

S.I. No. 605/2001 — Waste Management (Environmental Levy) (Plastic Bag) Regulations, 2001

STATUTORY INSTRUMENT

S.I. No. 605 of 2001

**WASTE MANAGEMENT (ENVIRONMENTAL LEVY) (PLASTIC BAG)
REGULATIONS, 2001**

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WASTE MANAGEMENT (ENVIRONMENTAL LEVY) (PLASTIC BAG) REGULATIONS, 2001.

The Minister for the Environment and Local Government, in exercise of the powers conferred on him by sections 7 and 29 of the Waste Management Act, 1996 (No. 10 of 1996) and section 72 of that Act, as inserted by section 9 of the Waste Management (Amendment) Act, 2001 (No. 36 of 2001), and with the consent of the Government, hereby makes the following Regulations:-

Citation. 1. These Regulations may be cited as the Waste Management (Environmental Levy) (Plastic Bag) Regulations, 2001.

Interpretation. 2. (1) In these Regulations—

“the Act” means the Waste Management Act, 1996 (No.10 of 1996) as amended by the Waste Management (Amendment) Act, 2001 (No. 36 of 2001);

“accounting period” means the period commencing on the 4th day of March, 2002 and ending on the last day of June, 2002 and thereafter each period of three months beginning on the first day of July, October, January or April,

“accountable person” means a person within the meaning of section 72(4) of the Act;

“Appeal Commissioners” has the meaning assigned to it by section 850 of the Taxes Consolidation Act, 1997 (No. 39 of 1997).

(2) In these Regulations -

- (a) a reference to an article is to an article of these Regulations, unless it appears that reference to some other provision is intended;
- (b) a reference to a sub-article is to the sub-article of the provision in which the reference occurs, unless it appears that reference to some other provision is intended.

(3) Subject to sub-article (1), a word or expression that is used in these Regulations and is also used in any provision of the Act has, except where the context otherwise requires, the same meaning in these Regulations as it has in that provision.

Imposition of levy, person liable, rate of levy and exceptions.

3. (1) On and from the 4th day of March 2002 there shall be charged, levied and paid a levy (which shall be known as an ‘environmental levy’ and is in these Regulations referred to as ‘the levy’) in respect of the supply to customers, at the point of sale to them of goods or products to be placed in the bags, or otherwise of plastic bags in or at any shop, supermarket, service station or other sales outlet.

(2) An accountable person shall be accountable for and liable to pay the levy.

Levy amount.

4. The amount of the levy shall be 15 cent for each plastic bag.

Excepted bags

5. The following classes of plastic bags are excepted from the definition of a plastic bag -

(a) plastic bags solely used to contain-

- (i) fresh fish and fresh fish products,
- (ii) fresh meat and fresh meat products, or
- (iii) fresh poultry and fresh poultry products

provided that such bags are not greater in dimension than 225mm in width (exclusive of any gussets), by 345mm in depth (inclusive of any gussets), by 450mm in length, (inclusive of any handles);

(b) plastic bags solely used to contain the products referred to in paragraph (a) where such products are contained in packaging, (including a bag), provided that such plastic bags are not greater in dimension than the dimensions referred to in paragraph (a);

(c) plastic bags solely used to contain-

- (i) fruit, nuts or vegetables,
- (ii) confectionery,

(iii) dairy products,

(iv) cooked food, whether cold or hot, or

(v) ice

provided that such products are not otherwise contained in packaging and where such bags are not greater in dimension than the dimensions referred to in paragraph (a);

(d) plastic bags used to contain goods or products sold:

(i) on board a ship or aircraft used for carrying passengers for reward, or

(ii) in an area of a port or airport to which intending passengers are denied access unless in possession of a valid ticket or boarding card, for the purposes of carrying the goods on board the ship or aircraft referred to in subparagraph (i);

(e) plastic bags designed for re-use, which are used to contain goods or products and which are sold to customers for a sum of not less than 70 cent each.

Charging the levy and evidence of charging.

6. An accountable person shall impose a charge equivalent to the amount of the levy on a customer in respect of the provision by him or her to the customer of a plastic bag, other than a plastic bag excepted under article 5.

