



Department
for Business
Innovation & Skills

**BATTERIES AND ACCUMULATORS
(PLACING ON THE MARKET)
REGULATIONS 2008**

Government Guidance Notes

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About this Guidance

This guidance is intended to help those placing onto the UK market batteries and accumulators, or products that contain or incorporate batteries and accumulators, to understand the application of the Batteries and Accumulators (Placing on the Market) Regulations 2008. These Regulations affect the whole of the UK.

2. The guidance aims to explain the Regulations as interpreted by the Department for Business, Innovation and Skills (BIS).
3. The guidance is not intended to cover every situation and of course it may be necessary to consider the relevant legislation carefully to see how it applies in your circumstances. However, if you do follow the guidance it will help you to comply with the law and reduce the impact that waste batteries have on the environment.
4. The Regulations may be revised from time to time, so businesses that might be affected should take care to keep themselves informed of changes. Such changes will normally be publicised on the Gov.UK website. Details of contacts for further information are given at the end of the document.

The law in brief

5. The Batteries and Accumulators (Placing on the Market) Regulations 2008 (hereafter referred to as “the Regulations”) implement in the UK the “internal market” provisions (sometimes referred to as “single market” provisions) of the European Parliament and Council Directive on Batteries and Accumulators and Waste Batteries and Accumulators 2006/66/EC (hereafter “the Directive”).
6. These Regulations specifically set out the technical requirements that any persons wishing to place on the market new primary (single use) batteries and accumulators (more commonly known as secondary or rechargeable batteries), and products that contain batteries and accumulators, must comply with.
7. These Regulations repeal the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994 (as amended) in Great Britain and the Batteries and Accumulators (Containing Dangerous Substances) Regulations (Northern Ireland) 1995 (as amended), which introduced a limited range of environmental and product design requirements, including restrictions on the use of mercury and cadmium in batteries and the design of products that they power.
8. These Regulations do not affect the application of other existing legal requirements for batteries such as those regarding safety, the protection of health, existing transport requirements or provisions on hazardous waste. This means that existing legislation that affects batteries, products containing or incorporating batteries, and relevant hazardous substances, must also be complied with.

Scope of the Regulations

9. The Regulations apply to all types of batteries, regardless of their shape, volume, weight, material composition or use, and whether or not they are incorporated into products, although there are some exemptions.
10. The Regulations do not apply to either:
- (i) batteries used in equipment connected with the protection of an European Economic Area (EEA) country's essential security interests, such as arms, munitions and war material, and intended for specifically military purposes; or
 - (ii) batteries used in equipment designed to be sent into space.
11. These exemptions are related to the actual **use** of the particular batteries concerned, rather than their design though, in many cases the batteries may be designed specifically for specialist use.

Enforcement Authority

12. Responsibility for enforcement of these Regulations falls to the Secretary of State for Business Innovation and Skills. The Secretary of State has appointed the National Measurement Office (NMO), an executive agency of the Department to enforce these Regulations.

Entry into force

13. These Regulations came into force on 26 September 2008.

Definitions

14. A detailed list of definitions can be found in the Batteries Directive and the Batteries Regulations themselves but if you require further information please refer to the Government Guidance on The Waste Batteries and Accumulators Regulations 2009.

15. Guidance on when a battery or appliance **is deemed to have been placed on the market** may be found in the European Commission's "*Guide to the implementation of directives based on the New Approach and the Global Approach*"¹ (commonly referred to as the "Blue Book" or "Blue Guide").

¹ The *Guide to the implementation of directives based on the New Approach and the Global Approach* can be downloaded from <http://ec.europa.eu/enterprise/newapproach/legislation/guide/index.htm>

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

Key Requirements

Materials Prohibitions (Regulation 4)

16. This Regulation transposes the prohibitions set out in Article 4 of the Directive. The intention of Regulation 4 (prohibitions on mercury and cadmium), is to prohibit any persons from placing:

- (i) any battery on the market that contains more than 0.0005% of mercury by weight; but this **does not apply** to button cells which are permitted a mercury content of no more than 2% by weight; and
- (ii) any portable battery that contains more than 0.002% of cadmium by weight, but this **does not apply** to portable batteries intended for use in emergency and alarm systems, including emergency lighting; medical equipment; or cordless power tools.²

17. These material prohibitions do not apply to a battery which is a material or a component of a vehicle within the scope of the End of Life Vehicles Directive (2000/53/EC). Our interpretation of “without prejudice” in that Regulation is that batteries used in vehicles may exceed the limits set down in the Batteries Directive.

18. 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 Batteries Directive.

19. This should not present practical difficulties, since we believe that relatively few portable batteries are used in vehicles, and automotive batteries do not contain mercury or cadmium.

² A ban on Cadmium in portable batteries and accumulators used in cordless power tools will apply from the 31 December 2016, ending the current exemption. From this date the use of portable Nickel-Cadmium (NiCd) batteries will only be allowed in emergency and alarm systems including emergency lighting and medical equipment. A ban on Mercury in button cells will also be introduced as part of the amended Batteries and Accumulators Directive in 2015.

