

Draft Order laid before Parliament under section 77(4) of the Climate Change Act 2008 and section 20(3) of the Regulatory Sanctions and Enforcement Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

ENVIRONMENTAL PROTECTION, ENGLAND

The Single Use Carrier Bags Charges (England) Order 2015

Made - - - -

Coming into force in accordance with article 1(c)

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

- (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent;
- (b) regulatory activities should be targeted only at cases in which action is needed.

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

- (c) section 77(4)(1) of the CCA 2008;
- (d) section 20(3) of the Regulatory Enforcement and Sanctions Act 2008(2) Act (“the RESA 2008”).

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

PART 1

Introduction

Citation, application, commencement and expiry

1. This Order—

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

(1) For the definition of “the relevant national authority”, see section 77(3) of the Climate Change Act 2008.
(2) 2008 c.13.

- (b) applies in relation to England;
- (c) comes into force—
 - (i) for the purposes of article 18(1), one month after the day on which it is made;
 - (ii) for all other purposes, on 5th October 2015;
- (d) ceases to have effect on 5th October 2022.

Interpretation

2. In this Order—

- “breach” has the meaning given in article 6;
- “enforcement costs recovery notice” has the meaning given in article 12(1);
- “lightweight plastic material” means synthetic or semi-synthetic material made from polyamide, polyethylene, polylactic acid, polyvinyl chloride or other polymer, or any combination of polymers, the thickness of which is not greater than 70 microns;
- “non-compliance penalty notice” has the meaning given in paragraph 3(4) of Schedule 7;
- “record” means a record required to be kept in accordance with paragraph 1(1) of Schedule 3;
- “reporting year” has the meaning given in paragraph 3 of Schedule 3;
- “seller” has the meaning given in Schedule 1;
- “single use carrier bag” has the meaning given in Schedule 2;
- “SUCB” means a single use carrier bag;
- “VAT” has the meaning given in section 96 of the Value Added Tax Act 1994(3).

PART 2

Sellers’ obligations

Obligation to charge

3. A seller must charge a minimum of 5 pence (including any VAT) for each SUCB supplied in the reporting year—

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

Obligations in relation to records

4. Schedule 3 (records) has effect.

PART 3

Administrators and enforcement

Administrators

- 5.—(1) The relevant local authority is appointed as the administrator⁽⁴⁾.
- (2) In paragraph (1), “the relevant local authority” is—
- (a) in the case of a SUCB supplied at a place in England where goods are sold, for the purpose of enabling the goods to be taken away, the local authority with responsibility for the area in which the goods are sold;
 - (b) in the case of a SUCB dispatched from a place in England, in the course of the delivery of goods to a person in England, the local authority with responsibility for the area from which the goods are dispatched;
 - (c) in the case of a SUCB dispatched from a place outside England, in the course of the delivery of goods to a person in England, the local authority with responsibility for the area for which the goods are destined.
- (3) In this article, “local authority” means, in relation to—
- (a) the City of London, the Common Council for the City of London;
 - (b) an area in the rest of London, the London borough council for that area;
 - (c) the Isles of Scilly, the Council of the Isles of Scilly;
 - (d) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area.

Breach

6. A seller breaches this Order if, without reasonable cause, the seller—
- (a) fails to—
 - (i) charge in accordance with article 3;
 - (ii) keep records in accordance with paragraph 1 of Schedule 3; or
 - (iii) supply records in accordance with paragraph 2 of Schedule 3; or
 - (b) gives false or misleading information to, or otherwise obstructs or fails to assist, an administrator exercising its functions under this Order.

Powers of enforcement

- 7.—(1) An administrator may, for the purpose of enforcing this Order—
- (a) enter a seller’s premises at any reasonable time;
 - (b) inspect a seller’s goods;
 - (c) make test purchases of a seller’s goods;
 - (d) require a seller to produce documents or to provide information;
 - (e) question a seller or officers or employees of a seller.
- (2) An administrator may only exercise the powers in paragraph (1)(d) or (e) if it reasonably believes that a breach has occurred.

