EXPLANATORY MEMORANDUM TO

THE SINGLE USE CARRIER BAGS CHARGES (ENGLAND) (AMENDMENT) ORDER 2020

2020 No. 324

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 Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Single Use Carrier Bags Charges (England) Order 2015 (S.I. 2015/776) ("the 2015 Regulations") by temporarily removing the obligation for large retailers to charge a minimum of 5p for single-use carrier bags ("SUCB") intended to be used solely to carry goods purchased for home delivery as part of an online grocery delivery services.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being laid in breach of the 21-day rule for Parliament to pray against Statutory Instruments.

3.2 The 2015 Regulations impose an obligation on sellers with over 250 employees to charge a minimum of 5p for each SUCB supplied in order that the goods purchased can be taken away or delivered. This obligation applies to bags supplied in-store or with deliveries. This instrument amends the 2015 Regulations so that, for a period of 6 months only, the obligation on sellers to charge for a SUCB where the SUCB is intended to be used solely to carry goods purchased for home delivery as part of an online grocery delivery service. Obligated sellers supplying SUCBs in store or for other forms of delivery will still be obligated to charge.

3.3 Online groceries are predominantly delivered in re-usable crates which are unpacked on the doorstep and then returned to drivers. The virus, COVID-19, has resulted in an unprecedented demand for online grocery orders, including from people who need to self-isolate because of they have contracted or been exposed to the virus. The use of SUCBs to convey the goods purchased online for home delivery is expected to help prevent the spread of the virus (from crates being passed from customer to customer via drivers). The SUCB will also increase the speed and capacity of those providing an online grocery delivery service.

3.4 Suspending the charge for online grocery delivery bags means both sellers and customers are incentivised to use SUCBs to convey goods purchased for home delivery rather than the re-useable crates, which need to be unpacked. This is expected to reduce risk of contamination to both customer and driver and increases

delivery speed times because drivers can leave bags on the doorstep and move on quickly to the next delivery.

3.5 Given the number of people self-isolating, which is expected to increase in the coming weeks, the pressure on online delivery services and concerns about the exposure of delivery drivers to the virus, Defra considers it necessary to act urgently and lift the obligation to charge for online grocery delivery bags without delay.

3.6 Any delay puts further pressure on an already stretched service and the potential for more drivers to be exposed to the virus. Delay also risks providers of the service refusing to allow their drivers to continue making home deliveries.

3.7 The amendment made by this instrument removes the obligation to charge for an online grocery delivery bag for a period of 6 months only (from 21st March to 21st September 2020). Any extension of this period will require a further Statutory Instrument, the need for which Defra will keep under review.

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)

3.8 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends the 2015 Regulations for the first time. The 2015 Regulations impose an obligation on sellers (retailers) with over 250 employees to charge a minimum of 5p for each SUCB supplied in order that the goods purchased can be taken away or delivered. This obligation applies to bags supplied in-store or with deliveries. The amendments to the 2015 Regulations remove, for a period of 6 months, the obligation on retailers to charge for SUCB supplied to carry goods purchased for home delivery as part of an online grocery delivery service. Obligated retailers supplying bags in store or for other forms of delivery will still be required to charge.

7. Policy background

What is being done and why?

7.1 The 2015 Regulations oblige retailers with 250 or more employees to charge a minimum of 5p for SUCBs used for taking goods out of shops or for delivering them. The policy aims to reduce the number of SUCBs used and the litter associated with their use.

7.2 In light of the spread of COVID-19 the government wants to do all it can to help ease day to day life and protect the health of citizens. Currently, online groceries are predominantly delivered in re-usable crates which are unpacked on the doorstep and then returned to drivers. The advice from the government is to limit social contact and for those displaying symptoms of COVID-19 to self-isolate in their homes to prevent the spread of the virus. This has led to an increase in the use of online deliveries as citizens try to limit the need to visit local stores.

7.3 The use of SUCBs is expected to help speed up delivery times as these bags could be used to deliver goods to the doorstep without requiring unpacking. Making deliveries as efficient as possible will become increasingly more important over time if more people are required to self-isolate and as delivery drivers face further time pressures from a rise in absent colleagues.

7.4 Furthermore, supermarkets have raised concerns for their delivery drivers, particularly those who are making deliveries to customers who are self-isolating. The ability to drop online purchases in bags at the door step will help protect delivery drivers from possible contact with COVID-19.

7.5 The possible risk of contamination comes from the passing of crates between customers and drivers because the virus can survive on external surfaces for a period of time. The ability to make deliveries using SUCBs which can be dropped at the door step without the need for contact could reduce this risk of contamination. The bags themselves can then be disposed of appropriately.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 This amending instrument has been drafted following engagement with representatives from industry, regulators and other interested parties.

10.2 Stakeholder engagement will continue over implementation of this amending instrument.

11. Guidance

11.1 The 2015 Regulations were accompanied by guidance for retailers and the public.

11.2 This amending instrument will only affect those retailers who offer online grocery delivery services. Defra will offer guidance to those retailers on a bilateral basis.

12. Impact

12.1 The impact on business will be limited, as this amending instrument only affects a very small number of businesses (those with over 250 employees and who offer an online grocery delivery service).

12.2 There is no, or no significant, impact on the public sector.

12.3 Defra encourages proceeds raised through the carrier bag charge to be donated to charitable causes. There may, therefore, be a small impact on charities, as the overall proceeds raised through the charge may be lower for the reporting year in which this amending instrument applies. The majority of single-use carrier bags are supplied, and charged for, in-store. Defra continues to encourage obligated retailers to donate the proceeds from doing so to charitable causes.

12.4 An Impact Assessment has not been prepared for this instrument because it is making or amending measures which will have effect for a period of less than 12 months in order to minimise the risks to public health arising from COVID-19.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The carrier bag charge must be reviewed within five years, according to a clause in the 2015 Regulations. Obligated retailers are required to report data on single-use carrier bags sold annually. This will inform Defra's assessment of the effectiveness of this policy.

14.2 This amendment will cease to have effect from 21st September 2020. Defra will review if an extension to this amendment is required.

15. Contact

15.1 Tom Pye at the Department for Environment, Food and Rural Affairs, Telephone: 02084152555 or email: tom.pye@defra.gov.uk can be contacted with any queries regarding the instrument.

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

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