**EXPLANATORY MEMORANDUM TO**

**THE SINGLE USE CARRIER BAGS CHARGES (ENGLAND) ORDER**

**2015 No. [XXXX]**

**1.** This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The Order will ensure that retailers with 250 or more employees charge a minimum amount for unused single use (lightweight) plastic bags used for taking goods out of shops or for delivering them. This will reduce the usage of these bags and the litter associated with them in a manner which supports new growth in the economy.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

## 4. Legislative Context

4.1 This is the first time the powers to make secondary legislation in section 90(3) and (5) of, and Schedule 6 to the Climate Change Act 2008 have been used in relation to England. The Welsh Ministers made regulations in exercise of these powers in 2010, in relation to Wales where they came into effect in 2011. Under different powers to make secondary legislation a levy has been introduced in Northern Ireland in 2013 and a charge will come into effect in Scotland in October 2014.

## 5. Territorial Extent and Application

5.1 This Order applies in relation to England. In practice, it will mainly affect retailers selling goods from places in England to persons in England. It will also affect a smaller number of retailers located outside England who supply lightweight plastic bags for the purpose of enabling goods to be delivered to persons in England.

## 6. European Convention on Human Rights

6.1 The Rt Hon Elizabeth Truss MP, the Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Single Use Carrier Bags Charges (England) Order [2015] are compatible with the Convention rights".

## 7. Policy background

7.1 The policy aim is to reduce the amount of single use (lightweight) plastic bags used; the litter associated with them and to encourage the reuse of bags. In 2006, 12.2 billion single-use carrier bags were distributed across the UK. Far too many of these bags made their way onto the streets and into the countryside as unsightly litter. They were also discarded onto beaches and into the sea, where they can choke or poison wildlife.

7.2 The charge for single use (lightweight) plastic bags is a targeted, proportionate approach to the problem of carrier bag distribution and littering. It focuses on plastic bags; paper bags are not in scope. Paper bags make up less than 0.1% of carrier bags distributed in the UK by the seven major supermarket retailers. Plastic carrier bags take longer to degrade in the natural environment, can damage wildlife and are extremely visible when littered in our towns, parks and the countryside.

7.3 The environmental impact of plastic bags extends beyond their littering. They consume resources, including oil, in their creation. Even when disposed of responsibly, plastic bags persist unchanged for long periods of time in landfill sites.

7.4 Since 2006, the grocery retail industry has made some important changes to reduce the huge amount of plastic bags that we use in the UK, including marketing Bags for Life more clearly. These industry initiatives were able to reduce carrier bag distribution by 41% between 2006 and 2009. They also successfully reduced the amount of new plastic and raised the level of recycled content used to make bags.

7.5 While this represented significant progress, single-use carrier bag distribution has crept back up in England between 2009 and 2013 by 18%. During the same period, the charge in Wales produced a decrease of 81%. In 2013, the seven major supermarkets in England still gave out 7.4 billion single-use carrier bags.[1]

7.6 It is clear that requiring 5p to be paid for each single use plastic bag supplied will significantly reduce the number that people use. As yet unpublished, social research has suggested that this is acceptable to consumers.

7.7 The requirement to charge applies to any person who employs 250 or more full-time-equivalent employees ("FTE's": the total number of hours per week for which all the employees of the person are contracted to work divided by 37.5)). This will capture companies with 250 or more FTE's (e.g. Tesco or Marks and Spencer) but exclude companies with fewer than 250 FTE's, including those granted a franchise or sharing a brand and products with others (e.g. "Symbol groups" like Spar and Londis which are prolific in the grocery sector - the main sector affected by this policy. These have looser and more varied arrangements with the parent company than franchises and do not benefit from the economies of scale available to larger businesses).

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[1] WRAP, *UK Voluntary Carrier Bag Monitoring - 2013 study*, July 2013, http://www.wrap.org.uk/sites/files/wrap/Carrier%20bags%20results%20(2012%20data).pdf

7.8 Companies with fewer than 250 FTE's are not included to avoid imposing new administrative burdens on start-up and growing businesses in England at a time when the Government is supporting new growth in our economy. It is also consistent with the European Commission's approach to promoting growth in businesses with fewer than 250 employees (as set out in the EU's Small Business Act for Europe, 2008). The FTE definition is consistent with the European Commission's approach to defining SMEs as set out in the SME User Guide (the New SME Definition). This defines SMEs as made up of enterprises which employ fewer than 250 persons (the definition, which also includes turnover, was the result of wide- ranging discussions between the Commission, Member States, business and experts as well as two open consultations). Companies or other retailers employing fewer than 250 FTE's will of course be able to charge on a voluntary basis if they wish and we know of one franchiser who is already encouraging its outlets to do this.

