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## CLAS CIRCULAR 2015/18 (14 September 2015)

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## CHARGING FOR SINGLE-USE PLASTIC CARRIER-BAGS



### INTRODUCTION

Members are reminded that **obligatory charging for single-use plastic carrier bag begins in England on 5 October 2015** as part of the Government's policy to reduce waste. Under the policy, a large retailer is required to levy a charge of 5p (+ VAT where the retailer is VAT-registered) for most single-use plastic carrier bags.

A large retailer is defined as a business that "employs 250 or more full-time equivalent employees (in total and not just in retail roles)". Given that Churches are structured so differently – ranging from a single charity in the case of the Salvation Army to individual charities for each parish in the case of the Church of England. Given also that it all depends on what is meant by "employs", CLAS members need to consider very carefully whether or not the obligation to charge applies to them.

*In case of doubt, our advice would be to assume that the charge applies:* there is no penalty for charging when you are not obliged to – the [guidance](#) states that

"If you're a small or medium-sized business you don't have to charge, but you're free to do so voluntarily."

As to what to do with the proceeds, the guidance also states:

"Once you've deducted reasonable costs, it's expected that you'll donate all proceeds to good causes."

What the guidance does *not* say is whether or not a charity (being by definition a "good cause") can simply keep the money – and the [Single Use Carrier Bags Charges \(England\) Order 2015](#) is silent on the matter.

In the circumstances, we felt that we should bring the matter to the attention of CLAS members.

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## THE GUIDANCE

**When the reporting year runs:** The reporting year runs from:

- 5 October 2015 to 6 April 2016
- 7 April to 6 April from 2016 onwards

**Bags you charge for:** A bag is considered as such if it has an opening and isn't sealed. You must charge at least 5p a bag for carrier bags that are all of the following:

- unused – it's new and hasn't been used previously for sold goods to be taken away or delivered
- plastic
- with handles
- 70 microns thick or less.

**Charging for delivery bags:** You should consider offering customers bagless deliveries, as you must charge for plastic bags used for deliveries and online sales. You don't have to charge for sealed packaging as this isn't covered by the charge.

The number of bags used isn't always known until delivery takes place. This means you can charge for an average number of bags for multi-bag deliveries, as long as 5p or more is charged per bag overall.

Charges apply to both home deliveries and click-and-collect (or similar) collections.

**Returnable multiple reuse bags:** A returnable multiple reuse bag must be all of the following:

- sold for 5p or more
- replaced free of charge if returned to you
- 50 to 70 microns thick - you can count thinner bags as reusable as long as they're thicker than your single-use bags and the handles are at least 50 microns thick
- at least 404mm (in either width or height) by 439mm

You can't count the following in your bag's dimensions:

- gussets
- handles - unless they're on wavy top bags

**Bags you don't charge for:** You don't charge for plastic bags that are:

- for uncooked fish and fish products
- for uncooked meat, poultry and their products
- for unwrapped food for animal or human consumption - for example, chips, or food sold in containers not secure enough to prevent leakage during normal handling
- for unwrapped loose seeds, flowers, bulbs, corns, rhizomes (roots, stems and shoots, such as ginger) or goods contaminated by soil (such as potatoes or plants)
- for unwrapped blades, including axes, knives, and knife and razor blades
- for prescription medicine
- for live aquatic creatures in water
- woven plastic bags
- for goods in transport, such as at an airport or on a train, plane or ship
- considered as sealed packaging for mail order and click-and-collect orders (regardless of handles)
- returnable multiple reuse bags (bags for life)
- used to give away free promotional material
- used for a service but there's no sale of goods, such as dry cleaning or shoe repairs

A bag can contain multiple items from this list and not incur a charge. However, if the bag contains other items then you must charge. For example, you wouldn't charge for a bag containing an unwrapped blade and unwrapped loose seeds, but adding a box of cornflakes means you'd have to charge.

**Super biodegradable bags:** There are no exemptions for biodegradable bags at present. However, the government is considering an exemption to encourage development of a new, genuinely biodegradable, more environmentally friendly bag. This would be introduced as an amendment at a later date.

Defra has commissioned a review of existing industry standards for biodegradability of lightweight plastics. It will review whether there are standards that could be used to introduce an exemption from the charge and, if so, how the exemption would be carried out. Defra has to submit the report to Parliament by 5 October 2015.

