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STATUTORY INSTRUMENTS

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**2009 No. 890**

**ENVIRONMENTAL PROTECTION**

**The Waste Batteries and Accumulators Regulations 2009**

*Made* - - - - - *7th April 2009*

*Laid before Parliament* *14th April 2009*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations under the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(1)</sup>.

The Secretary of State is designated<sup>(2)</sup> for the purposes of that Act in respect of matters relating to batteries and accumulators.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to Community instruments to be construed as a reference to those instruments as amended from time to time.

**PART 1**

**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Waste Batteries and Accumulators Regulations 2009.

(2) These Regulations come into force on 5th May 2009 except for—

(a) the following provisions, which come into force on 1st January 2010—

(i) regulation 56 (prohibition on disposing of waste automotive and industrial batteries in a landfill or by incineration); and

(ii) regulation 57 (requirement for approval of battery treatment operators and exporters);

(b) Part 4 (portable batteries: obligations and rights of distributors and other economic operators), which comes into force on 1st February 2010.

(3) Regulation 56 does not extend to Scotland.

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(1) 1972 c. 68. Paragraph 1A of Schedule 2 to the European Communities Act 1972 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(2) S.I. 2007/3471.

## Interpretation

### 2.—(1) In these Regulations—

“appliance” means any electrical or electronic equipment, as defined by Directive [2002/96/EC](#) of the European Parliament and of the Council on waste electrical and electronic equipment<sup>(3)</sup>, which is fully or partly powered by batteries or is capable of being so;

“appropriate authority” has the meaning given in regulation [3](#);

“appropriate person” has the meaning given in regulation [5](#);

“approved battery exporter” means an exporter who has been approved under regulation [59](#);

“approved battery treatment operator” means a battery treatment operator who has been approved under regulation [59](#);

“automotive battery” means a battery used for automotive starter, lighting or ignition power;

“batteries evidence note” means an evidence note issued by—

- (a) an approved battery treatment operator, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling, or
- (b) an approved battery exporter, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling outside the United Kingdom;

“battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable; an accumulator);

“battery compliance scheme” means a battery compliance scheme that has been approved under regulation [49](#);

“battery pack” means a 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;

“battery producer registration number” means the registration number allocated to a producer by the appropriate authority under regulation [28](#) or by the Secretary of State under regulation [45](#);

“battery treatment operator” means a person who, in the ordinary course of a trade, occupation or profession, carries out the treatment or recycling of waste batteries;

“best available techniques” has the meaning given in Article 2(12) of Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control<sup>(4)</sup>;

“category of battery” means any of the following types of batteries—

- (a) automotive batteries;
- (b) industrial batteries;
- (c) portable batteries;

“chemistry type” means, except in regulation [35](#) (take back: industrial batteries)—

- (a) lead-acid,
- (b) nickel-cadmium, or
- (c) any other chemistry;

“compliance period” means—

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<sup>(3)</sup> OJ No L 37, 13.2.2003, p 24. Directive as last amended by Directive [2008/112/EC](#) (OJ No L 345, 23.12.2008, p 68).

<sup>(4)</sup> OJ No L 24, 29.1.2008, p 8.

(a) the year 2010 (“the first compliance period”); or

(b) any year following the first compliance period;

“company registered in the United Kingdom” means a company registered in any part of the United Kingdom under—

(a) the Companies Act 2006<sup>(5)</sup>;

(b) the provisions of the Companies Act 1985<sup>(6)</sup> or the Companies (Northern Ireland) Order 1986<sup>(7)</sup> that remain in force; and

(c) any former enactment relating to companies;

(d) but a company incorporated outside the United Kingdom which has registered particulars under those Acts is not registered in the United Kingdom for the purposes of these Regulations;

“declaration of compliance” means the declaration of compliance referred to in regulation 18 or 25;

“Department of the Environment” means the Department of the Environment in Northern Ireland;

“disposal” means any of the applicable operations provided for in Annex IIA to Directive 2006/12/EC of the European Parliament and of the Council on waste<sup>(8)</sup>;

“distributor” means a person that provides batteries on a professional basis to an end-user;

“economic operator” means a producer, distributor, collector, recycler or other treatment operator;

“EEA” means the area comprised by the EEA States;

“electric vehicle” means a vehicle which uses electricity as a source of power for propulsion and includes a vehicle which in addition uses, or is capable of using, other sources of power for this purpose;

“end-user of industrial batteries” means—

(a) the person who last used the battery; or

(b) a waste disposal authority or any person acting on behalf of such an authority in connection with its functions under section 51 of the Environmental Protection Act 1990<sup>(9)</sup>;

“enforcement authority” has the meaning given in regulation 86<sup>(5)</sup>;

“enforcement notice” means a notice served under regulation 87<sup>(1)</sup>;

“enforcement officer” has the meaning given in regulation 88<sup>(11)</sup>;

“exporter” means a person who in the ordinary course of a trade, occupation or profession exports waste batteries for treatment or recycling outside the United Kingdom;

“extension of approval charge” means—

(a) subject to regulation 65<sup>(1)</sup>, where the appropriate authority is the Environment Agency or SEPA, the extension of approval charge specified in regulation 65<sup>(2)(b)</sup> or, if superseded

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(5) 2006 c. 46.

(6) 1985 c. 6.

(7) S.I. 1986/1032 (N.I. 6).

(8) OJ No L 114, 27.4.2006, p 9.

