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## SCHEDULES

### SCHEDULE 6

Section 77

#### CHARGES FOR [F1CARRIER BAGS]

**Annotations:**

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**Amendments (Textual)**

- F1** Words in Sch. 6 para. 2 substituted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 1\(b\)](#)

#### PART 1

##### POWERS TO MAKE REGULATIONS ABOUT CHARGES

###### *General power*

- 1 The relevant national authority may make provision by regulations about charging by sellers of goods for the supply of [F1carrier bags].

###### *Requirement to charge*

- 2 The regulations may make provision requiring sellers of goods to charge for [F1carrier bags] supplied—
- [F2(a) at a place where goods are sold, for the purpose of enabling goods to be taken away, or]
  - [F2(b) for the purpose of enabling goods to be delivered.]

**Annotations:**

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**Amendments (Textual)**

- F2** Sch. 6 para. 2(a)(b) substituted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 3\(1\)](#)

- [F32A The regulations may make provision for treating carrier bags as having been supplied for the purpose of enabling goods to be taken away if the carrier bags have been designed for that purpose.]

**Annotations:**

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**Amendments (Textual)**

- F3** Sch. 6 para. 2A inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 3\(2\)](#)

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### *Sellers of goods*

- 3 (1) “Seller”, in relation to goods, has the meaning given by the regulations which may define that term by reference (in particular) to—
- (a) a person's involvement in selling the goods,
  - (b) a person's interest in the goods, or
  - (c) a person's interest in the place at or from which the goods are sold,
- or any combination of those factors.
- (2) The regulations may make provision for regulations under this Schedule to apply—
- (a) to all sellers of goods,
  - (b) to sellers of goods named in the regulations,
  - (c) to sellers of goods identified by reference to specified factors, or
  - (d) to sellers of goods within paragraph (b) and sellers of goods within paragraph (c).
- (3) The specified factors may include—
- (a) the place or places at or from which a seller supplies goods;
  - (b) the type of goods that a seller supplies;
  - (c) the value of goods that a seller supplies;
  - (d) a seller's turnover or any part of that turnover.
  - [<sup>F4</sup>(e) the number of a seller's full-time equivalent employees.]
- (4) In this Schedule “specified” means specified in regulations under this Schedule.
- [<sup>F5</sup>(5) For the purposes of sub-paragraph (3)(e), the number of a seller's full-time equivalent employees is calculated as follows—
- Step 1* Find the number for full-time employees of the seller.
- Step 2* Add, for each employee of the seller who is not a full-time employee, such fraction as is just and reasonable. The result is the number of full-time equivalent employees.]

#### **Annotations:**

#### **Amendments (Textual)**

**F4** Sch. 6 para. 3(5) inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 4\(3\)](#)

**F5** Sch. 6 para. 3(3)(e) inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 4\(2\)](#)

### *Amount of charge*

- 4 The regulations may specify the minimum amount that a seller must charge for each [<sup>F6</sup>carrier bag], or provide for that amount to be determined in accordance with the regulations.

#### **Annotations:**

#### **Amendments (Textual)**

**F6** Words in Act substituted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 1\(a\)](#)

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### *Destination of proceeds – Wales*

