



Llywodraeth Cynulliad Cymru  
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# Draft Guidance on the Single Use Carrier Bags Charge (Wales) Regulations 2010

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# 1. OVERVIEW

## 1.1 Key points

- The Single Use Carrier Bags Charge (Wales) Regulations 2010 were made on 30 November 2010. The Regulations come into force on 01 October 2011.
- After midnight on 30 September 2011, single use carrier bags can no longer be given away for free when people buy goods from a seller.
- Some single use carrier bags are exempt from the requirement to charge.
- The minimum charge to the customer for each single use carrier bag is 5p.
- The charge applies to sales in-store and online.
- If you sell goods in Wales or sell goods that are delivered in Wales you need to charge for single use carrier bags. If you give them away for free, you will be breaking the law and could face civil sanctions, including monetary penalties of up to £5,000.
- Single use carrier bags include those made from plastic, paper, plant based material or natural starch that are not intended for multiple reuse.
- You will **not** need to charge 5p for a 'bag for life' if it meets the requirements in the Regulations.
- You will **not** need to charge 5p for bags that are specifically designed to be reused.
- You will need to keep records about how many bags you sell, including what you do with the proceeds from the charge (after you have deducted reasonable costs).
- If you are a business that trades above the VAT threshold and supply more than 1,000 bags in a year, you will need to publish these records either in your shop or by means of your internet home page.
- We expect retailers to pass on the proceeds from the charge to good causes in Wales. Retailers can sign-up to the voluntary agreement which will be developed between business and the Welsh Assembly Government in the lead up to implementation of the charge.

## 1.2 Background

1. The new single use carrier bags charge legislation will take effect in Wales on 1 October 2010. From this day onwards single use carrier bags will no longer be given away for free when people buy goods from a seller. Some single use carrier bags are exempt from the requirement to charge (see section 4.4.2).
2. The Regulations were made under powers conferred by sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008. The power to make the Regulations was subject to the approval of the National Assembly for Wales and that approval was given on 30 November 2010.
3. This document is non-statutory guidance which is intended to assist sellers, local authorities and the public to understand how the law has changed in Wales.
4. Because the Government does not have the final say about what the law requires, this guidance cannot constitute a definitive statement of the law; that is the sole preserve of the courts. This guidance does however, explain the legal effects that the Regulations are intended to deliver and sets out the Government's interpretation of the obligations they impose.

## 1.3 Why the law has changed

5. The main purpose of introducing the charge is to substantially decrease the number of single use carrier bags consumed in Wales in order to reduce their adverse effects on the environment.
6. The charge will help to:
  - (a) encourage a shift in consumer behavior away from throwaway consumption, towards re-use;
  - (b) cut down on the use of resources;
  - (c) prevent waste; and
  - (d) improve local environment quality by reducing the highly visible litter from single use carrier bags.

## 1.4 Where the law applies

7. The law applies in relation to Wales. It imposes legal obligations on sellers who sell goods from places in Wales and those who sell goods from places outside Wales if their goods are delivered in Wales.

## 1.5 Relationship with the Sale of Goods Act

8. Other than to require sellers to charge for single use carrier bags, the Regulations do not interfere with the contract of sale between sellers and customers; the legislation governing the sale of goods will apply to the sale of single use carrier bags as it applies to other goods sold by sellers.

9. This means that the customer will be entitled to a refund or replacement if the single use carrier bag is not of satisfactory quality; and this includes being fit for the purpose for which single use carrier bags are commonly supplied.
10. For example (and very broadly speaking), if a customer buys a carrier bag which splits whilst being filled, the customer has the right to expect the seller to provide a further bag that is 'fit for purpose'. In this instance a seller should only charge the customer for one bag and count one bag as being sold for the purposes of record keeping. This is because only one bag is supplied for the purpose of enabling the goods to be taken away.
11. This is distinguishable from a situation in which a customer returns an item to the store where it was purchased for a refund and also requests a refund for the carrier bag that was purchased at the same time to carry the goods home. If there was nothing wrong with the bag, then whether a refund is offered for the bag is entirely a matter for the retailer concerned. If the retailer decides to refund the cost of the bag as a matter of customer service, the refund will not be deductible from the gross amount received by way of charges for bags. This is because the bag was supplied for the purpose of enabling the goods to be taken away.

## 2. SELLERS

12. The Regulations impose obligations on *sellers*. The term "seller" is defined in the Regulations as:  
  
*"...a person who, in the course of trade or business-*  
*(A) sells goods from a place in Wales;*  
*(B) sells goods which are delivered to persons in Wales."*
13. The term "seller" is defined by reference to a "person". The effect of this is that the term includes both natural and legal persons. This means that in principle, the term "seller" is very broad; it encompasses for example, individuals, sole traders, companies, charities, public sector bodies, limited liability partnerships, statutory corporations, franchisees and unincorporated associations.
14. Whether any of those persons is in fact a "seller" for the purposes of the Regulations will depend on the answers to two questions:
  - i. whether the person sells goods in the course of trade or business; and
  - ii. with respect to those who do, whether:
    - (a) the person sells those goods from a place in Wales; or
    - (b) the goods that the person sells are delivered to persons in Wales.
15. Individuals who are employed as shop assistants or as other staff members or officers of a business are not "sellers" under the

Regulations when they are selling goods in that capacity. In these circumstances, it is the employing business who is the “seller”.

16. Individuals who are employed in one of the capacities mentioned above may be sellers if they sell goods in another capacity and if, when doing so, they meet the definition of seller in the respects outlined below. This might occur for example, where an individual is employed as a shop assistant, but runs their own part-time business selling goods.
17. Please see diagram 2.1 for a simple illustration of how question 1 and 2 applies to you. However, you will also need to consider points 2.1 and 2.2 below.

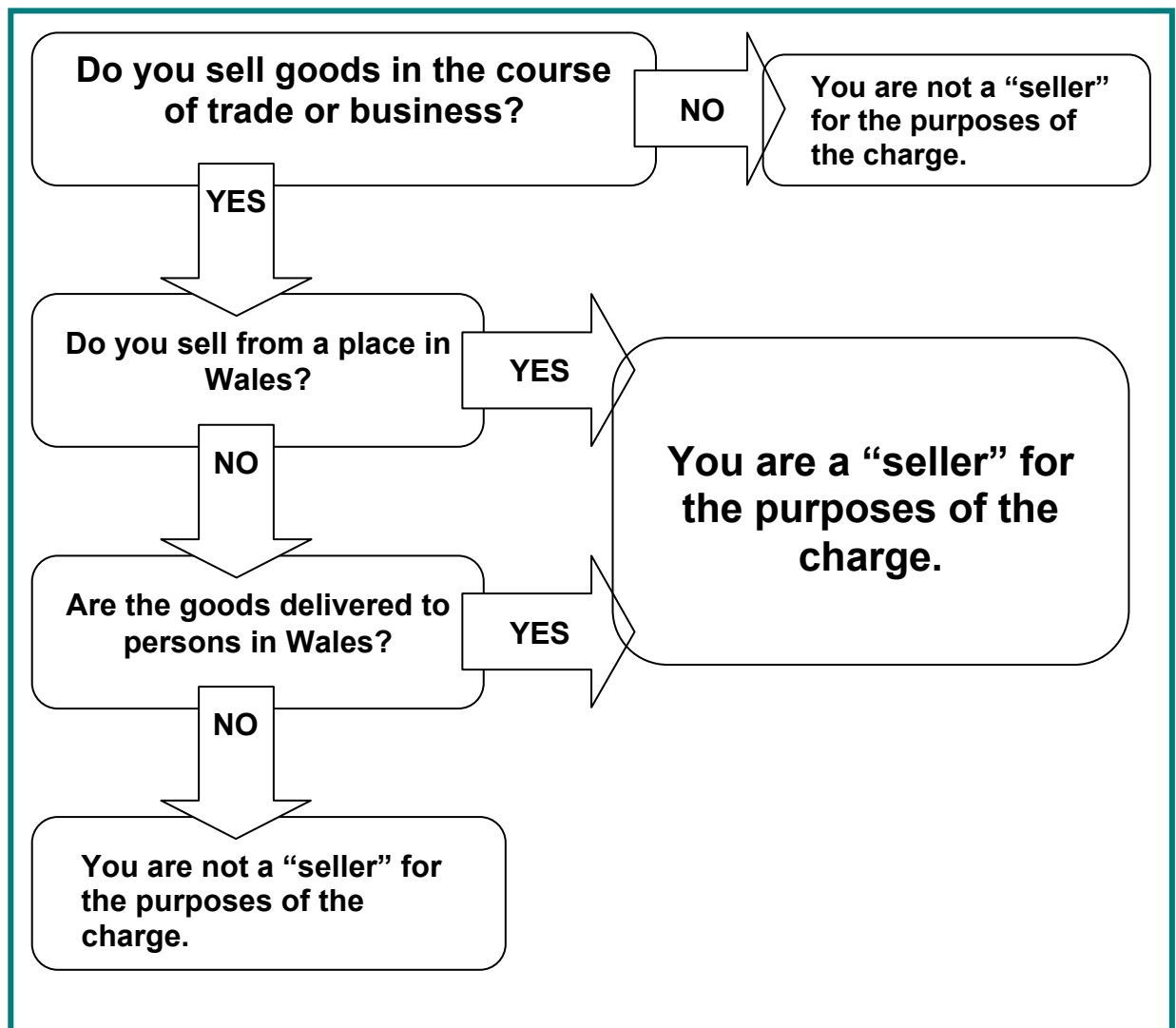


Diagram 2.1 - Are you a “seller”?

