

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) URN 08/913 ISSUED
ON 12 MAY 2008**

Single (Internal) Market
Provisions Of The Directive

AUGUST 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 08/913 which was Issued on 12 May 2008

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

This is a summary of our main findings from the stakeholder responses to the Consultation Document on the Implementation of the Batteries Directive and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC): Single (Internal) Market Provisions of the Directive. The Consultation Document was issued on 12 May 2008 by the Department for Business, Enterprise and Regulatory Reform (BERR) and sought views from producers, distributors, collectors and recyclers of batteries and accumulators and items containing batteries and accumulators and any other interested parties. Stakeholders were asked to respond by 20 June 2008.

Prohibitions and Labelling

- The provisions on prohibitions and labelling were widely perceived as being clear.
- Stakeholders seemed most concerned about the short six month timescale for implementation of the capacity marking requirements, but a number also questioned the technical basis for capacity marking and its value to the customer.
- A number of specific issues were also raised concerning a lack of clarity of labelling provisions for small batteries.

Removal of Waste Batteries and Accumulators

- Stakeholder widely felt that guidance on removability requirements (and any exemptions from the guidance) should be agreed at the European level rather than at Member State level to avoid a potential barrier to trade.
- A number of responses felt that the term "professionals" in the guidance should be clarified to provide guidance on the expectations of removal.
- 3 respondents felt the guidance should state that children's toys containing button cells should be exempted from the requirements on safety grounds.
- A number of concerns were raised about an apparent lack of joined up approach between the UK WEEE Regulations and the Battery regulations.

Enforcement issues

- 11 respondents thought the draft enforcement provisions identified all the issues and only one respondent did not.
- There was widespread support from stakeholders for defence of due diligence.
- It was noted that enforcement of the Capacity requirement of Article 21 of the Directive is not transposed into the draft UK regulations.

Unnecessary enforcement provisions

- Nine respondents felt all the provisions were necessary while three respondents felt there were unnecessary provisions.
- A number of responses stressed that there is a need for a government-funded body for the effective enforcement of the regulations.
- Two responses sought clarification on the enforcement authority's ability to serve the compliance and/or enforcement notices.
- One stakeholder felt that the proposed introduction of personal liability under Regulation 22 was not appropriate or proportionate and suggested that failure to comply should be limited to corporate responsibility.

Partial Impact Assessment

- The cost and benefits stated in the partial Impact Assessment were generally agreed.
- Four responses stated that the estimate for enforcement of £50,000 - £200,000 was significantly lower than would be necessary.
- One response highlighted that the costs for testing and purchasing samples did not seem to be included in the costings and remarked that these would be higher than RoHS because of the lower permitted content limits.

Any Other Comments

- 15 stakeholders provided additional comments for the consultation
- The most frequent comment provided called for a proportionate approach/de minimis for small companies/small producers.
- Two stakeholders sought confirmation that batteries placed on shelves before 26th September 2008 will to be allowed to be sold thereafter.
- Two stakeholders called for a single co-coordinating body for UK which interfaces with the WEEE system.

The remainder of this document provides a detailed breakdown of the 24 responses received according to each of the 6 questions posed.

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 mercury and cadmium and the labelling the labelling of batteries containing those metals, or containing lead.

This earlier Directive, and subsequent amendments, were transposed into GB law through Statutory Instruments 1994/232, 2000/3097, and 2001/2551, and additionally implemented through a non-statutory industry and Government action programme. In Northern Ireland, Statutory Rules 1995 No. 122 and 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 6 questions about the draft Regulations for implementing the Internal Market provisions of the Directive, including its materials prohibitions and labelling requirements; the enforcement regime proposed; a question regarding the partial Impact assessment; and finally an invitation for general comments.

