

Batteries Directive: EU powers up for war on improper disposal



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THE EU BATTERIES AND ACCUMULATORS DIRECTIVE (2006/66/EC) (the Batteries Directive) came into force on 26 September 2008 and will have cost and compliance implications for those who manufacture, import, distribute, sell or recycle batteries. The Batteries Directive is intended to help reduce the high proportion of batteries that are ending up in landfills in the EU and continues the push towards producer responsibility for items that contribute to waste.

In addition to the cost and compliance implications, batteries that do not meet the Batteries Directive requirements are no longer to be placed on the market. Furthermore, although non-compliant batteries placed on the market prior to 26 September do not have to be withdrawn, those placed on the market after that date will need to be removed.

This briefing looks at the implications of the Batteries Directive for the collection and recycling of batteries, the key prohibition and labelling requirements, interactions with other producer responsibility directives and the actions that should be taken now by those who deal with batteries.

WHY AND HOW IS THE BATTERIES DIRECTIVE BEING INTRODUCED?

The previous EC Directive on batteries (EC Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances) has failed to deliver suitable levels of, or any consistent framework for, recycling batteries throughout the EU. Close to half of the portable batteries sold in the EU in 2002 went to landfills, while in the UK this proportion is significantly higher, with only 0.5% of portable batteries being recycled. The Batteries Directive aims to increase the collection and recycling rates so that each member state is diverting 25% of portable batteries from landfills by 2012 and 45% by 2016.

The Batteries Directive is being implemented in UK law through two sets of regulations. The first set, the Batteries and Accumulators (Placing on the Market) Regulations 2008, came into force on 26 September 2008. These regulations address the prohibition and labelling requirements of the Batteries Directive, while the more contentious aspects relating to the collection and recycling schemes (including how these will be financed) will be in the second set of regulations. The draft of the second set of regulations is due out this autumn and another round of consultation will follow their release.

WHICH BATTERIES WILL BE AFFECTED?

The Batteries Directive applies to all batteries, with different obligations applying depending on the

category that a battery falls within (industrial, automotive or portable). The Directive also applies to appliances in which a battery is or may be placed.

The categories of batteries are:

- Portable batteries: all sealed batteries and accumulators (rechargeable batteries) that 'an average person could carry by hand without difficulty'. Examples of such batteries are: single cell batteries such as AA and AAA batteries, batteries for laptops, MP3 players and mobile phones.
- Industrial batteries: those designed exclusively for industrial or professional use or used in any type of electric vehicle.
- Automotive batteries: those used for automotive starting, lighting or ignition power.

COLLECTIONS AND RECYCLING

A key impact of the Batteries Directive (and, once implemented, of the second set of UK regulations) will be that producers, and to some extent distributors, are to be financially responsible for the collection, recycling and treatment of batteries, along with education programmes relating to those schemes. Distributors of portable batteries will be required to take back waste batteries at no charge.

Different methods of battery collection have been tested through pilot programmes in the UK, including kerbside recycling, in-store drop-off boxes and community drop-off trials. These programmes have shown that to achieve minimum collection rates the collection schemes to be put in place for portable batteries will need to involve a range of collection methods.

Once collection schemes are established, the organisers of the schemes will have until 26 September 2009 to show that they are using the best available technology to treat and recycle all batteries collected. The type of evidence that will be required to show that this standard is being met has been a point of discussion between the government and stakeholders. Further details on these requirements will be contained within the draft of the second set of regulations.

The disposal in landfills or destruction by incineration of industrial and automotive batteries is prohibited under the Batteries Directive (this will also be covered in the second set of UK regulations), meaning all such batteries need to be collected and recycled. In addition, producers of automotive or industrial batteries (or third parties acting on their behalf) will

not be able to refuse to take back batteries from end users.

WHO IS A PRODUCER?

As noted above, the Batteries Directive places obligations on 'producers' to finance collection and recycling schemes and related public information campaigns. In addition, all producers are to be registered, with registration to have the same procedural requirements in each member state. The definition of a 'producer' under the Batteries Directive is wide and captures not only those who create batteries but may also capture some importers, retailers and other sellers of batteries, placing similar cost and compliance implications on them.

A 'producer' under the Batteries Directive includes any person in a member state who:

'... 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'.

Examples of producers include:

- battery manufacturers;
- importers of batteries from outside of a member state;
- retailers of batteries that purchase batteries outside of a member state to sell within a member state;
- equipment manufacturers who buy batteries outside of a member state and incorporate them into equipment that is sold in a member state;
- subsidiary companies that import batteries from non-EU member state parent companies; and
- distance-based sellers based inside or outside the EU selling batteries to users in a different EU member state.

Any person who qualifies as a producer will need to obtain information from their suppliers about the

batteries they are dealing with to ensure that they meet the requirements of the Batteries Directive.

Distributors that do not qualify as producers will still have obligations under the Batteries Directive to take back waste portable batteries at no charge to end users.

