

CARRIER BAGS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of the Environment in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. As part of the 2011-15 Budget settlement the Northern Ireland Executive commissioned the Minister of the Environment to introduce a charge on carrier bags.
4. The Department of the Environment (“the Department”) has taken a phased approach to the implementation of charging. The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013¹ (“the 2013 Regulations”) which were made under the Climate Change Act 2008² (“the 2008 Act”) provide for the first phase of charging arrangements – the introduction of a minimum charge on single use carrier bags. With effect from 8 April 2013, sellers in Northern Ireland must, when applicable, charge customers at least 5 pence for each new single use carrier bag. The net proceeds of this minimum charge must be paid to the Department and will be used to help fund environmental programmes and activities.
5. The aim of the minimum charge is to achieve a significant reduction in the consumption of single use carrier bags in Northern Ireland.

¹ S.R. 2013 No. 4

² 2008 c.27 as amended by the Single Use Carrier Bags Act (Northern Ireland) 2011 (2011 c.26)

6. This Bill provides for the second phase of charging arrangements. It amends the 2013 Regulations to apply the charging provision to a wider variety of carrier bags – specifically the cheaper versions of reusable bags. These bags are defined by reference to their price. This approach is similar to the plastic bag tax in Ireland, where relatively more expensive plastic bags (currently 70 cents or more) are exempted from the charge. The Bill also specifies the date on which the new charging arrangements will commence.
7. The extension of the charging arrangements is due to the fact that a range of low cost reusable carrier bags is readily available. Faced with a choice between a single use carrier bag at 5 pence or a reusable bag at a similar price, it is considered likely that consumers would opt for the reusable bag, even if it costs marginally more. This “substitution effect” could in turn mean that many consumers will use and discard these bags prematurely. This would have significant adverse environmental impacts, as such bags are typically made of heavier gauge materials than single use bags.
8. The Bill also makes various other amendments to the 2008 Act which:
 - extend the Department’s ability to make specific provision for certain sellers;
 - provide for changes to record keeping and payment arrangements - including a requirement to pay interest to the Department in the event of late payment of the proceeds of the minimum charge; and
 - strengthen the Department’s enforcement powers.
9. The Bill also requires the Department to carry out a review of the carrier bag charging arrangements and provides specifically for an ad hoc review of exemptions to the charge. In addition, the Department must prepare a report on biodegradable carrier bags which must consider the need for any exemptions from the carrier bag on grounds of biodegradability – and how any such exemptions should be defined and implemented.

CONSULTATION

10. A consultation exercise carried out between 20 July and 12 October 2011 sought views on the main policy proposals for the implementation of carrier bag charging. A subsequent consultation between 16 April and 9 July 2012 sought views on the Department’s specific legislative proposals for a minimum charge on single use carrier bags.

11. Both consultation papers also outlined that the Department was considering extending charging arrangements to certain types of reusable bags.
12. The majority of those who responded on this specific issue expressed the perception that it was primarily a means of generating additional revenue. In response the Department outlined the environmental rationale for such an extension.

OPTIONS CONSIDERED

13. In the course of policy development, the Department assessed the viability of alternative approaches. These included continued reliance on the voluntary efforts of retailers to reduce carrier bag circulation and a charging regime that was confined to single use carrier bags. These options were assessed against the objective of achieving significant reductions in bag circulation. The proposals contained in the Bill were identified as the preferred option.

OVERVIEW

14. The Bill has 12 clauses.

COMMENTARY ON CLAUSES

Comments are not given where the wording is self explanatory.

Clause 1 – Extension of the 2008 Act to carrier bags

Clause 1 amends the 2008 Act to make provision for a minimum charge on carrier bags – that is, it removes the restriction to single use bags.

Clause 2 – Regulations under Schedule 6 to the 2008 Act

Clause 2 amends section 77(4) of the 2008 Act to require that any regulations made by the Department which increase the amount of the minimum charge for a carrier bag are subject to the Northern Ireland Assembly's affirmative resolution procedure.

It also applies section 17(5) of the Interpretation Act (Northern Ireland) 1954³ to a power to make regulations under Schedule 6 to the 2008 Act. This gives the Department greater discretion as to how it applies the carrier bag charging requirements. It would, for example, allow the Department, through regulations,

³ 1954 c.33

to make different provision for different cases, or to provide for exclusions from the requirements of the regulations.

Clause 3 – Requirement to charge

Clause 3 amends paragraph 2 of Schedule 6 to the 2008 Act.

The amendment allows regulations to require that the minimum charge be applied whether or not the bags that are supplied to a customer are actually used to carry away (or to deliver) goods purchased from the place where the bag is supplied at the time the bag is supplied. It is sufficient that the bags are designed for that purpose.

Clause 4 – Sellers

Clause 4 amends paragraph 3 of Schedule 6 to the 2008 Act.

Paragraph 3 provides for a “seller” of goods to be defined in regulations. It also provides that the Department may use the regulations to apply the charge to a range of different sellers. These include all sellers of goods, sellers named in the regulations and sellers identified by reference to four specified factors - the place from which the goods are supplied, the type and value of goods supplied and the seller’s turnover.