(9) 1990 c. 43. Section 51 has been amended by section 31 of the Waste and Emissions Trading Act 2003 (c. 33) and Part 4 of Schedule 5 to the Clean Neighbourhoods and Environment Act 2005 (c. 16).

by an extension of approval charge specified for the purpose in a charging scheme made under section 41 of the Environment Act 1995(10), that charge;

- (b) where the appropriate authority is the Department of the Environment, the extension of approval charge specified for the purpose in the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009(11);

“final holder of automotive batteries” means—

- (a) a person who, in the ordinary course of a trade, occupation or profession removes automotive batteries from vehicles;
- (b) a person who carries on the business of a scrap metal dealer within the meaning given by section 9(1) of the Scrap Metal Dealers Act 1964(12);
- (c) an authorised treatment facility as defined in regulation 2 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005(13); or
- (d) a waste disposal authority or any person acting on behalf of such an authority in connection with its functions under section 51 of the Environmental Protection Act 1990;

“industrial battery” means any battery or battery pack which is—

- (a) designed exclusively for industrial or professional uses;
- (b) used as a source of power for propulsion in an electric vehicle;
- (c) unsealed but is not an automotive battery; or
- (d) sealed but is not a portable battery;

“partnership” includes an unincorporated partnership and a Scottish partnership;

“Planning Appeals Commission” means the Planning Appeals Commission within the meaning of Article 110 of the Planning (Northern Ireland) Order 1991(14);

“portable battery” means any battery or battery pack which—

- (a) is sealed,
- (b) can be hand-carried by an average natural person without difficulty, and
- (c) is neither an automotive battery nor an industrial battery;

“premises” includes any land or means of transport;

“producer” means any person in the United Kingdom that, irrespective of the selling technique used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts(15), places batteries, including those incorporated into appliances or vehicles, on the market for the first time in the United Kingdom on a professional basis;

“proposed scheme” means a proposed battery compliance scheme that is the subject of an application for approval made under regulation 47;

“quarter period” means a period—

- (a) commencing on 1st January and ending on 31st March;
- (b) commencing on 1st April and ending on 30th June;
- (c) commencing on 1st July and ending on 30th September; or

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(10) 1995 c. 25. Section 41 is amended by regulation 94 of and Schedule 8 to these Regulations. There are other amendments which are not relevant to these Regulations.

(11) S.R. 2009/157.

(12) 1964 c. 49. Section 9(1) has been amended by paragraph 2 of the Schedule to the Vehicles (Crime) Act 2001 (c. 3).

(13) S.I. 2005/263.

(14) S.I. 1991/1220 (N.I. 19) as amended by S.I. 1999/663, and S.R. 2003/430 (N.I. 8).

(15) OJ No L 144, 4.6.1997, p 19. Directive as last amended by Directive 2007/64/EC (OJ No L 319, 5.12.2007, p 1).

- (d) commencing on 1st October and ending on 31st December;
- “recycling” means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;
- “relevant approval period” has the meaning given in regulation 61(2);
- “relevant compliance period” means a compliance period in respect of which a person has any obligation under regulation 7(2), 19(1), 35(2) or 36(2);
- “scheme application charge” means—
- (a) subject to regulation 55(1), where the appropriate authority is the Environment Agency or SEPA, the application charge specified in regulation 55(2)(a) or, if superseded by an application charge specified for the purpose in a charging scheme made under section 41 of the Environment Act 1995, that charge;
  - (b) where the appropriate authority is the Department of the Environment, the application charge specified for the purpose in the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009;
- “scheme member” means, in relation to a battery compliance scheme, a producer who is a member of that scheme;
- “scheme operator” means the operator of a battery compliance scheme;
- “scheme subsistence charge” means—
- (a) subject to regulation 55(1), where the appropriate authority is the Environment Agency or SEPA, the subsistence charge specified in regulation 55(2)(b) or if superseded by a subsistence charge specified for the purpose in a charging scheme made under section 41 of the Environment Act 1995, that charge;
  - (b) where the appropriate authority is the Department of the Environment, the subsistence charge specified for the purpose in the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009;
- “SEPA” means the Scottish Environment Protection Agency;
- “small producer” means a producer of portable batteries who places 1 tonne or less of portable batteries on the market in the United Kingdom during a year;
- “specified site” means a site specified in a notification of a grant of approval of a battery treatment operator under regulation 60(2)(a);
- “treatment” means any activity carried out on waste batteries after they have been handed over to a person for sorting, preparation for recycling or preparation for disposal;
- “treatment, recycling and export application charge” means—
- (a) subject to regulation 65(1), where the appropriate authority is the Environment Agency or SEPA, the application charge specified in regulation 65(2)(a) and (3) or, if superseded by an application charge specified for the purpose in a charging scheme made under section 41 of the Environment Act 1995, that charge;
  - (b) where the appropriate authority is the Department of the Environment, the application charge specified for the purpose in the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009;
- “waste battery” means any battery which is waste within the meaning of Article 1(1)(a) of Directive 2006/12/EC;
- “waste collection authority” means—

- (a) in England, Wales and Scotland, an authority mentioned in section 30(3) of the Environmental Protection Act 1990(16); and
- (b) in Northern Ireland, a district council within the meaning of section 1 of the Local Government Act (Northern Ireland) 1972(17);

“waste disposal authority” means—

- (a) in England, Wales and Scotland, an authority mentioned in section 30(2) of the Environmental Protection Act 1990(18); and
- (b) in Northern Ireland, a district council within the meaning of section 1 of the Local Government Act (Northern Ireland) 1972;

“writing” includes text that is—

- (a) transmitted by electronic means,
- (b) received in legible form, and
- (c) capable of being used for subsequent reference; and

“year” means a calendar year commencing on 1st January.