- [<sup>F7</sup>4A] (1) This paragraph applies to regulations made by the Welsh Ministers in relation to Wales.
- (2) The regulations may provide for the application of the net proceeds of the charge to specified purposes.
- [<sup>F8</sup>(2A) The regulations may—
- (a) provide for the time when and manner in which the gross or net proceeds of the charge are to be paid to the Department;
  - (b) provide for the payment of interest for late payment of the gross or net proceeds of the charge to the Department.]
- (3) Regulations under sub-paragraph (2) may (among other things)—
- (a) require sellers to apply the net proceeds of the charge to any one or more specified purposes;
  - (b) provide for any duty imposed under paragraph (a) to be discharged (subject to any provision made under paragraph (c)) by the net proceeds of the charge being accepted by any one or more of the following persons—
    - (i) specified persons;
    - (ii) persons who fall within a specified category of person;
  - (c) make provision about the arrangements under which the net proceeds of the charge are to be given by sellers to the persons mentioned in paragraph (b) or any other person;
  - (d) require persons who accept any net proceeds of the charge under paragraph (b) to apply the proceeds to any one or more specified purposes;
  - (e) provide for recovery by the Welsh Ministers of sums equal to the proceeds of the charge that have been accepted or applied otherwise than in accordance with provision made under sub-paragraph (2);
  - (f) provide for the application of sums recovered under paragraph (e) to specified purposes (this includes making provision to the effect that such sums are not to be paid into the Welsh Consolidated Fund);
  - (g) require the Welsh Ministers to give guidance about compliance with the regulations.
- (4) The purposes that may be specified under sub-paragraph (2) are limited to purposes relating to any of the following—
- (a) preventing or reducing waste;
  - (b) the collection, management, treatment or disposal of waste;
  - (c) protecting or improving the environment in relation to pollution or nuisances;
  - (d) educational or recreational activities for children or young people which relate to any of the matters specified in paragraphs (a) to (c).
- (5) But purposes concerning the production of renewable energy for consumption in transport or the use of that energy in transport may not be specified under sub-paragraph (2).
- (6) The regulations may make provision for regulations under this Schedule to apply to persons other than sellers, if the Welsh Ministers consider that such provision is appropriate for the enforcement of provision made under sub-paragraph (2) or for otherwise making such provision effective.

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- (7) The specified factors under paragraph 3(2)(c) may also include—
- (a) a seller's arrangements for applying the net proceeds of the charge, or
  - (b) any other factor that the Welsh Ministers consider appropriate, whether or not that factor is of the same kind as the factors listed in that paragraph.
- (8) The regulations may provide for exceptions and exemptions.]

**Annotations:**

**Amendments (Textual)**

- F7** Sch. 6 paras. 4A, 4B inserted (E.W.) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), ss. 1\(2\), 21\(2\)](#)
- F8** Sch. 6 para. 4A(2A) inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 5](#)

[<sup>F9</sup>4A (1) This paragraph applies to regulations made by the Department in relation to Northern Ireland.

- (2) The regulations may require the seller to pay to the Department—
- (a) the gross proceeds of the charge, or
  - (b) the net proceeds of the charge.
- (3) Paragraph 7(3)(c) does not apply to any amount required by regulations made under this paragraph to be paid to the Department.
- (4) In this paragraph—
- “ the Department ” means the Department of the Environment in Northern Ireland;
- “ gross proceeds of the charge ” means the amount received by the seller by way of charges for [<sup>F1</sup> carrier bags ] ;
- “ net proceeds of the charge ” means the seller's gross proceeds of the charge reduced by such amounts as may be specified. ]

**Annotations:**

**Amendments (Textual)**

- F9** Sch. 6 para. 4A inserted (N.I.) (4.5.2011) by [Single Use Carrier Bags Act \(Northern Ireland\) 2011 \(c. 26\), s. 1\(1\)](#)

*Interpretation of paragraph 4A*

- [<sup>F7</sup>4B (1) This paragraph applies for the purposes of paragraph 4A.
- (2) “ Children ” means persons who have not attained the age of 18.
- (3) “ Pollution ” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.
- (4) For the purposes of the definition in sub-paragraph (3), “ environmental harm ” means any of the following—
- (a) harm to the health of humans and other living organisms;
  - (b) harm to the quality of the environment, including—

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- (i) harm to the quality of the environment taken as a whole,
  - (ii) harm to the quality of the air, water or land, and
  - (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;
- (c) offence to the senses of human beings;
  - (d) damage to property;
  - (e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment.
- (5) For the purposes of sub-paragraphs (3) and (4), “ air ” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.
- (6) “ Nuisance ” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment.
- (7) “ Net proceeds of the charge ” has the same meaning as in paragraph 7(4).
- (8) “ Young people ” means persons who have attained the age of 18, but not the age of 25. ]

**Annotations:**

**Amendments (Textual)**

- F7** Sch. 6 paras. 4A, 4B inserted (E.W.) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\)](#), **ss. 1(2), 21(2)**

*[<sup>F1</sup>Carrier bags]*

- 5 [<sup>F10</sup>(1)] “[<sup>F6</sup>Carrier bag]” has the meaning given by the regulations, which may define that term by reference (in particular) to—
- (a) a bag's size, thickness, construction, composition or other characteristics, [<sup>F11</sup>or]
  - (b) its intended use, [<sup>F12</sup>or]
  - (c) its price,]
- or any combination of those factors.

