SCHEDULES

SCHEDULE 6

CHARGES FOR SINGLE USE CARRIER BAGS

PART 2

CIVIL SANCTIONS

Civil sanctions

9 (1) The relevant national authority may make provision by regulations about civil sanctions for breaches of regulations under this Schedule.

(2) For the purposes of this Schedule a person breaches regulations under this Schedule if, in such circumstances as may be specified, the person—

(a) fails to comply with a requirement made by or under the regulations, or

(b) obstructs or fails to assist an administrator.

(3) In this Schedule "civil sanction" means—

(a) a fixed monetary penalty (see paragraph 10), or

(b) a discretionary requirement (see paragraph 12).

Fixed monetary penalties

10 (1) The regulations may make provision conferring on an administrator the power by notice to impose a fixed monetary penalty on a person who breaches regulations under this Schedule.

(2) The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred.

(3) For the purposes of this Schedule a "fixed monetary penalty" is a requirement to pay to an administrator a penalty of an amount specified in or determined in accordance with the regulations.

(4) The regulations may not provide for the imposition of a fixed monetary penalty in excess of £5,000.

Fixed monetary penalties: procedure

11 (1) Provision under paragraph 10 must secure that—

(a) where an administrator proposes to impose a fixed monetary penalty on a person, the administrator must serve on that person a notice of what is proposed (a "notice of intent") that complies with sub-paragraph (2),

(b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),

(c) if the person does not so discharge liability—

(i) the person may make written representations and objections to the administrator in relation to the proposed imposition of the fixed monetary penalty, and

(ii) the administrator must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where the administrator decides to impose the fixed monetary penalty, the notice imposing it ("the final notice") complies with sub-paragraph (4), and

(e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.

(2) To comply with this sub-paragraph the notice of intent must include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty,

(b) the effect of payment of the sum referred to in sub-paragraph (1)(b),

(c) the right to make representations and objections,

(d) the circumstances in which the administrator may not impose the fixed monetary penalty,

(e) the period within which liability to the fixed monetary penalty may be discharged, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received, and

(f) the period within which representations and objections may be made, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received.

(3) Provision pursuant to sub-paragraph (1)(c)(ii) must include provision for circumstances in which the administrator may not decide to impose a fixed monetary penalty.

(4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to—

(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, and

(f) the consequences of non-payment.

(5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the administrator include the following—

(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the decision was unreasonable.

Discretionary requirements

12 (1) The regulations may make provision conferring on an administrator the power by notice to impose one or more discretionary requirements on a person who breaches regulations under this Schedule.

(2) The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred.

(3) For the purposes of this Schedule a "discretionary requirement" means—

(a) a requirement to pay a monetary penalty to an administrator of such amount as the administrator may determine, or

(b) a requirement to take such steps as an administrator may specify, within such period as the administrator may specify, to secure that the breach does not continue or recur.

(4) In this Schedule—

"variable monetary penalty" means a requirement referred to in sub-paragraph (3)(a);

"non-monetary discretionary requirement" means a requirement referred to in sub-paragraph (3)(b).

(5) The regulations must, in relation to each kind of breach of regulations under this Schedule for which a variable monetary penalty may be imposed—

(a) specify the maximum penalty that may be imposed for a breach of that kind, or

(b) provide for that maximum to be determined in accordance with the regulations.

(6) The regulations may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.

Discretionary requirements: procedure

13 (1) Provision under paragraph 12 must secure that—

(a) where an administrator proposes to impose a discretionary requirement on a person, the administrator must serve on that person a notice of what is proposed (a "notice of intent") that complies with sub-paragraph (2),

(b) that person may make written representations and objections to the administrator in relation to the proposed imposition of the discretionary requirement,

(c) after the end of the period for making such representations and objections, the administrator must decide whether to—

(i) impose the discretionary requirement, with or without modifications, or

(ii) impose any other discretionary requirement that the administrator has power to impose under paragraph 12,

(d) where the administrator decides to impose a discretionary requirement, the notice imposing it (the "final notice") complies with sub-paragraph (4), and

(e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.

(2) To comply with this sub-paragraph the notice of intent must include information as to—

(a) the grounds for the proposal to impose the discretionary requirement,

(b) the right to make representations and objections,

(c) the circumstances in which the administrator may not impose the discretionary requirement,

(d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.

(3) Provision pursuant to sub-paragraph (1)(c) must include provision for circumstances in which the administrator may not decide to impose a fixed monetary penalty.

(4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to—

(a) the grounds for imposing the discretionary requirement,

(b) where the discretionary requirement is a variable monetary penalty—

(i) how payment may be made,

(ii) the period within which payment must be made, and

(iii) any early payment discounts or late payment penalties,

(c) rights of appeal, and

(d) the consequences of non-compliance.