(2) In these Regulations—

- (a) any requirement to make, keep or retain a record or to maintain any register may be satisfied in electronic form if the text is capable of being produced in a legible documentary form by the person who is subject to the requirement;
- (b) any requirement for a signature may be satisfied by an electronic signature incorporated into the document; and
- (c) for the purposes of sub-paragraph (b), “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

### Meaning of appropriate authority

3.—(1) In these Regulations, “appropriate authority” means—

- (a) in relation to—
  - (i) a small producer,
  - (ii) a producer, other than a small producer, who is not and has not been a scheme member,
  - (iii) the operator of a proposed scheme, or
  - (iv) an exporter,
 the authority responsible for the area where that person’s registered office, or if that person is not a company registered in the United Kingdom, its principal place of business in the United Kingdom, is located;
- (b) in relation to—
  - (i) a scheme operator, the authority which granted approval under regulation 49 to that operator;

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(16) 1990 c. 43. Section 30(3) has been amended by the Local Government (Wales) Act 1994, Schedule 9, paragraph 17 and Schedule 18 and the Local Government etc (Scotland) Act 1994, Schedule 13, paragraph 167.

(17) 1972 c. 9 (N.I.).

(18) Section 30(2) has been amended by the Local Government (Wales) Act 1994, Schedule 9, paragraph 17 and the Local Government etc (Scotland) Act 1994, Schedule 13, paragraph 167.

- (ii) a producer, other than a small producer, who is or has been a scheme member, the authority which granted approval under regulation 49 to the operator of the battery compliance scheme of which the producer is or was last a scheme member;
  - (c) in relation to the site of a battery treatment operator, the authority responsible for the area where that site is located.
- (2) For the purposes of this regulation, the authority responsible for the area of—
- (a) England and Wales is the Environment Agency;
  - (b) Scotland is SEPA;
  - (c) Northern Ireland is the Department of the Environment.

### Service of documents

4.—(1) Any document required or authorised by these Regulations to be served on a person may be so served—

- (a) by delivering it to that person at or by leaving it at—
  - (i) an address for service provided by that person in accordance with these Regulations; or
  - (ii) that person's proper address; or
- (b) by sending it by post to that person at either of the addresses mentioned in sub-paragraph (a);
- (c) where that person is a partnership, by serving it in accordance with sub-paragraph (a) or (b) on a partner or on a person having control or management of the partnership business;
- (d) where that person is a limited liability partnership, by serving it in accordance with sub-paragraph (a) or (b) on a member of the partnership;
- (e) where that person is a body corporate, by serving it in accordance with sub-paragraph (a) or (b) on a director or the secretary of that body corporate; or
- (f) where that person is an unincorporated body (other than an unincorporated partnership), by serving it in accordance with sub-paragraph (a) or (b) on a person having control or management of that body.

(2) For the purposes of this regulation and for the purposes of section 7 of the Interpretation Act 1978(19) (which relates to the service of documents by post) in its application to this regulation, the proper address of any person on whom a document is to be served in accordance with these Regulations is—

- (a) in the case of service on a partnership or a partner or person having control or management of the partnership business, the principal place of business in the United Kingdom of the partnership;
- (b) in the case of service on a limited liability partnership or a member of the partnership, the registered office or principal place of business in the United Kingdom of the partnership;
- (c) in the case of service on a body corporate or one of its directors or its secretary, the address of the registered office or principal place of business in the United Kingdom of the body; and
- (d) in the case of service on an unincorporated body (other than an unincorporated partnership), the address of the principal place of business in the United Kingdom of the body; and

(e) in any other case, the last known address of the person in question.

(3) A document required or authorised by virtue of these Regulations to be served on a person may also be served by transmitting the document by any means of electronic communication to an electronic address (which includes a fax number and an e-mail address) being an address which the person has provided as an address for service under these Regulations, or otherwise held out as, an address at which the person can be contacted for the purposes of receiving such documents.

(4) A document transmitted by any means of electronic communication in accordance with paragraph (3) is, unless the contrary is proved, deemed to be received on the business day after the notice was transmitted over a public electronic communications network.

(5) In this regulation “body corporate” does not include a limited liability partnership or a Scottish partnership.

### **Signature of documents: meaning of appropriate person**

5. Where a provision of these Regulations requires a document or information to be signed by the appropriate person, the “appropriate person” means—

- (a) where the person under the obligation to provide the document or information is an individual, that individual;
- (b) where the person under the obligation to provide the document or information is a partnership or a limited liability partnership, a partner or member of the partnership respectively;
- (c) where the person under the obligation to provide the document or information is a company registered in the United Kingdom, a director or the secretary of that company; and
- (d) where the person under the obligation to provide the document or information is a body other than a company registered in the United Kingdom, partnership or limited liability partnership, a person who has control or management of that body.

### **Application**

6.—(1) These Regulations apply to all types of batteries, regardless of—

- (a) their shape, volume, weight, material composition or use; and
- (b) whether or not they are incorporated into an appliance.

(2) These Regulations do not apply to batteries used in—

- (a) equipment connected with the protection of the essential security interests of EEA states<sup>(20)</sup>, such as arms, munitions and war material, and intended for specifically military purposes; or
- (b) equipment designed to be sent into space.

