

BERR

Department for Business
Enterprise & Regulatory Reform

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

**Government Guidance
Notes**

AUGUST 2008

Government Guidance Notes

S.I. 2008 No.

This Guidance is intended to help those placing on the UK market batteries and accumulators, or certain electrical and electronic equipment that may contain or incorporate batteries and accumulators, to understand the application of the Batteries and Accumulators (Placing on the Market) Regulations 2008.

The Guidance aims to explain the Regulations as interpreted by the Department for Business, Enterprise and Regulatory Reform (BERR). The Regulations themselves should always be read and understood, as they constitute the law. This Guidance is intended to be informative, but has no legal authority. You should refer to the Regulations themselves for a full statement of the legal requirements and, in the case of doubt, take independent advice, including your own legal advice. The Regulations may be revised from time to time, so affected businesses should take care to keep themselves informed of changes. Such changes will normally be publicised on BERR's website, but information may also be obtained from the Department's Sustainable Development & Regulation Directorate. Details of contacts for further information are given on page 20.

How to use this Guidance

This Guidance is restricted to the application of the Batteries and Accumulators (Placing on the Market) Regulations 2008 that transpose the Internal Market provisions of the Directive on Batteries and Accumulators and Waste Batteries and Accumulators (2006/66/EC). It is confined to the requirements that any persons wishing to place new batteries or battery-powered appliances on the UK market will need to comply with from 26 September 2008.

Later in 2008, the Government will bring forward draft Regulations as part of a consultation document covering implementation of the remaining provisions of the Directive – those relating to the collection, treatment and recycling of waste industrial, automotive and portable batteries and accumulators. On completion of that consultation exercise and the subsequent laying of Regulations, the Government will issue further Guidance.

URN 08/1130

Table of Contents

Batteries Regulations – the law in brief.....	4
Entry into force	4
Key Requirements	4
Enforcement Authority	5
Scope	5
Definitions	5
Exemptions	8
The Regulations – In Detail	9
Materials Prohibitions (Regulation 4)	9
Labelling to Aid Recycling (Regulations 5 and 6)	9
Placing on the Market	12
Removal of Waste Batteries and Accumulators- Appliances into which Batteries may be incorporated (Regulation 7)	13
Capacity Labelling	14
Compliance	16
Materials Declarations	16
Materials Analysis	16
Defence of Due Diligence	17
UK Enforcement Regime	17
Enforcement Authority	17
Compliance and Enforcement Notices	18
Offences and Penalties	19
Restrictions on Enforcement Powers and Use of Certain Evidence	19
New Legislative Framework	19
Contact Points for further information	20
Annex A	21
Flow Diagram for Determining Battery Type	21

Batteries Regulations – the law in brief

1. The Batteries and Accumulators (Placing on the Market) Regulations 2008¹ (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”).
2. These Regulations specifically set out the technical requirements which any persons wishing to place on the market new primary (single use) batteries and accumulators (more commonly known as rechargeable batteries), and appliances that may contain batteries and accumulators, must comply with from 26 September 2008.
3. 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 appliances they power.
4. These Regulations do not affect the application of other existing legal requirements for batteries and accumulators such as those regarding safety, the protection of health, existing transport requirements or provisions on hazardous waste. In other words, existing legislation that affects batteries and rechargeable batteries and relevant hazardous substances must also be complied with.

Entry into force

5. The Regulations come into force on **26 September 2008**.

Key Requirements

6. The main requirement of the Regulations is that any persons placing batteries or accumulators or appliances that may contain batteries or accumulators on the EU market for the first time on or after 26 September 2008 will need to comply with the Batteries and Accumulators (Placing on the Market) Regulations 2008 in the UK. These requirements, covered by this Guidance, are broken down into four areas:
 - (i) Material Prohibitions ([Regulation 4](#)): restrictions on the use of mercury and cadmium in batteries within the overall scope of the legislation;
 - (ii) Labelling to aid recycling ([Regulations 5 and 6](#)): requirements for the use of a crossed out wheeled bin symbol and markings to show

¹ S.I. 2008 No.

where batteries contain acceptable levels of mercury, cadmium or lead;

- (iii) Placing on the market: batteries that do not meet the requirements of the Regulations should be prohibited from sale, or withdrawn from the market; and
 - (iv) Removal of batteries ([Regulation 7](#)): requirements that certain appliances be designed in such a way that waste batteries can be readily removed.
7. The first three of these requirements were adopted in the Directive with an Internal Market Treaty Base relating to the free movement of goods in the EU. The fourth is also deemed to constitute an Internal Market provision, since it contains design requirements for battery powered appliances, despite being adopted with an Environment Treaty Base, and is accordingly covered by these Regulations.

