EXPLANATORY MEMORANDUM TO

THE AIR PASSENGER DUTY (RATE) (QUALIFYING TERRITORIES) (VARIATION OF DESCRIPTION) ORDER 2009

2009 No. 193

1. This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

In order to benefit from the lower rate of air passenger duty (APD), countries must be listed in the list of 'qualifying territories' in Section 30(9A) of the Finance Act 1994. This instrument, which comes into force on 1 March 2009, amends the list of 'qualifying territories' following the independence of Kosovo. The description of that territory is changed from 'Kosovo under the Interim Administration of the United Nations Mission' to the 'Republic of Kosovo'.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 APD was introduced by the Finance Act 1994 (c.9) ("the Act"). All airlines pay an amount of duty for each passenger they carry from a UK airport (except in the Scottish Highlands and Islands) based on each passenger's final destination and, from 1 April 2001, the class of travel.

4.2 The rate of duty is determined by section 30 of the Act. There are two rates of duty. The lower rate applies to flights within the UK or to another EEA State, any territory for whose external relations the UK or another EU Member State is responsible and to any qualifying territory. "EEA State" is defined in section 30(9). "Qualifying territory" is defined in section 30(9A).

4.3 Section 30(9A) was inserted by section 121(1) and (4) of the Finance Act 2002 (c.23) and extended the lower rate of duty to, at that time, all EU applicant countries and Switzerland. Section 30(9B) provides that the definition of "qualifying territory" in section 30(9A) can be amended by Treasury Order by adding, removing or varying the description of any territory. Under that power, the section was amended by the Air Passenger Duty (Rates) (Qualifying Territories) Order 2006 (S.I. 2006/2693), which added Croatia to the list of "qualifying territories", and by the Air Passenger Duty (Rate) (Qualifying Territories) Order 2007 (SI 2007/22) which added Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo under the interim Administration of the United Nation Mission, Montenegro and Serbia. This Order is made under the same power.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury (Ms Angela Eagle) has made the following statement regarding Human Rights:

'In my view the provisions of the Air Passenger Duty (Rate) (Qualifying Territories) (Variation of Description) Order 2009 are compatible with the Convention rights.'

7. Policy background

- ***What is being done and why***

7.1 The description relating to Kosovo in the list of territories which qualify for the lower rate of APD is being amended following its independence. There is no practical change as the lower rates of APD already applied to flights to Kosovo and will continue to do so.

- ***Consolidation***

7.2 The instrument amends primary legislation and there are currently no plans to consolidate that legislation.

8. Consultation outcome

A consultation exercise was not considered necessary and has not been carried out.

9. Guidance

No guidance is considered necessary as the change is being made only to ensure that the lower rate of APD that applied to flights to Kosovo under the Interim Administration of the United Nations Mission continues to apply to flights to what is now the Republic of Kosovo.

10. Impact

10.1 An impact assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is not to introduce any new regulatory requirements as part of this variation in the description of Kosovo.

11.3 The basis for the final decision on what action to take to assist small business was the Government's policy not to introduce new regulatory requirements unless absolutely necessary.

12. Monitoring & review

Not applicable.

13. Contact

Catherine Mawer at the HM Revenue and Customs Tel: 0207 147 0655 or email: Catherine.Mawer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.