## **PART 2**

### **PRODUCER OBLIGATIONS: PORTABLE BATTERIES**

#### **Financing: portable batteries**

7.—(1) This regulation applies to each producer of portable batteries in respect of each compliance period during which it places such batteries on the market in the United Kingdom.

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<sup>(20)</sup> The application of Directive 2006/66/EC was extended to the EEA states by Decision 141/2007 of the European Economic Area Joint Committee (OJ No L 100, 10.4.2008, p 68).

(2) A producer of portable batteries, or a third party acting on its behalf, must finance the net costs arising from the collection, treatment and recycling of its share, calculated in accordance with regulation 8, of all waste portable batteries collected in the United Kingdom.

(3) A small producer is not under a duty to finance the costs referred to in paragraph (2).

### Calculation of a producer's share

8.—(1) The producer's share referred to in regulation 7(2) is an amount in tonnes of waste batteries.

(2) The producer's share is equal to the specified percentage of the average annual quantity in tonnes of portable batteries placed on the market for the first time in the United Kingdom by the producer during the relevant period.

(3) In this regulation—

“the relevant period” means—

- (a) in relation to the first compliance period, the year 2009;
- (b) in relation to the compliance period 2011, the years 2009 and 2010;
- (c) in relation to each subsequent compliance period, the compliance period and the two preceding years; and

“the specified percentage” means, in respect of a compliance period, the percentage specified in the table.

(4) The table is—

<i>Compliance period</i>	<i>Specified percentage</i>
2010	10%
2011	18%
2012	25%
2013	30%
2014	35%
2015	40%
2016	45%
Any year after 2016	45%

### Duty to be a member of a battery compliance scheme

9.—(1) A person must be a member of a battery compliance scheme in respect of any compliance period during which that person is a producer of portable batteries.

(2) The duty in paragraph (1) does not apply to a small producer.

(3) A producer who is required by paragraph (1) to be a member of a battery compliance scheme must join a scheme—

- (a) on or before 15th October in the year before the relevant compliance period; or
- (b) if the producer does not place portable batteries on the market for the first time in the United Kingdom until after that date, within 28 days of the date of such placing on the market.

(4) A producer may not be a member of more than one battery compliance scheme in respect of a compliance period unless the producer was a member of a scheme whose approval was withdrawn under regulation 54 during that compliance period.

#### **Effect of membership of a battery compliance scheme**

**10.** A producer who is a member of a battery compliance scheme is exempt from complying with any obligation under regulation 7(2) or 18.

#### **Information provided to operators of battery compliance schemes**

**11.**—(1) A scheme member must provide to the scheme operator on request and in writing the information which that operator will need to rely on for the purposes of—

- (a) complying with a demand to produce records under regulation 22(2) (record keeping);
- (b) complying with the requirement to provide information under regulation 23 (reporting: batteries placed on the market by scheme members);
- (c) making an application to register a producer under regulation 26(3) (registration of scheme members);
- (d) making a notification under regulation 29 (notification of changes to registration details).

(2) After providing such information, a producer must inform the scheme operator in writing of any material change to it within 14 days of the change.

(3) A producer providing information under this regulation must ensure that it is signed by the appropriate person.

#### **Record keeping**

**12.**—(1) A producer of portable batteries must keep records in writing of—

- (a) the total amount in tonnes; and
- (b) the amount in tonnes by reference to the chemistry type,

of portable batteries which that producer has placed on the market for the first time in the United Kingdom during 2009 and during any compliance period.

(2) A record kept under this regulation must be kept for four years from the date it is made and must be made available to the appropriate authority on demand.

(3) The duties in this regulation apply only to records that were in existence on the coming into force of these Regulations and to records made after that date.

#### **Reporting: portable batteries placed on the market by a small producer**

**13.**—(1) A small producer must provide to the appropriate authority information on the total amount in tonnes of portable batteries which that producer has placed on the market for the first time in the United Kingdom in—

- (a) 2009; and
- (b) each compliance period.

(2) The information referred to in paragraph (1) must—

- (a) be in writing and signed by the appropriate person;
- (b) specify the total amount in tonnes and the amount in tonnes by reference to the chemistry type; and
- (c) be submitted in the format published by the appropriate authority under regulation 79

(d) be accompanied by—

- (i) subject to regulation 14(1), where the appropriate authority is the Environment Agency or SEPA, the charge specified in regulation 14(2) or, if superseded by a charge specified for the purpose in a charging scheme made under section 41 of the Environment Act 1995(21), that charge;
- (ii) where the appropriate authority is the Department of the Environment, the charge specified for the purpose in the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009(22).

(3) The duty in paragraph (1)(a) does not require a small producer to provide information relating to portable batteries placed on the market for the first time in the United Kingdom during 2009 but before the coming into force of these Regulations.

(4) The information referred to in paragraph (1)(a) must be provided on or before 31st January 2010.

(5) The information referred to in paragraph (1)(b) must be provided for each compliance period on or before 31st January of the next year.

#### **Charges in relation to small producers**

**14.**—(1) Notwithstanding the power to make a charging scheme under section 41 of the Environment Act 1995, the Environment Agency and SEPA may impose a charge in accordance with paragraph (2) until—

- (a) that charge is superseded by such a charging scheme; or
- (b) 1st April 2013,

whichever is the earlier.

