

London Local Authorities (Shopping Bags) Bill

EXPLANATORY MEMORANDUM

PART 1

PRELIMINARY

Interpretation

Clause 1 deals with citation and commencement. It provides that the main operative provisions of the Bill should come into operation on a day or on days to be appointed by London Councils. London Councils is a statutory joint committee comprising members from each of the 33 London borough councils (including the Corporation of London). The detailed procedure which must be followed by London Councils when appointing a day for the commencement of the provisions of the Bill are contained in *Clause 3*.

Clause 2 sets out definitions of certain expressions used in the Bill including “shopping bag” which is defined as a bag supplied by a retailer and which has the primary purpose of carrying items purchased from that retailer on the occasion on which the bag is so supplied.

PART 2

THE PROHIBITION

Clause 4 makes provision for the prohibition. The prohibition will be imposed on the provision of shopping bags by retailers to customers, other than bags exempted under *Clause 5*.

Clause 5 describes the types of bag which are exempt from the prohibition. Subsection (1) sets out a list of types of bag which are exempt from the prohibition. They are as follows—

- small bags used to contain any unpackaged food for human or animal consumption;
- bags used for packaging any goods and sealed before the goods are offered for retail sale or supply;
- bags sold in the ordinary course of trade for use by the customer away from the premises at which they are sold;
- bags provided to the customer for the transmission of goods to the retailer;
- bags designed to be used for the disposal of waste;
- bags used to contain goods sold on board a ship, aircraft, train or bus used for carrying passengers.

Subsection (2) provides a definition of “small bag”.

Subsection (3) enables London Councils to pass resolutions adding or removing any category of bags from the list of exempt bags and make other alterations to the descriptions of the exemptions in the list.

PART 3

ENFORCEMENT

Clause 6 is, by virtue of subsection (1) a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007, meaning that the detailed penalty charge procedures set out in Part 4 of the 2007 Act will apply in relation to penalty charges for the contravention of the prohibition.

The effect of applying provisions of Part 4 of the 2007 Act in this way will be that councils will also be able to serve a penalty charge notice on the person who is suspected of contravening the prohibition, or causing it to be contravened. That person then has a period of 28 days in which to pay the penalty charge (the amount of which will be reduced if he pays within 14 days). The recipient is also able to make representations to the council in respect of the penalty charge and if those representations are rejected, there is a right of appeal to an independent adjudicator. All of these general provisions are set out in Part 4 of the 2007 Act. If after the appeals process is exhausted, or if no appeal is made at all and payment is still not received by the council, then provision is made in the 2007 Act enabling the council to take enforcement action through the County Court.

The grounds on which representations can be made against a penalty charge notice are specified in subsection (5). They are that there was no contravention, that somebody else was responsible for the contravention or that the penalty charge exceeded the proper amount.

Clause 7 deals with authorised officers and their functions under the Bill. The clause introduces the *Schedule* to the Bill which sets out a number of detailed provisions relating to the functions of authorised officers.

Under the *Schedule*, authorised officers have the following powers—

- they may require retailers and employees of retailers to produce records and documents;
- they may require retailers and employees of retailers to give assistance information and explanations about their dealings with shopping bags;
- they can enter premises in which they reasonably believe there to be shopping bags held for provision to customers, or records relating to such bags, and they may carry out searches and investigations, and remove and retain records and documents kept for the purposes of the Act.

The powers of authorised officers are to be exercised only for the purpose of ascertaining whether a person is complying with the Act, or of preparing a penalty charge notice for non-compliance, and an authorised officer must produce written evidence of his authority if required to do so. An authorised officer must give at least 24 hours notice of his intention to use any power, unless he has first obtained a warrant, and if he is to use reasonable force in exercising his powers of entry, then a warrant must be obtained.

A justice of the peace may grant a warrant for the exercise of any power of entry under the *Schedule* if satisfied by evidence on oath that there are reasonable grounds for the exercise of the power in relation to the specified premises and that any of the following

conditions is satisfied—

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

In cases where it is anticipated that refusal of entry will happen, or where refusal of entry has already happened, the justice of the peace must also be 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. An authorised officer who exercises powers of entry must leave the premises in as secure a condition as they were before they were entered, and there are provisions ensuring that authorised officers must provide receipts for any records or documents removed, and other protective provisions.

Clause 8 makes provision for the offence of obstructing authorised officers in exercise of their powers under the Act, failing to comply with their requirements, and providing false information. A person found guilty of an offence under *Clause 8* is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale except in cases of providing false information in which case the maximum fine is level 5 (£5,000).

