



Department of
**Agriculture, Environment
and Rural Affairs**

**GUIDANCE ON
CARRIER BAGS CHARGING
LEGISLATION IN
NORTHERN IRELAND**

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SECTION 1 - OVERVIEW

The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013 were made on 15 January 2013 and came into operation on 8 April 2013.

From that date, all sellers of goods in Northern Ireland had to charge their customers at least 5 pence (“the levy”) for each single use carrier bag supplied new so as to enable goods purchased to be taken away or delivered.

From 19 January 2015, the levy was extended to all carrier bags with a retail price of less than 20 pence.

Some bags are exempt from the requirement to charge the levy.

The Department of Agriculture, Environment and Rural Affairs has direct responsibility for the administration of charging arrangements. Sellers are required to forward the net proceeds of the levy to the Department, using an online payment facility. They are also required to keep and retain records of the bags supplied which attract the requirement to charge the levy.

In the event of breaches of the Regulations, the Department can apply a range of monetary and non-monetary penalties (“civil sanctions”).

In this guidance:

- **Section 2** highlights the key messages of the new charging arrangements;
- **Section 3** provides some detail on the charging requirement;
- **Section 4** deals with exemptions from the charging requirement.
- **Section 5** deals with the arrangements for payment of the net proceeds of the levy to the Department;
- **Section 6** summarises the record-keeping requirements;
- **Section 7** explains the civil sanctions that the Department can apply in the event of failure to comply with the requirements of the Regulations.
- **Section 8** explains temporary Coronavirus/Covid-19 charge amendment

Detailed guidance on the Department’s enforcement policy is published alongside this document.

SECTION 2 - KEY MESSAGES

The charging requirement

From 19 January 2015, all new carrier bags (regardless of whether they are considered single use or reusable and regardless of material) with a retail price of less than 20 pence are subject to the 5 pence carrier bag levy. The seller must pass this 5 pence levy onto the customer. **SEE SECTION 3**

Exemptions from the Charging requirement

There are some exemptions from the requirement to charge the levy.

SEE SECTION 4

Payment to the Department

Sellers must forward the net proceeds of the levy to the Department. An online payment facility has been established for this purpose. **SEE SECTION 5**

Record keeping

Sellers must maintain records of the carrier bags which they issue to their customers, retain these records for a specified period and make them available to the Department, on request. **SEE SECTION 6**

Civil Sanctions

If sellers fail to comply with the requirements of the Regulations, without reasonable cause, they will be breaking the law and could face civil sanctions. **SEE SECTION 7**

Coronavirus/Covid-19

The legislation was amended temporarily on 1 April 2020 for a period of 6 months to exempt bags used for grocery home delivery during the Coronavirus / Covid-19 pandemic. **SEE SECTION 8**

SECTION 3 – THE CHARGING REQUIREMENT

From 19 January 2015 all new carrier bags with a retail price of less than 20 pence are subject to the carrier bag levy. Sellers must add the levy on to the price of the bag.

In what circumstances must a seller apply the 5 pence levy?

The legislation states that, unless bags retail at 20 pence or more - or are otherwise exempt from the requirement to charge (see Section 4) the 5 pence levy will apply to a:

“bag of any material **supplied or designed** for the purpose of enabling goods to be taken away or delivered.”

This means that the obligation to charge the levy arises when the customer

- buys goods in person, and those goods are taken away in a carrier bag (whether immediately or later) by someone other than the seller;
- buys a carrier bag to use at a later date;
- buys goods from a distance and those goods are taken away (whether immediately or later) in a carrier bag by someone other than the seller;
- buys goods from a distance and those goods are delivered in a carrier bag by the seller or by a third party on behalf of the seller;
- pays for goods at one location, requests a carrier bag, and collects those goods from another location; and
- uses their own bag to contain goods purchased from the seller, but requests a carrier bag to hold other goods not purchased from the seller.

Who is a seller?

The Regulations define a seller as:

“...a person who in the course of trade or business sells goods from a place in Northern Ireland”.

This is intentionally a very broad definition. Sellers will normally be required to charge the levy for any carrier bags supplied new to their customers. However a person is not considered to be a seller where that person is employed as a shop assistant or staff member – in this instance, the employing business is the seller, and has responsibility for ensuring that the levy is applied.

What is meant by ‘in the course of trade or business’?