(5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the administrator include the following—

(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;

(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;

(d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;

(e) that the decision was unreasonable for any other reason.

Discretionary requirements: enforcement

14 (1) Provision under paragraph 12 may include provision for a person to pay a monetary penalty (a "non-compliance penalty") to an administrator if the person fails to comply with a non-monetary discretionary requirement imposed on the person.

(2) Provision under sub-paragraph (1) may—

(a) specify the amount of the non-compliance penalty or provide for that amount to be determined in accordance with the regulations, or

(b) provide for the amount to be determined by the administrator or in some other way.

(3) If the regulations make provision within sub-paragraph (2)(b), they must, in relation to each kind of failure for which a non-compliance penalty may be imposed—

(a) specify the maximum penalty that may be imposed for a failure of that kind, or

(b) provide for that maximum to be determined in accordance with the regulations.

(4) Provision under sub-paragraph (1) must secure that—

(a) the non-compliance penalty is imposed by notice served by the administrator, and

(b) the person on whom it is imposed may appeal against that notice.

(5) Provision pursuant to paragraph (b) of sub-paragraph (4) must secure that the grounds on which a person may appeal against a notice referred to in that sub-paragraph include the following—

(a) that the decision to serve the notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by the administrator, that the amount is unreasonable).

Combination of sanctions

15 (1) Provision may not be made under paragraphs 10 and 12 conferring powers on an administrator in relation to the same kind of breach of regulations under this Schedule unless it complies with the following requirements.

(2) The provision must secure that the administrator may not serve a notice of intent referred to in paragraph 11(1)(a) on a person in relation to a breach where a discretionary requirement has been imposed on that person in relation to the same breach.

(3) Such provision must secure that the administrator may not serve a notice of intent referred to in paragraph 13(1)(a) on a person in relation to a breach where—

(a) a fixed monetary penalty has been imposed on that person in relation to the same breach, or

(b) the person has discharged liability to a fixed monetary penalty in relation to that breach pursuant to paragraph 11(1)(b).

Monetary penalties

16 (1) If the regulations confer power on an administrator to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 14(1), they may include provision—

(a) for early payment discounts;

(b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;

(c) for enforcement of the penalty.

(2) Provision under sub-paragraph (1)(c) may include—

(a) provision for the administrator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;

(b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

Costs recovery

17 (1) Provision under paragraph 12 may include provision for an administrator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the administrator in relation to the imposition of the discretionary requirement up to the time of its imposition.

(2) In sub-paragraph (1), the reference to costs includes in particular—

(a) investigation costs;

(b) administration costs;

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

(3) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served—

(a) the notice specifies the amount required to be paid;

(b) the administrator may be required to provide a detailed breakdown of that amount;

(c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;

(d) the person required to pay costs may appeal against—

(i) the decision of the administrator to impose the requirement to pay costs;

(ii) the decision of the administrator as to the amount of those costs.

(4) Provision under this paragraph may include the provision referred to in paragraph 16(1)(b) and (c) and (2).

(5) Provision under this paragraph must secure that the administrator is required to publish guidance about how the administrator will exercise the power conferred by the provision.

Appeals

18 (1) The regulations may not provide for the making of an appeal other than to—

(a) the First-tier Tribunal, or

(b) another tribunal created under an enactment.

(2) In sub-paragraph (1)(b) "tribunal" does not include an ordinary court of law.

(3) If the regulations make provision for an appeal in relation to the imposition of any requirement or service of any notice, they may include—

(a) provision suspending the requirement or notice pending determination of the appeal;

(b) provision as to the powers of the tribunal to which the appeal is made;

(c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.

(4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—

(a) to withdraw the requirement or notice;

(b) to confirm the requirement or notice;

(c) to take such steps as the administrator could take in relation to the act or omission giving rise to the requirement or notice;

(d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the administrator;

(e) to award costs.

Publicity for imposition of civil sanctions

19 (1) The regulations may make provision enabling an administrator to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with regulations under this Schedule.

(2) A "publicity notice" is a notice requiring the person to publicise—

(a) the fact that the civil sanction has been imposed, and

(b) such other information as may be specified in the regulations,

in such manner as may be specified in the notice.

(3) The regulations may provide for a publicity notice to—

(a) specify the time for compliance with the notice, and

(b) require the person to whom it is given to supply an administrator with evidence of compliance within such time as may be specified in the notice.

(4) The regulations may provide that, if a person fails to comply with a publicity notice, an administrator may—

(a) publicise the information required to be publicised by the notice, and

(b) recover the costs of doing so from that person.

Persons liable to civil sanctions

20 The regulations may make provision about the persons liable to civil sanctions under regulations under this Schedule and may (in particular) provide for—

(a) the officers of a body corporate to be so liable as well the body corporate itself, and

(b) for the partners of a partnership to be liable as well as the partnership itself,

in such circumstances as may be specified.

