WELSH STATUTORY INSTRUMENTS

2010 No. 2880 (W.238)

ENVIRONMENTAL PROTECTION, WALES

The Single Use Carrier Bags Charge (Wales) Regulations 2010

Made - - - - 30 November 2010

Coming into force - - 1 October 2011

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 77(2) and 90(3)(a) and (b) of, and paragraphs 1, 2, 3(1)(a) and (2)(a), 4 to 8, 9(1) and (2), 10, 12, 16 to 19 and 21 of Schedule 6 to, the Climate Change Act 2008 [F1].

The Welsh Ministers are satisfied in accordance with paragraph 23 of Schedule 6 to that Act that every county council and county borough council in Wales will act in accordance with the principles referred to in that paragraph when exercising a power conferred by these Regulations to impose a civil sanction.

A draft of these Regulations has been laid before, and approved by resolution of, the National Assembly for Wales pursuant to section 77(4)(a) and (b) of, and paragraph 27(3) [F2] of Schedule 6 to, the Climate Change Act 2008.

F1 2008 c. 27; *see* section 77(3) of the Climate Change Act 2008 for the definition of "the relevant national authority"; and paragraph 3(4) of Schedule 6 to that Act for the definition of "specified".

F2 *See* section 97 of that Act for the definition of "devolved legislature".

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Single Use Carrier Bags Charge (Wales) Regulations 2010.

(2) These Regulations apply in relation to Wales and come into force on 1 October 2011.

Interpretation

2.—(1) In these Regulations—

[[F3]"the charge" ("*y tâl*") means the minimum consideration that must be paid by a customer by virtue of regulation 6(2);**]**

[[F4]"consideration" ("*cydnabyddiaeth*") includes any chargeable VAT;**]**

"enforcement costs recovery notice" ("*hysbysiad adennill costau gorfodi*") has the meaning given in regulation 16(1);

"functions" ("*swyddogaethau*") includes powers and duties;

"late payment penalty" ("*cosb am dalu'n hwyr*") means any increase in an amount payable—

(a) as a fixed monetary penalty, by virtue of paragraph 10 of Schedule 2;

(b) as a variable monetary penalty, by virtue of paragraph 9 of Schedule 3;

(c) as a non-compliance penalty, by virtue of paragraph 8 of Schedule 4;

"non-compliance penalty notice" ("*hysbysiad o gosb am beidio â chydymffurfio*") has the meaning given in paragraph 5(4) of Schedule 4;

"record" ("*cofnod*") means the information specified in regulation 8(3);

"reporting year" ("*blwyddyn adrodd*") means—

(a) the period starting on the date on which these Regulations come into force and ending on 6 April 2012;

(b) thereafter, the period commencing 7 April in one year and ending on 6 April the following year; the first such period to commence 7 April 2012;

"specified sum" ("*swm penodedig*") has the meaning given in paragraph 4(2) of Schedule 2.

[[F4]VAT" ("*TAW*") has the meaning given in section 96 of the Value Added Tax Act 1994.**]**

(2) References to—

(a) a notice of intent in relation to a fixed monetary penalty, are references to a notice of intent served under paragraph 3(1) of Schedule 2;

(b) a final notice in relation to a fixed monetary penalty, are references to a final notice served under paragraph 6(5) of Schedule 2;

(c) to a notice of intent in relation to a discretionary requirement, are references to a notice of intent served under paragraph 3(1) of Schedule 3;

(d) to a final notice in relation to a discretionary requirement, are references to a final notice served under paragraph 5(6) of Schedule 3;

(e) to a notice of intent in relation to a non-compliance penalty, are references to a notice of intent served under paragraph 3(1) of Schedule 4.

(3) References to single use carrier bags attracting the charge are references to those single use carrier bags to which regulation 6 applies.

F3 Words in reg. 2(1) substituted (1.10.2011) by The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011 (S.I. 2011/2184), regs. 1(2), **3(1)(a)**

F4 Words in reg. 2(1) inserted (1.10.2011) by The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011 (S.I. 2011/2184), regs. 1(2), **3(1)(b)**

Meaning of "single use carrier bag"

3.—(1) In these Regulations "single use carrier bag" ("*bag siopa untro*") means a bag fitting the description in paragraph (2) or (3)—

(2) A bag fits the description in this paragraph if—

(a) it is made wholly or mainly of paper, plant-based material or natural starch; and

(b) it is not specifically manufactured for multiple reuse.

(3) A bag fits the description in this paragraph if it is a plastic bag—

(a) which does not meet all of the specifications in paragraph (4); or

(b) which meets all of the specifications in paragraph (4) but is not intended for multiple reuse (*see* paragraph (5)).

(4) The specifications are—

(a) both of the bag's dimensions are greater than 404 millimetres ("mm");

(b) at least one of the bag's dimensions is greater than 439 mm;

(c) the bag is manufactured from material which is greater than 49 microns in thickness.

