

**CONSULTATION DOCUMENT ON
THE IMPLEMENTATION OF THE
BATTERIES AND ACCUMULATORS
AND WASTE BATTERIES AND
ACCUMULATORS DIRECTIVE
(2006/66/EC)**

Single (Internal) Market
Provisions of the Directive

MAY 2008

This consultation seeks views on draft regulations for implementing certain requirements of Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators in the UK.

The Department for Business, Enterprise and Regulatory Reform (BERR) is seeking the views of producers, distributors, collectors and recyclers of batteries and accumulators and items containing batteries and accumulators, and any other interested parties, on the proposed approach for implementing provisions in the Directive relating to the placing on the market of new batteries and accumulators, and the design of certain battery-powered appliances. Responses to this consultation will help Government finalise the legislation that is needed to transpose these provisions into UK law.

This consultation follows the recent Consultation Document (URN 07/710) on the Implementation of the Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC) on all aspects of the UK's implementation of the Directive that was issued on 20 December 2007 (7 January 2008 in Northern Ireland). The Government's has decided to separate the transposition of the Single (Internal) Market provisions that affect the "Placing on the Market" of new batteries from the transposition of the Environmental Protection provisions which relate to the collection, treatment and recycling of waste batteries. The Government will bring forward a consultation document including draft Regulations on all of the other aspects of the proposed batteries legislation in the summer.

Issued: 12 May 2008

Please respond by: 20 June 2008

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When submitting a response, please state whether you are doing so as an individual or on behalf of an organisation. If submitting on behalf of an organisation, please explain who the organisation represents and, where applicable, how the views of members were assembled.

An electronic version of this consultation is available at the following websites:

<http://www.berr.gov.uk/consultations/index.html>

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1. EXECUTIVE SUMMARY

The Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC) (hereafter “the new Batteries Directive” or “new Directive”), repeals Directive 91/157/EEC on Batteries and Accumulators Containing Certain Dangerous Substances, which introduced a limited range of environmental and product design requirements, including restrictions on the use of certain potentially dangerous substances, the labelling of batteries containing lead, mercury or cadmium, and the collection and recycling of those batteries, at end of life.

This earlier Directive, and subsequent amendments, were transposed into GB law through SIs 1994/232, 2000/3097, and 2001/2551, and additionally implemented through a non-statutory industry and Government action programme. In Northern Ireland, SR 1995 No. 122 and SR 2002 No. 300 transposed the Directive.

A proposal for a new Batteries Directive was made by the European (the Commission) on 24 November 2003, covering all batteries (so called ‘primary’ batteries, single life varieties) and accumulators (so called ‘secondary’ or rechargeable batteries) and waste batteries and accumulators. The Commission proposed that as the existing legislation covered only an estimated 7% of consumer batteries and accumulators on the EU market, all batteries and accumulators should be brought within scope, for environment and trade reasons. Following negotiation, the new Directive was adopted on 6 September 2006 and was published in the Official Journal of the European Communities 26 September 2006.

The new Batteries Directive applies to all types of batteries irrespective of their shape, weight, composition, except those used in equipment connected with a Member State’s essential security interests, or for certain military purposes, or designed to be sent into space. It seeks to improve the environmental performance of batteries and of the activities of all economic operators involved in the life cycle of batteries, e.g. producers, distributors and end users and, in particular, those operators directly involved in the treatment and recycling of waste batteries. Member States are required to transpose the Directive into national law by 26 September 2008.

BERR has overall co-ordinating responsibility for transposing the new Directive into national law, and is leading specifically on the development of policy and legislation on the Internal Market provisions - battery composition and labelling provisions - in the Directive, and those relating to waste industrial and automotive batteries. Defra is leading on the provisions relating to waste portable batteries. Each of the Devolved Administrations may implement the provisions of the Directive in their own countries in respect of those provisions which fall within devolved competence, but this does not include the requirements that are the subject of this consultation.

In developing policies to implement the Directive, both Departments have undertaken extensive informal consultation with interested parties, individually, and collectively through stakeholder groups. In addition, Devolved Administrations have undertaken their own consultation work including a written discussion paper in Northern Ireland. Implementation options crystallised into those set out in the Consultation Document

on the Implementation of the Batteries and Accumulators and Waste Batteries and Accumulators (2006/66/EC) URN 07/1701 of 20 December 2007.

This consultation only addresses the Internal Market provisions or technical requirements affecting the manufacturing and sale of batteries and accumulators and appliances containing batteries and accumulators and includes draft Regulations to transpose these provisions.

The chosen approach has taken into account the responses received to the previous consultation. For this consultation we should like to receive your views on the content of the draft legislation specifically.

In addition, we will welcome comments on the partial impact assessment produced to support the draft Regulations.

You will find the following questions at relevant sections of the consultation document:

Questions	
Single (Internal) Market Provisions	
Question 1:	Do the provisions set out in Part 2 (Prohibitions and labelling requirements) of the Regulations make clear what is expected of persons placing batteries on the market in order to comply?
Question 2:	<p>The UK continues to raise the issue of the '<i>removal of waste batteries and accumulators</i>' from appliances with the Commission.</p> <ul style="list-style-type: none"> - UK guidance notes will be developed in line with the Commission's interpretation and application. What additional information do you believe should be included on removability in the UK's own guidance notes?
Single (Internal) Market – Enforcement Regime	
Question 3:	Does the proposed Part 3 (Enforcement) identify all the issues that should be covered by the draft Regulations? If not, what does it fail to identify?
Question 4:	Do you think that any of the proposed enforcement provisions are not necessary to enable the Secretary of State / enforcement authority to carry out their duties to enforce these regulations effectively?
Other Questions	
Question 5:	Do you agree with the costs and benefits for the UK of the Internal Market provisions as set out in the partial Impact Assessment (attached at Annex C)?
Question 6:	Do you have any other comments that might aid the consultation process as a whole?
For each question please support you response with supporting evidence and reasons why.	

2. APPROACH TO DEFINITIONS USED IN THE DIRECTIVE

The draft regulations include a list of relevant definitions to help with interpretation and ensure these are consistent with the definitions in the new Directive.

The new Directive applies different obligations to producers of portable, industrial and automotive batteries. Our intention is to interpret the definition of batteries and accumulators in the following way:

An automotive battery is one which is used for the starting or ignition of the engine of a vehicle, or for providing power for any lighting used by such a vehicle.

A portable battery or battery pack is one which is sealed, can be hand-carried without difficulty, and is neither an automotive nor industrial battery.

An industrial battery or battery pack is one which is:

- (i) designed exclusively for industrial or professional uses;
- (ii) used as a source of power for propulsion in an electric vehicle;
- (iii) unsealed, but is not an automotive battery; or
- (iv) sealed, but is not a portable battery.

3. SINGLE (INTERNAL) MARKET PROVISIONS

In the new Batteries Directive, “batteries” is used to mean single-life primary batteries, and “accumulators” is used to mean rechargeable or secondary batteries. In this consultation document, “batteries” is used to mean both batteries and accumulators, unless otherwise specified.

There are three provisions in the new Directive which were adopted with an explicit Internal Market (also known as Single Market) Treaty Base – which relates to the free movement of goods in the EU. In the new Directive, these provisions are as follows:

- Article 4 (Prohibitions)
- Article 6 (Placing on the market)
- Article 21 (Labelling)

We consider a fourth provision, Article 11 (Removal of waste batteries and accumulators), to have potentially significant impact on the Internal Market since it contains design requirements for battery-powered appliances, despite being adopted with an Article 175(1) (Environment) Treaty Base. For this reason, we intend to adopt Article 11 as an Internal Market measure and it is therefore covered by this consultation and these draft Regulations.

Materials Prohibitions

The provisions transposing the prohibitions set out in Article 4 (Prohibitions) of the EC Directive are set down in draft Part 2, Regulation 5 (Prohibition on mercury and cadmium) of the attached draft Regulations.

Extract from draft Regulations

Prohibition on mercury and cadmium

5—(1) No person shall place on the market—

- (a) any battery that contains more than 0.0005% of mercury by weight; and
- (b) any portable battery that contains more than 0.002% of cadmium by weight.

(2) The prohibition in paragraph (1)(a) shall not apply to any button cell with a mercury content of no more than 2% by weight.

(3) The prohibition in paragraph (1)(b) shall not apply to any portable battery intended for use in—

- (a) emergency lighting and alarm systems, including emergency lighting;
- (b) medical equipment; or
- (c) cordless power tools.

(4) In this regulation, “place on the market” means supplying or making available, whether in return for payment or free of charge, to a third party within the Community and includes import into the customs territory of the Community as defined in Article 3 of Council Regulation 2913/92/EEC of 12th October 1992 establishing the Community Customs Code.

(5) This regulation does not apply to a battery which is a material or a component of a vehicle for the purposes of regulation 6 of the End-of-Life Vehicles Regulations 2003.

Background

The requirement in the new Directive is that Member States must transpose Article 4 “without prejudice to Directive 2000/53/EC” (the End-of-Life Vehicles Directive) which itself sets restrictions on the use of mercury and cadmium in vehicles and their components. The ELV Directive allows “a maximum concentration value of up to 0.1% by weight and per homogenous material, for lead, hexavalent chromium and mercury and up to 0.01% by weight and per homogenous material for cadmium”, and these thresholds are therefore different from those in the new Batteries Directive. Our interpretation of “without prejudice” is that batteries used in vehicles may exceed the limits set down in the Batteries Directive. This should not present practical difficulties, since few portable batteries are used in vehicles (certainly too few for battery manufacturers to justify running higher/lower mercury/cadmium production lines) and automotive batteries do not contain mercury or cadmium.

Placing on the Market

The provisions transposing the placing on the market requirements which are set out in Article 6 (Placing on the market) of the new Directive are addressed in draft Part 3, Regulations 9 to 23 of the attached draft Regulations.

The text of the regulations relevant to these sections is encompassed in the enforcement provisions specific to Part 3 Enforcement.

Background

Our interpretation of this Article is that any person may legally place batteries on the market that conform to current composition and labelling requirements (as set out in the current Batteries Directive 91/157/EEC) until 26 September 2008, when the new requirements come into force.

We explained in the previous consultation document (URN 07/1701) that the new Batteries Directive would not require distributors or retailers to withdraw the batteries that were legally placed on the market before 26 September 2008, once the requirements came into force. Only those batteries placed on the market on or after this date that did not conform to the new Batteries Directive would need to be withdrawn.

Subsequent communications with the Commission revealed that there was uncertainty with this interpretation i.e. that there was a possibility that the current wording of the Directive would require all batteries already legally placed on the market (but not sold to end-users) before 26 September 2008 would need to be withdrawn as they would not meet the requirements of the new Batteries Directive. Following discussion with Member States and direct representation by the UK, the Commission submitted proposals for a fast-track amendment to the Directive to provide clarification and remove the risk of what would have constituted virtually a “product recall from distributors” and the removal of batteries from the shelves.

This amendment will need to be adopted by the European Parliament and the Council through the co-decision process which it is hoped will be in place ahead of 26 September 2008 deadline.

However, to clarify, any batteries placed on the market on or after 26 September 2008 must comply with the composition and labelling requirements of the new legislation.

Labelling to Aid Recycling

The provisions transposing labelling requirements of Article 21 (Labelling) of the new Directive are addressed in draft Part 2, Regulations 6 and 7 of the attached draft Regulations.

Extract from draft Regulations

Crossed out wheeled bin labelling requirement

6.—(1) Any person who places on the market any battery or battery pack shall ensure that that battery or battery pack is marked with the symbol shown in the Schedule to these Regulations (“the crossed out wheeled bin symbol”).

(2) Subject to paragraph (3), the crossed out wheeled bin symbol shall cover at least 3% of the area of the largest side of the battery or battery pack and shall have a maximum size of 5 x 5 centimetres.

(3) In the case of cylindrical cells, the crossed out wheeled bin symbol shall cover at least 1.5% of the surface area of the battery and shall have a maximum size of 5 x 5 centimetres.

(4) Where the size of the battery or battery pack is such that the crossed out wheeled bin symbol would be smaller than 0.5 x 0.5 centimetres, the battery or battery pack need not be marked but a crossed out wheeled bin symbol measuring at least 1 x 1 centimetre shall be printed on the packaging.

(5) The crossed out wheeled bin symbol shall be printed visibly, legibly and indelibly.

Cadmium, mercury and lead labelling requirement

7.—(1) Any person shall ensure that—

- (a) any button cell containing more than 0.0005% of mercury by weight that that person places on the market is marked with the chemical symbol Hg;
- (b) any battery or button cell containing more than 0.002% of cadmium by weight that that person places on the market is marked with the chemical symbol Cd; and
- (c) any battery or button cell containing more than 0.004% of lead by weight that that person places on the market is marked with the chemical symbol Pb.

(2) The chemical symbols mentioned in paragraph (1) shall—

- (a) be printed beneath the crossed out wheeled bin symbol;
- (b) cover an area of at least one quarter the size of that symbol; and
- (c) be printed visibly, legibly and indelibly.

Background

The main labelling provision is similar to that set down in Directive 91/157 (the earlier EC Batteries Directive) and the corresponding national regulations, as amended, but they now apply to all batteries, rather than being confined to those containing mercury, cadmium or lead. The thresholds above which the chemical symbol for cadmium or mercury is required are the same as the prohibition limits. It is intended, therefore, that the only batteries needing these symbols are of the types taking advantage of the relevant exemptions.

There may be some instances where it is not entirely clear how the new requirements are intended to be applied. The Commission has provided some draft guidance as set out below:

Labelling of small batteries with the wheeled bin- how to label small batteries if sold separately or if they are sold incorporated in an appliance

In these instances, the wheelie bin symbol should be printed on the packaging of the battery if the battery is sold separately. In case the battery is sold together in an appliance, this symbol should be printed on the packaging of the appliance.

Reasoning:

The above labelling practice means that if the battery is not removable by the consumer, the consumer will be encouraged not to throw the equipment with the battery inside into municipal waste.

In case the battery is exchangeable by the consumer, the consumer will be informed via the packaging of the new battery, not to throw the battery away with the municipal waste.

Labelling of battery cells in battery packs

The individual cells in a battery pack do not need to be marked with the symbols indicated in Article 21 of Directive 2006/66/EC, the battery pack itself needs to be marked. This is because the end-users are not intended to split the packs open.

Labelling of batteries that are incorporated in appliances, not visible for the consumers and not removable by the consumers – exempted from labelling?

- *These batteries would still need to be marked with the chemical symbols. (This gives information on the chemistry of the battery at the treatment phase.)*
- *The wheeled bin marking does not seem to make sense in this case, as these batteries are neither visible nor removable by the consumer. If the appliances are marked with the wheeled bin under the WEEE Directive, these batteries could be exempted from marking with the wheeled bin.*

Although not finalised, this is likely to form the basis of the UK guidance that will accompany and support the final legislation.

Capacity Labelling

In addition to the labelling requirements above, there is a requirement for the capacity of all portable and automotive batteries to be indicated on them in a visible, legible and indelible form by 26 September 2009. Detailed rules for the implementation of this requirement, including harmonised methods for the determination of capacity and appropriate use, shall be laid down in accordance with the procedure referred to in Article 24 (2) (of the new Directive) no later than 26 March 2009.

The Commission has appointed a consultant to provide them with the technical underpinning to enable development of the detailed harmonised rules for the capacity labelling system. Once the consultants have reported back, the Commission will propose a system for Member States in order for them to amend national legislation accordingly.

Product Design Requirement under Article 175(1) - Removal of waste batteries and accumulators

The draft regulations also contain a further product design requirement that was adopted in the new Directive at a late stage, but not with an Internal Market Treaty Base.

The provision transposing the product design requirement which is set out in Article 11 (Removal of waste batteries and accumulators) of the new Directive is addressed in draft Part 2, Regulation 8 of the attached draft Regulations.

Extract from draft Regulations

Appliances into which batteries are or may be incorporated

8.—(1) No person shall place on the market any appliance designed in such a way that a waste battery cannot be readily removed from the appliance.

(2) Where any person places on the market any appliance into which a battery is or may be incorporated that person shall ensure that that appliance is accompanied by instructions showing how the battery can be removed safely and, where appropriate, informing the end-user of the type of the incorporated battery.

(3) Paragraphs (1) and (2) shall not apply where for safety, performance, medical or data integrity reasons continuity of power supply is necessary and requires a permanent connection between the appliance and the battery.

Background

The fact that this provision is drafted in such a way as to be open to different practical interpretations has the potential to cause significant Internal Market problems if, for example, Member States decide unilaterally which products must be designed to allow easy removal.

The Commission has agreed to issue Guidance on the interpretation and application of this provision, to reduce the risk of obstacles to the free movement of goods, and this will be developed with input from Member States via a Technical Adaptation Committee established under the Directive.

As we proposed in the earlier consultation (URN 07/1701), we have transposed this legislation as a “copy-out” of the text of the new Directive. We intend to supplement and support the draft Regulation 8 with the UK guidance which will need to be developed on the basis of the Commission’s own guidance on this matter. The Commission issued draft Guidance in March 2007 which can be found at *Figure 1 below*.

Figure 1: European Commission’s draft guidance regarding the removal of waste batteries and accumulators from appliances issued March 2007

Draft Commission Guidance

What requirement does the Directive contain on the removability of waste batteries from appliances?

Directive 2006/66/EC requires in Article 11 "that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed" and that "appliances into which batteries and accumulators are incorporated shall be accompanied by instructions showing how they can be removed safely". Exemptions are given for these requirements to appliances where for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery or accumulator.

Who should remove the batteries?

End-users or professionals should be able to remove the batteries, depending on the appliance in question. The instructions accompanying appliances, that should show how the batteries can be removed safely from appliances, could also specify who would be the most suited to remove the battery safely.

Do the batteries have to be removable from appliances by hand or by tools?

Depending on the appliance in question it should be possible to remove batteries from appliances by hand or by tools. The instructions accompanying appliances should specify how the batteries can be removed safely, it could specify under which conditions and what tools should be used for this. The instructions could also specify what dangers may occur in case of not complying with the instructions.

In case there are more specific rules on how the batteries should be removed applying to specific products, these products should comply with these rules.

When should waste batteries and accumulators be removable from appliances?

Waste batteries should be removable from the appliances during the life of the appliance if the batteries have a shorter lifetime or at the end of the life of the equipment, as applicable.

