Environmental Levy on Plastic Bags (Scotland) Bill  
[AS INTRODUCED]  

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Environmental Levy on Plastic Bags (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide for a levy on the provision of plastic bags to customers; to provide for the levy to be used by local authorities for environmental purposes; and for connected purposes.

The levy and the bags subject to it

1 The levy

(1) There is a levy on the provision to customers of plastic bags other than those exempted by section 2(2).

(2) The levy is 10 pence for each non-exempt plastic bag provided to a customer or such greater sum as the Scottish Ministers may prescribe by order.

2 Bags subject to the levy

(1) For the purposes of this Act, a “plastic bag” means a bag made wholly or in part of plastic.

(2) The following bags are exempt from the levy—

(a) small bags used to contain any unpackaged food for human or animal consumption;

(b) bags used for packaging any goods and sealed before the goods are offered for retail sale or supply;

(c) bags sold in the ordinary course of trade for use by the customer away from the premises at which they are sold;

(d) bags provided to the customer for the transmission of goods to the supplier;

(e) bags designed for re-use which are sold to the customer at a cost of at least 5 times the amount of the levy;

(f) bags designed to be used for the disposal of waste;

(g) bags used to contain goods sold on board a ship, aircraft, train or bus used for carrying passengers.
(3) For the purposes of this section, a “small bag” means one which, when measured flat with any gussets opened, is not larger than 300mm by 300mm.

(4) The Scottish Ministers may by order—
   (a) remove any category of bag from the list of exempt bags in subsection (2);
   (b) reduce the dimensions referred to in subsection (3); or
   (c) alter the multiplier in subsection (2)(e) but not to less than 3.

Duties of suppliers

3 Charging the levy

(1) A person who provides a non-exempt plastic bag to a customer in the course of business (a “supplier”) must charge the customer the levy and must ensure that the amount charged is itemised on any invoice or receipt issued to the customer.

(2) Nothing in this Act prevents the supplier from charging more than the amount of the levy and retaining the excess.

4 Registration with local authority

(1) Before becoming a supplier, a person must register under this Act with the local authority for any area where bags are to be provided.

(2) On registering, the person must state—
   (a) the name and address of the business;
   (b) the name (if different from the name of the business) of the persons with a controlling interest in the business; and
   (c) the address (if different from or additional to the address of the business) of any premises or location within the area of the local authority where the bags are to be provided.

(3) The Scottish Ministers may by regulations make further provision for registration, including provision as to the time and method of registration, the information to be supplied and the maintenance of the register.

5 Returns and payment

(1) A supplier must submit a return to the local authority stating the number of non-exempt plastic bags provided to customers within the local authority’s area in the period covered by the return.

(2) The supplier must submit returns at such dates and intervals, not less than monthly, and in such form as may be determined by the local authority.

(3) Where a supplier provides non-exempt plastic bags to customers at two or more premises or locations within the local authority’s area, a separate return must be made for each of them unless the local authority and the supplier otherwise agree.

(4) The supplier must pay to the local authority the amount of levy collected, payment being made at such dates and intervals, not less than monthly, and in such a way as may be determined by the local authority.

(5) The Scottish Ministers may by regulations make further provision as to the returns to be made and the times and methods of payment.
6 Record keeping
(1) A supplier must keep full and accurate records of the number of non-exempt bags provided to customers, and the amounts of levy received, at any premises or location during each period covered by a return under section 5.

(2) The supplier must retain the records kept under this section, together with all other documents containing particulars on which the records are based, for a period of at least 5 years from the date of the return made under section 5.

(3) The Scottish Ministers may by regulations make further provision as to the records to be kept under this section and the form and manner in which they are to be kept.

7 Functions of local authorities in relation to collection of the levy
(1) Each local authority must collect from each supplier within its area the amount of levy collected by that supplier.

(2) The local authority must provide any person who in its opinion may be or become a supplier with information about—
(a) the registration requirements under the Act, including requirements relating to the correction and updating of the register;
(b) the frequency with which, and dates when, returns and payments are to be made;
(c) the form of the returns, and any supporting documentation, required; and
(d) methods of payment.

(3) The Scottish Ministers may by regulations make further provision on the collection of the levy by local authorities and on the form and manner in which information is provided under subsection (2).

8 Functions of local authorities in relation to spending the levy
A local authority must spend the money raised from the levy, after deduction of reasonable collection costs, on environmental projects meeting criteria set out in guidance issued by the Scottish Ministers.

9 Reporting duties of local authorities
(1) A local authority must publish annually a report on its performance under this Act.

(2) The report must include an account of the amounts raised and spent under the Act in the period covered by the report.

(3) The local authority must submit a copy of the report to the Scottish Ministers.

10 Authorised officers
(1) A local authority must authorise in writing at least one person and such other number of persons as it considers necessary or expedient to exercise powers under this Act.