The Department’s policy objective is that only people who frequently engage in selling goods, on more than a minimum scale, should be required to charge the levy. It is not intended to apply to persons who occasionally sell their own possessions at car boot sales, internet sales or auction sites – such persons will not be regarded as selling goods *“in the course of trade or business”*, and will not be required to charge the levy.

It is worth emphasising that it is **the frequency of engagement in selling activity** that will determine whether a person is a seller – regardless of success in actually selling the goods.

The following will be regarded as sellers under the Regulations (note that this is not an exhaustive list):

- High street stores and shops;
- Local shops;
- Take-away restaurants (although see **Section 4**);
- Restaurants selling alcohol or food for consumption elsewhere (although see **Section 4**);
- Market traders;
- Charity shops;
- Businesses which sell goods as well as offering services, such as:
 - Restaurants selling alcohol or food for consumption elsewhere;
 - Hotels with gift shops;
 - Cinemas;
 - Cobblers;
 - Hairdressers;

- Dental practices;
- Veterinary practitioners;
- Opticians.
- Individuals who sell goods at car boot sales/internet sales/auction sites **as part of a trade or business**;
- Public bodies or subsidiaries of public bodies which sell goods (such as leisure centres, schools or colleges);
- University and Student Union shops;
- Religious shops at or adjoining places of worship;
- Museum or Gallery shops.

Which bags are covered by the levy?

The levy applies to **all new carrier bags with a retail price of less than 20 pence**. This includes bags intended to be used to carry goods on a single occasion (“single use bags”) as well as bags manufactured for multiple reuse (“reusable bags”). The levy is not restricted to plastic bags – it applies to bags made from **any material** including paper, plant-based material or natural starch.

Are ‘bags for life’ subject to the levy?

The legislation allows retailers to continue to operate what are commonly known as “bags for life” schemes if they choose to do so.

Such schemes usually involve reusable bags being sold and replaced at the end of their useful life at no additional charge to the customer.

The 5 pence levy is applicable to the initial purchase of bags (replacement bags are exempt from the levy) which are:

multiple reuse plastic bags” means bags which—

(a) are made wholly or mainly from plastic;

- (b) have either maximum dimensions of 404mm (both width and height) or a maximum dimension of 439mm (either width or height);
- (c) are manufactured from material which is greater than 49 microns in thickness;
- (d) are purchased by the customer; and
- (e) when worn out is returnable to the seller from whom they were purchased to be replaced free of charge.

Why are bags which are not used immediately to take away goods still subject to the levy?

The legislation requires the 5 pence levy to be applied whether or not the bag supplied to a customer is actually used to carry away (or to deliver) goods purchased from the place where the bag is supplied **at the same time that it is supplied**. It is sufficient that the bags are designed for that purpose.

This approach provides clarity for sellers and customers - and is consistent with the policy objective of avoiding the unnecessary use of bags.

What is meant by “bags supplied new”?

The requirement to charge the levy only applies to bags supplied new – **it does not apply to bags that are being reused**. Therefore, any seller who chooses to supply their customers with previously used carrier bags is not required to charge the levy on those bags; equally customers are of course free to reuse their own bags. However, it is worth noting that bags which have been previously owned, but not used (for example a charity shop receiving a donation of new bags), are subject to the charging requirement.

If a seller allows bags to be used so that goods may be taken away or delivered, then this will mean that bags have been ‘supplied’. It does not matter whether it is the seller, the seller’s representative or the customer who packs the bag.

It also does not matter whether the customer keeps the bag. This means that even if bags are 'loaned' to the customer – to be returned at a later date – they will be treated as 'supplied'. Such bags will therefore be subject to the levy.

In addition, if a seller delivers groceries to a customer in carrier bags, but retains those bags once the groceries are unpacked, the bags will be treated as having been 'supplied'. Such bags will therefore be subject to the levy.

Sellers need to take reasonable steps to ensure that they charge the levy where required - and communicate this to their customers. Sellers will therefore need to control the availability and supply of carrier bags, to ensure that the levy is applied. The intention is not to penalise sellers in the event of theft. However, if bags are displayed in such a way that they can easily be mistakenly taken by customers, then this would constitute a breach of the requirement to charge the levy.

How will the charge work for online grocery shopping?

In the case of online grocery shopping, the seller – rather than the customer – will generally make the judgement on how many bags are needed. The Department recognises that some customers could question that judgement, and potentially refuse to pay for what they view as "excess bags".