Enforcement Authority

8. Responsibility for the enforcement of these Regulations falls to the Secretary of State for Business, Enterprise and Regulatory Reform. The Secretary of State is currently in the process of appointing an enforcement body to act on his behalf. Information will be provided on the appointed enforcement body in due course.

Scope

9. The Regulations apply to all types of batteries and accumulators, regardless of their shape, volume, weight, material composition or use, placed on the market on or after 26 September 2008. They apply without prejudice to the End-of-Life Vehicles Regulations 2003, and the Waste Electrical and Electronic Equipment (WEEE) Regulations 2008.

Definitions

10. A detailed list of definitions can be found in the Regulations themselves. The following examples are of particular significance to the design requirements:

What is a battery?

11. A battery or accumulator is considered to be any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable or disposable batteries) or consisting of one or more secondary battery cells (accumulators or rechargeable batteries). This Guidance hereafter uses the words “battery and “batteries” to mean both primary and rechargeable varieties.

What different types of batteries are there?

12. The Regulations apply a number of common and a number of different obligations upon persons placing batteries on the market depending on whether these batteries are classified as industrial, automotive or portable batteries. These three different types of batteries are defined in the following way:

13. An **industrial battery** means a battery or battery pack of any size or weight which is:

- designed exclusively for industrial or professional uses;
- used as a source of power for propulsion in an electric vehicle;
- unsealed but is not an automotive battery or accumulator; or
- sealed but is not classified as a portable battery (see [paragraph 15](#) below).

Examples of **industrial batteries** include:

- *Batteries used in off shore oil rigs and lighthouses.*
- *Batteries designed exclusively for handheld terminals used in shops and restaurants and barcode readers in shops.*
- *Batteries used in professional video equipment and professional studios.*
- *The battery used as a source of propulsion in a golf cart or buggy.*
- *The battery found in a motor boat or motor yacht used for starting petrol or diesel fuelled engines or as a source of power for an electric engine.*
- *The battery used as a source of power and propulsion to drive the motor in an electric forklift.*

14. An **automotive battery** means a battery of any size or weight that is used for the starting or ignition of the engine of a road going vehicle or for providing power for any lighting used by such a vehicle. This includes such batteries used in vehicles that are of a road-going nature but not actually used on public roads, such as a racing car or tractor. Any other batteries used in vehicles, such as the battery in a key fob, are not automotive batteries. Batteries providing the power to drive electric vehicles are classified as industrial batteries.

Examples of an **automotive battery** include:

- *A motorcycle battery – the battery used for starting, lighting or ignition.*
- *A car/van battery – the battery used for starting, lighting or ignition (the traditional 12-volt “car battery”).*
- *A truck, bus or coach battery – the battery used for starting, lighting or ignition in such vehicles.*

15. A **portable battery** means any battery or battery pack which is

- sealed;
- can be hand-carried by an average natural person without difficulty; and
- is neither an automotive battery or accumulator nor an industrial.

Examples of a **portable battery** include:

- *The double A (or AA) or triple A (or AAA) batteries used to power a portable CD player or minidisk player, or the AA or AAA batteries used to power a remote control that may accompany appliances such as televisions and DVD players.*
- *The battery used to power a portable MP3 player.*
- *The battery used to power a laptop or mobile phone.*
- *The button cell that may or may not be fixed to the motherboard of a personal computer or laptop or used to power a wristwatch.*

Q&A on the Definitions used in the Regulations

It is still not clear what type of battery I am selling, is there any other means of working out what type of battery I am placing on the market?

- In addition to the explanation of the definitions and examples outlined above, a flowchart has also been included at **Annex A** to help persons placing batteries on the market to decide which category their batteries fall into. We would also strongly recommend, if a unique or bespoke battery is being placed on the market, that independent legal advice is sought in reaching a conclusion. The decision made could be challenged by the Secretary of State or the enforcement body acting on his behalf at any time.

What other key terms are defined in the Regulations?

Other key terms defined in the Regulations include:

- *Appliance* means any electrical or electronic equipment, as defined by the WEEE Regulations, which is fully or partly powered by batteries or is capable of being so.
- *Battery pack* means any set of batteries 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 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.
- *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.
- *Waste battery* means any battery which is waste within the meaning of Article 1(1)(a) of Directive 2006/12/EC.
- *Place on the market/placing on the market* generally means supplying or making available to a third person on a professional basis in the European Union for the first time. This is irrespective of whether a battery or appliance containing a battery has been made available in return for payment or free of charge.
- Further 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*"² (commonly referred to as the "Blue Book" or "Blue Guide"). Paragraph 2.3.1 'Placing on the market' Page 18 may be helpful.

Exemptions

16. In general terms, the Regulations will not apply to either:

- (i) batteries used in equipment connected with the protection of an EU 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.

² 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>

17. There are instances where the Regulations do not apply to certain types of battery which contain mercury and/or cadmium above the permitted levels, the specifics of which can be found in the next section “**The Regulations – In Detail**”.