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

- (3) An administrator seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—
- (a) the seller, or an officer or employee of the seller;
 - (b) the owner or occupier of any premises in which the administrator seeks to exercise the power concerned.
- (4) Nothing in paragraph (1) compels the production of any document of which—
- (a) in England and Wales or Northern Ireland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court;
 - (b) in Scotland, that person would on grounds of confidentiality of communications be entitled to withhold production on an order for the production of documents in an action in the Court of Session.
- (5) In this article, “premises” means premises other than those used wholly or mainly as a private dwelling.

Duties to report and publish guidance

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

PART 4

Sanctions, appeals etc.

Power to impose fixed monetary penalty

- 9.—(1) An administrator may by notice impose a fixed monetary penalty on a seller if satisfied on the balance of probabilities that a breach has occurred.
- (2) Schedule 5 (fixed monetary penalties: amounts and procedure) has effect.

Power to impose one or more discretionary requirements

- 10.—(1) An administrator may by notice impose one or more discretionary requirements on a seller if satisfied on the balance of probabilities that a breach has occurred.
- (2) An administrator may only exercise the power conferred by paragraph (1) in relation to a case if a discretionary requirement has not been imposed on the seller on a previous occasion in relation to the same act or omission.
- (3) Schedule 6 (discretionary requirements: amounts and procedure) has effect.

Power to impose non-compliance penalty

- 11.—(1) If a seller fails to comply with a non-monetary discretionary requirement, an administrator may by notice impose a non-compliance penalty on the seller.
- (2) A non-compliance penalty may be imposed irrespective of whether a variable monetary penalty has also been imposed.
- (3) The maximum amount which may be imposed in any case is £5,000.
- (4) Schedule 7 (non-compliance penalties: procedure) has effect.

Power to recover costs

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

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

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

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

- (a) methods of payment;
- (b) the date by which payment must be made;
- (c) the right of appeal;
- (d) the consequences of failure to make payment by the due date.

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

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

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

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

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

Power to require publicity

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

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

- (a) the fact that a civil sanction has been imposed;
- (b) the type of civil sanction;
- (c) the grounds on which the sanction was imposed;
- (d) if the sanction was a fixed or variable monetary penalty, the amount of that penalty;
- (e) if the sanction was a non-monetary discretionary requirement, the nature of the requirement in question.

(3) A publicity notice must—

- (a) specify the manner of publication required;
- (b) specify the time for compliance with the notice;
- (c) require the seller to provide evidence of compliance with the notice within a time specified in the 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;

(b) recover the costs of doing so from the seller.

(5) Where an administrator publicises information under paragraph (4)(a), it must do so in a way it considers most likely to bring the information to the attention of members of the public in its area.

Power to withdraw or amend notice

14.—(1) An administrator may at any time in writing—

- (a) withdraw a notice of intent or final notice served under Schedule 5;
- (b) withdraw, or reduce an amount specified in, a notice of intent or final notice relating to a variable monetary penalty served under Schedule 6;
- (c) amend the steps specified in a notice of intent or final notice relating to a non-monetary discretionary requirement served under Schedule 6 so as to reduce the amount of work necessary to comply with the notice;
- (d) withdraw, or reduce the amount specified in, a notice of intent or non-compliance penalty notice served under Schedule 7;
- (e) withdraw, or reduce the amount specified in, an enforcement costs recovery notice served under article 12(1).

(2) An administrator must consult the seller before withdrawing or amending a notice under paragraph (1) save where it is impracticable to do so.

Power to recover payments

15. An administrator may recover the amount of any fixed monetary penalty, variable monetary penalty, non-compliance penalty or enforcement costs as if payable under a court order.

Appeals

16.—(1) A seller may appeal on any ground to the First-tier Tribunal⁽⁵⁾ against an administrator's decision to—

- (a) impose a fixed monetary penalty under article 9(1);
- (b) impose a discretionary requirement under article 10(1);
- (c) impose a non-compliance penalty under article 11(1);
- (d) require payment of costs under article 12(1).

(2) A requirement or notice which is the subject of an appeal is suspended pending the determination or withdrawal of the appeal.

(3) The First-tier Tribunal may, in relation to the imposition of a requirement or service of a notice under this Order—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) take such steps as the administrator could have taken 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.

(5) 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, 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.