The Regulations require sellers to charge the levy for all chargeable bags supplied to customers. **However failure to apply the charge does not in itself constitute a breach - failure on the part of the seller to take all reasonable steps to comply with the requirement to charge the levy constitutes a breach.**

Sellers are therefore obliged to put procedures in place that should normally enable them to comply with the charging requirement. That is, they are obliged to take "reasonable steps".

Precisely how they choose to do this will be a matter for individual sellers. However a seller could, for example:

- calculate the average number of bags supplied by the store per pound spent;
- advise customers of the estimated number of bags needed to contain their online purchases;
- require the customer to accept or decline that number of bags – perhaps offering a facility to request fewer or additional bags, or a bag less delivery; and
- charge the customer on the basis of their response.

In the above scenario, any surplus goods could be supplied without bags.

A possible alternative approach would be to advise customers of the average bags used per pound spent and on this basis calculate the bags needed to contain goods purchased. Customers would then be advised that this approach may mean that they may be over or undercharged for bags supplied. This approach, which may be more appropriate for some sellers, entails a reduced element of customer choice.

This may in practice mean that bags are occasionally supplied without charging the levy. However the Department believes that, in either of these circumstances, a seller could demonstrate that they have taken reasonable steps to comply with their obligation to charge the levy.

The Department believes that, in calculating what constitutes the average spend per bag, a seller should base its calculations on a reasonable time period – if possible, one year.

The issue of breaches of the Regulations, and what might constitute reasonable steps to comply with a seller's obligations, is discussed in more detail in **Section 7**.

SECTION 4 – EXEMPTIONS

The requirement to charge the levy does not apply to the supply of certain carrier bags in certain circumstances.

What are the exemptions from the charging requirement?

All carrier bags with a retail price of at least 20 pence (excluding the 5 pence charge) are exempt from the levy.

The legislation allows retailers to continue to operate what are commonly known as “bags for life” schemes if they choose to do so. While the first purchase of bags meeting certain technical specifications is subject to the 5 pence levy, subsequent replacement of such bags will be exempt. (See Section 3 – p.9 for further details).

The Regulations also provide for specific exemptions from the levy on grounds such as **patient confidentiality, hygiene and food safety** and for **the protection of both goods and consumers**.

On this basis sellers are not required to charge the levy on the following types of carrier bags:

1. Bags **of any size** used:
 - a. to contain hot foods or hot drinks intended for consumption away from the premises on which they are sold;
 - b. to contain items purchased in airports and on board vehicles, vessels and aircraft;
 - c. solely to contain certain items listed in the Regulations.

2. Bags **of a certain size** used solely to contain packaged uncooked meat, poultry or fish.
3. **Small bags** of a certain size and type.
4. Certain types of **specialist bags**.

Each of these exemptions is discussed in more detail below.

1 a) Bags of any size used to contain hot foods or hot drinks intended for consumption away from the premises on which they are sold

The legislation contains an exemption for bags used to carry away hot foods and hot drinks.

Other items – such as a cold drink, chocolate bar or bag of crisps – can be placed in the bag in question. It is sufficient that a bag contains a single item of hot food or hot drink for the exemption to come into force.

1 b) Bags of any size used to contain items purchased in airports and on board vehicles, vessels and aircraft

Bags can be supplied free of charge when they are used to contain purchases made on board ships, trains, aircraft, coaches and buses or in restricted areas in airports (usually 'passenger only' areas beyond the departure gates).

The bags can contain other items; it is sufficient that the bag contains a single purchase made on board or in the restricted area for the exemption to come into force.

1 c) Bags of any size used solely to contain certain items listed in the Regulations

A carrier bag of any material and of any size is exempt from the charging requirement if it is used solely to contain one or more of the following **unpacked** items:

- **food for human or animal consumption** – for example loose fruit and vegetables and bread and other baked goods;
- **loose seeds, bulbs, corms or rhizomes;**
- **axes, knives, and knife or razor blades;** and
- **goods contaminated by soil** – for example vegetables or pot plants.

The term “*unpacked*” is defined in the regulations to mean “*wholly or partially unwrapped*”. This means that items such as knives mounted on cardboard but not completely enclosed in wrapping, can be provided in free bags, provided the bag is solely used to contain the unpacked items.