(2) A person so authorised is referred to in this Act as an “authorised officer”.

(3) The schedule has effect.
(4) The Scottish Ministers may by regulations make further provision as to the exercise of
the powers of authorised officers.

**Offences, penalties and estimated amounts**

### 11 Offence of not charging levy

1. A supplier who fails to charge the levy in accordance with section 3 is guilty of an
   offence.

2. The offence is one of strict liability but it is a defence for an accused to prove that the
   accused (or any employee or agent of the accused) took all reasonable precautions and
   exercised all due diligence to avoid its commission.

3. A supplier guilty of an offence under subsection (1) is liable on summary conviction to—
   (a) a fine not exceeding level 3 on the standard scale; and
   (b) a penalty of £100 for each occasion when a customer who was required to be
       charged the levy was not so charged.

### 12 Offence of obstructing authorised officers

1. A person who wilfully delays or obstructs an authorised officer in the exercise of a
   power under this Act is guilty of an offence.

2. A person guilty of an offence under this section is liable on summary conviction to a
   fine not exceeding level 3 on the standard scale.

### 13 Offences by bodies corporate etc.

1. Where an offence under this Act committed by a body of persons—
   (a) was committed with the consent or connivance of a person concerned in the
       management or control of the body; or
   (b) was attributable to any neglect on the part of any such person,
   that person, as well as the body, is guilty of the offence.

2. In this section—
   (a) a body of persons includes a body corporate, a partnership and an unincorporated
       association; and
   (b) a person concerned in the management or control of a body of persons includes a
       person who was purporting to be concerned in such management or control.

### 14 Civil penalties

1. A local authority may by notice impose a penalty on any person who, being liable to do
   so—
   (a) fails to register as required by or under section 4;
   (b) fails to submit a return as required by or under section 5;
   (c) fails or delays to pay the amount of levy collected to the local authority as
       required by or under section 5;
(d) fails to keep records as required by or under section 6; or
(e) fails to comply with any requirement lawfully made by an authorised officer.

(2) The notice must contain details about—
   (a) the reason for imposing the penalty;
   (b) how the penalty is calculated;
   (c) when and how payment is to be made;
   (d) rights of appeal; and
   (e) the steps which may be taken to recover payment.

(3) The penalty is £100 for each infringement.

(4) The penalty becomes due for payment to the local authority four weeks after the date of
the notice.

(5) The local authority may at any time withdraw a notice by serving a notice of
withdrawal, with the effect that the penalty is no longer due.

(6) A penalty may not be imposed on a person under subsection (1) if the person has been
convicted of an offence under this Act in respect of the conduct in question.

(7) The Scottish Ministers may by order increase the amount of the penalty.

15 Estimated amounts

(1) A local authority may serve a notice on a person stating the estimated amount due by
that person in respect of the levy for a period if, in its opinion, the person—
   (a) was liable to submit a return for that period under section 5 but has failed to do so
within the time required by the local authority; or
   (b) has submitted a return which understates the amount due.

(2) The period covered by the notice may not include any period more than 5 years before
the date of service of the notice unless the person has been convicted of fraud in relation
to the levy.

(3) The notice must contain details about—
   (a) the reason for serving the notice;
   (b) how the estimated amount is calculated;
   (c) when and how payment is to be made;
   (d) rights of appeal; and
   (e) the steps which may be taken to recover payment.

(4) The estimated amount becomes due for payment to the local authority four weeks after
the date of the notice.

(5) The local authority may at any time withdraw a notice by serving a notice of
withdrawal, with the effect that the estimated amount is no longer due.
16 Appeals against penalties and estimated amounts

(1) A person on whom a penalty has been imposed under section 14 or who has been served with a notice of an estimated amount under section 15 may appeal to the sheriff by summary application.

(2) The appeal may be on the ground that—
   
   (a) the penalty has been imposed or the notice has been served in circumstances which do not justify it;
   
   (b) the amount of the estimate is excessive; or
   
   (c) the person had a reasonable excuse for the conduct leading to the imposition of the penalty or the serving of the notice.

(3) The decision of the sheriff may be appealed to the Sheriff Principal whose decision is final.

General

17 Orders and regulations

(1) Any power of the Scottish Ministers to make an order or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—
   
   (a) different provision for different cases and different classes of case; and
   
   (b) such incidental, supplementary, consequential, saving or transitional provision as the Scottish Ministers may consider necessary or expedient.

