EXPLANATORY MEMORANDUM TO

THE SINGLE USE CARRIER BAGS CHARGES (ENGLAND) (AMENDMENT) ORDER 2021

2021 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument is being made to increase the minimum amount that sellers must charge for a single use carrier bag ("SUCB") from 5 pence to 10 pence. As set out in Schedule 2 of The Single Use Carrier Bags Charges (England) Order 2015, a single-use carrier bag (SUCB) means an unused bag made of lightweight plastic material with handles, other than an excluded bag. Furthermore, this instrument will extend the obligation to charge to SUCB to all retailers and will remove the exemption from airport retailers from charging for SUCB. This will reduce the usage of these bags and the litter associated with them whilst allowing for their continued use where necessary.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument, which was laid on 4 March 2021, replaces and corrects an error (in the italic headnote) in an earlier version of the instrument laid on 4 February 2021, which was subsequently withdrawn. The earlier instrument had a specified date (30 April 2021) on which it would come into force. The coming into force date of this instrument has not been specified. Rather, it will come into force on the day after the day on which it is made. The change to the coming into force date was made due to concerns the instrument would not have been made before 30 April because it will not have completed its parliamentary process before then.

3.2 It is appreciated the new coming into force date will not provide the expected 21 days between the the making of this instrument and the date on which it will come into force. However, those affected by the changes being made (to the 2015 Order) will have anticipated those changes coming into force in April 2021. This date was made clear in the Government Response to the Consultation on the proposal to extend the single use carrier bag charge to all retailers and to increase the minimum charge to 10p, which was published in August 2020. The department will be writing to inform those affected by this instrument of the changes it will introduce and the changes to the coming into force date (supermarkets, the British Retail Consortium, Association of Small Shopkeepers etc.). The department will write again once the dates for parliamentary debates have been set and more precise information on the coming into force date can be provided (anticipated to be late April/early May). These

communications will also be circulated to the Resources & Waste Stakeholder Advisory Group and by WRAP (the Waste & Resources Action Plan) to their members. The department believes these actions will give those affected a reasonable time to adapt to the changes being made by the instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 This entire instrument applies to England only and is a financial instrument for the purposes of Standing Order No. 83T of the Standing Orders of the House of Commons relating to Public Business.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England only.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP has made the following statement regarding Human Rights:

"In my view the provisions of the Single Use Carrier Bags Charges (England) (Amendment) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Single Use Carrier Bags Charges (England) Order 2015 ("the 2015 Order") obligates sellers to charge a minimum of 5 pence for each SUCB supplied. A "seller" is defined as a person who sells goods and employs 250 or more staff. The 2015 Order ceases to have effect on 5th October 2022.

6.2 This instrument, made under section 90(3) and (5) of, and Schedule 6 to, the Climate Change Act 2008, amends the 2015 Order to increase the minimum charge for a SUCB from 5 pence to 10 pence and to extend the obligation to charge to all sellers regardless of the number of employees. Other amendments remove the exemption to charge from airport retailers, remove the sunset provision, and update review provisions.

6.3 This instrument brings the requirement to charge into effect from. on the day after the day on which it is made. Given the success of the measure and its significant public support, it will also remove the current "sunset clause" and update provisions relating to the review of the 2015 Order and excluded bags.

7. Policy background

What is being done and why?

7.1 On 5th October 2015, a minimum charge of 5 pence for SUCB was introduced for large retailers in England to decrease the number of these bags in circulation and to encourage consumers to reuse bags as much as possible before recycling. Only retailers with 250 or more staff are legally required to implement the charge and report on the number of single-use (lightweight) plastic bags they sell each year. These amendments mean that small retailers will no longer be exempt from the obligation to charge, however, in order to not place additional burden on Micro, Small, and Medium Enterprises ("MSMEs"), we do not propose to extend the requirement to report beyond large retailers.

7.2 The policy to-date has proved successful. The main supermarkets supplied 226 million SUCB in 2019-2020, down from 549 million in 2018-2019 and 1.04 billion in 2017-2018. The reported number of these bags has decreased by 95% since the charge was introduced in 2015. A total of £180m has been raised for good causes from the revenue collected.

7.3 Nonetheless, plastic bags continue to have a significant impact on the environment, and its estimated that 3.2 billion SUCB were circulated by MSMEs, airport retailers, and civil and voluntary organisations in 2018 (over 80% of all SUCB placed on the market). This equates to, on average, 74 plastic bags per person.

7.4 The UK Government's 25 Year Environment Plan, published in January 2018, made a commitment to extending the 5 pence charge on SUCB to all retailers on a mandatory basis if voluntary approaches deemed ineffective. We worked with the Association of Convenience Store ("ACS") and National Federation of Retail Newsagents ("NFRN") to encourage their members to voluntarily charge for SUCB. Although there was some uptake of the charge on a voluntary basis, progress was slow and relied on the goodwill of retailers to tackle this issue with many other competing factors. Supplying SUCB free of charge provides a competitive edge for MSMEs and so a mandatory approach would provide a level playing field for all retailers. Engagement with both the ACS and NFRN, as well as following our consultation, demonstrated that retailers were in favour of the charge being introduced on a mandatory basis without the need to provide reports. The charge will continue to be enforced by local authority trading standards officers. We are expecting the enforcement to be light touch, pragmatic and complaints led. The two types of civil sanctions (1) Fixed Monetary Penalties or (2) Discretionary Requirements ("DR") will remain. Provisions for appeals are included in this instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the 2015 Order at this stage.

