

## Joint response to consultation on aviation tax reform

### Introduction and summary

1. This response to the government's consultation paper has been prepared on behalf of the Environmental Law Foundation ("ELF") with the support of:
  - **Stop Bristol Airport Expansion (SBAEx)** - a community campaign group based in North Somerset for individuals and groups opposed to airport expansion.
  - **Gatwick Area Conservation Campaign (GACC)** - a voluntary association that seeks to protect and improve the environment in the area affected by Gatwick Airport's operations. Registered Individual Members and Registered Supporters (not paying a membership fee) totalling 474. Community Groups (Residents Associations, Amenity Groups, Environmental Associations, Community Noise Groups) 45 representing some 10,000 people. Local Authority Councils 26 representing some 20,000 residents
  - **Heathrow Association for the Control of Aircraft Noise (HACAN)** - a campaign group formed to give a voice to residents under Heathrow flightpaths. It has more than 1000 members from across London and the Home Counties.
  - **Samara Jones-Hall and Jason Jones-Hall of Five10Twelve Limited** - Five10Twelve Limited describe themselves as placemaking and regeneration consultants. Involved with the Manston Airport DCO inquiry and subsequent successful challenge.
  - **Luton and District Association for the Control of Aircraft Noise** - a community group which represents people who are affected by the noise from Luton Airport and are concerned about its growing impacts on climate change and local quality of life. They have 300 regular members in communities around Luton Airport and advise many more through local community networks. They also sit on various committees including the Airport Consultative Committee and Noise and Track Sub Committee and Airspace Change Working Group.
  - **London Luton Airport Town and Village Community Committee** - a local committee focused on reducing the noise associated with flights in and out of Luton airport, particularly those at low levels.
  - **Stop Luton Airport Expansion** - a community interest group. It has 8-10 members and is particularly focused on saving Wigmore Park from becoming part of Luton Airport.
  - **People against Aircraft Intrusive Noise** - a community action group against noise impact from Luton and Heathrow Airport operations.

- **Stop Low Flights From Luton** - a campaign group representing approximately 20 people who live in the rural areas between Harpenden and St Albans.
2. Any references to paragraph numbers in this response are to those in the consultation document, unless expressly stated otherwise.
  3. We note that the HM Government's objectives for aviation taxation are as follows:<sup>1</sup>
    - a) To support the Union and international connectivity ("**Connectivity Objective**");
    - b) To align with our environmental objectives, particularly the Government's commitment to net zero emissions by 2050 ("**Environmental Objective**"); and,
    - c) To ensure that the aviation sector makes a fair contribution to public finances ("**Contribution Objective**").
  4. In summary, we are particularly concerned about the impact of the aviation sector, including both domestic and international flights, on the UK's Greenhouse Gas Emissions ("GHG emissions") and climate change more broadly. The emissions from aviation increased between 2017 and 2018;<sup>2</sup> and its contribution to those emissions, as compared to other sectors, is likely to increase between now and 2050 due to limited options for decarbonisation.<sup>3</sup> There is, in essence, no "zero carbon" aviation and no prospect of that soon.<sup>4</sup> Furthermore, changes in emissions to date have principally been achieved through changes in demand.<sup>5</sup>
  5. We therefore consider that **taxation on the aviation industry is essential:**
    - a) to secure behaviour change so that there is a reduced demand for flights with individuals and businesses opting for greener transport: and,
    - b) to offset the uneven distribution of the harmful environmental impacts of aviation (often affecting most those who fly the least).
  6. We doubt that the aviation sector makes a fair contribution to public finances, particularly in light of its significant environmental impact, including both GHG emissions and noise, compared to other forms of transport. We also question the extent to which the objective of Union connectivity would be achieved in circumstances where there are already significant APD exemptions for domestic routes.
  7. Overall, our view is that APD rates should reflect the polluter pays principle; and incentivise, through fiscal measures, less carbon intensive forms of travel.

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<sup>1</sup> HM Treasury, "Aviation tax reform: consultation" ("**Consultation Paper**") dated March 2021

<sup>2</sup> Climate Change Committee, "Reducing UK emissions – progress report to Parliament" June 2020, pg 105; overall, emissions from domestic and international aviation in 2018 were 124% above 1990 levels (see pg 107).

<sup>3</sup> CCC, "The Sixth Carbon Budget – Aviation" ("**CCC Report**"), pg 21. This is also recognised in the consultation response – see para 4.2

<sup>4</sup> AEF, Possible, Greenpeace, Transport and Environment and Friends of the Earth, "Briefing: Building back better for aviation", pg 1

<sup>5</sup> CCC Report, pg 29

There is therefore a need for an increase of APD, a review of the exemptions (for example, the short pleasure flight exemption<sup>6</sup> and the Public Service Obligations, “PSOs”, particularly where there are other forms of transport available on those routes), and a full analysis of the APD band structure to ensure the Environmental Objective is met.