## 2.1 Selling goods

18. In order to be a “seller” a person must sell goods.
19. The intention here is to capture the activity of transferring goods to another person in exchange for money. This means that a person will not be a “seller” if that person transfers goods to another in exchange for

something apart from money. An example might be certain transactions undertaken at swap meets, where people exchange goods in return for other goods. In this situation, even if the person concerned undertakes exchange transactions as part of a trade or business, that person would not be a “seller”, because no money changes hands in return for goods.

20. In addition to this, the thing that a person sells must be *goods*. The Government’s view is that the following are goods under the Regulations:
  - (a) anything which is sold and which is capable of being taken away or delivered by means of a single use carrier bag;
  - (b) anything which is sold, the taking away or delivery of which is capable of being facilitated by means of a single use carrier bag.

## 2.2 In the course of trade or business

21. A person is a “seller” for the purposes of the Regulations only if that person sells goods in the course of trade or business. The question of whether a person sells goods in the course of trade or business will be obvious in many cases; shops, markets and take-away restaurants are examples. The question may be less clear cut in other cases.
22. The “in the course of trade or business” formula is used in the Regulations primarily as a mechanism to exclude certain persons from the ambit of the obligations imposed on sellers. The intention is that only those persons who sell goods with some frequency over time and with an element of scale, are caught by the definition of “seller”; an element of commerciality is necessary.
23. Without this test the Regulations might have been ambiguous about whether a person who occasionally sells their own possessions at a car boot sale or on an internet sale or auction site for example, is caught by the obligations the Regulations impose. Requiring individuals to charge for single use carrier bags supplied in those circumstances and holding such persons to account for doing so is not the policy focus.
24. In the Government’s view, a person of any of the kinds mentioned in paragraph 13 will not be selling goods *in the course of trade or business*, if the person concerned engages in the activity of selling goods only infrequently on a scale that is minimal. It is worth noting the distinction here between engaging in the activity of selling goods infrequently on the one hand, and infrequently selling on the other. If a person frequently engages in the activity of selling goods but is rarely successful in doing so, the Government’s view is that, that person is nevertheless selling goods in the course of trade or business – it is the frequency of the activity of selling that counts in this respect, not the frequency of successful sales.

25. The popular understanding of the term “in the course of trade or business” may bring with it an implication that the person engaging in the activity of selling goods must do so for profit in order to fall within the definition of “seller”. This is not the intention. Whether or not the person concerned sells goods for profit, and regardless of whether a profit is actually returned on the goods being sold, if a person sells goods with some frequency over time and on a scale that is more than minimal, the Government’s view is that that person will be selling goods in the course of trade or business and will thus be a seller for the purposes of the Regulations.
26. The result produced by the way “seller” is defined in the Regulations is that sellers will include persons who may not obviously fall within the common perception of what the term implies. The following are examples of sellers under the Regulations:
- high street stores;
  - local shops;
  - take-away restaurants;
  - other restaurants which sell goods in addition to offering restaurant services (such as those which sell alcohol or food to consume off the premises);
  - hotels which sell goods in addition to offering hospitality services (such as where goods are sold in hotel gift shops for example);
  - market traders;
  - charity shops;
  - cinema undertakings which sell goods in addition to showing films;
  - cobblers which sell goods in addition to offering shoe repair services (such as those selling shoe polish, security products or gifts);
  - hairdressers which sell goods in addition to offering hairdressing services (shampoos and other hairstyling products for example);
  - opticians selling glasses and other ocular-related products;
  - individuals who sell goods at car boot sales as part of a trade or business (but not individuals who sell their own possessions occasionally);
  - direct selling companies and agents;
  - dental practices or associates which sell goods in addition to offering dental services (such as those selling dental hygiene products);
  - vet practitioners which sell goods in addition to offering veterinary services (such as those selling pet food or home hygiene products for example);
  - unincorporated associations of individuals which sell goods as part of a trade or business; such as members’ golf clubs which sell goods to non-members;
  - wholesalers;
  - public authorities or subsidiaries of public authorities which sells goods (such as leisure centres, schools or colleges);
  - public bodies or subsidiaries of public bodies (such as Cadw gift shops);

- university and student union shops;
- Religious shops at or adjoining places of worship (such as Christian book shops on church premises);
- museum shops.

## 2.3 Selling goods from a place in Wales

27. This is self-explanatory in most respects, but it is worth noting that “place” is a wide term
28. This means that a person will not fall outside the definition of “seller” merely because the person does not sell from a permanent location in Wales; mobile and visiting traders for example, will be selling from a place in Wales if they do so from vehicles, at markets, or seasonally in Wales.

## 2.4 Selling goods which are delivered to persons in Wales

29. A person who sells goods in the course of trade or business from a place outside Wales will fall within the definition of “seller” if the goods are delivered to persons in Wales. This means that a person who sells goods from a place in England or Scotland for example, will be a “seller” if those goods are delivered in Wales (and if the person meets the other criteria mentioned above).
30. The obvious example is dot.com grocery shopping, where a customer orders groceries online to be delivered to their home in Wales.
31. There are two further effects which may be less obvious. Even where the sale of goods takes place in person in a place outside Wales, the person selling the goods will be a “seller” if those goods are subsequently delivered in Wales. So for example, if a customer buys goods in-store from a shop in England and the shop subsequently delivers those goods to the customer’s home in Wales, the person selling the goods will be a “seller” under the Regulations.
32. The second less obvious effect of the definition in this respect concerns the fact that it engages where goods are delivered “to persons” in Wales, as opposed to “customers”. This means that it does not matter whether the goods are delivered to the person who bought them; it is sufficient that the goods are delivered to any person in Wales for the person selling them to fall within the definition of “seller” in this respect. This might happen for example, where a parent living in England orders groceries over the internet and requests that they be delivered to their child living and attending university at a place in Wales.
33. In relation to this last point, it is worth noting that “person” in this context means any natural or legal person, so if a person in the course of trade or business sells goods which are delivered to any person of the type mentioned in paragraph 13 in Wales, the person selling the goods will be

a “seller” under the Regulations (assuming that the person in question meets the other “seller”-related criteria mentioned above).

34. This means that the charge would apply to all sales of goods to persons in Wales regardless of whether that person is an individual, company, charity, public sector organisation etc. For example, the charge would apply where a company orders tea, coffee, milk and biscuits for meetings through a dot.com grocery site and these are delivered from a store in England to the company in Wales.

### **3. SINGLE USE CARRIER BAGS**

35. The term ‘single use carrier bag’ is defined broadly in the Regulations so that it includes all carrier bags which are commonly supplied with the intention that they are to be used to carry purchased goods on a single occasion. The term is defined in a way that captures some bags which may not immediately fall within most people’s perception of a single use carrier bag; small paper bags for example would be subject to the charge.
36. The Regulations define “single use carrier bag” in a way that distinguishes between bags that are made wholly or mainly from plastic and those that are not. In both cases, there is a two-stage test.

#### **3.1 Bags made wholly or mainly from paper, plant-based material or natural starch**

37. For bags that are not made wholly or mainly from plastic the first question is whether the bag is made wholly or mainly of paper, plant-based material or natural starch. If it is not (and it is not made wholly or mainly from plastic), then the bag is not a single use carrier bag.
38. If a bag *is* made wholly or mainly from paper, plant-based material or natural starch, then the next question is whether the bag is specifically manufactured for multiple reuse. If it is not, then it is a single use carrier bag.
39. The question of whether a bag is specifically manufactured for multiple reuse will be a question of fact. The intention behind this element of the definition is to carve out from it, those bags that are designed to be used again and again and that are constructed for that particular purpose. Cotton and jute shopping bags that are sold as such are examples of the types of bags that are intended to fall outside the definition of “single use carrier bag” on this basis; laminated paper bags of the type with rope handles which are sometimes supplied with clothes purchases are not.
40. The Government is not aware at this time of any bags made wholly or mainly of paper that would fall outside the definition of single use carrier bag on this basis and so at present, we think it likely that all paper bags are single use carrier bags.

### 3.2 Bags made wholly or mainly from plastic

41. For bags that are made wholly or mainly from plastic the first question is whether the bag meets the technical specifications in the Regulations with respect to width, height and thickness. If it does not, it is a single use carrier bag.
42. It may be worth noting that the technical specifications with respect to height do not include handles, nor do they include any extended gusset width. Similarly, the specifications with respect to width do not include any extended gusset width.
43. It is also worth noting that the technical specifications with respect to thickness concern the material from which the entire bag is made, and not merely some part of it. This means that bags which are made from material of varying gauges, one or more of which are below the 49 micron specification, will not meet the technical specifications and will thus be single use carrier bags under the Regulations.
44. If a plastic bag does meet the technical specifications, the next question is whether the bag is intended for multiple reuse; that is to say, whether the bag is purchased by the customer and when worn out, is returnable to the place where it was purchased to be replaced free of charge.
45. This part of the definition is intended to capture the thing that distinguishes plastic bags commonly known and used as 'bags for life' from other plastic bags with similar technical specifications (such as those supplied by some clothing stores).
46. There is no universally accepted definition of a 'bag for life' but in the Regulations we adopt an approach designed to capture the types of bags that are commonly understood and used as such; that is to say, the strong plastic shopping bag offered by a number of retailers for a small charge usually between 5-10 pence which, when worn out, can be returned to the same seller for a free replacement.
47. To ensure that a plastic bag is not a "single use carrier bag", the bag – whether it is called a 'bag for life' or not - must be:
  - (a) made of thick plastic (greater than 49 microns)
  - (b) at least 439mm x 404mm
  - (c) purchased by the customer
  - (d) returnable when worn out to the seller from whom it was purchased to be replaced free of charge.
48. Many retailers also provide recycling facilities for worn out 'bags for life', which helps facilitate a closed-loop lifecycle for 'bags for life'. Although the Regulations do not require retailers to recycle worn out 'bags for life', it is not the Government's intention for retailers to abandon this practice as a result of the Regulations.