Questions – Single (Internal) Market Provisions

- | | |
|--------------------|---|
| Question 1: | Do the provisions set out in Part 2 (Prohibitions and labelling requirements) of the Regulations make clear what is expected of persons placing batteries on the market in order to comply? |
| Question 2: | <p>The UK continues to raise the issue of the '<i>removal of waste batteries and accumulators</i>' from appliances with the Commission.</p> <ul style="list-style-type: none">- UK guidance notes will be developed in line with the Commission's interpretation and application. What additional information do you believe should be included on removability in the UK's own guidance notes? |

For each question please support your response with supporting evidence and reasons why.

4. SINGLE (INTERNAL) MARKET PROVISIONS – ENFORCEMENT REGIME

The following section of the Consultation sets down a summary of the enforcement powers laid down in draft Part 3 of the attached Regulations, revoking early batteries regulations. The Government proposes to build on the approach to enforcement outlined in the previous consultation document, which was based broadly on the experience of enforcing the materials restrictions in the End of Life Vehicles Regulations 2003. Considering the similarities of the Internal Market requirements of the Batteries Directive to that of the hazardous substances restrictions contained within the RoHS Regulations, and similarities of the labelling requirements of the WEEE Regulations, the approach to enforcing this aspect of the Directive has parallels to enforcing the Internal Market provisions of RoHS.

Enforcement Authority

It will be the duty of the Secretary of State for BERR to enforce the Regulations. Following the publication of this consultation document the Secretary of State will appoint an enforcement authority to carry out the duties necessary to enforce these Regulations.

Test on Batteries and Appliances

For the purpose of ascertaining whether the requirements of draft Regulations 5 or 8 have been met, the Secretary or State may submit any battery or appliance that he has purchased or obtained through legal means for testing for compliance. The purpose for this measure is to supplement the powers provided for in draft Regulation 12. Tests on batteries or appliances obtained in this way may be necessary to build up evidence as part of a case file or alternatively as a part of market surveillance activities. This draft Regulation also provides for interested parties with a right of access to tested batteries and appliances.

Supporting Enforcement Powers

In order to establish a robust enforcement regime and the ability to determine whether the core obligations have been met, the following enforcement powers are being proposed and are included in the draft Regulations.

Power to require production of documents and information

Due to the way in which the market for batteries is structured and the way obligations in the Directive have been framed, determining that non-compliant batteries have been placed on the market and identifying the responsible person for infringement purposes are often quite separate exercises. As the obligation to comply lies with the person placing the battery on the market, it may be necessary to obtain relevant documentation from the distributor or other entities within the supply chain to identify the responsible person.

Further powers to obtain evidence & Powers of entry: Supplementary

We have proposed that a duly authorised enforcement officer may, for the purposes of ascertaining whether an infringement has occurred, enter at any reasonable time any non-domestic premises in order to inspect any batteries; examine any procedure for their production; require a person carrying on or employed in connection with the business to provide records relating to it; take copies of such records; or seize and detain infringing batteries or records. The enforcement officers may also take with them any other persons and equipment or materials they consider it necessary or expedient to have with them.

Offences and Penalties

A list of offences is included at draft Regulation 16, with penalties are set out in draft Regulation 17.

Offences will include:

- placing on the market batteries which exceed the maximum allowed percentage by weight of mercury or cadmium
- placing on the market unlabelled or incorrectly labelled batteries
- placing on the market appliances that are not designed in such a way that waste batteries can be readily removed
- failing to comply with the requirements of an enforcement notice
- obstructing an enforcement officer who is acting in respect of these requirements
- failing to comply with a requirement to provide information, documents or records

Compliance and Enforcement Notices

Draft Regulation 14 enables the enforcement authority to serve a “compliance notice” on persons where they have reasonable grounds to suspect their obligations have not been met. The compliance notice enables the enforcement authority to detail its reasons for suspecting a contravention and provides the person served a compliance notice with an opportunity either to demonstrate that they are already in compliance with the obligations or to bring themselves into compliance within the period specified in the notice.

Where that person’s response (or lack of response) to a compliance notice indicates that it is continuing to ignore relevant obligations, the next step may sometimes be to proceed with a prosecution, although for a variety of reasons, this will often not be the case. However, even if a prosecution is not the appropriate course of action at this stage, it may be desirable for the enforcement authority to take further action to secure compliance or to ensure that infringing goods which are already on the market are removed from circulation (withdrawn from the market). It is therefore proposed that where a person has failed to comply with the legal requirements of Part 2 of the draft Regulations the enforcement authority should be able to serve a further “enforcement notice”. This is provided for in draft Regulation 15, which is similar to provisions found in a number of UK consumer and environmental protection regimes.

It is proposed that as well as including a “final warning” requirement to comply with a legal requirements in Part 2 of the draft Regulations an enforcement notice may require such goods to be withdrawn from the market, or prohibit or restrict their being put on the market. The notice must include the reasons why the enforcement authority believes the obligations have not been complied with. It is hoped that by giving the enforcement authority the option of utilising this further procedure, which occupies a step between the existing possibilities of serving a compliance notice and initiating a prosecution, the draft Regulations will provide them with a better graduated range of responses to non-compliant behaviour. This should help to make the enforcement regime more proportionate and effective, and potentially reduce burdens on both businesses and the enforcement authority.

Defence of Due Diligence

This draft Regulation 21 has been added to the proposals in light of responses to the recent consultation document. We acknowledge and are sympathetic to the views expressed concerning the complexity of the supply chain and the level of control that persons placing batteries on the market will be subject to in terms of obtaining evidence to demonstrate compliance (an experience learned from enforcing the RoHS Regulations). As a consequence we have, for the purposes of this consultation, accepted the argument for a due diligence defence to be permitted. In simple terms this defence involves an allegation that the offence was committed due to either an act or default of another person, or because of information given to them by another person. However, it is important to note that if using this defence, it must be shown that it was reasonable in all circumstances, for that person to have relied upon the information given to them by another party.

Restrictions on Enforcement Powers and Use of Certain Evidence

Regulation 25 provides for the disclosure of information acquired by the Secretary of State under the enforcement powers set out in these draft Regulations. We intend to follow the precedent set in the RoHS Regulations by extending the application of certain provisions of Part 9 (Restrictions on Disclosure of Information) of the Enterprise Act 2002 to these draft Regulations.

New Legislative Framework

These draft Regulations make certain powers available to enforcement authorities as from 26 September 2008. We are aware that the EU New Legislative Framework Proposals including the Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products are likely to be adopted later this year and that the Regulation is to apply from 1 January 2010. We shall evaluate whether we should propose that additional powers need to be conferred on the enforcement (market surveillance) authorities pursuant to that Regulation.

Possible changes to the RoHS Regulations

As noted above, the enforcement provisions of the draft Regulations have been based to a large extent on the enforcement provisions in the RoHS Regulations 2008. In the course of reviewing some of the RoHS provisions, we have noted a number of respects in which they could be improved. The two regimes are closely linked and we believe that, all other things being equal, the enforcement provisions of the two sets of regulations should be as similar as possible. As a result, and depending on the outcome of this consultation, we intend to make some minor amendments to the RoHS Regulations to reflect the development of our thinking on the equivalent provisions of the Batteries Internal Market Regulations, principally in relation to the drafting, rather than the basic policy, of the provisions relating to test purchases and

Questions – Single (Internal) Market – Enforcement Regime

Question 3: Does the proposed Part 3 (Enforcement) identify all the issues that should be covered by the draft Regulations? If not, what does it fail to identify?

Question 4: Do you think that any of the proposed enforcement provisions are not necessary to enable the Secretary of State / enforcement authority to carry out their duties to enforce these regulations effectively?

For these questions please support you response with supporting evidence and reasons why.

Other Questions

Question 5: Do you agree with the costs and benefits for the UK of the Internal Market provisions as set out in the partial Impact Assessment (attached at Annex C)?

Question 6: Do you have any other comments that might aid the consultation process as a whole?

For these questions please support you response with supporting evidence and reasons why.

5 WHAT HAPPENS NEXT?

Responses to this consultation will be assessed and views considered before the final Regulations are laid in Parliament. A response to this consultation, including a summary of the responses we receive, will be made publicly available and published on the BERR website. A further consultation including draft Regulations on all other aspects of UK implementation of the Batteries Directive will follow in the summer.

6 DISTRIBUTION AND ADDITIONAL COPIES

This consultation document has been sent to a large number of companies and individuals, including those with an interest in batteries, electronic equipment, waste collection and other waste services, consumer and environmental issues.

You may make additional copies of this document without seeking our permission. Alternatively, further printed copies of the consultation document can be obtained from:

BERR Publications Orderline
ADMAIL 528
London
SW1W 8YT

Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030

7 CONFIDENTIALITY & DATA PROTECTION

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

If you have **comments or complaints** about the way this consultation has been conducted, these should be sent to:

Vanessa Singhateh
BERR Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET
Email: vanessa.singhateh@berr.gsi.gov.uk

A copy of the Code of Practice on Consultation is in Annex E.

STATUTORY INSTRUMENTS

2008 No. 0000

ENVIRONMENTAL PROTECTION

The Batteries and Accumulators (Placing on the Market)
Regulations 2008

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - 26th September 2008

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in respect of matters relating to batteries and accumulators.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act, makes the following Regulations.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Batteries and Accumulators (Placing on the Market) Regulations 2008 and shall come into force on 26th September 2008.

Revocations

2. The following enactments are revoked—

- (a) the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994(c);
- (b) the Batteries and Accumulators (Containing Dangerous Substances) (Amendment) Regulations 2000(d);
- (c) the Batteries and Accumulators (Containing Dangerous Substances) (Amendment) Regulations 2001(e);

(a) S.I. 2007/3471.

(b) 1972 c.68. Under section 57 of the Scotland Act 1998 (c.46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by the Secretary of State as regards Scotland.

(c) S.I. 1994/232.

(d) S.I. 2000/3097.

(e) S.I. 2001/2551.

- (d) the Batteries and Accumulators (Containing Dangerous Substances) Regulations (Northern Ireland) 1995(a); and
- (e) the Batteries and Accumulators (Containing Dangerous Substances) (Amendment) Regulations (Northern Ireland) 2002(b).

Interpretation

3.—(1) In these Regulations—

“the Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC(c);

“appliance” means any electrical or electronic equipment, as defined by Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment(d), which is fully or partly powered by batteries or accumulators or is capable of being so;

“automotive battery or accumulator” means a battery or accumulator that is used for the starting or ignition of the engine of a vehicle or for providing power for any lighting used by such a vehicle;

“battery” or “accumulator” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable);

“battery pack” means any set of batteries or accumulators that are connected together or encapsulated within an outer casing so as to form a complete unit that the end-user is not intended to split up or open;

“button cell” means any small round portable battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment and back-up power;

“Community” means the European Community;

“compliance notice” has the meaning given in regulation 14(2);

“cordless power tool” means any hand-held appliance powered by a battery or accumulator and intended for maintenance, construction or gardening activities;

“electric vehicle” means a vehicle which uses electricity as a source of automotive power and includes a vehicle which in addition uses, or is capable of using, other sources of power for this purpose;

“enforcement notice” has the meaning given in regulation 15(2);

“enforcement officer” means a person appointed to act on behalf of the Secretary of State for the purposes of enforcing these Regulations;

“industrial battery or accumulator” means any battery, accumulator or battery pack which is—

- (a) designed exclusively for industrial or professional uses;
- (b) used as a source of power for propulsion in an electric vehicle;
- (c) unsealed but is not an automotive battery or accumulator; or
- (d) sealed but is not a portable battery or accumulator;

“infringing goods” has the meaning given in regulation 14(2)(c);

“place on the market”, except in regulation 5, means place on the market for the first time in the United Kingdom on a professional basis, and “placing on the market” shall be construed accordingly;

(a) S.R. 1995/122.

(b) S.R. 2002/300.

(c) OJ No. L266, 26.9.2006, p.1 as corrected by Corrigendum to Directive 2006/66/EC (OJ No. L311, 10.11.2006, p.58).

(d) OJ No. L37, 13.2.2003, p.24.

“portable battery or accumulator” means any battery, accumulator or battery pack which is—

- (a) sealed;
 - (b) can be hand-carried by an average natural person without difficulty; and
 - (c) is neither an automotive battery or accumulator nor an industrial battery or accumulator;
- “relevant requirement” has the meaning given in regulation 14(2)(a);

“waste battery or accumulator” means any battery or accumulator which is waste within the meaning of Article 1(1)(a) of Directive 2006/12/EC of the European Parliament and of the Council on waste(a).

(2) In these Regulations, any reference to a battery shall be construed as being a reference to a battery or an accumulator.

Application

4.—(1) These Regulations apply to—

- (a) all types of batteries, regardless of their shape, volume, weight, material composition or use; and
- (b) all appliances into which a battery is or may be incorporated.

(2) These Regulations do not apply to batteries used in—

- (a) equipment connected with the protection of member States’ essential security interests, such as arms, munitions and war material, and intended for specifically military purposes; or
- (b) equipment designed to be sent into space.

PART 2

Prohibitions and labelling requirements

Prohibition on mercury and cadmium

5.—(1) No person shall place on the market—

- (a) any battery that contains more than 0.0005% of mercury by weight;
- (b) any portable battery that contains more than 0.002% of cadmium by weight.

(2) The prohibition in paragraph (1)(a) shall not apply to any button cell with a mercury content of no more than 2% by weight.

(3) The prohibition in paragraph (1)(b) shall not apply to any portable battery intended for use in—

- (a) emergency lighting and alarm systems, including emergency lighting;
- (b) medical equipment; or
- (c) cordless power tools.

(4) In this regulation, “place on the market” means supplying or making available, whether in return for payment or free of charge, to a third party within the Community and includes import into the customs territory of the Community as defined in Article 3 of Council Regulation 2913/92/EEC of 12th October 1992 establishing the Community Customs Code(b).

(5) This regulation does not apply to a battery which is a material or a component of a vehicle for the purposes of regulation 6 of the End-of-Life Vehicles Regulations 2003(c).

(a) OJ No. L114, 27.4.2006, p.9.

(b) OJ No. L302, 19.10.1992, p.1 as amended by Article 1(1)(b) of European Parliament and Council Regulation 82/97/EC (OJ No. L17, 21.1.1997, p.1).

(c) S.I. 2003/2635.

Crossed out wheeled bin labelling requirement

6.—(1) Any person who places on the market any battery or battery pack shall ensure that that battery or battery pack is marked with the symbol shown in the Schedule to these Regulations (“the crossed out wheeled bin symbol”).

(2) Subject to paragraph (3), the crossed out wheeled bin symbol shall cover at least 3% of the area of the largest side of the battery or battery pack and shall have a maximum size of 5 x 5 centimetres.

(3) In the case of cylindrical cells, the crossed out wheeled bin symbol shall cover at least 1.5% of the surface area of the battery and shall have a maximum size of 5 x 5 centimetres.

(4) Where the size of the battery or battery pack is such that the crossed out wheeled bin symbol would be smaller than 0.5 x 0.5 centimetres, the battery or battery pack need not be marked but a crossed out wheeled bin symbol measuring at least 1 x 1 centimetre shall be printed on the packaging.

(5) The crossed out wheeled bin symbol shall be printed visibly, legibly and indelibly.

Cadmium, mercury and lead labelling requirement

7.—(1) Any person shall ensure that—

- (a) any button cell containing more than 0.0005% of mercury by weight that that person places on the market is marked with the chemical symbol Hg;
- (b) any battery or button cell containing more than 0.002% of cadmium by weight that that person places on the market is marked with the chemical symbol Cd; and
- (c) any battery or button cell containing more than 0.004% of lead by weight that that person places on the market is marked with the chemical symbol Pb.

(2) The chemical symbols mentioned in paragraph (1) shall—

- (a) be printed beneath the crossed out wheeled bin symbol;
- (b) cover an area of at least one quarter the size of that symbol; and
- (c) be printed visibly, legibly and indelibly.

Appliances into which batteries are or may be incorporated

8.—(1) No person shall place on the market any appliance designed in such a way that a waste battery cannot be readily removed from the appliance.

(2) Where any person places on the market any appliance into which a battery is or may be incorporated that person shall ensure that that appliance is accompanied by instructions showing how the battery can be removed safely and, where appropriate, informing the end-user of the type of the incorporated battery.

(3) Paragraphs (1) and (2) shall not apply where for safety, performance, medical or data integrity reasons continuity of power supply is necessary and requires a permanent connection between the appliance and the battery.

PART 3

Enforcement

Enforcement authority

9.—(1) It shall be the duty of the Secretary of State to enforce these Regulations.

(2) The Secretary of State may appoint any person to act on behalf of the Secretary of State for the purposes of paragraph (1).

(3) The Secretary of State shall not commence proceedings for an offence in Scotland.

Tests on batteries and appliances

10. Where, for the purpose of ascertaining whether the requirements or regulation 5 or 8 have been met, the Secretary of State submits any battery or appliance that the Secretary of State has purchased or otherwise lawfully acquired to a test and—

- (a) the test leads to the bringing of proceedings for an offence under regulation 16(1)(a) or (b) or the serving of an enforcement notice; and—
- (b) a person—
 - (i) from whom the battery or the appliance was purchased;
 - (ii) who is a party to the proceedings; or
 - (iii) who has an interest in the battery or the appliance which is identified as the infringing goods in an enforcement notice,requests the Secretary of State to allow that person to have the battery or the appliance tested,

the Secretary of State shall, if it is practicable for such a test to be carried out, allow that person to have the battery or the appliance tested.

Power to require production of documents and information by notice

11.—(1) If the Secretary of State reasonably believes that a person possesses information or documents which may provide evidence as to whether or not the requirements of Part 2 have been contravened in a particular case or class of cases or by a particular person, the Secretary of State may give that person notice in writing, requiring that person to provide the Secretary of State with that information, those documents, or copies of them.

(2) A notice given under paragraph (1) shall state the period of time within which the person to whom it is given must comply with it: this shall be a period which is reasonable in all the circumstances, and shall not in any event be less than 14 days.

Further powers to obtain evidence

12.—(1) The powers specified in paragraphs (3) and (4) may be exercised where the Secretary of State reasonably believes that their exercise will enable the Secretary of State to obtain evidence as to whether or not the requirements of Part 2 have been contravened in a particular case or class of cases or by a particular person.

(2) Before exercising any of the powers specified in paragraph (3) or (4), enforcement officers shall, if so requested, produce a copy of their authorisations to act as enforcement officers.

