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WELSH STATUTORY INSTRUMENTS

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**2010 No. 2880**

**The Single Use Carrier Bags Charge (Wales) Regulations 2010**

**PART 1**

Introduction

**Title, commencement and application**

1.—(1) The title of these Regulations is the Single Use Carrier Bags Charge (Wales) Regulations 2010.

(2) These Regulations apply in relation to Wales and come into force on 1 October 2011.

**Interpretation**

2.—(1) In these Regulations—

“the charge” (“*y tâl*”) means the minimum charge specified in regulation 6;

“enforcement costs recovery notice” (“*hysbysiad adennill costau gorfodi*”) has the meaning given in regulation 16(1);

“functions” (“*swyddogaethau*”) includes powers and duties;

“late payment penalty” (“*cosb am dalu'n hwyr*”) 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;

“non-compliance penalty notice” (“*hysbysiad o gosb am beidio â chydymffurfio*”) has the meaning given in paragraph 5(4) of Schedule 4;

“record” (“*cofnod*”) means the information specified in regulation 8(3);

“reporting year” (“*blwyddyn adrodd*”) means—

(a) the period starting on the date on which these Regulations come into force and ending on 6 April 2012;

(b) thereafter, the period commencing 7 April in one year and ending on 6 April the following year; the first such period to commence 7 April 2012;

“specified sum” (“*swm penodedig*”) has the meaning given in paragraph 4(2) of Schedule 2.

(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) to 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) to a final notice in relation to a discretionary requirement, are references to a final notice served under paragraph 5(6) of Schedule 3;
  - (e) to 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 attracting the 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” (“*bag siopa untro*”) 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 of the bag’s dimensions are greater than 404 millimetres (“mm”);
  - (b) at least one of the bag’s dimensions is greater than 439 mm;
  - (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—
  - (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” (“*dimensiynau*”) means width or height;
  - “plastic bag” (“*bag plastig*”) means a bag which is made wholly or mainly of plastic.

### **Meaning of “seller”**

4.—(1) In these Regulations “seller” (“*gwerthwr*”) means a person who in the course of trade or business—

- (a) sells goods from a place in Wales;
- (b) sells goods which are delivered to persons in Wales.

But this is subject to paragraph (2).

(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) A local authority is to administer the provision made by these Regulations and accordingly, is the administrator for its area<sup>(1)</sup>.

(2) In paragraph (1) the reference to a local authority is a reference to a county or county borough council.

## **PART 2**

### **The Charge**

#### **Requirement to charge**

6. A seller must charge a minimum of 5 pence for every single use carrier bag supplied new—

- (a) at the place in Wales where the goods are sold, for the purpose of enabling the goods to be taken away;
- (b) for the purpose of enabling the goods to be delivered to persons in Wales.

But this is subject to regulation 7.

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

7. Regulation 6 does not apply in relation to the supply of single use carrier bags of the kinds described in Schedule 1 and that Schedule has effect accordingly.

## **PART 3**

### **Records and Publication**

#### **Record-keeping**

8.—(1) A seller must keep an accurate record of the information specified in paragraph (3) for every reporting year.

(2) Records must be retained by a seller for a period of three years beginning on 31 May in the reporting year following that to which a record relates.

(3) The information is—

- (a) the number of single use carrier bags supplied by the seller which attract the charge;
- (b) the gross amount received by the seller by way of charges for single use carrier bags which attract the charge;
- (c) the gross proceeds of the charge<sup>(2)</sup>;
- (d) the net proceeds of the charge<sup>(3)</sup>;
- (e) a breakdown of how the amount which represents the difference between the gross and net proceeds of the charge has been arrived at, including (in particular)—
  - (i) the apportionment between any attributable VAT and reasonable costs;

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(1) For the definition of “administrator”, see paragraph 6(1) and (4) of Schedule 6 to the Climate Change Act 2008; and for the scope of administrators' powers under these Regulations, see regulation 19.

(2) For the meaning of “gross proceeds of the charge” see paragraph 7(4) of Schedule 6 to the Climate Change Act 2008.

(3) For the meaning of “net proceeds of the charge” see paragraph 7(4) of Schedule 6 to that Act.