A carrier bag of any material and of any size is also exempt from the charging requirement if it is used solely to contain **items or appliances supplied under a prescription** – whether this is a NHS or a private prescription and whether or not the recipient pays for the goods supplied under the prescription.

It does not matter whether the items in question are prescription only medicines, pharmacy medicines or over the counter medicines. As long as the items have been prescribed by a person entitled to do so, the charging requirement can be waived.

An exemption also applies to medicines which can only be sold under the supervision of a **qualified pharmacist**. However, a seller is obliged to charge for a bag used to contain over the counter medicines sold without a prescription (unless such bags qualify for an exemption on the grounds of their size and type – see p.17).

Sellers should take reasonable steps to ensure that **any bags supplied free of charge are used solely to contain the items listed in the Regulations**. A seller who relies on this exemption to make carrier bags available free of charge will breach the Regulations if it exerts no control over how those bags are used.

2) Bags of a certain size used *solely* to contain packaged uncooked meat, poultry or fish

A carrier bag of any material is exempt from the charging requirement if it is used solely to contain one or more of the following:

- packaged uncooked meat or meat products;
- packaged uncooked poultry or poultry products;
- packaged uncooked fish or fish products

and if it complies with following size specifications:

- maximum width of 205 mm;
- maximum height of 458 mm (inclusive of any handles); and
- maximum gusset width of 125 mm (if any).

It does not matter whether the bag is the smallest size into which the goods will fit but the bag must only be used to contain the goods listed above. It is hoped that sellers will choose not to supply larger bags than are required to contain these goods.

3) Small bags of a certain size and type

Three types of small carrier bags are exempt from the charging requirement:

- Flat paper bags of no more than 175mm wide and 260 mm high without handles, such as those used for holding greetings cards;
- Gusseted paper bags without handles of no more than 80mm wide and 155mm high and with a gusset width of no more than 50mm. Such bags are typically used for pick and mix confectionery or certain items sold in a pharmacy such as painkillers or cough mixture;
- Flat plastic bags of no more than 125 mm wide and 125 mm high without handles, such as those used for holding small items of hardware or haberdashery.

4) Specialist Bags

Sellers are not obliged to apply the levy where:

- their goods are delivered in **mail order dispatch or courier bags**. These types of bags - which are in effect envelopes or postal packaging - are exempt;

- the bag contains any **live aquatic creature, together with water** – for example fish purchased from a pet shop;
- they supply **gusseted liners** to cover a box, crate or other similar container to allow goods to be taken away or

SECTION 5 – PAYMENT TO THE DEPARTMENT

The net proceeds of the levy must be forwarded to the Department. An online payment facility has been established for this purpose.

How do I calculate the net proceeds?

The Regulations do not impose a fixed price on carrier bags. A seller can charge whatever price they choose for each carrier bag supplied new to customers. However they must ensure that the customer never pays less than 5 pence for each bag. It is the proceeds of this 5 pence charge (or levy) that must be forwarded to the Department.

For example, a seller may decide to charge 8 pence for each carrier bag. In this scenario when calculating the amount due to the Department, the seller can deduct 3 pence for each bag supplied.

What about VAT?

If a seller only applies the minimum 5 pence levy, then VAT will not be payable.

However if the seller applies an additional surcharge, **then the full amount is subject to VAT** i.e. VAT is payable to HMRC on both the 5 pence levy and the surcharge.

Thus in the scenario covered above, VAT will be payable on the full amount – i.e. the 8 pence charge – and, when completing a VAT return, the seller will pay VAT on the full 8 pence charge. However, when calculating the net proceeds due to the Department, the seller may deduct the element of VAT that relates to the 5 pence levy.

In summary, if a seller chooses to apply only the 5 pence levy, then the full proceeds of the charge must be paid to the Department. However if the seller decides to apply an additional surcharge, then the amount payable to the Department will be:

Gross proceeds of the charge **less**

- (i) proceeds relating to the seller's surcharge;
- (ii) any VAT relating to the 5 pence charge/levy.

The worked example below should help illustrate how sellers should calculate net proceeds.

Carrier Bag Levy – Worked Example

A seller issues 6000 bags at 12 pence (5 pence levy plus 7 pence seller's surcharge).

Gross Proceeds = 6000 X 12 pence = £720

VAT:

VAT is payable on the full charge (the 5 pence levy and 7 pence seller's surcharge). As the 12 pence charge is inclusive of VAT at a rate of 20%, in order to calculate the amount of VAT payable, the number of bags issued would be multiplied by the total charge and divided by 6 (i.e. the retail cost of the bag without VAT is 10 pence and with 20% VAT is 12 pence).

