STATUTORY INSTRUMENTS

2015 No. 776

ENVIRONMENTAL PROTECTION, ENGLAND

The Single Use Carrier Bags Charges (England) Order 2015

Made - - - - 19th March 2015

Coming into force in accordance with article 1(c)

The Secretary of State is satisfied in accordance with paragraph 23 of Schedule 6 to the Climate Change Act 2008 [F1] ("the CCA 2008") that each administrator appointed by article 5(1) will act in accordance with the principles that:

(a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action is needed.

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with:

(c) section 77(4) [F2] of, and paragraph 27(2) of Schedule 6 to, the CCA 2008;

(d) section 20(3) of the Regulatory Enforcement and Sanctions Act 2008 [F3] Act ("the RESA 2008").

The Secretary of State makes this Order in exercise of the powers conferred by section 90(3) and (5) of, and Schedule 6 to, the CCA 2008 and section 4(4)(a) of the RESA 2008.

F1 2008 c.27.
F2 For the definition of "the relevant national authority", see section 77(3) of the Climate Change Act 2008.
F3 2008 c.13.

PART 1

Introduction

Citation, application [F4and commencement]

1. This Order—

(a) may be cited as the Single Use Carrier Bags Charges (England) Order 2015;

(b) applies in relation to England;

(c) comes into force—

(i) for the purposes of article 18(1), one month after the day on which it is made;

(ii) for all other purposes, on 5th October 2015;

F5(d) . . . . . .

F4 Words in art. 1 heading substituted (21.5.2021) by The Single Use Carrier Bags Charges (England) (Amendment) Order 2021 (S.I. 2021/598), arts. 1(2), **3(a)**

F5 Art. 1(d) omitted (21.5.2021) by virtue of The Single Use Carrier Bags Charges (England) (Amendment) Order 2021 (S.I. 2021/598), arts. 1(2), **3(b)**

Interpretation

2. In this Order—

"breach" has the meaning given in article 6;

"enforcement costs recovery notice" has the meaning given in article 12(1);

"lightweight plastic material" means synthetic or semi-synthetic material made from polyamide, polyethylene, polylactic acid, polyvinyl chloride or other polymer, or any combination of polymers, the thickness of which is not greater than 70 microns;

"non-compliance penalty notice" has the meaning given in paragraph 3(4) of Schedule 7;

"record" means a record required to be kept in accordance with paragraph 1 of Schedule 3;

"reporting year" has the meaning given in paragraph 3 of Schedule 3;

[F6"seller"—

(a) for the purposes of Schedule 3, has the meaning given in Schedule 1;

(b) otherwise, means a person who sells goods;**]**

"single use carrier bag" has the meaning given in Schedule 2;

"SUCB" means a single use carrier bag;

"VAT" has the meaning given in section 96 of the Value Added Tax Act 1994 F7.

F6 Words in art. 2 substituted (21.5.2021) by The Single Use Carrier Bags Charges (England) (Amendment) Order 2021 (S.I. 2021/598), arts. 1(2), **4**

F7 1994 c.23.

PART 2

Sellers' obligations

Obligation to charge

3. A seller must charge a minimum of **[**F810**]** pence (including any VAT) for each SUCB supplied in a reporting year—

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

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

F8 Word in art. 3 substituted (21.5.2021) by The Single Use Carrier Bags Charges (England) (Amendment) Order 2021 (S.I. 2021/598), arts. 1(2), **5**

Obligations in relation to records

4. Schedule 3 (records) has effect.

PART 3

Administrators and enforcement

Administrators

5.—(1) The relevant local authority is appointed as the administrator [F9].

(2) In paragraph (1), "the relevant local authority" is—

(a) in the case of a SUCB supplied at a place in England where goods are sold, for the purpose of enabling the goods to be taken away, the local authority with responsibility for the area in which the goods are sold;

(b) in the case of a SUCB dispatched from a place in England, in the course of the delivery of goods to a person in England, the local authority with responsibility for the area from which the goods are dispatched;

(c) in the case of a SUCB dispatched from a place outside England, in the course of the delivery of goods to a person in England, the local authority with responsibility for the area for which the goods are destined.

(3) In this article, "local authority" means, in relation to—

(a) the City of London, the Common Council for the City of London;

(b) an area in the rest of London, the London borough council for that area;

(c) the Isles of Scilly, the Council of the Isles of Scilly;

(d) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area.