(3) Enforcement officers may—

- (a) enter at any reasonable time any premises other than premises occupied only as a person's residence;
- (b) examine and investigate—
 - (i) any process of assembly or manufacture; or
 - (ii) any other aspect of the supply,of a battery or an appliance, or the component parts of any such battery or appliance, taking place on, or organised from, such premises;
- (c) take such measurements and photographs and make such recordings as are necessary for the purpose of any examination or investigation under sub-paragraph (b)(i); and
- (d) require any person on such premises to afford them such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable them to exercise any of the powers conferred on them by sub-paragraphs (b) and (c) with due regard to the health and safety of themselves and others.

(4) When enforcement officers have exercised the power of entry under paragraph (3)(a), or when, with a view to ascertaining whether or not the requirements of Part 2 have been contravened in a particular case or class of cases or by a particular person, they have agreed to meet, at a specified time and place, a person in whose possession they reasonably believe there is evidence of the kind referred to in paragraph (1), they may—

- (a) take samples of any articles or substances found on or in the vicinity of the premises they have entered or which are in that person's possession;
- (b) require any person on the premises or at the meeting to produce, or, where the information is recorded in computerised form, furnish extracts in legible form from, any records to which that person has access—
 - (i) which it is necessary for the enforcement officers to see for the purposes of an examination or investigation under paragraph (3)(b); or
 - (ii) which take the form of existing documents which the Secretary of State could require to be produced under regulation 11, and inspect and take copies of, or of any entry in, the records; and
- (c) take possession of articles or substances of the kind referred to in sub-paragraph (a) or records of the kind referred to in sub-paragraph (b), and detain them for so long as is necessary to—
 - (i) examine them, or cause them to be examined;
 - (ii) ensure that they are not tampered with before examination of them is completed; and
 - (iii) ensure that they are available for use in evidence in any proceedings for an offence under regulation 16(1) or (3).

(5) Where enforcement officers exercise a power conferred by paragraph (4)(a) or (b), instead of immediately—

- (a) taking the samples, articles or substances; or
- (b) requiring the production of the records,

they may require them to be produced at such time and place and by such means as they may reasonably specify.

Powers of entry: supplementary

13.—(1) When enforcement officers enter premises by virtue of regulation 12(3)(a), they may take with them such other persons and such equipment or materials as they reasonably consider it necessary or expedient to have with them—

- (a) for the purpose of establishing whether there has been a contravention of the requirements of Part 2; and
- (b) to assist them in exercising any of their powers under regulation 12(3)(b) and (c).

(2) Enforcement officers who enter any premises by virtue of paragraph (3)(a) may direct that those premises, or any part of them, or anything in them, shall be left undisturbed for so long, and to such extent, as is reasonably necessary for the purpose of the exercise of any of their powers under regulation 12(3)(b) and (c).

(3) Where enforcement officers leave any premises that they have entered by virtue of this regulation and such premises are unoccupied or their occupier is temporarily absent, they shall leave them as effectively secured against a trespasser as they found them.

(4) If enforcement officers or other persons who enter any premises by virtue of this regulation disclose to any person any information obtained by them in the premises with regard to any secret manufacturing process or trade secret, they shall, unless the disclosure was made in the performance of their duty, be guilty of an offence.

(5) It shall not be an offence under paragraph (4) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to the disclosure; or
- (b) the information is disclosed more than 50 years after it was received.

Compliance notice

14.—(1) Where there are reasonable grounds for suspecting that a requirement of Part 2 has been contravened, the Secretary of State may serve a notice on the person who has contravened that requirement.

(2) A notice served under paragraph (1) (a “compliance notice”) shall—

- (a) state that the Secretary of State suspects that a requirement of Part 2 has been contravened, and specify that requirement (the “relevant requirement”);
- (b) state why the Secretary of State suspects that the relevant requirement has been contravened;
- (c) specify the goods in respect of which the Secretary of State suspects that the relevant requirement has been contravened (the “infringing goods”);
- (d) specify what action the Secretary of State considers the person on whom the notice is served needs to take (or refrain from taking) in order to comply with the relevant requirement; and
- (e) state that, if that person does not take (or refrain from taking) such action within such period as the notice specifies, and the Secretary of State considers that a contravention of a relevant requirement has occurred and is continuing in respect of the infringing goods, the Secretary of State may—
 - (i) take further action under regulation 15; or
 - (ii) commence proceedings under regulation 16(1)(a) or (b).

(3) No proceedings shall be commenced under regulation 16(1)(a) or (b) in respect of an alleged contravention of a relevant requirement against a person where—

- (a) a compliance notice has been served on that person in respect of the alleged contravention; and
- (b) the period specified under paragraph (2)(e) in that notice has not come to an end.

Enforcement notice

15.—(1) Where the Secretary of State serves a compliance notice on a person on the grounds of a suspected contravention of a relevant requirement and, at the end of the period specified in the notice under regulation 14(2)(e)—

- (a) that person has failed—
 - (i) to take (or refrain from taking) the action specified in the compliance notice under regulation 14(2)(d); or
 - (ii) otherwise to bring the suspected contravention to an end; and
- (b) the Secretary of State has reasonable grounds for considering that a contravention of the relevant requirement has occurred and is continuing in respect of the infringing goods,

the Secretary of State may serve a further notice on that person.

(2) A notice served under paragraph (1) (an “enforcement notice”) shall—

- (a) state that the Secretary of State considers that a relevant requirement has been contravened;
- (b) specify the infringing goods;
- (c) state why the conditions of paragraph (1) are satisfied in relation to the infringing goods;
- (d) specify the date, not less than 21 days from the date of the notice, by which the person on whom the notice is served is required to take such action as is specified in the notice to bring the contravention specified in the notice to an end; and

- (e) state the judicial remedies available to that person and the time limits to which those remedies are subject.
- (3) An enforcement notice may—
- (a) require the infringing goods to comply with the relevant requirement;
 - (b) require the infringing goods to be withdrawn from the market; or
 - (c) prohibit or restrict the placing on the market of the infringing goods.
- (4) No proceedings shall be commenced under regulation 16(1)(a) or (b) in respect of an alleged contravention of a relevant requirement against a person where—
- (a) an enforcement notice has been served on that person in respect of the alleged contravention; and
 - (b) the period specified under paragraph (2)(d) in that notice has not come to an end.

Offences

16.—(1) A person who contravenes or fails to comply with any of the requirements of—

- (a) regulation 5,
- (b) regulation 6, 7, or 8, or
- (c) an enforcement notice,

shall be guilty of an offence.

(2) A person who intentionally obstructs an enforcement officer who is acting pursuant to any provision of this Part shall be guilty of an offence.

(3) A person who is subject to a requirement imposed under regulation 11 or 12(3)(b) or (4) to provide information, documents or records shall be guilty of an offence—

- (a) if that person fails, without reasonable excuse, to comply with that requirement; or
- (b) if—
 - (i) any information, document or record which that person provides in response to that requirement is false or misleading in a material respect; or
 - (ii) any statement which that person makes in response to that requirement is false or misleading in a material respect,

and that person either knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

Penalties

17.—(1) A person who is guilty of an offence under regulation 16(1)(a) or (c) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) A person who is guilty of an offence under regulation 13(4) or 16(1)(b), (2) or (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Power of the court to require matter to be remedied

18.—(1) Where a person is convicted of an offence under regulation 16(1) in respect of any matters which appear to the court to be matters which it is in that person's power to remedy, the court may, in addition to or instead of imposing any punishment, order that person, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be guilty of an offence under regulation 16(1) in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

Recovery of expenses of enforcement

19.—(1) This regulation applies where a court convicts a person of an offence under regulation 16(1)(a) or (c).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Secretary of State for any expenditure which the Secretary of State has incurred in investigating the offence, including in having the battery or appliance in respect of which the offence was committed tested.

Commencement of proceedings

20. In England and Wales a magistrates' court may try an information, and in Northern Ireland a magistrates' court may try a complaint, in relation to an offence under these Regulations if the information is laid or if the complaint is made within twelve months from the time when the offence is committed. In Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

Defence of due diligence

21.—(1) Subject to the following provisions of this regulation, in proceedings for an offence under these Regulations, a person who is shown to have taken all reasonable steps and exercised all due diligence to avoid committing the offence shall have a defence.

(2) Where, in any proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

such a defence shall not, without leave of the court, be relied on unless, not later than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), that person has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time it is served.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of that person's reliance on information supplied by another, unless it is shown that it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to—

- (a) the steps which that person took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether that person had any reason to disbelieve the information.

Liability of persons other than the principal offender

22.—(1) Where the commission by a person of an offence under these Regulations is due to anything which another person did or failed to do in the course of a business, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or

(b) as a result of the negligence of an officer of the body corporate, the officer, as well as the body corporate, shall be guilty of the offence.

(3) In paragraph (2) a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, company secretary or other similar officer of the body corporate;
- (b) a person purporting to act as a director, manager, company secretary or other similar officer; and
- (c) if the affairs of a body corporate are managed by its members, a member.

(4) In this regulation references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, company secretary or other similar officer of a body corporate is a reference to a partner.

Service of documents

23.—(1) Any document required or authorised by these Regulations to be served on a person may be so served—

- (a) by delivering it to that person or by leaving it at that person’s proper address or by sending it by post to that person at that address; or
- (b) if a person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body corporate; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978^(a) (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served in accordance with these Regulations shall be that person’s last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

PART 4

Miscellaneous

Restrictions on enforcement powers and use of certain evidence under them

24.—(1) Nothing in these Regulations shall be taken as—

- (a) requiring a person to produce any document which that person would be entitled to refuse to produce in any proceedings in any court on the grounds that it is the subject of legal professional privilege or, in Scotland, that it contains a confidential communication made by or to an advocate or solicitor in that capacity; or
- (b) authorising a person to take possession of any document which is in the possession of a person who would be so entitled.

(2) A statement by a person in response to a requirement imposed by virtue of regulation 11 may only be used in evidence against that person—

- (a) on a prosecution for an offence under regulation 16(3)(b); or

(a) 1978 c.30.

(b) on a prosecution for some other offence where in giving evidence that person makes a statement inconsistent with it.

(3) But the statement may not be used against that person by virtue of paragraph (2)(b) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.

Amendment of the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004

25. Schedule 1 to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004(a) is amended by the addition, at the end, of the following entry—

“The Batteries and Accumulators (Placing on the Market) Regulations 2008.”.

Date *Name*
Minister of State for Energy,
Department for Business, Enterprise and Regulatory Reform

SCHEDULE 1

Regulation 6

Crossed out wheeled bin symbol



EXPLANATORY NOTE

(This note is not part of the Regulations)

[Text of explanatory note]

(a) S.I. 2004/693.

I

(Acts whose publication is obligatory)

DIRECTIVE 2006/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 September 2006

on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof and Article 95(1) thereof in relation to Articles 4, 6 and 21 of this Directive,

Having regard to the proposal from the Commission ¹,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁴, in the light of the joint text approved by the Conciliation Committee on 22 June 2006,

Whereas:

(1) It is desirable to harmonise national measures concerning batteries and accumulators and waste batteries and accumulators. The primary objective of this Directive is to minimise the negative impact of batteries and accumulators and waste batteries and accumulators on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment. The legal base is therefore Article 175(1) of the Treaty. However, it is also appropriate to take measures at Community level on the basis of Article 95(1) of the Treaty to harmonise requirements concerning the heavy metal content and labelling of batteries and accumulators and so to ensure the smooth functioning of the internal market and avoid distortion of competition within the Community.

(2) The Commission Communication of 30 July 1996 on the Review of the Community Strategy for Waste Management established guidelines for future Community waste policy. That Communication stresses the need to reduce the quantities of hazardous substances in waste and points out the potential benefits of Community-wide rules limiting the presence of such substances in products and in production processes. It further states that, where the generation of waste cannot be avoided, that waste should be reused or recovered for its material or energy.

(3) The Council Resolution of 25 January 1988 on a Community action programme to combat environmental pollution by cadmium ⁵ stressed the limitation of the uses of cadmium to cases where suitable alternatives do not exist and the collection and recycling of batteries containing cadmium as major elements of the strategy for cadmium control in the interests of the protection of human health and the environment.

(4) Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances ⁶ has brought about an approximation of Member States' laws in this field. However, the objectives of that Directive have not been fully attained. Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁷ and Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ⁸ also underlined the need for Directive 91/157/EEC to be revised. Directive 91/157/EEC should therefore be revised and replaced in the interests of clarity.

¹ OJ C 96, 21.4.2004, p. 29.

² OJ C 117, 30.4.2004, p. 5.

³ OJ C 121, 30.4.2004, p. 35

⁴ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 354), Council Common Position of 18 July 2005 (OJ C 264 E, 25.10.2005, p. 1) and Position of the European Parliament of 13 December 2005 (not yet published in the Official Journal). European Parliament Legislative Resolution of 4 July 2006 (not yet published in the Official Journal) and Decision of the Council of 18 July 2006.

⁵ OJ C 30, 4.2.1988, p. 1.

⁶ OJ L 78, 26.3.1991, p. 38. Directive as amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

⁷ OJ L 242, 10.9.2002, p. 1.

⁸ OJ L 37, 13.2.2003, p. 24. Directive as amended by Directive 2003/108/EC of the European Parliament and of the Council (OJ L 345, 31.12.2003, p. 106).

(5) In order to achieve its environmental aims, this Directive prohibits the placing on the market of certain batteries and accumulators containing mercury or cadmium. It also promotes a high level of collection and recycling of waste batteries and accumulators and improved environmental performance of all operators involved in the life cycle of batteries and accumulators, e.g. producers, distributors and end-users and, in particular, those operators directly involved in the treatment and recycling of waste batteries and accumulators. The specific rules needed to do this are supplementary to existing Community legislation on waste, in particular Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste ¹, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ² and Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste ³

(6) In order to prevent waste batteries and accumulators from being discarded in such a way as to pollute the environment, and to avoid end-user confusion about the different waste management requirements for different batteries and accumulators, this Directive should apply to all batteries and accumulators placed on the market within the Community. Such a wide scope should also ensure economies of scale in collection and recycling, as well as optimal resource saving.

(7) Reliable batteries and accumulators are fundamental for the safety of many products, appliances and services, and are an essential energy source in our society.

(8) It is appropriate to distinguish between portable batteries and accumulators on the one hand and industrial and automotive batteries and accumulators on the other. The disposal of industrial and automotive batteries and accumulators in landfill sites or by incineration should be prohibited.

(9) Examples of industrial batteries and accumulators include batteries and accumulators used for emergency or back-up power supply in hospitals, airports or offices, batteries and accumulators used in trains or aircraft and batteries and accumulators used on offshore oil rigs or in lighthouses. Examples also include batteries and accumulators designed exclusively for hand-held payment terminals in shops and restaurants, bar code readers in shops, professional video equipment for TV channels and professional studios, miners' lamps and diving lamps attached to mining and diving helmets for professionals, back up batteries and accumulators for electric doors to prevent them from blocking or crushing

people, batteries and accumulators used for instrumentation or in various types of measurement and instrumentation equipment and batteries and accumulators used in connection with solar panel, photo-voltaic, and other renewable energy applications. Industrial batteries and accumulators also include batteries and accumulators used in electrical vehicles, such as electric cars, wheelchairs, bicycles, airport vehicles and automatic transport vehicles. In addition to this non exhaustive list of examples, any battery or accumulator that is not sealed and not automotive should be considered industrial.

(10) Examples of portable batteries and accumulators, which are all-sealed batteries and accumulators that an average person could carry by hand without difficulty and that are neither automotive batteries or accumulators nor industrial batteries or accumulators, include single cell batteries (such as AA and AAA batteries) and batteries and accumulators used by consumers or professionals in mobile telephones, portable computers, cordless power tools, toys and household appliances such as electric toothbrushes, razors and hand-held vacuum cleaners (including similar equipment used in schools, shops, restaurants, airports, offices or hospitals) and any battery or accumulator that consumers may use for normal household applications.

(11) The Commission should evaluate the need for adaptation of this Directive, taking account of available technical and scientific evidence. In particular, the Commission should carry out a review of the exemption from the cadmium ban provided for portable batteries and accumulators intended for use in cordless power tools. Examples of cordless power tools are tools that consumers and professionals use for turning, milling, sanding, grinding, sawing, cutting, shearing, drilling, making holes, punching, hammering, riveting, screwing, polishing or similar processing of wood, metal and other materials, as well as for mowing, cutting and other gardening activities.

(12) The Commission should also monitor, and Member States should encourage, technological developments that improve the environmental performance of batteries and accumulators throughout their entire life cycle, including through participation in a Community eco-management and audit scheme (EMAS).

(13) In order to protect the environment, waste batteries and accumulators should be collected. For portable batteries and accumulators, collection schemes achieving a high collection rate should be established. This means setting up collection schemes so that end-users can discard all waste portable batteries and accumulators conveniently and free of charge. Different collection schemes and financing arrangements are appropriate for the different battery and accumulator types.

¹ OJ L 114, 27.4.2006, p. 9.

² OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

³ OJ L 332, 28.12.2000, p. 91.

(14) It is desirable for Member States to achieve a high collection and recycling rate for waste batteries and accumulators so as to achieve a high level of environmental protection and material recovery throughout the Community. This Directive should therefore set minimum collection and recycling targets for Member States. It is appropriate to calculate the collection rate on the basis of average annual sales in preceding years, so as to have comparable targets for all Member States that are proportionate to the national level of battery and accumulator consumption.

(15) Specific recycling requirements should be established for cadmium and lead batteries and accumulators in order to attain a high level of material recovery throughout the Community and to prevent disparities between Member States.

(16) All interested parties should be able to participate in collection, treatment and recycling schemes. Those schemes should be designed to avoid discrimination against imported batteries and accumulators, barriers to trade or distortions of competition.

(17) Collection and recycling schemes should be optimised, in particular in order to minimise costs and the negative environmental impact of transport. Treatment and recycling schemes should use best available techniques, as defined in Article 2(11) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control¹. The definition of recycling should exclude energy recovery. The concept of energy recovery is defined in other Community instruments.

(18) Batteries and accumulators can be collected individually, by way of national battery collection schemes or together with waste electrical and electronic equipment, by way of national collection schemes set up on the basis of Directive 2002/96/EC. In the latter case, as an obligatory minimum treatment requirement, batteries and accumulators should be removed from the collected waste electrical and electronic equipment. After their removal from the waste electrical and electronic equipment, batteries and accumulators are subject to the requirements of this Directive, notably they count for achieving the collection target and are subject to recycling requirements.

(19) Basic principles for financing the management of waste batteries and accumulators should be set at Community level. Financing schemes should help to achieve high collection and recycling rates and to give effect to the principle of producer responsibility. All producers as defined by this Directive should be registered. Producers should finance the costs of collecting, treating and recycling all collected batteries and accumulators minus the profit made by selling

the materials recovered. However, under certain circumstances, the application of de minimis rules to small producers could be justified.