(2) The charge referred to in paragraph (1) is, annually £30 in respect of any administrative costs incurred in the exercise of functions connected with—

- (a) registration of small producers (including amending the register maintained under regulation 76);
- (b) monitoring the compliance of small producers with their obligations under this Part;
- (c) monitoring the accuracy of information provided by small producers under regulation 13;
- (d) publishing information in relation to small producers under regulation 81.

#### **Duty to join another scheme on withdrawal of approval**

**15.**—(1) This regulation applies to a producer who is notified under regulation 54(4) that approval of the battery compliance scheme of which the producer is a member (“the old scheme”) has been withdrawn.

(2) The producer is no longer a member of the old scheme from the date when the withdrawal takes effect and must, within 42 days of that date—

- (a) become a member of another battery compliance scheme; or
- (b) notify the appropriate authority of its intention to become a member of a proposed scheme.

(3) If the producer notifies its intention to become a member of a proposed scheme, the producer must become a member of a battery compliance scheme within 28 days of the date of the notification given to that producer under regulation 51(4).

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(21) 1995 c. 25. Section 41 is amended by regulation 95 and Schedule 8 of these Regulations. There are other amendments which are not relevant to these Regulations.

(22) S.R. 2009/157.

### **Treatment, recycling, record keeping and reporting after withdrawal of scheme approval**

- 16.—(1) This regulation applies to a producer—
- (a) to whom regulation 15 applies; and
  - (b) who has not yet become a member of another battery compliance scheme as required by regulation 15(2) or (3).
- (2) The producer must ensure that all identifiable waste portable batteries collected by that producer are delivered to and accepted by—
- (a) an approved battery treatment operator for treatment and recycling; or
  - (b) an approved battery exporter for export for treatment and recycling outside the United Kingdom.
- (3) The producer must keep records in writing of—
- (a) the total amount in tonnes; and
  - (b) the amount in tonnes by reference to the chemistry type,
- of waste portable batteries that the producer has collected and delivered to an approved battery treatment operator for treatment and recycling or to an approved exporter for treatment and recycling outside the United Kingdom.
- (4) A record kept under paragraph (3) must be kept for four years from the date it is made and must be made available to the appropriate authority on demand.
- (5) The producer must provide to the appropriate authority information on the total amount in tonnes of portable batteries which that producer has placed on the market for the first time in the United Kingdom in a compliance period.
- (6) The producer must provide to the appropriate authority information on the total amount in tonnes of waste portable batteries that the producer has—
- (a) collected; and
  - (b) delivered to an approved battery treatment operator for treatment and recycling or to an approved battery exporter for treatment and recycling outside the United Kingdom.
- (7) The information referred to in paragraphs (5) and (6) must—
- (a) be in writing and signed by the appropriate person;
  - (b) specify the total amount in tonnes and the amount in tonnes by reference to the chemistry type;
  - (c) be submitted in the format published by the appropriate authority under regulation 79 and
  - (d) be provided for each quarter period of a relevant compliance period on or before the last day of the month following the end of that quarter period.

### **Duty of the appropriate authority to determine and notify producer's share**

- 17.—(1) This regulation applies in respect of a producer—
- (a) to whom regulation 15 applies; and
  - (b) who has not yet become a member of another battery compliance scheme as required by regulation 15(2) or (3).
- (2) The appropriate authority must—
- (a) determine the producer's share in accordance with the method set out in regulation 8; and
  - (b) notify the producer of that share on or before 31st March in the year following the relevant compliance period.

- (3) In making its determination, the appropriate authority must—
- (a) take account of any information provided to it under regulation 23; and
  - (b) make a reasonable estimate of—
    - (i) the quantity in tonnes of portable batteries placed on the market for the first time in the United Kingdom by the producer during 2009 but before the coming into force of these Regulations; and
    - (ii) any information which should have been provided under that regulation but was not.
- (4) A notification must include the following information—
- (a) the compliance period to which it relates;
  - (b) the producer's share determined by the authority;
  - (c) details of how that share has been determined in accordance with the method set out in regulation 8, including details of any information which was estimated;
  - (d) a statement that the producer may make representations in writing to the appropriate authority in respect of the determination within 14 days of the notification.
- (5) The appropriate authority must—
- (a) consider any representation made under paragraph (4)(d);
  - (b) confirm or amend the share determined by it;
  - (c) notify its decision and the reasons for it in writing to the operator of the scheme within 14 days of receiving the representations.

#### **Declaration of compliance by producer**

- 18.**—(1) This regulation applies to a producer—
- (a) to whom regulation 15 applies; and
  - (b) who has not yet become a member of another battery compliance scheme as required by regulation 15(2) or (3).
- (2) The producer must provide—
- (a) a declaration of compliance; and
  - (b) copies of all batteries evidence notes acquired by the producer,
- in respect of the relevant compliance period to the appropriate authority on or before 31st May of the next year.
- (3) A declaration of compliance must—
- (a) include the information and the declaration set out in Part 1 of Schedule 1; and
  - (b) be in writing and signed by the appropriate person.

### **PART 3**

#### **OBLIGATIONS OF BATTERY COMPLIANCE SCHEMES AND REGISTRATION OF PRODUCERS OF PORTABLE BATTERIES**

##### **Financing: portable batteries**

- 19.**—(1) A scheme operator must finance—
- (a) the net costs for which each scheme member is responsible under regulation 7(2);

- (b) the net costs of the collection, treatment and recycling of any waste portable batteries collected by the battery compliance scheme in excess of those required to satisfy sub-paragraph (a);
- (c) the net costs of a scheme information campaign.