Amendment of Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008

17. In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008(6) (enactments specified for purposes of section 4(1): definition of “relevant function”), at the appropriate place insert—

“Single Use Carrier Bags Charges (England) Order 2015 (S.I. 2015/)

Review

18.—(1) Before 5th October 2015, the Secretary of State must—

- (a) complete a review of industry standards for the biodegradability of lightweight plastic material; and
- (b) lay a copy of a report before Parliament setting out the conclusions of the review, in particular—
 - (i) whether it appears to the Secretary of State that there exists an industry standard appropriate for the purposes of an exclusion from the obligations specified in Part 2 on grounds of biodegradability; and
 - (ii) if so, how that exclusion would be implemented.

(2) Before 5th October 2020, the Secretary of State must—

- (a) carry out a review of this Order;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(3) The report in paragraph (2) must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by this Order;
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Single Use Carrier Bags Charges (England) Order 2015* ISBN 978-0-11-112773-5

SCHEDULE 1

Article 2

Sellers

Meaning

1. A seller means a person who sells goods and employs 250 or more employees on the first day of a reporting year.

Number of employees of a person

2.—(1) For the purposes of this Schedule, the number of employees of a person is taken to be the number of that person’s full-time equivalent employees.

(2) The number of full-time equivalent employees of a person is calculated as follows—

$$\frac{TH}{37.5}$$

where TH is the total number of hours per week for which all the employees of the person are contracted to work.

Employees

3.—(1) In this Schedule, “employee” means an individual who has entered into or works under a contract of employment.

(2) In sub-paragraph (1), “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing.

SCHEDULE 2

Article 2

Single use carrier bags

Meaning

1. A SUCB means an unused bag made of lightweight plastic material with handles, other than an excluded bag.

Excluded bags

2.—(1) The following are excluded bags—

<i>Name</i>	<i>Description</i>
(a) Unwrapped food bag	A bag intended to be used solely to contain wholly or partly unwrapped food for human or animal consumption.
(b) Unwrapped loose seeds bag	A bag intended to be used solely to contain wholly or partly unwrapped loose seeds, bulbs, corns, rhizomes, flowers or goods contaminated by soil.

<i>Name</i>	<i>Description</i>
(c) Unwrapped blades bag	A bag intended to be used solely to contain wholly or partly unwrapped axes, knives, knife blades or razor blades.
(d) Prescription-only medicine bag	A bag intended to be used solely to contain a prescription-only medicine, a pharmacy medicine or a listed appliance sold in accordance with a prescription issued by a doctor, dentist, supplementary prescriber, nurse independent prescriber, independent nurse prescriber, optometrist independent prescriber, pharmacist independent prescriber or EEA health professional.
(e) Uncooked meat food bag	A bag intended to be used solely to contain uncooked fish or fish products, meat or meat products or poultry or poultry products.
(f) Live aquatic creatures bag	A bag intended to be used solely to contain live aquatic creatures in water.
(g) Returnable multiple reuse bag	A bag which is sold for an amount not less than the minimum amount specified in article 3 and which— (i) is intended to be returnable to the seller from whom it was purchased to be replaced free of charge; (ii) is made from material the thickness of which is not less than 50 microns but not greater than 70 microns; and (iii) disregarding the width of any gussets, or the height of any handles extending above the main body of the bag— (aa) has a width and height greater (in each case) than 404 mm; and (bb) has a width or height greater (in either case) than 439 mm.
(h) Woven plastic bag	A bag the material of which is made by interlacing long threads passing in one direction with others at a right angle to them.
(i) Transit goods bag	A bag which is intended to be used to carry goods in a transit place.

(2) For the purposes of determining whether a bag falls within the description in paragraph 2(1) (a), (b), (c), (d) or (e), the fact that the bag may be intended to be used to contain items referred to in the description relating to any other of those bags is to be disregarded.

(3) In sub-paragraph (1)—

“dentist” means a person registered in the dentists register kept under section 14 of the Dentists Act 1984(7);

(7) 1984 c. 24, amended by S.I. 2005/2011, articles 2(1) and 6, 2007/3101, regulations 109 and 111; there are other amending instruments but none is relevant.

