

Draft of

REGULATIONS

entitled

Circular Economy (Environmental Levy) (Plastic Bag) (No. 2) Regulations 2023

To be made by the Minister of
State at the Department of the
Environment, Climate and
Communications.

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I, Ossian Smyth, Minister of State at the Department of the Environment, Climate and Communications in exercise of the powers conferred on me by section 11 of the Circular Economy and Miscellaneous Provisions Act 2022 (No. 26 of 2022) and the Environment, Climate and Communications (Delegation of Ministerial Functions) Order 2023 (S.I. No. 252 of 2023), for the purpose of giving full effect to Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015¹ amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags, and with the consent of the Government, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the Circular Economy (Environmental Levy) (Plastic Bag) (No. 2) Regulations 2023.

(2) These Regulations shall come into operation on the 1st day of January 2024.

Interpretation

2. (1) In these Regulations—

“accountable person” means a person within the meaning of section 12(1) of the Act of 2022;

¹ OJ No. L 115, 06.05.2015, p. 11.

“accounting period” means the period commencing on the 1st day of January 2024 and ending on the last day of March 2024, and thereafter each period of three months beginning on the first day of April, July, October or January;

“Act of 2022” means the Circular Economy and Miscellaneous Provisions Act 2022 (No. 26 of 2022);

“Act of 1996” means the Waste Management Act 1996 (No. 10 of 1996);

“Appeal Commissioners” has the meaning assigned to it by section 2 of the Finance (Tax Appeals) Act 2015 (No. 59 of 2015);

“Directive” means Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015¹ amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags;

“lightweight plastic bag” has the meaning given to it in section 6 of the Act;

‘plastic bag’ means a carrier bag, with or without handles, made of plastic, which is supplied to consumers at the point of sale of goods or products;

“Regulations of 2023” means the Circular Economy (Environmental Levy) (Plastic Bag) Regulations 2023 (No. 343 of 2023);

“very lightweight plastic bag” has the meaning given to it in section 6 of the Act.

(2) A word or expression used in these Regulations that is also used in the Directive has, unless a contrary intention appears, the meaning in these Regulations that it has in the Directive.

PART 2

ENVIRONMENTAL LEVY

Imposition of environmental levy

3. (1) On and from the date of the coming into operation of these Regulations, there shall be charged, levied and paid a levy (which shall be known as an ‘environmental levy’ and in these Regulations referred to as ‘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 supermarket, service station or any other retail premises.

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

Levy amount

4. The amount of the levy shall be 22 cent for each plastic bag.

Excepted bags

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

- (a) very lightweight plastic bags solely used to contain the following, including where such products are contained in packaging (including a bag):

- (i) fresh fish and fresh fish products;
 - (ii) fresh meat and fresh meat products;
 - (iii) fresh poultry and fresh poultry products;
- (b) very lightweight plastic bags solely used to contain the following:
- (i) fruit, nuts or vegetables;
 - (ii) confectionery;
 - (iii) dairy products;
 - (iv) cooked food, whether cold or hot;
 - (v) ice;
- provided that such products are not otherwise contained in packaging;
- (c) 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);

- (d) plastic bags, with a wall thickness of 50 microns or higher, that are sold to customers and which are used to contain goods or products.

Charging of 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 Regulation 5.

Itemisation of levy

7. Where a charge under Regulation 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.

PART 3

COLLECTION AUTHORITY

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 Regulation 10.

(3) The Minister hereby confers powers on the Revenue Commissioners to authorise officers of the Revenue Commissioners for the purposes of Regulation 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 paragraph (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 (in these Regulations 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 paragraph (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 paragraph (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 the following:

- (a) the number of plastic bags, other than those excepted from the definition of plastic bag by reason of Regulation 5, in stock before the commencement of business on the date of the coming into operation of these Regulations;
- (b) the number of plastic bags excepted from the definition of plastic bag by reason of paragraphs (a), (b) and (c) of Regulation 5, in stock before the commencement of business on the date of the coming into operation

of these Regulations;

- (c) the number of plastic bags, other than those excepted from the definition of plastic bag by reason of Regulation 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) and (c) of Regulation 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 Regulation 5, supplied by him or her to customers in each accounting period.

(2) An accountable person shall retain the records referred to in paragraph (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.

