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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Single Use Carrier Bags Charges (England) Order 2015**

**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;
  - (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 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<sup>(1)</sup>.

## 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 a 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<sup>(2)</sup>.

(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

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

- (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.

(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 the period of 28 days beginning with 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<sup>(3)</sup> against an administrator's decision to—
- (a) impose a fixed monetary penalty under article 9(1);

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(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, 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) 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.

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

17. In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008(4) (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.

### **Transitional and saving provision**

19. Article 1(d) does not have effect in relation to the requirement to—
- (a) keep a record in accordance with paragraph 1(3) of Schedule 3, in so far as the record relates to the reporting year beginning with 7th April 2022 (“the final year”);
  - (b) supply a record in accordance with paragraph 2 of Schedule 3, in so far as the record relates to the final year;
  - (c) publish a record in accordance with paragraph 1 of Schedule 4, in so far as the record relates to the final year;
  - (d) publish a report in accordance with paragraph 2 of Schedule 4, in so far as the report relates to the period beginning with 5th October 2020 and ending with 4th October 2022.

Date

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