Existing batteries and accumulators, can continue to be sold until stocks have been exhausted.

Labelling to Aid Recycling (Regulations 5 and 6)

20. Regulations 5 (crossed out wheeled bin labelling requirement) and 6 (cadmium, mercury and lead labelling requirements) transpose certain of the requirements set out in Article 21 (Labelling) of the Directive. They are designed to ensure that any persons placing batteries on the market:

1. shall mark any batteries, accumulators or battery packs, or their packaging where appropriate, with the “crossed out wheeled bin symbol” as laid down in Schedule 1 of the Regulations; and
2. that exceed the prohibitions set out in Regulation 6, where permitted, must ensure that they are marked with the appropriate chemical symbol or symbols:
 - a any button cell containing more than 0.0005% of mercury by weight is marked with the chemical symbol Hg;
 - b any industrial battery or button cell, or portable battery to be used in an exempted application, containing more than 0.002% of cadmium by weight is marked with the chemical symbol Cd; and
 - c any battery or button cell containing more than 0.004% of lead by weight is marked with the chemical symbol Pb.

21. The main labelling provisions are similar to those set down in the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994, but they now apply to all batteries, rather than being confined to those cells 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 benefiting from the relevant exemptions.

Marking Batteries with the Crossed Out Wheeled Bin Symbol

22. The Regulations require that the crossed out wheeled bin symbol covers at least 3% of the area of the largest side of the battery or battery pack to a maximum size of 5cm x 5cm.

23. In the case of cylindrical cells – for example an AA or AAA battery – the crossed out wheeled bin symbol must cover at least 1.5% of the surface area of the battery again to a maximum size of 5cm x 5cm.

24. Where the size of the battery or battery pack is such that the crossed out wheeled bin symbol would be smaller than 0.5cm x 0.5cm, the battery or battery pack does not need to be marked. Instead, a crossed out wheeled bin symbol measuring at least 1cm x 1cm should be printed on the packaging.

25. At all times the crossed out wheeled bin symbol shall be indicated visibly, legibly and indelibly. It is not a requirement that this symbol be used on button cells.

Marking Batteries with the Appropriate Chemical Symbol

26. The Regulations require that the appropriate chemical symbol be printed on all affected batteries and battery packs beneath the crossed out wheeled bin symbol. The chemical symbol is intended to show that one of the restricted materials is present in the battery, not the amount of that material. The chemical symbol must be of an area of at least one quarter the size of the crossed out wheeled bin symbol.

27. At all times the chemical symbol must be indicated visibly, legibly and indelibly.

Removal of Waste Batteries – Appliances into which Batteries are or may be Incorporated (Regulation 7)

28. Regulation 7 (Appliances into which batteries are or may be incorporated) transposes the requirements set out in Article 11 (Removal of waste batteries and accumulators) of the Directive. The intention of this Regulation is to ensure that:

- no person shall place on the market any appliance designed in such a way that a waste battery cannot be readily removed from it; and
- shall ensure that that appliance into which a battery is or may be incorporated with a battery is accompanied by instructions showing how the battery can be removed safely and, where appropriate, informing the end-user of the type of battery incorporated.
- The requirements of (i) and (ii) above **shall not apply** where for safety, performance, medical or data integrity reasons **continuity of power** supply is necessary and a permanent connection is required between the appliance and the battery.

29. Article 11 of the Directive *requires 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’*.³

³ As of 30 December 2013 under the Amended Batteries Directive 2013, Article 11 was replaced by the following:

‘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. Where they cannot be readily removed by the end-user, Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed by qualified professionals that are independent of the manufacturer. Appliances in which batteries and accumulators are incorporated shall be accompanied by instructions on how those batteries and accumulators can be safely removed by either the end-user or by independent qualified professionals. Where appropriate, the instructions shall also inform the end-user of the types of battery or accumulator incorporated into the appliance.

30. Exemptions to these requirements are allowed for 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.

31. Where there is more specific legislation applying to specific products (e.g. toys) on how the batteries should be incorporated/removed, any persons placing such products on the market should ensure that those products comply with those specific rules. Unsafe products must not be placed on the market. The Government also recognises that there will be occasions when specific rules do not exist, but there are clear and convincing health, safety or hygiene grounds for product not to comply with the removability requirement.

Compliance

32. Any persons placing on the market batteries or products that contain or incorporate batteries must comply with these Regulations.

33. There is no prescribed method to demonstrate compliance. However, any persons placing batteries on the market may wish to consider the role that both technical declarations and technical analysis could play.

Materials Declarations

34. Any persons placing batteries on the market could, for example, obtain an assurance from their suppliers that the products supplied do not contain more than the permitted level of the restricted substances, except where the presence of those substances comes within the scope of an exemption.