- (ii) the apportionment between different heads of reasonable costs;
  - (f) the uses to which the net proceeds of the charge have been put.
- (4) The following are the amounts specified for the purposes of the definition of “net proceeds of the charge” in paragraph 7(4) of Schedule 6 to the Climate Change Act 2008(4)—
- (a) the amount of any attributable VAT;
  - (b) the amount of any reasonable costs.
- (5) In this regulation—
- “attributable VAT” (“*TAW briodoladwy*”) means VAT on the supply by the seller of single use carrier bags which attract the charge;
- “reasonable costs” (“*costau rhesymol*”) means—
- (a) costs reasonably incurred by a seller to enable the seller to comply with these Regulations;
  - (b) costs reasonably incurred by a seller to enable the seller to communicate information about the charge to customers;
- “VAT” (“*TAW*”) has the meaning given in section 96 of the Value Added Tax Act 1994(5).

#### **Availability of records**

- 9.—(1) This regulation applies where a person mentioned in paragraph (4) 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 must provide a copy of that record to the person who requested it within 28 days of receiving the written request.
- (3) The retention period is the three year period for which any particular record must be retained under regulation 8(2).
- (4) The persons are—
- (a) the Welsh Ministers;
  - (b) a member of the public.

#### **Publication of records**

- 10.—(1) A seller must publish the record for a reporting year if the conditions in paragraph (2) are met by the seller in relation to the reporting year in question.
- (2) The conditions are—
- (a) that the seller is a taxable person for the purposes of the Value Added Tax Act 1994;
  - (b) that the seller supplies 1000 or more single use carrier bags which attract the charge.
- (3) A seller must publish the record on or before 31 May in the reporting year following that to which the record relates.
- (4) The record must remain published until 31 May in the following reporting year.
- (5) Publication must be by way of—
- (a) the seller’s internet site; or

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(4) 2008 c. 27.

(5) 1994 c. 23; there are amendments to section 96 which are not relevant to these Regulations.

- (b) the display of a notice containing the record in all of the seller’s premises in Wales to which customers have access.
- (6) If a seller publishes the record by way of its internet site—
  - (a) the record must be displayed prominently on the seller’s home page; or
  - (b) if the record is to be displayed elsewhere on the seller’s internet site, a link to the record must be displayed prominently on the seller’s home page.
- (7) If a seller publishes the record in the way described in paragraph (5)(b), the notice must be displayed in a prominent position so that it is clearly visible to, and readable by, customers.

## **PART 4**

### **Breaches**

#### **Breaches**

**11.**—(1) A seller breaches 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—
  - (a) the requirement to charge in accordance with regulation 6;
  - (b) the requirement to keep records in accordance with regulation 8;
  - (c) the requirement to retain records in accordance with regulation 8;
  - (d) the requirement to supply records in accordance with regulation 9;
  - (e) the requirement to publish records in accordance with regulation 10.
- (3) A seller breaches these Regulations if, without reasonable cause, a seller—
  - (a) gives false or misleading information to an administrator;
  - (b) otherwise obstructs or fails to assist an 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(6);
  - (b) Schedule 3, which makes provision for discretionary requirements(7).

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(6) For the meaning of “fixed monetary penalty” see paragraph 10(3) of Schedule 6 to the Climate Change Act 2008.

(7) For the meaning of “discretionary requirement” see paragraph 12(3) of Schedule 6 to that Act.

### Combination of penalties

13.—(1) An administrator may not serve a notice of intent in relation to a fixed monetary penalty on a seller if a discretionary requirement has been imposed on that seller in relation to the same breach.

(2) An administrator may 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 that 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) An administrator has the powers of enforcement in this regulation.

(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 an administrator reasonably believes that there has been a failure to comply with a requirement of these Regulations—
  - (i) to question a seller or officers or employees of a seller;
  - (ii) to require the production of documents or the provision of information.

(3) In this regulation “domestic premises” (“*mangre ddomestig*”) means premises used wholly or mainly as a private dwelling.

(4) An administrator seeking to exercise a power under paragraph (2)(b) or (c) must 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 which the administrator seeks to exercise the power concerned.

(5) Nothing in paragraph (2) compels the production of any document of which—

- (a) in England and Wales or Northern Ireland, that 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; or
- (b) in Scotland, that person would on grounds of confidentiality of communications be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

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

15. Schedule 4 makes provision for the imposition of monetary penalties in cases where a seller fails to comply with a non-monetary discretionary requirement<sup>(8)</sup> and that Schedule has effect accordingly.

### **Enforcement costs recovery**

16.—(1) An administrator may serve a notice (“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 the imposition of the discretionary requirement up to the time of its imposition (“enforcement costs”).

