

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

DRAFT STATUTORY RULES OF NORTHERN IRELAND

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.

(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 30th June 2013; and thereafter the three month period ending 30th September, 31st December, 31st March or 30th 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;

- (c) where a discretionary requirement has previously been imposed in respect of the same act or omission.

PART 6

Enforcement and Non-compliance

Enforcement powers

14.—(1) The Administrator may exercise any of the powers in paragraph (2) for the purposes of enforcement.

(2) The powers are—

- (a) to make test purchases of goods for the purposes of ascertaining whether these Regulations are being complied with;
- (b) to inspect any goods and to enter any premises at any reasonable time (other than domestic premises) for the purposes of ascertaining whether these Regulations are being complied with;
- (c) if the Administrator reasonably believes that there has been a failure to comply with a requirement of these Regulations—
 - (i) to question a seller or an officer or employee of a seller;
 - (ii) to require the production of documents or the provision of information.

(3) In this regulation “domestic premises” means premises used wholly or mainly as a private dwelling.

(4) The Administrator seeking to exercise a power under paragraph (2)(b) or (c) shall 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) an owner or occupier of any premises in respect of which the Administrator seeks to exercise the power concerned.

(5) Nothing in paragraph (2)(c)(ii) shall compel production of any document in respect of which a 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.

Non-monetary discretionary requirements: enforcement

15. Schedule 4 makes provision for the imposition of a monetary penalty in cases where a seller fails to comply with a non-monetary discretionary requirement and that Schedule has effect accordingly.

Enforcement costs recovery

16.—(1) The Administrator may serve an enforcement costs recovery notice on a seller on whom a discretionary requirement is imposed requiring that seller to pay the costs incurred by the Administrator in relation to that discretionary requirement up to the time of its imposition (“enforcement costs”).

(2) Enforcement costs shall include, in particular—

- (a) investigation costs;
- (b) administration costs;

- (c) costs of obtaining expert advice (including legal advice).
- (3) An enforcement costs recovery notice shall specify the amount required to be paid and shall include information as to—
 - (a) how payment may be made;
 - (b) the date by which payment shall be made;
 - (c) the consequences of failure to make payment by the date it is due; and
 - (d) the right of appeal.
- (4) The date referred to in paragraph (3)(b) shall be at least 28 days later than the date on which the enforcement costs recovery notice is served on the seller.
- (5) Enforcement costs shall be paid by the seller by the date specified in the enforcement costs recovery notice.
- (6) Paragraph (5) is subject to the remaining provisions of this regulation and to regulation 20(4) (suspension of requirements and notices pending appeal).
- (7) If a decision of the Administrator under this regulation is the subject of an appeal, then to the extent that that decision is upheld, the seller shall pay the enforcement costs within 28 days of the day on which the appeal is determined.
- (8) The Administrator shall provide a detailed breakdown of the costs specified in an enforcement costs recovery notice if requested to do so by the seller on whom that notice is served.
- (9) A seller is not liable to pay any costs shown by that seller to have been unnecessarily incurred.
- (10) A seller may appeal against—
 - (a) a decision of the Administrator to impose a requirement to pay costs;
 - (b) a decision of the Administrator as to the amount of those costs.

Debt recovery

17. The Administrator may recover as a civil debt, any amount of unpaid—
- (a) fixed monetary penalty;
 - (b) variable monetary penalty;
 - (c) non-compliance penalty;
 - (d) enforcement costs; or
 - (e) late payment penalty.

