

POLICY NOTE

THE SINGLE USE CARRIER BAGS CHARGE (SCOTLAND) REGULATIONS 2014

SSI 2014/XXX

1. The above Instrument is proposed to be made in exercise of the powers conferred by sections 88, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009 (“the Act”).
2. The Instrument is subject to affirmative procedure by virtue of section 96(4) of the Act. It must therefore be approved by resolution of the Scottish Parliament before it can be made.
3. The Instrument will, if approved, be the first regulations made under section 88 of the Act. A copy of the proposed Regulations was therefore laid before the Scottish Parliament in accordance with section 97(2) of the Act.
4. The Scottish Ministers specified on laying a copy of the proposed Regulations, in accordance with section 97(3) and (4) of the Act, that there would be a 90 day period during which representations on the proposed Regulations might be made to them. They then publicised the proposed Regulations in accordance with section 97(5) of the Act.
5. The Scottish Ministers have in accordance with section 97(6) of the Act considered representations on the proposed Regulations made to them, and considered the Report on the proposed Regulations made by the Delegated Powers and Law Reform Committee of the Scottish Parliament.
6. The Scottish Ministers have laid a report (the “Accompanying Statement”) setting out details of the representations and of the Report, and of changes made to the proposed Regulations, all in accordance with section 97(7) of the Act.

Policy Objectives

7. The main policy drivers for this Instrument are the requirement to reduce litter, Scotland’s Zero Waste Plan¹ and Safeguarding Scotland’s Resources² which together set out our approach to preventing and managing waste, and using resources more efficiently. This policy is also consistent with action proposed at a European Parliament level³.
8. Research indicates that 750 million carrier bags a year are dispensed by supermarkets in Scotland, which equates to 11.7 bags used per person per month. If all retailers in Scotland were counted, this figure would be higher.
9. Although by weight they form a small proportion of Scotland’s waste stream, carrier bags can become a highly visible and damaging component of litter, either by being improperly disposed of or by being blown from bins and landfills. Zero Waste Scotland research suggests that around 7.4m bags are retrieved each year from the wider environment by Scottish local authorities⁴. The Marine Conservation Society’s big beach clean-up usually reports plastics bags as being a common beach litter item.

¹ Zero Waste Plan (2010): <http://www.scotland.gov.uk/Publications/2010/06/08092645/0>

² Safeguarding Scotland’s Resources (2013): <http://www.scotland.gov.uk/Publications/2013/10/6262>

³ European Parliament press release: http://europa.eu/rapid/press-release_IP-13-1017_en.htm

⁴ Scotland’s Litter Problem – *Quantifying the Scale and Cost of Litter and Flytipping*, Zero Waste Scotland (2013) pp16-17: <http://www.zerowastescotland.org.uk/LitterResearchReport%20>

10. Although they are not the most common form of litter, plastic single use carrier bags in particular have a disproportionate impact on wildlife, notably in the marine environment where they can be mistaken for food and cause death after ingestion. As they are light and easily windblown they can spread widely and be difficult and expensive to remove from the wider environment.
11. This Instrument also supports activity under our Zero Waste Plan and Safeguarding Scotland's Resources to change perceptions concerning resources and how they are used and discarded - to encourage re-use of goods as often as possible; maximise their economic value, and minimise their carbon impact. The carrier bag charging policy, by placing a value on a previously 'free' and therefore unvalued item, will encourage re-use, provide an incentive to switch to other types of shopping containers and use them as often as possible, and potentially lead more people to consider re-use of other products.

