

Explanatory Memorandum to the Single Use Carrier Bags Charge (Wales) (Amendment) (No.2) Regulations 2020

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Single Use Carrier Bags Charge (Wales) (Amendment) (No.2) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Hannah Blythyn
Deputy Minister for Housing and Local Government
15 June 2020

1. Description

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

The exemption is temporary and will come into force on 9 July 2020 and will expire on 31 December 2020.

A temporary exemption was initially introduced in April 2020 for an initial period of three months under the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020 (the 2020 Amendment Regulations). These Regulations are intended to come into force the day after the initial one expires on 8 July.

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

It is considered that in the current public health emergency, the measure given effect by these Regulations, will expire on 31 December 2020.

3. Legislative background

These Regulations are made under powers in sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008 and make amendments to the 2010 Regulations. By virtue of the operation of section 77(4) and (5) of that Act, they are subject to negative resolution procedure.

4. Purpose & intended effect of the legislation

These Regulations amend Schedule 1 of the 2010 Regulations to enable a temporary exemption from the charge of bags used solely for services providing for the delivery or collection of groceries. The exemption is to be temporary, from 9 July until 31 December 2020.

Since the introduction of the SUCB charge, a number of supermarkets have imposed either a flat rate charge for the bags used with each home grocery delivery, or else have phased out bagged deliveries completely, favouring the use of a “bag free ” option. This is where individual items are delivered in

a crate and then unloaded by the customer in their property before being returned to the driver.

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

This poses a number of issues with respect to the charge. The charge was introduced in 2011 with the aim of changing the behaviour of shoppers, encouraging a switch from SUCBs to reusable ones. The rationale was that consumers could avoid the charge by reusing bags. However, due to the removal of ‘bag free’ deliveries underpinned by public health guidance intended to prevent the spread of the virus, the option to avoid the charge has been taken away. This undermines the behaviour change rationale behind the charge.

The charge was applied to SUCB to encourage the use of reusable ones. In terms of global warming potential, reusable bags are better for the environment. However, of the bag types suitable for home deliveries, reusables are typically made from thicker plastic. These are only more carbon efficient if they are reused many times. Otherwise in terms of carbon, reusables are worse for the environment than the SUCB bags that attract the charge. Officials believe the exemption for deliveries may encourage the use of lighter-weight options. Given the significant increase in deliveries in Wales since the start of the pandemic, officials feel this is the least damaging option when compared to thicker plastic bags until more environmentally beneficial options can be found.

Since the introduction of lockdown measures to reduce the transmission of COVID-19, many grocery retailers, including supermarkets, independent shops and food businesses, have either substantially increased their existing delivery services or introduced them for the first time. Specialist food retailers such as butchers, greengrocers, bakeries and delicatessens have used deliveries to survive or even thrive during lockdown. They have experienced a 40% increase in trade, despite the significantly reduced footfall on the high street resulting from the lockdown measures¹. The Association of Convenience Stores (ACS) report their members have made some 600,000 deliveries across the UK since lockdown began.

¹ <https://www.thegrocer.co.uk/consumer-trends/specialist-food-and-drink-stores-see-40-sales-hike-in-april/604786.article>

Supermarkets have increased their delivery capacity several fold. For example, Tesco have increased their weekly deliveries from around 600,000 per week across the UK before the pandemic to more than 1.2 million² (by end of first week in May). They focused on meeting requests from vulnerable people, particularly those instructed to shield. Meanwhile, Marks & Spencer and Sainsbury's have significantly extended or introduced 'same day' delivery services³ covering food and essential household supplies.

5. Consultation

Due to the timescale available to bring in these Regulations and the continued pressures on stakeholders, our ability to consult widely on the legislation has been limited. However, views on the provision of the exemption and its continued need have been sought from Welsh retailers via their respective representative bodies. Feedback suggested with continued social distancing measures still needing to be in place, an extension of the exemption would be preferred.

6. Regulatory Impact Assessment

Options

Two options have been considered in this RIA:

Option 1: Do nothing. Allow the initial exemption to expire on 8 July, requiring sellers to charge for SUCBs when providing a grocery delivery or collection service.