8. We consider that the scope of the consultation should consider more broadly taxation on aviation, particularly in light of the environmental imperative, including the need to reduce the sector’s carbon footprint as well as incentivise more sustainable lifestyles, as well as the need for the aviation sector and its customers to make a fair contribution to society.
9. Our view is that the government can (pursuant to section 13(4) of the CCA 2008), and should, look at the policies of other national authorities in considering how to meet the Net Zero Obligation. We note, for example, that in France domestic flights have now been banned on routes where it is possible to travel by rail in under 2 and a half hours.<sup>7</sup> We also understand that in Austria a higher tax has been introduced on short-haul flights (less than 350 km).<sup>8</sup>
10. We support in full the consultation response of ACF.
11. We further note that HM Government will consult later this year on how the aviation sector will deliver its contribution to the UK’s commitment to bring all GHG emissions to net zero by 2020. We note that when assessing any proposed decarbonisation initiative careful consideration must be given to all the environmental and social consequences – most obviously, the extensive use of biofuels and the impact on deforestation and the availability of land for local food supplies. We reserve the right to respond separately to this consultation once it has been published.

## **Aviation and taxation**

12. APD is the only tax on the aviation sector, because tickets are VAT free and aviation fuel incurs no duty.<sup>9</sup> We therefore agree with Aviation Environment Foundation (“AEF”), as set out in their consultation response, that aviation is very lightly taxed – if it paid the same level of duty and VAT on its fuel, as motorists currently do on theirs, revenue would increase to over £11 billion a year compared to the £3.6 billion that APD currently raises.<sup>10</sup>

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<sup>6</sup> <https://www.gov.uk/guidance/exemptions-from-air-passenger-duty>

<sup>7</sup> <https://www.theguardian.com/commentisfree/2021/apr/13/france-ban-short-domestic-flights-britain-air-travel>

<sup>8</sup> <https://www.fr24news.com/a/2020/06/austria-sets-minimum-price-for-airline-tickets.html>;  
[https://edition.cnn.com/travel/article/austrian-airlines-flight-train-service-intl/index.html#:~:text=\(CNN\)%20%E2%80%94%20Austria's%20flagship%20airline,operating%20a%20rail%20service%20instead](https://edition.cnn.com/travel/article/austrian-airlines-flight-train-service-intl/index.html#:~:text=(CNN)%20%E2%80%94%20Austria's%20flagship%20airline,operating%20a%20rail%20service%20instead)

<sup>9</sup> Consultation paper, para 1.2

<sup>10</sup> AEF consultation response, pg 3; and consultation paper, para 1.2 which states that the tax raised £3.6 bn in 2019-2020./

13. We consider that the reduction in demand for flying is key to reducing GHG emissions in the aviation sector; and that APD, along with other forms of taxation, have an essential role to play in achieving that reduction. The Climate Change Committee (“CCC”) describes “*demand management*” as reducing the annual number of passengers through carbon pricing, a frequent flyer levy, fuel duty, VAT or APD reforms, and restricting the availability of flights.<sup>11</sup> Indeed, in setting the sixth Carbon Budget, the CCC **assumes** a reduction in aviation demand, as compared to the “business as usual” baseline.<sup>12</sup> It is therefore of paramount importance in working towards net Zero that there is a change in demand for aviation.

14. It was therefore clear that aviation tax reform is required in order to achieve that objective and meet the Net Zero Obligation.

### **Impact of COVID-19**

15. We note that, at paragraphs 1.12-1.14, the consultation sets out the extensive measures and financial support that have been put in place to support the aviation sector, following the reduction in passengers caused by COVID-19.

16. In light of those measures and the objectives of this consultation (as laid out above at paragraph 3, we consider that aviation tax reform is not, and should not be, for the purpose of recovery of the aviation sector – such a purpose would be improper.

### **Legal obligations**

17. In the decision adopting the Paris Agreement on climate change (FCCC/CP/2015/10/Add 1 dated 29 January 2016), the parties recognised and acknowledged:

“[T]hat **climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries**, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions,

“[T]hat **deep reductions in global emissions will be required** in order to achieve the ultimate objective of the Convention and emphasizing the need for urgency in addressing climate change,

“[T]hat **climate change is a common concern of humankind**, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality,

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<sup>11</sup> CCC Report, pg 9

<sup>12</sup> *Ibid*, pgs 10, 18 and 21

empowerment of women and intergenerational equity [...]” [emphasis added]

18. The parties further emphasised:

“with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels,”

19. They noted, with concern, that:

“the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the intended nationally determined contributions do not fall within least-cost 2°C scenarios but rather lead to a projected level of 55 gigatonnes in 2030, and also **notes that much greater emission reduction efforts will be required** than those associated with the intended nationally determined contributions in order to hold the increase in the global average temperature to below 2 °C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5 °C above pre-industrial levels [...]”