Itemisation of levy.

7. Where a charge under article 6 is imposed the charge shall be itemised on any invoice, receipt or docket issued to the customer.

Exclusion of employees.

8. References in these Regulations to a person who supplies plastic bags do not include references to a person who supplies plastic bags in his or her capacity as an employee of another person but include references to a person whose employee supplies plastic bags in his or her capacity as such employee.

Collection authority.

9. (1) The Minister hereby specifies that the Revenue Commissioners shall be the collection authority to whom the levy shall be payable.

(2) An accountable person shall pay the levy to the Revenue Commissioners in accordance with article 10.

(3) The Minister hereby confers powers on the Revenue Commissioners to authorise officers of the Revenue Commissioners for the purposes of article 17.

Returns and payment.

10. (1) An accountable person or any person who has been required to do so by notice in writing from the Revenue Commissioners, shall, not later than the 19th day of the month following the end of an accounting period furnish to the Revenue Commissioners a full and true return in such form as may be specified by the Revenue Commissioners of the amount of the levy which became payable by him or her during the accounting period and he or she shall authorise the Revenue Commissioners to debit the amount payable, if any, from the account of

that person in a financial institution indicated by that person on the return form.

(2) Notwithstanding the provisions of sub-article (1), the Revenue Commissioners may, from time to time, by notice in writing, authorise an accountable person to furnish to them within 19 days of the end of a period longer than an accounting period but not exceeding a year (hereinafter referred to as the specified period), a full and true return in such form as may be specified by the Revenue Commissioners of the amount of the levy which became payable by him or her during the specified period and he or she shall authorise the Revenue Commissioners to debit the amount payable, if any, from the account of that person in a financial institution indicated by that person on the return form.

(3) The Revenue Commissioners may, by notice in writing, authorise two or more accountable persons who are closely bound by financial, economic or organisational links to submit one return in respect of the levy due by all such persons.

(4) An authorisation under sub-article (2) or (3) may be issued by the Revenue Commissioners subject to such conditions as they consider proper to ensure that there is no loss of levy and that the accountable persons will meet their obligations under the Regulations and such authorisations shall, in each case, take effect on the date specified in the notice of authorisation.

(5) The Revenue Commissioners may, by notice in writing to the accountable person or persons concerned, terminate an authorisation issued in accordance with sub-article (2) or (3) and the said termination shall take effect from the date specified in the notice of termination.

Records

11. (1) An accountable person shall keep in a permanent form a full and true record of—

- (a) the number of plastic bags, other than those excepted from the definition of plastic bag by reason of article 5, in stock before the commencement of business on the 4th day of March, 2002,
- (b) the number of plastic bags excepted from the definition of plastic bag by reason of paragraphs (a), (b), (c) and (d) of article 5, in stock before the commencement of business on the 4th day of March, 2002,
- (c) the number of plastic bags, other than those excepted from the definition of plastic bag by reason of article 5, purchased or acquired by him or her in each accounting period,
- (d) the number of plastic bags excepted from the definition of plastic bag by reason of paragraphs (a), (b), (c) and (d) of article 5, purchased or acquired by him or her in each accounting period,
- (e) the number of plastic bags, other than those excepted from the definition of plastic bag by reason of article 5, supplied by him or her to customers in each accounting period.

(2). An accountable person shall retain the records referred to in sub-article (1),

together with all other books and documents containing particulars on which the records are based, for a period of not less than six years.

*Estimation
in the case
of non-
payment.*

12. (1) If within the time specified in article 10 a person, being an accountable person or a person who has been required to do so in writing by the Revenue Commissioners, fails to furnish a return in respect of any period, then without prejudice to any other action that may be taken, the Revenue Commissioners may estimate the amount of levy payable by that person in respect of that period and serve notice on that person of the amount estimated:

Provided that where the Revenue Commissioners are satisfied that the amount so estimated is excessive, they may amend the amount so estimated by reducing it and serve notice on the person concerned of the revised amount estimated and such notice shall supersede any previous notice issued under this sub-article.

