

*These notes refer to the Carrier Bags Act (Northern Ireland)
2014 (c.7) which received Royal Assent on 28 April 2014*

Carrier Bags Act (Northern Ireland) 2014

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Carrier Bags Act (Northern Ireland) 2014 which received Royal Assent on 28 April 2014. They have been prepared by the Department of the Environment in order to assist the reader of the Act and have not been endorsed by the Assembly.
2. These Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. As part of the 2011-15 Budget settlement the Northern Ireland Executive commissioned the Minister of the Environment to introduce a charge on carrier bags.
4. The Department of the Environment (“the Department”) has taken a phased approach to the implementation of charging. The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013¹ (“the 2013 Regulations”) which were made under the Climate Change Act 2008² (“the 2008 Act”) provided for the first phase of charging arrangements – the introduction of a minimum charge on single use carrier bags. With effect from 8 April 2013, sellers in Northern Ireland must, when applicable, charge customers at least 5 pence for each new single use carrier bag. The net proceeds of this minimum charge must be paid to the Department and will be used to help fund environmental programmes and activities.
5. The aim of the minimum charge is to achieve a significant reduction in the consumption of single use carrier bags in Northern Ireland.
6. This Act provides for the second phase of charging arrangements. It amends the 2013 Regulations to apply the charging provision to a wider variety of carrier bags – specifically the cheaper versions of reusable bags. These bags are defined by reference to their price. This approach is similar to the plastic

¹ S.R. 2013 No. 4

² 2008 c.27 as amended by the [Single Use Carrier Bags Act \(Northern Ireland\) 2011 \(2011 c.26\)](#)

bag tax in Ireland, where relatively more expensive plastic bags (currently 70 cents or more) are exempted from the charge. The Act also specifies the date on which the new charging arrangements will commence.

7. The extension of the charging arrangements is due to the fact that a range of low cost reusable carrier bags is readily available. Faced with a choice between a single use carrier bag at 5 pence or a reusable bag at a similar price, it is considered likely that consumers would opt for the reusable bag, even if it costs marginally more. This “substitution effect” could in turn mean that many consumers will use and discard these bags prematurely. This would have significant adverse environmental impacts, as such bags are typically made of heavier gauge materials than single use bags.
8. The Act also makes various other amendments to the 2008 Act which:
 - extend the Department’s ability to make specific provision for certain sellers;
 - provide for changes to record keeping and payment arrangements - including a requirement to pay interest to the Department in the event of late payment of the proceeds of the minimum charge; and
 - strengthen the Department’s enforcement powers.
9. The Act also requires the Department to carry out a review of the carrier bag charging arrangements and provides specifically for an ad hoc review of exemptions to the charge. In addition, the Department must prepare a report on biodegradable carrier bags which must consider the need for any exemptions from the levy on grounds of biodegradability – and how any such exemptions should be defined and implemented.

CONSULTATION

10. A consultation exercise carried out between 20 July and 12 October 2011 sought views on the main policy proposals for the implementation of carrier bag charging. A subsequent consultation between 16 April and 9 July 2012 sought views on the Department’s specific legislative proposals for a minimum charge on single use carrier bags.
11. Both consultation papers also outlined that the Department was considering extending charging arrangements to certain types of reusable bags.
12. The majority of those who responded on this specific issue expressed the perception that it was primarily a means of generating additional revenue. In response the Department outlined the environmental rationale for such an extension.

OVERVIEW

13. The Act has 12 sections.

COMMENTARY ON SECTIONS

Comments are not given where the wording is self explanatory.

Section 1 – Extension of the 2008 Act to carrier bags

Section 1 amends the 2008 Act to make provision for a minimum charge on carrier bags – that is, it removes the restriction to single use bags.

Section 2 – Regulations under Schedule 6 to the 2008 Act

Section 2 amends section 77(4) of the 2008 Act to require that any regulations made by the Department which increase the amount of the minimum charge for a carrier bag are subject to the Northern Ireland Assembly’s affirmative resolution procedure.

It also applies section 17(5) of the Interpretation Act (Northern Ireland) 1954³ to a power to make regulations under Schedule 6 to the 2008 Act. This gives the Department greater discretion as to how it applies the carrier bag charging requirements. It would, for example, allow the Department, through regulations, to make different provision for different cases, or to provide for exclusions from the requirements of the regulations.

Section 3 – Requirement to charge

Section 3 amends paragraph 2 of Schedule 6 to the 2008 Act.

The amendment allows regulations to require that the minimum charge be applied whether or not the bags that are supplied to a customer are actually used to carry away (or to deliver) goods purchased from the place where the bag is supplied at the time the bag is supplied. It is sufficient that the bags are designed for that purpose.