49. See Diagram 3.1 for a quick reference guide to help decide whether a bag is a single use carrier bag as defined in the Regulations.

## 4. THE OBLIGATION TO CHARGE

### 4.1 The amount of the charge

50. The Regulations do not fix the amount that a seller must charge for each single use carrier bag. Instead, the Regulations require sellers to ensure that the minimum price to the customer is 5 pence (the reason for this approach is explained below). The minimum price is referred to in the Regulations as 'the charge'.
51. The Regulations do not make any provision in relation to a maximum amount that sellers can charge for single use carrier bags. This means that sellers are free to charge customers any price they wish, so long as the price the customer pays is never less than 5 pence.

### 4.2 VAT

52. The obligation to charge is drafted by reference to the price the customer pays in order to ensure that the minimum price to the customer is the same, regardless of whether the seller is required to charge VAT on the supply of the bag. If the Regulations had required all sellers to charge 5 pence for a bag, the effect in practice would have been to require sellers who are registered for VAT to charge VAT in addition to the 5 pence charge. At the present rate of VAT, that would have required VAT registered sellers to price single use carrier bags at a minimum of 6 pence (5 pence + VAT @ 20%).
53. It has never been the Government's intention to require customers to pay different amounts for single use carrier bags, depending on the VAT status of the seller and so the Regulations are drafted to secure this result.

### 4.3 When the obligation to charge applies

54. There are a number of general points about the obligation to charge that sellers and administrators may wish to note.

#### 4.3.1 - General points about the obligation to charge

##### (1) Supply

55. The obligation to charge is framed by reference to the *supply* of single use carrier bags. The term "supplied" is given no special meaning in the Climate Change Act or the Regulations and so it attracts its natural meaning in the context in which it is used. The Government takes the view that 'supply' in the context of the Regulations means using a bag, or allowing another person to make use of a bag, whether actively or passively.

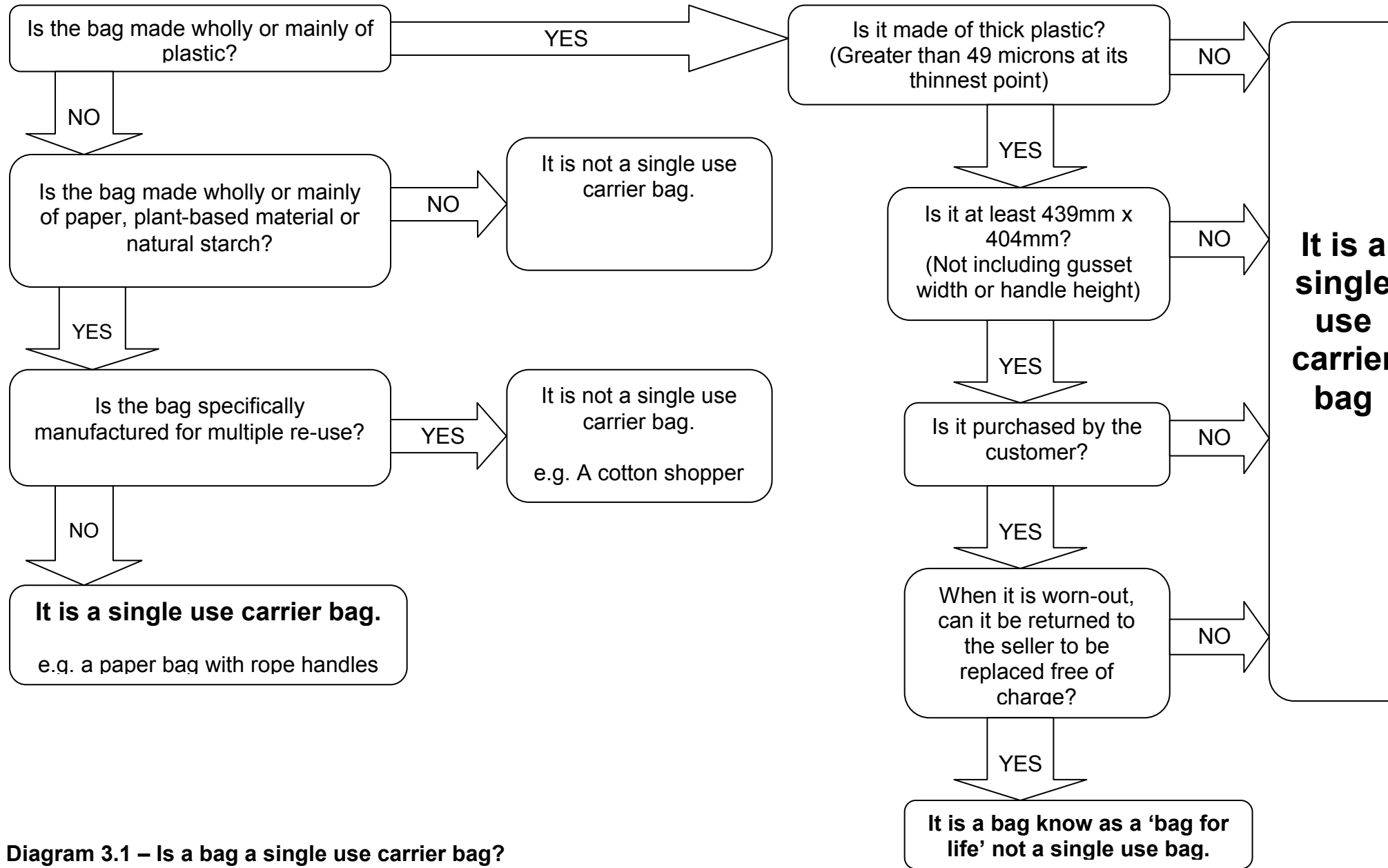


Diagram 3.1 – Is a bag a single use carrier bag?

56. This means that single use carrier bags will be “supplied” for the purposes of the Regulations when they are used, or allowed to be used, for the purpose of enabling goods to be taken away or delivered. It does not matter whether the bags are used by the seller or its agents or contractors, nor does it matter whether a customer or other person is allowed to use a bag as a result of action or omission by a seller or by its agents or contractors.
57. For the sake of brevity, ‘*making available*’ is used in the remainder of this section to mean using a bag, or allowing another person to make use of a bag, whether actively or passively (which is itself explained more fully below: see paragraph 61(c)).
58. It is immaterial whether the customer or any other person keeps the bag that is made available; the test in the Government’s view is whether the bag is in fact made available.
59. This means for example, that if a seller were to ‘lend’ single use carrier bags to customers, the bags in question would nevertheless be “supplied” for the purposes of the obligation to charge. This practice would constitute a supply for the purpose of enabling the goods to be taken away, by virtue of the seller having allowed a person to make use of a bag temporarily.
60. This also means that if a seller were to deliver groceries in single use carrier bags but to retain the bags once the groceries are unpacked, the bags in question would nevertheless be “supplied” for the purposes of the obligation to charge. This practice would constitute a supply for the purpose of enabling the goods to be delivered by virtue of the seller itself having used the bag to facilitate the delivery of the goods.
61. The following are examples of acts and omissions which the Government considers to amount to *supply*, whether or not the single use carrier bag is retained by the seller, the customer or any third party:
  - (a) pro-actively giving or lending a single use carrier bag to a person in response to a request from the person in that behalf;
  - (b) pro-actively giving or lending a single use carrier bag to a person when there is no request from the person in that behalf (such as where a seller of its own volition, gives a single use carrier bag to a customer; or uses single use carrier bags to deliver goods and retains the bags once the goods are delivered);
  - (c) allowing a person to use a single use carrier bag for the purpose of enabling purchased goods to be taken away without demanding payment of the charge. This could arise for example, as a result of inadequate arrangements being made by a seller to supervise stocks of single use carrier bags placed in areas to which customers have access (such as where single use carrier bags are provided at self-

checkout facilities). This is what is meant by supplying a bag 'passively' (as in paragraph 54 above).

62. This last point is worthy of note. If customers use single use carrier bags to take away the goods that they have purchased and do not pay for the bags in question, the taking of the bags could be an honest mistake or it may amount to theft. It is not the Government's intention to penalise sellers who are the victims of theft and the Government accepts that in many respects, the behaviour of customers is outside the control of sellers.
63. That said, it is for sellers to ensure that sufficient arrangements are in place to make known to customers that single use carrier bags must be paid for and to secure that they can control the availability and supply of single use carrier bags in a manner appropriate to ensure that bags are in fact charged for. The Government's view is that a failure to charge for bags as a result of failing to make reasonable arrangements to avoid bags being taken by honest mistake or theft would amount to a breach of the requirement to charge.