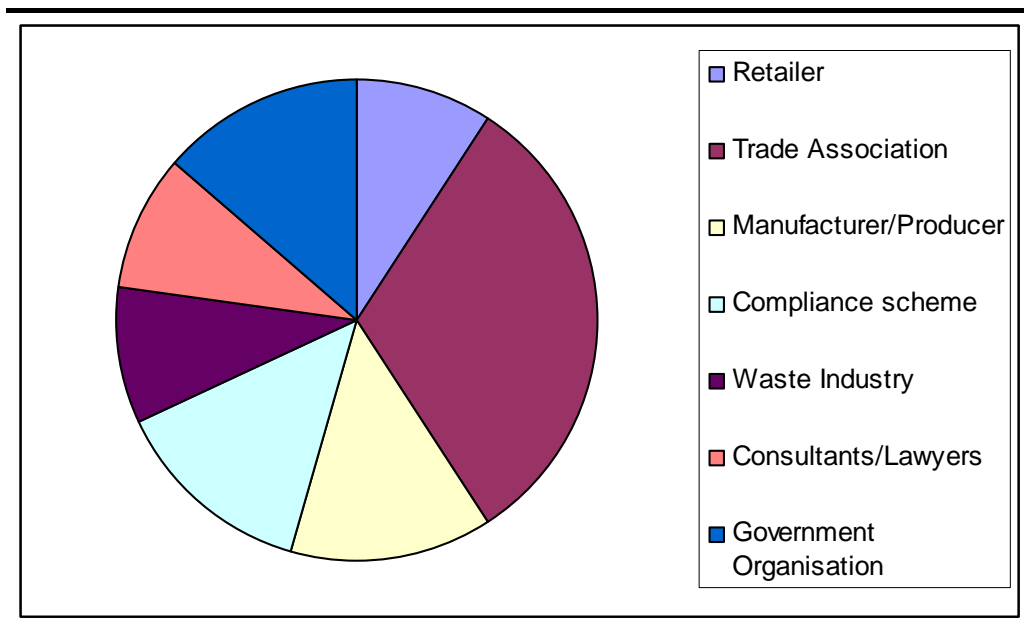
A total of 24 written responses to the consultation paper were received (see Fig 1.1 and 1.2 for a breakdown by sector see Annex A for a detailed list of

those that responded to the consultation), and these are broken down as follows:

Fig 1.1 - Responses by Sector

Sector	Number of Responses
Trade Association	7
Manufacturer/Producer	3
Compliance scheme	3
Waste Industry	2
Consultants/Lawyers	2
Government Organisation	3
Local Authority	2
TOTAL	24

Fig 1.2 - Pie chart showing responses by sector



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. The Government's responses to the points raised are set out after each question.

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?*

This question relates to Part 2 – Prohibitions and labelling requirements of the draft Regulations 2008 and the commentary provided in the consultation document. This includes:

A prohibition on mercury and cadmium: A maximum content for these substances is established and various exemptions are defined;

Placing on the market: This concerns implementation of the regulations to batteries placed on the market before and after implementation;

Labelling to aid recycling: A crossed out wheeled bin labelling requirement will be required (on packaging for small batteries). Chemical symbols for batteries containing cadmium, mercury and lead (at certain levels) are also required; and

Capacity labelling: Portable and automotive batteries will need to show their capacities according to rules being developed by the European Commission.

Overview of Consultation Responses to this Question

18 stakeholders provided a response to this question.

- 11 respondents thought the provisions on prohibitions and labelling were clear; of these, 9 provided additional comments.
- 1 stakeholder thought the provisions were unclear.

A number of issues were raised by respondents. These were:

Capacity Marking

- 6 respondents raised an issue concerning the technical basis for capacity marking. Concerns were expressed about the feasibility of capacity labelling and their value to the consumer – in particular for primary batteries. As an alternative, it was felt a website could be established to provide this information.
- 5 respondents felt that the timescale for the implementation will be too short given the long planning and development cycles of global products. One respondent proposed this should be extended to 18 months.
- 3 responses stressed the need for spares to be exempted from the regulations for equipment such as laptops and portable DVD players which otherwise might be discarded prematurely - this would be in line with other legislation such as the RoHS Directive.