Publicity for imposition of civil sanctions

- 18.—(1) The Administrator may give a publicity notice to a seller on whom a civil sanction has been imposed.
- (2) The following information shall be included in a publicity notice—
- (a) the type of civil sanction imposed;
 - (b) the grounds on which the civil sanction was imposed;
 - (c) if the civil sanction was a fixed or variable monetary penalty, the amount of that penalty;
 - (d) if the civil sanction was a non-monetary discretionary requirement, the nature of that requirement.
- (3) A publicity notice shall—
- (a) specify the manner of publication required;

- (b) specify the time within which publication is required;
 - (c) require the seller to provide evidence to the Administrator of compliance with the publicity notice within a time specified in that notice.
- (4) If a seller fails to comply with a publicity notice within the time specified under paragraph (3)(b), the Administrator may—
- (a) publicise the information required to be publicised; and
 - (b) recover the costs of publication from the seller.
- (5) Where information is publicised under paragraph (4)(a) it shall be done in a way likely to attract the attention of the public.

PART 7

Administration

Withdrawing or amending a notice

- 19.—(1) The Administrator may at any time in writing—
- (a) withdraw a notice of intent or a final notice in relation to a fixed monetary penalty;
 - (b) withdraw a notice of intent or a final notice in relation to a variable monetary penalty or reduce the amount specified in the notice;
 - (c) withdraw a notice of intent or a final notice in relation to a non-monetary discretionary requirement or amend steps specified in the notice so as to reduce the amount of work necessary to comply with the notice;
 - (d) withdraw a notice of intent in relation to a non-compliance penalty or reduce the amount specified in the notice;
 - (e) withdraw a non-compliance penalty notice or reduce the amount specified in the notice;
 - (f) withdraw an enforcement costs recovery notice or reduce the amount specified in the notice.
- (2) The Administrator shall consult the seller before withdrawing or amending a notice under paragraph (1).
- (3) Paragraph (2) does not apply in any case where it is impracticable to consult the seller.

Appeals

- 20.—(1) An appeal under these Regulations is to the First-tier Tribunal⁽³⁾ (“the Tribunal”).
- (2) In an appeal where the commission of a breach is an issue requiring determination, the Administrator shall prove that breach on the balance of probabilities.
- (3) In any other case the Tribunal shall determine the standard of proof.
- (4) A requirement or notice which is the subject of an appeal is suspended pending the determination of the appeal.
- (5) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the requirement or notice;

(3) Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 5B(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 (S.I. 2008/2684, amended by S.I. 2009/196, 2009/1021 and 2009/1590). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to such appeals.

- (b) confirm the requirement or notice;
- (c) take such steps as the Administrator could take in relation to the act or omission giving rise to the requirement or notice;
- (d) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Administrator.

Guidance as to use of civil sanctions

21.—(1) The Administrator shall publish guidance about its use of civil sanctions under these Regulations.

(2) The guidance shall contain the information specified at paragraphs (5) and (6) as appropriate.

(3) The Administrator shall revise the guidance where appropriate.

(4) The Administrator shall have regard to the guidance or revised guidance in exercising its functions.

(5) In the case of guidance relating to a fixed monetary penalty, the information referred to in paragraph (2) is information as to—

- (a) the circumstances in which the penalty is likely to be imposed;
- (b) the circumstances in which the penalty may not be imposed;
- (c) the amount of the penalty;
- (d) how liability for the penalty may be discharged and the effect of discharge;
- (e) rights to make representations and objections; and
- (f) rights of appeal.

(6) In the case of guidance relating to a discretionary requirement, the information referred to in paragraph (2) is information as to—

- (a) the circumstances in which the requirement is likely to be imposed;
- (b) the circumstances in which the requirement 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);
- (d) rights to make representations and objections; and
- (e) rights of appeal.

Additional guidance

22.—(1) The Administrator shall publish guidance about how it will exercise the powers conferred by regulation 15 and Schedule 4 (non-compliance penalties) and regulation 16 (enforcement costs recovery).

(2) The guidance shall include, in particular, information as to—

- (a) the circumstances in which the powers are likely to be exercised;
- (b) matters to be taken into account in determining the amounts involved;
- (c) rights of appeal.

(3) The Administrator shall revise the guidance where appropriate.

(4) The Administrator shall have regard to the guidance or revised guidance in exercising its functions.

Consultation on guidance

23. Before publishing any guidance or revised guidance under regulations 21 and 22 the Administrator shall consult with such bodies or persons as it may consider appropriate.