## **(2) Single use carrier bags supplied by third parties**

64. A seller is obliged to charge for single use carrier bags in the circumstances explained below even if the bags are supplied by someone other than the seller. What counts for the purposes of engaging the obligation to charge is that the bags are supplied for the purposes of enabling the seller's goods to be taken away or delivered.
65. In many cases, the seller will supply single use carrier bags directly to the customer but there may be circumstances in which this is not the case. This may occur for example, where an internet seller uses a third party warehouse to dispatch goods. In those cases, single use carrier bags may in fact be supplied by the third party, as opposed to the seller; but the obligation to charge in those circumstances still remains with the seller.

## **(3) Exemptions from the requirement to charge**

66. The obligation to charge does not apply to the supply of all single use carrier bags, the supply of some bags is exempt from that requirement and the bags in question are listed in Schedule 1 to the Regulations. Exemptions are dealt with further at section 4.4.2 below.

## **(4) New single use carrier bags**

67. The obligation to charge applies only to new single use carrier bags; it does not apply to bags that are being reused. This means that if a seller chooses to supply used single use carrier bags, the seller will not be obliged to charge for them. This might be the case for example, for charity shops which supply carrier bags that have already been used, or for some car boot or market traders who may do the same.

68. It is worth noting that the intention here is to exclude single use carrier bags that have previously been used from the obligation to charge; it is not the intention to exclude single use carrier bags that have previously been owned, but not used. This means for example, that if a seller purchases a stock of second-hand unused carrier bags, or receives a donation of second-hand unused carrier bags, that seller will be required to charge when supplying those bags in the circumstances explained below.

#### 4.3.2 – Circumstances in which the obligation to charge arises

69. For those bags that are not exempt or excluded from the requirement to charge, a seller will be obliged to charge for a single use carrier bag in two situations:

**(A)** where a new bag is supplied at the place in Wales where the goods are sold, for the purpose of enabling the goods sold by the seller to be taken away;

**(B)** where a new bag is supplied for the purpose of enabling the goods sold by the seller to be delivered to persons in Wales.

**(A) – Supplying new single use carrier bags at the place in Wales where the goods are sold for the purpose of enabling the goods to be taken away**

70. This situation covers those cases where customers buy goods in person and the goods are taken away from the place where they are purchased by someone other than the seller<sup>1</sup>. It also covers cases where customers buy goods from a distance and the goods are subsequently taken away from the place where they are sold by someone other than the seller.

##### ***The point at which the goods are taken away***

71. The customer does not have to take the goods away there and then for the obligation to engage; nor does it have to be the person who pays for the goods who takes the goods away; it is sufficient that the bag is supplied at the particular location where the goods are sold for the purpose of enabling the goods to be taken away by someone other than the seller.
72. This means that when a single use carrier bag is supplied to enable the purchased goods to be picked up later by the customer or another person, the seller will be obliged to charge for the bag. This might be the case for example, where a seller offers a ‘pick up by car’ facility. Another example could be for “click and collect” purchases where a customer either orders and pays on-line or over the phone and then chooses to collect from a local store.

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<sup>1</sup> For the sake of brevity the term ‘seller’ here is used to denote the person who is the “seller”, along with the seller’s agents or contractors.

***The point at which a single use carrier bag is supplied***

73. The point at which the bag is supplied during the course of the sales transaction is irrelevant to question of whether the obligation to charge arises. So, for example, if a customer pays for goods at one location in the place where the goods are sold and picks up the goods from a different location in that place, the obligation to charge applies to any bag supplied at the pick-up point. This might happen in some catalogue superstores, for example.
74. Another example is the case where a customer declines a bag during the course of the sale transaction and subsequently requests a bag; perhaps because the customer's own bag is not big enough to contain all of the goods purchased. In this situation, the purpose of supplying the bag is to enable the goods to be taken away and so the obligation to charge applies.

***“For the purpose of enabling the goods to be taken away”***

75. A more complex situation might arise where a customer uses their own bags to contain the goods that they have purchased from the seller and request a single use carrier bag to hold goods that were not purchased from the seller. On the face of it this situation would not appear to engage the obligation to charge because the bag is ostensibly supplied for the purpose of enabling goods purchased from a different seller to be taken away.
76. The Government believes that that is the wrong approach. In these circumstances, the fact that the need for the bag arises as a result of goods being purchased from the seller is sufficient in the Government's view, to render the supply a supply made for the purpose of enabling the goods purchased from the seller to be taken away.
77. The logic here is that, were it not for the goods purchased from the seller, the need for the single use carrier bag would not arise. It is the fact that the customer's own goods are placed into the single use carrier bag supplied by the seller that enables the customer to use his or her own bag to take away the goods purchased from the seller. The Government's view is that a single use carrier bag supplied in these circumstances is thus supplied for the purpose of enabling the goods purchased from the seller to be taken away and that consequently, the obligation to charge applies.

**Supply of single use carrier bags where no goods are purchased**

78. If a person requests a seller to supply a bag in circumstances where the person has not purchased goods from the seller then the obligation to charge for the bag does not arise. This is because the bag is not supplied for the purpose of enabling any goods purchased from the seller to be taken away. For example, a seller providing a carrier bag to take away a promotional store catalogue would not be required to charge for this bag.

79. The Government nevertheless hopes that sellers will choose to champion the environment by charging for single use carrier bags supplied in these circumstances.

#### **(B) - Supplying new single use carrier bags for the purpose of enabling the goods to be delivered to persons in Wales**

80. This situation covers those cases where customers buy goods in-store, over the telephone or over the internet, and arrange with the seller for the goods to be delivered to a person in Wales.
81. Where the entire sales transaction takes place at a distance, there are unlikely to be many complexities involved in ascertaining whether the obligation to charge arises or not. This is the case primarily because it will be clear to the person supplying the bags whether or not the bags are being supplied for the purpose of enabling the goods to be delivered to persons in Wales as a delivery address will need to be provided. The Government's view is that there are unlikely to be many (if any) circumstances in which bags are supplied in the course of delivering goods which do not attract the requirement to charge.
82. There is however, one point of significance here in relation to exemptions from the requirement to charge. Exemptions are dealt with fully in section 4.4.2 below. One of the exemptions relates to mail order dispatch and courier bags. The effect of the exemption is that if goods are to be delivered to persons in Wales by means of these types of bags, the seller is not required to charge for these types of bags when supplied for the purpose of enabling the goods to be delivered in Wales.

### **4.4 When the obligation to charge does not apply**

83. The obligation to charge does not apply to all single use carrier bags; some will be supplied for purposes other than to enable goods to be taken away or delivered, others are exempt from the requirement to charge. This section explains the circumstances in which the Regulations do not impose any obligation on a seller to charge for a single use carrier bag.

#### **4.4.1 Bags supplied for purposes other than to enable goods to be taken away or delivered**

84. It is only where bags are supplied for the purpose of enabling goods to be taken away or delivered that the obligation to charge arises. This means that when sellers supply bags for other purposes, there is no obligation to charge.
85. An example of this type of supply was given earlier at paragraph 78 in relation to the supply of a bag where no goods are purchased from the seller. Another example of how this might occur is where a seller uses a bag as primary packaging for a single sales unit, such as where own-

brand ready meals are sold in sealed bags which comprise indivisible units offered for sale as such.

86. The Government's view is that a bag will be supplied as primary packaging for a single sales unit only if the bag is used to package the unit before it is offered for sale. The distinguishing feature of this type of supply is that it manifests as a *fait accompli*; if the customer wishes to purchase the goods, the customer has no option but to purchase the goods as a single unit packaged in the sealed bag.
87. This is to be distinguished from cases where customers are offered a choice of goods which are then placed in a bag and sold at a set price. In this circumstance, the bag does not function as primary packaging, but as secondary packaging the primary purpose of which is to facilitate the goods being taken away (or delivered). This practice might occur with respect to some goods sold at delicatessen counters in supermarkets, or at hot on-the-go food take away restaurants serving what are commonly known as 'meal deals'.

#### 4.4.2 Exemptions

88. The obligation to charge does not apply to the supply of single use carrier bags in five circumstances:

- (A)- where the bag is one that meets certain technical specifications concerning its size and the material from which it is made; these are small bags that can always be supplied free of charge
- (B)- where the bag is one that meets certain size specifications *and* it is used solely to contain packaged uncooked meat, poultry or fish;
- (C) - where the bag is one that is used to contain certain items specified in the Regulations (regardless of the bag's technical specifications);
- (D)– where the bag is a mail order dispatch or courier bag (regardless of the bag's technical specifications);
- (E)– where the bag is a gusseted liner used to line or cover boxes, crates or other containers of a similar nature.

(A) – Certain small bags that can always be supplied free of charge

89. There are three types of single use carrier bag that can always be supplied free of charge. These bags are described at paragraph 1(1)(j), (k) and (l) of Schedule 1 to the Regulations.

##### **Small flat paper bags without handles**

90. The first type of bag is a small flat paper bag without a handle. In order to be exempt from the requirement to charge, the bag must be no greater than 175 mm in width, and no greater than 260 mm in height.