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“doctor”, “nurse independent prescriber”, “optometrist independent prescriber”, “pharmacist independent prescriber” and “supplementary prescriber” have the meaning given in regulation 8(1) of the Human Medicines Regulations 2012⁽⁸⁾;

“EEA health professional” has the meaning given in regulation 213(1) of the Human Medicines Regulations 2012;

“independent nurse prescriber” has the meaning given in regulation 2(1) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013⁽⁹⁾;

“listed appliance” means a listed appliance within the meaning of—

- (a) section 80 of the National Health Service (Wales) Act 2006⁽¹⁰⁾;
- (b) Article 63 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽¹¹⁾;
- (c) section 27 of the National Health Service (Scotland) Act 1978⁽¹²⁾; or
- (d) section 126 of the National Health Service Act 2006⁽¹³⁾;

“pharmacy medicine” and “prescription-only medicine” have the meaning given in regulation 5(3) and (5) of the Human Medicines Regulations 2012;

“transit place” means on board a ship, train, aircraft, coach or bus, or in an area designated by the Secretary of State as a security restricted area under section 11A of the Aviation Security Act 1982.

SCHEDULE 3

Article 4

Records

Record-keeping

1.—(1) A seller must keep a record in relation to a reporting year if required to charge in that year in accordance with article 3.

(2) The record must include the following information—

- (a) the number of SUCBs supplied by the seller during the reporting year;
- (b) in relation to those bags—
 - (i) the gross proceeds of the charge;
 - (ii) the amount of any VAT received by way of the gross proceeds of the charge;
 - (iii) the amount of any reasonable costs;
 - (iv) the apportionment between any different kinds of reasonable costs;
 - (v) the net proceeds of the charge;
 - (vi) the uses to which the net proceeds of the charge have been put.

(3) The seller must keep the record for a period of three years beginning on 31st May in the reporting year following that to which the record relates.

⁽⁸⁾ S.I. 2012/1916, amended by S.I. 2014/490, regulations 2 and 4(a)(iii); there are other amending instruments but none is relevant.

⁽⁹⁾ S.I. 2013/349, to which there are amendments not relevant to this Order.

⁽¹⁰⁾ 2006 c.42, to which there are amendments not relevant to this Order.

⁽¹¹⁾ S.I. 1972/1265 (N.I. 14), amended by S.I. 1978/1907 (N.I. 26); there are other amending instruments but none is relevant.

⁽¹²⁾ 1978 c. 29, to which there are amendments not relevant to this Order.

⁽¹³⁾ 2006 c.41, to which there are amendments not relevant to this Order.

(4) The amounts specified for the purposes of the definition of “net proceeds of the charge” in paragraph 7(4) of Schedule 6 to the Climate Change Act 2008 are—

- (a) the amount of any VAT received by way of the gross proceeds of the charge; and
- (b) the amount of any reasonable costs.

(5) In this paragraph, “reasonable costs” means costs reasonably incurred completing transactions, communicating information, obtaining expert advice or carrying on similar activities to enable the seller to comply with this Order.

Supply of records

2.—(1) The seller must supply a copy of the record to the Secretary of State.

(2) The record must be supplied—

- (a) on or before 31st May in the reporting year following that to which the record relates;
- (b) in an electronic or other format reasonably required by the Secretary of State for the purposes of publishing the records or producing statistics.

(3) If a person writes to the seller asking them to supply the record during the retention period, the seller must provide a copy of that record to the person who requested it within 28 days of receiving the written request.

(4) In sub-paragraph (3), “the retention period” means the three-year period for which the record must be kept in accordance with paragraph 1(3).

Interpretation

3. In this Schedule—

“the first reporting year” means the period beginning on 5th October 2015 and ending on 6th April 2016;

“reporting year” means the first reporting year or a subsequent reporting year;

“a subsequent reporting year” means any period beginning on 7th April in one year and ending on 6th April the following year.

SCHEDULE 4

Article 8

Reporting and guidance

Publication of records

1.—(1) The Secretary of State must publish every record supplied in accordance with paragraph 2(1) of Schedule 3 on or before 31st July in the reporting year following that to which the record relates.

(2) The record must be published by way of a notice displayed in a prominent position on a website.