Publication of enforcement action

24.—(1) The Administrator shall from time to time publish reports specifying—

- (a) the cases in which a civil sanction for a breach of these Regulations has been imposed;
- (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged in accordance with paragraph 4 of Schedule 2 (discharge of liability following notice of intent).

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

Sealed with the Official Seal of the Department of the Environment on



Wesley Shannon
A senior officer of the
Department of the Environment

SCHEDULE 1

Regulation 7

Exemptions

- 1.—(1) The kinds of single use carrier bags to which regulation 6 does not apply are—
- (a) bags used solely to contain one or more items of the following kinds—
 - (i) unpackaged food for human or animal consumption;
 - (ii) unpackaged loose seeds, bulbs, corms or rhizomes;
 - (iii) any unpackaged axe, knife, knife blade or razor blade;
 - (iv) unpackaged goods contaminated by soil;
 - (v) items from the categories specified in sub-paragraph (2);
 - (b) bags used solely to contain packaged—
 - (i) uncooked fish or fish products;
 - (ii) uncooked meat or meat products;
 - (iii) uncooked poultry or poultry products,and in respect of which the maximum dimensions are 205 millimetres (“mm”) (width) x 125 mm (gusset width) x 458 mm (height inclusive of handles);
 - (c) bags used to contain hot foods or hot drinks intended for consumption away from the premises on which they are sold;
 - (d) bags used to contain purchases made on board ships, trains, aircraft, coaches or buses;
 - (e) bags used to contain purchases made in an area designated by the Secretary of State as a security restricted area under section 11A of the Aviation Security Act 1982(4);
 - (f) mail order dispatch and courier bags;
 - (g) bags which—
 - (i) are made wholly from paper;
 - (ii) have maximum dimensions of 175 mm (width) x 260 mm (height);
 - (iii) do not have a gusset; and do
 - (iv) not have a handle;
 - (h) bags which—
 - (i) are made wholly or mainly from plastic;
 - (ii) have maximum dimensions of 125 mm (width) x 125 mm (height);
 - (iii) do not have a gusset; and
 - (iv) do not have a handle;
 - (i) bags which—
 - (i) are made wholly from paper;
 - (ii) have maximum dimensions of 80 mm (width) x 50 mm (gusset width) x 155 mm (height); and
 - (iii) do not have a handle;
 - (j) gusseted liners used to line or cover boxes, crates or other containers of a similar nature;
 - (k) bags used solely to contain live aquatic creatures in water;

(4) 1982 c. 36; section 11A was inserted by the Aviation and Maritime Security Act 1990 (c. 31), Schedule 1, paragraph 3; and amended by S.I. 2010/902, regulations 3 and 9(b).

- (2) The specified categories are—
- (a) medicinal products or listed appliances sold in accordance with a prescription issued by a registered medical practitioner, a dentist, a supplementary prescriber, a nurse independent prescriber, an independent nurse prescriber, an optometrist independent prescriber, a pharmacist independent prescriber or an EEA health professional;
 - (b) where sold otherwise than in accordance with paragraph (a), pharmacy medicine.
- (3) In this paragraph—
- “dentist” means a person registered in the dentists register kept under section 14 of the Dentists Act 1984(5);
- “EEA health professional” has the meaning given in regulation 1(2) of the Medicines for Human Use (Prescribing by EEA Practitioners) Regulations 2008(6);
- “independent nurse prescriber” has the meaning given in the Pharmaceutical Services Regulations (Northern Ireland) 1997(7);
- “listed appliances” means listed appliances within the meaning of article 63 of the Health and Personal Social Services (Northern Ireland) Order 1972(8);
- “medicinal product” has the meaning given in section 130 of the Medicines Act 1968(9);
- “pharmacy medicine” means a medicinal product which is not a prescription only medicine and which—
- (a) in accordance with section 52(10) of the Medicines Act 1968, can only be sold or supplied under the conditions specified in sub-section (1)(a) to (c) of that section; or
 - (b) but for the fact that it is sold or supplied in accordance with section 55(11) of that Act, could only lawfully be sold or supplied under those conditions;
- “prescription only medicine” means a medicinal product—
- (a) of a description or falling within a class specified in an order made under section 58(12) of the Medicines Act 1968;
 - (b) to which section 58 of that Act applies by virtue of an order made under section 104(13) of that Act;
- “supplementary prescriber”, “nurse independent prescriber”, “optometrist independent prescriber” and “pharmacist independent prescriber” each have the meanings respectively ascribed to them in article 1(2) of the Prescription Only Medicines (Human Use) Order 1997(14);
- “unpacked” means wholly or partly unwrapped.