This means that flat paper bags without handles of any size below the maximum height and width specifications can also be supplied free of charge.

91. To note the requirement here that the bag is flat: the supply of a paper bag that meets the height and width specifications will *not* be exempt if the bag has a gusset.
92. These flat paper bags are typically used for small items such as greeting cards. The description of these bags is at paragraph 1(1)(j) of Schedule 1 to the Regulations

**Small gusseted paper bags without handles**

93. The second type of bag is a small gusseted paper bag without a handle. In order to be exempt from the requirement to charge, the bag must be no greater than 80 mm in width, and no greater than 155 mm in height; the bag's gusset width must be no more than 50 mm. This means that gusseted paper bags without handles of any size below these dimensions can also be supplied free of charge.
94. These bags are typically used for 'pick and mix' type confectionary or in pharmacies for cough mixture or paracetamol. The description of these bags is at paragraph 1(1)(l) of Schedule 1 to the Regulations.

**Small flat plastic bags without handles**

95. The third type of bag that can always be supplied free of charge is a small flat plastic bag without handles. In order to be exempt from the requirement to charge the bag must be no greater than 125 mm in width, and no greater than 125 mm in height. As before, this means that flat plastic bags without handles of any size below the maximum height and width specifications can also be supplied free of charge.
96. These bags are typically used to contain small hardware items such as screws, or small haberdashery items such as buttons. The description of these bags is at paragraph 1(1)(k) of Schedule 1 to the Regulations.

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

97. A single use carrier bag made of any material which meets the size specifications set out in the next paragraph can be supplied free of charge if it is used *solely* to contain:
  - (a) packaged uncooked fish or fish products;
  - (b) packaged uncooked meat or meat products;
  - (c) packaged uncooked poultry or poultry products.
98. The size specifications are:
  - (a) maximum width of 205 mm;
  - (b) maximum height of 458 mm – inclusive of any handles;

(c) maximum gusset width of 125 mm (if any).

99. This means that bags of any size below the maximum width / height / gusset specifications can also be supplied free of charge as long as they are used *solely* to contain the goods specified above. It does not matter whether the bag in question is the smallest size into which the goods will fit; what matters is that the bag is used only to contain the goods in question.
100. The Government hopes that sellers will comply with the spirit of the legislation and choose not to supply larger bags where smaller bags would be sufficient.
101. The description of these bags is at paragraph 1(1)(e) of Schedule 1 to the Regulations.

**(C) – Bags of any size used to contain particular items**

102. Many of the exemptions do not depend on the size or design of the bag in question but instead, relate to how the single use carrier bag is used. This means that any single use carrier bag made of any material and regardless of its size, thickness or design can be supplied free of charge if it is used in a way specified in certain paragraphs of Schedule 1 to the Regulations (mentioned further below).

103. There are two types of exempt supply under this heading:

- (a) the supply of bags which are used to contain purchases made on board vehicles and vessels and in restricted areas in airports; and
- (b) the supply of bags which are used *solely* to contain certain items listed in Schedule 1.

**(a) – Bags used to contain purchases made on board vehicles and ships & in restricted areas in airports**

*Purchases made on board ships, trains, aircraft, coaches or buses*

104. There is no obligation to charge for the supply of a single use carrier bag which is used to contain purchases made on board ships, trains, aircraft, coaches or buses (this exemption is contained in paragraph 1(1)(g) of Schedule 1 to the Regulations).

105. There is no requirement that the bag in question be used *solely* to contain purchases made on board a vehicle or vessel, it is sufficient that that bag is used to contain a single purchase made on board.

*Purchases made in restricted areas in airports*

106. Sellers are not obliged to charge for supplying single use carrier bags which are used to contain purchases made in restricted areas in airports (this exemption is contained in paragraph 1(1)(h) of Schedule 1 to the Regulations).

107. Restricted areas are designated by the Secretary of State under powers contained in the Aviation Security Act 1982. For the purposes of this guidance, the point to note is that these areas include the areas in which duty free shops and other airside retail outlets operate.

108. The point made at paragraph 102 applies here also.

**(b) Bags used solely to contain certain items listed in Schedule 1**

109. There is no requirement to charge for the supply of any single use carrier bag which is used solely to contain any of the following items:

- (a) unpackaged food for human or animal consumption (paragraph 1(1)(a) of Schedule 1);
- (b) unpackaged loose seeds, bulbs, corms or rhizomes (paragraph 1(1)(b) of Schedule 1);
- (c) any unpackaged axe, knife, knife blade or razor blade (paragraph 1(1)(c) of Schedule 1);
- (d) unpackaged goods contaminated by soil (paragraph 1(1)(d) of Schedule 1);
- (e) live aquatic creatures in water (paragraph 1(1)(n) of Schedule 1);
- (f) certain medicinal products (paragraph 1(1)(o) of Schedule 1).

110. There are two things that trigger this exemption from the requirement to charge. The first is that the bag in question must be *used* to contain one of the listed items; the second is that the bag must be used *solely* to contain the item in question.

111. There is a noteworthy distinction between supplying a bag for the purpose of the bag being used in a particular way, and supplying a bag which is in fact used in a particular way. This exemption is directed towards the latter, not the former.

112. It is the Government's view that a bag will be used to contain an item in the list if the item in question is placed within it. It is also the Government's view that a bag will be used solely to contain an item on the list if the item in question is the only item placed in the bag. Typical examples include a bag provided at a greengrocer display in a supermarket, into which customers place their unpackaged fruit or vegetables before reaching the point of sale; or a small paper bag into which a camping knife might be placed at the point of sale.

113. The Regulations place the obligation to charge on sellers; they do not directly impose any obligation on customers to pay for bags they use (albeit that the former gives rise to the latter in practice). This is an important distinction, particularly in relation to the exemptions being discussed here.

114. The result with respect to these exemptions, is that it is the seller's obligation to ensure that any bags supplied free of charge are used solely to contain the items in the list above. Recalling the discussion

earlier about the meaning of 'supply' in the Regulations, this means that a seller who allows a single bag to be used to enable goods in addition to an item on the list above to be taken away, will breach the requirement to charge.

115. Sellers can avoid this result by making arrangements to secure that bags which they do supply free of charge in reliance on this exemption, are in fact used solely to contain the items on the list. This might be achieved by providing bags of a size capable of containing only the particular items on the list.
116. Strictly speaking, the Regulations envisage that a bag used to contain items from two or more of the categories listed above would not be exempt from the requirement to charge, because the bag in question would not be used *solely* to contain an item of a description in a single category.
117. The Government takes the view that it would be counter-productive to enforce against a seller who supplies a bag free of charge where the bag is used solely to contain one *or more* of the items listed above. This is because to do so could inadvertently encourage the use of multiple single use carrier bags, where one might be sufficient.

**(C).1 - Notes on the particular items listed in Schedule 1**

***Unpackaged food for human or animal consumption (paragraph 1(1)(a) of Schedule 1)***

118. Many of the items that fall within this category on the list will be obvious – examples include loose fruit and vegetables, bread and other bakery items, pick and mix sweets and dry animal food.
119. Because the term “unpackaged” is defined in the Regulations to mean “wholly or partially unwrapped”, items in this category will also include hot on-the-go food items such as French fries, chips and other meal items which are served in open cartons or trays or which are partially wrapped in paper (such as open ‘cones’ of paper used to serve chips for consumption on-the-go).

***Unpackaged loose seeds, bulbs, corms or rhizomes (paragraph 1(1)(b) of Schedule 1);***

120. Items in this category will include all kinds of loose plant seeds, such as grass seed, bean, sweet pea etc; all bulbs, such as tulip and daffodil bulbs, all corms, such as freesia and crocus; and all rhizomes, such as asparagus, ginger, lily of the valley etc.

***Any unpackaged axe, knife, knife blade or razor blade (paragraph 1(1)(c) of Schedule 1);***

121. This is self explanatory in most respects; and to note that “unpackaged” means wholly or partially unwrapped also. This means for example, that a bag can be supplied free of charge if it contains a kitchen knife which is mounted on cardboard, but not enclosed in wrapping.

***Unpackaged goods contaminated by soil (paragraph 1(1)(d) of Schedule 1);***

122. In order to benefit from this exemption, the goods contained in the bag need not inherently derive from soil or soil-based products; it is sufficient that the item in question is as a matter of fact, contaminated by soil.
123. This means for example, that a seller will not need to charge for a single use carrier bag used to contain goods which have become contaminated by soil as a result of the manner in which the goods have been stored. This could be the case for a variety of products stored in outside areas in garden centres, for example.
124. Some of the items covered by this exemption are likely to fall under one of the exemptions mentioned above also; vegetables and plant bulbs are examples. This exemption will also apply to the supply of single use carrier bags which are used to contain the following items if they are otherwise wholly or partially unwrapped (the list is not intended to be exhaustive):
- (a) soil;
  - (b) compost;
  - (c) potted plants;
  - (d) cut flowers (but only if they are in fact contaminated by soil);
  - (e) fishing bait and wormery worms.
  - (f) aquatic plants

***Live aquatic creatures in water (paragraph 1(1)(n) of Schedule 1);***

125. This exemption is directed to the supply of any single use carrier bag which is used to contain any live creature, together with water. An obvious example is live fish purchased from a pet shop. It does not matter how much water is contained in the bag; different amounts of water will be appropriate for different types of creatures; nor does it matter whether the creature's survival depends on being immersed in the water.
126. The purpose of this exemption is to secure that there is no requirement to charge for a single use carrier bag which is used to transport live creatures which in any way depend on water for their survival or comfort. The use of "aquatic" to describe the creatures in question is intended to capture this last point.