7.10 The single use carrier bags to be charged for are made of lightweight plastic material with handles and a thickness of 70 microns or less. This covers the vast majority of single use plastic bags given out by English retailers. 70 microns has been chosen to ensure all bags given out by high street retailers as single use bags are covered, with a specific exemption for those designed and sold as reusable "bags for life" (see 7.11).

7.11 Exemptions to the charge are based on bag size, thickness, intended use, cost or combination of those factors. These are:

a) A bag intended to be used solely to contain wholly or **partly unwrapped food for human or animal consumption;**

b) A bag intended to be used solely to contain wholly or partly unwrapped loose seeds, bulbs, corns, rhizomes, flowers or **goods contaminated by soil;**

c) A bag intended to be used solely to contain wholly or partly unwrapped axes, knives, knife blades or razor **blades;**

d) A bag intended to be used solely to contain a **prescription medicine;**

e) A bag intended to be used solely to contain **live aquatic creatures in water;**

f) A bag intended to be used solely to contain **uncooked fish or fish products, meat or meat products or poultry or poultry products;**

g) A **returnable multiple reuse bag** sold for more than 5p made from material between 50 and 70 microns thick (this exemption ensures they are not captured by the requirement to report, which would skew the statistics);

h) A bag which is intended to be used **to carry goods in a transit place** e.g. an airport or on board a train, aeroplane or ship.

7.12 When Government announced this policy it included an exemption for genuinely biodegradable plastic bags that meet defined criteria. Whilst the charge will result in fewer plastic bags distributed, there will always be a need for some plastic bags and we want to encourage development of bags that biodegrade, are less harmful to wildlife if littered, and have a low impact when disposed of responsibly. The Government recognises this is a challenge to UK industry.

The instrument requires the Secretary of State to carry out a review of existing industry standards for biodegradability and report to Parliament by October 2015 on whether there is an appropriate

industry standard that could be used for plastic bags and how an exemption would be implemented. Government is working with industry and academic experts on this.

7.13 The requirements for sellers to report on the numbers of bags they charge for and where the proceeds have gone are essential to monitor the effectiveness of the policy, which is likely to receive a lot of scrutiny from the public, press and NGOs. In addition to domestic requirements, negotiations are currently underway on a European Commission proposal on reducing the consumption of plastic carrier bags. We are likely to be required to report this data to the EU Commission.

7.14 The Government does not have the legal power to take the proceeds of the charge (as happens in Northern Ireland) nor to determine where the proceeds of the charge go. There is an expectation that (as in Wales) retailers after deducting reasonable costs will donate the rest to good causes. We are working with retailers on this.

7.15 The Order brings the requirement to charge into effect from 5th October rather than the 1st as it is a Monday and retailers have stated that they would find it easier to make the till changes at the start of a week.

7.16 The charge will be enforced by local authority trading standards officers. We are expecting the enforcement to be light touch, pragmatic and complaints led. We are introducing two types of civil sanctions (1) Fixed Monetary Penalties or (2) Discretionary Requirements (DR). Provisions for appeals are included in the Order. The Act requires us to review the enforcement provisions three years after the charge comes into force.

**8. Consultation outcome**

8.1 The charge was announced by the Deputy Prime Minister in September 2013. The announcement stated that businesses with fewer than 250 employees would be exempt and that the Government expects that retailers would give the proceeds of the charge to charity.

8.2 We did not consult industry on the scope of the policy (focus on plastic bags and only businesses with over 250 employees) as this had already been announced. The details of the charging scheme were however subject to a Call for Evidence in November and December 2013. The main issues on which further evidence was sought were:

- What sort of bags (i.e. material type, thickness) should be exempt from the charge;
- What bags used for specific purposes (i.e. to carry food, medicines) should be exempt from the charge;
- How best to tell people about the charge;
- How to make sure that organisations are applying the charge;
- How to encourage organisations to donate their profits from the charge to good causes.

8.3 The Call for Evidence was widely publicised and we received 185 responses to the questions, comprising of: 10 industry groups; 11 NGOs; 12 Local Authorities; 4 academics; 94 private individuals; and 12 others. In parallel, we received just over 2000 emails on the broader shape of the charge, predominantly as part of campaigns by the Campaign to Protect Rural

England (1799), the Marine Conservation Society and partners (129) and Surfers Against Sewage (96).

8.4 The majority of the respondents supported the introduction of a charge on plastic bags and over 80% of respondents thought that organisations should have to publish data on their bag usage.

8.5 The concerns raised in the email campaigns centred around the focussed nature of the Call for Evidence and the lack of opportunity to comment on some of the main elements of the scheme (paper bags exclusion, small business exemption and the biodegradable bag exemption).