(3) The record must remain published until 31st July in the reporting year following that in which the record must be published.

Publication of report about enforcement action

2.—(1) An administrator must publish a report for —

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- (a) the two-year period beginning on 5th October 2015 and ending on 4th October 2017;
 - (b) each consecutive three-year period starting with the period beginning on 5th October 2017 and ending on 4th October 2020.
- (2) The report must be—
- (a) published in a prominent position on the administrator’s website; and
 - (b) available for inspection at the administrator’s office.
- (3) The report must specify—
- (a) the cases in which a civil sanction has been imposed;
 - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 3 of Schedule 5.
- (4) In sub-paragraph (3)(a), the reference to the imposition of a civil sanction does not include cases where a civil sanction was imposed but overturned on appeal.
- (5) An administrator must not publish a report where the Secretary of State notifies the administrator in writing not to do so.
- (6) The report must be published on or before 31st May in the year following the period to which the information relates and, until 30th May in the year following the next period, must—
- (a) remain on the administrator’s website; and
 - (b) be available for inspection at the administrator’s office.

Guidance as to use of civil sanctions

- 3.—**(1) An administrator must publish guidance about its use of civil sanctions under this Order.
- (2) The guidance must contain—
- (a) in relation to a fixed monetary penalty, information as to—
 - (i) the circumstances in which the penalty is likely to be imposed;
 - (ii) the circumstances in which the penalty may not be imposed;
 - (iii) the amount of the penalty;
 - (iv) how liability for the penalty may be discharged and the effect of discharge;
 - (v) the right to make representations and objections;
 - (vi) the right of appeal;
 - (b) in relation to a discretionary requirement, information as to—
 - (i) the circumstances in which the requirement is likely to be imposed;
 - (ii) the circumstances in which the requirement may not be imposed;
 - (iii) 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);
 - (iv) the right to make representations and objections;
 - (v) the right of appeal.
- (3) An administrator must revise the guidance where appropriate.
- (4) An administrator must publish revised guidance within 28 days of its revision.
- (5) Before publishing any guidance or revised guidance, an administrator must consult the Secretary of State and the British Retail Consortium.

(6) An administrator must have regard to the guidance or revised guidance in exercising its functions under this Order.

SCHEDULE 5

Article 9(2)

Fixed monetary penalties: amounts and procedure

PART 1

Fixed monetary penalties: amounts

1. The amount of penalty which may be imposed as a fixed monetary penalty in any case is as follows—

<i>Breach</i>	<i>Amount</i>
Fails to comply with the requirement to charge in accordance with article 3	£200
Fails to keep records in accordance with paragraph 1 of Schedule 3	£100
Fails to supply records in accordance with paragraph 2 of Schedule 3	£100

PART 2

Fixed monetary penalties: procedure

Notice of intent

2.—(1) An administrator who proposes to impose a fixed monetary penalty on a seller must serve a notice of intent on that seller.

(2) But an administrator may not serve a notice of intent on a seller in relation to a breach where a discretionary requirement has been imposed on the seller in relation to the same breach.

(3) A notice of intent must—

- (a) state the amount of the penalty;
- (b) offer the seller the opportunity to discharge its liability by paying the amount specified in paragraph 3 within 28 days beginning with the day on which the notice is received;
- (c) include information as to—
 - (i) the grounds for the proposal to impose the penalty;
 - (ii) the right to make representations and objections;
 - (iii) the 28-day period within which representations and objections may be made;
 - (iv) the circumstances in which the administrator may not impose the penalty;
 - (v) methods of payment.

Discharge of liability following notice of intent

3.—(1) A seller's liability to a fixed monetary penalty is discharged by paying the specified sum within 28 days beginning with the day on which the notice of intent to which it relates was received.

(2) The specified sum is—

<i>Breach</i>	<i>Sum</i>
Fails to comply with the requirement to charge in accordance with article 3	£100
Otherwise	£50

Making representations and objections

4.—(1) This paragraph applies if a seller does not discharge its liability to a fixed monetary penalty by payment of the amount specified in paragraph 3(1).

(2) Within 28 days of the day on which the notice of intent is received by the seller, the seller may make written representations and objections to the administrator in relation to the proposed imposition of the penalty.