Clause 9 makes provision about liability of directors for offences committed by bodies corporate under *Clause 8*. It makes provision in certain circumstances for the director, manager, secretary or other officers to be found liable for offences committed by such bodies.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of the Westminster City Council the provisions of the London Local Authorities (Shopping Bags) Bill are compatible with the Convention Rights.

London Local Authorities (Shopping Bags) Bill

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Schedule — Powers of Authorised Officers

A

B I L L

To introduce in London a prohibition on the supply of certain bags by retailers, to confer powers upon local authorities in London to enforce the prohibition; and for related purposes.

WHEREAS—

- (1) It is expedient that retailers should be prohibited from supplying certain kinds of shopping bags to a customer:
- (2) It is expedient that the other provisions contained in this Act should be enacted:
- (3) The objects of this Act cannot be attained without the authority of Parliament: 5
- (4) In relation to the promotion of the Bill for this Act the Westminster City Council have complied with the requirements of section 239 of the Local Government Act 1972 (c. 70) and the other London borough councils to whom it applies have complied with the requirements of section 87 of the Local Government Act 1985 (c. 51): 10
- (5) In relation to the promotion of the Bill the London borough councils have acted through their representation in the London Councils, a statutory joint committee whose membership is made up from members of all the London borough councils:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— 15

PART 1

PRELIMINARY

1 Citation, commencement and extent

- (1) This Act may be cited as the London Local Authorities (Shopping Bags) Act 2008. 5
- (2) This Act, except this Part, shall come into operation in the area of a borough council on the appointed day.
- (3) This Act shall not apply in the London borough of Hounslow.

2 General interpretation

- In this Act— 10
- “authorised officer” has the meaning given by **section 7**;
 - “borough council” means London borough council (except Hounslow London Borough Council) and includes the Common Council of the City of London in its capacity as a local authority and “borough” and “council” shall be construed accordingly; 15
 - “the Code of Practice” means a code of practice relating to the administration and enforcement of this Act published by London Councils;
 - “customer” includes a person to whom goods are sold or supplied (whether or not for consideration) in the course of business; 20
 - “London Councils” means the body known by that name (and formerly as the Association of London Government) and established in April 2000 as a joint committee by all the London borough councils and the Corporation of the City of London;
 - “non-exempt shopping bag” means a shopping bag other than one exempted from the shopping bag prohibition by **section 5(1)**; 25
 - “shopping bag” means a bag supplied by a retailer and which has the primary purpose of carrying items purchased from that retailer on the occasion on which the bag is so supplied;
 - “the shopping bag prohibition” means the prohibition under **section 4(1)**. 30

3 Appointed day

- (1) For the purposes of **section 1(2)**, “the appointed day” means such day as may be fixed in relation to the borough councils by resolution of London Councils, subject to and in accordance with the provisions of this section.
- (2) Different days may be fixed under this section for the purpose of the application of different provisions of this Act to an area of borough council. 35
- (3) No day shall be appointed under this section in relation to **section 4(1)** until the Code of Practice has been published;
- (4) London Councils shall cause to be published in a local newspaper circulating in Greater London and in the London Gazette notice— 40

- (a) of the passing of any resolution under subsection (1) and of a day fixed by them; and
 - (b) of the general effect of the provisions of this Act coming into operation on that day,and the day so fixed shall not be earlier than the expiration of one month from the publication of the notice in the London Gazette. 5
- (5) A document certified by the officer appointed for that purpose by a borough council to be a true reproduction of a page or part of a page of any such newspaper or London Gazette—
 - (a) bearing the date of its publication; and 10
 - (b) containing any such notice,shall be evidence of the publication of the notice and of the date of publication.

PART 2

THE PROHIBITION

- 4 The shopping bag prohibition** 15
 - (1) There is a prohibition on retailers supplying or permitting or causing another person to supply shopping bags to their customers.
 - (2) The prohibition does not apply in respect of exempt shopping bags.
 - (3) In subsection (1), “supplying” means supplying, whether or not for consideration. 20
- 5 Exempt shopping bags**
 - (1) The following bags are “exempt shopping bags” for the purposes of this Act—
 - (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; 25
 - (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 retailer; 30
 - (e) bags designed to be used for the disposal of waste;
 - (f) bags used to contain goods sold on board a ship, aircraft, train or bus used for carrying passengers.
 - (2) In subsection (1)(a), a “small bag” means one which, when measured flat with any gussets opened, is not larger than 300mm by 300mm. 35
 - (3) London Councils may by resolution—
 - (a) add or remove any category of bag from the list of exempt bags in subsection (1); or
 - (b) reduce the dimensions referred to in subsection (2).