Option 2: Amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 to exempt from the charge SUCBs used for grocery delivery or collection services from 9 July until 31 December. **(Preferred option)**

Cost-benefit analysis

Given the time and data available, it has not been possible to produce a quantified assessment of the likely costs and benefits of the proposals. The following section provides a narrative description of the likely impacts.

² <https://www.bbc.co.uk/news/business-52441772>

³ <https://www.bbc.co.uk/news/business-52545028>

Option 1 – No action taken

This is the baseline option and as such there are no additional costs associated with this option.

The 2010 Regulations require retailers to charge for each SUCB provided for goods to be taken away from the shop or delivered. There are a number of exemptions on public health or safety grounds for bags used exclusively for taking away items such as raw fish, plants or seeds with soil attached, sharp objects such as knives, unwrapped or partially wrapped foods and prescription goods.

Under the 2010 Regulations, Third Sector organisations can be beneficiaries of the proceeds of the charge. Retailers are strongly encouraged, but not mandated, to donate their proceeds to good causes, preferably those benefitting the Welsh environment. Many retailers have now phased out the use of SUCB that attract the charge. However, we understand they often continue to donate the proceeds from the sale of all carrier bags to good causes.

Under the 2010 Regulations, Local Authorities (LA) are appointed administrators of the charge and undertake any enforcement action. This is usually intelligence led and in the first instance, takes the form of approaches to retailers to explain the requirements of the Regulations and seeks to bring them in line by consent. We understand complaints are relatively rare and enforcement action is undertaken infrequently. However, for persistent breaches, LAs have the option to apply civil sanctions in the form of either a fixed or variable monetary penalty.

Costs

Option 2 – Continue to exempt the charge for SUCBs used to enable grocery delivery and collection services

Local Authorities

Under this option, LAs will not be required to undertake any additional enforcement activities and will no longer be required to enforce the charge for grocery deliveries or collections. A small cost saving is, therefore, anticipated for LAs for the duration of the exemption for enforcement activities.

However, if LAs did choose to deal with breaches of these Regulations, they may incur some small set-up costs for staff training. We assume all 22 LAs in

Wales may incur a one-off administration familiarisation cost to familiarise themselves with the proposed changes. However, as this is a small and relatively straightforward regulatory change, retraining has not been costed here.

Sellers

Sellers may face a small, one-off cost to retrain staff and amend billing processes or till systems to remove the charge for deliveries. Under the 2010 Regulations, these would be deductible against the proceeds of the charge sellers that are expected to be made to charitable causes, as this is considered a 'reasonable expense'. However, as any costs would likely have been incurred when the exemption was first introduced in April 2020, it is unlikely any further costs would be associated with this new extension and these Regulations.

This option is likely to result in an increase in the number of SUCBs sold (relative to Option 1), the cost of which would need to be borne by the seller. However, it should be noted the cost of buying carrier bags wholesale are not considered to be a 'reasonable expense' and should have always been borne by the seller. Any increase in expenses would likely pass onto the consumer indirectly.

Retailers are required to keep annual records of SUCB sales. However, data covering April and May isn't yet available, so it hasn't been possible to quantify the impact of the initial exemption given effect by the 2020 Amendment Regulation.

Charitable purposes in Wales

For the purposes of this RIA we have been unable to ascertain the potential impact the temporary exemption has had on charities/ good causes in Wales. Most large supermarket chains no longer sell SUCBs in-store. This has reduced the amount of net proceeds being donated for charitable purpose. The increase in SUCB usage for online deliveries during the COVID-19 pandemic may have resulted in an increase in donations if the charge still applied. Whilst sellers are currently not legally obliged to pass on the net profits of the charge, previous research⁴ suggests that most do, with health related charitable purposes and local community projects being the most popular recipient.

To address the potential loss in charitable donations during this exemption period, the Minister for Housing and Local Government has written to retailer organisations to ask consideration be given to donating to environmental

⁴ <https://gov.wales/research-sale-and-use-carrier-bags-wales>

charitable purposes, the equivalent to any net proceeds that would otherwise have been raised through levying the charge to customers.

Exchequer

There will be a small cost per bag to the exchequer, as they will not receive VAT on sales of SUCB used for delivery and collection services. Due to the lack of carrier bags sales data for the initial phase of the pandemic referred to above, it has not been possible to quantify this at this stage.

