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

Complimentary Advice fo Clients

September 2008

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

Introduction

These Regulations come into force on **26 September 2008** in the UK and apply to all new primary (single use) batteries and accumulators (rechargeable batteries) and appliances that contain batteries or accumulators, regardless of their shape, volume, weight, material composition or use.

They bring into UK law the *Internal Market provisions of EU Directive on Batteries and Accumulators and Waste Batteries and Accumulators (2006/6/EC)*, (the Directive), which repealed the *Batteries Directive 91/157/EEC* and repeal the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994 and amendments in both Great Britain and Northern Ireland. They do not replace any other existing legislation affecting batteries/accumulators or hazardous substances contained in them, (e.g health protection, transportation, hazardous waste, End of Life Vehicles Directive (ELV) or WEEE), which are still in force and must be complied with.

There are separate regulations dealing with other aspects of the Directive, specifically the collection and disposal of batteries and details of these will be the subject of a further briefing once they are confirmed. Details of the take back scheme (similar to WEEE) are expected to be released in 2009.

The UK enforcing authority is the Department for Business, Enterprise and Regulatory Reform (BERR).

The term battery or batteries used in this briefing refers to all batteries and accumulators covered under these regulations.

The key requirements can be broken into four areas

1. Materials Prohibitions (Regulation 4)

This requirement refers to Article 4 of the Directive and prohibits the placing on the market of any battery:

- 1.1. containing more than 0.0005% of mercury by weight except for button cell batteries, which may contain not more than 2% mercury by weight and/or
- 1.2. any portable battery containing more than 0.002% by weight of cadmium. There is an exception for portable batteries intended for use in emergency and alarm systems, medical equipment or cordless power tools.

BERR advise that the prohibitions do not apply to batteries falling under ELV as those regulations allow for a greater threshold than those above. They further advise that automotive batteries do not contain mercury or cadmium and that few portable batteries are used in vehicles.

2. Labelling to aid recycling (Regulations 5 & 6)

Regulation 5 (crossed out wheelie bin requirement) and 6 (cadmium, mercury and lead labelling requirements) refer to Article 21 of the Directive. These put a responsibility on the person placing batteries on the market to:

- 1.3. mark batteries (or their packs where appropriate) with the crossed out wheelie bin symbol (if in an appliance, only applicable if the batteries can be removed by the consumer) and
- 1.4. ensure that if the exceptions in 1.1 or 1.2 exceed the general de minimus they are marked with the appropriate chemical symbol (i.e button cells with >0.0005% of mercury by weight must be marked Hg.) even when the battery cannot be removed by the consumer.

If the batteries cannot be removed by the consumer and the appliance they are in is already marked under the WEEE scheme, then the batteries do not need the crossed out wheelie bin symbol. The symbol is not required on button cells.

At all times, the symbol must be visible, legible and indelible and the Regulations specify minimum sizes for the symbol as at least 3% of the area of the largest side of the battery or pack to a maximum of 5 x 5 cms. For cylindrical cells, the symbol must cover a minimum of 1.5% of the surface area, subject a maximum of 5 x 5 cms. If the battery is so small that the symbol would be smaller than 0.5 x 0.5cms, then the symbol may be placed on the packaging and must be at least 1 x 1 cm.

If a chemical symbol is required, it must be placed under the crossed out wheelie bin symbol and be at least ¼ the size of the crossed out wheelie bin symbol. It's purpose is to indicate the presence of a restricted material, not the amount. It too must be visible, legible and indelible.

Individual cells within a battery pack do not need to be marked with either symbol.

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In addition to the recycling labels, there is a requirement for the capacity of portable and automotive batteries to be indicated visibly, legibly and indelibly, but this will not be enforced until 26 September 2009 and detailed rules should be available from 26 March 2009.

3. Removal of batteries (Regulation 7).

Regulation 7 (Appliances into which batteries are or may be incorporated) deals with Article 11 of the Directive and ensures that, from 26 September 2008

- 1.5. appliances cannot be placed on the market that have been designed in such a way that the waste battery cannot easily be removed from it; and
- 1.6. appliances must be accompanied by instructions showing how the battery can be removed safely and, if appropriate, the type of battery used. It is not sufficient to provide instructions on, say, a website. They must be with each appliance when it is placed on the market.

4.1 and 4.2 do not apply where, for safety, performance, medical or data integrity reasons, continuity of power must be assured and a permanent connection maintained between the appliance and the battery. Where specific products (i.e. toys) have their own legislation covering the incorporation/removal of batteries, that legislation must still be complied with (in addition to these regulations) to ensure that no unsafe products are placed on the market. There is scope for "clear and convincing health, safety or hygiene grounds" to be demonstrated as a reason for non-compliance with Regulation 7.

BERR guidance indicates that there is no differentiation between whether batteries are meant to be removed by end user consumers or professionals only, other than a recommendation that the accompanying instructions should specify this. BERR also offer guidance that batteries should be removable during the life of the appliance if the battery life is shorter than the appliance life, but at latest at the end of appliance life. This is to encourage recycling and discourage short span products designed to be thrown away when the battery dies.

4. Placing on the market

Regulations 8–22 cover Article 6 of the Directive and ensure that only batteries meeting the requirements in Regulations 4-6 can be placed on the market from 26 September 2008. Batteries, or appliances containing batteries, that have already been first placed on the market before this date can still be traded legally provided they are in compliance with the requirements set out in the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994, even where they do not comply with these new Regulations. BERR emphasise that only batteries placed on the market on or after 26 September 2008 that do not comply with the new Regulations will be prohibited from sale or required to be withdrawn from the market. We believe this to mean that any extant stocks you hold, purchased before 26 September 2008 can legally be traded and any stocks you purchase after that date, provided they were first placed on the EU market before that date, can also be traded.

5. Compliance

Whilst the Regulations require all persons placing batteries, or appliances containing batteries, to comply there is not yet any prescribed method for demonstrating compliance. A defence of "due diligence" is permissible with regards to Regulations 4 and 6, but not for the other Regulations. Regulation 21 provides for the "liability of persons other than the principal offender", opening the way for both corporate and individual prosecutions. 6 offences are introduced:

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

Further details of the Regulations are available from the following websites:

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

<http://www.netregs.gov.uk/netregs/legislation/380525/389181/>

If you would like assistance to qualify and quantify the impact of these Regulations on your business, please contact John Williams on 01491 872837 or email jwilliams_assoc@btinternet.com.