(2) In this regulation, “scheme information campaign” has the meaning given in paragraph 10 of Schedule 3.

#### **Duty of the appropriate authority to determine and notify scheme operator’s aggregate share of costs**

- 20.**—(1) This regulation applies in respect of each battery compliance scheme.
- (2) The appropriate authority must—
- (a) determine the aggregate share for which each scheme operator is responsible, being the sum of the shares of all scheme members calculated in accordance with regulation 8;
  - (b) notify each scheme operator of that share on or before 31st March in the year following the relevant compliance period.
- (3) In making its determination, the appropriate authority must—
- (a) take account of any information provided to it under regulation 23; and
  - (b) make a reasonable estimate of—
    - (i) the quantity in tonnes of portable batteries placed on the market in the United Kingdom by scheme members during 2009 but before the coming into force of these Regulations; and
    - (ii) any information which should have been provided under that regulation but was not.
- (4) A notification must include the following information—
- (a) the compliance period to which it relates;
  - (b) the aggregate share determined by the authority;
  - (c) details of how that share has been determined in accordance with the method set out in regulation 8 and paragraph (2)(a) of this regulation, including details of any information which was estimated;
  - (d) a statement that the scheme operator may make representations in writing to the appropriate authority in respect of the determination within 14 days of the notification.
- (5) The appropriate authority must—
- (a) consider any representation made under paragraph (4)(d);
  - (b) confirm or amend the aggregate share determined by it;
  - (c) notify its decision and the reasons for it in writing to the scheme operator within 14 days of receiving the representations.

#### **Treatment and recycling**

**21.** A scheme operator must ensure that all identifiable waste batteries collected by the battery compliance scheme are delivered to and accepted by—

- (a) an approved battery treatment operator for treatment and recycling; or
- (b) an approved battery exporter for export for treatment and recycling outside the United Kingdom.

### **Record keeping**

**22.**—(1) A scheme operator must keep records in writing of—

- (a) the total amount in tonnes; and
- (b) the amount in tonnes by reference to the chemistry type,

of waste portable batteries which that scheme has been responsible for collecting and delivering to an approved battery treatment operator for treatment or recycling or to an approved battery exporter for treatment or recycling outside the United Kingdom during a relevant compliance period.

(2) A record kept under this regulation must be kept for four years from the date it is made and must be made available to the appropriate authority on demand.

### **Reporting: batteries placed on the market by scheme members**

**23.**—(1) A scheme operator must provide to the appropriate authority information on the total amount in tonnes of portable batteries that each scheme member has placed on the market for the first time in the United Kingdom in—

- (a) 2009; and
- (b) each relevant compliance period.

(2) The information must—

- (a) be in writing and signed by the appropriate person;
- (b) specify the total amount in tonnes and the amount in tonnes by reference to the chemistry type; and
- (c) be submitted in the format published by the appropriate authority under regulation 79.

(3) The duty in paragraph (1)(a) does not require a scheme operator to provide information relating to portable batteries placed on the market for the first time in the United Kingdom during 2009 but before the coming into force of these Regulations.

(4) The information referred to in paragraph (1)(a) must be provided on or before 31st January 2010.

(5) The information referred to in paragraph (1)(b) must be provided for each quarter period of a relevant compliance period on or before the last day of the month following the end of that quarter period.

### **Reporting: waste batteries**

**24.**—(1) A scheme operator must provide to the appropriate authority information on the total amount in tonnes of waste portable batteries that the operator has been responsible for—

- (a) collecting; and
- (b) delivering to an approved battery treatment operator for treatment and recycling or to an approved battery exporter for treatment and recycling outside the United Kingdom,

during a relevant compliance period.

(2) The information must—

- (a) be in writing and signed by the appropriate person;
- (b) specify the total amount in tonnes and the amount in tonnes by reference to the chemistry type; and
- (c) be submitted in the format published by the appropriate authority under regulation 79.

(3) The information must be provided for each quarter period of a relevant compliance period on or before the last day of the month following the end of that quarter period.

### **Declaration of compliance by battery compliance scheme**

**25.**—(1) A scheme operator must provide—

- (a) a declaration of compliance; and
- (b) copies of all batteries evidence notes acquired by it

in respect of the relevant compliance period to the appropriate authority on or before 31st May of the next year.

(2) A declaration of compliance must—

- (a) include the information and the declaration set out in Part 2 of Schedule 1; and
- (b) be in writing and signed by the appropriate person.

### **Registration of producers of portable batteries**

**26.**—(1) A scheme operator must ensure that each scheme member is registered with the appropriate authority.

(2) Paragraph (1) does not apply to a scheme member who is or was also a producer of industrial or automotive batteries and is registered with the Secretary of State under regulation 45.

(3) A scheme operator must make an application for registration of scheme members to the appropriate authority—

- (a) in respect of any producer who is a scheme member on 15th October 2009 on or before 31st October 2009; or
- (b) in respect of any producer who—
  - (i) becomes a scheme member after 15th October 2009; and
  - (ii) whose details do not appear on a register kept under regulation 76, within 28 days of the date when that producer becomes a scheme member.

(4) A small producer must make an application to register with the appropriate authority within 28 days of the date that producer first places portable batteries on the market for the first time in the United Kingdom after 15th October 2009.

(5) Paragraph (4) does not apply to a small producer who is or was also a producer of industrial or automotive batteries and is registered with the Secretary of State under regulation 45.