Guidance as to use of civil sanctions

21 (1) Where power is conferred on an administrator by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must secure that—

(a) the administrator must publish guidance about the administrator's use of the civil sanction,

(b) the guidance must contain the relevant information,

(c) the administrator must revise the guidance where appropriate,

(d) the administrator must consult such persons as the provision may specify before publishing any guidance or revised guidance, and

(e) the administrator must have regard to the guidance or revised guidance in exercising the administrator's functions.

(2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—

(a) the circumstances in which the penalty is likely to be imposed,

(b) the circumstances in which it may not be imposed,
(c) the amount of the penalty,
(d) how liability for the penalty may be discharged and the effect of discharge, and
(e) rights to make representations and objections and rights of appeal.

(3) In the case of guidance relating to a discretionary requirement, the relevant information referred to in sub-paragraph (1)(b) is information as to—
(a) the circumstances in which the requirement is likely to be imposed,
(b) the circumstances in which it may not be imposed,
(c) in the case of a variable monetary penalty, the matters likely to be taken into account by the administrator in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
(d) rights to make representations and objections and rights of appeal.

Publication of enforcement action

22 (1) Where power is conferred on an administrator by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must, subject to this paragraph, secure that the administrator must from time to time publish reports specifying—
(a) the cases in which the civil sanction has been imposed, and
(b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 11(1)(b).

(2) In sub-paragraph (1)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.

(3) The provision conferring the power need not secure the result in sub-paragraph (1) in cases where the relevant authority considers that it would be inappropriate to do so.

Compliance with regulatory principles

23 A relevant national authority may not make any provision conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule unless the authority is satisfied that the administrator 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.

Review

24 (1) A relevant national authority must in accordance with this paragraph review the operation of any provision made by the authority conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule.

(2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.

(3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.

(4) In conducting a review under this paragraph the relevant national authority must consult such persons as the authority considers appropriate.

(5) The relevant national authority must publish the results of a review under this section.

(6) The relevant national authority must lay a copy of a review under this paragraph before—

(a) Parliament (where the relevant national authority is the Secretary of State);

(b) the National Assembly for Wales (where the relevant national authority is the Welsh Ministers);

(c) the Northern Ireland Assembly (where the relevant national authority is the Department of the Environment in Northern Ireland).

Suspension

25 (1) Where provision has been made by a relevant national authority conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule, the authority may direct the administrator—

(a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in paragraph 11(1)(a) in relation to a breach of that kind, and

(b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in paragraph 13(1)(a) in relation to a breach of that kind.

(2) The relevant national authority may only give a direction under sub-paragraph (1) in relation to a breach of regulations under this Schedule if it is satisfied that the administrator has failed on more than one occasion—

(a) to comply with any duty imposed on it under or by virtue of this Schedule in relation to a breach of that kind,

(b) to act in accordance with the guidance it has published in relation to a breach of that kind (in particular, the guidance published under paragraph 21), or

(c) to act in accordance with the principles referred to in paragraph 23 or with other principles of best practice in relation to the enforcement of a breach of that kind.

(3) The relevant national authority may by direction revoke a direction given by it under sub-paragraph (1) if satisfied that the administrator has taken the appropriate steps to remedy the failure to which that direction related.

(4) Before giving a direction under sub-paragraph (1) or (3) the relevant national authority must consult—

(a) the administrator, and

(b) such other persons as the authority considers appropriate.

(5) Where the relevant national authority gives a direction under this section, the authority must lay a copy before—

(a) Parliament (where the relevant national authority is the Secretary of State);
(b) the National Assembly for Wales (where the relevant national authority is the Welsh Ministers);
(c) the Northern Ireland Assembly (where the relevant national authority is the Department of the Environment in Northern Ireland).

(6) Where the relevant national authority gives a direction under this section, the administrator must—
(a) publish the direction in such manner as the authority thinks fit, and
(b) take such other steps as the administrator thinks fit or the authority may require to bring the direction to the attention of other persons likely to be affected by it.

Payment of penalties into Consolidated Fund

26 (1) Where pursuant to any provision made under this Schedule an administrator receives—
(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 14,
(b) any interest or other financial penalty for late payment of such a penalty, or
(c) a sum paid in discharge of liability to a fixed monetary penalty pursuant to paragraph 11(1)(b),

the administrator must pay it into the relevant Fund.

(2) In sub-paragraph (1) "relevant Fund" means—
(a) in a case where the administrator has functions only in relation to Wales, the Welsh Consolidated Fund,
(b) in a case where the administrator has functions only in relation to Northern Ireland, the Northern Ireland Consolidated Fund, and
(c) in any other case, the Consolidated Fund.