

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1 – Charges for Carrier Bags: Civil Sanctions

328. This Schedule is introduced by section 61.

Civil Sanctions

329. Paragraph 1 provides that the carrier bag regulations may make provision that a person who breaches the regulations may be liable to civil sanctions. Sub-paragraph (3) provides that civil sanctions may take the form of fixed monetary penalties (defined in paragraph 2(3)) and discretionary requirements (defined in paragraph 4(3)).

Fixed Monetary Penalties

330. Paragraph 2 provides that the carrier bag regulations may give an administrator a power to impose a fixed monetary penalty not exceeding £5,000 on any person who breaches the regulations. Notices imposing fixed monetary penalties may only be issued in cases where the administrator is satisfied on the balance of probabilities that a breach of the regulations has occurred.

Fixed Monetary Penalties: Procedure

331. [Paragraph 3](#) provides that where administrators have the power to issue fixed monetary penalty notices the regulations must set out the procedure as prescribed in this paragraph.

332. Sub-paragraph (1)(a) provides that before the administrator can impose a penalty they must first issue a 'notice of intent'. The notice must offer the person served the opportunity to either pay the penalty or make representations or objections within a specified time which in both cases must be no more than 28 days of when the notice was received (see sub-paragraphs (2)(e) and (f)). The notice must include the information as set out in sub-paragraphs (2)(a) to (f).

333. Under sub-paragraph (1)(b) the person served may discharge liability for the penalty by making a payment which may be less than or equal to the amount of the penalty. This would allow the administrator to offer a discount for early payment. If a payment is made no further action will be taken.

334. Under sub-paragraph (1)(c) the person served may make written representations and objections against the penalty. At the end of the specified time period, the administrator, having considered the representations or objections decides whether they impose the fixed monetary penalty. If they are still of the view that the penalty is due they may issue a "final notice". The final notice must include the information in sub-paragraphs (4)(a) to (f). If they decide to withdraw the penalty notice then under paragraph 3(3) they must explain why they have decided not to impose the penalty.

335. Sub-paragraph (5) sets out the circumstances in which a person served may appeal against a final notice. (See paragraph 10 for appeal procedure.)
336. Paragraph 4 provides that the regulations may give an administrator the power to impose, by notice, one or more requirements ("discretionary requirements") on a person. "Discretionary requirements" are defined in sub-paragraph (3) as:
- the payment of a monetary penalty of an amount that the administrator will determine ("variable monetary penalty");
 - to take such steps as may be specified by an administrator within such time period as the administrator may specify to ensure that the incident of non-compliance does not continue or recur ("non-monetary discretionary requirement").
337. Sub-paragraph (2) specifies the standard of proof that must be applied by the administrators when deciding whether there has been a breach of the regulations. Under sub-paragraph (5) the regulations must provide that variable monetary penalties are capped to a maximum amount to be specified in, or determined in accordance with, the regulations.

Discretionary requirements: procedure

338. Paragraph 5 provides for the procedure that must be set out in regulations and followed by the administrator when imposing any discretionary requirement. An administrator must serve a notice on the person of their intention to impose a discretionary requirement. The notice must state the time within which the person served may make representations and objections about the proposed sanction. The regulations may not provide for the time period to be any less than 28 days.
339. Sub-paragraph (c) provides that after the end of the specified time for making representations and objections, the administrator must decide whether to impose, withdraw or vary the discretionary requirement or replace it with a different discretionary requirement.
340. When imposing a discretionary requirement an administrator must serve a final notice. The final notice must contain the information set out in sub-paragraph (4), including the fact that the person's right of appeal against the sanction.
341. Sub-paragraph (5) sets out the minimum grounds for appeal against the discretionary requirement that must be available.

Discretionary requirements: enforcement

342. Paragraph 6 provides that where a person does not comply with a non-monetary discretionary requirement, the regulations may give an administrator power to impose a monetary penalty. Non-compliance penalties are not available in cases where a person has failed to pay a variable monetary penalty. Sub-paragraph (2) provides that the regulations may either specify the amount of the non-compliance penalty or that the amount may be determined in accordance with the regulations. Alternatively, sub-paragraph (3) provides that the regulations may specify a maximum penalty that an administrator may impose or the maximum amount as determined in accordance with the regulations. Sub-paragraph (5) provides that the regulations must state the grounds on which a non-compliance penalty may be appealed against which grounds are set out in (a) to (c).

Combination of sanctions

343. Paragraph 7 restricts the circumstances in which carrier bag regulations may give an administrator powers to impose both types of civil sanction (i.e. fixed monetary penalties and discretionary requirements) in relation to the same kind of breach of the regulations. In particular, if the regulations do confer those powers, they must ensure

that the administrator may not serve a notice of intent to impose one kind of civil sanction on a person if it has already imposed the other kind of civil sanction on the person for the same breach.