Decision whether to impose a fixed monetary penalty

5.—(1) After the end of the 28-day period for making representations and objections under paragraph 4(2), the administrator must decide whether to impose the fixed monetary penalty.

(2) The administrator must take into consideration any representations or objections made by the seller under paragraph 4(2).

(3) An administrator may not impose the penalty if the administrator discovers that its proposal to impose the penalty was based on an error of fact, wrong in law or unreasonable.

(4) Where an administrator decides to impose the penalty it must do so by serving the final notice on the seller.

Contents of final notice

6. The final notice must 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) methods of payment;
- (e) the period of 56 days within which payment must be made;
- (f) the right of appeal;
- (g) the consequences of non-payment.

Payment

7.—(1) A fixed monetary penalty must be paid by a seller within 56 days beginning with the day on which the final notice imposing it was received.

(2) If a decision to impose a penalty is upheld on appeal, the seller must pay the penalty within 28 days beginning with the day on which the appeal is determined.

Early payment discount

8. A seller may discharge its liability to a fixed 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 was received.

Late payment penalty

9. If a fixed monetary penalty is not paid within the period specified in paragraph 7(1) or (if applicable) (2), the amount of the penalty is increased by 50%.

SCHEDULE 6

Article 10(3)

Discretionary requirements: amounts and procedure

PART 1

Variable monetary penalties: maximum amounts

1. The maximum amount of variable monetary penalty which may be imposed in any case is as follows—

<i>Breach</i>	<i>Maximum amount</i>
Fails to comply with the requirement to charge in accordance with article 3	£5,000
Fails to keep records in accordance with paragraph 1 of Schedule 3	£5,000
Fails to supply records in accordance with paragraph 2 of Schedule 3	£5,000
Gives false or misleading information to, or otherwise obstructs or fails to assist, an administrator	£20,000

PART 2

Discretionary requirements: procedure

Notice of intent

2.—(1) Where an administrator proposes to impose a discretionary requirement on a seller, the administrator must serve a notice of intent on that seller.

(2) But an administrator may not serve a notice of intent on a seller in relation to a breach where—

- a fixed monetary penalty has been imposed on the seller in relation to the same breach; or
- the seller has discharged liability to a fixed monetary penalty in relation that breach pursuant to paragraph 3(1) of Schedule 5.

(3) The notice of intent must—

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- (a) if the administrator proposes to impose a non-monetary discretionary requirement—
 - (i) specify the steps that the administrator proposes the seller be required to take;
 - (ii) specify the time period within which the administrator proposes that those steps are to be taken;
- (b) if the administrator proposes to impose a variable monetary penalty, specify the amount of penalty proposed;
- (c) include information as to—
 - (i) the grounds for the proposal to impose the discretionary requirement;
 - (ii) the right to make representations and objections;
 - (iii) the 28-day period within which representations and objections may be made;
 - (iv) the circumstances in which the administrator may not impose the discretionary requirements;
 - (v) in the case of a variable monetary penalty, methods of payment.

Making representations and objections

3. Within 28 days beginning with the day on which the notice of intent is received by the seller, the seller may make written representations and objections to the administrator in relation to the proposed imposition of the discretionary requirement.

Decision whether to impose discretionary requirements

4.—(1) After the end of the 28-day period for making representations and objections under paragraph 3, the administrator must decide whether to impose—

- (a) the discretionary requirement with or without modifications; or
- (b) any other discretionary requirement that the administrator has power to impose under this Schedule.

(2) The administrator must take into consideration any representations or objections made by the seller under paragraph 3.

(3) An administrator may not impose a discretionary requirement if the administrator discovers that its proposal to impose the requirement was—

- (a) based on an error of fact;
- (b) wrong in law;
- (c) in relation to the amount of any variable monetary penalty, unreasonable;
- (d) in relation to the nature of any non-monetary discretionary requirement, unreasonable;
- (e) unreasonable for any other reason.

(4) An administrator may not impose a fixed monetary penalty in place of a discretionary requirement.

(5) Where an administrator decides to impose a discretionary requirement it must do so by serving the final notice on the seller.