The purpose of the amendment is to add a further specified factor – the number of a seller’s full-time equivalent employees. The amendment also sets out how the number of full-time equivalent employees is to be calculated.

Clause 5 - Payment of the charge

Clause 5 amends paragraph 4A of Schedule 6 to the 2008 Act.

Paragraph 4A provides that regulations may require a seller of carrier bags to pay the gross proceeds or the net proceeds of the charge to the Department. The amendment allows the Department to specify how, and at what intervals, the amount due is to be paid. It also gives the Department the power to impose interest payments, in the event of late payment.

Clause 6 – Carrier bags defined by price

Clause 6 amends paragraph 5 of Schedule 6 to the 2008 Act.

Paragraph 5 provides that carrier bags which are to be included in regulations may be defined by reference to technical specifications such as a bag’s size, thickness, construction or composition and/or its intended use. The amendment also allows such bags to be defined by reference to their price.

Clause 7 – Records and enforcement

Clause 7 amends paragraphs 7 and 8 of Schedule 6 to the 2008 Act.

Paragraph 7 gives the Department power, exercisable through regulations, to require sellers to keep and make available certain records and information in relation to the minimum charge. This amendment provides that such records and information may include details of the payments of the gross and net proceeds of the minimum charge to the Department.

Paragraph 8 gives the Department powers to enforce regulations made under Schedule 6 to the 2008 Act. In particular – where there is reason to believe that a seller has failed to comply – the Department may question a seller or require a seller to provide documents and information.

Clause 7 provides for routine monitoring activity by the Department by removing the requirement of reasonable belief of failure to comply. It also provides the Department with additional enforcement powers, exercisable through regulations, to permit the inspection, retention and copying of documents.

Clause 8 – Civil sanctions

Clause 8 repeals paragraph 24(6) of Schedule 6 to the 2008 Act.

Paragraph 24 requires the Department to carry out a review of the operation of civil sanctions in relation to a breach of the carrier bag charging regulations. The repeal removes the requirement to lay a copy of any such review before the Assembly.

Clause 9 – Amendments of the 2013 Regulations

Clause 9 amends the 2013 Regulations to:

- extend their scope from single use carrier bags to “carrier bags”; and
- amend the existing exemptions provision to add 2 additional exemptions for bags with a retail price of 20 pence or more and bags that are issued as free replacements for ‘bags for life’.

The clause also specifies that this extension of charging will commence on 19 January 2015.

Clause 10 – Report on biodegradable carrier bags

Clause 10 requires the Department to prepare a report on biodegradable carrier bags within 18 months of the Bill receiving Royal Assent.

The report must consider whether any biodegradable bags should be exempt from the charge, the criteria for any such exemptions and how such exemptions would be implemented.

The report must be published and must be laid before the Assembly.

Clause 11 - Review

Clause 11 requires the Department to prepare a report on the operation of the carrier bag charging provisions. The report, which must be prepared within 3 years of the section coming into operation, must include an assessment of the effectiveness of the legislation and whether any amendments should be made. The report must be published and must be laid before the Assembly.

Clause 11 also provides for an ‘ad hoc’ review of exemptions to the requirement to charge for bags.

Clause 12 – Short title

Clause 12 provides a short title for the Bill.

FINANCIAL EFFECTS OF THE BILL

15. While there will be a cost to the Department of administering the charging arrangements, it is anticipated that this will be offset by revenue generated from the proceeds of the minimum charge.

HUMAN RIGHTS ISSUES

16. The Department considers the provisions of the Bill to be compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

17. Under the terms of section 75 of the Northern Ireland Act 1998⁴, the Department carried out screening for equality impact and is satisfied that the

⁴ 1998 c.47

provisions in the Bill will not lead to discriminatory or negative differential impact on any of the section 75 groups.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

18. As part of the consultation on the 2013 Regulations, a regulatory impact assessment was conducted which considered a range of options for intervention on carrier bags, including the “do nothing” option. These options were assessed against the objectives of achieving significant reductions in carrier bag consumption and raising revenue for environmental projects.
19. A 10 pence minimum charge on carrier bags payable by consumers (discounted to 5 pence and confined to single use bags in the first year) was initially identified as the preferred option. It was estimated that this would result in a reduction of over 80% in the number of single use carrier bags consumed in Northern Ireland and a substantial corresponding environmental benefit in terms of reduced air and water pollution and reduced CO₂ emissions as well as lower clean up and disposal costs. In addition to this substantial environmental benefit, it was estimated that a 10p levy - on a wider range of carrier bags - would raise additional revenue for environmental programmes and activities.
20. However, a review of the initial returns from retailers revealed that the 5 pence levy on single use bags was already delivering significant reductions. On this basis, the Minister decided to retain the levy at 5 pence rather than increase it to 10 pence in Phase 2 (from April 2014) as originally planned.

LEGISLATIVE COMPETENCE

21. The Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Carrier Bags Bill would be within the legislative competence of the Northern Ireland Assembly.”

RECOMMENDATION

22. The Minister of Finance and Personnel, Mr Simon Hamilton, has made the following recommendation as required under section 63 of the Northern Ireland Act 1998:

“As Minister of Finance and Personnel, I recommend the Carrier Bags Bill to the Assembly as is required by section 63 of the Northern Ireland Act 1998.”