(5) 1984 c. 24; section 14 was substituted by S.I. 2005/2011, articles 2(1) and 6; and amended by S.I. 2007/3101, regulations 109 and 111.

(6) S.I. 2008/1692, to which there are amendments not relevant to these Regulations.

(7) S.I. 1997/381 as amended by 2003/447

(8) S.I. 1972/1265 (N.I. 14), amended by 1978/1907 (N.I. 26); there are other amendments but none is relevant.

(9) 1968 c. 67; section 130 was amended by S.I. 1994/3119, regulation 2(b); and S.I. 2005/50, regulation 25(1)(c) and (d); there are other amendments but none is relevant.

(10) Section 52 was amended by the Health Act 2006 (c. 28); there are other amendments but none is relevant.

(11) Section 55 was amended by S.I. 2004/1771, article 3 and paragraph 10(b) of the Schedule; by S.I. 2006/2407, paragraphs 1 and 26 of Schedule 8.

(12) There are amendments to section 58 which are not relevant to these Regulations.

(13) Section 104 was amended by S.I. 2004/1031, regulation 54 and paragraph 17 of Schedule 10; and by S.I. 2006/2407, paragraphs 1 and 54 of Schedule 8.

(14) S.I. 1997/1830; relevant amending instruments are S.I. 2003/696, S.I. 2004/1771, S.I. 2005/765, S.I. 2006/915, S.I. 2010/1621.

SCHEDULE 2

Regulation 12

Fixed monetary penalties

PART 1

Imposition of fixed monetary penalties and procedure

Power to impose fixed monetary penalty

1.—(1) The Administrator may by notice impose a fixed monetary penalty on a seller who breaches these Regulations in the circumstances specified in regulation 11(1).

(2) The Administrator may exercise the power conferred by sub-paragraph (1) in relation to a case if it is satisfied on the balance of probabilities that a breach has occurred.

Fixed monetary penalties

2. The amount of penalty that can be imposed by the Administrator as a fixed monetary penalty in any case is the amount listed in the second column of the table in Part 2 by reference to the kind of breach concerned.

Notice of intent

3.—(1) Where the Administrator proposes to impose a fixed monetary penalty on a seller, the Administrator shall serve by post a notice of intent on that seller.

(2) A notice of intent shall—

- (a) state the amount of the penalty;
- (b) offer the seller the opportunity to discharge its liability to the penalty by paying the specified sum within 28 days beginning with the day on which the notice is served;
- (c) include information as to—
 - (i) the grounds for the proposal to impose the fixed monetary penalty;
 - (ii) the effect of payment of the specified sum;
 - (iii) the right to make representations and objections conferred by paragraph 5;
 - (iv) the circumstances in which the Administrator may not impose the fixed monetary penalty;
 - (v) the 28 day period within which liability to the fixed monetary penalty may be discharged by virtue of paragraph 4;
 - (vi) the 28 day period within which representations and objections may be made;
 - (vii) how payment may be made.

Discharge of liability following notice of intent

4.—(1) A seller's liability to a fixed monetary penalty is discharged if the specified sum is paid within 28 days beginning with the date of service of the notice of intent.

(2) The specified sum is the amount specified in the third column of the table in Part 2 by reference to the kind of breach concerned.