Labelling of Small Batteries

- 3 respondents pointed out that Battery labelling requirements and WEEE labelling requirements could lead to two 'crossed out wheeled bin' symbols printed on the packaging of small batteries, leading to customer confusion.
- 1 respondent felt it was not clear whether chemical symbols should be printed on the packaging or on small batteries themselves.
- 1 response stated that the UK guidance align with the Commission's guidance (April 2008) so that the requirement to print the crossed out wheeled bin symbol on the packaging of an appliance is deleted
- 1 response recommended that the same line is taken as the WEEE Directive in that labels need to be displayed on the product, or, subject to product size limitation, on the instructions for use, warranty and on the packaging.
- 1 respondent felt that when the cell is too small to carry labelling, the label on the packaging may conflict with product safety information and other WEEE labelling and suggested an exemption for toy packaging.
- 1 response stated that there is no minimum dimension requirement for the capacity text – or definition of what 'visible' means. Hence 'visible' is an unclear and very subjective requirement.

Other Issues

- 2 respondents called for chemistry labelling to be colour coded to aid sorting and recycling
- 1 respondent felt that the duplication of consumer advice on disposal for the new Regulations and the WEEE Regulations was onerous especially when required in the languages of the country of sale. A suggested text was provided for combining the two.
- 1 stakeholder felt that where embedded batteries were exempt from the removability requirement, there would be no point labelling the battery with the recycling (or capacity) symbol.
- 1 respondent felt the text on exemptions provided in draft Regulation 8(3) was too open to interpretation and could lead to market distortions across member states.
- 1 respondent emphasised that Regulation 5(1) and 4(1) refers to Batteries only, providing a potential legal loophole.
- 1 respondent does not understand why 'Accurate' capacity marking of batteries and accumulators is not a requirement of the Directive.

- 1 respondent felt that no additional 'crossed out wheeled bin' symbol should be required for the purposes of the Batteries Directive where it is already covered by the WEEE Directive, but that this was not clear where the appliance falls outside WEEE whether a chemical symbol should be added especially as the appliance is not likely to reach the treatment.
- 1 respondent requested further clarity regarding the definition of 'placed on the market'.

Government Response

Capacity Marking

The Government highlighted in its consultation document that whilst Member States await proposals from the Commission on the detailed rules for the implementation of this requirement, it would not include it in the draft Regulations. This does mean that an amendment to the Regulations will be required in due course.

The Government recognises that although the Directive was adopted in September 2006, the period between adopting the framework for capacity marking and the coming into force date is only six months. The Government continues to press the Commission on this issue, highlighting the concerns of industry and requesting the publication of as much information as possible in advance of the September 2009 coming into force date.

The Commission have appointed consultants to assist them in developing the framework for capacity marking. The consultants have produced an interim report on this specific issue which can be found at http://ec.europa.eu/environment/waste/batteries/pdf/bio_battery_report.pdf. The Government will make more information available as proposals are presented by the Commission – proposals which will need to be adopted by the European Parliament and the Council by the co-decision process.

Labelling of Small Batteries

The Government has published Guidance Notes to accompany these Regulations, and to supplement the Commission's current Q&A documents. The Government takes note of the points that have been raised on this issue and will continue to press the European Commission to provide greater clarity on labelling requirements. We understand that Commission is in the process of revising its Q&A document to include a specific section "*Labelling of small batteries*". The Government may revise its own Guidance further, if necessary, once the Commission has published its revised document.

Other issues

It is the intention of the Government to use the interpretation 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*"¹ (also

¹ <http://ec.europa.eu/enterprise/newapproach/legislation/guide/index.htm>

known as the Blue Book or Blue Guide). This approach is consistent with that approach taken for the similar Internal Market requirements of the RoHS Directive. More information on placing on the market will be addressed in the Guidance Document to accompany these Regulations.

The Directive, unlike the RoHS Directive, does not provide the scope to exempt 'spares' (which the Government is interpreting to mean certain types of specific replacement batteries for appliances) from this requirement.

Question 2: *The UK continues to raise the issue of the ‘removal of waste batteries and accumulators’ from appliances with the Commission – 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?*

This question addresses product design requirements in the draft Regulations concerning the removal of batteries and accumulators. This includes:

- Product design requirements (Paragraph 8); and
- Draft Commission Guidance concerning the removal of batteries.

Overview of Consultation Responses to this Question

20 stakeholders provided a response to this question.

