
DRAFT STATUTORY INSTRUMENTS

2015 No.

The Single Use Carrier Bags Charges (England) Order 2015

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⁽¹⁾ 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.

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

17. In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008⁽²⁾ (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/)

(1) 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.

(2) 2008 c.13.

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.