### **Form of an application to register scheme members or a small producer**

**27.** A person making an application to register scheme members or a small producer under regulation 26 must ensure that it—

- (a) is in writing, is signed by the appropriate person and is in the format published by the appropriate authority under regulation 76;
- (b) contains in relation to each producer who is a subject of the application the information set out in Schedule 2;
- (c) in the case of an application to register scheme members, is accompanied by evidence that the battery compliance scheme has been approved under regulation 49.

### **Duties of the appropriate authority in relation to applications to register producers of portable batteries**

**28.**—(1) The appropriate authority must grant an application for registration where—

- (a) the applicant has complied with regulation 27;

- (b) in the case of an application to register a scheme member, the scheme is approved under regulation 49; and
  - (c) the producer who is the subject of the application does not appear on a register maintained under regulation 76.
- (2) Otherwise the appropriate authority must refuse the application.
- (3) Where an application for registration is granted the appropriate authority must, by the date mentioned in paragraph (5) confirm to the applicant in writing—
- (a) either (as the case may be)—
    - (i) that scheme members specified in the confirmation are registered with it; or
    - (ii) that the small producer is registered with it; and
  - (b) subject to paragraph (4), the new battery producer registration number it has allocated to each of those scheme members or to the small producer (as the case may be).
- (4) If a producer who is the subject of the confirmation appeared on a register maintained under regulation 76 during any of the five compliance periods preceding the compliance period during which the application for registration is made, the appropriate authority must, instead of allocating a new battery producer registration number, allocate that producer's most recently allocated battery producer registration number.
- (5) The date referred to in paragraph (3) is—
- (a) in respect of an application made on or before 31st October 2009, on or before 30th November 2009;
  - (b) otherwise, within 28 days of receipt of the application.

#### **Notification of changes to registration details**

**29.**—(1) If there is a change to the details entered in respect of a producer on a register maintained under regulation 76—

- (a) the operator of the battery compliance scheme of which the producer is a scheme member at the time of that change; or
- (b) the small producer,

as the case may be, must notify the appropriate authority of it within one month of the change of circumstance.

(2) If a scheme member or small producer ceases to be a producer—

- (a) the scheme operator at the time of that change of circumstance; or
- (b) the small producer,

as the case may be, must notify the appropriate authority of it within one month of the change.

(3) A notification under this regulation must—

- (a) be made in writing and signed by the appropriate person;
- (b) contain, in addition to notification of the change of details or circumstance, the producer's name and battery producer registration number;
- (c) be submitted in the format published by the appropriate authority under regulation 76;
- (d) where the notification is made by a scheme operator, be accompanied by evidence that the battery compliance scheme has been approved under regulation 49.

### **Declaration of battery producer registration number**

**30.** A producer who is registered with an appropriate authority under regulation 26 must declare its battery producer registration number to any person to whom that producer intends to sell, sells or otherwise supplies batteries in the United Kingdom.

## **PART 4**

### **PORTABLE BATTERIES: OBLIGATIONS AND RIGHTS OF DISTRIBUTORS AND OTHER ECONOMIC OPERATORS**

#### **Take back**

**31.**—(1) A distributor of portable batteries must, at any place it supplies such batteries to end-users,—

- (a) take back waste portable batteries at no charge; and
- (b) inform end-users about the possibility of such take back at the distributor's sales points.

(2) A distributor may not—

- (a) make any charge to end-users; or
- (b) oblige end-users to buy a new battery,

when accepting waste portable batteries under paragraph (1)(a).

(3) The duty in paragraph (1) does not apply where portable batteries are supplied by a small distributor.

(4) A distributor must not dispose of, or arrange for the disposal of, waste portable batteries accepted under paragraph (1)(a).

(5) In this regulation “small distributor” means a distributor who supplies less than 32 kg of portable batteries to end-users in a year.

#### **Distributor's right to request collection of waste batteries**

**32.**—(1) A distributor may request any battery compliance scheme to collect from it waste portable batteries it has taken back under regulation 31.

(2) A scheme operator who receives a request under paragraph (1) must—

- (a) arrange with the distributor within 21 days of the request for the collection of the waste portable batteries;
- (b) ensure the collection of those batteries without charge to the distributor and within a reasonable time.

(3) A distributor who has requested collection of waste portable batteries under paragraph (1) may not make a charge for the collection of those waste batteries under paragraph (2).

#### **Right of economic operators to participate in collection, treatment and recycling schemes**

**33.**—(1) Economic operators and waste collection authorities may take waste portable batteries to any facility provided by a battery compliance scheme for the purpose of receiving such batteries from such persons.

(2) The scheme operator must accept waste portable batteries at such a facility without charge.

### **Prohibition on showing the costs of collection, treatment and recycling of portable batteries**

**34.** A distributor must not show separately the costs of the collection, treatment and recycling of waste portable batteries to an end-user at the time of sale of new portable batteries.

## **PART 5**

### **PRODUCER OBLIGATIONS: INDUSTRIAL AND AUTOMOTIVE BATTERIES**

#### **Take back: industrial batteries**

**35.**—(1) This regulation applies to a producer of industrial batteries in respect of each compliance period during which it places such batteries on the market for the first time in the United Kingdom.

(2) The producer must take back waste industrial batteries free of charge and within a reasonable time from an end-user of industrial batteries when requested by that end-user during the compliance period—

- (a) if the end-user is supplied by the producer with new industrial batteries during the compliance period;
- (b) if—
  - (i) the end-user is not able for any reason to return waste industrial batteries to another producer under sub-paragraph (a); and
  - (ii) the waste industrial batteries which are the subject of the request are of the same chemistry type as the new industrial batteries that the producer placed on the market for the first time in the United Kingdom in the compliance period or any of the three preceding years;
- (c) if the end-user is not able for any reason to return waste industrial batteries to another producer under sub-paragraphs (a) and (b).