(20) The provision of information to end-users on the desirability of separate collection, the collection schemes available and end-users' role in the management of waste batteries and accumulators is necessary for successful collection. Detailed arrangements should be made for a labelling system, which should provide end-users with transparent, reliable and clear information on batteries and accumulators and any heavy metals they contain.

(21) If, in order to achieve the objectives of this Directive, and, in particular, to achieve high separate collection and recycling rates, Member States use economic instruments, such as differential tax rates, they should inform the Commission accordingly.

(22) Reliable and comparable data on the quantities of batteries and accumulators placed on the market collected and recycled are necessary for monitoring whether the objectives of this Directive have been achieved.

(23) Member States should lay down rules on the penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(24) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making², Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.

(25) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission³.

(26) Since the objectives of this Directive namely protecting the environment and ensuring the proper functioning of the internal market cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

¹ OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

² OJ C 321, 31.12.2003, p. 1.

³ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

(27) This Directive applies without prejudice to Community legislation on safety, quality and health requirements and specific Community waste management legislation, in particular Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles ¹ and Directive 2002/96/EC.

(28) As regards producer responsibility, producers of batteries and accumulators and producers of other products incorporating a battery or accumulator are responsible for the waste management of batteries and accumulators that they place on the market. A flexible approach is appropriate to enable financing schemes to reflect differing national circumstances and to take account of existing schemes, particularly those set up to comply with Directives 2000/53/EC and 2002/96/EC, while avoiding double charging.

(29) Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ² does not apply to batteries and accumulators used in electrical and electronic equipment.

(30) Automotive and industrial batteries and accumulators used in vehicles should meet the requirements of Directive 2000/53/EC, in particular Article 4 thereof. Therefore the use of cadmium in industrial batteries and accumulators for electrical vehicles should be prohibited, unless they can benefit from an exemption on the basis of Annex II to that Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter

This Directive establishes:

(1) rules regarding the placing on the market of batteries and accumulators and, in particular, a prohibition on the placing on the market of batteries and accumulators containing hazardous substances; and

(2) specific rules for the collection, treatment, recycling and disposal of waste batteries and accumulators to supplement relevant Community legislation on waste and to promote a high level of collection and recycling of waste batteries and accumulators.

It seeks to improve the environmental performance of batteries and accumulators and of the activities of all economic operators involved in the life cycle of batteries and accumulators,

e.g. producers, distributors and end-users and, in particular, those operators directly involved in the treatment and recycling of waste batteries and accumulators.

Article 2

Scope

1. This Directive shall apply to all types of batteries and accumulators, regardless of their shape, volume, weight, material composition or use. It shall apply without prejudice to Directives 2000/53/EC and 2002/96/EC.

2. This Directive shall not apply to batteries and accumulators used in:

- (a) equipment connected with the protection of Member States' essential security interests, arms, munitions and war material, with the exclusion of products that are not intended for specifically military purposes;
- (b) equipment designed to be sent into space.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) 'battery' or 'accumulator' means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable);

(2) 'battery pack' means any set of batteries or accumulators that are connected together and/or encapsulated within an outer casing so as to form a complete unit that the end-user is not intended to split up or open;

(3) 'portable battery or accumulator' means any battery, button cell, battery pack or accumulator that:

(a) is sealed; and

(b) can be hand-carried; and

(c) is neither an industrial battery or accumulator nor an automotive battery or accumulator;

(4) 'button cell' means any small round portable battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment and back-up power;

(5) 'automotive battery or accumulator' means any battery or accumulator used for automotive starter, lighting or ignition power;

¹ OJ L 269, 21.10.2000, p. 34. Directive as last amended by Council Decision 2005/673/EC (OJ L 254, 30.9.2005, p. 69).

² OJ L 37, 13.2.2003, p. 19. Directive as last amended by Commission Decision 2006/310/EC (OJ L 115, 28.4.2006, p. 38).

(6) 'industrial battery or accumulator' means any battery or accumulator designed for exclusively industrial or professional uses or used in any type of electric vehicle;

(7) 'waste battery or accumulator' means any battery or accumulator which is waste within the meaning of Article 1(1)(a) of Directive 2006/12/EC;

(8) 'recycling' means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;

(9) 'disposal' means any of the applicable operations provided for in Annex IIA to Directive 2006/12/EC;

(10) 'treatment' means any activity carried out on waste batteries and accumulators after they have been handed over to a facility for sorting, preparation for recycling or preparation for disposal;

(11) 'appliance' means any electrical or electronic equipment, as defined by Directive 2002/96/EC, which is fully or partly powered by batteries or accumulators or is capable of being so;

(12) 'producer' means any person in a Member State that, irrespective of the selling technique used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts¹, places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the territory of that Member State on a professional basis;

(13) 'distributor' means any person that provides batteries and accumulators on a professional basis to an end-user; (14) 'placing on the market' means supplying or making available, whether in return for payment or free of charge, to a third party within the Community and includes import into the customs territory of the Community;

(15) 'economic operators' means any producer, distributor, collector, recycler or other treatment operator;

(16) 'cordless power tool' means any hand held appliance powered by a battery or accumulator and intended for maintenance, construction or gardening activities;

(17) 'collection rate' means, for a given Member State in a given calendar year, the percentage obtained by dividing the weight of waste portable batteries and accumulators collected in accordance with Article 8(1) of this Directive or with Directive 2002/96/EC in that calendar year by the average weight of portable batteries and accumulators that producers either sell directly to end-users or deliver to third parties in order to sell them to end-users in that Member State during that calendar year and the preceding two calendar years.

Article 4

Prohibitions

1. Without prejudice to Directive 2000/53/EC, Member States shall prohibit the placing on the market of:

(a) all batteries or accumulators, whether or not incorporated into appliances, that contain more than 0,0005 % of mercury by weight; and

(b) portable batteries or accumulators, including those incorporated into appliances, that contain more than 0,002 % of cadmium by weight.

2. The prohibition set out in paragraph 1(a) shall not apply to button cells with a mercury content of no more than 2 % by weight.

3. The prohibition set out in paragraph 1(b) shall not apply to portable batteries and accumulators intended for use in:

(a) emergency and alarm systems, including emergency lighting;

(b) medical equipment; or

(c) cordless power tools.

4. The Commission shall review the exemption referred to in paragraph 3(c) and submit a report to the European Parliament and to the Council by 26 September 2010, together, if appropriate, with relevant proposals, with a view to the prohibition of cadmium in batteries and accumulators.

Article 5

Increased environmental performance

Member States which have manufacturers established on their territory shall promote research and encourage improvements in the overall environmental performance of batteries and accumulators throughout their entire life cycle as well as the development and marketing of batteries and accumulators which contain smaller quantities of dangerous substances or which contain less polluting substances, in particular as substitutes for mercury, cadmium and lead.

Article 6

Placing on the market

1. Member States shall not, on the grounds dealt with in this Directive, impede, prohibit, or restrict the placing on the market in their territory of batteries and accumulators that meet the requirements of this Directive.

2. Member States shall take the necessary measures to ensure that batteries or accumulators that do not meet the requirements of this Directive are not placed on the market or are withdrawn from it.

¹ OJ L 144, 4.6.1997, p. 19. Directive as last amended by Directive 2005/29/EC (OJ L 149, 11.6.2005, p. 22).

Article 7

Overarching objective

Member States shall, having regard to the environmental impact of transport, take necessary measures to maximise the separate collection of waste batteries and accumulators and to minimise the disposal of batteries and accumulators as mixed municipal waste in order to achieve a high level of recycling for all waste batteries and accumulators.

Article 8

Collection schemes

1. Member States shall ensure that appropriate collection schemes are in place for waste portable batteries and accumulators. Such schemes:

(a) shall enable end-users to discard waste portable batteries or accumulators at an accessible collection point in their vicinity, having regard to population density;

(b) shall require distributors to take back waste portable batteries or accumulators at no charge when supplying portable batteries or accumulators, unless an assessment shows that alternative existing schemes are at least as effective in attaining the environmental aims of this Directive. Member States shall make public such assessments;

(c) shall not involve any charge to end-users when discarding waste portable batteries or accumulators, nor any obligation to buy a new battery or accumulator;

(d) may be run in conjunction with the schemes referred to in Article 5(2) of Directive 2002/96/EC. Collection points set up to comply with point (a) of this paragraph shall not be subject to the registration or permit requirements of Directive 2006/12/EC or Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ¹.

2. Provided that the schemes meet the criteria listed in paragraph 1, Member States may:

(a) require producers to set up such schemes;

(b) require other economic operators to participate in such schemes;

(c) maintain existing schemes.

3. Member States shall ensure that producers of industrial batteries and accumulators, or third parties acting on their behalf, shall not refuse to take back waste industrial batteries and accumulators from end-users, regardless of chemical composition and origin. Independent third parties may also collect industrial batteries and accumulators.

4. Member States shall ensure that producers of automotive batteries and accumulators, or third parties, set up schemes for the collection of waste automotive batteries and accumulators from end-users or from an accessible collection point in their vicinity, where collection is not carried out under the schemes referred to in Article 5(1) of Directive 2000/53/EC. In the case of automotive batteries and accumulators from private, non-commercial vehicles, such schemes shall not involve any charge to end-users when discarding waste batteries or accumulators, nor any obligation to buy a new battery or accumulator.

Article 9

Economic instruments

Member States may use economic instruments to promote the collection of waste batteries and accumulators or to promote the use of batteries and accumulators containing less polluting substances, for instance by adopting differential tax rates. If they do so, they shall notify the measures related to the implementation of those instruments to the Commission.

Article 10

Collection targets

1. Member States shall calculate the collection rate for the first time in respect of the fifth full calendar year following the entry into force of this Directive. Without prejudice to Directive 2002/96/EC, annual collection and sales figures shall include batteries and accumulators incorporated into appliances.

2. Member States shall achieve the following minimum collection rates:

(a) 25 % by 26 September 2012;

(b) 45 % by 26 September 2016.

3. Member States shall monitor collection rates on a yearly basis according to the scheme set out in Annex I. Without prejudice to Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics ², Member States shall transmit reports to the Commission within six months of the end of the calendar year concerned. Reports shall indicate how they obtained the data necessary to calculate the collection rate.

4. In accordance with the procedure referred to in Article 24(2):

(a) transitional arrangements may be laid down to address difficulties faced by a Member State in satisfying the requirements of paragraph 2 as a result of specific national circumstances;

¹ OJ L 377, 31.12.1991, p. 20. Directive as last amended by Regulation (EC) No 166/2006.

² OJ L 332, 9.12.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 783/2005 (OJ L 131, 25.5.2005, p. 38).

(b) a common methodology shall be established for the calculation of annual sales of portable batteries and accumulators to end-users by 26 September 2007.

Article 11

Removal of waste batteries and accumulators

Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed. Appliances into which batteries and accumulators are incorporated shall be accompanied by instructions showing how they can be removed safely and, where appropriate, informing the end-user of the type of the incorporated batteries and accumulators. These provisions shall not apply where, for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery or accumulator.

Article 12

Treatment and recycling

1. Member States shall ensure that, no later than 26 September 2009:

(a) producers or third parties set up schemes using best available techniques, in terms of the protection of health and the environment, to provide for the treatment and recycling of waste batteries and accumulators; and

(b) all identifiable batteries and accumulators collected in accordance with Article 8 of this Directive or with Directive 2002/96/EC undergo treatment and recycling through schemes that comply, as a minimum, with Community legislation, in particular as regards health, safety and waste management.

However, Member States may, in accordance with the Treaty, dispose of collected portable batteries or accumulators containing cadmium, mercury or lead in landfills or underground storage when no viable end market is available. Member States may also, in accordance with the Treaty, dispose of collected portable batteries or accumulators containing cadmium, mercury or lead in landfills or underground storage as part of a strategy to phase out heavy metals which, on the basis of a detailed assessment of the environmental, economic, and social impacts, shows that this disposal option should be preferred over recycling.

Member States shall make public this assessment and notify draft measures to the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services¹.

2. Treatment shall meet the minimum requirements set out in Annex III, Part A.

3. Where batteries or accumulators are collected together with waste electrical and electronic equipment on the basis of Directive 2002/96/EC, batteries or accumulators shall be removed from the collected waste electrical and electronic equipment.

4. Recycling processes shall, no later than 26 September 2010, meet the recycling efficiencies and associated provisions set out in Annex III, Part B.

5. Member States shall report on the levels of recycling achieved in each calendar year concerned and whether the efficiencies referred to in Annex III, Part B have been met. They shall submit the information to the Commission within six months of the end of the calendar year concerned.

6. Annex III may be adapted or supplemented to take account of technical or scientific progress in accordance with the procedure referred to in Article 24(2). In particular:

(a) detailed rules regarding the calculation of recycling efficiencies shall be added no later than 26 March 2010; and

(b) the minimum recycling efficiencies shall be evaluated regularly and adapted to best available techniques and in the light of the developments referred to in paragraph 1, second subparagraph.

7. Before proposing any amendment to Annex III the Commission shall consult relevant stakeholders, in particular producers, collectors, recyclers, treatment operators, environmental organisations, consumer organisations and employee associations. It shall inform the committee referred to in Article 24(1) of the outcome of this consultation.

Article 13

New recycling technologies

1. Member States shall encourage the development of new recycling and treatment technologies, and promote research into environmentally friendly and cost-effective recycling methods for all types of batteries and accumulators.

2. Member States shall encourage treatment facilities to introduce certified environmental management schemes in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)².

¹ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

² OJ L 114, 24.4.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 196/2006 (OJ L 32, 4.2.2006, p. 4).

Article 14

Disposal

Member States shall prohibit the disposal in landfills or by incineration of waste industrial and automotive batteries and accumulators. However, residues of any batteries and accumulators that have undergone both treatment and recycling in accordance with Article 12(1) may be disposed of in landfills or by incineration.

Article 15

Exports

1. Treatment and recycling may be undertaken outside the Member State concerned or outside the Community, provided that the shipment of waste batteries and accumulators is in compliance with Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community¹.

2. Waste batteries and accumulators exported out of the Community in accordance with Regulation (EEC) No 259/93, Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste² and Commission Regulation (EC) No 1547/1999 of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92)39 final does not apply³ shall count towards the fulfilment of the obligations and efficiencies laid down in Annex III to this Directive only if there is sound evidence that the recycling operation took place under conditions equivalent to the requirements of this Directive.

3. Detailed rules for the implementation of this Article shall be laid down in accordance with the procedure referred to in Article 24(2).

Article 16

Financing

1. Member States shall ensure that producers, or third parties acting on their behalf, finance any net costs arising from:

(a) the collection, treatment and recycling of all waste portable batteries and accumulators collected in accordance with Article 8(1) and (2); and

(b) the collection, treatment and recycling of all waste industrial and automotive batteries and accumulators collected in accordance with Articles 8(3) and (4).

¹ OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

² OJ L 166, 1.7.1999, p. 6. Regulation as last amended by Commission Regulation (EC) No 105/2005 (OJ L 20, 22.1.2005, p. 9).

³ OJ L 185, 17.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 105/2005.

2. Member States shall ensure that the implementation of paragraph 1 avoids any double charging of producers in the case of batteries or accumulators collected under schemes set up in accordance with Directive 2000/53/EC or Directive 2002/96/EC.

3. Member States shall oblige producers, or third parties acting on their behalf, to finance any net costs arising from public information campaigns on the collection, treatment and recycling of all waste portable batteries and accumulators.

4. The costs of collection, treatment and recycling shall not be shown separately to end-users at the time of sale of new portable batteries and accumulators.

5. Producers and users of industrial and automotive batteries and accumulators may conclude agreements stipulating financing arrangements other than the ones referred to in paragraph 1.

6. This Article shall apply to all waste batteries and accumulators, irrespective of the date of their placing on the market.

Article 17

Registration

Member States shall ensure that each producer is registered. Registration shall be subject to the same procedural requirements in each Member State. Such requirements for registration shall be established in accordance with the procedure referred to in Article 24(2).

Article 18

Small producers

1. Member States may exempt producers which, relative to the size of the national market place very small quantities of batteries or accumulators on the national market, from the requirements of Article 16(1), on the condition that this does not impede the proper functioning of the collection and recycling schemes set up on the basis of Articles 8 and 12.

2. Member States shall make public such draft measures and the grounds for proposing them and notify them to the Commission and other Member States through the Committee referred to in Article 24(1).

3. The Commission shall, within six months of notification as referred to in paragraph 2, approve or reject the draft measures after having verified that they are consistent with the considerations set out in paragraph 1 and do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. In absence of a decision by the Commission within this period, the draft measures shall be deemed to have been approved.

Article 19

Participation

1. Member States shall ensure that all economic operators and all competent public authorities may participate in the collection, treatment and recycling schemes referred to in Articles 8 and 12.

2. These schemes shall also apply to batteries and accumulators imported from third countries under non-discriminatory conditions and shall be designed to avoid barriers to trade or distortions of competition.

Article 20

Information for end-users

1. Member States shall ensure, in particular through information campaigns, that end-users are fully informed of:

- (a) the potential effects on the environment and human health of the substances used in batteries and accumulators;
- (b) the desirability of not disposing of waste batteries and accumulators as unsorted municipal waste and of participating in their separate collection so as to facilitate treatment and recycling;
- (c) the collection and recycling schemes available to them;
- (d) their role in contributing to the recycling of waste batteries and accumulators;
- (e) the meaning of the symbol of the crossed-out wheeled bin shown in Annex II and the chemical symbols Hg, Cd and Pb.

2. Member States may require economic operators to provide some or all of the information referred to in paragraph 1.

3. Where Member States require distributors to take back waste portable batteries and accumulators pursuant to Article 8, they shall ensure that such distributors inform end-users about the possibility of discarding waste portable batteries or accumulators at their sales points.

Article 21

Labelling

1. Member States shall ensure that all batteries, accumulators and battery packs are appropriately marked with the symbol shown in Annex II.

2. Member States shall ensure that the capacity of all portable and automotive batteries and accumulators is indicated on them in a visible, legible and indelible form by 26 September 2009. Detailed rules for the implementation of this require-

ment, including harmonised methods for the determination of capacity and appropriate use, shall be laid down in accordance with the procedure referred to in Article 24(2) no later than 26 March 2009.