PROHIBITIONS AND LABELLING REQUIREMENTS

The key prohibitions and labelling requirements of the Batteries Directive have been transposed into the first set of Regulations and state that:

- Batteries cannot contain more than 0.0005% of mercury by weight (or 2% for button cell batteries) and no portable battery can contain more than 0.002% of cadmium by weight.
- All batteries will need to be labelled with the crossed-out wheelee bin symbol (the same symbol as required under the Waste Electrical and Electronic Equipment Regulations 2008 (WEEE)).
- Chemical symbol labelling is required for certain batteries with specified levels of mercury, cadmium or lead.
- There is a prohibition on placing on the market any appliance into which a battery can be or is incorporated unless the appliance is designed in a way that the battery can be removed from that appliance and there are instructions showing how the battery can be removed safely.
- There must be capacity labelling, which is to be introduced by 26 September 2009. The system for such labelling is still to be voted on by member states.

The few exceptions to the prohibitions are:

- The prohibition on the percentage of cadmium to be contained in portable batteries does not apply to emergency and alarm systems, medical equipment or power tools.
- The restrictions around the removal of batteries incorporated into appliances do not apply where for safety, performance, medical or data-integrity reasons a permanent connection between the appliance and battery is required.

As mentioned above, from 26 September 2008, any batteries that do not meet these requirements are not to be placed on the market. Batteries that were placed on the market prior to 26 September are not required to be withdrawn, however, those that have been placed on the market since 26 September will

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need to be removed if they do not meet the requirements of the Batteries Directive.

INTERACTION WITH OTHER DIRECTIVES

There are important interactions between the Batteries Directive, the End-of-Life Vehicles (ELV) Regulations 2003 and WEEE. In relation to WEEE, there will be certain electronic devices where collection will need to be made in accordance with WEEE and then the batteries removed and recycled in accordance with the Batteries Directive. The ELV applies notwithstanding the Batteries Directive, meaning that the higher levels of mercury allowed under the ELV will apply to those batteries covered by those regulations.

As both WEEE and the ELV require producer responsibility, any double charging of producers in relation to automotive batteries covered by the ELV, or to appliance producers covered under WEEE (that then place a battery inside the appliance creating an obligation as a producer under the Batteries Directive), will need to be avoided by member states when collection and recycling schemes are established. Further guidance on the overlap between the Batteries Directive, the ELV and WEEE is expected with the second set of regulations.

ENFORCEMENT

Methods of enforcement if an infringement of the Batteries Directive occurs have been outlined in the first set of UK regulations. There are several steps that the enforcement authority can take, starting with service of a compliance notice. If no action is taken within a specified timeframe then an enforcement notice may be served. Failure to comply with an enforcement notice within a 21-day period is also an offence.

Possible penalties under the regulations differ depending on the offence but include:

- summary conviction and a fine not exceeding the current statutory maximum (currently £5,000);
- an unlimited fine in the Crown Court; or
- a fine not exceeding level 5 on the standard scale (currently £5,000).

The court can also order an offender to remedy the breach, which may include, for example, removing the relevant batteries from the market. If an offence is committed by a body corporate then any officer who consented to the breach, or whose negligence caused the breach, can be guilty of the offence as well as the body corporate.

ACTION TO BE TAKEN

The prohibition and labelling provisions of the Batteries Directive are already in force through the first set of regulations, and there are several important key provisions, especially for those who are 'producers', that will be determined in the second set of regulations. Key dates and actions for those involved in the manufacture, importation, distribution, sale or recycling of batteries are as follows:

- Those who are deemed 'producers' under the Batteries Directive will need to ensure that the battery content and labelling requirements are met for all batteries that are placed onto the market after 26 September 2008.
- Distributors will need to ensure that the batteries they are dealing with that have been placed on the market after 26 September 2008 are compliant with the Batteries Directive. Those batteries that are not compliant will need to be withdrawn from the market.
- 'Producers' will need to follow the progress of the second set of regulations to ascertain the financial and compliance impact of the collection schemes required by those regulations. There will be a consultation period once the draft regulations are released.
- Depending on the second set of regulations the collection schemes (and thus producers and those involved in the recycling of batteries) may need to show that interim collection targets are being met in 2010 and 2011.
- By 2011 the collection schemes will be required to provide evidence showing that the batteries collected are meeting recycling efficiencies.
- Collection schemes will need to show 25% of portable batteries recycled by 2012 and 45% by 2016.

CONCLUSION

The Batteries Directive is aimed at increasing levels of, and creating consistent systems for, battery recycling in the EU. This Directive will have significant cost and compliance implications for those who manufacture, import, distribute, sell or recycle batteries.

As of 26 September 2008 the Batteries Directive has been partially implemented into UK law through the first of two sets of regulations. This first set of regulations has established certain content and labelling requirements for batteries and any

non-compliant batteries placed on the market after 26 September 2008 need to be removed. The draft of the second set of regulations is keenly awaited and will be of key importance for those who deal with batteries as it will contain the information relating to the collection and recycling schemes to be introduced.

A person or company that is a 'producer', and to some extent those that are distributors, will be financially responsible for the collection, recycling, and treatment of batteries, along with education programmes relating to those schemes.

Furthermore, distributors of portable batteries and producers of automotive or industrial batteries (or third parties acting on their behalf) will be required to take back waste batteries from end users. As explained in this article, these new producer responsibility obligations will introduce further cost pressures on businesses that are already under significant financial pressures.

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