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Changes to legislation: There are currently no known outstanding effects for the Environment (Wales) Act 2016, SCHEDULE 1. (See end of Document for details)

PROSPECTIVE

SCHEDULE 1

(introduced by section)

CHARGES FOR CARRIER BAGS: CIVIL SANCTIONS

Civil sanctions

- 1 (1) Carrier bag regulations may make provision about civil sanctions for breaches of the regulations.
- (2) For the purposes of this Schedule, a person breaches carrier bag regulations 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.
- (3) In this Schedule, “civil sanction” means—
- (a) a fixed monetary penalty, or
 - (b) a discretionary requirement.

Fixed monetary penalties

- 2 (1) Carrier bag regulations may confer on an administrator the power by notice to impose a fixed monetary penalty on a person who breaches the regulations.
- (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

- 3 (1) Carrier bag regulations that make provision under paragraph 2 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

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- (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
 - (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

- 4 (1) Carrier bag regulations may confer on an administrator the power by notice to impose one or more discretionary requirements on a person who breaches the regulations.
- (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

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- (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” (“*cosb ariannol amrywiadwy*”) means a requirement referred to in sub-paragraph (3)(a), and
 - “non-monetary discretionary requirement” (“*gofyniad yn ôl disgrisiwn nad yw'n un ariannol*”) means a requirement referred to in sub-paragraph (3)(b).
- (5) Carrier bag regulations must, in relation to each kind of breach of the regulations 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.
- (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

- 5 (1) Carrier bag regulations that make provision under paragraph 4 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 4,
 - (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.

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- (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;
 - (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

- 6 (1) If carrier bag regulations make provision under paragraph 4, they may confer on an administrator the power to require a person to pay a monetary penalty (a “non-compliance penalty”) to the administrator if the person fails to comply with a non-monetary discretionary requirement imposed on the person.
- (2) The regulations 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 carrier bag 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) Carrier bag regulations that make 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.

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- (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 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

- 7 (1) Carrier bag regulations may not make provision under paragraphs 2 and 4 conferring powers on an administrator in relation to the same kind of breach of the regulations unless the following requirements are complied with.
- (2) The regulations must secure that the administrator may not serve a notice of intent referred to in paragraph 3(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) The regulations must secure that the administrator may not serve a notice of intent referred to in paragraph 5(1)(a) on a person in relation to a breach where—
- (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 3(1)(b).

Monetary penalties

- 8 (1) If carrier bag 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, 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 a 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

- 9 (1) If carrier bag regulations make provision under paragraph 4, they may confer on an administrator the power 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.

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- (2) In sub-paragraph (1), the reference to costs includes (among other things)—
 - (a) investigation costs;
 - (b) administration costs;
 - (c) costs of obtaining expert advice (including legal advice).
- (3) Carrier bag regulations that make 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 8(1)(b) and (c) and (2).

Appeals

- 10 (1) Carrier bag 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 the 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

- 11 (1) Carrier bag regulations may confer on an administrator the power to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with the regulations.

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- (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.

Persons liable to civil sanctions

- 12 (1) Carrier bag regulations may make provision about the persons who are liable to civil sanctions under the regulations.
- (2) The provision that may be made by virtue of this paragraph includes provision 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 about use of powers to impose civil sanctions and recover costs

- 13 (1) Where carrier bag regulations confer power on an administrator to impose a civil sanction in relation to a breach of the regulations, they 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 regulations 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—

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- (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.
- (4) If carrier bag regulations make provision under paragraph 9, they must secure that the administrator is required to publish guidance about how the administrator will exercise the power conferred by the provision.

Publication of enforcement action

- 14 (1) Where carrier bag regulations confer power on an administrator to impose a civil sanction in relation to a breach of the regulations, they must 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 3(1)(b).
- (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 regulations need not secure the result in sub-paragraph (1) in cases where the Welsh Ministers consider that it would be inappropriate to do so.

Compliance with regulatory principles

- 15 Carrier bag regulations may not confer power on an administrator to impose a civil sanction in relation to a breach of the regulations unless the Welsh Ministers are 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

- 16 (1) The Welsh Ministers must review the operation of any provision of carrier bag regulations conferring power on an administrator to impose a civil sanction in relation to a breach of the regulations.
- (2) The first review must take place as soon as practicable after 1 October 2017; and each subsequent review must take place as soon as practicable after the end of the period of three years beginning with the date on which the previous review took place.
- (3) A review under this paragraph must in particular consider whether the provision has implemented its objectives efficiently and effectively.
- (4) In conducting a review under this paragraph, the Welsh Ministers must consult such persons as they consider appropriate.

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- (5) The Welsh Ministers must—
- (a) publish the results of a review under this paragraph, and
 - (b) lay a copy of the review before the National Assembly for Wales.

Suspension

- 17 (1) Where carrier bag regulations confer power on an administrator to impose a civil sanction in relation to a breach of the regulations, the Welsh Ministers 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 3(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 5(1)(a) in relation to a breach of that kind.
- (2) The Welsh Ministers may only give a direction under sub-paragraph (1) in relation to a breach of carrier bag regulations if they are 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 13), or
 - (c) to act in accordance with the principles referred to in paragraph 15 or with other principles of best practice in relation to the enforcement of a breach of that kind.
- (3) The Welsh Ministers may by direction revoke a direction given by them under sub-paragraph (1) if they are 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 Welsh Ministers must consult—
- (a) the administrator, and
 - (b) such other persons as they consider appropriate.
- (5) Where the Welsh Ministers give a direction under this paragraph, they must lay a copy of the direction before the National Assembly for Wales.
- (6) The administrator must take steps to bring a direction under this paragraph to the attention of other persons likely to be affected by it; and must do so in such manner (if any) as the Welsh Ministers may require.

Payment of penalties into Welsh Consolidated Fund

- 18 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,
 - (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 3(1)(b),

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the administrator must pay it into the Welsh Consolidated Fund.

Index of defined terms

19 In this Schedule, the following expressions are defined or otherwise explained in the provisions indicated—

“breach” (“*torri*” a “*toriad*”) (in relation to carrier bag regulations): paragraph 1(2);

“civil sanction” (“*sanctsiwn sifil*”): paragraph 1(3);

“discretionary requirement” (“*gofyniad yn ôl disgrisiwn*”): paragraph 4(3);

“fixed monetary penalty” (“*cosb ariannol benodedig*”): paragraph 2(3);

“non-compliance penalty” (“*cosb am beidio â chydymffurfio*”): paragraph 6(1);

“non-monetary discretionary requirement” (“*gofyniad yn ôl disgrisiwn nad yw'n un ariannol*”): paragraph 4(4) and (3)(b);

“notice of intent” (“*hysbysiad o fwriad*”) (in relation to a proposed discretionary requirement): paragraph 5(1)(a);

“notice of intent” (“*hysbysiad o fwriad*”) (in relation to a proposed fixed monetary penalty): paragraph 3(1)(a);

“publicity notice” (“*hysbysiad cyhoeddusrwydd*”): paragraph 11(2);

“variable monetary penalty” (“*cosb ariannol amrywiadwy*”): paragraph 4(4) and (3)(a).

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