PART 4

ESTIMATION AND RECOVERY

Estimation in case of non-payment

12. (1) If within the time specified in Regulation 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 paragraph.

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

- (a) a person who considers that he or she is not an accountable person may appeal to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997 (No. 39 of 1997), within the period of 30 days after the date of notice, for a determination on whether he or she is an accountable person and the decision of the Appeal Commissioners shall be final and conclusive, but this is without prejudice to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997;
- (b) on the expiration of the period mentioned in paragraph (a), 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 Regulation 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 paragraph (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 all of the following:

- (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;
- (c) the balance of levy remaining unpaid.

(2) Where notice is served on an accountable person under paragraph (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 30 days from the date of the service of the notice, appeal to the Appeal Commissioners;

- (b) on the expiration of the period mentioned in subparagraph (a), 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 paragraph (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 Regulations 12 and 13, where any officer of the Revenue Commissioners nominated by them for the purposes of Regulations 12 or 13, or any other officer of the Revenue Commissioners acting with the knowledge of the nominated officer causes, for the purposes of Regulations 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 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 tax.

(2) In particular and without prejudice to the generality of paragraph (1), that paragraph applies the provisions of Chapter 1C of Part 42, and section 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 Regulation, the rules of the court concerned for the time being applicable to civil proceedings shall apply to proceedings by virtue of this Regulation.

Appeals

16. Where, in accordance with these Regulations, an accountable person is required to make a return and account for environmental levy to the Revenue Commissioners, no appeal lies against an estimate raised in accordance with Regulation 14 until such time as the accountable person makes the return and pays or has paid the amount of the environmental levy payable on the basis of that return.

PART 5

AUTHORISED OFFICERS

Powers of authorised officers with respect to accountable persons

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

(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 Regulation 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 Regulation 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 Regulation 17.

Application of section 14 of Act of 1996

19. The provisions of section 14 of the Act of 1996, in relation to authorised persons, shall apply in relation to an authorised officer under these Regulations.

Information to be provided by distributors, etc.

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

(2) A person who supplies plastic bags to a person who carries on the business of selling goods or products in, or at, any supermarket, service station or any other retail premises 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—

- (i) very lightweight plastic bags, and
 - (ii) lightweight plastic bags,
- other than those exempt under Regulation 5,
- (b) the number of plastic bags (other than the type referred to in—
 - (i) subparagraph (a), or
 - (ii) paragraph (d) of Regulation 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.

(3) For the purpose of the State's obligations under the Directive, the Minister may, in writing, require a person who supplies plastic bags to a person that carries on the business of selling goods or products in, or at, any supermarket, service station or any other retail premises, to provide the information referred to in paragraph (2) to the Minister, or such other person as may be specified by the Minister in the requirement and, where so required, the person shall provide that information not later than 30 days after the date of receipt of the requirement.

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.

PART 6

FINAL PROVISIONS

Notices

22. (1) Where a notice is required to be served or given, by the Revenue Commissioners, to a person, it shall be in writing addressed to the person concerned and given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily carries on business;
- (c) by sending it by pre-paid registered post addressed to the person at the address at which the person ordinarily carries on business;
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to that party at that address;
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person concerned carries on business or, if an electronic address or facsimile number address for the service of an notices has been furnished by the person concerned, that electronic address or facsimile machine, but only if—

- (i) the recipient's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
- (ii) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the notice;

and it is also given in one of the other ways mentioned in subparagraphs (a) to (d).

(2) For the purpose of this Regulation, a company within the meaning of the Companies Acts, or the Companies Act 2014, is deemed to be ordinarily resident at its registered office, and every corporate body and every unincorporated body of persons is deemed to be ordinarily resident at its principal office or place of business.

Revocation and transitional provisions

22. (1) The Regulations of 2023 are revoked.
- (2) The revocation of the Regulations of 2023 by paragraph (1) shall not affect –
- (a) any outstanding obligations that arise under those Regulations,
 - (b) the rights of any person, the Revenue Commissioners or the Minister,

and all rights and obligations that arise under those Regulations shall continue to subsist as if those Regulations had not been revoked.

GIVEN under my Hand,

_____ 2023.

Minister of State at the
Department of the Environment,
Climate and Communications.

EXPLANATORY NOTE

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

These Regulations ...