Section 4 – Sellers

Section 4 amends paragraph 3 of Schedule 6 to the 2008 Act.

Paragraph 3 provides for a “seller” of goods to be defined in regulations. It also provides that the Department may use the regulations to apply the charge to a range of different sellers. These include all sellers of goods, sellers named in the regulations and sellers identified by reference to four specified factors - the place from which the goods are supplied, the type and value of goods supplied and the seller’s turnover.

The purpose of the amendment is to add a further specified factor – the number of a seller’s full-time equivalent employees. The amendment also sets out how the number of full-time equivalent employees is to be calculated.

3 1954 c.33

Section 5 - Payment of the charge

Section 5 amends paragraph 4A of Schedule 6 to the 2008 Act.

Paragraph 4A provides that regulations may require a seller of carrier bags to pay the gross proceeds or the net proceeds of the charge to the Department. The amendment allows the Department to specify how, and at what intervals, the amount due is to be paid. It also gives the Department the power to impose interest payments, in the event of late payment.

Section 6 – Carrier bags defined by price

Section 6 amends paragraph 5 of Schedule 6 to the 2008 Act.

Paragraph 5 provides that carrier bags which are to be included in regulations may be defined by reference to technical specifications such as a bag's size, thickness, construction or composition and/or its intended use. The amendment also allows such bags to be defined by reference to their price.

Section 7 – Records and enforcement

Section 7 amends paragraphs 7 and 8 of Schedule 6 to the 2008 Act.

Paragraph 7 gives the Department power, exercisable through regulations, to require sellers to keep and make available certain records and information in relation to the minimum charge. This amendment provides that such records and information may include details of the payments of the gross and net proceeds of the minimum charge to the Department.

Paragraph 8 gives the Department powers to enforce regulations made under Schedule 6 to the 2008 Act. In particular – where there is reason to believe that a seller has failed to comply – the Department may question a seller or require a seller to provide documents and information.

Section 7 provides for routine monitoring activity by the Department by removing the requirement of reasonable belief of failure to comply. It also provides the Department with additional enforcement powers, exercisable through regulations, to permit the inspection, retention and copying of documents.

Section 8 – Civil sanctions

Section 8 repeals paragraph 24(6) of Schedule 6 to the 2008 Act.

Paragraph 24 requires the Department to carry out a review of the operation of civil sanctions in relation to a breach of the carrier bag charging regulations. The repeal removes the requirement to lay a copy of any such review before the Assembly.

Section 9 – Amendments of the 2013 Regulations

Section 9 amends the 2013 Regulations to:

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- extend their scope from single use carrier bags to “carrier bags”; and
- amend the existing exemptions provision to add 2 additional exemptions for bags with a retail price of 20 pence or more and bags that are issued as free replacements for ‘bags for life’.

The section also specifies that this extension of charging will commence on 19 January 2015.

Section 10 – Report on biodegradable carrier bags

Section 10 requires the Department to prepare a report on biodegradable carrier bags within 18 months of the Act receiving Royal Assent.

The report must consider whether any biodegradable bags should be exempt from the charge, the criteria for any such exemptions and how such exemptions would be implemented.

The report must be published and must be laid before the Assembly.

Section 11 - Review

Section 11 requires the Department to prepare a report on the operation of the carrier bag charging provisions. The report, which must be prepared within 3 years of the section coming into operation, must include an assessment of the effectiveness of the legislation and whether any amendments should be made. The report must be published and must be laid before the Assembly.

Section 11 also provides for an ‘ad hoc’ review of exemptions to the requirement to charge for bags.

Section 12 – Short title

Section 12 provides a short title for the Act.

14. HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act’s passage through the Assembly.

<i>STAGE</i>	<i>DATE</i>
Introduction to the Assembly	3 June 2013
Introduction of the Act to the Committee for the Environment	6 June 2013
Second Stage debate	11 June 2013
Committee Stage – evidence from the Northern Ireland Independent Retail Trade Association, the Northern Ireland Retail Consortium, Northern Ireland	26 September 2013

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<i>STAGE</i>	<i>DATE</i>
Environment Link and the Northern Ireland Local Government Association.	
Committee Stage – Departmental briefing	3 October 2013
Committee Stage – Departmental briefing	10 October 2013
Committee Stage – Informal Clause-by-Clause Consideration	17 October 2013
Committee Stage - Informal Clause-by-Clause Consideration	7 November 2013
Committee Stage – Departmental briefing	21 November 2013
Committee Stage – Formal Clause-by-Clause scrutiny	21 November 2013
Committee’s report on the Act – Report number NIA 125/11-15	26 November 2013
Consideration Stage in the Assembly	28 January 2014
Further Consideration Stage	25 February 2014
Final Stage	10 March 2014
Royal Assent	28 April 2014