(2) Where a notice is served under sub-article (1) on a person, the following provisions shall apply:

- (a) the person may, if he or she claims that he or she is not an accountable person, by giving notice in writing to the Revenue Commissioners within the period of fourteen days from date of service of the notice, require the claim to be referred for decision of the Appeal Commissioners and their decision shall be final and conclusive,
- (b) on the expiration of the said period, if no such claim is required to be referred, or, if such is required to be so referred, on final determination against the claim, the estimated levy shall be recoverable in the like manner and by the like proceedings as if the amount specified in the notice were the amount of levy which the person was liable to pay for the period referred to in the notice,
- (c) if, at any time after the service of the notice the person makes the return required under article 10 and, pays the levy due, if any, together with any costs which may have been incurred in connection with the default, the notice shall stand discharged and any excess of levy which may have been paid shall be repaid.

(3) A notice given by the Revenue Commissioners under sub-article (1) may extend to two or more consecutive accounting periods.

*Estimation in
the case of
underpayment.*

13. (1) Where the Revenue Commissioners have reason to believe that the total amount of levy payable by an accountable person in relation to any period, consisting of one accounting period or of two or more consecutive accounting periods, was greater than the total amount of levy (if any) paid by him or her in relation to that period, then, without prejudice to any other action which may be taken, they may make an estimate in one sum of the total amount of levy which in their opinion should have been paid in respect of the accounting period or periods comprised in such period and may serve a notice on the person specifying—

- (a) the total amount of levy so estimated,
- (b) the total amount of levy (if any) paid by the person in relation to the

said period, and

(c) the balance of levy remaining unpaid.

(2) Where notice is served on an accountable person under sub-article (1), the following provisions shall apply:

- (a) the person may, if he or she claims that the total amount of levy or the balance of levy remaining unpaid is excessive, on giving notice in writing to the Revenue Commissioners within the period of twenty-one days from the date of the service of the notice, appeal to the Appeal Commissioners,
- (b) on the expiration of the said period, if no notice of appeal is received or, if notice of appeal is received, on determination of the appeal by agreement or otherwise, the balance of levy remaining unpaid as specified in the notice or the amended balance of levy as determined in relation to the appeal shall become due and payable as if the levy were levy which the person was liable to pay for the accounting period during which the period of fourteen days from the date of the service of the notice under sub-article (1) expired or the appeal was determined by agreement or otherwise, whichever period is the later.

Proof of notice in relation to estimation.

14. For the purposes of articles 12 and 13, where any officer of the Revenue Commissioners nominated by them for the purposes of article 12 or 13, or any other officer of the Revenue Commissioners acting with the knowledge of the nominated officer causes, for the purposes of article 12 or 13, to be issued, manually or by any electronic, photographic or other process, and to be served, a notice bearing the name of the nominated officer, the estimate to which the notice relates shall be deemed to have been made by the nominated officer.

Recovery

15. (1) Without prejudice to any other mode of recovery, the provisions of any enactment relating to the recovery of income tax and the provisions of any rule of court so relating shall apply to the recovery of any levy payable as they apply in relation to the recovery of income tax.

(2) In particular and without prejudice to the generally of sub-article (1), that sub-article applies the provisions of sections 962, 963, 964(1), 966 and 1002 of the Taxes Consolidation Act, 1997 .

(3) In proceedings instituted for the recovery of any amount of levy-

- (a) a certificate signed by an officer of the Revenue Commissioners which certifies that a stated amount of levy is due and payable by the defendant shall be evidence, until the contrary is proved, that that amount is so due and payable, and
- (b) a certificate certifying as aforesaid and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed, until the contrary is proved, to have been signed by an officer of the Revenue Commissioners.

(4) Subject to this article, the rules of the court concerned for the time being applicable to civil proceedings shall apply to proceedings by virtue of this article.

