

Explanatory Memorandum to the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020.

Hannah Blythyn
Deputy Minister for Housing and Local Government
8 April 2020

1. Description

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 so that the requirement to charge for single use carrier bags (SUCBs) under those Regulations, does not apply to those bags used solely to carry goods purchased for delivery as part of a grocery delivery service, or for collection as part of a service that provides for collection of groceries.

This exemption from the SUCB charge is to be temporary, and will cease to have effect at the end of a period of three months from the coming into force of these Regulations. The three-month period may only be extended by making further subordinate legislation

2. Matters of special interest to the Legislation, Justice and Constitution Committee

It is considered that in the current public health crisis, the measure given effect by these Regulations, should be put in place as a matter of urgency. Consequently, they come into force on the day after the day on which they are made, and do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

3. Legislative background

These Regulations are made under powers in sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008 (“the 2008 Act”) and make amendments to the Single Use Carrier Bags Charge (Wales) Regulations 2010 (S.I. 2010/2880 (W. 238)) (“the 2010 Regulations”). By virtue of the operation of section 77(4) and (5) of the 2008 Act, they are subject to negative resolution procedure.

4. Purpose & intended effect of the legislation

Background

The Single Use Carrier Bags Charge (Wales) Regulations 2010, subject to certain exemptions, require sellers of goods who supply SUCBs for the purpose of allowing those goods to be carried away or delivered, to make a charge for each such bag supplied. All types of SUCBs are, potentially, subject to the

charge, including those made wholly or partly of any type of plastic, paper or any type of plant based material or natural starch. However, Schedule 1 of the 2010 Regulations, exempts certain types of SUCBs described in the Schedule, from the charge.

These Regulations amend Schedule 1 of the 2010 Regulations, in order to exempt bags used solely for delivery or collection of groceries, from the charge. The exemption is to be temporary, for a period of three-months from the date these regulations come into force.

Since the introduction of the SUCB charge, a large number of supermarkets have either imposed a flat rate charge for any bags used with each home grocery delivery or have phased out bagged deliveries completely, favouring the use of a “bagless” option (this is where individual items are delivered in a crate and then unloaded by the customer in their property).

During the current Covid-19 outbreak, concerns have been raised over the risk posed by “bagless” deliveries, with the potential for the virus to be transmitted between delivery drivers and householders. To help reduce this risk, retailers have now removed the “bagless” option from their service and instead are leaving, where possible, deliveries in bags on the doorstep to avoid contact.

However, retailers were concerned that by adopting this approach they would effectively be “forcing” all customers to pay for a bag they may have not usually selected and, therefore, took the decision to cover the carrier bag charge themselves. This presented a legal concern, as they were not charging customers for bags as required under our 2010 Regulations.

To address these issues, the Welsh Government, in discussion with the UK Government, other Devolved Administrations and representatives from the Welsh retail sector, agreed to introduce a temporary exemption from the charge, for SUCBs used solely to carry goods purchased for delivery as part of a grocery delivery service, or for collection as part of a service that provides for collection of groceries. The purpose of the temporary exemption is, therefore, to increase efficiency of delivery systems and to mitigate as far as possible, the risk of transmission of the COVID-19 virus, through delivery and collection systems, by the use of single use carrier bags to carry goods (instead of crates). It also reduces the risk of a legal challenge being made against retailers who were not charging their customers for bags.

5. Consultation

In the circumstances, the Welsh Government was unable to carry out a formal Consultation on these changes. However, discussions have been held with the UK Government and other Devolved Administrations and with key representatives of the Welsh retail sector who were supportive of the change.

6. Regulatory Impact Assessment

The emergency nature of the instrument means it has not been possible to prepare a Business and Regulatory Impact Assessment. The needs of business and, in particular, the retail sector have, however, closely informed the preparation of these Regulations.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language.

Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people.

Privacy

There are no impact implications on privacy matters.

Justice Impact Assessment (JIA)

Whilst no formal JIA has been undertaken, no impacts have been identified when considering these Regulations.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No