

# ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 – Charges for Carrier Bags**

212. This Part gives the Welsh Ministers powers to make regulations about charges for carrier bags.
213. It repeals in relation to Wales section 77 of, and Schedule 6 to, the [Climate Change Act 2008 \(c.27\)](#) which conferred powers on the Welsh Ministers to make regulations about charges for carrier bags intended for single use. The Climate Change Act was amended by the [Waste \(Wales\) Measure 2010 \(nawm 8\)](#) which conferred further powers to make regulations about how the net proceeds from the sale of carrier bags must be applied. These powers were not exercised at that time as the preferred policy was to enlist the co-operation of the sellers by encouraging them to apply the net proceeds to good causes through a voluntary agreement.
214. The regulations made under these provisions that are in force at the time this Act receives Royal Assent are the Single Use Carrier Bags Charge (Wales) Regulations 2010 (as amended by the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011) (“the 2010 Regulations”).
215. Provisions in this Part generally confer the same regulation-making powers as the Climate Change Act 2008. The main changes are that:
- definitions of the key terms “carrier bag” and “seller of goods” are set out in the primary legislation rather than being left to regulations;
  - the Welsh Ministers are under a duty to make regulations which impose a minimum charge;
  - the charge may apply to any type of carrier bag specified in the regulations and not just to those intended for single use;
  - sellers must be required to apply the net proceeds of sales of carrier bags to charitable purposes relating to environmental protection and improvement and which benefit Wales; an exception is provided for those sellers who wish to maintain their existing arrangements with non-environmental good causes;
  - the regulations are in all cases subject to affirmative procedure.

#### ***Section 54 – Meaning of “carrier bag”***

216. [Section 54](#) defines “carrier bags” as those bags which may be supplied either at the place where the goods are sold, or those supplied for the purpose of delivering goods. Generally carrier bags to which a minimum charge may apply would be those which are supplied by retailers to their customers when they buy goods in store or those supplied by companies who are delivering goods such as a supermarket providing an online grocery delivery service.

### **Section 55 – Requirement to charge**

217. [Section 55\(1\)](#) provides that the Welsh Ministers must make carrier bag regulations. Carrier bag regulations are regulations which require sellers of goods to charge for carrier bags as specified in the regulations that are supplied in circumstances mentioned in subsection (3). These circumstances are either where the goods are sold from a place in Wales, or where they are intended to be delivered to a person living in Wales.
218. Subsection (4) provides that the carrier bags to which the requirement applies may be described by reference to their technical specifications such as a bag's size, thickness, composition, price and/or its intended use or a combination of any of these factors. Price was not specified as a factor in Schedule 6 to the Climate Change Act 2008.

### **Section 56 – Sellers of goods**

219. Section 56 provides for the carrier bag regulations to apply to either all sellers of goods or to certain types of seller (see subsection (3)). It allows the regulations to apply provisions to both named sellers and to sellers identified by reference to specified factors (and examples of the factors that may be specified are given in subsection (4)).
220. Subsection (1) defines a “seller of goods” for the purpose of the regulations as a person who sells goods in the course of a business. Sellers may, for example, include high street retailers, supermarkets, street or market traders or any person running an internet business selling goods. The term does not include, and the regulations may not apply to, any person who occasionally sells their own possessions privately, for example, at a car boot sale or on an internet sale or auction site.
221. Subsection (2) makes clear that the business carried on by a seller of goods need not be a commercial enterprise undertaken for profit (so that a seller of goods could be a charity) and that a body exercising public functions will be acting in the course of a business.

### **Section 57 – Application of proceeds**

222. Under section 57(1), carrier bag regulations must require sellers to apply the net proceeds of the charge to charitable purposes which relate to environmental protection or improvement and which benefit Wales. This is subject to subsection (2) which provides that regulations must include an exception for sellers who have existing arrangements where they apply money earned by selling carrier bags to other charitable purposes.
223. “Net proceeds of the charge” is defined in section 63 to mean the gross proceeds of charge less any amount that the regulations may specify such as, for example, administration costs. The “gross proceeds of the charge” means the amount that the seller receives as a result of the minimum charge. It does not include money received which is over and above the minimum charge so if the sellers charges 8p for a bag and the minimum charge is 5p the gross proceeds of the charge will be 3p.
224. The net proceeds must be applied to “charitable purposes”, which are defined in subsection (8) as having the same meaning as in section 2 of the [Charities Act 2011 \(c.25\)](#). The purposes are described in section 3 of that Act and include the advancement of environmental protection or improvement.
225. Under subsection (8) regulations may modify the definition of “charitable purpose” where the Welsh Ministers consider it necessary or expedient for securing an appropriate application of the net proceeds of the charge. This power might be exercised, for example, where the definition in section 2 of the Charities Act has been amended and the new definition is considered no longer appropriate for the purpose of the regulations.
226. Where sellers have existing arrangements before the regulations come into force and are voluntarily donating money they receive for carrier bags to charitable purposes that do

not fall within subsection (1), subsection (2) provides that the regulations must include an exception enabling them to donate the net proceeds of the charge to those purposes. This is subject to provision made by the regulations under subsections (2) and (3).