3. Batteries, accumulators and button cells containing more than 0,0005 % mercury, more than 0,002 % cadmium or more than 0,004 % lead, shall be marked with the chemical symbol for the metal concerned: Hg, Cd or Pb. The symbol indicating the heavy metal content shall be printed beneath the symbol shown in Annex II and shall cover an area of at least one quarter the size of that symbol.

4. The symbol shown in Annex II shall cover at least 3 % of the area of the largest side of the battery, accumulator or battery pack, up to a maximum size of 5 × 5 cm. In the case of cylindrical cells, the symbol shall cover at least 1,5 % of the surface area of the battery or accumulator and shall have a maximum size of 5 × 5 cm.

5. Where the size of the battery, accumulator or battery pack is such that the symbol would be smaller than 0,5 × 0,5 cm, the battery, accumulator or battery pack need not be marked but a symbol measuring at least 1 × 1 cm shall be printed on the packaging.

6. Symbols shall be printed visibly, legibly and indelibly.

7. Exemptions from the labelling requirements of this Article may be granted in accordance with the procedure referred to in Article 24(2).

Article 22

National implementation reports

1. Member States shall send the Commission a report on the implementation of this Directive every three years. However, the first report shall cover the period until 26 September 2012.

2. Reports shall be drawn up on the basis of a questionnaire or outline established in accordance with the procedure referred to in Article 24(2). The questionnaire or outline shall be sent to Member States six months before the beginning of the first period that the report is to cover.

3. Member States shall also report on any measures that they take to encourage developments affecting the impact of batteries and accumulators on the environment, in particular:

(a) developments, including voluntary steps taken by producers, reducing quantities of heavy metals and other hazardous substances contained in batteries and accumulators;

(b) new recycling and treatment techniques;

(c) economic operators' participation in environmental management schemes;

(d) research in those fields; and

(e) measures taken to promote waste prevention.

4. The report shall be made available to the Commission no later than nine months after the end of the three-year period concerned or, in the case of the first report, no later than 26 June 2013.

5. The Commission shall publish a report on the implementation of this Directive and on the impact of this Directive on the environment and on the functioning of the internal market no later than nine months after receiving the reports from Member States in accordance with paragraph 4.

Article 23

Review

1. The Commission shall review the implementation of this Directive and the impact of this Directive on the environment and the functioning of the internal market after receiving reports from Member States in accordance with Article 22(4) for the second time.

2. The second report that the Commission publishes in accordance with Article 22(5) shall include an evaluation on the following aspects of this Directive:

(a) the appropriateness of further risk management measures for batteries and accumulators containing heavy metals;

(b) the appropriateness of the minimum collection targets for all waste portable batteries and accumulators set out in Article 10(2), and the possibility of introducing further targets for later years, taking account of technical progress and practical experience gained in Member States;

(c) the appropriateness of the minimum recycling requirements set out in Annex III, Part B, taking account of information that Member States provide, technical progress and practical experience gained in Member States.

3. If necessary, proposals for revision of the related provisions of this Directive shall accompany the report.

Article 24

Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 18 of Directive 2006/12/EC.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of procedure.

Article 25

Penalties

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those measures to the Commission by 26 September 2008 and shall inform it without delay of any subsequent amendment to them.

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 September 2008. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of all existing laws, regulations and administrative provisions adopted in the field covered by this Directive.

Article 27

Voluntary agreements

1. Provided that the objectives set out in this Directive are achieved, Member States may transpose the provisions set out in Articles 8, 15 and 20 by means of agreements between the competent authorities and economic operators concerned. Such agreements shall meet the following requirements:

(a) they shall be enforceable;

(b) they must specify objectives with the corresponding deadlines;

(c) they must be published in the national official journal or an official document equally accessible to the public and transmitted to the Commission.

2. The results achieved must be monitored regularly, and reported to the competent authorities and the Commission, and made available to the public under the conditions set out in the agreement.

3. The competent authorities shall ensure that the progress made under such agreements is examined.

4. In cases of non-compliance with the agreements, Member States shall implement the relevant provisions of this Directive by legislative, regulatory or administrative measures.

Article 28

Repeal

Directive 91/157/EEC is repealed with effect from 26 September 2008. References to Directive 91/157/EEC shall be construed as references to this Directive.

Article 29

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 30

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

ANNEX I

MONITORING OF COMPLIANCE WITH THE ARTICLE 10 COLLECTION TARGETS

Year	Data collection		Calculation	Reporting requirement
X (*)+1	Sales in year 1 (S1)			
X+2	Sales in year 2 (S2)	—	—	
X+3	Sales in year 3 (S3)	Collection in year 3 (C3)	Collection rate (CR3) = $3 * C3 / (S1 + S2 + S3)$	
X+4	Sales in year 4 (S4)	Collection in year 4 (C4)	Collection rate (CR4) = $3 * C4 / (S2 + S3 + S4)$ (Target set at 25 %.)	
X+5	Sales in year 5 (S5)	Collection in year 5 (C5)	Collection rate (CR5) = $3 * C5 / (S3 + S4 + S5)$	CR4
X+6	Sales in year 6 (S6)	Collection in year 6 (C6)	Collection rate (CR6) = $3 * C6 / (S4 + S5 + S6)$	CR5
X+7	Sales in year 7 (S7)	Collection in year 7 (C7)	Collection rate (CR7) = $3 * C7 / (S5 + S6 + S7)$	CR6
X+8	Sales in year 8 (S8)	Collection in year 8 (C8)	Collection rate (CR8) = $3 * C8 / (S6 + S7 + S8)$ (Target set at 45 %.)	CR7
X+9	Sales in year 9 (S9)	Collection in year 9 (C9)	Collection rate (CR9) = $3 * C9 / (S7 + S8 + S9)$	CR8
X+10	Sales in year 10 (S10)	Collection in year 10 (C10)	Collection rate (CR10) = $3 * C10 / (S8 + S9 + S10)$	CR9
X+11	Etc.	Etc.	Etc.	CR10
Etc.				

(*) Year X is the year including the date mentioned in Article 26.

ANNEX II

SYMBOLS FOR BATTERIES, ACCUMULATORS AND BATTERY PACKS FOR SEPARATE COLLECTION

The symbol indicating 'separate collection' for all batteries and accumulators shall be the crossed-out wheeled bin shown below:



ANNEX III

DETAILED TREATMENT AND RECYCLING REQUIREMENTS

PART A: TREATMENT

1. Treatment shall, as a minimum, include removal of all fluids and acids.
2. Treatment and any storage, including temporary storage, at treatment facilities shall take place in sites with impermeable surfaces and suitable weatherproof covering or in suitable containers.

PART B: RECYCLING

3. Recycling processes shall achieve the following minimum recycling efficiencies:
 - (a) recycling of 65 % by average weight of lead-acid batteries and accumulators, including recycling of the lead content to the highest degree that is technically feasible while avoiding excessive costs;
 - (b) recycling of 75 % by average weight of nickel-cadmium batteries and accumulators, including recycling of the cadmium content to the highest degree that is technically feasible while avoiding excessive costs; and
 - (c) recycling of 50 % by average weight of other waste batteries and accumulators.
-

CORRIGENDA

Corrigendum to Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directives 91/157/EEC

(Official Journal of the European Union L 266 of 26 September 2006)

On page 7, in Article 12(4):

for: '... no later than 26 September 2010, ...',

read: '... no later than 26 September 2011, ...'.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Implementation of Internal Market Provisions of Batteries and Accumulators Directive (2006/66/EC)	
Stage: Partial	Version: Two	Date: 11 April 2008
Related Publications: Consultation Document 'Implementation of the Batteries and Accumulators Directive - Single/Internal Market Provisions'		

Available to view or download at:

<http://www.berr.gov.uk/consultations>

Contact for enquiries: Trevor Reid

Telephone: 0207 215 5843

What is the problem under consideration? Why is government intervention necessary?

The main problem under consideration is to harmonise requirements concerning the heavy metal content and labelling of batteries and accumulators to ensure the smooth functioning of the European Internal Market and avoid distortions of competition within the Community. Government intervention is necessary because Government establishes the legal framework under which businesses can compete and trade effectively, and Government provides the legislative and administrative framework to enable the operation of fair and open markets.

What are the policy objectives and the intended effects?

The policy objective is to transpose the Single/Internal Market provisions of the European Batteries and Accumulators Directive (2006/66/EC) so as to protect and promote the European Internal Market in batteries and accumulators. The intended effects are that manufacturers and/or professional importers of batteries can only place new batteries on the EU market which meet certain harmonised requirements, and that non-compliant batteries and accumulators are removed from the market.

What policy options have been considered? Please justify any preferred option.

For the Internal Market requirements of the Batteries Directive the UK has little discretion in transposition and so intends to transpose these requirements into UK law as close as possible to the text of the Batteries and Accumulators Directive.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be monitored by BERR with a full-scale review planned for three years after the Regulations have been in force.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: Option 1	Description: Transposition of Articles 4, 6,21, and 11 of Batteries Directive, and for enforcement of UK Regulations.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The main costs are from the prohibition of certain hazardous substances in the production of new batteries and accumulators, and the labelling and marking of all batteries and accumulators. Manufacturers and producers of batteries and accumulators are the main affected groups		
	One-off (Transition) Yrs			
	£			
	Average Annual Cost (excluding one-off)			
	£ 7-8 million	Total Cost (PV)	£ 55-58 million	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The main benefits are from the protection and promotion of competition and trade across the European Internal Market for batteries and accumulators. There will also be environmental and health and safety benefits. Both of these benefits are difficult to quantify.		
	One-off Yrs			
	£ Not Quantified			
	Average Annual Benefit (excluding one-off)			
	£ Not Quantified	Total Benefit (PV)	£ Not Quantified	
Other key non-monetised benefits by 'main affected groups' Benefits from the protection and promotion of the Internal Market should accrue largely to UK businesses and consumers. Environmental benefits will accrue to all UK stakeholders.				

Key Assumptions/Sensitivities/Risks Key Assumptions include: the type and volume of batteries currently placed on the UK market, and the extent to which heavy metals are currently used in batteries and accumulators. The main risk relates to the current estimates of costs and benefits from the heavy metal restrictions on new batteries and accumulators.

Price Base Year 2008	Time Period Years 9	Net Benefit Range (NPV) £ Not Quantified	NET BENEFIT (NPV Best estimate) £ Not Quantified
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	26 September 2008				
Which organisation(s) will enforce the policy?	BERR				
What is the total annual cost of enforcement for these organisations?	£ 50,000 - 200,000				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ None				
What is the value of changes in greenhouse gas emissions?	£ None				
Will the proposal have a significant impact on competition?	Yes				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro unknown</td> <td style="width: 25%; text-align: center;">Small unknown</td> <td style="width: 25%; text-align: center;">Medium unknown</td> <td style="width: 25%; text-align: center;">Large unknown</td> </tr> </table>	Micro unknown	Small unknown	Medium unknown	Large unknown
Micro unknown	Small unknown	Medium unknown	Large unknown		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 46k-186k	Decrease of £	Net Impact £ 46k-186k

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Transposition of the Single/Internal Market Provisions of the European Batteries and Accumulators Directive (Directive 2006/66/EC)

Introduction

1.1 The Batteries and Accumulators Directive (Directive 2006/66/EC - 'the new (Batteries) Directive') is concerned with all types of batteries throughout their life-cycle, i.e. from the production stage through to when they become spent and are subsequently discarded. In order to protect and promote the European Single/Internal Market it relates to all batteries placed on the European Market. In relation to environmental protection it relates to all spent batteries that are discarded as waste at the end of their life.

1.2 The Internal Market provisions of the new Batteries Directive in relation to portable, industrial, and automotive batteries, and their implementation in the UK, are the subject of this partial Impact Assessment (IA).

1.3 These Internal Market provisions are based on Article 95 of the Treaty establishing the European Community. They are concerned with the use of certain heavy metals in the production and placing on the market of new batteries and accumulators (Articles 4 and 6 of the new Directive), and the labelling of new batteries and accumulators (Article 21 of the new Directive). In addition, Article 11 of the new Directive is concerned with the removal of batteries and accumulators from appliances. This has implications for the Internal Market by nature.

1.4 The provisions of the new Batteries Directive in relation to waste batteries and accumulators are based on Article 175 of the Treaty establishing the European Community, i.e. they relate to environmental protection. The UK will transpose these provisions of the new Batteries Directive in separate legislation. Draft Regulations for this transposition, with a supporting partial IA, will be the subject of a further consultation exercise in the coming months.

1.5 The Internal Market provisions of the new Directive are somewhat simpler to transpose than the environmental provisions. A separate Statutory Instrument for the Internal Market provisions should give UK businesses clarity, and sufficient lead time to enable them to comply with the new Directive with as little disruption to current practices as possible, whilst enabling them to continue to operate effectively in the Internal Market

Background

1.6 The Batteries and Accumulators Directive (Directive 2006/66/EC – 'the new Batteries Directive') updates and replaces the previous Directive on Batteries (Directive 91/157/EEC) which was concerned only with batteries and accumulators containing certain hazardous substances, namely mercury, cadmium and lead, and appliances and equipment powered by such batteries.

1.7 Though considered to be successful, the European Commission believed that an up-dating and revision of Directive 91/157/EEC applying to all battery types would increase clarity, and

would provide greater protection and promotion of the European Internal Market, and increased protection of the environment and of health and safety. This up-dating and revision was also driven by the adoption and implementation across Europe of the End-of Life Vehicles (ELV), the Waste Electrical and Electronic (WEEE), and the Restriction on certain Hazardous Substances (RoHS) Directives, given that batteries are used in vehicles and in electrical and electronic equipment (EEE).

1.8 Heavy metals, such as lead and cadmium are used widely in batteries for industrial and automotive applications. The use of heavy metals is less widespread in the production of portable batteries, which are generally, but not exclusively, used in non-commercial, consumer applications. It has thus been estimated that the previous Batteries Directive applied to somewhere in the region of only 7 per cent of consumer batteries, these largely being Nickel-Cadmium (NiCd) batteries used in such equipment as cordless power tools (CPTs), and a range of small household appliances.

1.9 To ensure that any heavy metal restrictions and labelling requirements on batteries and accumulators are more uniform across the European market, so as to facilitate and promote effective competition in the market for batteries, the heavy metal and labelling requirements of the new Batteries Directive covers all types of batteries, to include all portable, industrial, and automotive batteries.

1.10 The draft Regulations to transpose the Internal Market provisions of the new Batteries Directive, which are the subject of this consultation, are supported by this partial IA. BERR, DEFRA, the Department of Environment Northern Ireland, the Scottish Government, and the Welsh Assembly Government, consulted on transposition of the Internal Market provisions of the new Directive as part of a consultation exercise on transposition of the whole of the new Batteries Directive between 20 December 2007 and 13 March 2008.

1.11 This consultation paper contained a separate chapter on the Internal Market provisions of the new Directive and the partial IA that supported the consultation also contained a separate chapter on the costs and benefits of transposing these Internal Market provisions.

1.12 There were 115 responses to the consultation exercise, of which on average around 50 per cent responded to the various questions relating to transposition of the Internal Market provisions. These responses generally supported the proposals for transposition, but there were no specific comments on the estimates of the costs and benefits from this transposition contained within the partial IA supporting the consultation paper.

Purpose and Intended Effect of Measure

1.13 The new Batteries Directive has two main aims. The primary objective is “...to *minimise the negative impacts of batteries and accumulators and waste batteries and accumulators on the environment...*” (Recital 1 of the new Directive). The second is to “...*ensure the smooth functioning of the internal market and avoid distortion of competition within the Community.*” (Recital 1 of the new Directive).

1.14 The new Batteries Directive contains three specific Articles that have a legal basis of Article 95 of the EC Treaty establishing the Community. These ‘Internal Market’ Articles are Articles 4, 6 and 21. They introduce the following provisions:

- Article 4 of the Directive introduces prohibitions on the placing of the European market of batteries containing a certain amount of heavy metals. Specifically:

- All batteries and accumulators containing more than 0.0005 per cent mercury by weight are prohibited, with the exception of button cells where the restriction is no more than 2 per cent of mercury by weight.
- Portable batteries containing more than 0.0002 per cent cadmium by weight are prohibited, but with the following exceptions: batteries and accumulators used in emergency, emergency lighting, and alarm systems; batteries and accumulators used in medical equipment; and batteries and accumulators used in cordless power tools.
- Article 6 of the Directive requires member States not to impede or restrict batteries being placed on the market in their territories where they meet the requirements of the new Directive. In addition, it requires member States to ensure that batteries not meeting the requirements of the new Directive are withdrawn from the market within their territory.
- Article 21 of the Directive requires member States to ensure that batteries, battery packs, and accumulators are:
 - Marked with the crossed-out wheeled bin symbol. Under some circumstances and where the battery is small this symbol can be placed on the battery packaging.
 - Batteries and accumulators containing more than 0.0005 per cent mercury are marked with the symbol Hg.
 - Batteries and accumulators containing more than 0.002 per cent cadmium are marked with the symbol Cd.
 - Batteries and accumulators containing more than 0.004 per cent lead are marked with the symbol Pb.
 - By 26 September 2009, and following establishment of the requirements under European Committee procedure, portable and automotive batteries and accumulators should have their capacity shown on them.

1.15 In addition, Article 11 of the new Directive builds on Article 5 of the previous Batteries Directive by requiring member States to ensure that manufacturers design appliances in a way that spent batteries and accumulators can be readily removed. The previous Directive applied this requirement to appliances containing batteries which used hazardous substances, i.e. mercury, lead, or cadmium batteries. The new Directive applies this requirement to appliances using any type of battery. However, this requirement is not to apply where for safety, performance, power supply, or data integrity reasons a permanent connection between the appliance and the battery is required. By its nature Article 11 of the new Directive has implications for the Internal Market.

The Markets for Portable, Industrial and Automotive Batteries in the UK

1.16 There is no official data on the volume and type of portable, industrial or automotive batteries and accumulators that are placed on the market in the UK in any particular year. This is because there has been no specific need for this data to be collected in the past. One of the aims of the new Batteries Directive is to collect such data across all European member States to obtain a clearer picture of the operations of the Internal Market where batteries and accumulators are concerned.

1.17 There are a number of estimates of the size and composition of the UK market for the different types of batteries and accumulators in use today.

1.18 In terms of portable batteries and accumulators these can be non-rechargeable (so called 'primary' batteries) or rechargeable (so-called accumulators or 'secondary' batteries). The

majority of portable batteries are used in households, but a proportion are also used on commercial and industrial premises.

