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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2012 No.**

**The Single Use Carrier Bags Charge  
Regulations (Northern Ireland) 2012**

**PART 1**

**Introduction**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Single Use Carrier Bags Charge Regulations (Northern Ireland) 2012.

(2) These Regulations come into operation on 8th April 2013.

**Interpretation**

2.—(1) In these Regulations—

“the Administrator” means the Department of the Environment;

“the charge” means the full consideration received by a seller for single use carrier bags which attract the requirement to charge;

“consideration” includes any chargeable VAT;

“the Department” means the Department of the Environment;

“discretionary requirement” has the meaning given in paragraph 12(3) of Schedule 6 to the Climate Change Act 2008;

“enforcement costs recovery notice” has the meaning given in regulation 16(1);

“fixed monetary penalty” has the meaning given in paragraph 10(3) of Schedule 6 to the Climate Change Act 2008;

“functions” includes powers and duties;

“late payment penalty” means any increase in an amount payable—

- (a) as a fixed monetary penalty, by virtue of paragraph 10 of Schedule 2;
- (b) as a variable monetary penalty, by virtue of paragraph 9 of Schedule 3;
- (c) as a non-compliance penalty, by virtue of paragraph 8 of Schedule 4;

“net proceeds of the charge” means the proceeds of the charge less—

- (a) any element of the charge in excess of 5 pence;
- (b) any amount of chargeable VAT in respect of the 5 pence charge.

“non-compliance penalty notice” has the meaning given in paragraph 5(4) of Schedule 4;

“non-monetary discretionary requirement” has the meaning given in paragraph 12(4) of Schedule 6 to the Climate Change Act 2008;

“publicity notice” has the meaning given in paragraph 19(2) of Schedule 6 to the Climate Change Act 2008;

“record” means the information specified in regulation 9(3);

“reporting year” means—

- (a) the period starting on the date on which these Regulations come into operation and ending on 5 April 2014;
- (b) thereafter, the period commencing 6 April in one year and ending on 5 April the following year; the first such period to commence 6 April 2014;

“specified sum” has the meaning given in paragraph 4(2) of Schedule 2;

“variable monetary penalty” has the meaning given by paragraph 12(4) of Schedule 6 to the Climate Change Act 2008;

“VAT” has the meaning given in section 96 of the Value Added Tax Act 1994(1).

(2) References to—

- (a) a notice of intent in relation to a fixed monetary penalty, are references to a notice of intent served under paragraph 3(1) of Schedule 2;
- (b) a final notice in relation to a fixed monetary penalty, are references to a final notice served under paragraph 6(5) of Schedule 2;
- (c) a notice of intent in relation to a discretionary requirement, are references to a notice of intent served under paragraph 3(1) of Schedule 3;
- (d) a final notice in relation to a discretionary requirement, are references to a final notice served under paragraph 5(6) of Schedule 3;
- (e) a notice of intent in relation to a non-compliance penalty, are references to a notice of intent served under paragraph 3(1) of Schedule 4.

(3) References to single use carrier bags which attract the requirement to charge are references to those single use carrier bags to which regulation 6 applies.

### **Meaning of “single use carrier bag”**

3.—(1) In these Regulations “single use carrier bag” means a bag fitting the description in paragraph (2) or (3).

(2) A bag fits the description in this paragraph if—

- (a) it is made wholly or mainly of paper, plant-based material or natural starch; and
- (b) it is not specifically manufactured for multiple reuse.

(3) A bag fits the description in this paragraph if it is a plastic bag—

- (a) which does not meet all of the specifications in paragraph (4); or
- (b) which meets all of the specifications in paragraph (4) but is not intended for multiple reuse (see paragraph (5)).

(4) The specifications are—

- (a) both the bag’s dimensions are greater than 404 millimetres (“mm”);
- (b) at least one of the bag’s dimensions is greater than 439mm;
- (c) the bag is manufactured from material which is greater than 49 microns in thickness.

(5) A plastic bag is intended for multiple reuse if—

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(1) 1994 c. 23; there are amendments to section 96 which are not relevant to these Regulations.

- (a) it is purchased by the customer; and
  - (b) when worn out it is returnable to the seller from whom it was purchased to be replaced free of charge.
- (6) In this regulation—
- “dimensions” means width or height;
  - “plastic bag” means a bag which is made wholly or mainly of plastic.

### **Meaning of “seller”**

4.—(1) Subject to paragraph (2) “seller” means a person who in the course of trade or business sells goods from a place in Northern Ireland.

(2) Where a person (A) sells goods in A’s capacity as an officer or employee of another person (B), then for the purposes of these Regulations B is the seller in those circumstances, and not A.

### **Administrator**

5.—(1) The Department shall administer the provision made by these Regulations.

(2) The Department may appoint as authorised officers such persons as it considers necessary to administer provision made by these Regulations and may terminate any appointment made under this paragraph.