- 10 respondents felt the text on removability requirements (and any exemptions) should be agreed at EU level rather than at Member State level to avoid potential barriers to trade. Of these, 4 respondents thought the text should be transposed into the UK guidance verbatim.
- 3 responses felt that the term ‘professionals’ in the guidance should be clarified to only those likely to have access to the user guides. In particular, it was felt the interpretation of professional as a waste operative in a treatment facility would infer that all batteries would need to be removed prior to waste treatment (including shredding) and this would be onerous, especially for items such as toys that contain only small batteries.
- 3 respondents felt the guidance should state that children’s toys containing button cells should be exempted from the requirements on safety grounds.
- 2 responses highlighted that the guidance should exempt medical equipment where there is an infection risk each time a battery is removed.
- 2 respondents expressed a need for consumer guidance on what should be done with the item if it is not placed into the municipal waste stream.
- 2 responses stressed that the Government should further define the exemptions for ‘performance’ reasons as it is felt this could be potentially very diverse in its application.
- A number of issues were raised concerning lack of joined up approach between the UK WEEE Regulations and the Battery regulations including:
 - 1 respondent felt that re-use of WEEE could be precluded by the Battery regulations requirement for the removal of integral batteries from end of life appliances.
 - 1 respondent felt that it was more appropriate and safer (in an approved facility) to remove integral batteries when the electrical item is processed at the end of its life under the WEEE Regulations.

- 1 stakeholder felt the guidance should be clarified, in particular that the removal of batteries means the whole battery pack rather than individual cells (where applicable) and the whole weight of the removed battery and/or pack should be considered a battery and that no part (including the casing, internal wiring, etc) should be considered and contribute towards WEEE evidence.
- 1 respondent felt that where a battery is sufficiently small in diameter, or is already labelled because it is an electrical item, or is exempted from labelling under WEEE, there should be no requirement to label with the battery with the crossed out wheeled bin.

Other individual responses included:

- Emphasis that removal instructions could be labelled on the appliance to fulfil the requirement for accompanying instructions.
- Guidance on whether products whose primary function does not require them to be classified or labelled under WEEE would be exempted from the labelling requirements (e.g. musical mugs, musical socks, and the batteries within them will not be removable without destroying the product e.g. smashing the mug).

Government Response

The Government appreciates the responses received on the issue of removability. The Government supports calls from respondents to encourage the Commission to agree the rules that implement this requirement, and any exemption, at a European level. However, it would only be possible in the short-term for the Commission to introduce such wording in its own guidance notes rather than as an amendment to the Directive. This would inevitably lead to a certain level of interpretation from Member State to Member State.

The removability requirement obviously impacts on the design of certain appliances. It is inevitable that some equipment may have to be re-designed – the purpose of this requirement aims to address certain sustainability issues in particular where an appliance can continue to be used beyond the life of the battery but may be unnecessarily disposed of prematurely.

The Commission's Q&A enables manufacturers to meet this requirement in one of several ways and the exemption permits them also to decide how best to meet the requirements of Article 11. If on safety, performance, medical or data integrity grounds, the continuity of power supply is necessary then this requirement does not apply.

The Q&A also enables manufacturers to decide who is best placed to remove waste batteries at end of life – either the consumer or a professional. In whichever circumstance, instructions must be included with the appliance to explain how the battery or batteries can be safely removed. In the event that it is best placed for a battery to be removed / replaced by a professional, this should be clearly stated in the instructions.

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?*

This question relates to the proposed enforcement regime for single market provisions.

Overview of Consultation Responses to this Question

18 stakeholders provided responses to this question

- 11 respondents thought the provisions identified all the issues.
- 1 respondent did not think the provisions covered all the issues.

Given the open nature of the question, a wide range of suggestions and views were submitted.