(2) Enforcement costs include, in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

(3) An enforcement costs recovery notice must specify the amount required to be paid and must include information as to—

- (a) how payment may be made;
- (b) the date by which payment must be made;
- (c) the right of appeal; and
- (d) the consequences of failure to make payment by the date it is due.

(4) The date referred to in paragraph (3)(b) must be at least 28 days later than the date on which the enforcement costs recovery notice is served on the seller.

(5) Enforcement costs must be paid by the seller by the date specified in the enforcement costs recovery notice.

(6) But paragraph (5) is subject to the remaining provisions of this regulation and to regulation 21(4) (suspension of requirements and notices pending appeal).

(7) If a decision of an administrator under this regulation is the subject of an appeal, then to the extent that that decision is upheld, the seller must pay the enforcement costs within 28 days of the day on which the appeal is determined.

(8) An administrator must provide a detailed breakdown of the costs specified in an enforcement costs recovery notice if requested to do so by the seller on whom the 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—

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

### **Recovery of payments**

17. An administrator may recover any fixed monetary penalty, variable monetary penalty, non-compliance penalty, enforcement costs or late payment penalty—

- (a) as a civil debt;
- (b) on the order of a court, as if payable under a court order.

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<sup>(8)</sup> For the meaning of “non-monetary discretionary requirement” see paragraph 12(3)(b) of Schedule 6 to the Climate Change Act 2008.

**Publicity for imposition of civil sanctions**

**18.**—(1) An administrator may give a publicity notice to a seller on whom a civil sanction has been imposed<sup>(9)</sup>.

(2) The following is the information specified for the purposes of paragraph 19(2)(b) of Schedule 6 to the Climate Change Act 2008—

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

(3) A publicity notice must—

- (a) specify the manner of publication required;
- (b) specify the time for compliance with the notice;
- (c) require the seller to provide evidence of compliance with the notice within a time specified in the 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 by the notice; and
- (b) recover the costs of doing so from the seller in question.

(5) Where an administrator publicises information under paragraph (4)(a) it must do so in a way it considers most likely to bring the information to the attention of members of the public in its area.

## **PART 7**

### **Administration**

**Scope of administrators' powers**

**19.** The functions conferred on an administrator by these Regulations are exercisable by an administrator in, and in relation to, its area.

**Withdrawing or amending a notice**

**20.**—(1) An 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 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 the 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;

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(9) For the meaning of “publicity notice” see paragraph 19(2) of Schedule 6 to the Climate Change Act 2008.

- (f) withdraw an enforcement costs recovery notice or reduce the amount specified in the notice.
- (2) An administrator must consult the seller in question before withdrawing or amending a notice under paragraph (1).
- (3) But paragraph (2) does not apply in any case where it is impracticable to consult the seller concerned.

## **Appeals**

- 21.**—(1) An appeal under these Regulations is to the First-tier Tribunal<sup>(10)</sup> (“the Tribunal”).
- (2) In any appeal where the commission of a breach is an issue requiring determination, the administrator must prove that breach on the balance of probabilities.
  - (3) In any other case the Tribunal must 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**

- 22.**—(1) An administrator must publish guidance about its use of civil sanctions under these Regulations.
- (2) The guidance must contain the relevant information (see paragraphs (5) and (6)).
  - (3) An administrator must revise the guidance where appropriate.
  - (4) An administrator must 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 relevant information referred to in paragraph (2) is information as to—
    - (a) the circumstances in which the penalty is likely to be imposed;
    - (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 relevant information referred to in paragraph (2) is information as to—
    - (a) the circumstances in which the requirement is likely to be imposed;

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<sup>(10)</sup> 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 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**

**23.**—(1) An administrator must 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 must 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) An administrator must revise the guidance where appropriate.

(4) An administrator must have regard to the guidance or revised guidance in exercising its functions.

### **Consultation on guidance**

**24.** Before publishing any guidance or revised guidance under these Regulations an administrator must consult—

- (a) the Welsh Ministers;
- (b) the Local Better Regulation Office;
- (c) the Confederation of British Industry;
- (d) the Federation of Small Businesses;
- (e) the British Retail Consortium.

### **Publication of enforcement action**

**25.**—(1) An administrator must 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.

(3) An administrator must not publish a report in any case where the Welsh Ministers notify the administrator in writing that it would be inappropriate to do so.

30 November 2010

*Jane Davidson*  
Minister for Environment, Sustainability and  
Housing, one of the Welsh Ministers