VAT = (6000 X £0.12)/6

= £120 (£70 attributable to seller's surcharge and £50 attributable to bag levy).

The seller will therefore enter £120 on his VAT return.

Net Proceeds:

= Gross Proceeds	–	Seller's surcharge ¹	–	VAT attributable to Bag Levy
= £720	–	(6000 x £0.07)	–	((6000 x £0.05)/6)
= £720	–	£420	–	£50

¹ Including VAT

Net Proceeds of Levy = £250

The online portal (<https://www.nidirect.gov.uk/services/carrier-bag-levy-retailer-registration-login>) automatically calculates the net proceeds due to the Department once the seller enters the required information on the chargeable bags issued.

The following online tool also provides information for retailers on when to apply the levy and the subsequent VAT implications depending on the intended retail price of the carrier bag:

<https://www.daera-ni.gov.uk/publications/carrier-bag-levy-calculator>

Further information on how to use the online payment facility can be obtained by calling 02877442056 or 0300 2007879.

How does the charging requirement impact on retail concessions?

The Department recognises that some sellers will operate from retail concessions located within other stores, shopping centres or premises.

There are a number of different operating arrangements for such concessions. At one end of the spectrum, some function as distinctly separate entities, supplying their own bags and recording their transactions independently from their host business. At the other, the concessions supply bags provided by host business, and are networked to their host's electronic point of sale system (EPOS).

Regardless of the individual operating arrangements, it is the seller operating the concession – not the host business – that is supplying the bag under the Regulations. The concession is therefore ultimately responsible for ensuring compliance with the requirements of the Regulations.

However the Department recognises that retail concessions may face specific challenges in calculating accurately the net proceeds that will be due to the Department. In these circumstances, it will be acceptable for the host business to

make a composite return, based on bags sold both by itself and by retail concessions operating within its premises.

This issue is discussed further in **Section 6**.

SECTION 6 – RECORD KEEPING

Sellers must keep and retain records of chargeable carrier bags which they issue to their customers.

Why must records be kept?

As outlined in Section 3 above, all sellers are required, where appropriate, to pass on the 5 pence levy to their customers and to forward the net proceeds to the Department. Record keeping is essential, both:

- to provide the Department with sufficient assurance that the charging requirement is being correctly applied; and
- to help ensure a 'level playing field' for all sellers.

However while some record keeping is essential, the Department appreciates the need to minimise the additional burden on sellers. Details of the records that must be kept are summarised below.

What records must sellers keep?

Sellers are required to keep records of the following:

- the number of carrier bags attracting the requirement to charge the levy which were supplied to customers;
- the gross proceeds received for carrier bags which attract the requirement to charge the levy;
- the amount received by way of the 5 pence levy;
- any amount of chargeable VAT relating to the 5 pence levy; and
- the net proceeds of the levy.

This information must be retained for 6 years, and made available to the Department on request.

The number of carrier bags attracting the requirement to charge the levy which were supplied to customers

This will be the total number of 'levy bags' supplied for each reporting period. Section 3 above outlines the type of bags that will be subject to the charging requirement.

This figure will not include any bags for which the seller did not have to charge the levy, for example exempt bags (see Section 4) or torn or damaged bags.

Gross proceeds received for carrier bags which attract the requirement to charge the levy

If the seller only passes on the 5 pence levy to the customer, then the amount recorded under this heading will be identical to that recorded under the heading “**The amount received by way of the 5 pence levy**” (see below).

However some sellers may choose to price their carrier bags at more than 5 pence. In these circumstances, the amount to be recorded under this heading will be the total amount received from customers in respect of chargeable bags.

For example, using the figures quoted in the worked example in Section 5, a retailer who charges 12 pence for each bag, and issues 6000 chargeable bags, would record £720 as 'Gross Proceeds'.

The amount received by way of the 5 pence levy

Under this heading, a seller should record the proceeds of the 5 pence levy – i.e. 5 pence multiplied by the number of chargeable bags supplied.

The net proceeds of the charge

The calculation of net proceeds is explained in detail in Section 5. Essentially however, it is *the amount received by way of the 5 pence minimum charge, less any*

chargeable VAT. As indicated above, in cases where the seller only passes the minimum 5 pence charge on to the customer, VAT will not apply.