[<sup>F13</sup>(2) In this paragraph “ price ” means the price paid by a specified person, excluding any minimum charge that may be applicable by virtue of paragraph 4. ]

**Annotations:**

**Amendments (Textual)**

- F10** Sch. 6 para. 5 renumbered as Sch. 6 para. 5(1) (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\)](#), **s. 6(2)**
- F11** Word in Sch. 6 para. 5(1)(a) omitted (N.I.) (28.4.2014) by virtue of [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\)](#), **s. 6(3)(a)**
- F12** Sch. 6 para. 5(1)(c) and preceding word inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\)](#), **s. 6(3)(b)**

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**F13** Sch. 6 para. 5(2) inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\)](#) , s. 6(4)

*Administration*

- 6 (1) The regulations may appoint a person (an “administrator”) to administer provision made by regulations under this Schedule.
- (2) More than one person may be appointed as administrator.
- (3) The regulations may confer or impose powers or duties on an administrator and may (in particular) do so—
- (a) by making modifications to any enactment applying to the administrator, or
  - (b) by providing for any such enactment to apply, with or without modifications, for the purposes of regulations under this Schedule.
- (4) References in this Schedule to an administrator include a person appointed by an administrator.

*Record-keeping and publication of records*

- 7 (1) The regulations may require records to be kept relating to charges made for [F<sup>1</sup>carrier bags].
- (2) The regulations may require—
- (a) the records, or such other information as may be specified, to be published at such times and in such manner as may be specified;
  - (b) the records, or such other information as may be specified, to be supplied on request and in such manner as may be specified to—
    - (i) the relevant national authority,
    - (ii) an administrator, or
    - (iii) members of the public.
- (3) The regulations may (in particular) require the publication or supply of records or information relating to any of the following—
- (a) the amount received by a seller by way of charges for [F<sup>1</sup>carrier bags];
  - (b) the seller's gross or net proceeds of the charge;
  - (c) the uses to which the net proceeds of the charge have been put.
  - [F<sup>14</sup>(d) payments of the gross or net proceeds of the charge made to the Department of the Environment in Northern Ireland.]
- [F<sup>15</sup>(3A) Regulations made by the Welsh Ministers may also require the publication or supply of records or information relating to the amount received by a person from a seller by way of net proceeds of the charge to be applied to purposes specified under paragraph 4A(2).]
- (4) In this paragraph—
- “gross proceeds of the charge” means the amount received by the seller by way of charges for [F<sup>1</sup>carrier bags];
- “net proceeds of the charge” means the seller's gross proceeds of the charge reduced by such amounts as may be specified.

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**Annotations:**

**Amendments (Textual)**

- F14** Sch. 6 para. 7(3)(d) inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 7\(2\)](#)  
**F15** Sch. 6 para. 7(3A) inserted (E.W.) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), ss. 1\(3\), 21\(2\)](#)

*Enforcement*

- 8 (1) The regulations may confer or impose powers or duties on an administrator to enforce provision made by regulations under this Schedule.
- (2) The regulations may (in particular) confer powers on an administrator to—
- (a) require the production of documents or the provision of information,<sup>[F16]</sup> or
  - <sup>[F17]</sup>(aa) inspect, retain or copy such documents, or
  - (b) question a seller or officers or employees of a seller.
- <sup>[F18]</sup>(2A) Regulations made by the Welsh Ministers may also confer powers on an administrator to question a person the administrator reasonably believes has received any net proceeds of the charge or officers or employees of such a person.]
- <sup>[F19]</sup>(3) Regulations under sub-paragraph (2) must contain provision for ensuring that the power in question is exercised by a person only where the person reasonably believes there has been a failure to comply with a requirement of regulations under this Schedule.]