## **PART 2**

### **The Charge**

#### **Requirement to charge**

6. Subject to regulation 7, a seller shall charge a customer at least 5 pence for every single use carrier bag supplied new for the purpose of enabling goods purchased to be taken away or delivered.

#### **Exemption from the requirement to charge**

7. Regulation 6 does not apply in relation to the supply of single use carrier bags of the kind described in Schedule 1.

#### **Payment of net proceeds of the charge to the Department of the Environment**

8.—(1) A seller shall pay to the Department the net proceeds of the charge for each relevant period within 28 days of the end of that period.

(2) Payment of the net proceeds of the charge shall not be received by the Department until the Department has cleared funds for the full amount.

(3) Any amount of the net proceeds due to the Department if unpaid may be recovered by the Department as a civil debt.

(4) In this regulation the relevant period is—

- (a) the period starting on the date on which these Regulations come into operation and ending on 30<sup>th</sup> June 2013; and thereafter the three month period ending 30<sup>th</sup> September, 31<sup>st</sup> December, 31<sup>st</sup> March or 30<sup>th</sup> June in each reporting year; or
- (b) such other period as the Department may determine.

## PART 3

### Records

#### Record-keeping

9.—(1) A seller shall keep a record of the information specified in paragraph (3) for every reporting year.

(2) Records kept in accordance with paragraph (1) shall be retained by a seller for the period of six years beginning on 31 May in the reporting year following that to which the record relates.

(3) The information is—

- (a) the number of single use carrier bags supplied to customers which attract the requirement to charge;
- (b) the total proceeds received for single use carrier bags supplied to customers which attract the requirement to charge;
- (c) the amount received by way of the 5 pence element of the charge;
- (d) any amount of chargeable VAT in respect of the 5 pence element of the charge;
- (e) the net proceeds of the charge.

#### Availability of records

10.—(1) This regulation applies where the Administrator requests a seller in writing to supply a record for a reporting year.

(2) If the request is received during the retention period for the record in question, the seller shall provide a copy of that record to the Administrator within 28 days of receiving the written request.

(3) The retention period is the six year period for which any particular record shall be retained under regulation 9(2).

## PART 4

### Breaches

#### Breaches

11.—(1) It shall be a breach of these Regulations if, as a result of having failed to take all reasonable steps necessary to enable it to do so, a seller fails to comply with a requirement mentioned in paragraph (2).

(2) The requirements are to—

- (a) charge in accordance with regulation 6;
  - (b) pay the net proceeds of the charge to the Department in accordance with regulation 8;
  - (c) keep records in accordance with regulation 9;
  - (d) retain records in accordance with regulation 9;
  - (e) supply records in accordance with regulation 10;
- (3) It shall be a breach of these Regulations for a seller, without reasonable cause—
- (a) to give false or misleading information to the Administrator;

- (b) to otherwise obstruct or fail to assist the Administrator in the conduct of its functions under these Regulations.

## PART 5

### Civil Sanctions

#### Civil sanctions

12. The following Schedules have effect—

- (a) Schedule 2, which makes provision for fixed monetary penalties;
- (b) Schedule 3, which makes provision for discretionary requirements.

#### Combination of sanctions

13.—(1) The Administrator shall not serve a notice of intent in relation to a fixed monetary penalty on a seller in any of the following circumstances—

- (a) where a discretionary requirement has been imposed on the seller in relation to the same breach;
- (b) where the seller has discharged liability to a fixed monetary penalty in respect of the same breach by payment of a specified sum;
- (c) where a fixed monetary penalty has previously been imposed in respect of the same act or omission.

(2) The Administrator shall not serve a notice of intent in relation to a discretionary requirement on a seller in any of the following circumstances—

- (a) where a fixed monetary penalty has been imposed on the seller in relation to the same breach;
- (b) where the seller has discharged liability to a fixed monetary penalty in respect of the same breach by payment of a specified sum;
- (c) where a discretionary requirement has previously been imposed in respect of the same act or omission.

## PART 6

### Enforcement and Non-compliance

#### Enforcement powers

14.—(1) The Administrator may exercise any of the powers in paragraph (2) for the purposes of enforcement.

(2) The powers are—

- (a) to make test purchases of goods for the purposes of ascertaining whether these Regulations are being complied with;
- (b) to inspect any goods and to enter any premises at any reasonable time (other than domestic premises) for the purposes of ascertaining whether these Regulations are being complied with;

- (c) if the Administrator reasonably believes that there has been a failure to comply with a requirement of these Regulations—
  - (i) to question a seller or an officer or employee of a seller;
  - (ii) to require the production of documents or the provision of information.
- (3) In this regulation “domestic premises” means premises used wholly or mainly as a private dwelling.
- (4) The Administrator seeking to exercise a power under paragraph (2)(b) or (c) shall produce evidence of identity and authority if requested by a person who is, or appears to be—
  - (a) the seller, or an officer or employee of the seller;
  - (b) an owner or occupier of any premises in respect of which the Administrator seeks to exercise the power concerned.
- (5) Nothing in paragraph (2)(c)(ii) shall compel production of any document in respect of which a person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court.

