

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA37

Constitutional and Legislative Affairs Committee Draft Report

Title: The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010. They are made under the Climate Change Act 2008 and come into force on 1 October 2011.

The 2010 Regulations require sellers to charge a minimum price for single use carrier bags. They impose record keeping and reporting requirements on sellers, appoint local authorities to administer the charging scheme and confer civil sanctioning powers on local authorities to enforce the Regulations.

The principal amendments made to the 2010 Regulations by these Regulations are summarised in the Explanatory Note that introduces the Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Background

The 2010 Regulations were considered by the third Assembly's Constitutional Affairs Committee on 17 November 2010. The Committee agreed to report on the Merits of the Regulations and a copy of that report is attached as an Annex. The Report, which was not unduly critical of the regulations, drew attention to the following points among others:

- that the regulations were the first time in the UK that powers under the Climate Change Act 2008 were being used to require charges for carrier bags and the first time Civil Sanction Powers were being granted to local authorities in Wales;

DRAFT SI REPORT

- that the powers under which the regulations were being made were granted directly to Welsh Ministers and had not previously been scrutinised in the Assembly; and
- that there were a range of detailed concerns about how the regulations would work in practice and how they would impact on, in particular, small retailers.

Procedure

The original Regulations were made under the affirmative procedure and were debated and approved in Plenary on 29 November. This was because the enabling legislation requires the affirmative procedure to be used where the powers:

- are being used for the first time;
- impose new civil sanctions;
- increase or change the basis for determining monetary penalties; or
- amend primary legislation.

None of these factors apply to these amending regulations, which are, therefore, being made under the negative resolution procedure.

Specific Issues

Impact on Small and Medium-sized Enterprises (SMEs)

These regulations address one of the points reported by the Constitutional Affairs Committee in 2010. SMEs were concerned about the impact of the requirement to maintain records and provide them on request to any member of the public. The amending regulations now remove the reporting requirements for businesses with less than 10 full-time equivalent staff.

Costs

The regulations also appear to address another issue reported by the Constitutional Affairs Committee; whether costs incurred in the lead up to the regulations coming into force can be deducted from the income received from charging. The amending regulations now clarify that 'set up' costs count as 'reasonable costs' for the first reporting year and can be deducted.

Timing

These regulations come into effect in 12 days' time on 1 October 2011, which is the date on which charging for carrier bags also comes into effect. However, we understand that the Welsh Government has kept those with an interest in the amending regulations informed of

DRAFT SI REPORT

the possibility of these changes, which should therefore be expected by them.

In the light of the foregoing, the Committee agreed that the amendment regulations raise issues of public policy likely to be of interest to the Assembly. The Committee agreed to draw the draft Order and Regulations to the attention of the Assembly through a report under Standing Order 21.3(ii).

Constitutional and Legislative Affairs Committee

September 2011

CA499

Constitutional Affairs Committee Report

Title: The Single Use Carrier Bags Charge (Wales) Regulations 2010

Procedure: Affirmative

These Regulations make provision about a minimum amount (5p) which sellers of goods must charge for single use carrier bags. The Regulations are made under sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008.

Technical Scrutiny

No points are identified for reporting under Standing Order 15.2 in respect of this instrument.

Merits Scrutiny

Background

These Regulations require sellers of goods to charge for single use plastic and paper carrier bags provided to customers. The Regulations set the charge at a minimum of 5p and require sellers of goods to keep and publish records in relation to the number of bags they sell in Wales and how the proceeds of the charge have been used.

The Regulations also appoint local authorities in Wales as administrators and confer powers on local authorities to use civil sanctions to deal with breaches of the Regulations.

Matters identified by the Government as being of special interest to the Constitutional Affairs Committee

These draft Regulations are the first in the UK to make use of the power to require sellers to charge for single use carrier bags under the Climate Change Act 2008.

They are also the first to confer powers on local authorities in Wales in relation to the use of civil sanctions. The civil sanctioning powers are accompanied by duties to publish guidance on how the powers will be used.