**Annotations:**

**Amendments (Textual)**

- F16** Word in Sch. 6 para. 8(2)(a) omitted (N.I.) (28.4.2014) by virtue of [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 7\(3\)\(a\)](#)  
**F17** Sch. 6 para. 8(2)(aa) inserted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 7\(3\)\(b\)](#)  
**F18** Sch. 6 para. 8(2A) inserted (E.W.) (15.2.2011) by [Waste \(Wales\) Measure 2010 \(nawm 8\), ss. 1\(4\), 21\(2\)](#)  
**F19** Sch. 6 para. 8(3) omitted (N.I.) (28.4.2014) by virtue of [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 7\(3\)\(c\)](#)

**PART 2**

CIVIL SANCTIONS

*Civil sanctions*

- 9 (1) The relevant national authority may make provision by regulations about civil sanctions for breaches of regulations under this Schedule.
- (2) For the purposes of this Schedule a person breaches regulations under this Schedule if, in such circumstances as may be specified, the person—
- (a) fails to comply with a requirement made by or under the regulations, or
  - (b) obstructs or fails to assist an administrator.

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- (3) In this Schedule “civil sanction” means—
- (a) a fixed monetary penalty (see paragraph 10), or
  - (b) a discretionary requirement (see paragraph 12).

*Fixed monetary penalties*

- 10 (1) The regulations may make provision conferring on an administrator the power by notice to impose a fixed monetary penalty on a person who breaches regulations under this Schedule.
- (2) The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “fixed monetary penalty” is a requirement to pay to an administrator a penalty of an amount specified in or determined in accordance with the regulations.
- (4) The regulations may not provide for the imposition of a fixed monetary penalty in excess of £5,000.

*Fixed monetary penalties: procedure*

- 11 (1) Provision under paragraph 10 must secure that—
- (a) where an administrator proposes to impose a fixed monetary penalty on a person, the administrator must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),
  - (b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the administrator in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the administrator must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the administrator decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with sub-paragraph (4), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the effect of payment of the sum referred to in sub-paragraph (1)(b),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the administrator may not impose the fixed monetary penalty,
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received, and



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- (f) the period within which representations and objections may be made, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (3) Provision pursuant to sub-paragraph (1)(c)(ii) must include provision for circumstances in which the administrator may not decide to impose a fixed monetary penalty.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1) (d) must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the administrator include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.

#### *Discretionary requirements*

- 12 (1) The regulations may make provision conferring on an administrator the power by notice to impose one or more discretionary requirements on a person who breaches regulations under this Schedule.
- (2) The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “discretionary requirement” means—
- (a) a requirement to pay a monetary penalty to an administrator of such amount as the administrator may determine, or
  - (b) a requirement to take such steps as an administrator may specify, within such period as the administrator may specify, to secure that the breach does not continue or recur.
- (4) In this Schedule—
- “variable monetary penalty” means a requirement referred to in sub-paragraph (3)(a);
  - “non-monetary discretionary requirement” means a requirement referred to in sub-paragraph (3)(b).
- (5) The regulations must, in relation to each kind of breach of regulations under this Schedule for which a variable monetary penalty may be imposed—
- (a) specify the maximum penalty that may be imposed for a breach of that kind, or
  - (b) provide for that maximum to be determined in accordance with the regulations.

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- (6) The regulations may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.

*Discretionary requirements: procedure*

- 13 (1) Provision under paragraph 12 must secure that—
- (a) where an administrator proposes to impose a discretionary requirement on a person, the administrator must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),
  - (b) that person may make written representations and objections to the administrator in relation to the proposed imposition of the discretionary requirement,
  - (c) after the end of the period for making such representations and objections, the administrator must decide whether to—
    - (i) impose the discretionary requirement, with or without modifications, or
    - (ii) impose any other discretionary requirement that the administrator has power to impose under paragraph 12,
  - (d) where the administrator decides to impose a discretionary requirement, the notice imposing it (the “final notice”) complies with sub-paragraph (4), and
  - (e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the discretionary requirement,
  - (b) the right to make representations and objections,
  - (c) the circumstances in which the administrator may not impose the discretionary requirement,
  - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.
- (3) Provision pursuant to sub-paragraph (1)(c) must include provision for circumstances in which the administrator may not decide to impose a fixed monetary penalty.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1) (d) must include information as to—
- (a) the grounds for imposing the discretionary requirement,
  - (b) where the discretionary requirement is a variable monetary penalty—
    - (i) how payment may be made,
    - (ii) the period within which payment must be made, and
    - (iii) any early payment discounts or late payment penalties,
  - (c) rights of appeal, and
  - (d) the consequences of non-compliance.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the administrator include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;

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- (c) in the 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.

