

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Other provisions

Charges for single use carrier bags

Section 77 and Schedule 6: Charges for single use carrier bags

366. This section introduces Schedule 6 and allows for the making of regulations about charges for single-use carrier bags.
367. *Subsection (3)* defines who is the relevant national authority for the purposes of making regulations under the Schedule; this is the Secretary of State in relation to England, the Welsh Ministers in relation to Wales and the Department of the Environment in Northern Ireland in relation to Northern Ireland.
368. *Subsection (4)* sets out the circumstances in which the affirmative procedure applies to the making of regulations (that is, where the first set of regulations is made by the relevant national authority under the Schedule, where the regulations contain provisions imposing or providing for the imposition of new civil sanctions, where the regulations increase the maximum amount of a monetary penalty or change the basis on which it is to be determined and where the regulations amend or repeal primary legislation). Otherwise, regulations under the Schedule are subject to the negative resolution procedure.

Schedule 6: Charges for single use carrier bags

369. *Part 1 of Schedule 6* contains enabling powers to make regulations about charges for single use carrier bags.
370. *Paragraph 1* provides a general power for the relevant national authority (defined in section 77(3)) to make regulations about charging by sellers of goods for the supply of single use carrier bags. Powers to define what is meant by “sellers” and by “single use carrier bags” are set out in paragraphs 3 and 5.
371. *Paragraph 2* provides that the regulations may require sellers of goods to charge for single use carrier bags supplied either at the place where the goods are sold, or for the purpose of delivering goods.
372. *Paragraph 3* provides that “sellers” of goods are to be defined in the regulations, including by reference to one or more of the following: a person’s involvement in selling goods or a person’s interest in the goods or in the premises at or from which the goods are sold. It provides that the regulations may apply to a range of different sellers, including all sellers of goods, sellers named in the regulations and sellers identified by reference to factors specified in the regulations. The factors that may be specified in the regulations may include the place from which the goods are sold, the type and value of goods supplied and the seller’s turnover.

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373. *Paragraph 4* provides that the regulations may specify the minimum amount that sellers must charge for each single use bag or provide for that amount to be determined in accordance with the regulations.
374. *Paragraph 5* provides that the definition of a 'single-use carrier bag' is to be included in the regulations, which may be by reference to technical specifications such as a bag's size, thickness or composition and/or its intended use.
375. *Paragraph 6* contains powers to appoint an administrator to administer the provisions made by the regulations. It also provides that the regulations may confer powers and duties on the administrator to enable it to carry out its functions.
376. *Paragraph 7* provides that the regulations may require records to be kept in relation to charges made for single use carrier bags, including records relating to the amounts received by the seller by way of charges and the uses to which the proceeds of the charge are put. The regulations may also require that this information is published and is made available to the relevant national authority, an administrator or members of the public upon request.
377. *Paragraph 8* provides that the regulations may confer powers and duties on an administrator in order to enforce the regulations and in particular, to enable the administrator to obtain relevant documents and information where the administrator reasonably believes that there has been a breach of the regulations.
378. *Part 2 of Schedule 6* sets out the provision that may or must be made in relation to civil sanctions for breaches of other aspects of the regulations made under the Schedule.
379. *Paragraph 9* contains a power for the relevant national authority to include in regulations civil sanctions to deal with breaches of requirements in the regulations. Civil sanctions may take the form of fixed monetary penalties (defined in paragraph 10) and discretionary requirements (defined in paragraph 12).
380. *Paragraph 10* provides that the regulations may grant an administrator a power to issue fixed penalty notices not exceeding £5,000 to any person who breaches the regulations. The notices may only be issued in cases where the administrator is satisfied on the balance of probabilities that a breach of the regulations has occurred.
381. *Paragraph 11* specifies certain minimum requirements that regulations providing for fixed monetary penalties must include. In particular, before the administrator can impose a penalty it must first issue a 'notice of intent'. The person subject to this notice will then have the opportunity to make written representations and objections against the penalty. Alternatively, the person could choose to discharge liability for the penalty by paying a discharge payment of a specified amount which must be no more than the penalty. Any representations or discharge payment must be made within 28 days of receipt of the notice, or such shorter period as prescribed by the notice of intent. If a discharge payment is made, no further action will be taken against that person.
382. After this period, if the administrator chooses to impose the penalty, it must issue a 'final notice' setting out certain specified information such as the grounds for imposing the penalty and how payment may be made. Paragraph 11 also sets out the provision that may be made by regulations as to the right of appeal against the decision to impose a fixed penalty notice and the minimum grounds on which an appeal may be brought.
383. *Paragraph 12* provides that the regulations may grant an administrator the power to impose, by notice, one or more requirements ("discretionary requirements") on a person. These requirements are:
- The payment of a monetary penalty of an amount that the administrator will determine ("variable monetary penalty");