The Regulations – In Detail

Materials Prohibitions (Regulation 4)

18. 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 or accumulator 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.
19. 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.
20. 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.
21. This should not present practical difficulties, since we believe that few portable batteries are used in vehicles, and automotive batteries do not contain mercury or cadmium.

Labelling to Aid Recycling (Regulations 5 and 6)

22. [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 or accumulators on the market:
- (i) shall mark any batteries, accumulators of battery packs, or their packaging where appropriate, with the “crossed out wheeled bin symbol” as laid down in Schedule 1 of the Regulations; and

- (ii) 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.

23. 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 and Accumulators and Battery Packs with the Crossed Out Wheeled Bin Symbol

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

25. 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 5 x 5 centimetres.

26. 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 does not need to be marked. Instead, a crossed out wheeled bin symbol measuring at least 1 x 1 centimetre should be printed on the packaging.

27. 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 and Accumulators, Button Cells and Battery Packs with the Appropriate Chemical Symbol

28. The Regulations require that the appropriate chemical symbol be printed on all appropriate 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.

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

Q&A on the Labelling Requirements of the Regulations

How do I label small batteries with the crossed out wheeled bin or chemical symbol if sold separately or if they are sold incorporated in an appliance?

- In the instances where a crossed out wheeled bin symbol printed on a battery would be smaller than 0.5 x 0.5 centimetre, it should be printed on the packaging of the battery if the battery is sold separately. Likewise, the appropriate chemical symbol would need to be printed on the packaging below the crossed out wheeled bin symbol as per the Regulations
- In the instances where a crossed out wheeled bin symbol printed on a battery would be smaller than 0.5 x 0.5 centimetre and it is sold incorporated into an appliance, a crossed out wheeled bin symbol measuring at least 1 x 1 centimetre should be printed on the packaging of the appliance. Likewise, the appropriate chemical symbol would need to be printed on the packaging below the crossed out wheeled bin symbol as per the Regulations

Do I have to label all the individual cells contained within a battery pack?

- The individual cells in a battery pack do not need to be marked with the crossed out wheeled bin or chemical symbols. The battery pack itself needs to be marked. This is permitted because end-users are not intended to split these packs open.

Do I have to label batteries and accumulators that are incorporated in appliances, not visible for the consumers and not removable by the consumers? Are these not exempted from labelling?

- These batteries would still need to be marked with the appropriate chemical symbols as they provide information to those dealing with the treatment of these batteries of its chemistry and composition
- The crossed out 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 crossed out wheeled bin symbol under the WEEE Regulations, these batteries could be exempted from having to also be marked with the crossed out wheeled bin symbol.

Do I therefore have to print a second symbol to comply with these Batteries Regulations?

- No. The crossed out wheeled bin symbol set out in Schedule 1 to the Regulations is the same as that set out in Schedule 4 to the WEEE Regulations.

Placing on the Market

30. The provisions transposing the placing on the market requirements which are set out in Article 6 (Placing on the market) of the Directive are addressed by [Regulations 8 to 22](#) of the Regulations. The intention of these provisions is to ensure that only batteries that meet these requirements may be placed on the market from 26 September 2008.
31. Batteries lawfully placed on the market before 26 September 2008 and in compliance with the composition and labelling requirements set out in the current Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994, may continue to be legally sold on, to end-users and others in the supply chain, despite not complying with the new requirements.
32. It follows that distributors or retailers will not be required to withdraw from stock or shelves the batteries that were lawfully placed on the market before 26 September 2008, once the requirements came into force. Only batteries placed on the market on or after this date that do not comply with these Regulations will be prohibited from sale or will be required to be withdrawn from the market.
33. The European Commission has confirmed that this interpretation accords with the intention of Article 6. The Commission is concerned that Article 6(2) is drafted in an imprecise way and this means that it is possible to place an interpretation on it that would require certain batteries already legally placed on the market (but not sold to end-users) before 26 September 2008 to be withdrawn as they would not meet the requirements of the new Batteries Directive. Responding to representations from a number of Member States, including the UK, the Commission has 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 shop shelves.
34. This amendment has been adopted by the European Parliament and is expected to be adopted by the European Council before 26 September 2008.
35. However, to clarify, these regulations require that only those batteries placed on the market on or after 26 September 2008 must comply with the composition and labelling requirements of the new legislation. The UK

Government's view is that the Regulations implement Article 6 by applying the correct interpretation of this provision. The adoption of the amendment mentioned in paragraph 34 will simply confirm this approach.

Q&A on the Placing on the Market Requirements of the Regulations

Do I have to remove all batteries and accumulators that do not meet the new requirements from the shelves as of 26 September?

- No. These can continue to be sold if they were lawfully placed on the market before 26 September 2008.