20. The preamble to the agreement further recognises that:

“[S]ustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change.”

21. The Paris Agreement sets out, in Article 2, obligations to reduce emissions of greenhouse gases, in particular carbon dioxide, with the object of seeking to reduce the rate of increase in global warming and to contain such increase to well below 2°C above, and pursuing efforts to limit the temperature increase to 1.5°C, above pre-industrial levels.

22. To achieve that long-term temperature goal, pursuant to Article 4, parties are required to aim to reach global peaking of GHG Emissions as soon as possible and to undertake reductions thereafter in accordance with the best available science.

23. On 22 April 2016, the United Kingdom signed the Paris Agreement; and on 17 November 2016 the United Kingdom ratified the Agreement.

24. The Climate Change Act 2008 (“the **CCA 2008**”) is the principal domestic legislation, which was enacted, in part, to make the reduction of GHG emissions legally binding and to provide for a system of carbon budgeting. The act applies to the whole of the United Kingdom.

25. Section 1 of the CCA 2008 is a **statutory duty** on the Secretary of State to **ensure** the net UK carbon account for the year 2050 is at least 100%<sup>13</sup> lower than the 1990 baseline (“the **Net Zero Obligation**”). Section 24 of the CCA 2008 enables the Secretary of State to set targets for other GHG emissions.
26. The CCA 2008 also requires the Secretary of State to set an amount for the net UK carbon account (the “carbon budget”) for the succeeding period of five years, at least 12 years in advance; and to ensure that the net UK carbon account for any period does not exceed that budget (sections 4, 5 and 8).
27. Furthermore, the Secretary of State has a statutory duty to prepare proposals and policies for meeting the carbon budgets; and, in turn, the net zero target (section 13). These proposals and policies must contribute to **sustainable development** (section 13(3)). A relevant consideration is the proposals of other national authorities (section 13(4)).

### **Domestic flights and APD**

28. We outline our general position above at paragraphs 4-11. We answer those questions that we consider we are best equipped to answer below.
29. **Question 1: Do you agree with the government’s initial policy position that the effective rate of domestic APD should be reduced? In your view, what would be the positive and negative effects of such a change, particularly in light of the government’s objectives for aviation tax?**

No, we do not agree with the policy position that the effective rate of domestic APD should be reduced. In light of the Environmental Objective, our view is that a reduction would be irrational. Furthermore, we consider that APD should be increased.

A reduction is entirely contrary to the Net Zero Obligation. APD is currently the only taxation on the aviation sector – tickets are VAT free and aviation fuel incurs no duty (as is acknowledged in the consultation paper, para 1.2). APD rates are already very low. Reducing APD further will only make it harder for consumers to make low-carbon choices. It is therefore extremely important, through fiscal measures such as an increase in APD, to change demand for flying, which has, in turn, been identified by the CCC as the principal means by which emissions have been reduced to date and likely to be key going forward.

We consider that the need to incentivise greener travel is particularly key on routes that are already accessible by rail. It is widely accepted that domestic and other short-haul flights are a more carbon intensive form of travel and emit more carbon dioxide per person per mile than long haul flights, because taking-off and landing uses the most fuel. BEIS/DEFRA calculate that planes

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<sup>13</sup> Climate Change Act 2008 (2050 Target Amendment) Order 2019/1056

on routes of 700km or less emit 251 grammes per km (“g/km”) compared to 195 g/km for a long haul flight.<sup>14</sup>

We also doubt that reducing APD will logically achieve better Union connectivity. There are few towns that are not well connected by rail; and where places are particularly isolated, they benefit from a Public Service Obligation or APD exemption.

**30. Questions 2 and 4:**

**2. What evidence can you provide about the impact of an effective reduction in the domestic rate of APD on Union and regional connectivity?**

**4. Which domestic air routes, if any, are likely to be introduced/restart following any effective reduction in the domestic rate of APD, and what wider benefits would these routes provide?**

We answer questions 2 and 4 together. Our position is that APD should be increased. Notwithstanding that position, we question the extent to which a reduction in APD would increase regional connectivity, particularly in remote areas that are not otherwise connected by rail or other means of transport. We consider that the government must take into account the fact that PSOs (including the direct subsidy and APD exemption) on 22 routes (para 2.3).

**31. Question 7: What could the environmental impact of reducing the effective domestic rate of APD be? How could any negative impacts be mitigated?**

We consider that the APD should incentivise greener travel and meet the Environmental Objective. Given the rates are currently so low, we question the extent to which it effectively achieves either. A reduction would only render it even less effective.

