
WELSH STATUTORY INSTRUMENTS

2010 No. 2880

The Single Use Carrier Bags Charge (Wales) Regulations 2010

PART 7

Administration

Scope of administrators' powers

19. The functions conferred on an administrator by these Regulations are exercisable by an administrator in, and in relation to, its area.

Withdrawing or amending a notice

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

- (a) withdraw a notice of intent or a final notice in relation to a fixed monetary penalty;
- (b) withdraw a notice of intent or final notice in relation to a variable monetary penalty or reduce the amount specified in the notice;
- (c) withdraw a notice of intent or a final notice in relation to a non-monetary discretionary requirement or amend the steps specified in the notice so as to reduce the amount of work necessary to comply with the notice;
- (d) withdraw a notice of intent in relation to a non-compliance penalty or reduce the amount specified in the notice;
- (e) withdraw a non-compliance penalty notice or reduce the amount specified in the notice;
- (f) withdraw an enforcement costs recovery notice or reduce the amount specified in the notice.

(2) An administrator must consult the seller in question before withdrawing or amending a notice under paragraph (1).

(3) But paragraph (2) does not apply in any case where it is impracticable to consult the seller concerned.

Appeals

21.—(1) An appeal under these Regulations is to the First-tier Tribunal⁽¹⁾ (“the Tribunal”).

(2) In any appeal where the commission of a breach is an issue requiring determination, the administrator must prove that breach on the balance of probabilities.

(3) In any other case the Tribunal must determine the standard of proof.

(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 and 2009/1590). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to such appeals.

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

(5) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

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

Guidance as to use of civil sanctions

22.—(1) An administrator must publish guidance about its use of civil sanctions under these Regulations.

(2) The guidance must contain the relevant information (see paragraphs (5) and (6)).

(3) An administrator must revise the guidance where appropriate.

(4) An administrator must have regard to the guidance or revised guidance in exercising its functions.

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

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

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

- (a) the circumstances in which the requirement is likely to be imposed;
- (b) the circumstances in which the requirement may not be imposed;
- (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the administrator in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance);
- (d) rights to make representations and objections; and
- (e) rights of appeal.

Additional guidance

23.—(1) An administrator must publish guidance about how it will exercise the powers conferred by regulation 15 and Schedule 4 (non-compliance penalties) and regulation 16 (enforcement costs recovery).

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

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

- (3) An administrator must revise the guidance where appropriate.
- (4) An administrator must have regard to the guidance or revised guidance in exercising its functions.

Consultation on guidance

24. Before publishing any guidance or revised guidance under these Regulations an administrator must consult—

- (a) the Welsh Ministers;
- (b) the Local Better Regulation Office;
- (c) the Confederation of British Industry;
- (d) the Federation of Small Businesses;
- (e) the British Retail Consortium.

Publication of enforcement action

25.—(1) An administrator must from time to time publish reports specifying—

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

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

(3) An administrator must not publish a report in any case where the Welsh Ministers notify the administrator in writing that it would be inappropriate to do so.