Can I continue to manufacture or import batteries that do not meet the new requirements of the Regulations and place them on the EU market after 26 September 2008?

- Only if you are importing batteries which have been lawfully placed on the EU market before 26 September 2008. But any batteries or appliances that contain batteries that are placed on the EU market on or after 26 September must comply with the Regulations.
- Any non-compliant batteries placed on the market on or after 26th September must be removed from the market

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

36. **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 Regulations is to ensure that as of 26 September 2008:

- (i) 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
- (ii) 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.
- (iii) 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.

37. 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'.

38. 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.
39. 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.

Capacity Labelling

40. 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 Directive) no later than 26 March 2009.

Q&A on the Removal of Waste Batteries and Accumulators from Appliances Requirements of the Regulations

What does "batteries and accumulators can be readily removed" mean?

- This means that that consumers or professionals (e.g. appliance service centres, watch menders, camera shops, waste management facilities) should be able to remove batteries from appliances. The product must be accompanied with instructions explaining how the batteries can be readily and safely removed. They should also specify who, in the view of the manufacturer, the best person to safely remove the battery is.

When should waste batteries and accumulators be removable from appliances?

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

As a producer, may I choose to place a product on the market with a battery that can only be removed by a professional, or at the end of life at a waste facility?

- Only within the limits explained in paragraphs 38 and 39. For example, a back-up battery for a clock in an electricity meter that is intended to last the full operational life-span of the product, does not necessarily have to be readily removable by the consumer. However, a battery in a normal household clock should be accessible by the consumer to remove or replace, unless the manufacturer can demonstrate that it would normally out-last the life of the clock itself.
- The requirement for easy removability, is intended both to encourage recycling and to discourage the production of short life-span products that need to be thrown away, merely because the battery has expired.

I do not include manuals or instructions with my appliances. They are available online through my website. Is this sufficient?

- No. The Directive and the Regulations are specific. The appliance must be "...accompanied by instructions showing how the battery can be removed safely...".

The appliance I place on the market contains a battery that is not accessible to the consumer and should be removed or replaced by a professional service engineer. Does the battery have to be readily removable by the end user?

- No. The appliance you have placed on the product must be accompanied with instructions showing how the batteries can be readily and safely removed. The instructions should specify who, in the view of the manufacturer, the best person is to safely remove the battery

When should waste batteries and accumulators be removable from appliances?

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

41. The Commission has appointed a consultant to provide them with the technical support to facilitate their 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 to consider and vote upon. The Commission's proposal would also be the subject of scrutiny by the European Parliament. Any measure finally adopted by both Council and Parliament will be reflected in amendments to these Regulations.

Compliance

42. Any persons placing on the market batteries or accumulators or appliances that may contain batteries or accumulators must comply with these Regulations.
43. There is no prescribed method to demonstrate compliance. However, any persons placing batteries or accumulators on the market may wish to consider the role that both materials declarations and materials analysis could play.

Materials Declarations

44. Any persons placing batteries or accumulators 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

45. 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 or accumulators 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.
46. Any person placing batteries or appliances that contain batteries on the market, or third parties, may employ any suitable analytical technique in order to establish that their batteries and accumulators 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

47. 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.
48. 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.

49. 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

50. 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

51. It will be the duty of the Secretary of State for BERR to enforce the Regulations. The Secretary of State will appoint an enforcement body to carry out the duties necessary to enforce these Regulations on his behalf.
52. 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:
- (i) [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.
 - (ii) [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.
 - (iii) [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

53. 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.
54. 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.
55. 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

56. These Regulations introduce the following offences:
- (i) placing on the market batteries which exceed the maximum allowed percentage by weight of mercury or cadmium.
 - (ii) placing on the market unlabelled or incorrectly labelled batteries.
 - (iii) placing on the market appliances that are not designed in such a way that waste batteries can be readily removed.
 - (iv) failing to comply with the requirements of an enforcement notice.
 - (v) obstructing an enforcement officer who is acting in respect of these requirements.

- (vi) failing to comply with a requirement to provide information, documents or records.

57. 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

58. [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](#)).

New Legislative Framework

59. These 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 after these regulations take effect and that the Regulation is to apply from 1 January 2010. We are evaluating whether we should propose that additional powers need to be conferred on the enforcement (market surveillance) authorities pursuant to that Regulation.

Contact points for further information

Marc Jay
Sustainable Development & Regulation Directorate
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street
London SW1H 0ET

Tel: +44 (0)20 7215 6539

Email: marc.jay@berr.gsi.gov.uk

Website: www.berr.gov.uk

Envirowise Telephone Helpline

0800 585 794 (UK calls only)

Website: www.envirowise.gov.uk

This Helpline is a telephone enquiry service, funded by the Government, providing a comprehensive information and signposting service for firms seeking advice on a wide range of environmental issues that may affect their business.

Flow Diagram for Determining Battery Type