Making representations and objections

5.—(1) This paragraph applies if a seller does not discharge liability to a fixed monetary penalty by payment of the specified sum.

(2) Within 28 days of the date of the service of the notice of intent, the seller may make written representations and objections to the Administrator in relation to the proposed imposition of the fixed monetary penalty.

Decision whether to impose a fixed monetary penalty

6.—(1) At the end of the 28 day period for making representations and objections under paragraph 5, the Administrator shall decide whether to impose the fixed monetary penalty.

(2) In making a decision under this paragraph the Administrator shall take into consideration any representations or objections made by the seller in accordance with paragraph 5.

(3) The Administrator may not decide to impose a fixed monetary penalty in any of the following circumstances—

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

(4) Without restricting the power under sub-paragraph (1), the Administrator may decide not to impose a fixed penalty if the Administrator considers that in all the circumstances of the case it would be inexpedient to do so.

(5) Where the Administrator decides to impose the fixed monetary penalty it shall do so by serving by post a final notice on the seller.

(6) The final notice shall comply with paragraph 7.

Contents of final notice

7. The final notice shall include information as to—

- (a) the grounds for imposing the fixed monetary penalty;
- (b) the Administrator's response to any representation and objections made by the seller;
- (c) the amount of the penalty;
- (d) how payment may be made;
- (e) the period of 56 days within which payment shall be made;
- (f) the effect of paragraph 9 (early payment discount);
- (g) the effect of paragraph 10 (late payment penalty);
- (h) rights of appeal; and
- (i) the consequences of non-payment.

Payment

8.—(1) Subject to regulation 20(4) (suspension of requirements and notices pending appeal) and sub-paragraph (2), a fixed monetary penalty shall be paid by a seller within 56 days beginning with the date of service of the final notice.

(2) If a decision to impose a fixed monetary penalty is the subject of an appeal which upholds the imposition of a penalty, that penalty shall be paid by the seller within 28 days beginning with the date upon which the appeal is determined.

Early payment discount

9. A seller may discharge liability to a fixed monetary penalty by paying 50% of the amount of the penalty within 28 days beginning with the date of service of the final notice.

Late payment penalty

10. If a fixed monetary penalty is not paid within the period allowed in paragraph 8 the amount of the penalty shall be increased by 50%.

Grounds of appeal

11.—(1) A seller may appeal against the Administrator’s decision to impose a fixed monetary penalty.

- (2) The grounds of appeal are—
 - (a) that the decision was based on a error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) any other reason.

PART 2

Fixed monetary penalty amounts and specified sums

<i>Breach</i>	<i>Amount of penalty which can be imposed as a fixed monetary penalty</i>	<i>Specified sums</i>
Failure to comply with the requirement to charge in accordance with regulation 6 (regulation 11(1) and (2))	£200	£100
Failure to comply with the requirement to pay the net proceeds of the charge to the Department in accordance with regulation 8 (regulation 11(1) and (2))	£200	£100
Failure to keep records in accordance with regulation 9 (regulation 11(1) and (2))	£100	£50
Failure to retain records in accordance with regulation 9 (regulation 11(1) and (2))	£100	£50

<i>Breach</i>	<i>Amount of penalty which can be imposed as a fixed monetary penalty</i>	<i>Specified sums</i>
Failure to supply records in accordance with regulation 10 (regulation 11(1) and (2))	£100	£50

SCHEDULE 3

Regulation 12

Discretionary requirements

PART 1

Imposition of discretionary requirements and procedure

Power to impose discretionary requirements

1.—(1) The Administrator may by notice impose one or more discretionary requirements on a seller who breaches these Regulations.

(2) The Administrator may exercise the power conferred by sub-paragraph (1) in relation to a case if it is satisfied on the balance of probabilities that the breach occurred.

Variable monetary penalties: maximum amounts

2. The maximum penalty which may be imposed by the Administrator as a variable monetary penalty in respect of any particular kind of breach is the amount listed in the second column of the table in Part 2 by reference to the kind of breach specified in the first column.