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- 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”).
384. The administrator must be satisfied on the balance of probabilities that a person has breached the regulations before imposing such a requirement. 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.
385. *Paragraph 13* specifies certain minimum requirements that regulations providing for discretionary requirements must include. In particular, the provisions must require the administrator to serve a notice on the person of its intention to impose discretionary requirements on that person and the time within which the recipient can make representations and objections (which cannot be less than 28 days from receipt of the notice) against the proposed sanction.
386. After the end of the time for making representations and objections, the administrator can then decide whether to impose, withdraw or vary the discretionary requirement or replace it with a different requirement.
387. Where the administrator decides to impose a discretionary requirement, this must be done by way of a notice. The final notice must contain the information set out in sub-paragraph (4), including the person's right of appeal against the sanction.
388. Sub-paragraph (5) sets out the minimum grounds for appeal against the discretionary requirement that must be available.
389. By virtue of *paragraph 14*, the regulations providing for discretionary requirements may also allow an administrator to issue a monetary penalty by notice for the failure to comply with a non-monetary discretionary requirement (a "non-compliance penalty"). Non-compliance penalties are not available for failure to pay a variable monetary penalty. Failure to pay any monetary penalty can lead to the administrator recovering the amount due through civil debt procedures or as if payable under court order (see paragraph 16).
390. *Paragraph 15* provides that an administrator cannot be granted power to impose both a fixed monetary penalty and a discretionary requirement in relation to the same breach.
391. *Paragraph 16* provides that regulations providing for civil sanctions may make provision for discounts for early payment of a monetary penalty and for the payment of interest or a financial penalty for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed. It provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It also allows the regulations to create a more streamlined process of recovery by treating the penalty as if it were payable under a court order.
392. *Paragraph 17* provides that regulations may confer power on the administrator to recover its costs, by notice, from a person on whom a discretionary requirement is imposed. The costs are those incurred by the administrator in relation to the imposition of the sanction, up to the point of its imposition, and include investigation costs, administration costs and the costs of obtaining expert (including legal) advice. The person is not required to pay any costs he can show have been unnecessarily incurred. It requires that, where a costs notice is served, the person subject to the notice has a right of appeal against the decision of the administrator regarding payment of costs.
393. *Paragraph 18* contains certain procedural provisions for appeals from civil penalties. In particular, it provides that appeals must be heard by the First-tier Tribunal (established under the [Tribunals, Courts and Enforcement Act 2007 \(c.15\)](#)) or another tribunal created under an enactment.

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394. *Paragraph 19* 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.
395. *Paragraph 20* provides that the regulations may make provision for officers of a body corporate and partners of a partnership to be liable to civil sanctions.
396. *Paragraph 21* 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 and on rights of appeal.
397. *Paragraph 22* provides that regulations providing for civil sanctions must secure the publication of reports by the administrator on the use of civil sanctions.
398. *Paragraph 23* provides that civil sanction powers may not be conferred on an administrator in regulations unless the relevant national authority is satisfied that the administrator will comply with better regulation requirements.
399. *Paragraph 24* requires the relevant national authority to review the operation of the civil sanction provisions set out in regulations three years after they come into force and to publish the results of the review.
400. *Paragraph 25* provides the relevant national authority with the power to suspend an administrator's powers to impose civil penalties in certain circumstances by issuing a direction to the administrator. Such directions may be revoked by the relevant national authority. Before issuing a direction, the relevant national authority must consult the administrator and such other persons as it considers appropriate. Any directions issued must be laid before Parliament and must be published.
401. *Paragraph 26* provides for money received from penalties to go to the relevant national authority's Consolidated Fund.
402. *Part 3 of Schedule 6* makes further provision about the procedures to be followed when making regulations about charges for single use carrier bags.
403. *Paragraph 27* set out the procedure to be followed where regulations are made by a single national authority. Sub-paragraphs (2) and (3) set out the affirmative resolution procedure applying in Parliament and the devolved legislatures. Sub-paragraphs (4) to (6) set out the negative resolution procedure applying in Parliament and the devolved legislatures. Sub-paragraph (7) allows any regulations that could be made using the negative resolution procedure to be made using the affirmative procedure; this will allow, say, amendments which would otherwise have to be made using different procedures to be made in the same instrument.
404. *Paragraph 28* sets out the procedure where regulations are made jointly between the Secretary of State and/or the Welsh Ministers and/or the Department of the Environment in Northern Ireland. The affirmative and negative procedures apply as they do in paragraph 27. If either House of Parliament or the relevant devolved legislature does not approve the instrument, then the instrument cannot be made.
405. *Paragraph 29* provides that where regulations made under the Schedule would otherwise be treated as a hybrid instrument under the standing orders of either House of Parliament, the instrument is to proceed as if it were not a hybrid instrument.