(3) A statutory instrument containing regulations made under this Act is, subject to subsection (4), subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing an order or regulations made under sections 1, 2, 10 or 14(7) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

18 Interpretation

In this Act—

“authorised officer” has the meaning given by section 10;

“customer” includes a person to whom goods are sold or supplied (whether or not for a price) in the course of business;

“local authority” means a council constituted under section 2 of the Local Government (Scotland) Act 1994 (c.39);

“non-exempt plastic bag” means a plastic bag other than the one exempted from the levy by section 2(2);

“plastic bag” has the meaning given by section 2; and

“supplier” has the meaning given by section 3(1).
Crown application

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable; but the Court of Session may, on the application of a local authority or an office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (2), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

Short title and commencement

(1) This Act may be cited as the Environmental Levy on Plastic Bags (Scotland) Act 2005.

(2) Sections 4, 5(2) to (5) (in so far as these subsections provide for the making of determinations by a local authority or regulations by the Scottish Ministers), 6(3), 7(3), 10(4), 17 and 18, and this section, come into force on the day after the date of Royal Assent.

(3) The remainder of the Act comes into force at the end of the period of six months beginning with the date of Royal Assent.
SCHEDULE

(introduced by section 10)

POWERS OF AUTHORISED OFFICERS

Powers

1. An authorised officer may—
   (a) require any supplier, and any employee of a supplier, to produce all records and documents kept for the purposes of the Act;
   (b) require any supplier, and any employee of a supplier, to give all reasonable assistance, including information and explanations about the acquisition, retention, supply and disposal of non-exempt plastic bags;
   (c) at all reasonable times, enter premises in which the officer reasonably believes there to be non-exempt plastic bags held for provision to customers or records relating to such bags and carry out there such search and investigation, and take such particulars relevant to compliance with the Act, as the officer may consider to be proper; and
   (d) remove and retain, for such period as may be reasonable for further examination or copying or for the purposes of any proceedings in relation to the levy, all records and documents kept for the purposes of the Act.

2. In exercising any of the above powers the authorised person may be accompanied by such other persons as may be necessary.

3. Where information which is to be produced under this schedule is held in a non-legible form the authorised officer may require the person holding the information to produce it in a permanent legible form.

Restrictions and safeguards

4. The powers of authorised officers under this Act are to be exercised only for the purpose—
   (a) of ascertaining whether a person is complying with the Act; or
   (b) of bringing, or preparing for, proceedings for non-compliance.

5. An authorised officer must, if required to do so, produce written evidence of his or her authority.

6. If exercising the powers conferred by paragraph 1(a) or 1(b) separately from the power of entry conferred by paragraph 1(c), the authorised officer must serve a notice setting out the time and place where the requirement is to be met, and the form and manner in which any assistance is to be provided.

7. (1) The authorised officer must give at least 24 hours notice of intention to exercise the powers conferred by paragraph 1(c) or (d).
   (2) The notice must be given to the occupier of the premises where the power is to be exercised.
   (3) Sub-paragraphs (1) and (2) do not prevent the authorised officer from exercising the powers conferred by paragraph 1(c) or (d) without notice if a warrant has been obtained under paragraph 8.
(4) The powers conferred by paragraph 1(c) or (d) may not be exercised by force unless a warrant has been obtained under paragraph 8.

8 (1) A sheriff or a justice of the peace may grant a warrant for the exercise of any power conferred by paragraph 1(c) or (d) if satisfied, by evidence on oath, that there are reasonable grounds for the exercise of the power in relation to specified premises and that any of the following conditions is satisfied—

(a) that the exercise of the power in relation to the premises has been refused;
(b) that such refusal is reasonably anticipated;
(c) that the premises are unoccupied;
(d) that the occupier is temporarily absent from the premises; or
(e) that a notice of intention to exercise the power in relation to the premises would defeat the object of the exercise of the power.

(2) A sheriff or justice must not issue a warrant by virtue only of sub-paragraph (1)(a) or (b) unless also satisfied that notice of intention to apply for the warrant was given to the occupier of the premises or that the giving of such notice would have defeated the object of the exercise of the power.

(3) A warrant under this paragraph continues in force until the purposes for which the warrant was issued have been fulfilled or the expiry of such period as the warrant may specify.

9 An authorised officer who has entered premises by force must leave the premises in as secure a condition as they were in before they were entered.

10 (1) An authorised officer must, if requested—

(a) promptly provide a receipt for any records or documents removed;
(b) grant the owner of the records or documents removed, or an agent of the owner, access to the records or documents removed and a reasonable opportunity, if necessary under supervision, to take copies of the items removed; and
(c) provide free of charge a copy of any document removed if the copy is reasonably required for business reasons.

(2) An authorised officer need not grant access under sub-paragraph (1)(b) if the officer reasonably considers that to do so would prejudice the investigation.

Evidence

11 A copy or photograph of a document produced to or seized by an authorised officer under this Act, and certified as a true copy by the authorised officer, is admissible in evidence to the same extent as the original.
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An Act of the Scottish Parliament to provide for a levy on the provision of plastic bags to customers; to provide for the levy to be used by local authorities for environmental purposes; and for connected purposes.

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