227. Under subsection (2)(a), the regulations must specify a period during which the seller must have made payments to other charitable purposes. For example, the regulations might provide that the exception only applies if a seller has made a payment during the year before the regulations come into force.
228. Under subsection (2)(b), the regulations must require sellers to give notice that they wish to continue with these arrangements in order to rely on the exception. Subsection (3) provides that regulations may include details about how the exception applies such as how notice must be given, the information contained in it and any conditions.
229. Subsection (4) provides that regulations under subsection (1) may give the seller discretion to choose the charitable purpose or may specify one or more charitable purpose (but it must still be a charitable purpose falling within subsection (1))
230. Subsections (5) provides for the regulations to make provision about the arrangements for applying the net proceeds and the persons who may accept those proceeds on behalf of the charity. Under subsection (6), the regulations may give the Welsh Ministers powers to enforce the regulations if the seller fails to apply the net proceeds as required.

### ***Section 58 - Administration***

231. Section 58 makes provision about who may be responsible for administering the carrier bag charging regime. This section provides that the carrier bag regulations may appoint any person to be an administrator and may confer powers and duties on that person for the purpose of administering the regime. Under the 2010 Regulations, county and county borough councils are the administrators for their area.
232. In order to confer powers and duties on the administrator under subsection (3), subsection (4) provides that the regulations may modify enactments that apply to the administrator (such as enactments about the powers and duties of local authorities). “Enactment” is defined in section 87. The administrator may be given enforcement functions under section 60.

### ***Section 59 – Record-keeping and publication of records***

233. This section makes provision about records that must be kept and information that must be provided in relation to the carrier bag charging regime. This section may apply to any person but the regulations are most likely to impose duties on the sellers and any person who receives any net proceeds of charge for charitable purposes.
234. Currently regulation 8(3) of the Single Use Carrier Bags (Wales) Regulations 2010 requires sellers to keep information on the number of single use carrier bags supplied, the amount received by way of the charge and the uses to which the net proceeds have been put.
235. Subsection (2)(b) provides that the regulations may require information about carrier bag charges to be published or supplied to any of the persons identified in paragraphs (i) to (iii). These are Welsh Ministers, any administrator appointed under section 58 or members of the public.
236. Subsection (3) provides examples of records or information that may be required under the regulations. Regulations could, for example, require sellers to provide information about how many bags they have sold in any given period and the amount they have received in charges. They might also require the sellers to give a breakdown of how they have calculated the net proceeds of the charge as defined in section 63 and how those proceeds have been used.

237. Subsection (4) provides that the regulations may require any person who receives any net proceeds of the carrier bag charge from a seller of goods to publish or supply records or information about the money they have received.

### ***Section 60 - Enforcement***

238. Section 60 enables carrier bag regulations to make provision about how the carrier bag regime is to be enforced. The regulations may confer various functions on administrators appointed under section 58. The regulations may give the administrator the power to require the seller to provide information and documentation and to question the sellers or their employees, but only if the administrator reasonably believes that there has been a failure to comply with the regulations.

### ***Section 61 – Civil sanctions***

239. Section 61 introduces Schedule 2 which makes provision about civil sanctions that may be imposed on any person who does not comply with the carrier bag regulations.

### ***Section 62 – Regulations under this Part***

240. Section 62 provides that the carrier bag regulations must be made by statutory instrument and cannot be made until a draft has been laid before and approved by resolution of the National Assembly for Wales.
241. This section also gives the Welsh Ministers power to include provisions in the carrier bag regulations dealing with any ancillary matters, and to apply the regulations in different ways for example, by applying different minimum charges to different types of bag.

### ***Section 64 – Minor and consequential amendments and repeals***

242. This section introduces Part 2 of Schedule 2 to the Act, which makes minor and consequential amendments and repeals in the Climate Change Act 2008 and the Waste (Wales) Measure 2010.