Appeals

16. The provisions of the Taxes Consolidation Act, 1997 relating to-

- (a) the appointment of times and places for the hearing of appeals;
- (b) the giving of notice to each person who has given notice of appeal of the time and place appointed for the hearing of his or her appeal;
- (c) the determination of an appeal by agreement between the appellant and an officer appointed by the Revenue Commissioners in that behalf;
- (d) the determination of an appeal by the appellant giving notice of his intention not to proceed with the appeal;
- (e) the refusal of an application for an appeal hearing;
- (f) the hearing and the determination of an appeal by the Appeal Commissioners including the hearing and determination of an appeal by one Appeal Commissioner;
- (g) the publication of reports of determinations of the Appeal Commissioners;
- (h) the determination of an appeal through the failure of a person who has given notice of an appeal to attend before the Appeal Commissioners at the time and place appointed;
- (i) the refusal of an application for the adjournment of any proceedings in relation to an appeal and the dismissing of an appeal by the Appeal Commissioners;
- (j) the extension of the time for giving notice of appeal and the readmission of appeals by the Appeal Commissioners;
- (k) the rehearing of an appeal by a judge of the Circuit Court and the statement of a case for the opinion of the High Court on a point of law;
- (l) the payment of the levy in accordance with the determination of the Appeal Commissioners notwithstanding that a case for the opinion of the High Court on a point of law has been required to be stated or is pending;
- (m) the payment of levy which is agreed not to be in dispute in relation to an appeal; and
- (n) the procedures for appeal,

shall, subject to any necessary modifications, apply to an estimate under articles 12 or 13 of these regulations as if the estimate or appeal were an appeal against an assessment to income tax.

Powers of officers.

17. (1) In this article, “authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this article.

(2) An accountable person or any person employed by the accountable person shall on request by an authorised officer produce all records, books and documents required to be retained under article 11 and furnish the authorised officer with all reasonable assistance, including the provision of information and explanations in relation to the acquisition, supply, disposal and stocks held of plastic bags as may be required by the authorised officer.

(3) An authorised officer may, at all reasonable times, enter premises in which plastic bags in respect of which the levy is or was chargeable are reasonably believed by the officer to be kept and may inspect and carry out such search and investigation as such officer may consider to be proper and take particulars of -

(a) any such plastic bags there found, or

(b) any records, books or other documents there found and reasonably believed by the officer to relate to the acquisition and the supply of such plastic bags or, in the case of such information in a non-legible form (including such information in a computer), require the person in charge of such premises to produce it to the officer in a permanent legible form.

(4) An authorised officer may remove and retain all records, books and documents required to be retained under article 11 for such period as may be reasonable for their further examination or for the purposes of any proceedings in relation to the levy.

Obstruction.

18. A person shall not resist, obstruct or impede an officer of the Revenue Commissioners in the exercise of a power conferred on that officer by article 17.

Application of Section 14 of the Act — avoidance of doubt.

19. For the avoidance of doubt, it is hereby declared that the provisions of section 14 of the Act shall apply in relation to these Regulations.

Information to be provided by distributors etc.

20. (1) In this article “authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this article.

(2) A person who supplies plastic bags to a person who carries on the business of selling goods or products at any shop, supermarket, service station or other sales outlet and who has been required to do so by notice in writing from an

authorised officer, shall, not later than one month after the receipt of such notice, advise the authorised officer in writing of -

- (a) the number of plastic bags not greater in dimension than 225mm in width (exclusive of any gussets) by 345mm in depth (inclusive of any gussets) by 450mm in length (inclusive of any handles), and
- (b) the number of plastic bags (other than those of the type referred to in paragraph (a) above or in paragraph (e) of article 5)

supplied by him or her, during the accounting period or periods specified in the notice, to each accountable person specified in the notice and shall, on request by an authorised officer, produce to the authorised officer all records, books and documents retained by him or her in relation to such supplies.

*Nomination
of officers.*

21. The Revenue Commissioners may nominate any officer of the Revenue Commissioners to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by the Revenue Commissioners.

Given under the Official Seal of the Minister for the
Environment and Local Government this 19th day of
December 2001.

NOEL DEMPSEY

Minister for the Environment and Local Government.

EXPLANATORY NOTE.

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations provide for the imposition of an environmental levy on plastic bags and provide for the arrangements for the collection of the levy and specify the times at which the levy shall be paid.

These Regulations were notified to the European Commission in draft form in accordance with EU Council Directive 98/34/EC.