- The most frequent comment related to acceptance of the defence of due diligence. 7 responses expressed their support for this approach.
- 2 responses noted that enforcement of the Capacity Labelling requirement of Article 21 of the Directive is not in the draft UK regulations.
- 1 response sought clarification regarding who will be responsible for commencing proceedings for an offence in Scotland and Northern Ireland.
- 1 respondent stated that seizing and impounding of batteries should apply to batteries and accumulators, but not to appliances incorporating batteries and accumulators.
- 1 response felt it was unclear whether the EC fast track amendment to the Directive preventing product recall from stores on 26 September 2008 has been adopted. The respondent also requested clarification on ownership regarding whether the final retailer is responsible for ensuring labelling of delivered unlabelled stock held in UK warehouses after 26 September but not owned by the retailer until it is delivered to the retail premises.
- A number of recommendations were given by one respondent concerning laboratory testing. These were:
 - Regulations 10 and 7 need to recognise that testing is likely to be required for prosecutions as evidence for non-compliance;
 - Regulations 5 and 7 need to state the test would need to refer to the whole battery but where this is not possible a modification of regulation 12(a) is suggested as *'take samples of any articles (including such number of replicate articles as may be required for testing) and substances...'*;
 - Regulation 10 should state that a test method will be developed; and

- An independent 'reference analyst' should be appointed to assure the process and provide independent testing.
- 1 response stated that the Directive does not require the producer name on the battery and this could lead to problems for market surveillance/enforcement.
- 1 response suggested that manufacturer should be required to hold a technical document on battery composition for inspection. 1 trade association suggested a period of time for documents to be gathered for presentation under these Regulations should mirror the Toy Safety Directive.

Government Response

The Government is pleased that the majority of respondents that responded to this question supported the overall approach to the enforcement regime in the UK.

Due Diligence

The Government has accepted the argument put forward by respondents for due diligence defence in the initial consultation. However, the Government intends to limit this defence to infringements of the Regulations specific to materials prohibitions and the associated chemical symbol 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.

Placing on the Market and Withdrawal from the Market

The placing on the market requirements will apply to all new batteries placed on the market on or after the 26 September 2008 when the Regulations come into effect. This means that batteries lawfully placed on the market before 26 September can continue to be sold on to end-users and others in the supply chain. The Commission has put forward an amendment to the Directive clarifying this point – at present Article 6(2) of the Directive could be interpreted to require all batteries that do not comply with the new Regulations be removed from the market on 26 September. The proposed amendment to the Directive has not yet been adopted, although the Commission's aspiration is for this to happen before the coming into force date of the Directive.

Testing of Batteries and Appliances

The Government appreciates the suggestions that have been made with respect to the testing of batteries, which will be an important market surveillance tool for the UK enforcement authority.

It is inevitable that batteries would need to be subject to testing as part of an enforcement authority's market surveillance activities and appreciates the suggestions that have been put forward. Where necessary, we would expect the enforcement authority to use testing as part of a case file where necessary. The approach to testing will need to be developed and taken forward by the enforcement authority in conjunction with BERR, the industry – an approach that BERR has already initiated with representative bodies and established testing laboratories.

The Regulations ensure that where the enforcement authority has grounds to believe that an infringement of the Regulations has occurred, and carries out any testing in the course of its duties, the person suspected of being responsible for the infringement may, if it is practicable, have the opportunity to test the battery or appliance themselves. This is a measure similarly provided for in other comparable environmental protection legislation e.g. the RoHS Regulations.

The Government believes there is a case for pursuing the development of a harmonised test method in the EU, and intends to raise this matter with the European Commission via the Batteries Technical Adaptation Committee, set up under the Directive.

Other Issues

Unlike the RoHS Directive, the Batteries Directive does not require persons placing batteries on the market to create or maintain a technical file. The Government had considered such a measure but considered that it would go beyond the requirements of the Directive placing additional burdens upon batteries producers, importers and any other persons placing batteries on the UK market, effectively “gold-plating” the legislation.

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?*

This question follows a discussion on the proposed enforcement regime relating to the single market provisions.

Overview of Consultation Responses to this Question

13 stakeholders provided comments in response to this issue.

- 9 respondents felt all the provisions were necessary.
- 3 respondents felt there were unnecessary provisions.