Other Issues

DRAFT SI REPORT

Reduction in proposed charge

Evidence from retailers during the consultation process indicated that a 5p charge would be a sufficient disincentive for people to purchase carrier bags. Previously the Welsh Government had calculated this to be 7p.

The Government now believe a 5p charge would be fairer to low income groups and would prevent a single use carrier bag costing more than a 'bag-for-life' which will be exempt from the charge. In the light of the representations received, they have decided to drop the charge from 7p to 5p, despite acknowledging that the lower charge will not 'internalise' the social and environmental costs of producing and selling carrier bags whereas 7p would have.

Definitional Issues

The consultation responses indicated continued confusion about a number of matters that do not appear to have been fully addressed in the Regulations or the EM. These include:

- whether plastic bags used for promotional goods, e.g. bags given away at conferences, will be subject to a charge;
- where goods are returned by the purchaser, whether the seller would be obliged to refund the carrier bag charge and whether the seller could deduct this from the gross proceeds as a reasonable cost under the regulations;
- whether a bag which **breaks** can be replaced free of charge.
- interpretation of the provisions which exempt some bags (for instance for health or hygiene reasons) but that would not subsequently be exempt if other items are placed in the bag.

Cost and Record Keeping

Retailers can deduct 'reasonable costs' from the gross proceeds from the charge on carrier bags, including costs of compliance and costs associated with communicating the charge to staff and customers. Larger retailers will be required to keep records and publish these records annually, smaller retailers will be required to keep records but not to publish them.

A degree of concern has been expressed by consultees on some of these issues. These include:

- it not being clear whether costs incurred in the lead up to the regulations coming into force (in October 2011) can be deducted;

DRAFT SI REPORT

- the regulations being implemented in different ways across Wales because local authorities, who will be responsible for administering and enforcing the charge, may not define 'reasonable costs' consistently;
- concern from SMEs about the impact of the requirement to maintain records and provide them on request to any member of the public.

Penalties

The regulations provide for a range of fixed monetary penalties none of which exceed £200. However, there is also provision for variable monetary penalties to be imposed by individual local authorities. These penalties have maximum values of £5,000 and £20,000 depending on the breach concerned. It is not yet clear to what extent local authorities will impose penalties according to different criteria in different parts of Wales.

Paper Carrier Bags

The regulations aim to reduce the number of single use carrier bags used annually in Wales. Of the 445 million bags used, 350 million are plastic and 95 million are paper bags. The charge is to be set at a level which 'internalises' the social cost of using a bag and therefore leads to reductions in consumption.

The charge will apply to both plastic and paper carrier bags. However, the Government has not been able (as it has for plastic bags) to calculate the social cost of a paper bag at this stage. For the purposes of the Regulatory Impact Assessment they assumed that the cost is the same as for a plastic bag. This assumption may not be correct.

Committee Consideration

The Committee noted the above matters and in particular:

- that the regulations are the first use in the UK of powers under the Climate Change Act 2008 to require charges for carrier bags and the first granting of Civil Sanction Powers to local authorities in Wales.
- that the powers under which the regulations are being made were granted directly to Welsh Ministers and have not previously been scrutinised in the Assembly.

DRAFT SI REPORT

- That there are a range of detailed concerns about how the regulations will work in practice and how they will impact on, in particular, small retailers;
- that the regulations apply to both paper carrier bags and plastic carrier bags. Even though the underlying cost factors for the two types of bag may be different they have been assumed to be the same and the RIA calculated on that basis.

The Committee agreed that it would be helpful for the Minister to address all of these points directly during the plenary debate on the draft Order.

In the light of these factors the Committee agreed that the draft Order and Regulations raise issues of public policy likely to be of interest to the Assembly. The Committee agreed to draw the draft Order and Regulations to the attention of the Assembly through a report under Standing Order 15.3(ii).

Janet Ryder AM
Chair, Constitutional Affairs Committee

17 November 2010