*Discretionary requirements: enforcement*

- 14 (1) Provision under paragraph 12 may include provision for a person to pay a monetary penalty (a “non-compliance penalty”) to an administrator if the person fails to comply with a non-monetary discretionary requirement imposed on the person.
- (2) Provision under sub-paragraph (1) may—
- (a) specify the amount of the non-compliance penalty or provide for that amount to be determined in accordance with the regulations, or
  - (b) provide for the amount to be determined by the administrator or in some other way.
- (3) If the regulations make provision within sub-paragraph (2)(b), they must, in relation to each kind of failure for which a non-compliance penalty may be imposed—
- (a) specify the maximum penalty that may be imposed for a failure of that kind, or
  - (b) provide for that maximum to be determined in accordance with the regulations.
- (4) Provision under sub-paragraph (1) must secure that—
- (a) the non-compliance penalty is imposed by notice served by the administrator, and
  - (b) the person on whom it is imposed may appeal against that notice.
- (5) Provision pursuant to paragraph (b) of sub-paragraph (4) must secure that the grounds on which a person may appeal against a notice referred to in that sub-paragraph include the following—
- (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).

*Combination of sanctions*

- 15 (1) Provision may not be made under paragraphs 10 and 12 conferring powers on an administrator in relation to the same kind of breach of regulations under this Schedule unless it complies with the following requirements.
- (2) The provision must secure that the administrator may not serve a notice of intent referred to in paragraph 11(1)(a) on a person in relation to a breach where a discretionary requirement has been imposed on that person in relation to the same breach.
- (3) Such provision must secure that the administrator may not serve a notice of intent referred to in paragraph 13(1)(a) on a person in relation to a breach where—

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- (a) a fixed monetary penalty has been imposed on that person in relation to the same breach, or
- (b) the person has discharged liability to a fixed monetary penalty in relation to that breach pursuant to paragraph 11(1)(b).

*Monetary penalties*

- 16 (1) If the regulations confer power on an administrator to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 14(1), they may include provision—
- (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
  - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include—
- (a) provision for the administrator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
  - (b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

*Costs recovery*

- 17 (1) Provision under paragraph 12 may include provision for an administrator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the administrator in relation to the imposition of the discretionary requirement up to the time of its imposition.
- (2) In sub-paragraph (1), the reference to costs includes in particular—
- (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice).
- (3) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served—
- (a) the notice specifies the amount required to be paid;
  - (b) the administrator may be required to provide a detailed breakdown of that amount;
  - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
  - (d) the person required to pay costs may appeal against—
    - (i) the decision of the administrator to impose the requirement to pay costs;
    - (ii) the decision of the administrator as to the amount of those costs.
- (4) Provision under this paragraph may include the provision referred to in paragraph 16(1)(b) and (c) and (2).

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- (5) Provision under this paragraph must secure that the administrator is required to publish guidance about how the administrator will exercise the power conferred by the provision.

#### *Appeals*

- 18 (1) The regulations may not provide for the making of an appeal other than to—
- (a) the First-tier Tribunal, or
  - (b) another tribunal created under an enactment.
- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) If the regulations make provision for an appeal in relation to the imposition of any requirement or service of any notice, they may include—
- (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
- (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the administrator could take in relation to the act or omission giving rise to the requirement or notice;
  - (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the administrator;
  - (e) to award costs.

#### *Publicity for imposition of civil sanctions*

- 19 (1) The regulations may make provision enabling an administrator to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with regulations under this Schedule.
- (2) A “publicity notice” is a notice requiring the person to publicise—
- (a) the fact that the civil sanction has been imposed, and
  - (b) such other information as may be specified in the regulations,
- in such manner as may be specified in the notice.
- (3) The regulations may provide for a publicity notice to—
- (a) specify the time for compliance with the notice, and
  - (b) require the person to whom it is given to supply an administrator with evidence of compliance within such time as may be specified in the notice.
- (4) The regulations may provide that, if a person fails to comply with a publicity notice, an administrator may—
- (a) publicise the information required to be publicised by the notice, and
  - (b) recover the costs of doing so from that person.