***Certain medicinal goods (paragraph 1(1)(o) of Schedule 1).***

***A preliminary note about selling and supplying medicinal goods***

127. One of the key features of the obligation to charge is that it is triggered when a seller supplies a bag for the purpose enabling the goods *sold by the seller* to be taken away or delivered. This point has a particular relevance for sellers who are involved in dispensing medicines.

128. When a person dispenses medicines for which no money is given in exchange, that person will not be selling the goods in question. This will be the case, for example, where medicines are dispensed free of charge in accordance with certain prescriptions.
129. This does not mean that persons who dispense free medicines are not “sellers” under the Regulations; those persons may be selling other goods which brings them within the definition of that term. What it does mean is that the obligation to charge will not apply to those sellers when they supply bags for the purpose of enabling the free goods to be taken away or delivered.
130. When sellers dispense medicinal products or listed appliances in exchange for money, those sellers will be selling the goods in question. It is in respect of the supply of single use carrier bags during the course of these sales transactions that the exemption is relevant.

*The medicines exemption*

131. Without this exemption, the Regulations would require sellers to charge for single use carrier bags given out when customers pay for medicines and appliances for human use for which they have a prescription. The Regulations would also require sellers to charge for bags given out when customers pay for medicines which they can only buy under the supervision of a pharmacist (“pharmacy medicine”).
132. This exemption disapplies the obligation to charge for bags in both circumstances; but only if the bag in question is used *solely* to contain the prescribed items or pharmacy medicine.
133. The exemption does not apply to items prescribed by veterinary surgeons or practitioners, so sellers will be obliged to charge for bags supplied for the purposes of enabling these goods to be taken away or delivered.
134. It is worth noting that the effect of the exemption in relation to the sale of medicinal products or listed appliances which have been prescribed. The effect is that it does not matter whether the particular item is a prescription only medicine; whether it is a pharmacy medicine, or whether it is an over-the-counter medicine; as long as the item has been prescribed by a person entitled to do so, the seller is not obliged to charge for the supply of a bag used solely to contain the items in question.
135. One of the knock-on effects of this last point is that the obligation to charge will apply to sellers when they supply a bag to enable an over-the-counter medicine to be taken away or delivered if the medicine in question is not prescribed; but the seller will not be required to charge for a bag if the same medicine is prescribed.

#### (D) – Mail order dispatch or courier bags

136. This exemption will be relevant to any sellers whose goods are delivered by mail or courier in Wales.
137. Because of the way “single use carrier bag” is defined in the Regulations most (perhaps all) plastic mail order bags and those used by couriers will be “single use carrier bags”. The Regulations are targeted at encouraging consumers to change the way they consume single use carrier bags, as opposed to being directly targeted at reducing the use of packaging generally, or plastic in particular.
138. Without this exemption the effect of the Regulations would be to require sellers to charge for bags which are equivalent, in effect, to envelopes or other postal packaging.
139. This is not the intended target of the legislation and consequently this exemption operates so that sellers whose goods are delivered in mail order dispatch or courier bags are not required to charge for those bags.

#### (E) Gusseted liners used to line or cover boxes, crates or other containers of a similar nature

140. These bags are commonly made of plastic and fall within the definition of “single use carrier bag”, primarily because they are not intended for multiple re-use.
141. A seller who supplies a gusseted liner for the purpose of enabling goods to be taken away or delivered will not be required to charge for the liner if it is used to cover a box, crate or other container of a similar nature.
142. These kinds of bags are sometimes supplied at the point of sale to line boxes before goods are placed in the boxes to be taken away or delivered. They might be used for example, where the weight of a quantity of small loose hardware items is such that a box is the only realistic means of taking the goods away or delivering them; but where the individual items are so small that they could escape from the box if they were not otherwise contained in a bag.
143. These liners are sometimes also used by local merchants who deliver produce to local residents in boxes. In these circumstances the liners might be used to cover the box of produce to protect both the produce, and the box, from inclement weather. Examples include organic box delivery schemes.

## 5. RECORDS & PUBLICATION

144. The Regulations impose obligations on sellers to keep, retain, supply and publish certain information about the single use carrier bags they supply and about the money they receive as a result of having to charge

for bags. The purpose of imposing these obligations is to ensure that the public have access to information about how the money they are now required to pay is used; and about the effectiveness of the legislation in bringing about positive environmental outcomes.

145. Although the Regulations directly impose obligations only on sellers, the financial burden imposed by the legislation will ultimately be borne by consumers. The environmental outcomes that the legislation is designed to deliver will directly affect the quality of the local environment enjoyed by the public in Wales and are of significance in the wider context of protecting biodiversity and safeguarding the environment. For these reasons the record-keeping and publication elements of the Regulations are of central importance to the integrity of the scheme as a whole.

## 5.1 Keeping records

146. All sellers are required to keep annual records of information relating to the single use carrier bags that they supply and in relation to the proceeds they receive by way of the amount they charge for these bags. The information that sellers must keep is focussed on the single use carrier bags that *must* be charged for, as opposed to all single use carrier bags that they supply (the latter would include bags that are exempt). The term “chargeable bags” is used in the remainder of this section to denote single use carrier bags that must be charged for.

### 5.1.1 - Reporting years

147. The obligation to keep records is framed by reference to *reporting years*; which denote annual periods that commence on 7 April in one year and end on 6 April the following year. Because the Regulations come into force part-way through the year, the first “reporting year” is defined so that it commences on 01 October 2011 and ends on 6 April 2012 (the definition of “reporting year” can be found in regulation 2(1)).
148. Because the requirement is to keep records for a reporting year, the information that must be recorded in any particular annual record is the information that relates to the particular reporting year in question. There is an exception to this for the first reporting period in relation to “reasonable costs”. This is explained in more detail at paragraph X below.

### 5.1.2 – The information that must be recorded

149. The information that must be contained in the annual records is set out at regulation 8(3) and comprises:
- (a) the number of chargeable single use carrier bags supplied;
  - (b) the gross amount received by the seller by way of charges for single use carrier bags which attract the charge (“gross amount received”);
  - (c) the gross amount received by way of the charge;
  - (d) the net proceeds of the charge;

- (e) a breakdown of the difference between the gross and net proceeds of the charge;
- (f) the uses to which the net proceeds of the charge have been put.

**(a) – The number of chargeable single use carrier bags supplied**

150. This will be the total number of single use carrier bags supplied in the reporting year, less the number of those bags that did not attract the obligation to charge (because they were exempt from the requirement to charge, for example).
151. Where sellers' goods are taken away or delivered by means of chargeable bags used or provided by third parties acting on behalf of the seller or under contract with the seller, those bags must also be included in this part of the record (although they do not need to be identified separately). This might occur where goods are distributed from third party warehouses in some cases.

**(b) – The gross amount received by the seller by way of charges for single use carrier bags which attract the charge**

152. If a seller charges only enough to ensure that the minimum price to the customer for each chargeable bag supplied is 5 pence, the amount under this heading will be the same as the amount under the "gross amount received by way of the charge" heading (see below). Because sellers are free to charge any amount they wish above 5 pence for single use carrier bags, some sellers may price bags at more than 5 pence. In these cases, the amount that will be recorded under this heading will be more than the amount recorded under "gross amount received by way of the charge". The additional amount will be the total of all amounts over and above the 5 pence that a seller chooses to charge its customers.
153. For example, a seller who charges 8 pence per bag and supplied 800,000 bags in a reporting year would record £64,000 (8p x 800,000) as the gross amount received. The same seller would record £40,000 (5p x 800,000) as the "gross amount received by way of the charge".

**(c) – The gross amount received by way of the charge**

154. The Regulations define *the charge* as "the minimum consideration that a customer must pay by virtue of regulation 6(2)"; which, in turn, is 5 pence. This means that the amount recorded under this heading will be the amount that represents 5 pence multiplied by the number of chargeable bags supplied.

**(d) – The net proceeds of the charge**

155. The net proceeds of the charge is the amount that is left over from the gross amount received once the seller's overheads and any amount above the minimum 5 pence price have been deducted. 'Overheads' are reasonable costs and VAT (if chargeable). The significance of the net proceeds figure is that it represents the amount of 'additional' money a seller receives from customers as a result of being obliged to charge the statutory minimum price for bags.

156. This 'additional' money is generated as a direct result of the mandatory charge and it is kept by sellers. The Regulations do not dictate how this money is to be used they simply require sellers to provide information about it.
157. The amount that will be recorded under this heading will be the amount that is arrived at by subtracting any attributable VAT, reasonable costs and any amount above 5 pence that a seller chooses to charge, from the gross amount received.

#### **Attributable VAT**

158. This will be the amount of any VAT included in the price of 5 pence. VAT charged on any amount above 5 pence will not be "attributable VAT". This is because the information needed is the net proceeds of the 5 pence charge, as opposed to the net proceeds of charging at levels above the mandatory minimum.
159. For sellers who are not required to charge VAT on the supply of bags, there will be no "attributable VAT" to deduct from the gross amount received.

