

*Draft Regulations laid before the Assembly under section 77(4)(a), (aa) and (b) of, and paragraph 27(3) of Schedule 6 to, the Climate Change Act 2008 for approval*

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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2012 No.**

**ENVIRONMENTAL PROTECTION**

**The Single Use Carrier Bags Charge  
Regulations (Northern Ireland) 2012**

*Made - - - -*

*Coming into operation*

*8th April 2013*

The Department of the Environment makes these Regulations in exercise of the powers conferred by sections 77(2) and 90(2)(b), 90(3)(a) and (b) of, and paragraphs 1, 2, 3(1)(a), 3(2), (3), (4) and 4 to 22 of Schedule 6 to, the Climate Change Act 2008(1).

**PART 1**

**Introduction**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Single Use Carrier Bags Charge Regulations (Northern Ireland) 2012.

(2) These Regulations come into operation on 8th April 2013.

**Interpretation**

2.—(1) In these Regulations—

“the Administrator” means the Department of the Environment;

“the charge” means the full consideration received by a seller for single use carrier bags which attract the requirement to charge;

“consideration” includes any chargeable VAT;

“the Department” means the Department of the Environment;

“discretionary requirement” has the meaning given in paragraph 12(3) of Schedule 6 to the Climate Change Act 2008;

“enforcement costs recovery notice” has the meaning given in regulation 16(1);

“fixed monetary penalty” has the meaning given in paragraph 10(3) of Schedule 6 to the Climate Change Act 2008;

“functions” includes powers and duties;

“late payment penalty” 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;

“net proceeds of the charge” means the proceeds of the charge less—

- (a) any element of the charge in excess of 5 pence;
- (b) any amount of chargeable VAT in respect of the 5 pence charge.

“non-compliance penalty notice” has the meaning given in paragraph 5(4) of Schedule 4;

“non-monetary discretionary requirement” has the meaning given in paragraph 12(4) of Schedule 6 to the Climate Change Act 2008;

“publicity notice” has the meaning given in paragraph 19(2) of Schedule 6 to the Climate Change Act 2008;

“record” means the information specified in regulation 9(3);

“reporting year” means—

- (a) the period starting on the date on which these Regulations come into operation and ending on 5 April 2014;
- (b) thereafter, the period commencing 6 April in one year and ending on 5 April the following year; the first such period to commence 6 April 2014;

“specified sum” has the meaning given in paragraph 4(2) of Schedule 2;

“variable monetary penalty” has the meaning given by paragraph 12(4) of Schedule 6 to the Climate Change Act 2008;

“VAT” has the meaning given in section 96 of the Value Added Tax Act 1994(2).

(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) 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) a final notice in relation to a discretionary requirement, are references to a final notice served under paragraph 5(6) of Schedule 3;
- (e) 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 which attract the requirement to charge are references to those single use carrier bags to which regulation 6 applies.

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(2) 1994 c. 23; there are amendments to section 96 which are not relevant to these Regulations.

### **Meaning of “single use carrier bag”**

3.—(1) In these Regulations “single use carrier bag” 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 the bag’s dimensions are greater than 404 millimetres (“mm”);
  - (b) at least one of the bag’s dimensions is greater than 439mm;
  - (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” means width or height;
  - “plastic bag” means a bag which is made wholly or mainly of plastic.

### **Meaning of “seller”**

4.—(1) Subject to paragraph (2) “seller” means a person who in the course of trade or business sells goods from a place in Northern Ireland.

(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) The Department shall administer the provision made by these Regulations.

(2) The Department may appoint as authorised officers such persons as it considers necessary to administer provision made by these Regulations and may terminate any appointment made under this paragraph.

## **PART 2**

### **The Charge**

#### **Requirement to charge**

6. Subject to regulation 7, a seller shall charge a customer at least 5 pence for every single use carrier bag supplied new for the purpose of enabling goods purchased to be taken away or delivered.

### **Exemption from the requirement to charge**

7. Regulation 6 does not apply in relation to the supply of single use carrier bags of the kind described in Schedule 1.

### **Payment of net proceeds of the charge to the Department of the Environment**

8.—(1) A seller shall pay to the Department the net proceeds of the charge for each relevant period within 28 days of the end of that period.

(2) Payment of the net proceeds of the charge shall not be received by the Department until the Department has cleared funds for the full amount.

(3) Any amount of the net proceeds due to the Department if unpaid may be recovered by the Department as a civil debt.

(4) In this regulation the relevant period is—

- (a) the period starting on the date on which these Regulations come into operation and ending on 30<sup>th</sup> June 2013; and thereafter the three month period ending 30<sup>th</sup> September, 31<sup>st</sup> December, 31<sup>st</sup> March or 30<sup>th</sup> June in each reporting year; or
- (b) such other period as the Department may determine.

## **PART 3**

### **Records**

#### **Record-keeping**

9.—(1) A seller shall keep a record of the information specified in paragraph (3) for every reporting year.

(2) Records kept in accordance with paragraph (1) shall be retained by a seller for the period of six years beginning on 31 May in the reporting year following that to which the record relates.

(3) The information is—

- (a) the number of single use carrier bags supplied to customers which attract the requirement to charge;
- (b) the total proceeds received for single use carrier bags supplied to customers which attract the requirement to charge;
- (c) the amount received by way of the 5 pence element of the charge;
- (d) any amount of chargeable VAT in respect of the 5 pence element of the charge;
- (e) the net proceeds of the charge.

#### **Availability of records**

10.—(1) This regulation applies where the Administrator 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 shall provide a copy of that record to the Administrator within 28 days of receiving the written request.

(3) The retention period is the six year period for which any particular record shall be retained under regulation 9(2).

## PART 4

### Breaches

#### **Breaches**

**11.**—(1) It shall be a breach of these Regulations if, as a result of having failed to take all reasonable steps necessary to enable it to do so, a seller fails to comply with a requirement mentioned in paragraph (2).

(2) The requirements are to—

- (a) charge in accordance with regulation 6;
- (b) pay the net proceeds of the charge to the Department in accordance with regulation 8;
- (c) keep records in accordance with regulation 9;
- (d) retain records in accordance with regulation 9;
- (e) supply records in accordance with regulation 10;

(3) It shall be a breach of these Regulations for a seller, without reasonable cause—

- (a) to give false or misleading information to the Administrator;
- (b) to otherwise obstruct or fail to assist the Administrator in the conduct of its functions under these Regulations.

## PART 5

### Civil Sanctions

#### **Civil sanctions**

**12.** The following Schedules have effect—

- (a) Schedule 2, which makes provision for fixed monetary penalties;
- (b) Schedule 3, which makes provision for discretionary requirements.

#### **Combination of sanctions**

**13.**—(1) The Administrator shall not serve a notice of intent in relation to a fixed monetary penalty on a seller in any of the following circumstances—

- (a) where a discretionary requirement has been imposed on the seller in relation to the same breach;
- (b) where the seller has discharged liability to a fixed monetary penalty in respect of the same breach by payment of a specified sum;
- (c) where a fixed monetary penalty has previously been imposed in respect of the same act or omission.

(2) The Administrator shall not serve a notice of intent in relation to a discretionary requirement on a seller in any of the following circumstances—

- (a) where a fixed monetary penalty has been imposed on the seller in relation to the same breach;
- (b) where the seller has discharged liability to a fixed monetary penalty in respect of the same breach by payment of a specified sum;