

POLICY NOTE

THE SINGLE USE CARRIER BAGS CHARGE (SCOTLAND) AMENDMENT REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by sections 88 and 96(2) of the Climate Change (Scotland) Act 2009 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Purpose of Instrument: This instrument temporarily removes the requirement for retailers and catering establishments to charge for single use carrier bags used for the delivery of groceries, collection of groceries ordered in advance by their customers, and the delivery or collection of takeaway food.

Policy Objectives

Currently, the Single Use Carrier Bags Charge (Scotland) Regulations 2014 stipulate that retailers are required to apply the minimum charge of £0.05 to any single use carrier bags (SUCBs), including those used for delivery or customer collection of pre-ordered groceries. Similarly, the charge should be applied for the delivery of food or drink from restaurants or takeaway facilities.

Customers should always have the option of not taking any SUCBs and thereby avoiding the charge. This has led to the widespread adoption of crates for both delivery and collection, which can require significant interaction between staff and customers and take time.

Retailers have identified that, due to the Covid-19 pandemic, being able to supply all delivery and collection services using SUCBs would support efforts to maintain the grocery supply chain in the following ways:

- It would speed up deliveries at a time when demand for them is increasing, allowing drivers to reach more customers.
- It would reduce contact between drivers and customers, reducing the risk of transmission, and allow deliveries to be made to those self-isolating.
- It would reduce risk of contamination from the crates being passed from driver to customer, or from drivers going into homes to offload crates.

It has also been noted that, for a variety of reasons, some people will rely on delivery of pre-prepared meals for hot food or to continue to receive food at all. Furthermore, a wide range of catering establishments are moving over to offering delivery services in order to maintain a service for customers. These types of delivery will be subject to similar issues identified above for the delivery or collection of groceries.

As noted above, a principle of the charge is that customers should have the option of not paying it by choosing a bagless option or to use their own bag. Therefore, a situation where a

charge is being levied without the customer having an option to avoid it does not match the aim of the Regulations.

This Instrument therefore amends the above-noted Regulations to introduce a new exemption from the requirement to charge for single use carrier bags when they are being used:

- for delivery of groceries that have been purchased through any form of ordering system.
- to facilitate collection of pre-ordered groceries.
- for delivery of pre-prepared food or drinks purchased for delivery or collection as part of a takeaway food service.

This exemption will be in force from the date the Regulations come into force, until 0001 hours on 3 October 2020. This time limit recognises that this is an emergency measure to support efforts to contain the outbreak of Covid-19 and to maintain the supply of food. The exemption will lapse automatically, without need for further amendments. A further Instrument will be required if Scottish Ministers deem it appropriate to extend the exemption further, or end the exemption before 3 October 2020.

These Regulations are being made under the affirmative process required by the Climate Change (Scotland) Act 2009. As they are not the first Regulations made under this power, the ‘super-affirmative’ procedure does not apply. Furthermore, due to the emergency nature of the provisions a shortened timeframe has been agreed with Parliament for the affirmative procedure.

Article 4.1a of Directive 94/62/EC on packaging and packaging waste (as amended by EU Directive 2015/720) imposes an obligation on Member States to reduce the number of single use carrier bags used in those Member States, either by ensuring they are not provided free of charge at the point of sale, or ensuring other measures are in place to limit the number of lightweight carrier bags used per person is below a threshold of 90 bags per person per year. The 2014 Regulations were made before these requirements came into force, but are now considered to be implementing Scotland’s obligations under that Directive and had reduced an annual Scottish consumption of an estimated 800,000,000 bags to an estimated 150,000,000 bags per year, well under the threshold of 90 bags per person. While the Scottish Ministers accept that the changes made by these Regulations are likely to increase the number of carrier bags used in Scotland for grocery and takeaway food purchases, we consider that Scotland will remain in compliance with its obligations under that Directive, as a charge for single use carrier bags will otherwise continue to apply as before. The additional exemptions being introduced are intended to last for a limited period only; and the number of carrier bags used per person in Scotland while the additional exemptions are in force is likely to remain below the threshold required by the Directive.

Consultation

Due to the nature of this Instrument in responding to an immediate concern, no formal consultation has been carried out on it. It does, however, amend a set of existing Regulations that underwent a normal consultation process and was, furthermore, subject to a ‘super affirmative’ scrutiny in Parliament when they were introduced in 2014. This Instrument introduces a new exemption to an existing set of exemptions, and does not fundamentally change the nature or intent of the amended Regulations.

It should be noted that this amendment is being introduced at the request of stakeholders in the grocery retail sector.

Impact Assessments

Due to the nature of this Instrument and the curtailed timeframe for its introduction to support response to an emergency, no impact assessments have been completed for it. Furthermore, this Instrument amends a set of Regulations which were subject to normal impact assessments when they were introduced in 2014.

Financial Effects

The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. The Single Use Carrier Bags Charge (Scotland) Regulations 2014 which this Instrument amends were subject to a BRIA which did identify some business impacts. However, this Instrument relaxes some of the provisions in the Regulations rather than introducing new restrictions.

Scottish Government
Environment and Forestry Directorate

26 March 2020