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*Persons liable to civil sanctions*

- 20 The regulations may make provision about the persons liable to civil sanctions under regulations under this Schedule and may (in particular) provide for—
- (a) the officers of a body corporate to be so liable as well the body corporate itself, and
  - (b) for the partners of a partnership to be liable as well as the partnership itself, in such circumstances as may be specified.

*Guidance as to use of civil sanctions*

- 21 (1) Where power is conferred on an administrator by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must secure that—
- (a) the administrator must publish guidance about the administrator's use of the civil sanction,
  - (b) the guidance must contain the relevant information,
  - (c) the administrator must revise the guidance where appropriate,
  - (d) the administrator must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
  - (e) the administrator must have regard to the guidance or revised guidance in exercising the administrator's functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty,
  - (d) how liability for the penalty may be discharged and the effect of discharge, and
  - (e) rights to make representations and objections and rights of appeal.
- (3) In the case of guidance relating to a discretionary requirement, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the requirement is likely to be imposed,
  - (b) the circumstances in which it 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), and
  - (d) rights to make representations and objections and rights of appeal.

*Publication of enforcement action*

- 22 (1) Where power is conferred on an administrator by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must, subject to this paragraph, secure that the administrator must from time to time publish reports specifying—
- (a) the cases in which the civil sanction has been imposed, and
  - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 11(1)(b).

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- (2) In sub-paragraph (1)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.
- (3) The provision conferring the power need not secure the result in sub-paragraph (1) in cases where the relevant authority considers that it would be inappropriate to do so.

#### *Compliance with regulatory principles*

- 23 A relevant national authority may not make any provision conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule unless the authority is satisfied that the administrator 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.

#### *Review*

- 24 (1) A relevant national authority must in accordance with this paragraph review the operation of any provision made by the authority conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule.
- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.
  - (3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.
  - (4) In conducting a review under this paragraph the relevant national authority must consult such persons as the authority considers appropriate.
  - (5) The relevant national authority must publish the results of a review under this [F20]paragraph].
  - [F21](6) The relevant national authority must lay a copy of a review under this paragraph before—
    - (a) Parliament (where the relevant national authority is the Secretary of State);
    - (b) the National Assembly for Wales (where the relevant national authority is the Welsh Ministers);
    - (c) the Northern Ireland Assembly (where the relevant national authority is the Department of the Environment in Northern Ireland)].

#### **Annotations:**

##### **Amendments (Textual)**

- F20** Word in Sch. 6 para. 24(5) substituted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 8\(2\)\(a\)](#)
- F21** Sch. 6 para. 24(6) omitted (N.I.) (28.4.2014) by virtue of [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\), s. 8\(2\)\(b\)](#)

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### *Suspension*

- 25 (1) Where provision has been made by a relevant national authority conferring power on an administrator to impose a civil sanction in relation to a breach of regulations under this Schedule, the authority may direct the administrator—
- (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in paragraph 11(1)(a) in relation to a breach of that kind, and
  - (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in paragraph 13(1)(a) in relation to a breach of that kind.
- (2) The relevant national authority may only give a direction under sub-paragraph (1) in relation to a breach of regulations under this Schedule if it is satisfied that the administrator has failed on more than one occasion—
- (a) to comply with any duty imposed on it under or by virtue of this Schedule in relation to a breach of that kind,
  - (b) to act in accordance with the guidance it has published in relation to a breach of that kind (in particular, the guidance published under paragraph 21), or
  - (c) to act in accordance with the principles referred to in paragraph 23 or with other principles of best practice in relation to the enforcement of a breach of that kind.
- (3) The relevant national authority may by direction revoke a direction given by it under sub-paragraph (1) if satisfied that the administrator has taken the appropriate steps to remedy the failure to which that direction related.
- (4) Before giving a direction under sub-paragraph (1) or (3) the relevant national authority must consult—
- (a) the administrator, and
  - (b) such other persons as the authority considers appropriate.
- (5) Where the relevant national authority gives a direction under this section, the authority must lay a copy before—
- (a) Parliament (where the relevant national authority is the Secretary of State);
  - (b) the National Assembly for Wales (where the relevant national authority is the Welsh Ministers);
  - (c) the Northern Ireland Assembly (where the relevant national authority is the Department of the Environment in Northern Ireland).
- (6) Where the relevant national authority gives a direction under this<sup>F22</sup> paragraph, the administrator must—
- (a) publish the direction in such manner as the authority thinks fit, and
  - (b) take such other steps as the administrator thinks fit or the authority may require to bring the direction to the attention of other persons likely to be affected by it.

