

Draft Regulations laid before the Scottish Parliament under section 96(4) of the Climate Change (Scotland) Act 2009 for approval by resolution of the Scottish Parliament. These draft Regulations replace those laid on 19th February 2015 and are being issued free of charge to all known recipients of those draft Regulations.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

ENVIRONMENTAL PROTECTION

**The Single Use Carrier Bags Charge (Fixed Penalty
Notices and Amendment) (Scotland) Regulations 2015**

Made - - - -

Coming into force - - *1st April 2015*

The Scottish Ministers make these Regulations in exercise of the powers conferred by sections 88, 88A(3) and (4) and 96(2) of, and paragraphs 3 and 4 of schedule 1A to, the Climate Change (Scotland) Act 2009⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 96(4) of that Act⁽²⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Single Use Carrier Bags Charge (Fixed Penalty Notices and Amendment) (Scotland) Regulations 2015 and come into force on 1st April 2015.

(2) In these Regulations, “the Act” means the Climate Change (Scotland) Act 2009.

Fixed penalty notices: enforcement authority

2.—(1) The enforcement authority in relation to these Regulations is a local authority for the area of the authority.

(2) The enforcement authority has the following functions in relation to fixed penalty notices:—

- (a) authorising a person for the purposes of section 88A(1) of the Act; and
- (b) the functions of an enforcement authority under schedule 1A of the Act.

(1) 2009 asp 12. Section 88A and Schedule 1A were inserted by the Regulatory Reform (Scotland) Act 2014 (asp 3), section 43(2).
(2) Section 96 has been modified by the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), schedule 3, paragraph 5.

Time after which a fixed penalty notice may not be given

3. The time prescribed for the purposes of paragraph 3 of schedule 1A to the Act (period in which notice can be given) is 7 days after the day on which the offence took place.

Fixed penalty notices: prescribed amount and the discounted amount

4. For the purposes of paragraph 4 of schedule 1A to the Act (amount of penalty)—
- (a) the amount of the fixed penalty is £200; and
 - (b) the discounted amount is £100.

Amendment to the Single Use Carrier Bags Charge (Scotland) Regulations 2014

5.—(1) The Single Use Carrier Bags Charge (Scotland) Regulations 2014(3) are amended as follows.

(2) In paragraph 1 of the Schedule—

- (a) after sub-paragraph (g), omit “or”; and
- (b) at the end of sub-paragraph (h) insert—

“; or

(i) used to contain a purchase made in—

- (i) a prison;
- (ii) a hospital in which a person is detained, or otherwise in custody, under the Mental Health (Care and Treatment) (Scotland) Act 2003(4) or Part 6 or section 200 of the Criminal Procedure (Scotland) Act 1995(5); or
- (iii) secure accommodation,

where the bag is necessary for reasons of security, good order, discipline or safety”.

(3) In paragraph 2 of the Schedule, after the definition of “prescription only medicine”—

- (a) omit “and”; and
- (b) insert—

““prison” means any prison, young offenders institution or remand centre which is under the general superintendence of the Scottish Ministers under the Prisons (Scotland) Act 1989(6), and includes any contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994(7);

“secure accommodation” has the same meaning as in regulation 2 of the Secure Accommodation (Scotland) Regulations 2013(8); and”.

(3) S.S.I. 2014/161.

(4) 2003 asp 13.

(5) 1995 c.46.

(6) 1989 c.45.

(7) 1994 c.33. Section 106(4) was relevantly amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 115(3).

(8) S.S.I. 2013/205.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for fixed penalties in relation to offences under the Single Use Carrier Bags Charge (Scotland) Regulations 2014 (“the 2014 Regulations”) and makes an amendment to those Regulations.

Regulation 2 of the Regulations provides that local authorities will be the enforcement authorities and ensures that those authorities will have all the functions of enforcing authorities under section 88A of, and schedule 1A to, the Climate Change (Scotland) Act 2009 (“the 2009 Act”). Section 88A of the 2009 Act provides that a person authorised by an enforcement authority may give a fixed penalty notice if they have reason to believe that the person to whom the notice is given has committed an offence provided for in Regulations made under section 88. The 2014 Regulations were made under section 88 of the 2009 Act. Schedule 1A to the 2009 Act makes provision about the content and procedure of fixed penalty notices.

Regulation 3 prescribes the time after which a fixed penalty not be given as 7 days after the day on which the offence took place (see paragraph 3 of schedule 1A to the 2009 Act).

Regulation 4(a) of the Regulations prescribes that the amount of a fixed penalty notice given under section 88A of the 2009 Act is £200.

Regulation 4(b) provides that the discounted payment in relation to such fixed penalty notices is £100. By virtue of paragraph 2(3)(a) of schedule 1A to the 2009 Act a fixed penalty notice under section 88A must state that any liability to conviction of the offence is discharged if the person makes payment of the discounted amount before the discounted payment deadline. The discounted payment deadline is specified in paragraph 5(3) of schedule 1A to the 2009 Act.

Regulation 5 of the Regulations amends the 2014 Regulations to provide an exemption for certain premises where a person’s liberty may be restricted. These include prisons, young offenders institutions, hospitals where persons are detained under mental health legislation, and secure accommodation. The exemption only applies where the bag is necessary for reasons of security, good order, discipline or safety.