#### **Non-monetary discretionary requirements: enforcement**

15. Schedule 4 makes provision for the imposition of a monetary penalty in cases where a seller fails to comply with a non-monetary discretionary requirement and that Schedule has effect accordingly.

#### **Enforcement costs recovery**

- 16.—(1) The Administrator may serve an enforcement costs recovery notice on a seller on whom a discretionary requirement is imposed requiring that seller to pay the costs incurred by the Administrator in relation to that discretionary requirement up to the time of its imposition (“enforcement costs”).
- (2) Enforcement costs shall include, in particular—
    - (a) investigation costs;
    - (b) administration costs;
    - (c) costs of obtaining expert advice (including legal advice).
  - (3) An enforcement costs recovery notice shall specify the amount required to be paid and shall include information as to—
    - (a) how payment may be made;
    - (b) the date by which payment shall be made;
    - (c) the consequences of failure to make payment by the date it is due; and
    - (d) the right of appeal.
  - (4) The date referred to in paragraph (3)(b) shall be at least 28 days later than the date on which the enforcement costs recovery notice is served on the seller.
  - (5) Enforcement costs shall be paid by the seller by the date specified in the enforcement costs recovery notice.
  - (6) Paragraph (5) is subject to the remaining provisions of this regulation and to regulation 20(4) (suspension of requirements and notices pending appeal).
  - (7) If a decision of the Administrator under this regulation is the subject of an appeal, then to the extent that that decision is upheld, the seller shall pay the enforcement costs within 28 days of the day on which the appeal is determined.

(8) The Administrator shall provide a detailed breakdown of the costs specified in an enforcement costs recovery notice if requested to do so by the seller on whom that notice is served.

(9) A seller is not liable to pay any costs shown by that seller to have been unnecessarily incurred.

(10) A seller may appeal against—

- (a) a decision of the Administrator to impose a requirement to pay costs;
- (b) a decision of the Administrator as to the amount of those costs.

### **Debt recovery**

17. The Administrator may recover as a civil debt, any amount of unpaid—

- (a) fixed monetary penalty;
- (b) variable monetary penalty;
- (c) non-compliance penalty;
- (d) enforcement costs; or
- (e) late payment penalty.

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

18.—(1) The Administrator may give a publicity notice to a seller on whom a civil sanction has been imposed.

(2) The following information shall be included in a publicity notice—

- (a) the type of civil sanction imposed;
- (b) the grounds on which the civil sanction was imposed;
- (c) if the civil sanction was a fixed or variable monetary penalty, the amount of that penalty;
- (d) if the civil sanction was a non-monetary discretionary requirement, the nature of that requirement.

(3) A publicity notice shall—

- (a) specify the manner of publication required;
- (b) specify the time within which publication is required;
- (c) require the seller to provide evidence to the Administrator of compliance with the publicity notice within a time specified in that 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 required to be publicised; and
- (b) recover the costs of publication from the seller.

(5) Where information is publicised under paragraph (4)(a) it shall be done in a way likely to attract the attention of the public.

## **PART 7**

### **Administration**

#### **Withdrawing or amending a notice**

19.—(1) The 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 a 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 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) The Administrator shall consult the seller before withdrawing or amending a notice under paragraph (1).
- (3) Paragraph (2) does not apply in any case where it is impracticable to consult the seller.

### Appeals

- 20.**—(1) An appeal under these Regulations is to the First-tier Tribunal<sup>(2)</sup> (“the Tribunal”).
- (2) In an appeal where the commission of a breach is an issue requiring determination, the Administrator shall prove that breach on the balance of probabilities.
- (3) In any other case the Tribunal shall determine the standard of proof.
- (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

- 21.**—(1) The Administrator shall publish guidance about its use of civil sanctions under these Regulations.
- (2) The guidance shall contain the information specified at paragraphs (5) and (6) as appropriate.
- (3) The Administrator shall revise the guidance where appropriate.
- (4) The Administrator shall 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 information referred to in paragraph (2) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed;

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(2) 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.



- (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 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**

**22.**—(1) The Administrator shall 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 shall 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) The Administrator shall revise the guidance where appropriate.

(4) The Administrator shall have regard to the guidance or revised guidance in exercising its functions.

#### **Consultation on guidance**

**23.** Before publishing any guidance or revised guidance under regulations 21 and 22 the Administrator shall consult with such bodies or persons as it may consider appropriate.

#### **Publication of enforcement action**

**24.**—(1) The Administrator shall 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.

Sealed with the Official Seal of the Department of the Environment on



*Wesley Shannon*  
A senior officer of the  
Department of the Environment