#### **Reasonable costs**

160. These are costs that sellers have to incur to be able to comply with the obligations imposed by the legislation; they are additional costs, over and above those that sellers would have to incur otherwise. For this reason they are also deducted from the gross amount received to arrive at the figure that represents the 'additional' amount of money (net proceeds) that sellers receive by complying with the obligation to charge for bags.
161. Because the first reporting period commences on the date the Regulations come into force, preparatory costs incurred by sellers before that date will not relate to the first reporting period. Although these costs are incurred before the legislation comes into effect, they are borne by sellers as a direct result of the need to comply with the obligations the legislation imposes. For this reason the Regulations entitle sellers to include these preparatory costs as "reasonable costs" in their record for the first reporting period.
162. There are two types of reasonable costs:
- (i) costs reasonably incurred to enable the seller to comply with the Regulations;
  - (ii) costs reasonably incurred to enable the seller to communicate information about the charge to customers.

*Costs reasonably incurred to enable the seller to comply with the Regulations*

163. These costs represent the *additional* expenditure that sellers will have to incur in order to be able to comply with the Regulations. Because the Regulations do not require sellers to supply bags, the cost of buying those bags wholesale will not be a 'reasonable cost'.

164. In principle, the Government considers that the following types of expenditure are of the kind that could amount to "reasonable costs" (the list is not intended to be exhaustive):

- On-going maintenance, updates and renewal of IT systems to administer the charge, including accounting, recording, checkout, self-service and barcode systems;
- Systems for ensuring compliance with recording and reporting the charge, including website activity;
- Costs in connection with supplying records on request to members of the public or the Welsh Ministers;
- Costs in connection with responding to enquiries made by administrators;
- Staff time for administering the charge;
- On-going monitoring to ensure compliance across multiple stores;
- On-going training and communications to staff;
- Specialist advice

165. Whether any expenditure will in fact amount to reasonable costs in any case will depend on whether there is a sensible and proportionate relationship between the activity and amounts involved on the one hand, and what the seller realistically needs to do to comply with the legislation on the other.

166. For example: the cost of an entirely new IT system is unlikely to be expenditure that a seller reasonably needs to incur to comply with the legislation if a minor upgrade would achieve the same result; but significant costs associated with upgrading an IT system may be expenditure that a seller reasonably needs to incur, if the system is already a part of the seller's normal operations.

*Costs reasonably incurred by a seller to enable the seller to communicate information about the charge to customers*

167. These are costs that sellers incur as a result of undertaking activities to inform customers about the charge. Again, the costs must be reasonable in order to be deductible from the gross amount received.

Costs which could fall under this heading might include the following (an indicative list only):

- Website activity;
- Staff time talking to customers about the charge (we would expect the amount of time spent on this activity to decrease as the public becomes accustomed to the charge);
- Costs of any printed material distributed to customers.

**Any amount in excess of the charge received by way of consideration for single use carrier bags**

168. This amount will be relevant to any sellers who choose to charge more than the mandatory minimum of 5 pence per bag. It represents the amount of money a seller generates by charging more than the 5 pence mandatory minimum (plus any VAT included in the price).

169. Because the net proceeds of the charge is focussed on the amount of additional money received by sellers as a direct result of having to charge 5 pence for bags, any extra amounts generated by sellers themselves needs to be discounted.

170. The amount that will be deducted from the gross amount received under this heading is the difference between the minimum 5 pence charge and the price customers actually pay for each single use carrier bag; it will be the product of subtracting the amount recorded under head (c) above from the amount recorded under head (b).

171. To take the example given earlier: a seller who prices bags at 8 pence each and supplies 800,000 bags in a reporting year will receive £64,000 (8p x 800,000); this will be recorded under head (b) – *gross amount received by way of charges for single use carrier bags which attract the charge*. The same seller will record £40,000 (5p x 800,000) under head (c) – *gross amount received by way of the charge*. The seller will deduct the difference between these two amounts - £24,000 – from the gross amount received from all charging as part of reaching the figure that represents the net proceeds of the charge.

172. For sellers who do not price bags above 5 pence, there will be nothing to deduct under this heading.

**(e) - A breakdown of how the amount which represents the difference between the gross and net proceeds of the charge has been arrived at**

173. The information needed here is focussed on the money received by sellers which will not form part of the seller's net proceeds of the charge. That money will be made up of any extra amounts the seller receives by pricing bags at more than 5 pence each, together with the seller's overheads. The seller's overheads will be its reasonable costs and any

VAT the seller is required to charge on the supply of bags at 5 pence each.

174. This part of the record needs to show:

- the total amount of VAT charged during the reporting year on the supply of chargeable bags at 5 pence each (regardless of whether the seller sold bags at a price higher than 5 pence);
- the difference between the total amount of money received by the seller from the 5 pence charge and the total amount of money received by the seller from pricing bags at more than 5 pence (if any);
- the total amount of reasonable costs incurred during the reporting year;
- a breakdown of reasonable costs so that the different amounts of expenditure incurred on different heads of reasonable costs is shown;

175. In relation to this last point, the different heads of reasonable costs will be the two types mentioned earlier:

- costs reasonably incurred by a seller to enable the seller to comply with the Regulations;
- costs reasonably incurred by a seller to enable the seller to communicate information about the charge to customers.

**(f) - The uses to which the net proceeds of the charge have been put**

176. The Regulations do not impose any obligations on sellers to use the net proceeds in a particular way; those proceeds belong to sellers and the decision about how to use the additional money remains theirs. That said, the Government wishes to see the net proceeds of the charge used to support good causes, particularly ones that benefit the environment, and we will be working with retailers between now and October to agree a voluntary code of practice for how the net proceeds should be used.

177. The Government is aware that some sellers already have successful partnerships with good causes and does not wish to impede those arrangements in any way. The Waste (Wales) Measure 2010 provides the Welsh Ministers with a power to make regulations requiring sellers to use the net proceeds in particular ways. The Government does not intend to use this power unless the voluntary approach is unsuccessful.

178. The Regulations do oblige sellers to disclose the decisions they make about how they use the additional money generated by the obligation to charge and it is under this heading in sellers' annual records that those disclosures will be made. This means that sellers will set out in their records how they have used the additional money they receive from the 5 pence minimum price that customers pay for single use carrier bags.

179. There is no requirement to set out how much of the net proceeds has been applied to different uses, but the Government considers that to do so would be good practice and that it would aid transparency to customers on how their money has been used.

## 5.2 Retaining records

180. Records must be retained for three years. The retention period begins on 31 May following the end of the reporting year in question. This means for example, that the record for the first reporting year which ends on 6 April 2012 will be retained by the seller until 30 May 2015; the record for the reporting year ending 6 April 2013 will be retained until 30 May 2016 and so on.

## 5.3 Making records available on request

181. Sellers are obliged to provide a copy of a record if a member of the public or the Welsh Ministers request it in writing. A seller must provide the copy within 28 days of receiving the written request, but only if the request is made during the three years for which the record must be retained.
182. This obligation applies to all sellers, regardless of their VAT status or the number of single use carrier bags that they supply.

## 5.4 Publishing records

183. This is the primary mechanism by which sellers account to the public for the use of the additional money generated by the obligation to charge.

### 5.4.1 Which sellers must publish

184. Not all sellers are required to publish records. Sellers who are required to register for VAT during the course of a particular year *and* who supply 1,000 or more chargeable single use carrier bags in that year will always have to publish their record for the year in question.
185. Sellers who are not required to register for VAT during a particular year will not have to publish their record for that year, regardless of how many chargeable bags they supply during that year. Sellers who are required to register for VAT in a particular year but who supply less than 1,000 chargeable bags during that year will not be required to publish their records for that year. The following table shows which sellers need to publish records.
186. During the course of any reporting year a seller may become liable to register for VAT. If a seller also supplies more than 1,000 single use carrier bags in that year then the seller will be required to publish its records.

| Was the seller required to register for VAT in the reporting year? | Did the seller supply 1,000+ chargeable bags during the reporting year | Is the seller required to publish its record for the reporting year? |
|--|--|--|
| Yes  | Yes  | Yes  |
| Yes  | No   | No   |
| No   | Yes  | No   |

### 5.4.2 Time and duration of publication

187. Records for one reporting year must be published on or before 31 May in the following reporting year. This means that sellers will have just short of eight weeks to produce and publish records. A template to assist with the publication of records is available at [www.carrierbagchargewales.gov.uk](http://www.carrierbagchargewales.gov.uk)

### 5.4.3 Methods of publication

188. The Regulations offer two options for publication: in-store notices or internet publication. It is open to a seller to publish by both methods if it so wishes.

#### Internet publication

189. Records can be published on a seller's home page or elsewhere on its internet site. In either case the record, or a link to the record, needs to be displayed prominently on the seller's home page. The purpose of the requirement for prominence is to secure that the public can easily locate and access the information that records contain.

190. This does not mean that a seller's home page must be organised so that the prominence given to the seller's record, or the link to its record, is greater than that given to other information on the seller's home page. The Government's view is that the requirement for prominence does mean that the record or link to the record must be given at least equivalent prominence to other information on the seller's home page and that it must be clearly visible to and readable by website visitors without recourse to a search facility or site map.

191. The term "home page" is intended to capture the start page, or first level, of a seller's website; the page whose URL ends with ".com", ".co.uk", ".org.uk", and the like.