Notice of intent

3.—(1) Where the Administrator proposes to impose one or more discretionary requirements on a seller, the Administrator shall serve by post a notice of intent on that seller.

(2) If the Administrator proposes to impose a non-monetary discretionary requirement, the notice of intent shall—

- (a) specify the steps that the Administrator requires the seller to take;
- (b) include information as to—
 - (i) the grounds for the proposal to require those steps to be taken;
 - (ii) the time period within which the Administrator requires those steps to be completed;
 - (iii) the right to make representations and objections conferred by paragraph 4;
 - (iv) the 28 day period within which representations and objections may be made.

(3) If the Administrator proposes to impose a variable monetary penalty, the notice of intent shall—

- (a) specify the amount of the penalty proposed;
- (b) include information as to—
 - (i) the grounds for the proposal to impose a variable monetary penalty;

- (ii) the right to make representations and objections conferred by paragraph 4;
- (iii) the circumstances in which the Administrator may not impose a variable monetary penalty;
- (iv) the 28 day period within which representations and objections may be made.

Making representations and objections

4. Within 28 days beginning with the date of service of the notice of intent, the seller may make written representations and objections to the Administrator in relation to the proposed imposition of the one or more discretionary requirements.

Decision whether to impose discretionary requirements

5.—(1) After the end of the 28 day period for making representations and objections under paragraph 4, the Administrator shall decide whether to—

- (a) impose the one or more discretionary requirements with or without modifications; or
- (b) impose any other discretionary requirement that the Administrator has the power to impose under these regulations.

(2) In making a decision under this paragraph the Administrator shall take into consideration any representations or objections made by the seller in accordance with paragraph 4.

(3) The Administrator may not decide to impose a discretionary requirement if—

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

(4) The Administrator may not decide to impose a fixed monetary penalty in place of a discretionary requirement.

(5) Without restricting the power under sub-paragraph (1), the Administrator may decide not to impose a discretionary requirement if it considers that in all the circumstances of the case it would be expedient to do so.

(6) Where the Administrator decides to impose a discretionary requirement it shall do so by serving the final notice on the seller.

(7) The final notice shall comply with paragraph 6.

Contents of a final notice

6. The final notice shall include information as to—

- (a) the grounds for imposing the one or more discretionary requirements;
- (b) the Administrator's response to any representations and objections made by the seller, including the effect (if any) on the amount of any variable monetary penalty imposed;
- (c) where the discretionary requirement is a non-monetary discretionary requirement—
 - (i) the steps the seller is required to take;
 - (ii) the period within which those steps shall be completed;
- (d) where the discretionary requirement is a variable monetary penalty—
 - (i) the amount of the penalty;

- (ii) how payment may be made;
- (iii) the period within which the penalty shall be made;
- (iv) the effect of paragraph 8 (early payment discount);
- (v) the effect of paragraph 9 (late payment penalty);
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

Payment

7.—(1) Subject to regulation 20(4) (suspension of requirements and notices pending appeal) and sub-paragraph (2), a variable monetary penalty shall be paid by a seller within 56 days beginning with the date of service of the final notice.

(2) If the decision to impose a variable monetary penalty is the subject of an appeal then to the extent that that decision is upheld, the penalty shall be paid by the seller within 28 days beginning with the date upon which the appeal is determined.

Early payment discount

8. A seller may discharge liability to a variable monetary penalty by paying 50% of the amount of the penalty within 28 days beginning with the day on which the final notice imposing it is received.

Late payment penalty

9. If a variable monetary penalty is not paid within the period specified in paragraph 7 the amount payable shall be increased by 50%.

Grounds of appeal

10.—(1) A seller may appeal against the Administrator's decision to impose a discretionary requirement.

(2) The grounds of appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in 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;
- (f) any other reason.