1.19 The batteries and accumulators market is an innovative and dynamic market. The European Commission's Extended Impact Assessment (COM(2003)723 final), (EIA) which supported the proposal to introduce the new Batteries Directive estimated that the consumer battery market in the then fifteen members of the European Union had grown by some 70 per cent, in terms of the number of units sold, between 1985 and 1995.

1.20 The European Commission appointed Bio Intelligence to produce a report to inform it of alternative policy options available for revision of the then existing Batteries Directive, and to support proposals for a new Batteries Directive. This report, *Impact Assessment on Selected Policy Options for Revision of the Battery Directive*, was published in 2003.

1.21 The Bio Report estimated portable battery sales in the EU-15 in the region of 160,000 tonnes in 2002. If we assume that the sale and use of portable batteries across Europe is in proportion to the size of the economy of a member State, then with the UK making up around one-sixth of EU GDP, the Bio Report estimate would imply that around 27,000 tonnes of portable batteries were placed on the UK market in 2002.

1.22 In 2000, the then Department for Trade and Industry (DTI), commissioned ERM consultants to undertake a report on the potential impacts of a new Batteries Directive. ERM estimated that some 640 million units of portable batteries were sold in the UK in 1999, representing some 18,500 tonnes. In 2006, the Department of Environment, Food, and Rural Affairs (DEFRA) commissioned ERM to produce a life-cycle assessment for separately collecting and recycling portable batteries in the UK according to the requirements of the new Batteries Directive. This report used a figure of 24,850 tonnes of portable batteries placed on the UK market in 2003.

1.23 An estimate from industry suggests that in 2006, UK sales of portable primary batteries amounted to some 24,000 tonnes, and almost 1 billion units. 2006 UK sales of portable rechargeable batteries (accumulators) were estimated to amount to some 6,000 tonnes, equating to just over 110 million units. These figures imply that in 2006 in the UK, sales of portable batteries amounted to some 30,000 tonnes and over 1.1 billion units.

1.24 In terms of chemistry, it is estimated that some 80 per cent of batteries and accumulators sold in the UK are non-hazardous, in that they are largely Alkaline Manganese and Zinc Carbon batteries. Button cells and rechargeable batteries make up the remaining UK sales.

1.25 In terms of market trends, for primary batteries, alkaline manganese has been increasingly replacing zinc carbon as the main chemistry. For rechargeable batteries, recent years have seen strong growth in Lithium-ion (Li-ion) and Nickel Metal Hydride (NiMH) technologies, generally at the expense of Nickel Cadmium (NiCd) technology.

1.26 In terms of industrial batteries, the Bio Report estimated that some 200,000 tonnes of industrial batteries and accumulators were placed on the EU-15 market in 2002, of which 97 per cent were lead-acid (Pb) batteries and accumulators, and the remainder were generally Nickel-Cadmium (NiCd) batteries and accumulators.

1.27 If we assume that industrial batteries are used across Europe in proportion to the size of the economy of different member States, this could imply that based on the Bio estimates, UK sales of industrial batteries in 2002 were some 33,000 tonnes.

1.28 In 2000, the then Department for Trade and Industry (DTI), commissioned ERM consultants to undertake a report on the potential impacts of a new Battery Directive. ERM

estimated UK sales for industrial batteries and accumulators in the region of 51,000 tonnes in 1999. ERM also presented estimates of the future growth of the UK market for industrial batteries and accumulators, and forecast this to rise to just under 68,000 tonnes by the end of 2005. Some recent estimates from ERM suggest that around 69,000 tonnes and some 3.5 million units of industrial batteries were sold in the UK in 2006. Differing opinion about what is, and what is not, an industrial battery and accumulator makes consistent and accurate estimation difficult. One of the aims of the new Batteries Directive is to introduce a clearer definition of industrial batteries and accumulators.

1.29 In terms of automotive batteries, the Bio Report estimated that some 860,000 tonnes of automotive batteries were placed on the EU-15 market in 2002, which could imply UK sales of automotive batteries in 2002 in the region of 143,000 tonnes.

1.30 In 2000, the then Department for Trade and Industry (DTI), commissioned ERM consultants to undertake a report on the potential impacts of a new Battery Directive. ERM estimated UK sales for automotive batteries and accumulators in the region of 109,000 tonnes in 1999. ERM also presented estimates of the future growth of the UK market for automotive batteries and accumulators, and forecast this to rise to just under 115,000 tonnes by the end of 2005. Some recent estimates from ERM suggest that around 131,000 tonnes and some 9 million units of automotive batteries were sold in the UK in 2006.

Sectors and Groups Affected

1.31 The Internal Market provisions of the new Batteries Directive impact on all those who place batteries and accumulators on the European market. Principally, this is manufacturers of batteries and accumulators, but also includes those who sell batteries and accumulators under their own brand name, those who professionally import batteries and accumulators, and those who place vehicles and electrical and electronic equipment (EEE) containing batteries and/or accumulators on to the European market.

1.32 There are tens of thousands of UK retailers selling portable batteries, and around 10 per cent of primary portable batteries sold in the UK are estimated as being 'own brand' batteries sold by larger retail chains. Those selling 'own brand' batteries are considered to be producers under the new Batteries Directive.

1.33 There are no UK manufacturers of 'standard-size, general-use' portable batteries. There are some UK manufacturers of button cell batteries. There are an estimated 18 major international producers of portable batteries, a number of which are members of the British Battery Manufacturers' Association (BBMA).

1.34 In terms of industrial and automotive batteries, it is estimated that there are around 7 main industrial battery manufacturers in the UK, and around 33 suppliers of industrial and automotive batteries operating in the UK currently.

1.35 It is difficult to estimate the exact number of businesses that may be affected by the Internal Market provisions of the new Batteries Directive. Estimates based on collection trials undertaken by the Waste and Resources Action Programme (WRAP) for Defra in the UK in 2007/08 suggest that there are in the region of 600-700 different brands of portable batteries arising in the UK waste stream at any one time. Some industry estimates are that the new Batteries Directive may, through its definition of a producer, obligate some 1,000 businesses in relation to portable batteries and accumulators.

Costs and Benefits

1.36 It is not straightforward to estimate the costs and benefits from UK implementation of the Internal Market provisions of the new Batteries Directive. The reasons for this are as follows:

- As there is little firm data on the number, size, and type of batteries placed on the UK market it is difficult to determine precisely how many batteries are affected by the Internal Market provisions.
- Some batteries and accumulators are already marked or labelled with some, or all, of the requirements of Article 21 of the new Batteries Directive, as the previous Batteries Directive itself required certain marking and labelling. However, it is difficult to know what proportion of batteries and accumulators currently placed on the market meet some, or all, of the labelling requirements of the new Directive.
- In terms of the marking and labelling of batteries and accumulators, the new Batteries Directive gives some scope for the crossed-out wheeled bin to be placed on packaging and not on individual batteries. This gives some scope to limit the costs of marking, but it is unclear how many batteries and accumulators this will apply to.
- In terms of the prohibitions of Article 4 of the Batteries Directive, the exemptions in the new Directive will limit costs, but may also reduce potential benefits. In practice, industry has increasingly been moving away, on a voluntary basis, from the use of cadmium and mercury in batteries and accumulators where this is technically feasible. It remains unclear the exact extent to which heavy metals are used in batteries and accumulators currently, and this makes it difficult to estimate the additional burden of the prohibitions of the Directive.
- Since Article 11 of the new Directive, is in part, at least, a requirement of the previous Directive, it is difficult to determine the extent to which there will be additional costs and benefits from this Article.

Costs

Draft Regulation 5: Article 4 of the new Batteries Directive - Prohibitions

1.37 Draft Regulation 5 transposes Article 4 of the new Batteries Directive which introduces prohibitions on the placing on the market of batteries which contain levels of mercury and cadmium above certain thresholds. There are certain exemptions to this prohibition depending on the battery type. In the case of mercury, this is for button cells, and in the case of cadmium, the use of portable batteries and accumulators in some applications.

1.38 Restrictions on the use of mercury in batteries were introduced in the previous Batteries Directive. The use of mercury in batteries has been declining for a number of years now, as a consequence of the previous Directive, and as industry itself has sought to move away from using this metal where it is technically feasible to do so. The exemption for button cells is retained from the previous Batteries Directive for a range of reasons including the use of button cells in hearing aids and other medical equipment. The Bio Report (2003) itself said that *“Mercury containing batteries are no longer a significant concern..”*

1.39 In terms of cadmium, producers have also been voluntarily moving away from the use of cadmium in batteries and accumulators for a number of years now. This movement has been

due to developments largely stemming from Japan, amongst industry to use less hazardous substances in the production of a range of goods, including batteries and accumulators.

1.40 The exemptions in the Directive for the use of portable batteries containing cadmium are for specific applications. These are:

- Use in Medical equipment. Nickel Cadmium (NiCd) batteries have historically been widely used in applications involving medical equipment. This has been the case because NiCds were seen as being a stable and reliable technology across a range of environments, most notably at extremes of temperature, and where relatively high amounts of power were required immediately and at short notice.
- Use in Emergency, emergency lighting and alarm systems. NiCd batteries have historically been used in many applications involving emergency, emergency lighting and alarm systems. These include a wide range of applications, such as their use in back-up systems for Air Traffic Control and back-up systems for rail safety. As for medical equipment, NiCds were seen as being a stable and reliable technology across a range of environments, at extremes of temperature, and where relatively high amounts of power were required immediately and at short notice.
- Use in cordless power tools (CPTs). Historically, NiCds have been the predominant battery chemistry used in cordless power tools (CPTs). This has been because of their reliability and simplicity. However, industry has developed Nickel Metal Hydride (NiMH) and Lithium-Ion (Li-ion) batteries as alternatives to NiCd batteries in CPTs. NiMH and Li-ion powered CPTs have the advantages of lightness and smallness over NiCd powered CPTs, and recent developments have meant that Li-ion batteries can exceed the power and capacity of similar NiCd and NiMH technologies. However, Li-ion powered CPTs generally incur a premium in terms of cost and currently are usually used by, and aimed at, the more professional-end of the CPT market.

1.41 The Bio Report (2003) estimated that the costs of a prohibition on the use of cadmium in portable batteries in consumer applications, and excluding their use in CPTs, could be very large, with a cost to European consumers in the range of 825 to 1,995 million euro per annum. This was because the Bio Report estimated that the main alternative to NiCd batteries at the time, Nickel Metal Hydride (NiMH) batteries, were in the range of 10-30 per cent more expensive than NiCds, and NiMH batteries had a life expectancy (in terms of the number of cycles they could take during their lifetime) of between one-third and one-half of NiCds.

1.42 The European Council questioned the estimates in the Bio Report and produced a revised draft impact assessment on the prohibition of NiCd portable batteries. This impact assessment questioned the relative performance of NiCd and NiMH technologies as outlined in the Bio Report, and said that the latest NiMH technologies had a capacity 1.5 to 4 times that of NiCd batteries. This meant that despite the higher initial purchase price and fewer cycles, because NiMH batteries could store more energy than NiCds the Council said that the cost estimates in the Bio Report “*..would not actually occur.*”

1.43 The Council Report itself was questioned in terms of how representative of the different technologies was the one example in its impact assessment, given that the comparison was between one NiMH battery and one NiCd battery for use in a specific application. It was also not clear from the Council Report what the relative cost was of the two batteries being compared.

1.44 This uncertainty over the costs and benefits of a prohibition on the use of cadmium in portable batteries, ultimately lead to the compromise text of the new Batteries Directive. The

new Directive allows the use of cadmium in batteries in CPTs to continue, but this is to be reviewed by the European Commission by 26 September 2010. The new Directive bans the use of cadmium in batteries in non-CPT applications, such as in dustbusters, other small household equipment, and toys from 26 September 2008.

1.45 To estimate the potential costs of a ban on the use of NiCd portable batteries in domestic applications not including CPTs, a number of assumptions need to be made.

1.46 The Bio Report estimated that around 30 per cent of sales of NiCd portable batteries across Europe were for use in household applications not involving CPTs. This amounted to an estimated 3,600 tonnes (for 1999), which if we assume the UK used one-sixth of these would be some 600 tonnes for the UK.

1.47 Most estimates suggest that the use of NiCd batteries in a range of household appliances (excluding CPTs) has been falling. This has been driven by a switch to alternative technologies in equipment where lightness and smallness is important – such as phones, laptops, and audio and visual equipment, and by developments in alternative technologies, most notably Nickel metal-hydride (Ni-MH) and more recently Lithium-ion (Li-ion). It is difficult to estimate the precise fall in the use of NiCds, but if we assume it is equal to the increase in the use of NiMHs this would imply an average fall of some 2 per cent per annum (based on estimates of the annual increase in the sale of NiMH batteries). This fall may be an under-estimate given the rapid growth in recent years in Li-ion technology. However, in the following we assume that the Ni-Cd technology has been, and will continue to be, replaced largely by Ni-MH technology for the applications where the ban bites, given that Li-ion batteries are still currently largely used in 'higher-end' and more 'professional-type' equipment.

1.48 The Bio Report presented figures for Ni-Cd sales by application which implied the average weight of a NiCd portable cell used in household applications was almost 23 grammes. For tonnage estimates as calculated above (estimated to be in the region of just over 500 tonnes currently) this would imply some 22-23 million NiCd portable cells sold in the UK last year (for household applications not including CPTs), which in the absence of the ban, and based on a 2 per cent annual decline) would be estimated at just under 19 million cells in 2016.

1.49 The Bio Report quoted a figure of 4.2 euros per unit as the average cost of a NiCd cell in 2003. In today's prices this would imply a cost in the region of £3.10 per cell, assuming the cost of NiCd cells has risen in line with consumer prices generally.

1.50 In terms of the number of cycles and the capacity of NiCds compared to NiMH batteries we assume that the estimated benefit for NiCds in terms of the additional number of cycles is offset by the potential additional capacity of NiMH batteries such that replacement over the lifetime of an appliance does not result in any additional cells being needed.

1.51 In terms of the differential in price between NiCd and NiMH batteries, NiMH's have fallen in price in comparison to NiCds as their use has become more widespread. We assume a differential of no more than 10 per cent in price on average, at the lower-end of the estimates in the Bio Report. In some instances, retailers are currently selling NiMH and NiCd batteries with a differential lower than 10 per cent, and more in the region of 5 per cent. In addition, this differential may fall further over time as NiMHs, and other technologies, become more and more widespread.

1.52 All of the above enables an estimate to be made of the costs of draft Regulation 5 transposing Article 4 of the new Batteries Directive. This is for a cost estimated at just under £7 million in 2009, and falling over time to just under £6 million by 2016, because we assume that the use of NiCds would have fallen over time in any case in the absence of the ban.

1.53 The above estimate is based on a number of assumptions. Implicit in this is that we assume that household equipment (excluding CPTs) does not need to be substantially modified to use NiMH rather than NiCd batteries. However, we do know that NiCds are being used less and less in a range of household applications because of developments in other battery technologies independent of the new Batteries Directive. We also know that these technological developments have reduced the difference in performance between NiCds and other technologies. In addition, the cost of alternatives to NiCds has been falling over time, and the timespan offered by the new Directive, in terms of its adoption and its coming into force, before the use of NiCds in some household applications needs to cease should have given industry time to adjust and help to reduce any costs of replacement.

1.54 But, there is still some uncertainty regarding the relative performance and cost of NiCds and alternative technologies in a range of household applications other than CPTs. To mitigate this somewhat, NiCds can still be used in a range of household applications other than CPTs, provided they are placed on the market prior to 26 September 2008. The average lifespan of a NiCd battery of some 5-7 years should also contribute to reducing any cost increases from the prohibitions of Article 4.

Draft Regulations 9 – 23: Article 6 of the new Batteries Directive – Placing on the market

1.55 Draft Regulations 9-23 propose an enforcement regime for the UK to transpose Article 6 of the new Batteries Directive which requires member States to ensure that batteries and accumulators which meet the requirements of the Directive are allowed to be placed on their market, whilst ensuring batteries that do not meet the requirements are removed from their market.

1.56 This monitoring and enforcement of the Internal Market aspects of the Directive is expected to result in costs to the public sector, and potentially some costs to business in terms of the provision of information to the relevant enforcement body. It is difficult to estimate the costs of enforcing this Article of the Directive, but we can use estimates of enforcement regimes in other areas to obtain a range of costs that may be incurred following implementation of the Batteries Directive.

1.57 Costs for enforcing the Restriction on Hazardous Substances (RoHS) Regulations, which restrict the use of certain heavy metals in the production of new electrical and electronic equipment (EEE), are currently in the region of £350,000 per annum. These costs are expected to increase by possibly up to £100,000 per annum as the enforcement body, the National Weights and Measures Laboratory (NWML) increases its enforcement activities over the next few years. These costs are paid by BERR, which is the Department responsible for implementing the European RoHS Directive in the UK.

1.58 Costs for enforcing the heavy metals restrictions in the production of new vehicles under the End-of Life Vehicles (ELV) Regulations are currently in the region of £100,000 per annum. The enforcement body here is the Vehicle Certification Agency (VCA). These costs are paid by BERR, which is the Department responsible for implementing the European ELV Directive in the UK.

1.59 In terms of enforcing the Internal Market requirements of the new Batteries Directive it is not expected that the costs incurred for RoHS or ELVs will be replicated. This is because in the case of RoHS the enforcement is on a huge range of electrical and electronic equipment (EEE) which differs widely in terms of constitution, complexity and application, and in the case of vehicles, enforcement involves all components, for which there could be up to 10,000 in a single vehicle.

1.60 Batteries and accumulators, on the other hand, are relatively straightforward products, consisting of a main dominant chemistry, relatively few materials, and relatively few parts. Enforcement should thus be more straightforward than in the case of EEE or vehicles. An enforcement cost estimate in the region of 50 per cent that for the RoHS and ELV Regulations of between £50,000 - £200,000 per annum may not be unreasonable.

1.61 On top of these costs, will be costs to businesses from compiling and providing information to ensure that they can prove compliance with the Directive to the relevant enforcement body. Until the actual enforcement regime is determined it is difficult to estimate the potential costs to business, but a figure equivalent to that estimated to be incurred by the public sector may also not be unreasonable.

1.62 These estimates would imply costs from the draft Regulations 9-23 transposing Article 6 of the new Batteries Directive in the region of £0.1 million - £0.4 million per annum.

Draft Regulations 6 and 7: Article 21 of the new Batteries Directive - Labelling

1.63 Draft Regulations 6 and 7 transpose Article 21 of the new Batteries Directive which introduces various marking and labelling requirements on batteries and accumulators.