#### **Annotations:**

#### **Amendments (Textual)**

- F22** Word in Sch. 6 para. 25(6) substituted (N.I.) (28.4.2014) by [Carrier Bags Act \(Northern Ireland\) 2014 \(c. 7\)](#), s. 8(3)



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### *Payment of penalties into Consolidated Fund*

- 26 (1) Where pursuant to any provision made under this Schedule an administrator receives —
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 14,
  - (b) any interest or other financial penalty for late payment of such a penalty, or
  - (c) a sum paid in discharge of liability to a fixed monetary penalty pursuant to paragraph 11(1)(b),
- the administrator must pay it into the relevant Fund.
- (2) In sub-paragraph (1) “relevant Fund” means—
- (a) in a case where the administrator has functions only in relation to Wales, the Welsh Consolidated Fund,
  - (b) in a case where the administrator has functions only in relation to Northern Ireland, the Northern Ireland Consolidated Fund, and
  - (c) in any other case, the Consolidated Fund.

## **PART 3**

### **PROCEDURES APPLYING TO REGULATIONS**

#### *Regulations made by a single authority*

- 27 (1) This paragraph applies in relation to an instrument containing regulations under this Schedule made by a single national authority.
- (2) Where the instrument contains regulations that—
- (a) are to be made by the Secretary of State, and
  - (b) are subject to affirmative resolution procedure,
- the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (3) Where the instrument contains regulations that—
- (a) are to be made by a national authority other than the Secretary of State, and
  - (b) are subject to affirmative resolution procedure,
- the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the relevant devolved legislature.
- (4) An instrument containing regulations made by the Secretary of State that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) An instrument containing regulations made by the Welsh Ministers that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (6) An instrument containing regulations made by the Department of the Environment in Northern Ireland that are subject to negative resolution procedure is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act

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(Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act.

- (7) Any provision that may be made by regulations subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

*Regulations made by two or more national authorities*

- 28 (1) This paragraph applies in relation to an instrument containing regulations under this Schedule made or to be made by any two or more of—
- (a) the Secretary of State,
  - (b) the Welsh Ministers, and
  - (c) the Department of the Environment in Northern Ireland.
- (2) If any of the regulations are subject to affirmative resolution procedure, all of them are subject to that procedure.
- (3) Sub-paragraphs (2) to (6) of paragraph 27 apply to the instrument as they apply to an instrument containing regulations made by a single national authority.
- (4) If in accordance with that paragraph—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) a devolved legislature resolves that an instrument containing regulations made by a national authority be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (5) This is without prejudice to the validity of anything previously done under the instrument or to the making of a new instrument.
- (6) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution.

*Hybrid instruments*

- 29 If a draft of an instrument containing regulations under this Schedule would, apart from this paragraph, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

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**Changes and effects yet to be applied to :**

- Sch. 6 para. 4A 4B omitted by 2016 anaw 3 Sch. 2 para. 12(4)(a)
- Sch. 6 para. 7(3A) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(b)
- Sch. 6 para. 8(2A) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(c)
- Sch. 6 para. 24(6)(b) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(d)
- Sch. 6 para. 25(5)(b) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(e)
- Sch. 6 para. 26(2)(a) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(f)
- Sch. 6 para. 27(5) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(g)
- Sch. 6 para. 28(1)(b) omitted by 2016 anaw 3 Sch. 2 para. 12(4)(i)(ii)
- Sch. 6 para. 28(1) words omitted by 2016 anaw 3 Sch. 2 para. 12(4)(i)(i)
- Sch. 6 para. 28 cross-heading words substituted by 2016 anaw 3 Sch. 2 para. 12(4)(h)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 86(1)(a) words renumbered as s. 86(1)(a) by 2016 c. 22 s. 211(2)(a)
- s. 86(1)(b) and word inserted by 2016 c. 22 s. 211(2)(b)
- s. 86(7A)(7B) inserted by 2016 c. 22 s. 211(5)