8.6 On balance the Government has decided to focus on plastic bags with exemptions for small business and biodegradable bags for the reasons described in the policy background section.

8.7 The summary of responses to the call for evidence was published on 19 June 2014 and can be found here: https://www.gov.uk/government/consultations/single-use-plastic-bag-charge-for-england-call-for-evidence. This tied in with the Government's response to the Environmental Audit Committee's inquiry into carrier bags. The evidence provided to the EAC and the EAC's report were used as an additional source of evidence in the development of this instrument. The EAC report and the Government response can be found here: http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2010/plastic-bags/

8.8 In addition, we have undertaken significant additional evidence gathering. We shared a policy paper with the British Retail Consortium (BRC) and held a workshop with the BRC and its members in June 2014 (the BRC represents the majority of retailers affected by the charge). We discussed details of the scheme, practicalities and made some changes to the Order based on their views. For example: a size restriction for bags containing uncooked meat was removed on their advice; we removed the requirement for them to publish records on the number of bags handed out and the use to which proceeds were put to reduce burden, agreeing that central reporting will make the records publically available; and we included a clause that allows retailers to charge for an average number of bags for online grocery sales where the exact number used is unknown at the time of the sale.

8.9 We commissioned (as yet unpublished) consumer research carried out in early 2014 through focus groups and survey interviews to better assess how the charge might influence attitudes and behaviours in England. The headline results show that the majority of respondents supported the charge (57%). The main reason survey respondents said they supported the charge (when presented with a list of options) was the general statement that "plastic carrier bags are bad for the environment". When survey respondents were asked how they thought the charge would impact on their shopping behaviour, 61% selected behaviours which showed a positive change to their bag use behaviour i.e. re-using bags more often.

8.10 There has also been ongoing stakeholder engagement through meetings, workshops, conversations and correspondence. We have had ongoing discussions with retailer and industry

bodies such as the BRC, the Association of Convenience Stores (ACS) and the Federation of Small Businesses (FSB).

8.11 We undertook broad informal consultation in relation to the definition of businesses with fewer than 250 FTEs (i.e. a short definition avoiding complex business relationships) and exclusion of franchise models. We had several discussions with retailer organisations such as BRC, ACS, FSB and BIRA (British Independent Retailers Association). Whilst the ACS would like to see all businesses included in the charge, if businesses with less than 250 FTEs are excluded they would also prefer to see franchises excluded. In this context the ACS support our definition of businesses with fewer than 250 FTEs and the exclusion of franchise models, as does BIRA. The BRC would like to see all sizes of business included in the charge.

8.12 We have also met with and had ongoing discussions with the plastics industry who have mixed views on the charge.

8.13 We have undertaken additional workshops with the Local Government Association and Trading Standards Institute to discuss the practicalities of enforcement and to ensure that the Order provides necessary and proportionate powers.

8.14 We are continuing the stakeholder engagement in discussions over draft guidance, reporting methods and the implementation of the scheme.

8.15 We are required to share the draft Order with the European Commission under the Technical Standards Directive. As a financial measure, there is no stand still period, however any Member State will be able to comment.

**9. Guidance**

9.1 The Order will be accompanied by guidance for retailers and the public. This is being developed in consultation with industry.

9.2 Defra is providing training and guidance on enforcement will be produced.

**10. Impact**

10.1 A full impact assessment relating to the plastic bag charge is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

10.2 The total net impact of the scheme over 10 years is a positive benefit of £782.33m in net present value terms, which includes savings from reduced littering, waste management costs and $CO_2$ equivalent emissions.

10.3 The impact on the public sector is calculated as £4m costs for enforcement over 10 years.

10.4 The impact on retailers is calculated as £26m cost over 10 years, but they are able to retain a portion of the proceeds to cover this so overall the impact on retailers should be neutral. There will be significant benefits to charities and good causes from the remainder of the proceeds.

10.5 The cost to consumers is calculated at £1,266m over 10 years for the purchase of new bags for life, bin liners, VAT and the 5p charge itself, however all but £55m is cancelled out by the benefits of hidden costs of bags being removed from retail prices.

**11. Regulating small business**

11.1 The legislation does not apply to persons with fewer than 250 employees on the first day of a reporting year.

**12. Monitoring & review**

12.1 A review clause has been included in the regulations for within five years. The requirement to report data on bags sold annually will provide the data for the Department to assess the effectiveness of the policy.

**13. Contact**

Laura Denison at the Department for the Environment, Food and Rural Affairs Tel: 0207 238 6110 or email: Laura.denison@defra.gsi.gov.uk can answer any queries regarding the instrument.