1.64 Batteries that contain certain amounts of mercury, cadmium, and lead need to be marked with the symbols, Hg, Cd, and Pb respectively. This marking requirement, for batteries containing certain hazardous substances, was largely one that formed part of the previous Batteries Directive that the new Batteries Directive replaces. This requirement is thus not expected to result in any significant additional costs.

1.65 Under the new Directive, all batteries, accumulators, and battery packs are to be marked with the crossed-out wheeled bin symbol. This symbol is to be shown on the side of the battery, unless the battery is small, where it can then be shown on the packaging.

1.66 It is difficult to estimate the costs of marking batteries with the crossed-out wheeled bin because it is unclear how many batteries or accumulators will need to be marked individually, how many could be marked via their packaging, and how many are already marked.

1.67 The crossed-out wheeled bin symbol was a requirement of the previous Batteries Directive for batteries containing mercury, lead, and cadmium. Given that industrial and automotive batteries and accumulators largely consist of one or another of these chemistries, the requirement of the new Directive in this regard is not expected to result in any additional costs, as markings are already in place.

1.68 In terms of portable batteries, the previous Directive requirements would have related to the 7 per cent of portable batteries estimated to have contained hazardous substances at the time. Many of the remaining portable batteries placed on the UK market have the crossed-out wheeled bin symbol on their packaging. To mark the batteries themselves will result in additional costs.

1.69 Portable batteries currently have a range of marks and labels and thus we do not expect the addition of an extra mark to entail significant extra costs per battery. An estimate of the cost per battery in the region of 10 per cent of 1 pence may not be an unreasonable first estimate. This would imply total costs in the region of £1 million per annum for the estimated 1 billion portable batteries currently sold in the UK. We assume these costs are also incurred in the period running up to introduction of the UK Regulations to transpose the new Batteries Directive as business adjusts to the new requirements.

1.70 Some of the costs of marking batteries will be one-off costs in terms of design changes and adjustments to labelling runs. There will be some on-going costs in terms of the materials used for marking. It is difficult to estimate what proportion of costs will be one-off and what proportion on-going.

1.71 In as much as the specific requirements for batteries to show their capacity are not to form part of the UK's Regulations to transpose the Internal Market provisions of the Batteries Directive, but will form part of amending Regulations once the capacity requirements have been agreed at European level in 2009, there will not be costs until the capacity requirements come into force. BERR will take an active part in European negotiations on capacity marking to ensure that any costs are proportionate to the benefits resulting from such marking.

Draft Regulation 8: Article 11 of the new Batteries Directive – Removal of waste batteries and accumulators

1.72 Article 11 requires manufacturers to design appliances such that waste batteries and accumulators can be removed easily. The previous Batteries Directive contained this requirement for appliances using batteries containing mercury, cadmium and lead

1.73 For equipment and appliances that use primary batteries, these are already designed such that the user can replace spent batteries with new batteries so as to enable continual use of such equipment and appliances. Thus the Article 11 requirement really only impacts on equipment and appliances using rechargeable batteries. As some of these will be equipment and appliances using NiCd and Pb-acid batteries the requirement is not new and so there will be no additional burden.

1.74 For equipment and appliances using other technologies, such as NiMH and Lithium-ion, the design requirements will also apply in the future, except where for safety, performance, medical or data integrity reasons a permanent connection between the appliance and the battery is required.

1.75 The European Commission has suggested that the requirements for battery removal may be considered to apply to end-users or professionals. If the latter are interpreted as those who operate treatment facilities for waste electrical and electronic equipment (WEEE) then the implications for design costs will be different, and much lower, than if end-users are to remove batteries.

1.76 The European Commission has also suggested that the instructions accompanying equipment and appliances should show who is best placed to remove batteries. This should give manufacturers the flexibility they need to produce equipment and appliances such that batteries can be removed in the most appropriate manner depending on the type of equipment involved. This should also reduce any cost impacts.

Benefits

Draft Regulation 5: Article 4 of the new Batteries Directive - Prohibitions

1.77 The prohibitions on the placing on the market of batteries and accumulators which contain levels of mercury and cadmium above certain thresholds aim to reduce the risks to human health, animal health, and the environment from the use and disposal of mercury and cadmium.

1.78 In as much as the prohibitions, with their current exemptions, reduce the use of mercury and cadmium this will have a positive impact on human and animal health and on the

environment. It is not straightforward to estimate the consequent benefits. However, we do expect there to be benefits because of the nature of these two metals.

1.79 Mercury is a volatile element, which may be transported over long distances by air. In terms of human exposure the main exposure pathways are via the inhalation of vapours and via ingestion in food. Mercury is toxic and possibly carcinogenic. In terms of animal health, mercury can have adverse impacts on the central nervous system and kidneys of birds and mammals, and negative impacts on the reproductive systems of fish.

1.80 Cadmium tends to bio-accumulate. The major route through which humans are exposed is via food (through agricultural crops where cadmium is in soil). The main risk to human health is kidney damage. In terms of animal health, cadmium can produce a wide variety of negative effects on birds and mammals, similar to those seen in humans.

1.81 The prohibition on the use of NiCd in household equipment (excluding CPTs) should result in a fall in the amount of cadmium being disposed of in the UK. For the estimated tonnages of NiCd batteries that could have been used in the UK in the future (outlined in the Costs section) and given that cadmium forms around 14 per cent of a NiCd battery this fall is estimated to be in the region of 70 tonnes per annum in 2009. This reduction in the disposal of cadmium is estimated to fall to 60 tonnes by 2016 because we assume that the use of NiCd batteries would fall in any case in the absence of the ban. It is difficult to quantify the benefits from this reduction in cadmium, but cadmium is hazardous, and NiCd batteries account for almost an estimated one-fifth of all cadmium found in the municipal solid waste (MSW) stream.

Draft Regulations 9 – 23: Article 6 of the new Batteries Directive – Placing on the market

1.82 The ability for member States to withdraw batteries and accumulators from their market that do not meet the requirements of the new Batteries Directive, and the requirement for member States not to impede or restrict those batteries and accumulators that meet the requirements of the new Directive, will have the benefit of protecting and promoting the European Internal Market in batteries and accumulators.

1.83 This should bring benefits in the form of greater competition in the market for batteries and accumulators as a result of a more level-playing field for all manufacturers and producers of batteries and accumulators. Both UK producers and consumers will benefit from this, in terms of potentially improved access to markets, and in terms of a potentially higher quality, and safer types of batteries and accumulators. However, whilst UK businesses will benefit from greater protection and promotion of the Internal Market, these benefits, and any benefits to UK consumers, are very difficult to quantify.

Draft Regulations 6 and 7: Article 21 of the new Batteries Directive - Labelling

1.84 The appropriate marking and labelling of batteries and accumulators will aid the separate collection of portable batteries and accumulators at the end of their life, so enabling their future treatment and recycling. In terms of industrial and automotive batteries, appropriate marking will reinforce the prohibition on the disposal of these spent batteries as whole, as required by the new Directive.

1.85 It is difficult to quantify these benefits, but the marking and labelling of batteries and accumulators will play an important part in providing information to, and raising awareness among end-users in relation to batteries and spent batteries. In particular, there should be environmental benefits in terms of spent batteries being discarded in a more appropriate manner in the future. Marking and labelling is thus one of the pre-cursors to the successful treatment and recycling of spent batteries and accumulators.

Draft Regulation 8: Article 11 of the new Batteries Directive – Removal of waste batteries and accumulators

1.86 The requirements on the removal of batteries should have a positive impact on reducing the costs of treating and recycling WEEE in the future. However, it is difficult to quantify these benefits not least because it is unclear how many appliances containing batteries will be separately collected in the future. However, where appliances are separately collected the draft Regulation should have a positive impact on reducing the costs of treating and recycling spent batteries and accumulators in the future.

Small Firms Impact Test

1.87 The Internal Market provisions of the new Batteries Directive are intended to apply to all batteries and accumulators placed on the European market. Impacts on businesses are thus expected to be largely in proportion to the type and volume of batteries and accumulators they place on the market. It is thus not expected that there will be any disproportionate impacts on small firms from UK implementation of the Internal Market provisions of the new Batteries Directive.

Competition Assessment

1.88 UK implementation of the Internal Market provisions of the new Batteries Directive is not expected to have a detrimental impact on competition in the market for batteries and accumulators. Indeed, the main aim of the draft Regulations is to promote and enhance competition by establishing a more level-playing field for those who place batteries on the market.

Enforcement and Sanctions

1.89 The Internal Market provisions of the Batteries Directive will be enforced in the UK by BERR. Such enforcement may be contracted out to a third party. Sanctions are expected to be similar to those that exist in the UK's RoHS and ELV Regulations with regard to the Internal Market aspects of the Directives these Regulations implement in the UK.

Summary and Conclusions

1.90 The UK is required to transpose into UK law the Internal Market provisions of the Batteries Directive, so it plays its part in protecting and promoting the European Internal Market, by 26 September 2008. Given the legal basis of these provisions the UK has little discretion when implementing these provisions.

1.91 It is difficult to estimate with any precision the costs and benefits of UK implementation of these provisions of the new Batteries Directive. Total costs are estimated to be in the region of £7-£8 million per annum to 2016.

1.92 It is particularly difficult to quantify the benefits that will result from increased protection and promotion of the Internal Market, and greater protection of human health, animal health, and the environment, as a consequence of the draft Regulations to implement the Internal Market provisions. However, these benefits do exist and include: a reduction in hazardous substances

entering the environment; a reduction in exposure to hazardous substances for humans and animals; a more level playing field for businesses to operate in the Internal Market, including the removal of non-compliant batteries and accumulators; and positive contributions to reducing any costs of treating and recycling spent batteries in the future. Table 1 below summarises the main estimates of this partial IA.

Table 1: Internal Market Provisions of new Batteries Directive: Summary of Estimates of Costs and Benefits (£ million)

	2008	2009	2010	2011	2012	2013	2014	2015	2016
Costs									
Article 4	1.7	6.7	6.6	6.5	6.3	6.2	6.1	6.0	5.8
Article 6	0 - 0.1	0.1 - 0.4	0.1 - 0.4	0.1 - 0.4	0.1 - 0.4	0.1 - 0.4	0.1 - 0.4	0.1 - 0.4	0.1 - 0.4
Article 21	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.4
Article 11	Not Quantified. Not expected to be significant.								
Total Costs	2.9 – 3.0	8.0 – 8.3	7.9 – 8.2	7.8 – 8.1	7.7 – 8.0	7.6 – 7.9	7.5 – 7.8	7.4 – 7.7	7.3 – 7.6
Present Value (PV) of Total Costs	2.9 – 3.0	7.7 – 8.0	7.4 – 7.6	7.0 – 7.3	6.7 – 7.0	6.4 – 6.6	6.1 – 6.3	5.8 – 6.0	5.5 – 5.8
Sum of PV of Total Costs	55.4 – 57.6								
Benefits	Not Quantified.								
Article 4	Positive contributions to protection of the environment. Positive contributions to human health and animal health.								
Article 6	Positive contributions to the Internal Market.								
Article 21	Positive contributions to separate collection, and subsequent treatment and recycling of spent batteries. Positive contributions to raising awareness of waste and waste issues more generally.								
Article 11	Positive contributions to reducing costs of treating and recycling of spent batteries. Positive contributions to reducing waste appliances as spent batteries can be replaced in appliances.								

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

SPECIFIC IMPACT TESTS

Legal Aid

It is not clear to what extent those who would be subject to the draft SI transposing the Internal Market provisions of the Batteries Directive are eligible for legal aid, and given the nature of the SI there is not expected to be any significant impact on Legal Aid.

Race Equality Assessment

The draft SI does not have as one its aims race equality explicitly.

Disability Equality

The draft SI does not have disability equality as one of its aims explicitly.

Gender Impact Assessment

The draft SI to transpose the Internal Market provisions of the Batteries Directive impacts on all those producing, selling and using batteries and accumulators. It is not aimed at overcoming gender inequalities or eliminating barriers to inequality explicitly.

Human Rights

The draft SI is not expected to impact on the rights and freedoms of individuals as set out in the Human Rights Act 1998.

Rural Proofing

The draft SI is not expected to have a significant impact on rural areas or circumstances specifically.

BERR | Department for Business
Enterprise & Regulatory Reform

**GOVERNMENT RESPONSE TO THE
CONSULTATION DOCUMENT ON
THE IMPLEMENTATION OF THE
BATTERIES AND ACCUMULATORS
AND WASTE BATTERIES AND
ACCUMULATORS DIRECTIVE
(2006/66/EC) ISSUED ON 20
DECEMBER 2007**

Single (Internal) Market
Provisions of the Directive

MAY 2008

Government Response to the Consultation Document on the Implementation of the Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC) URN 07/1701 Issued on 20 December 2007

Single (Internal) Market Provisions of the Directive

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Note: In the new Batteries Directive, “batteries” is used in the Directive to mean single-life primary batteries, and “accumulators” is used to mean rechargeable or secondary batteries. In this document, “batteries” is used to mean both batteries and accumulators, unless otherwise specified.

Executive Summary

In December 2007, BERR and Defra, in conjunction with the Devolved Administrations, published a consultation document seeking views on options for implementing the requirements of Directive 2006/66/EC the Batteries and Accumulators and Waste Batteries and Accumulators Directive (hereafter “the Batteries Directive”) in the UK.

The purpose of this consultation was to obtain views of producers, distributors, collectors and recyclers of all types of batteries, and any other interested parties, on options to implement two distinct sets of provisions contained within the Directive. These are:

- a. technical Single (Internal) Market requirements placed upon persons placing new batteries on the market; and
- b. the collection, treatment and recycling of waste batteries (environmental protection requirements).

The consultation document did not include draft Regulations. Responses from stakeholders on the options put to them would inform Government decisions on the content of legislation to transpose the Directive into national law. This current document focuses specifically on the responses received from stakeholders on the requirements of the Directive relating to the production and sale of new batteries and accumulators - the provisions as set out by the Articles adopted under the ‘Internal Market’ Treaty Base relating to the free movement of goods in the EU. These provisions are Article 4 (prohibitions), Article 6 (placing on the market) and Article 21 (labelling) in the Directive. A fourth provision, Article 11 (removability of batteries) could also be deemed to constitute an Internal Market provision, since it contains design requirements for battery-powered appliances, despite being adopted under the ‘Environment’ Treaty Base.

A further Government response will be issued separately addressing the points raised by stakeholders relating to the possible approaches for the collection, treatment and recycling of waste portable, industrial and automotive batteries and accumulators.

More information and a full text of the Batteries Directive can be found at:

<http://www.berr.gov.uk/sectors/sustainability/batteries/page30610.html>

Background to the Directive

The Batteries Directive repeals Directive 91/157/EEC on Batteries and Accumulators Containing Certain Dangerous Substances, which introduced a limited range of environmental and product design requirements, including restrictions on the use of certain potentially dangerous substances, the labelling of batteries containing lead, mercury or cadmium, and the collection and recycling of those batteries at end of life.

This earlier Directive, and subsequent amendments, were transposed into GB law through SIs 1994/232, 2000/3097, and 2001/2551, and additionally implemented through a non-statutory industry and Government action programme. In Northern Ireland, SR 1995 No. 122 and SR 2002 No. 300 transposed the Directive.

A proposal for a new Batteries Directive was made by the European Commission (“the Commission”) on 24 November 2003, covering all batteries (so called ‘primary’ batteries, single life varieties) and accumulators (so called rechargeable or secondary batteries) and waste batteries and accumulators. The Commission proposed that as the existing legislation covered only an estimated 7% of consumer batteries and accumulators on the EU market, all batteries and accumulators should be brought within scope, for environment and trade reasons. Following negotiation, the new Directive was adopted on 6 September 2006, came into force on 26 September 2006, and must be transposed into Member States’ national law by 26 September 2008 (with the Internal Market provisions having effect from that date).

The Batteries Directive applies to all types of batteries irrespective of their shape, weight, composition or use, except those used in certain military or space applications. It seeks to improve the environmental performance of batteries and of the activities of all economic operators involved in the life cycle of batteries, e.g. producers, distributors and end users and, in particular, those operators directly involved in the treatment and recycling of waste batteries.

Key provisions in the Directive are:

- restrictions on the use of mercury and cadmium in batteries;
- labelling requirements for new batteries to aid consumer choice and recycling;
- a minimum 25% collection rate for waste portable batteries to be met by 2012, rising to 45% by 2016;
- a prohibition on the disposal by landfill or incineration of waste industrial and automotive batteries – in effect setting a 100% collection and recycling target;
- the introduction of “producer responsibility” obligations;
- the setting of recycling efficiencies to ensure that a high proportion of the weight of waste batteries is recycled; and
- the setting of waste battery treatment standards.

Responses Received

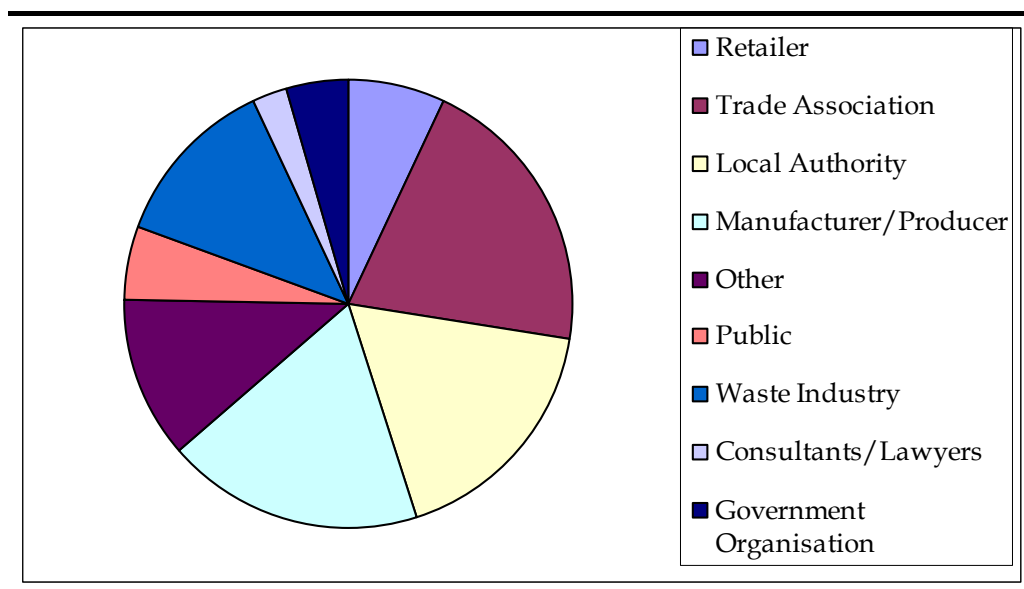
The consultation posed 5 questions out of a total of 29 about the proposals for implementing the Internal Market provisions of the Directive, including an invitation for general comments on the practical implications of these requirements and potential impact on the ‘free movement of goods’.