10. Consultation outcome

10.1 A public consultation entitled "*Single-use carrier bags: Consultation on the proposal to extend the single-use carrier bag charge to all retailers and to increase the minimum charge to 10p*" was held between 27th December 2018 and 22nd February 2019. In total, the consultation received 583 responses from a wide range of stakeholders, including 437 from members of the general public.

10.2 The scope of the consultation included:

- extending the charge to all retailers (but without any reporting requirements);
- increasing the charge to 10 pence;
- requiring "producers" of SUCB to report the volume they place on the market (as an extension of existing packaging producer reporting obligations); and,
- remove the exemption from the 5 pence charge for retailers in security restricted areas at airports.

10.3 The consultation attracted considerable support from the public (82%) and from organisations (81%) to extend the charge to all retailers. The consultation to increase the charge attracted strong support from the public (74%) and from organisations (71%).

10.4 The impact assessment estimates that extending the charge to all retailers and increasing the minimum charge to 10 pence will reduce the use of SUCB by 58% in supermarkets, 56% in high street retailers, 79% in MSMEs, and 92% in airport retailers and civic & voluntary organisations between 2019 and 2024.

10.5 Our consultation attracted strong support from the public (71%) and from organisations (63%) to remove the current exemption for these bags supplied at restricted areas at airports. We therefore will remove the exemption at airports other than for "sealed tamper-evident bags" and other sealable plastic bags used for carrying alcohol and tobacco products.

10.6 Our consultation sought views on a proposal for producers (i.e. importers and manufacturers) of plastic packaging to report annually on the number of SUCB they place on the market as part of their existing reporting obligations under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (SI 2007/871) ("the 2007 Regulations"). This will apply to obligated producers that are already required to report on the tonnages of plastic they place on the GB market. Businesses that fall below the existing de minimis threshold for reporting would be exempt from the requirement. We will introduce this reporting from January 2022.

10.7 The data that will be collated under the 2007 Regulations along with the requirements for sellers to report on the numbers of bags they charge for and where the proceeds have gone are to monitor the effectiveness of the policy.

10.8 A copy of the full summary of responses and the UK Government's response can be found at: https://www.gov.uk/government/consultations/single-use-carrier-bags-extending-and-increasing-the-charge.

11. Guidance

11.1 The guidance on the GOV.UK website will be updated for both retailers and the public at the time this instrument comes into effect.

12. Impact

12.1 The impact on business, charities, or voluntary bodies is that there will be a shift toward the use of alternative, reusable bags and a reduction in the amount of SUCB which are supplied by these organisations. It will also generate a new revenue stream for many small businesses who previously supplied SUCB free of charge to citizens. The overall net present value to businesses is estimated to be £1,016 million and £656 million for charities and voluntary bodies over the appraisal period.

12.2 Our analysis estimates that extending the obligation to charge for a SUCB to all retailers and increasing the minimum charge to 10 pence, the total present value costs are estimated at £1,121 million and total present value benefits are estimated at £1,418 million over the 10 year appraisal period. The net benefit (net present value) is therefore estimated at £297m, which includes savings from the reduced circulation of SUCB, an increase in the use of alternatives, and savings from reduced litter costs.

12.3 The impact on the public sector is calculated as £0.2m each year. Enforcement costs for all local authorities in England are estimated at £1.3m in total over 10 years (net present value). This cost estimate is due to SUCB charge being extended to MSMEs.

12.4 The overall transitional costs to all retailers are calculated as £4.6m in the first year. Businesses are able to retain a portion of the proceeds to cover the cost, therefore the impact on these businesses would be neutral. There will be significant benefits to charities and good causes from the remainder of the proceeds.

12.5 The cost to consumers is calculated at £202m in the first year for the purchase of new bags for life, bin liners, VAT paid on 10 pence charge.

12.6 We estimate a net benefit to MSME businesses, including charity organisations, of £122m annually, primarily as a consequence of those sectors being able to keep the proceeds from the charge and savings from reduced stock. We believe this incentive will result in high levels of compliance and consequential low levels of necessary enforcement activity.

12.7 A full Impact Assessment is submitted with this Explanatory Memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), they are excluded from reporting obligations.

13.3 The basis for the final decision on what action to take to assist small businesses is taken from feedback from the consultation and the assessments made in the Impact Assessment.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for large retailers to report on SUCB sold annually, along with the data that will be collated under the 2007 Regulations.

14.2 A statutory review clause is included in the 2015 Order.

15. Contact

15.1 Lottie Free at the Department for the Environment, Food and Rural Affairs Telephone: 07825316792 or email: Lottie.Free@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.