What records must be kept by retail concessions?

As stated in Section 5, it is the seller operating the concession who is ultimately responsible for ensuring compliance with the requirements of the Regulations. This responsibility extends to cover the keeping of an accurate record of bags supplied to customers.

This should be relatively straightforward in circumstances where the concession's point of sale equipment is independent from that of the host business – or where the networked system enables the concession's bag supply to be recorded separately. However difficulties could arise in circumstances where the concession seller's point of sale equipment is integrated into the network system of the host business - and bags supplied by the concession cannot be recorded separately.

In these circumstances, it will be acceptable for the host business to keep a record of all bags supplied by both itself and any concession sellers operating within its premises and, based on these records, to pay the net proceeds to the Department.

SECTION 7 – BREACHES AND CIVIL SANCTIONS

If sellers fail to comply with the requirements set out in the legislation, without reasonable cause, they will be breaching the Regulations and could face civil sanctions.

This Section contains only an overview of this issue. Detailed operational guidance on the Department's enforcement policy has been published alongside this document.

In what circumstances could a seller breach the Regulations?

The Regulations impose a number of obligations on sellers. Failure to:

- apply the 5 pence levy ;
- pay the proceeds of the levy to the Department ; and
- keep, retain or supply records

all constitute potential breaches of the Regulations.

However the Department does not wish to penalise sellers who do all that they reasonably can to comply with the Regulations - even if, despite their best efforts, they occasionally fail to comply with a particular requirement. The Regulations therefore clarify that non-compliance with any of these obligations will only amount to a breach if it results from a seller's failure to take **all reasonable steps** necessary to enable it to comply with its obligations.

The Regulations also confirm that:

- giving false or misleading information to the Department; and

- obstructing or failing to assist the Department

also constitute breaches of the Regulations - but only if a seller does so **without reasonable cause**.

Who will determine whether there has been a breach of the Regulations?

In the first instance, the question of whether a seller has taken all reasonable steps necessary to comply with its obligations in a particular case will be a judgement call for the Department.

If the Department decides that there has been a breach and decides to take formal enforcement action, the seller can appeal that decision to the First Tier Tribunal.

How can a seller demonstrate that they have taken reasonable steps to comply with their obligations?

The actions listed below could be used by a seller to demonstrate reasonable efforts to comply with the Regulations. These lists are not intended to be exhaustive, nor will every step in each list be appropriate for every seller.

Reasonable steps to demonstrate compliance with the requirement to charge

- Training relevant staff;
- Making it clear to customers that chargeable bags must be paid for;
- Putting in place appropriate arrangements to avoid chargeable bags being taken by honest mistake or theft;
- Ensuring that any third parties involved in the delivery of the seller's goods are aware of the seller's obligations to charge for bags supplied by the third parties;

- Adjusting online shopping websites to offer bag less deliveries or to require customers to actively choose whether to purchase chargeable bags for delivery.

Reasonable steps to demonstrate compliance with the requirement to pay the charge to the Department

- Training relevant staff;
- Establishing systems and procedures to ensure accurate calculation of the amount due;
- Establishing systems and procedures to help ensure that payment is made within the required deadline.

Reasonable steps to demonstrate compliance with the requirement to keep records

- Ensuring that the necessary data is recorded regularly so that the records produced are accurate;
- Ensuring that IT systems (if used) are appropriately maintained so that data is not corrupted or lost;
- Training staff;
- For sellers who do not operate solely in Northern Ireland, putting in place arrangements to ensure that the seller's systems or practices can accurately record Northern Ireland-only data.

Reasonable steps to demonstrate compliance with the requirement to retain records

- Storing records securely to ensure that the information they contain is not lost, corrupted or destroyed;
- Training staff as to the type of records that need to be retained.

Reasonable steps to demonstrate compliance with the requirement to supply records

- Putting procedures in place so that a written request is treated with sufficient priority to ensure that the necessary information is provided to the Department within the 28 day deadline;
- Training relevant staff.

Who administers the carrier bag charging scheme?

The Department (the “Administrator”) administers the scheme and therefore monitors compliance and investigates and enforces breaches of the Regulations throughout Northern Ireland. The Department has established the “Carrier Bag Levy Team” to manage day-to-day administration.

What investigatory powers does the Administrator possess?