Policy Summary

12. The Instrument will:
 - require retailers to charge at least 5p for most single use carrier bags;
 - define what is meant by a single use carrier bag including the material from which such bags are made (plastic, paper and plant/starch based material);
 - apply the requirement to charge for single use carrier bags to all retailers, regardless of type or size;
 - require retailers with ten or more full time equivalent staff to keep records, and produce them to the enforcement authority on request; and
 - specify circumstances in which the requirement to charge does not apply.
13. The minimum 5p charge will encourage shoppers to bring their own bags or other containers to avoid paying the charge, and encourage higher levels of re-use of shopping containers. This will fulfil the policy objectives detailed above.
14. The charge will apply to all retailers and all material types (not just plastic bags) to maintain a level playing field, and prevent displacement into environmentally harmful behaviours (such as replacing plastic bags with paper).
15. The Instrument will specify that bags that are above a certain thickness and size and that are specifically intended for multiple reuse ('bags for life') are not covered by the charge as our policy is to encourage reuse. It is important that this type of bag is clearly defined as out of scope.
16. The Instrument will also specify certain small plastic and paper bags not in the scope of the charge. This is to prevent the unintended consequence of customers taking a large bag rather than a small bag if the small bag was to cost the same. This recognises that this type of small bag is better seen as packaging rather than as a carrier bag.
17. The charge is not a tax. Anyone can avoid the charge by reusing bags. The policy intention is that net proceeds raised by the charge will be donated by retailers to charitable good causes under a voluntary agreement currently being negotiated (rather than through regulation), including publication of records of such donations. The overall purpose of the charge is to reduce carrier bag usage rather than generate funds for good causes. Also, the power to regulate at section 88 of the Act is restricted to requiring that the proceeds be used for the advancement of environmental protection or improvement

(or similar purposes) and we would not want to cut across existing relationships between retailers and other good causes. Experience from Wales and dialogue with retailers reinforces our expectation that retailers will respect the terms of such a voluntary agreement, which is currently under negotiation. We propose to keep this position under review following implementation.

Enforcement

18. The enforcing authority in any area will be the local authority responsible for that area.
19. The Instrument provides for criminal penalties for failure to comply with the Regulations (on summary conviction a fine not exceeding the statutory maximum of £10,000, or on conviction on indictment an unlimited fine).
20. In line with the Safeguarding Scotland's Resources consultation⁵ (July-September 2012) (summarised below) we have made provision through section 43 of the Regulatory Reform (Scotland) Act 2014 to amend the powers in the Act so as to enable the introduction of civil penalties in respect of offences under the Instrument.
21. The Regulations will be amended in due course to enable local authorities to issue fixed penalty notices where there is reason to believe an offence has been committed.
22. The introduction of fixed penalties will provide a more proportionate enforcement option for cases where prosecution might not be appropriate.

Consultation

23. The policy proposals for the Instrument were part of the 'Safeguarding Scotland's Resources' consultation. The original consultation was reopened for further comment alongside a Strategic Environmental Assessment⁶ (February to March 2013). 94% of respondents supported charging for carrier bags. Two campaigns were run in response to the consultation, by the Marine Conservation Society and the World Wildlife Fund Scotland, submitting a total of 594 responses in support of the principle; a further 43 standard responses agreed or partially agreed with charging and 26 disagreed⁷.
24. A copy of the proposed Regulations was open to public representation and further comment for a 90 day period (12 September - 11 December 2013), in accordance with Section 97(3) of the Act. The Instrument was published on the Scottish Government website and generally publicised through a news release and through direct contact with stakeholders, including those who had submitted responses to the consultation. 30 responses to the draft Regulations were received, with 25 expressing support for the concept of the Instrument. The Scottish Parliament Law Reform and Delegated Powers Committee also made a report on the draft Instrument. The Scottish Government has considered all further representations and responded to them in the Accompanying Statement.
25. The proposed Instrument was notified on 1 October 2013 to the Technical Standards Committee of the EC, as required by the Technical Standards Directive (Directive 98/34/EC). No minimum standstill period was required under the Directive as this

⁵ Consultation paper: <http://www.scotland.gov.uk/Publications/2012/06/4215>

⁶ Strategic Environmental Assessment: <http://www.scotland.gov.uk/Resource/0041/00413697.pdf>

⁷ Consultation analysis: <http://www.scotland.gov.uk/Publications/2013/06/9713>

instrument was classed as a financial measure for the purposes of the Directive. No responses were received to this notification.

Financial Impacts

26. The previously published Partial Business Regulatory Impact Assessment⁸ provides an in-depth analysis of financial and regulatory impacts on retailers, consumers, the carrier bag supply industry in Scotland and the Scottish Government. It demonstrates that through a reduction in litter disamenity and the hidden cost of 'free' carrier bags there will be an overall positive impact. A full BRIA confirming these findings is being published alongside the Instrument.

Equality Impact

27. This Instrument does not have a disproportionate impact on any specific sector. On this basis it was not deemed necessary to produce an Equality Assessment.

**Scottish Government - Environmental Quality Division
April 2014**

⁸ Partial BRIA: <http://www.scotland.gov.uk/Publications/2013/07/7590>