PART 2**Variable monetary penalties: maximum amounts**

<i>Breach</i>	<i>Maximum amount which may be imposed as a variable monetary penalty</i>
Failure to comply with the requirement to charge in accordance with regulation 6	£10,000

<i>Breach</i>	<i>Maximum amount which may be imposed as a variable monetary penalty</i>
(regulation 11(1) and (2))	
Failure to comply with the requirement to pay the net proceeds of the charge to the Department in accordance with regulation 8	£20,000 or 10% of the amount estimated to be due – whichever is the greater
(regulation 11(1) and (2))	
Failure to keep records in accordance with regulation 9 (regulation 11(1) and (2))	£5,000
Failure to retain records in accordance with regulation 9 (regulation 11(1) and (2))	£5,000
Failure to supply records in accordance with regulation 10 (regulation 11(1) and (2))	£5,000
Without reasonable cause, giving false or misleading information to the Administrator	£20,000
(regulation 11(3))	
Without reasonable cause, otherwise obstructing or failing to assist the Administrator in the conduct of its functions under these Regulations (regulation 11(3))	£20,000

SCHEDULE 4

Regulation 15

Non-monetary Discretionary requirements: enforcement

1.—(1) In this Schedule—

“specified steps” means the steps specified in a final notice under paragraph 6(c)(i) of Schedule 3;

“specified period” means the period specified in a final notice under paragraph 6(c)(ii) of Schedule 3.

(2) A reference in this Schedule to a complete failure is a reference to a seller having taken none of the specified steps within the specified period.

(3) A reference in this Schedule to a partial failure is a reference to a seller having taken at least one, but not all, of the specified steps within the specified period.

Power to impose non-compliance penalties

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

(2) A non-compliance penalty may be imposed in respect of a complete or partial failure to comply with a non-monetary discretionary requirement.

(3) A non-compliance penalty may be imposed irrespective of whether a variable monetary penalty was imposed in addition to the non-monetary discretionary requirement to which the non-compliance penalty relates.

- (4) The amount of a non-compliance penalty is to be determined by the Administrator.
- (5) The maximum penalty which may be imposed by the Administrator as a non-compliance penalty is the amount specified in sub-paragraph (6) by reference to the kind of failure concerned.
- (6) The maximum penalties are—
 - (a) £5,000 in relation to a partial failure;
 - (b) £5,000 in relation to a complete failure.

Notice of intent

- 3.**—(1) Where the Administrator proposes to impose a non-compliance penalty on a seller, the Administrator shall serve by post on that seller a notice of what is proposed (a “notice of intent”).
- (2) A notice of intent shall include information as to—
- (a) the kind of failure in relation to which the Administrator proposes to impose the non-compliance penalty;
 - (b) the specified steps which remain to be taken by the seller concerned;
 - (c) the amount of the penalty proposed;
 - (d) how payment may be made;
 - (e) the date by which payment would be due;
 - (f) the consequences of failure to make payment by the date it is due;
 - (g) the right to make representations and objections conferred by paragraph 4;
 - (h) the 28 day period within which representations and objections may be made;
 - (i) the circumstances (if any) in which the Administrator may be inclined to reduce the amount of the penalty imposed.

Making representations and objections

4. Within 28 days beginning with the date of service of the notice of intent, the seller may make written representations and objections to the Administrator in relation to the proposed imposition of a non-compliance penalty.

Decision whether to impose a non-compliance penalty

- 5.**—(1) After the end of the 28 day period for making representations and objections under paragraph 4, the Administrator shall decide whether to impose the non-compliance penalty with or without modifications.
- (2) Without restricting the power under sub-paragraph (1), the Administrator may decide not to impose a non-compliance penalty if the Administrator considers that in all the circumstances of the case it would be inexpedient to do so.
- (3) In making a decision under this paragraph the Administrator shall take into consideration any representations or objections made by the seller in accordance with paragraph 4.
- (4) Where the Administrator decides to impose a non-compliance penalty it shall do so by serving by post a notice on the seller.
- (5) A non-compliance penalty notice shall comply with paragraph 6.