F9 For the definition of "administrator", see paragraph 6(1) and (4) of Schedule 6 to the Climate Change Act 2008.

Breach

6. A seller breaches this Order if, without reasonable cause, the seller—

(a) fails to—

(i) charge in accordance with article 3;

(ii) keep records in accordance with paragraph 1 of Schedule 3; or

(iii) supply records in accordance with paragraph 2 of Schedule 3; or

(b) gives false or misleading information to, or otherwise obstructs or fails to assist, an administrator exercising its functions under this Order.

Powers of enforcement

7.—(1) An administrator may, for the purpose of enforcing this Order—

(a) enter a seller's premises at any reasonable time;

(b) inspect a seller's goods;

(c) make test purchases of a seller's goods;

(d) require a seller to produce documents or to provide information;

(e) question a seller or officers or employees of a seller.

(2) An administrator may only exercise the powers in paragraph (1)(d) or (e) if it reasonably believes that a breach has occurred.

(3) An administrator seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—

(a) the seller, or an officer or employee of the seller;

(b) the owner or occupier of any premises in which the administrator seeks to exercise the power concerned.

(4) Nothing in paragraph (1) compels the production of any document of which—

(a) in England and Wales or Northern Ireland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court;

(b) in Scotland, that person would on grounds of confidentiality of communications be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

(5) In this article, "premises" means premises other than those used wholly or mainly as a private dwelling.

Duties to report and publish guidance

8. Schedule 4 (reporting and guidance) has effect.

PART 4

Sanctions, appeals etc.

Power to impose fixed monetary penalty

9.—(1) An administrator may by notice impose a fixed monetary penalty on a seller if satisfied on the balance of probabilities that a breach has occurred.

(2) Schedule 5 (fixed monetary penalties: amounts and procedure) has effect.

Power to impose one or more discretionary requirements

10.—(1) An administrator may by notice impose one or more discretionary requirements on a seller if satisfied on the balance of probabilities that a breach has occurred.

(2) An administrator may only exercise the power conferred by paragraph (1) in relation to a case if a discretionary requirement has not been imposed on the seller on a previous occasion in relation to the same act or omission.

(3) Schedule 6 (discretionary requirements: amounts and procedure) has effect.

Power to impose non-compliance penalty

11.—(1) If a seller fails to comply with a non-monetary discretionary requirement, an administrator may by notice impose a non-compliance penalty on the seller.

(2) A non-compliance penalty may be imposed irrespective of whether a variable monetary penalty has also been imposed.

(3) The maximum amount which may be imposed in any case is £5,000.

(4) Schedule 7 (non-compliance penalties: procedure) has effect.

Power to recover costs

12.—(1) An administrator may serve a notice (an "enforcement costs recovery notice") on a seller on whom a discretionary requirement is imposed requiring the seller to pay the costs incurred by the administrator in relation to the imposition of the discretionary requirement up to the time of its imposition ("enforcement costs").

(2) In paragraph (1), the reference to "costs" includes—

(a) investigation costs;

(b) administration costs;

(c) costs of obtaining expert advice (including legal advice).

(3) An enforcement costs recovery notice must specify the amount required to be paid and must include information as to—

(a) methods of payment;

(b) the date by which payment must be made;

(c) the right of appeal;

(d) the consequences of failure to make payment by the due date.

(4) The date referred to in paragraph (3)(b) must be at least 28 days later than the date on which the enforcement costs recovery notice is served on the seller.

(5) Enforcement costs must be paid by the seller by the date specified in the enforcement costs recovery notice.

(6) To the extent that a decision of an administrator is upheld on appeal, the seller must pay the enforcement costs within the period of 28 days beginning with the day on which the appeal is determined.

(7) An administrator must provide a detailed breakdown of the costs specified in an enforcement costs recovery notice if requested to do so by the seller on whom the notice is served.

(8) A seller is not liable to pay any costs shown by the seller to have been unnecessarily incurred.

Power to require publicity

13.—(1) An administrator may give a publicity notice to a seller on whom a civil sanction has been imposed.

(2) A publicity notice means a notice requiring the seller to publicise—

(a) the fact that a civil sanction has been imposed;

(b) the type of civil sanction;

(c) the grounds on which the sanction was imposed;

(d) if the sanction was a fixed or variable monetary penalty, the amount of that penalty;