Environment

The rationale for introducing the SUCB charge in 2011 was to reduce the reliance on throwaway bags, to encourage a move to reusable options, thus cutting unnecessary resource use. This policy anticipated consumers would only buy enough reusable bags to meet their needs. Under normal circumstances, this would be possible. During the current COVID-19 pandemic, consumers are being asked to reduce their visits to shops and many have adapted by making use of weekly delivery or collection services.

Benefits

Option 2 – Continue to exempt the charge for SUCBs used to enable grocery delivery and collection services

Public Health

There is expected to be an ongoing public health benefit from extending the exemption because it is now clear the need for self-isolation, shielding and social distancing measures is likely to continue for some months, potentially until the threat from the virus is nullified. Essentially, the public health imperative underpinning the decision to implement an exemption in April has not changed. This suggests an ongoing need to minimise opportunities for transmission of the virus⁵ from measures such as doorstep grocery drops, which limit close contact between individuals, particularly as studies have shown the virus can live on plastic surfaces for up to three days⁶. While the overall risks of transmission from handling food packaging has been judged as

⁵ <https://www.gov.uk/government/publications/wuhan-novel-coronavirus-infection-prevention-and-control/transmission-characteristics-and-principles-of-infection-prevention-and-control>

⁶ <https://www.sciencedaily.com/releases/2020/03/200320192755.htm>

relatively low by the Food Standards Agency⁷, the main benefit is in reducing the need for close contact between the driver and customer.

Sellers

The main benefits to retail businesses is expected to be in reductions to sickness absences of delivery drivers who are able to undertake contactless deliveries. Therefore, following social distancing measures effectively.

It also enables them to speed up their operation. Bagged deliveries are quicker for customers to load and unload. This is helpful during the pandemic, as supermarket retailers have sought to prioritise delivery requests from vulnerable or self-isolating groups.

Consumers

Those consumers who often pay for SUCB deliveries will benefit from a reduction in costs due to the absence of the charge (approximately 40p to 50p per delivery).

Environment

The rationale for introducing the SUCB charge in 2011 was to reduce the reliance on throwaway bags, to encourage a move to reusable options, thus cutting unnecessary resource use. This policy anticipated consumers would only buy enough reusable bags to meet their needs. Under normal circumstances, this would be possible. In current times, consumers are being asked to reduce their visits to shops and many have adapted by making use of weekly delivery or collection services.

In these circumstances, the use of heavier-weight, reusable bags are likely to lead to consumers accumulating large numbers of such bags at home. In practice, these are unlikely to be reused. Without reuse, lifecycle analyses have shown reusable bags have a greater environmental impact than lighter-weight alternatives. Officials believe the exemption for deliveries may encourage retailers to use lighter-weight options for this purpose. If not reused, these are less environmentally damaging than thicker, reusable bags used once.

⁷ <https://www.gov.uk/government/publications/guidance-for-consumers-on-coronavirus-covid-19-and-food/guidance-for-consumers-on-coronavirus-covid-19-and-food>

Before the pandemic officials had concerns about households not consistently reusing plastic bags, leading to accumulation. Officials have been considering which policy levers could be used to change behaviours. Policy development in this area needs to take account of changes to the wider retail landscape and consumer behaviours relating to COVID-19. Engagement with relevant stakeholders has been complicated by current circumstances and a full solution is likely to take longer than six-months. However, such a timeframe would be enough to make some headway in the conversation towards more environmentally friendly options which also sustain the protection of public health.

Summary of the preferred option

The preferred option is **Option 2**.

A temporary exemption for SUCB used for delivery or collection services will help retailers apply social distancing rules during the collection and delivery services whilst discouraging the accumulation of excess thicker, reusable bags that are unlike to be reused in people's homes. This will, therefore, have an important contributory impact across the following well-being goals in the Well-being of Future Generations Act 2015:

- a prosperous Wales;
- a resilient Wales;
- a globally responsible Wales;
- a healthier Wales;
- a more equal Wales; and
- a Wales of cohesive communities.

This approach also demonstrates the application of the five ways of working set out under the sustainable development principle in the Well-being of Future Generations Act 2015.

Specific impact tests

Welsh Language

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

Children's Rights

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

Privacy

There are no impact implications on privacy matters.

Justice Impact Assessment (JIA)

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

Competition Assessment

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