(5) A plastic bag is intended for multiple reuse if—

(a) it is purchased by the customer; and

(b) when worn out, it is returnable to the seller from whom it was purchased to be replaced free of charge.

(6) In this regulation—

"dimensions" ("*dimensiynau*") means width or height;

"plastic bag" ("*bag plastig*") means a bag which is made wholly or mainly of plastic.

Meaning of "seller"

4.—(1) In these Regulations "seller" ("*gwerthwr*") means a person who in the course of trade or business—

(a) sells goods from a place in Wales;

(b) sells goods which are delivered to persons in Wales.

But this is subject to paragraph (2).

(2) Where a person (A) sells goods in A's capacity as an officer or employee of another person (B), then for the purposes of these Regulations B is the seller in those circumstances, and not A.

Administrator

5.—(1) A local authority is to administer the provision made by these Regulations and accordingly, is the administrator for its area [F5].

(2) In paragraph (1) the reference to a local authority is a reference to a county or county borough council.

F5 For the definition of "administrator", *see* paragraph 6(1) and (4) of Schedule 6 to the Climate Change Act 2008; and for the scope of administrators' powers under these Regulations, *see* regulation 19.

PART 2

The Charge

Requirement to charge

[F6 6.—(1) A seller must charge for every single use carrier bag supplied new—

(a) at the place in Wales where the goods are sold, for the purpose of enabling the goods to be taken away;

(b) for the purpose of enabling the goods to be delivered to persons in Wales.

This is subject to regulation 7.

(2) The amount that a seller must charge is such amount as ensures that the consideration paid by a customer for each single use carrier bag is not less than 5 pence.**]**

F6 Reg. 6 substituted (1.10.2011) by The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011 (S.I. 2011/2184), regs. 1(2), **4**

Exemption from the requirement to charge

7. Regulation 6 does not apply in relation to the supply of single use carrier bags of the kinds described in Schedule 1 and that Schedule has effect accordingly.

PART 3

Records and Publication

[F7Application of this Part

7A.—(1) This Part applies to a seller in relation to any reporting year in which the seller meets the condition in paragraph (2).

(2) The condition is that on the first day of the reporting year the seller employs ten or more full time equivalent members of staff .**]**

F7 Reg. 7A inserted (1.10.2011) by The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011 (S.I. 2011/2184), regs. 1(2), **5**

Record-keeping

[F8 8.—(1) A seller must keep a record of the information specified in paragraph (3) for every reporting year.

(2) Records must be retained by a seller for a period of three years beginning on 31 May in the reporting year following that to which a record relates.

(3) The information is—

(a) the number of single use carrier bags supplied which attract the charge;

(b) the amount received by way of consideration for single use carrier bags which attract the charge;

(c) the amount received by way of the charge;

(d) the net proceeds of the charge;

(e) a breakdown of how the amount which represents the difference between the amount received by way of the charge and the net proceeds of the charge has been arrived at, including—

(i) the apportionment between any chargeable VAT and reasonable costs;

(ii) the apportionment between different heads of reasonable costs;

(f) the uses to which the net proceeds of the charge have been put.

(4) The following are the amounts specified for the purposes of the definition of "net proceeds of the charge" in paragraph 7(4) of Schedule 6 to the Climate Change Act 2008—

(a) any amount in excess of the charge received by way of consideration for single use carrier bags which attract the charge;

(b) any amount of chargeable VAT received by way of the charge;

(c) the amount of any reasonable costs.

(5) In this regulation "reasonable costs" ("*costau rhesymol*") means—

(a) costs reasonably incurred by a seller to enable the seller to comply with these Regulations;

(b) costs reasonably incurred by a seller to enable the seller to communicate information about the charge to customers.

This is subject to paragraph (6).

(6) In relation to the first reporting year, "reasonable costs" includes costs reasonably incurred by a seller before the date on which these Regulations come into force —

(a) to enable the seller to comply with these Regulations;

(b) to enable the seller to communicate information about the charge to customers.**]**

F8 Reg. 8 substituted (1.10.2011) by The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011 (S.I. 2011/2184), regs. 1(2), **6**

Availability of records

9.—(1) This regulation applies where a person mentioned in paragraph (4) requests a seller in writing to supply a record for a reporting year.

(2) If the request is received during the retention period for the record in question, the seller must provide a copy of that record to the person who requested it within 28 days of receiving the written request.

(3) The retention period is the three year period for which any particular record must be retained under regulation 8(2).

(4) The persons are—

(a) the Welsh Ministers;

(b) a member of the public.

Publication of records

10.—(1) A seller must publish the record for a reporting year if the conditions in paragraph (2) are met by the seller in relation to the reporting year in question.

(2) The conditions are—

(a) that the seller is a taxable person for the purposes of the Value Added Tax Act 1994;

(b) that the seller supplies 1000 or more single use carrier bags which attract the charge.

(3) A seller must publish the record on or before 31 May in the reporting year following that to which the record relates.

(4) The record must remain published until 31 May in the following reporting year.

(5) Publication must be by way of—

(a) the seller's internet site; or