Contents of a non-compliance notice

- 6.**—(1) A non-compliance penalty notice shall include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the Administrator's response to any representations and objections made by the seller, including the effect (if any) on the amount of the penalty imposed;
- (c) the amount of the penalty;
- (d) how payment may be made;
- (e) the date by which payment shall be made;
- (f) the right of appeal; and
- (g) the consequences of failure to make payment by the date it is due.

(2) A non-compliance penalty shall be paid by a seller within 56 days beginning with the date of service of the non-compliance notice.

(3) But this is subject to sub-paragraph (4) and regulation 20(4) (suspension of requirements and notices pending determination of an appeal).

(4) If the requirements of the non-monetary discretionary requirement are complied with before the 56 days expire, the non-compliance penalty is not payable.

(5) A seller on whom a non-compliance penalty notice is served may appeal against it.

(6) The grounds of appeal are—

- (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);
- (d) any other reason.

Payment of non-compliance penalties following appeal

7. If a non-compliance penalty notice is the subject of an appeal, then to the extent that the notice is upheld, the penalty shall be paid by the seller within 28 days beginning with the day on which the appeal is determined.

Non-compliance penalties: late payment penalty

8. If a non-compliance penalty is not paid within the period allowed by paragraph 6(2) or (as the case may be) by paragraph 7, the amount shall be increased by 50%.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about a minimum amount sellers of goods shall charge for single use carrier bags. The Regulations are made under sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008.

Part 1 of the Regulations deals with definitions. It includes a definition of “single use carrier bag” and a definition of “seller” and appoints the Department of the Environment as the Administrator under the Regulations.

Part 2 of the Regulations deals with the minimum amount (5 pence) which a seller shall charge for a single use carrier bag and the types of single use carrier bags to which the requirement to charge does not apply (the bags in question are set out in Schedule 1 to the Regulations). It also specifies that the net proceeds of the charge are to be paid to the Department.

Part 3 of the Regulations deals with the keeping, retention and supply of records by sellers.

Part 4 of the Regulations specifies the circumstances in which a seller breaches these Regulations.

Part 5 of the Regulations concerns civil sanctions. It introduces Schedules 2 and 3 and deals with the circumstances in which a formal proposal to impose a fixed penalty or discretionary requirement cannot be made.

Schedule 2 confers power on the Administrator to impose fixed monetary penalties and contains associated procedural rights and obligations. Schedule 3 confers power on the Administrator to impose discretionary requirements and contains associated procedural rights and obligations.

Part 6 of the Regulations deals with enforcement and non-compliance. It confers enforcement powers on the Administrator; allows the Administrator to recover certain enforcement costs which it has reasonably incurred; and allows the Administrator to recover penalties and enforcement costs through the civil courts. This Part introduces Schedule 4 which allows the Administrator to impose penalties on sellers who fail to comply with certain requirements previously imposed on them. This Part also allows the Administrator to require sellers to publish details of any civil sanctions they have incurred.

Part 7 of the Regulations deals with administrative matters such as the scope of the Administrator’s powers under the Regulations, general provision in relation to appeals, and duties on the Administrator to publish guidance about how it will exercise its civil sanctioning and enforcement powers under the Regulations.

An impact assessment has been prepared for these Regulations. A copy can be downloaded from http://www.doeni.gov.uk/partial_ria_single_use_carrier_bags_regulations.pdf

A draft of the Regulations was notified to the European Commission in accordance with:

(1) Article 8 of Directive [98/34/EC](#) of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ No. L204, 21.7.1998, p. 37) last amended by Council Directive [2006/96/EC](#) (OJ No. L363, 20.12.2006, p. 81); and

(2) Article 16 of European Parliament and Council Directive [94/62/EC](#) of 20 December 1994 on packaging and packaging waste (OJ No. L365, 31.12.1994, p. 10) last amended by Regulation (EC) [No. 219/2009](#) (OJ No. L87, 31.3.2009, p. 109).