## WHAT RETAILERS HAVE TO DO

For every bag that you charge for, you must:

- charge at least 5p a bag (including any VAT)
- make every effort to ensure that you're charging for self-checkout bags
- keep a reporting year's records for 3 years from 31 May in the following reporting year (eg you must keep the records for 5 October 2015 to 6 April 2016 until 31 May 2019)
- send records to Defra on or before 31 May following the end of the reporting year

You must also record for the whole reporting year:

- the number of bags supplied
- the gross and net proceeds of the charge
- any VAT in the gross proceeds
- what you did with the proceeds from the charge
- any reasonable costs and how they break down

**Reasonable costs** include new costs incurred to comply with the legislation. This might include:

- the cost of changing till systems
- training staff
- communicating the policy to staff and customers
- getting expert advice
- administering donations to good causes

You can't include existing costs, such as the cost of the bags. You're likely to see reasonable costs significantly reduce after the first year.

**Dealing with the proceeds:** Once you've deducted reasonable costs, it's expected that you'll donate all proceeds to good causes.

[Carrier Bag Charges Wales](#) has examples of how good causes have benefited from the proceeds of the Welsh charge, and expected reductions in carrier bag use.

**Sending records to Defra:** You must send the following details to Defra once a year:

- the number of bags you distributed
- the amount of money you received from selling bags
- any VAT you had to pay from the money you received
- what you did with the proceeds from bags
- details of the 'reasonable costs' you had to pay to provide bags

This information will be made public.

You must send these details for each reporting period by 31 May the following year. For example, for the period 5 October 2015 to 6 April 2016 you must send your details by 31 May 2017.

You must send your name and email to [PlasticBagCharge@defra.gsi.gov.uk](mailto:PlasticBagCharge@defra.gsi.gov.uk). If you send your name and email before the deadline you'll get advice on how to report, and get reminders about when to report.

**Responding to public enquiries:** Members of the public can request copies of carrier bag records. You must provide copies within 28 days.

**Getting records of enforcement action:** Your local authority publishes a report on its website for the preceding recording year on or before 31 May, and keeps the report until 30 May of the next reporting year. It will publish the number of cases and sanctions it served or opposed, along with objections and appeals.

If you trade across different regions of the UK, you can apply for a [Primary Authority agreement](#). This means you can choose to deal with just one local authority rather than deal with the authorities in each area you trade in.

**Who inspects retailers:** In most cases it's the local authority where your shop or store is based that makes sure that the law is being followed.

However, for home deliveries the relevant local authority is the one where the goods are:

- dispatched from, if sent and delivered within England
- received, if delivered from outside England

Local authority inspectors can visit stores at reasonable times and make test purchases. They can question staff and demand relevant documentation if they believe a breach has taken place.

**When retailers will be fined:** Your local authority must publish details of fine levels and circumstances on its website. It can fine you if you:

- don't charge at least 5p for the appropriate bags
- don't keep records
- don't supply records
- mislead on how you're complying with the law

Local authorities can:

- issue a non-compliance notice with steps you must take to correct a breach
- impose a fixed penalty
- impose a discretionary penalty
- order you to advertise that you've broken the law, what their penalty was and how you are now complying
- recover the cost of the investigation from you if you breach the law

Both fixed and variable fines are:

- reduced by 50% if you pay within 28 days
- increased by 50% if you don't pay within 56 days

Local authorities can't impose a variable fine if a fixed fine has already been levied for the same issue (unless a non-compliance notice has been issued).

**Publicity if retailers break the law:** Local authorities can impose non-monetary requirements, such as making you publicise that you've breached the law.

**PENALTIES**

*Failure to comply can lead to a fine of up to £5,000, in addition to any other penalties.*

**Fixed penalties**

Breach	Penalty
Not charging for bags appropriately	£200
Not keeping records	£100
Not supplying records	£100

**Variable penalties**

Breach	Maximum penalty
Not charging for bags appropriately	£5,000
Not keeping records	£5,000
Not supplying records	£5,000
Giving false or misleading information to, or otherwise obstructing or failing to assist the local authority	£20,000

**Appeals and objections:** You can object within 28 days of being issued a penalty notice. You can appeal a penalty if you feel it was wrong, unreasonable or based on an error. You can also appeal if you feel that the non-monetary requirement is unreasonable or if the variable amount penalty is too high.

[Source: Defra – 23 March]