The Regulations confer the following investigatory powers on the Administrator:

- i. to make test purchases;
- ii. to inspect any goods;
- iii. to enter any premises (other than domestic premises);
- iv. to question a seller or officers or employees of a seller;
- v. to require the production of documents; and
- vi. to require the provision of information.

The powers at i – iii above can be used at any time to test and monitor whether sellers are complying with their obligations under the Regulations.

If the Administrator wishes to inspect goods or to enter premises the responsible officer must produce evidence of their identity and their authority to act on behalf of the Administrator. The requirement to produce this evidence only arises if it is specifically requested.

The power to question sellers and to require the production of documents and information (iv – vi above) can only be exercised if the Administrator reasonably believes that there has been a failure to comply with a requirement of the Regulations.

What are civil sanctions?

Overview

The Regulations give the Administrator powers to impose two broad types of civil sanctions: fixed monetary penalties and discretionary requirements.

Fixed monetary penalties are financial penalties of a set amount.

Discretionary requirements fall into 2 categories; one is financial, the other is not. The financial requirements are known as **variable monetary penalties**, the non-financial requirements as **non-monetary discretionary requirements**.

In addition, the Administrator can impose financial penalties - **non-compliance monetary penalties** - on sellers for failures to comply with non-monetary discretionary requirements that have previously been imposed.

Formal proceedings for imposing civil sanctions and non-compliance penalties follow the same format: a notice of intent to impose a penalty is served on a seller, the seller is given an opportunity to make representations and, if the Administrator subsequently decides to impose a penalty, a final notice is then served.

The Administrator can also recover enforcement costs connected with imposing discretionary requirements. With enforcement costs recovery there is no obligation on the Administrator to serve a notice of intent before requiring a seller to pay enforcement costs.

The Administrator can withdraw any notice of intent or final notice at any time. Except in the case of fixed monetary penalties, the Administrator can also amend a notice to

reduce the severity of a sanction it originally proposed or to reduce the amount of enforcement costs it originally sought from the seller.

If the Administrator imposes a civil sanction on a seller, it can require the seller to publish that fact, along with information about the type of sanction imposed. If the seller fails to comply with such a requirement, the Administrator can publish the details required and recover the costs of doing so from the seller.

The Administrator is required to periodically publish reports identifying the cases in which it has imposed civil sanctions.

What are Fixed Monetary Penalties?

A fixed monetary penalty (FMP) is a relatively low level sum that the Administrator can impose as a penalty for certain breaches of the Regulations.

It is a stand-alone civil sanction and cannot be used in conjunction with any other sanction. Once a FMP has been imposed, no other formal enforcement proceedings can be commenced against the seller for the same breach (other than to recover any penalty that remains unpaid).

FMPs can be imposed for:

- failing to charge the levy,
- failing to pay the levy proceeds to the Department; and
- failing to keep, retain or supply records

if any of these failures arise as a result of a seller failing to take all reasonable steps to enable them to achieve compliance.

FMPs cannot be imposed for:

- giving false or misleading information to the Administrator; or
- otherwise obstructing or failing to assist the Administrator

without reasonable cause.

The amounts that can be imposed as FMPs are set out in the table below:

Breach	Fixed Penalty amount
Failure to charge the levy or failure to pay the net proceeds to the Department as a result of the seller failing to take all reasonable steps to enable it to do so	£200
Failure to keep, retain or supply records as a result of the seller failing to take all reasonable steps to enable it to do so	£100

The Regulations provide for an early payment discount of 50% in certain circumstances and, conversely, for a late payment penalty where the amount of the relevant FMP is increased by 50%.

What are Discretionary Requirements?

Financial discretionary requirements are known as variable monetary penalties (VMPs), the non-financial requirements are termed non-monetary discretionary requirements.

Variable Monetary Penalties

The Regulations set upper limits for VMPs and, within those limits, the Administrator has discretion to impose whatever amount it considers appropriate in the circumstances. The upper limits are set out in the table below:

Breach	Maximum amount which may be imposed as a variable monetary penalty
Failing to charge the levy - as a result of the seller failing to take all reasonable steps to enable it to do so	£10,000
Failure to pay the net proceeds to the Department - as a result of the seller failing to take all reasonable steps to enable it to do so	£20,000 or 10% of the amount estimated to be due (whichever is the greater)
Failure to keep, retain or supply records – as a result of the seller failing to take all reasonable steps to enable it to do so	£5,000
Giving false or misleading information to the Administrator otherwise obstructing or failing to assist the Administrator.	£20,000

Non-monetary discretionary requirements

These are requirements to take steps to ensure that a breach does not continue or recur. The Administrator will decide what those steps should be and the time period within which they must be completed. Examples of steps that might be required include the following:

- Training of relevant staff;
- Alteration of record-keeping processes;

- Exertion of more control over the availability of carrier bags in-store.