192. For sellers who have more than one internet site the purpose behind the publication requirements will have a particular significance as it will dictate to a large extent, which internet site is the appropriate vehicle for publication. The purpose behind the requirements is to ensure that the public can easily locate and access the information that the records contain.
193. This means that the records will need to be published on an internet site to which the public would ordinarily turn for information of the type contained in the records. This might be the seller's online grocery shopping site, or it could be an entirely separate internet site concerned with corporate and social responsibility. The point here is that the public should not be required to undertake an unreasonable amount of enquiry to locate and access a seller's records.
194. The Government's view is that to publish records only on an internet site dedicated solely to financial products offered by a seller, or to a seller's recruitment practices for example, would not meet the obligation to publish records.

#### *Franchisees*

195. The mechanics of franchising are such that sellers who are franchisees might wish to publish their records on the franchisor's website, rather than their own website or in-store. It is worth noting in this respect that although the Regulations require sellers who wish to publish records on the internet to use "the seller's internet site", the Regulations do not make any provision about when a website is to be considered as the seller's website and when it is not.
196. The Government's view is that if the franchisor's website is the website commonly relied on by the franchisee to make its presence on the internet known, publishing on the franchisor's website will be sufficient to comply with the duty to publish on "the seller's internet site". Again, the guiding principle here is whether the franchisor's website is the internet site to which the public would ordinarily turn for information of the type contained in the record for the particular seller in question.
197. Because each seller is required to keep and publish its own record, it is those individual records that must be published on the seller's internet site. Where franchisee sellers wish to publish by means of the franchisor's website, this will mean that the franchisor's website will need to contain the individual records of all franchisees. There is nothing in the Regulations to prevent the publication of a consolidated report for the business model as a whole, albeit that that could not substitute for the publication of individual records.

#### **In-store publication**

198. If a seller publishes its record by displaying an in-store notice, the notice must be displayed in some obvious way. The requirement for the notice to be displayed prominently and for it to be clearly visible to, and

readable by, customers, is again addressed to making it easy for customers to obtain the information contained in the record. The Government's view is that this requirement will be met where the notice is both large enough and obvious enough for a reasonably diligent customer to locate it without needing to seek assistance.

199. The Government considers in principle that a notice of equivalent size and prominence to those commonly used to convey information to customers about a seller's refund policy or the sale of age-restricted products is likely to be sufficient to meet the obligation to publish.
200. It may be worth noting that the prominence and visibility of an in-store notice relates to the ease with which customers can read a seller's record; it does not relate to the ease with which the public at large can do so. This means that a seller is not required to display the notice so that it is readable by members of the public who are not customers. Members of the public who are not customers may gain access to a seller's record by making a written request.

## 5.5 Verifying records

201. Sellers are under no express obligation to verify the information contained in their records. It will be a breach of the Regulations to fail to keep accurate records if that shortcoming arises as a result of a failure to take all reasonable steps necessary to do so. In order to demonstrate that a seller has taken all reasonable steps to place itself in a position to keep accurate records, sellers may wish to separately record the evidence on which their records are based.
202. For any smaller sellers who may not use IT systems to record data on their operations, this may mean for example, manually recording the amount of resources incurred in complying with the legislation (payments made to accountants and estimates of staff time are examples).

## 6. BREACHES

### 6.1 Overview

203. From a regulatory perspective the significance of breaching the Regulations is that enforcement action can be taken against a seller who does so and that liability to a civil penalty arises where a breach is found. From the seller's wider perspective, an established breach of the Regulations may impact on its reputation with its customers and its standing within the business community.
204. From the Government's perspective, the significance of the breaches set out in the Regulations is that they indicate the minimum standard of behaviour that the Government expects sellers to adopt in order to make a responsible contribution to delivering the environmental outcomes that underpin the Regulations.

205. The Regulations impose a number of obligations on sellers but a failure to comply with those obligations will not of itself amount to a breach. It is a failure to comply with an obligation in the circumstances set out in the Regulations that will amount to a breach. In addition to this, obstructing or failing to assist an administrator will amount to a breach but again, only in the circumstances specified in the Regulations.
206. The Government's view is that a seller who does all it reasonably can in good faith to comply with the Regulations should not be penalised if, despite its best efforts, the seller nevertheless fails to comply with a particular requirement on occasion. It is with this in mind that the circumstances in which a breach occurs have been framed.

## 6.1 Failure to charge; failure to keep, retain, supply or publish records

207. Non-compliance with these obligations will amount to a breach if it results from a seller's failure to take all reasonable steps necessary to enable it to comply. In some cases it may be straightforward enough to establish whether a seller has taken all reasonable steps; in others, less so.
208. The question of whether a seller has or has not taken all reasonable steps necessary in any particular case will be a judgement call for the relevant local authority in the first instance. If a seller and the relevant local authority cannot reach common ground on whether the seller did or did not take all reasonable steps necessary to enable it to comply, the local authority will reach a decision about whether to take enforcement action; if it does, the seller can appeal that decision to the First Tier Tribunal.

### **Reasonable steps to take to comply with the requirement to charge**

209. The points made in Section 4.3.1 about the circumstances in which a seller supplies single use carrier bags are of particular relevance here. In the light of the acts and omissions that can amount to 'supply', the Government's view is that in order to put itself in a position to be able to comply with the requirement to charge, a seller would need to take the following kinds of steps. This list is not intended to be exhaustive, nor will every step necessarily be appropriate for every seller:
- (a) staff training;
  - (b) making known to customers that chargeable bags must be paid for;
  - (c) putting in place appropriate arrangements to avoid chargeable bags being taken by honest mistake or theft;
  - (d) ensuring that any third parties involved in the delivery of the seller's goods are aware of the seller's obligation to charge for bags supplied by the third parties;

- (e) making appropriate arrangements to ensure that any third parties involved in the delivery of the seller's goods comply with the seller's obligation to charge;
- (f) adjusting online shopping websites to offer bagless deliveries or to require customers to actively choose whether to purchase chargeable bags for delivery;

**Reasonable steps to take to comply with the requirement to keep records**

210. This will very much depend on what system the seller already has in place to record the movement of stock and whether that system is capable of recording the information needed for the record. It might be that new systems or practices need to be introduced, or existing systems altered or updated. The following are examples of the kind of steps that a seller may need to take to comply with the requirement to keep records (again, the list is indicative only):

- (a) ensuring that the necessary data is regularly recorded throughout the reporting year so that the record produced at the end of the year is accurate;
- (b) for sellers who will use IT systems to record the data, ensuring that that their systems are capable of accurately recording the data required and that they are appropriately maintained to secure that data is neither corrupted nor lost;
- (c) training relevant staff on the recording system or practices in place to ensure that it is operated consistently over time;
- (d) putting in place procedures to ensure that inconsistencies or mistakes in how or whether data is recorded are detected and remedied;
- (e) for sellers who do not operate solely in Wales, putting in place arrangements to ensure that the seller's systems or practices can accurately record Wales-only data;

**Reasonable steps to take to comply with the requirement to retain records**

211. Reasonable steps to comply with this requirement will include storing records securely to ensure that the information they contain is not lost, corrupted or destroyed.

**Reasonable steps to take to comply with the requirement to supply records**

212. Reasonable steps to comply with this requirement are likely to include:

- (a) putting procedures in place to ensure that a written request is treated with sufficient priority to ensure that it is provided to the person who requested it within the 28 day deadline;
- (b) training relevant staff;
- (c) conveying the information requested with sufficient clarity to enable it to be understood without reference to material that is not itself provided at the same time to the person who requested the record.

**Reasonable steps to take to comply with the requirement to publish records**

213. Reasonable steps to comply with this requirement will include:

- (a) putting in place arrangements to ensure that the data necessary to produce the record is collated and analysed in sufficient time to allow the record to be published by the date required;
- (b) where a record is published by way of an in-store notice, putting in place arrangements to guard against the notice being obscured and to replace any notice that is defaced or otherwise becomes unreadable;
- (c) where a record is published by way of an internet site, putting in place arrangements to check that links remain in working order and that they are fixed in a timely manner if found to be broken.

## 6.2 Giving false or misleading information to an administrator

214. Administrators have powers under the Regulations to question sellers and their officers and employees and to require documents to be produced and information to be provided. Giving false or misleading information to an administrator will amount to a breach under the Regulations if a seller does so without reasonable cause.
215. The question of whether a seller had reasonable cause will again be a judgement call for administrators in the first instance (and the points made above at paragraph 199 about a difference of opinion between sellers and administrators apply here also).
216. If a seller were to give false or misleading information to an administrator, but had reasonable grounds for believing that the information in question was correct, the Government's view is that in principle, that might amount to reasonable cause. This could potentially happen for example, where digital information became corrupted through no fault of the seller's.

### 6.3 Otherwise obstructing or failing to assist an administrator

217. Again, obstructing or failing to assist an administrator will breach the Regulations if the seller does so without reasonable cause.
218. The most obvious situation in which a seller might have reasonable cause for failing to assist an administrator is where a seller refuses to produce a document which could be withheld on grounds of legal professional privilege in England and Wales, or confidentiality of communications in Scotland. The Regulations do not require sellers to disclose these documents, even if an administrator requests them.
219. The question of whether a document attracts legal professional privilege or confidentiality of communications can be complex and sellers may need to consult their legal advisers.