**32. Question 8: What could the impact of reducing the effective domestic rate of APD be on other modes of transport (e.g. road/rail)?**

We consider that a reduction in APD will only further incentivise the use of air travel over rail, which is contrary to the Environmental Objective. We note that in France domestic flights have now been banned on routes where it is possible to travel by rail in under 2 and a half hours (as detailed above). We also note that with the introduction of more electric and hybrid cars, travel by road is likely to be less polluting over time (depending upon how full the vehicle is).<sup>15</sup>

**33. Question 16: Do you agree with the government’s initial position that a new domestic band would be the most appropriate approach to reducing the rate of APD on domestic flights?**

No, we disagree with the premise of the question. We consider that it would be wrong to reduce APD in light of the Environmental Objective.

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<sup>14</sup> <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2019>

<sup>15</sup> *ibid*

## **International distance bands**

34. **Question 19:** *Do you agree with the government's initial policy position that the number of APD distance bands should be increased? In your view, what would be the positive and negative effects of such a change, particularly in light of the government's objectives for aviation tax?*

Yes, we consider that an increase in distance bands should be adopted in order to reflect the polluter pays principle, but that (i) the lowest rate of APD must be higher than it currently is in order to incentivise the necessary behaviour change to greener transport; and (ii) the banding should take into account the fact that short-haul flights are more carbon intensive. We propose an approach to designing an appropriate banding structure in answer to questions 22 and 23.

35. **Question 20:** *What could the impact on the environment of a change to the banding structure? How could any negative environmental impacts be mitigated?*

We consider that a more nuanced approach to the banding structure that reflects the polluter pays principle could incentivise less air travel on the most polluting routes. We are concerned, however, that any reduction in APD on both long-haul and short-haul flights or change to the banding structure to incentivise more air travel, particularly on polluting routes, will have harmful to the environment, increase the GHG emissions, and undermine the Net Zero Obligation.

36. **Questions 22 and 23:**

**22.** *Which of the policy options for increasing the number of international distance bands do you think is most appropriate? Please explain your answer.*

**23.** *Is there an alternative banding structure that could better meet the government's objectives as outlined in paragraph 1.1?*

We answer questions 22 and 23 together. In designing an appropriate band structure, we identify a number of factors should be taken into account. In light of the Environmental Objective, we consider that careful thought needs to be given to the precise environmental impact of different flight routes, aircraft types, lengths of journey and any other factors that affect the GHG emissions from a particular flight and/or route. Once this careful analysis has been undertaken, we consider that the polluter pays principle should generally inform the APD bands – if a particular route pollutes more, it should cost more to travel on that route. We also consider that there is a need for an equitable approach insofar as a key principle within the Paris Agreement is supporting developing countries, particularly those that are feeling the immediate effects of climate change and rely on other industries such as tourism.



## **Frequent flyer levy**

37. **Question 25:** *Do you agree with the government's assessment that APD should remain as the principal tax on the aviation sector? Would you propose any alternative tax measures which could further align the aviation tax framework with the government's environmental objectives?*

We consider that the option of a frequent flyer levy should be considered with an open mind and fully investigated. We acknowledge that it might have advantages and disadvantages. Its advantage would be that it would target those individuals that travel by air the most; and therefore, might be considered the most just and equitable option in accordance with the polluter pays principle. A disadvantage is that it would involve taxing individuals rather than flights so there is less of an incentive to ensure that planes are full. We consider that it requires full and proper investigation, with the necessary consultation, before it is discounted as a policy option.

## **About ELF**

38. ELF is a charity registered in England and Wales (no. 1045918 and company no. 02485383). Our current President is HRH The Prince of Wales.

39. We help the voice of ordinary people and communities to be heard on matters affecting the environment in which they live. We do this by providing free information and guidance in-house on environmental issues for individuals and communities, also through our university-based law clinics, and via our network of specialist environmental lawyers and technical experts.

40. Through our work, we have a unique insight into how local voices are heard in the planning system. Most of our clients are drawn from local community groups who want assistance participating in planning decision-making.

## **Response signed by:**

Environmental Law Foundation (ELF)

South Bristol Airport Expansion (SBAEx)

Gatwick Area Conservation Campaign (GACC)

Heathrow Association for the Control of Aircraft Noise (HACAN)

Samara Jones-Hall and Jason Jones-Hall of Five10Twelve Limited

Luton and District Association for the Control of Aircraft Noise

London Luton Airport Town and Village Community Committee  
Stop Luton Airport Expansion

People against Aircraft Intrusive Noise

Stop Low Flights From Luton

**Date: 14 June 2021**