Several issues were raised and these are summarised below:

- 3 respondents stressed that there is a need for a government-funded enforcement body for the effective enforcement of the regulations.
- 2 respondents sought clarification on the enforcement authority expectations to serve the compliance and/or enforcement notices. In particular, one respondent was unsure why when an offence is suspected under Part 2, and a Compliance Notice requiring remedial action issued under Regulation 14(2)(d) is not complied with, that an Enforcement Notice can be issued under Regulation 15. It was suggested that a Compliance Notice, containing appropriate timeframes to undertake the remedial action, should be the only step required before proceedings under Regulation 16 are initiated, and that the Compliance Notice should be able to include the provisions currently in Regulation 15(3).
- 1 stakeholder felt that the proposed introduction of personal liability (Regulation 22) was not appropriate or proportionate and suggested that failure to comply should be limited to corporate responsibility.
- 1 stakeholder felt the duty to provide business records from the person *'carrying on or employed in the business'* should be stated more clearly as *'proprietor, partner, director, or any other competent person appointed by the company'*.

Government Response

The Government is pleased that the majority of respondents that answered this question supported the overall approach did not include unnecessary measures to enforce the UK Regulations.

It is the intention of the Secretary of State to appoint an enforcement authority to enforce these Regulations on his behalf.

The Government's approach to the enforcement of these Regulations builds upon the experience of enforcing other similarly framed Regulations such as

the End of Live Vehicles, WEEE and RoHS Regulations. Considering the requirements of the Batteries Directive mirror those of the RoHS and WEEE Regulations, the Government intends to introduce a similar light touch, two-step process to enforcement - an approach that many stakeholders are familiar with having to comply with the materials prohibitions and labelling requirements of the respective RoHS and WEEE Regulations.

The Government intends to retain the proposed introduction of personal liability as this is consistent with the approach taken to other similarly framed environmental legislation.

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?*

This question relates to the partial Impact Assessment (IA) costs and benefits for implementation of the Regulations provided in Annex C of the consultation.

Overview of Consultation Responses to this Question

15 stakeholders responded to Question 5.

- 7 stakeholders agreed with the costs and benefits, and 3 stakeholders disagreed with the costs and benefits.
- 4 responses stated that the estimate for enforcement of £50,000 - £200,000 was significantly lower than expected to ensure appropriate enforcement of the regulations. It was suggested costs from existing national schemes in other EU member states could inform the estimates.
- 2 waste management stakeholders stated that the costing for mercury batteries could be significant because some far eastern batteries have mercury levels of 155ppm of mercury. These also stressed that the market for lithium batteries was growing and that Paragraph 1.24 should account for these.

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

- 1 stakeholder mentioned that costs for testing and purchasing samples did not seem to be included in the costing and felt the test costs would be higher than RoHS because of the lower permitted content limits.
- 1 stakeholder questioned the data basis for Paragraph 1.34 of the IA, namely, *'7 UK manufacturers seems too high and the number of suppliers (UK based importers, distributors and large retailers) seems low'*.
- 1 stakeholder felt that a consumer choice benefit for capacity marking should be acknowledged in the costing.

Government Response

The Government is grateful to those who responded to the partial IA.

In terms of mercury batteries, the original Batteries Directive aimed to deal with the problem of mercury directly by restricting the use of mercury in batteries and accumulators. The UK, like all other member States, implemented the original Batteries Directive to prevent batteries and accumulators containing excessive levels of mercury being placed on its market. Recently BERR commissioned consultants to conduct testing of certain batteries imported from the Far East. First analysis of these tests suggests that mercury was not present in the examples under scrutiny.

In terms of enforcement, BERR will consider the appropriate level of resources required to enforce the UK's Regulations in the light of the consultation responses. However, it remains difficult at this stage to see why enforcement costs for batteries and accumulators should exceed those for more complex and diverse products such as vehicles and electrical and electronic equipment (EEE). In the final IA we retain the estimate of £0.1 million - £0.4 million per annum, because we compensate for possible lower costs to business with possible higher costs to the public sector.

In terms of capacity marking, the partial IA pointed out that specific requirements for batteries and accumulators to show their capacity are not to form part of the UK's Regulations currently Directive, but will form part of amending Regulations once the capacity requirements have been agreed at European level in 2009. The costs and benefits of capacity marking will be considered at this time.

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

Overview of Consultation Responses to this Question

15 stakeholders provided comments in response to this question.

Due to the open-ended nature of the question, a large variety of responses were received.

