 of Schedule 23 to the Finance (No. 4) Bill includes changes which devolve to the Northern Ireland Assembly the rate of APD to be applied to passengers on direct long haul flights that take off from Northern Ireland (Bands B, C and D) on or after a day to be appointed by order. As air passenger duty remains an excepted matter, more generally, the power to appoint that day

(and trigger the devolution of the Northern Ireland power) will be retained by Treasury and given effect through secondary legislation. This appointed day will be set in conjunction with the devolved administration, with the intention that this should be as soon as possible after the necessary legislation has been passed by both Parliament and the Northern Ireland Assembly.

7. The changes will apply to those flights that begin from Northern Ireland and do not end in the UK or within 2000 miles from London (largely destinations within the UK and EU), that is direct long haul flights.
8. The provisions deal with a devolution matter as they change the legislative competence of the Assembly, in relation to rate setting of APD.
9. Part 3 also makes provision for the setting up and maintenance of a separate register of aircraft operators with routes from Northern Ireland. The Commissioners may keep a register of aircraft operators operating routes from Northern Ireland, and if they do, operators currently registered for APD with routes that begin in Northern Ireland will need to register a second time and will need to account for APD on their Northern Ireland routes separately from their other routes. Operators who only operate routes that begin in Northern Ireland will only be required to register on the Northern Ireland register.
10. In addition, to allow for more effective management of the tax and the APD rate setting process, Part 3 introduces provisions for HMRC to disclose information to the Secretary of State, HM Treasury or the Department of Finance and Personnel in Northern Ireland. It specifies that the information to be shared is to be related to the duty on direct long haul flights from Northern Ireland and that this information is not to be disclosed further without the consent of the Commissioners of HMRC. It also provides that penalties may be applied in the event of wrongful disclosure of this information.
11. Finally, Part 3 makes consequential legislative amendments concerning payments into the Northern Ireland Consolidated Fund.
12. Part 4 of Schedule 23 to the Finance (No. 4) Bill also extends the scope of APD to private jets as well as changes to reflect the devolution of direct long haul APD rates to the Assembly. It provides that the new rates to be applied for carriage on aircraft considered to provide exceptional standards of luxury travel are to be twice those applied to non standard class travel. These changes would apply from 1 April 2013.

13. APD is not a devolved matter in Scotland or Wales, and Northern Ireland is in a unique position due to its sharing of a land border with another EU Member State. As part of the UK Government's consultation process stakeholders were invited to provide views on the market impact of devolution. The Government's response to consultation was that it would devolve rate setting powers to Northern Ireland, relating to APD rate setting for direct long haul flights, and continue to explore the feasibility and likely effects of devolution of APD to Scotland and Wales.

### **Reasons for making the Provisions**

14. The legislative consent motion being tabled in the Assembly seeks agreement to Westminster legislating for the devolution to the Assembly of APD rate setting for direct long haul flights (along with associated consequential provisions) departing from Northern Ireland.
15. The Executive has agreed to Assembly consent being sought through a legislative consent motion.
16. If the inclusion of the relevant APD provisions is agreed to by both the Executive and the Assembly, it would enable the Executive to follow through on the commitment to reduce APD to zero for direct long haul flights from Northern Ireland.

### **Reasons for utilising the Bill rather than an Act of the Assembly**

17. The Assembly currently has no powers to legislate in relation to APD as this is an excepted matter so an Assembly Bill cannot be used to implement the proposal to give the Assembly powers to set the rate of APD for long haul flights starting in Northern Ireland.
18. Subject to Parliamentary approval of the relevant provisions in the Finance (No. 4) Bill devolving responsibility to the Assembly, an Assembly Bill will subsequently be required to set the rates of APD for direct long haul flights from Northern Ireland.

### **Consultation**

19. Budget 2011 launched a UK-wide consultation on APD, which included a question on whether APD should be devolved to Northern Ireland. The consultation closed on 17 June 2011 and the Department of Finance and Personnel submitted a response (<http://www.dfpni.gov.uk/dfp-response-to-apd-consultation.pdf>). Around 100 responses commented on the broader issue of APD and devolution (across the UK). 26 responses were provided from interested parties in Northern Ireland. This included nine

district councils, Chambers of commerce, representatives of the local airports, political representatives and tourist organisations.

20. In relation to Northern Ireland, several stakeholders highlighted the competition effects of substantially lower rates of duty in the Republic of Ireland, which they considered to threaten the viability of direct services between Belfast and long haul destinations including the United States.
21. On 27 September 2011, the Government announced that, effective from 1 November 2011, APD for passengers travelling on direct long haul routes departing from airports in Northern Ireland would be cut to the lower short-haul rate. To provide a lasting solution, the Government had launched a parallel process to devolve aspects of APD to the Northern Ireland Assembly.
22. The Northern Ireland Executive also consulted on its commitment to eliminate APD on long haul flight as part of its wider consultation on the Programme for Government, which was launched on 17 November 2011. The Programme for Government was subsequently agreed and published on 12 March 2012.

### **Human Rights and Equality**

23. HMRC will work with the Northern Ireland Executive to ensure effective monitoring of receipts and information collected on tax returns, as well as the wider impact of the policy.
24. There are not considered to be any human rights or any differential equality implications from the devolution of powers to the Northern Ireland Assembly.

### **Financial Implications**

25. The EU Azores criteria requires the Executive to meet the full financial consequences of any decision to devolve the power to set APD rates for direct long haul flights. Financial implications and the approach to Block adjustment are being finalised with HM Treasury and discussions are ongoing in this regard.
26. HMT has indicated that the overall revenue costs associated with the reduction/devolution of direct long haul APD rates is expected to be up to £5m per annum.
27. Delivery issues and the need for a Memorandum of Understanding (MoU) with HMRC in relation to the administrative issues / costs associated with

the devolution of APD are also being finalised. An estimate of administrative costs is not yet available.

### **Summary of Regulatory Impact**

28. It is considered that the regulatory impact of the changes on businesses will be negligible, given that one off compliance costs as well as the administrative burden of the changes are expected to be minimal. The changes could also have the potential to make Northern Ireland more attractive, help to rebalance the economy, increase tourism and make the region more competitive. The changes would enable the Executive to meet its commitment to provide a zero rate of APD on direct long haul flights, as stated in the 2011-2015 Programme for Government, by 2013/14.

### **Engagement to date with the Committee for Finance and Personnel**

29. The Finance and Personnel Committee has been briefed on the APD issue and the changes that would be given effect through the UK Finance (No. 4) Bill. During the briefing session Committee Members raised a number of policy issues.
30. In particular, Committee members were briefed on the background to, and the rationale for the devolution of the APD powers in relation to setting the rates for direct long haul flights. Members were also informed of the legislative process for the change, including the relevant clauses in the draft Finance (No. 4) Bill, the need for a Legislative Consent Motion and a subsequent Assembly Bill to set APD rates for Northern Ireland. The Committee indicated that they would consider the matter and report as appropriate in due course.

### **Conclusion**

31. The view of the Minister of Finance and Personnel is that, in the interests of providing the Assembly with the power to set the rate of APD for direct long haul flights from Northern Ireland, the Assembly should support a Legislative Consent Motion in the terms of the draft set out in paragraph one of this Memorandum.

**Department of Finance and Personnel**

**Thursday 12 April 2012**