- (4) London Councils shall cause to be published in a local newspaper circulating in Greater London and in the London Gazette notice of the passing of a resolution under subsection (3) and its effect.
- (5) A document certified by the officer appointed for that purpose by the borough council to be a true reproduction of a page or part of a page of any such newspaper or London Gazette— 5
 - (a) bearing the date of its publication; and
 - (b) containing any such notice,shall be evidence of the publication of the notice and of the date of publication.

PART 3

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ENFORCEMENT

6 Penalty charges for not complying with prohibition

- (1) This section is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007 (c. ii) (penalty charges).
- (2) A penalty charge is payable for the purposes of the said section 61 by a retailer if that retailer supplies a shopping bag in contravention of the prohibition in **section 4** or permits or causes such a bag to be supplied in contravention of that prohibition. 15
- (3) A penalty charge is payable to a borough council for the purposes of the said section 61 by the retailer who supplied the shopping bag in question or who permitted or caused it to be supplied, as the case may be. 20
- (4) The retailer mentioned in subsection (3) is the appropriate recipient for the purposes of the said section 61.
- (5) For the purposes of section 62(1) of the said Act of 2007 (representations and appeals) the grounds on which representations may be made against a penalty charge notice arising from a penalty charge payable by virtue of this section are— 25
 - (a) that the recipient was not the person who supplied the shopping bag in question or caused it to be supplied, as the case may be;
 - (b) that no shopping bag was supplied or caused to be supplied in contravention of the prohibition; 30
 - (c) that the penalty charge exceeded the amount applicable in the circumstances of the case.
- (6) Where the ground mentioned in subsection (5)(a) is relied on in any representations made under the said section 62(1), those representations must include a statement of the name and address of the person who supplied the shopping bag in question, or caused it to be supplied, as the case may be (if that information is in the recipient's possession). 35

7 Authorised officers

- (1) A borough council may authorise in writing such 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. 5

8 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 who wilfully fails to comply with the requirements of an authorised officer under paragraph 1(a) or (b) of the **Schedule** is guilty of an offence. 10
- (3) A person who, in providing information lawfully required by a borough council or an authorised officer under this Act, commits an offence if he—
 - (a) makes any statement which he knows is false in a material particular;
 - (b) recklessly makes a statement which is false in a material particular.
- (4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 15
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

9 Liability of directors, etc.

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence. 20
- (2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 25

SCHEDULE

Section 7

POWERS OF AUTHORISED OFFICERS

Powers

- 1 An authorised officer may—
- (a) require any retailer, and any employee of a retailer, to give all reasonable assistance, including information and explanations about the acquisition, retention, supply and disposal of non-exempt shopping bags; 5
 - (b) at all reasonable times, enter premises in which the officer reasonably believes there to be— 10
 - (i) non-exempt shopping bags held for provision to customers; or
 - (ii) 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 15
 - (c) 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 shopping bag prohibition, all records and documents kept for the purposes of the Act. 20

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. 25

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 preparing for the issuing of a penalty charge notice for non-compliance. 30

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

6 If exercising the powers conferred by paragraph 1(a), the authorised officer shall 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. 35

- 7 (1) The authorised officer shall give at least 24 hours notice of intention to exercise the powers conferred by paragraph 1(b) or (c).
- (2) The notice shall 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(b) or (c) without notice if a warrant has been obtained under paragraph 9. 5
- 8 The powers conferred by paragraph 1(b) or (c) may not be exercised by force unless a warrant has been obtained under paragraph 9.
- 9 (1) A justice of the peace may grant a warrant for the exercise of any power conferred by paragraph 1(b) or (c) 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— 10
- (a) that the exercise of the power in relation to the premises has been refused; 15
- (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. 20
- (2) A justice of the peace shall not issue a warrant by virtue only of sub-paragraph 1(b) or (c) 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. 25
- 10 An authorised officer who has entered premises by force shall leave the premises in as secure a condition as they were in before they were entered.
- 11 (1) An authorised officer shall, if requested— 30
- (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 35
- (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* 40
- 12 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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SESSION 2007–08

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LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
23.11.07.

(384466)