- 3 respondents called for a proportionate approach/de minimis for small companies/small producers. One trade association stated that the majority of companies who have a battery within laboratory products only place between 5kg to 30kg in total of batteries a year period per company. One recommended that exemptions should be offered to small companies based on their weight of batteries imported (4-10 tonnes per year suggested), rather than a cost de minimis (which would be more difficult to establish).
- 2 stakeholders sought confirmation that batteries placed on shelves before 26 September 2008 will to be allowed to be sold thereafter. One of the stakeholders recommended that the UK implementing regulation explicitly states the EC's fast track amendment. A suggested text was provided for the end of Part 2 of the regulations;

'Nothing in the Part shall prevent any battery or accumulator that was legally placed on the Community market for the time before the entry into force of these regulations from being supplied in the UK market after that date'.

- 2 responses called for a single co-coordinating body for UK which interfaces with the WEEE system. The registration process should allow a combined 'Battery and WEEE registration' in a bid to limit the burden placed on industry.

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

- 1 response asked for clarification over what is meant by regarding the defence of *'reliance on information given by another'*.
- 1 response suggested that the name of the producer should be written on the battery to improve market surveillance and enforcement.
- 1 response rated that the requirements of the WEEE, Batteries and RoHS Directives need to be considered along side each other throughout, and aligned as much as possible to achieve the obvious synergies that are available and to avoid confusion.

- 1 respondent stated that the present definition of Industrial Batteries in Article 7 is ambiguous regarding what is 'industrial or professional use' at both the start and end of a batteries life.
- 1 response stated that there are many electrical/electronic laboratory equipment items that are not within the scope of the WEEE directive which are referenced in the Batteries draft regulations as an 'appliance' as defined by the WEEE Directive. A proportionate approach was urged as many laboratory equipment manufacturers will only place on the UK market a minimal number of batteries each year – some as low as 10 or less.

Government Response

The prescriptive manner of the Internal Market provisions of the Directive does not permit Member States to introduce a de minimis or exemption for small companies from these requirements. These requirements have been adopted under the Single Market Treaty Base of the European Union which aims to address free movement of goods. Therefore any person or company irrespective of size or the volume of batteries placed on the market must comply with these requirements.

The European Commission's proposed amendment to the 'Placing on the Market' requirement of the Directive is currently being considered by both the European Parliament and the Council. The amendment will be adopted subject to the Co-decision process. At present, the amendment has been voted upon and approved by the European Parliament and is now subject to vote and approval by the Council. However, it has always been the Government's belief that the intention of the amendment was the original intention of the Directive. This is addressed in the Government's Guidance Document which accompanies the Regulations.

The Internal Market provisions of the Directive do not place registration requirements upon any persons placing batteries on the market. The requirement for producers of batteries to register as a producer will be addressed when the Government implements the remaining waste provisions of the Directive which have been adopted under the Environment Treaty base of the European Union.

The requirement for persons to include their 'name' on batteries they place on the market is not a requirement of the Internal Market provisions of the Directive.

The Government believes that it has introduced Regulations that takes account of the similarly framed requirements of both the RoHS and WEEE Regulations. This is demonstrated in the approach to the enforcement of these Regulations.

Next Steps

The Government is 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 has now presented to Parliament the Regulations which transpose the Internal Market provisions of the Batteries Directive into UK law.

Annex A: List of Respondents

1. British Battery Manufacturers Association
2. BSI Product Services
3. European Batteries Recyclers Association
4. ENVIRON UK Ltd
5. G&P Batteries Ltd
6. GAMBICA
7. GP Batteries (UK) Limited
8. Industrial Battery Distributors Association
9. Intellect
10. Laboratory of the Government Chemist
11. Leicestershire County Council
12. Lovells LLP
13. Marks and Spencer
14. Motorola
15. Norfolk County Council
16. REPIC Ltd
17. Scottish Environmental Protection Agency
18. Sony UK Ltd
19. Tesco Stores
20. The British Toy and Hobbies Association
21. Toshiba Information Systems (UK) Ltd
22. Valpak Ltd
23. Vehicle Certification Agency
24. WEEE Link