Materials Analysis

35. In addition, any persons may wish to undertake (or ask a third party to undertake) their own analysis of the materials that they use in the batteries being placed on the market. This action may be undertaken either to verify supplier declarations or to establish the presence or otherwise of the restricted substances in those cases where no declaration is available. It may also be undertaken if there are doubts over the reliability of any declarations.

36. Any person placing batteries or products that contain batteries on the market, or third parties, may employ any suitable analytical technique in order to establish that their batteries comply with the permitted levels of restricted substances. The criteria for analysis will depend on the quantity of product put onto the market (less for small producers than for large producers), the relationship with suppliers, the risk of a restricted substance being present, and the potential impact of that substance on the environment. When using such techniques, it must be ensured that any limitations of the analytical technique be taken into account.

Defence of Due Diligence

37. The defence of 'due diligence' ([Regulation 20](#)) is available where a person can show he took all reasonable steps and exercised all due diligence to avoid committing an offence. This may include reference to an act or default of, or reliance on information given by, a third party, in which case it must be accompanied by such information identifying the third party, as is information in the possession of a defendant.

38. However, the defence of due diligence is limited to a contravention of [Regulation 4](#) 'Prohibitions on mercury and cadmium', and [Regulation 6](#) 'Mercury, cadmium and lead labelling requirement'. The Government does not think a case has been made to allow due diligence as an acceptable defence for failing to comply with the "crossed out wheeled bin symbol" labelling requirement, or failure to comply with the "removability of waste batteries" from appliances requirement.

39. The Regulations also provide for the 'liability of persons other than the principal offender' ([Regulation 21](#)), including a provision that where a company or other body corporate commits an offence, those concerned in its management and responsible (consciously or by negligence) for the commission of the offence, may also be prosecuted as individuals.

UK Enforcement Regime

40. The following section of the Guidance sets down a summary of the enforcement powers laid down in Part 3 of the Regulations, which also revoke earlier batteries Regulations. Considering the similarities of the requirements of the Regulations 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 with enforcing the internal market provisions of RoHS.

Enforcement Authority

41. It is the duty of the Secretary of State for BIS to enforce the Regulations. The Secretary of State has appointed the National Measurement Office (NMO), an executive agency of the Department to enforce these Regulations on his behalf.

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

- (iii) **Tests on batteries and appliances (Regulation 9)** – For the purpose of ascertaining whether the materials prohibitions and labelling requirements have been met, batteries or appliances purchased or obtained through legal means may be submitted for testing for compliance. This Regulation also provides interested parties with a right of access to tested batteries and appliances.
- (iv) **Power to require production of documents and information (Regulation 10)** – Determining that non-compliant batteries have been placed on the market and identifying the responsible person of the infringement 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 others within the supply chain to identify the responsible person.
- (v) **Further powers to obtain evidence & powers of entry (Regulations 11 and 12)** – A duly authorised enforcement officer may enter at any reasonable time any non-domestic premises for the purposes of ascertaining whether an infringement of the Regulations has occurred. That officer may inspect batteries, examine production procedures, require anyone connected with or employed by the business to provide records relating to it, take copies of such records or seize and detain infringing batteries or records.

Compliance and Enforcement Notices

43. Regulation 13 enables the enforcement authority to serve a “compliance notice” on persons where there are reasonable grounds to suspect that an infringement of the obligations has occurred. The notice will detail the reasons for the suspected contravention and provide them with an opportunity either to demonstrate that their products are compliant or to bring them into compliance within the period specified in the notice.

44. Where that person’s response (or lack of response) to a compliance notice indicates that they are continuing to ignore relevant obligations, the next step may be to proceed with a prosecution. However, where a person has failed to comply with the legal requirements of the Regulations, the enforcement authority may serve an “enforcement notice” provided for in Regulation 14 to secure compliance or to ensure that infringing goods which are already on the market are removed from circulation (withdrawn from the market), rather than initiate a prosecution.

45. 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 – between issuing a compliance notice and initiating a prosecution – the 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.

Offences and Penalties

46. These Regulations introduce the following offences:

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 readily 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.

47. As an alternative, or in addition, to any of the above penalties, the court may, in certain circumstances, make an order requiring a person convicted of the offences referred to in paragraph 60 above to remedy the matters which have given rise to the commission of the offence. In addition, the court may order a person convicted of the offences referred to in paragraph 60 above to reimburse the enforcement authority’s costs of investigating the offence.

Restrictions on Enforcement Powers and Use of Certain Evidence

48. Regulation 23 provides for the disclosure of information acquired by the Secretary of State under the enforcement powers set out in the Regulations. This follows 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 Regulations (as set out in Regulation 24).

Related Reference Documents

Link to NMO produced compliance guidance for manufacturers, importers and distributors of batteries and accumulators

<https://www.gov.uk/placing-batteries-on-the-uk-market-producer-responsibilities>

Link to related Batteries guidance on gov.uk

<https://www.gov.uk/environmental-regulations#batteries-and-accumulators--collection-and-recycling>

Link to the European Commission web page with legislation, FAQs and background reports:

<http://ec.europa.eu/environment/waste/batteries/index.htm>

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

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