Contents of a final notice

5. The final notice must include information as to—

- (a) the grounds for imposing the discretionary requirement;

- (b) the administrator's response to any representation and objections made by the seller, including any effect 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 must be taken;
- (d) where the discretionary requirement is a variable monetary penalty—
 - (i) the amount of the penalty;
 - (ii) methods of payment;
 - (iii) the period within which payment must be made;
 - (iv) the effect of paragraph 7;
- (e) the right of appeal;
- (f) the consequences of failing to comply with the notice.

Payment

6.—(1) A variable monetary penalty must be paid by a seller within 56 days beginning with the day on which the final notice imposing it was received.

(2) To the extent that a decision of an administrator is upheld on appeal, the seller must pay the penalty within 28 days of the day on which the appeal is determined.

Early payment discount

7. A seller may discharge its 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

8. If a variable monetary penalty is not paid within the period specified in paragraph 6(1) or (if applicable) (2), the amount of the penalty is increased by 50%.

SCHEDULE 7

Article 11(4)

Non-compliance penalties: procedure

Notice of intent

1.—(1) Where an administrator proposes to impose a non-compliance penalty on a seller, the administrator must serve a notice of intent on that seller.

(2) The notice of intent must include information as to—

- (a) the grounds for the proposal to impose the penalty;
- (b) the amount of the penalty proposed;
- (c) methods of payment;
- (d) the date by which payment would be due;
- (e) the consequences of failure to make payment by the due date;
- (f) the right to make representations and objections;

- (g) the 28-day period within which representations and objections may be made;
- (h) the circumstances (if any) in which the administrator may reduce the amount of the penalty proposed.

Making representations and objections

2. Within 28 days beginning with the date on which the notice of intent is received by the seller, 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

3.—(1) After the end of the 28-day period for making representations and objections under paragraph 2, the administrator must decide whether to impose the non-compliance penalty with or without modifications.

(2) An 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) The administrator must take into consideration any representations or objections made by the seller under paragraph 2.

(4) Where an administrator decides to impose a non-compliance penalty it must do so by serving a notice (a “non-compliance penalty notice”) on the seller.

Contents of a non-compliance penalty notice

4.—(1) A non-compliance penalty notice must 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 any effect on the amount of the penalty imposed;
- (c) the amount of the penalty;
- (d) methods of payment;
- (e) the date by which payment must be made;
- (f) the right of appeal;
- (g) the consequences of failure to make payment by the due date.

(2) A non-compliance penalty must be paid by a seller within 56 days beginning with the date on which the notice imposing it was received.

(3) If the requirements of the non-monetary discretionary requirement are complied with before the 56 days expire, the liability to pay the non-compliance penalty is discharged.

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

Late payment penalty

5. If a fixed monetary penalty is not paid within the period specified in paragraph 4(2) or (if applicable) (4) the amount of the penalty is increased by 50%.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces provision about charging by sellers of goods for the supply of single use carrier bags (“SUCBs”). It applies in relation to England.

Certain words or phrases in this Order have the meaning given in Schedule 6 to the Climate Change Act 2008 (2008 c.27). These include: “administrator”, “civil sanction”, “discretionary requirement”, “fixed monetary penalty”, “gross proceeds of the charge”, “net proceeds of the charge”, “non-monetary discretionary requirement”, “variable monetary penalty”.

Article 3 requires sellers to charge a minimum of 5 pence (including any VAT) for each SUCB supplied in a reporting year for certain purposes (for example for enabling goods to be taken away). “Seller” has the meaning given in Schedule 1. “SUCB” has the meaning given in Schedule 2.

Schedule 3 requires sellers to keep records and supply copies to the Secretary of State and to members of the public who ask for them. The Secretary of State must publish the records (paragraph 1 of Schedule 4).

Local authorities in England are responsible for enforcing this Order (article 5). Their powers are set out in articles 7 and 9 to 15. They also have duties to publish reports and guidance about enforcement action (paragraphs 2 and 3 of Schedule 4).

Article 16 sets out sellers’ rights of appeal against enforcement decisions. Article 18 is a review clause.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.gov.uk/defra and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk. Alternatively, a copy of the assessment may be obtained by writing to Defra at Nobel House, 17 Smith Square, London, SW1P 3JR.