If a seller does not fully comply with a non-monetary discretionary requirement in the time given, the Administrator can impose a financial penalty.

What are Non-Compliance Penalties?

A non-compliance penalty is a financial penalty issued because a non-monetary discretionary requirement has not been complied with. For this reason the Administrator can impose a non-compliance penalty even if a VMP was imposed at the same time as the non-monetary discretionary requirement.

If a seller completes the steps required by the non-monetary discretionary requirement before the time period for payment of the non-compliance penalty expires, the seller is not required to pay the non-compliance penalty.

It could be that a seller takes none of the steps required by the non-monetary discretionary requirement or that the seller takes some but not all of the steps; a non-compliance penalty can be imposed in either case and the maximum amount that can be imposed is £5000.

What sanctions can be imposed together?

Discretionary requirements can be imposed for any kind of breach. They cannot be combined with FMPs but financial and non-financial discretionary requirements can be imposed together for the same breach at the same time. The Administrator can also impose more than one non-financial requirement at the same time and can do so in combination with a VMP.

The table below sets out details of the sanctions that can be imposed at the same time in relation to the same breach. All sanctions must be imposed at the same time because the Regulations prohibit the imposition of discretionary requirements on more than one occasion for the same breach.

Imposing discretionary requirements for a single breach		
VMP & FMP		No
Non-monetary discretionary requirement & FMP		No
VMP on its own	Yes	
Non-monetary discretionary requirement on its own	Yes	
VMP & Non-monetary discretionary requirement	Yes	
VMP & two or more non-monetary discretionary requirements	Yes	
More than one VMP		No
More than one non-monetary discretionary requirement	Yes	

Can the Administrator recover enforcement costs?

The Administrator can require a seller to pay the costs that it has reasonably incurred in relation to imposing discretionary requirements. The Administrator cannot recover the costs of imposing FMPs.

Enforcement costs are not exhaustively defined in the Regulations but they do expressly include investigation costs, administration costs, and the costs of obtaining expert advice, including legal advice. The Administrator must provide a detailed breakdown of its enforcement costs if requested by the seller to do so. The seller is not liable to pay any costs shown by it to have been unnecessarily incurred.

The Regulations set out the procedures for imposing FMPs, discretionary requirements and non-compliance penalties and for recovering enforcement costs from sellers. **These procedures are set out in detail in separate guidance.**

Can a seller appeal against a civil sanction?

The Regulations confer a right of appeal against:

- the imposition of a fixed monetary penalty, discretionary requirement or non-compliance penalty;
- a requirement to pay enforcement costs or the amount of the costs.

There is no formal right of appeal against a notice of intent to impose a fixed monetary penalty, discretionary requirement or non-compliance penalty (although the Regulations make provision for representations to be made to the Administrator in all these cases).

Appeals are made to the General Regulatory Chamber of the First –tier Tribunal and, where appropriate, the Administrator will have to prove on the balance of probabilities that the seller breached the Regulations.

The grounds on which an appeal can be brought against any particular decision are set out in the Regulations. In some cases the grounds include “any other grounds”. This is so as not to limit potential appeals unnecessarily, **not** to suggest that appeals without merit should be brought or could succeed.

How can the Department recover unpaid penalties and enforcement costs?

Any monetary penalties or enforcement costs that remain unpaid after the statutory time limit for payment has elapsed can be enforced through the civil courts.

Section 8: Coronavirus/Covid-19 arrangements:

The Single Use Carrier Bags Charge (Coronavirus Amendment) Regulations (Northern Ireland) 2020 were introduced as a temporary measure, for six months with effect from 1 April 2020, removing the requirement to charge for a carrier bag used for home delivery as part of a grocery delivery service.

This was introduced to show flexibility in the unprecedented times. This allowed a more flexible delivery of groceries by reducing the need for delivery drivers to enter houses and speed up home deliveries.

This amendment removed the requirement to charge the levy up until 30 September 2020.