A total of 113 written responses to the consultation paper were received (see Fig 1.1 and 1.2 for a breakdown by sector see Annex A for a detailed list of those that responded to the consultation), and these are broken down as follows:

Fig 1.1 - Responses by Sector

Number of Responses by Sector	
Retailer	8
Trade Association	23
Local Authority	20
Manufacturer/Producer	21
Other	13
Public	6
Waste Industry	14
Consultants / Lawyers	3
Government organisation	5
TOTAL	113

Fig 1.2 - Pie chart showing responses by sector



To supplement the consultation BERR convened one and Defra three stakeholder forums, which took place on 14th, 20th and 21st February. The forums were open to all stakeholders with an interest in the implementation of the Batteries Directive and included representatives of producers of batteries, retailers, Local Authorities, trade associations and other professional bodies.

Summary of Responses Received from Stakeholders

The following analysis of the responses to the consultation is structured around the questions posed in the consultation document specifically on Internal Market provisions i.e. Questions 1 to 5 of the Consultation Document. The Government's responses to the points raised are set out after each question.

QUESTION 1: *What are your views on this interpretation and are you able to identify any additional implications resulting from the different requirements in the two directives?*

The question refers to the Directive's reference to placing batteries on the market without prejudice to the End-of-Life Vehicles (ELV) Directive and the Government's interpretation that batteries used in vehicles may exceed the limits above. The question follows a short discussion on Article 4 (Prohibitions) of the Directive which prohibits particular types of batteries being placed on the market. This includes:

- batteries which contain more than 0.0005% mercury (with the exception of button cells whose mercury content is no more than 2% by weight); and
- portable batteries containing more than 0.002% cadmium (unless the batteries are intended to be used in emergency and alarm systems, medical equipment or cordless power tools).

Overview of Consultation Responses to this Question:

42 stakeholders provided a response to this question.

- 32 respondents supported the Government's interpretation; of these 10 acknowledged the potential issue or provided additional confirmation of the factors.
- 8 stakeholders commented on definitions or interpretation issues such as items which may be found in vehicles containing batteries (e.g. torches designed to be plugged into cigarette lighters), products which may fit a dictionary definition of vehicle despite being atypical (e.g. boats, vacuum cleaners) and the possible impact of batteries used in electric vehicles.
- 1 stakeholder commented that such a requirement should not restrict possible innovation (e.g. 'lightweighting' of batteries which may contain hazardous substances) although they acknowledge that they are unaware of any research which would currently be restricted by this requirement.

Government and Devolved Administrations' Response

The prescriptive nature of Article 4 of the Directive leaves the Government little flexibility in the way in which it can implement the hazardous substances prohibitions. The Government notes the general support that it has received and intends to implement Article 4 as proposed in the consultation document.

The Government recognises that in a few specific cases it may not be immediately apparent to persons placing a niche or bespoke battery on the market as to which category (either portable, industrial or automotive) it would automatically fall into. The Government aims to address these “grey areas” where possible in the non-legally binding guidance note that will be published to accompany the Internal Market Regulations.

The Government is also considering the inclusion of a “decision tree” within the guidance to help persons placing batteries on the market to assist them in deciding which category a particular type being placed on the market falls into – portable, industrial or automotive.

QUESTION 2: What are your views on this proposed approach?

This question follows a short discussion on Article 6 (placing on the market), regarding the placing of on the market in relation to the new requirements set down in the Directive.

The Government's interpretation is that batteries which conform with the current labelling and composition legislation may be placed on the EU market until 26 September 2008, when the new Directive's requirements will come into force. This provision would not therefore require distributors/retailers to remove batteries from shelves, since they have already been placed on the market (as opposed to being sold to end-users), and they can continue to be sold after 26 September 2008.

Batteries that do not meet the requirements of the new Directive and which are placed on the market on or after the 26 September 2008 would need to be withdrawn.

Overview of Consultation Responses to this Question:

60 stakeholders provided a response to this question.

- 51 stakeholders agreed with the Government's interpretation.
- 11 stakeholders commented on the double-negative in the consultation text (We do *not* believe that the new Directive will *not* require distributors to cease making them available to consumers after 26 September) and a small number of respondents seemed to accept that batteries would need to be removed from shelves. Most recognised the text as a mistake and confirmed their support of the intended approach.
- 8 referred to the term 'placing on the market'. Comments ranged from: seeking confirmation that the same approach as the RoHS Directive would be taken; references to the *Blue Book*; and issues relating to possible discrepancies in individual Member States' interpretations.

Other common issues raised by respondents included:

- Potential stockpiling of Directive 'non-compliant' batteries prior to September. However, some felt this was unlikely to be attractive given other commercial pressures. One stakeholder raised the point that if the UK was less strict on enforcing this date, manufacturers may 'dump' their batteries on the UK market leading to problems for the recovery/waste management market.

- Consideration of a later cut-off date to allow for ‘clear-through’ of stock in retail outlets.
- Implications for replacement batteries which are required to service existing electrical equipment. If the sale of specific batteries were restricted this may result in electrical equipment being discarded/replaced before time.

Government and Devolved Administrations’ Response

The Government and Devolved Administrations are pleased in general terms that this consultation exercise has confirmed the overall approach that it proposed on implementing the requirements of Article 6 of the Directive.

We apologise for the typographical error in the consultation relating to the interpretation of Article 6. The text should have read as *“We do not believe that the new Directive will require distributors to cease making them available to consumers after 26 September.”* The Government acknowledges the general support for this approach, and can report that, following representation from the UK, the European Commission has now published a proposal for an amendment to be made to the Directive, clarifying that batteries lawfully placed on the market before 26 September should not need to be withdrawn, if not sold on to end-users, by that date.

It is the intention of the Government to use the application of ‘placing on the market’ as set out in the Commission’s *“Guide to the Implementation of Directives Based on the New Approach and the Global Approach”*³⁹ (also known as the Blue Book or Blue Guide) where possible. Considering the similar Internal Market requirements of the RoHS Directive, it would be consistent to take a similar approach to placing on the market.

The Directive does not provide any scope for a cut-off date for a clear through of batteries that would not meet the Internal Market requirements on or after the coming into force date. As with the implementation of the RoHS Directive into UK Regulations, there was no provision for a transition period.

The Government shares the view of respondents that it is unlikely that persons placing batteries on the EU market would ‘stockpile’ them prior to the coming into force date of the Directive.

³⁹ <http://ec.europa.eu/enterprise/newapproach/legislation/guide/index.htm>

QUESTION 3: *What are your views on the capacity labelling provision, in advance of the appearance of a commission proposal?*

This question follows a short discussion of Article 21 (Labelling) on the labelling requirements set down in the Directive. This relates to the labelling of all batteries according to their lead, cadmium and mercury content and also the capacity labelling requirement for portable and automotive batteries.

Overview of Consultation Responses to this Question:

55 stakeholders provided comments to this question. Given the open nature of the question, a wide range of suggestions and views were submitted.

- The most frequent comment related to the timescales for implementing the labelling requirements and in particular the implications of the Commission's current work on capacity marking. 22 stakeholders raised timescales as a concern.
- 18 stakeholders referred to the need to wait for the Commission or referred to the need for harmonisation across Europe.
- 13 stakeholders referred to the practicalities or need to label batteries which are incorporated into products or which are packed together in packs (as these labels would not be visible to consumers). In relation to this point, some raised the issue of the potential need to label the packaging. Some supported this, others did not.
- 15 stakeholders voiced their support or acceptance of the need for labelling in the general or overall sense, particularly those that felt it would help consumer choice and aid recycling.
- 3 specifically disagreed with the capacity labelling requirements and eight others voiced their concerns about the feasibility of capacity labelling in all cases – in particular for primary batteries. Of those voicing concern, the vast majority called for websites to contain the necessary information as detailed information could not be placed on the battery itself.
- 7 stakeholders, mainly from the waste management sector, called for chemistry labelling to be colour-coded to aid sorting and recycling.
- 6 stakeholders called for exemptions to the labelling provisions (e.g. embedded batteries, individual batteries found in battery packs).

Government and Devolved Administrations' Response

The requirement to mark batteries with a 'crossed out wheeled bin' symbol is similar to, and an extension of the requirements of the Waste Electrical and Electronic Equipment (WEEE) Regulations to help end users identify waste products that should be separated out for collection, treatment and recycling rather than being put in the bin. The chemistry symbol labelling requirements are similar to the requirements of the previous Batteries Directive (EEC/91/157), but extended to cover all battery chemistries, and not just those that contain more than specified levels of cadmium and mercury.

The Government notes that the majority of respondents' concerns about the labelling requirements centred predominantly on capacity labelling. We acknowledge this concern and continue to press the Commission on this matter. The Commission has now appointed Bio Intelligence to develop the platform on which a capacity labelling system will be based. The UK awaits the Commission's proposals for establishing a portable and automotive battery capacity labelling regime across the EU.

QUESTION 4: *Do you think the proposed enforcement regime will be effective and is proportionate?*

This question follows a discussion on the proposed enforcement regime relating to the Internal Market provisions. The proposals are based on the need for producers to submit technical documentation in relation to the material content of batteries to the enforcement body if requested to do so. The Government is not proposing a defence of 'due diligence'.

The enforcement body may make product purchases to test compliance. Further work may then be necessary to identify the 'person' placing the battery on the market. A set of proposed offences is set out in the consultation paper.

Overview of Consultation Responses to this Question:

58 Stakeholders provided comments in response to this issue.

- 27 stakeholders broadly agreed and supported the proposed approach although many provide supplementary comments.
- 16 stakeholders mentioned issues associated with the complexity of the battery supply chain including concerns about the level of control the producer will have on the original battery manufacturer/supplier. Some called for the need or potential legal requirement for technical documentation to be passed down the supplier chain.
- 12 specifically called for the need to allow 'due diligence' in ensuring compliance, most of these also commented on the complexity of the supply chain (above). Nine stakeholders specifically called for a 'notice of compliance' period.
- 13 stakeholders called for a proportionate or risk-based approach to enforcement to ensuring enforcement powers are used in a targeted way. Examples and suggestions included:
 - addressing free-riders before registered producers;
 - proportionate action for small companies with less resources available; and
 - focusing on issues of real concern (i.e. not upon labels which are slightly too small etc).
- 13 stakeholders mentioned the importance of ensuring adequate resources are allocated for enforcement activities.

Government and Devolved Administrations' Response

The Government and Devolved Administrations appreciated the responses received from stakeholders relating to proposals for enforcing the Batteries Directive in the UK. The Government considered the responses generally to support the Government's approach. It is sympathetic to the views that were raised relating to the complexity of the supply chain and the level of control that persons placing batteries on the market will have on obtaining information or confirmation of compliance from their suppliers. The Government accepts the argument put forward by respondents requesting for a due diligence defence to be permitted. This is a similar issue faced by persons placing electrical and electronic equipment on the market and RoHS compliance.

The Government supported the call of respondents for a risk-based approach to enforcement. It is the intention of the Government to put in place an enforcement regime that is risk-based, proportionate and targeted and thus reflects and embeds the principles established by the Hampton Review.

QUESTION 5: *What are your views on the practical implications of this requirement and whether there is indeed the potential for ‘free movement of goods’ problems?*

This question relates to Article 11 (Removal of waste batteries and accumulators) of the Directive which addressed the need for manufacturers to design appliances so that batteries can be readily removed. The requirement can be interpreted in different ways and given the concern that this could lead to significant Internal Market problems, the Commission is issuing guidance on the issue. The consultation paper includes the draft guidance issued in March 2007.

Overview of Consultation Responses to this Question:

64 stakeholders responded to this question.

When answering the question of ‘free movement of goods’ problem, the following views were expressed.

- 18 stakeholders were of the opinion that there is the potential for ‘free movement of goods’ problems.
- 6 stakeholders stated that they do not think there is the potential for ‘free movement of goods’ problems.
- 10 stakeholders mentioned their support for the Draft Commission Guidance.
- 2 stakeholders stated that they had no problems or concerns with the Article.

In addition, several other issues were raised and these are summarised below.

- 11 stakeholders stated that manufacturer discretion should be used for deciding whether batteries should be removed by consumers (i.e. in the case of battery lifetime being shorter than product lifetime), or for deciding whether products should be re-designed for easy battery removal.
- 12 stakeholders discussed battery removal by end-users, and within this, health and safety concerns were at the root of most concerns mentioned.
- 10 stakeholders expressed concerns relating to batteries that are not readily removable from appliances.
- 9 different sets of stakeholders each mentioned the following issues: time; the need for guidance; and the potential for conflict in interpretation and implementation between countries.

- 7 stakeholders commented on the possibility of practical problems when removing batteries and 7 stakeholders also mentioned financial concerns.
- 6 stakeholders request clarity regarding exemptions (or suggested exemptions).
- A range of other points were also raised by 20 stakeholders. These varied widely and included the following: the need for a non-prescriptive approach; links with the WEEE and ELV Directives; small business difficulties with re-design of products; and the importance of easily removable batteries for waste operators.

Government and Devolved Administrations' Response

The Government proposes to adopt the Article 11 "*removal of waste batteries and accumulators*" production design requirements as an Internal Market measure for UK Regulations given the obvious Internal Market implications of this provision. Member States are still waiting, however, for the Commission to issue guidance (following the Commission's draft guidance which was published in the consultation document), on the interpretation and application of this measure.

The Government recognises the potential risk of free movement of goods problems arising should there be differences in the way Member States interpret and implement this Article across the EU. The Government will continue to raise this issue as a concern with the Commission.

As proposed in the consultation document, the Government intends to address this requirement by 'copying-out' the requirements of the Directive into UK Regulations, supplementing this with further information in guidance notes. These guidance notes will need to be developed on the basis of the European Commission's own guidance on this requirement.

Next Steps

The Government and Devolved Administrations are pleased in general terms that this consultation exercise has confirmed the overall approach that it has taken on proposals for implementing the Internal Market provisions of the Directive.

The Government will now come forward with draft Regulations that will implement the Internal Market provisions of the Batteries Directive into UK law. These draft Regulations will be consulted on for a period of six weeks and will include provisions that will:

- set prohibitions on the levels of mercury and cadmium that can be used in the production of new batteries placed on the market as of 26 September 2008 subject to the requirements of the Directive;
- set out the labelling requirements to be displayed on all batteries subject to the requirements of the Directive from 26 September 2008;
- transpose the Article 6 “*placing on the market*” provision of the Directive ensuring that anyone placing new batteries on the market as of 26 September 2008 must comply with the prohibitions and labelling requirements set out above:
 - whilst new batteries placed on the market before this coming into force date can continue to be legally sold (similar to that of the established requirements of the RoHS Regulations), any persons found placing non compliant batteries on the market after this coming into force date may be prohibited from doing so or required to remove infringing batteries from the market;
- set out the product design requirements of the Directive for the ‘removal of waste batteries and accumulators’ from appliances that use batteries; and
- set out the UK enforcement regime – powers of the Enforcement Authority (to be appointed by the Secretary of State), penalties and requirements for any persons placing new batteries on the market to comply with the Internal Market requirements. Following the publication of draft Regulations and consultation document that transposes the Internal Market provisions of the Directive, the Government proposes to appoint an enforcement authority.

Annex A: List of Respondents

Adams Consultancy Services

Applied Acoustic Engineering Limited

arc21

Association of Convenience Stores

Association of Manufacturers of Domestic Appliances

Automobile Association

Belfast City Council

Boots

Bosch

British Battery Manufacturers Association

British Electrotechnical & Allied Manufacturers Association

British Marine Federation

British Metals Recycling Association

British Retail Consortium

British Security Industry Association

British Standards Institute

British Toy & Hobby Association

Bryan Norris

Budget Pack

Campaign for Real Recycling

Charter Broadcast Ltd

Chartered Institute of Waste Management

Commercial Group

Co-operative Group
Copeland Borough Council
Covidien
Devon County Council
DHL
Donarbon Ltd
DSG International plc
Eco-Bat Technologies Ltd
Eion MacDonald
Energys
Engelhard Sales Ltd
Enva Northern Ireland Ltd
Environment & Heritage Service NI
Environmental Services Association
ERP UK Ltd
Essex County Council
European Battery Recycling Association
European Power Tool Association
Federation of Small Businesses
G&P Batteries Ltd
GP Batteries
Greater London Authority
Greater Manchester Waste Disposal Authority
H J Enthoven & Sons

Halfords
Hertford Eco
Hewlett-Packard Ltd
Home Retail Group plc
ICOM inc
Independent Battery Distributors Association
Industry Council for Electronic Equipment Recycling
Institute of Environmental Management & Assessment
Intellect
Kirby Muxloe
Laboratory of the Government Chemist
Lancashire County Council
Lead Development Association International
Leaf Environmental Limited
Leeds County Council
Leicestershire County Council
Lighting Industry Federation Ltd
Local Authority Recycling Advisory Committee
Local Government Association
Loddon Holdings
London Borough of Sutton
Lovells
Merseyside Waste Disposal Authority
Moltech Power Systems

Motor Vehicle Dismantlers Association
National Association of Waste Disposal Officers
National Household Hazardous Waste Forum
Norfolk Against Incineration and Landfill
Norfolk County Council
Novelis Recycling
O2
Outpace Ltd
Palm Europe Ltd
Panasonic Industrial Europe GmbH (UK Branch)
Panasonic UK
Philips Electronics UK Ltd
Premier Farnell
Procter & Gamble
QinetiQ
Recharge
REPIC Ltd
Retail Motor Industry Federation
Risco Group
Royal National Institute for the Deaf
Scottish Environmental Protection Agency
Scottish Grocers Federation
Silver Lining Industries Ltd
Society of Motor Manufacturers and Traders Ltd

Sony

Southern Waste Management Partnership

St Edmundsbury Borough Council

Sustainable Energy Action Ltd

Sysmex Europe GMBH

t2e

Tesco

Toshiba Information Systems UK

Tricia Marcouse

Valpak

Vehicle Certification Agency

Viridor

Vodafone

Waste Resources Action Programme

West Sussex County Council

WH Smith

Wiltshire County Council

Woking Borough Council

URN 08/913

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Better Regulation Executive's web site, address: <http://bre.berr.gov.uk/regulation/consultation/code/>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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