Monetary Penalties

344. Paragraph 8 provides that where the regulations provide for civil sanctions to be imposed they may also make provision as set out in sub-paragraph (1)(a) to (c). They may include discounts for early payment or for the payment of interest or other financial penalty for late payment of the original penalty. Sub-paragraph (1)(b) provides that the total amount of any late payment penalty must not exceed the total amount of the penalty imposed.
345. Under sub-paragraph (1)(c) the regulations may include provisions to enforce the penalties. Provision under sub-paragraph (1)(c) may enable an administrator to recover a penalty or other payment as may be specified in the regulations under sub-paragraph (1)(b) as a civil debt through the civil courts. The regulations may also create a more streamlined process of recovery by treating the penalty as if it were payable under a court order.

Costs Recovery

346. Paragraph 9 provides that regulations may confer powers on the administrator to recover their costs, by notice, from a person on whom a discretionary requirement is imposed. Sub-paragraph (2) provides that the costs may include investigation costs, administration costs and the costs of obtaining expert (including legal) advice. Under sub-paragraph (3) where a costs notice is served the administrator may be required to give a detailed breakdown of the costs they are seeking to recover and that person served is not liable for any costs unnecessarily incurred.
347. Sub-paragraph (4) provides that the provision made by the regulations for the payment of the administrator's costs may include provision for the recovery of interest and late payment penalties under paragraph 8. Sub-paragraph 3(d) provides for a right of appeal against the decision of the administrator regarding payment of costs.

Appeal

348. [Paragraph 10](#) contains certain procedural provisions for appeals from civil penalties. In particular, it provides that the regulations must provide for appeals to be made to the First-tier Tribunal (established under the [Tribunals, Courts and Enforcement Act 2007 \(c.15\)](#)) or another tribunal created under an enactment. Regulation 21 of the 2010 Regulations provides for appeals against civil sanctions to be made to the First-tier Tribunal.

Publicity for imposition of civil sanctions

349. [Paragraph 11](#) provides that the regulations may confer a power on an administrator to issue a publicity notice to a person on whom a civil sanction has been imposed. Such a notice would require the recipient to publicise, at their own cost, that a sanction has been imposed, as well as such other information as may be specified in the regulations. If the person fails to publish the notice as required, the regulations may provide for the administrator to publish the notice and to recover the costs from the person to whom the notice relates.

Persons liable to civil sanctions

350. [Paragraph 12](#) provides that the regulations may make provision for officers of a body corporate and partners of a partnership to be liable to civil sanctions.

Guidance about use of powers to impose civil sanctions and recover costs

351. [Paragraph 13](#) provides that where an administrator is to have the power to impose civil sanctions, there is to be a corresponding duty on the administrator to publish guidance containing certain information about how it will use its civil sanction powers, including details about fixed monetary penalties and discretionary requirements such as: when they are likely to be imposed, how fixed and variable monetary penalties will be determined, how liability for penalties may be discharged and the effect of a discharge on rights of appeal.

Publication of enforcement action

352. [Paragraph 14](#) provides that regulations providing for civil sanctions must secure the publication of reports by the administrator on the use of civil sanctions.

Compliance with regulatory principles

353. [Paragraph 15](#) provides that civil sanction powers may not be conferred on an administrator in regulations unless the Welsh Ministers are satisfied that the administrator will comply with principles of better regulation as set out in paragraphs (a) and (b).

Review

354. [Paragraph 16](#) requires the Welsh Ministers to review the operation of the civil sanction provisions set out in regulations. The first review must take place as soon as practicable after 1 October 2017 and subsequent reviews must take place as soon as practicable after the end of three years beginning with the date on which the previous review took place. This section also requires the Welsh Ministers to publish the results of the review and lay it before the National Assembly.

Suspension

355. [Paragraph 17](#) provides the Welsh Ministers with the power to suspend an administrator's powers to impose civil sanctions in certain circumstances by issuing a direction to the administrator. Such directions may be revoked by the Welsh Ministers. Before issuing a direction, the Welsh Ministers must consult the administrator and such other persons as they consider appropriate. Any directions issued must be laid before the National Assembly for Wales and brought to the attention of those that are likely to be affected by it.

Payment of penalties into Welsh Consolidated Fund

356. [Paragraph 18](#) provides for money received from penalties to go to the Welsh Consolidated Fund established under section 117 of the Government of Wales Act 2006, into which is paid public money allocated to the devolved institutions in Wales by the UK Government and also that received from other sources.