(3) The producer must publish details of how an end-user of industrial batteries should request the take back of waste industrial batteries by that producer under paragraph (2)(b) and (c)—

- (a) on or before 1st December in the year preceding the compliance period; or
- (b) if the producer does not place industrial batteries on the market for the first time in the United Kingdom until after that date, within 28 days of the date of such placing on the market.

(4) The details required to be published under paragraph (3) must—

- (a) be published in such a manner as is reasonably likely to bring them to the notice of end-users of industrial batteries; and
- (b) give details of the chemistry type of the industrial batteries placed or intended to be placed on the market by the producer during the compliance period and the three preceding years.

(5) Where the compliance period in respect of which the producer has obligations under paragraph (2) is a year prior to 2012, the period of four years referred to in paragraphs (2)(b)(ii) and (4)(b) is replaced by the following—

- (a) where the relevant compliance period is the year 2010, that compliance period and the year 2009; and
- (b) where the relevant compliance period is the year 2011, that compliance period and the years 2009 and 2010.

(6) In this regulation “chemistry type” in relation to a battery, means the type of the battery by reference to its main chemical constituents, for example, lead, nickel-cadmium, nickel-metal hydride or lithium.

#### **Collection: automotive batteries**

**36.**—(1) This regulation applies to a producer of automotive batteries in respect of each compliance period during which the producer places such batteries on the market for the first time in the United Kingdom.

(2) The producer must collect waste automotive batteries free of charge and within a reasonable time from a final holder of automotive batteries when requested by that final holder during the compliance period.

(3) The producer must publish details of how final holders of automotive batteries should request the collection of waste automotive batteries from that producer under paragraph (2)—

- (a) on or before 1st December in the year preceding the compliance period; or
- (b) if the producer does not place automotive batteries on the market for the first time in the United Kingdom until after that date, within 28 days of the date of such placing on the market.

(4) The details required to be published under paragraph (3) must be published in such a manner as is reasonably likely to bring them to the notice of final holders of automotive batteries.

#### **Alternative financing agreements**

**37.**—(1) Nothing in these Regulations prevents a producer of industrial or automotive batteries from concluding an agreement under which the parties to the agreement make arrangements between themselves to finance the net costs of the collection, treatment and recycling of waste industrial or automotive batteries which differ from the arrangements provided for under these Regulations.

(2) Any such agreement entered into by a producer of industrial or automotive batteries is without prejudice to the obligations of that producer under these Regulations.

#### **Treatment and recycling**

**38.** A producer of industrial or automotive batteries must ensure that all identifiable waste batteries taken back or collected by that producer under this Part are delivered to and accepted by—

- (a) an approved battery treatment operator for treatment and recycling; or
- (b) an approved battery exporter for export for treatment and recycling outside the United Kingdom.

#### **Record keeping**

**39.**—(1) A producer of industrial or automotive batteries must keep records in writing of—

- (a) the amount in tonnes of—
  - (i) industrial batteries; and
  - (ii) automotive batteries,

which that producer has placed on the market for the first time in the United Kingdom during 2009 and any relevant compliance period; and

- (b) the amount in tonnes of—
  - (i) waste industrial batteries; and

(ii) waste automotive batteries,

which that producer has been responsible for taking back or collecting and delivering to an approved battery treatment operator for treatment or recycling or to an approved battery exporter for treatment or recycling outside the United Kingdom during a relevant compliance period.

(2) A record kept under this regulation must specify the amount in tonnes of batteries by reference to—

- (a) each category of battery; and
- (b) the chemistry type for each category of battery.

(3) A record kept under this regulation must be kept for four years from the date on which it is made and must be made available to the Secretary of State on demand.

(4) The duties in this regulation apply only to records that were in existence on the coming into force of these Regulations and to records made after that date.

#### **Reporting: industrial and automotive batteries placed on the market**

**40.**—(1) A producer of industrial or automotive batteries must provide to the Secretary of State information on the total amount in tonnes of industrial or automotive batteries which that producer has placed on the market for the first time in the United Kingdom in—

- (a) 2009; and
  - (b) each relevant compliance period.
- (2) The information referred to in paragraph (1) must—
- (a) be in writing and signed by the appropriate person;
  - (b) specify the amount in tonnes of the industrial and automotive batteries by reference to—
    - (i) each category of battery; and
    - (ii) the chemistry type for each category of battery; and

(c) be submitted in the format published by the Secretary of State under regulation 74.

(3) The duty in paragraph (1)(a) does not require a producer to provide information relating to batteries placed on the market for the first time on the United Kingdom during 2009 but before the coming into force of these Regulations.

(4) The information referred to in paragraph (1)(a) must be provided on or before 31st March 2010.

(5) The information referred to in paragraph (1)(b) must be provided for each compliance period on or before 31st March of the next year.

#### **Reporting: waste batteries**

**41.**—(1) A producer of industrial or automotive batteries must provide to the Secretary of State information on the total amount in tonnes of waste industrial and automotive batteries which that producer has been responsible for—

- (a) taking back or collecting; and
- (b) delivering to an approved battery treatment operator for treatment and recycling or an approved battery exporter for treatment and recycling outside the United Kingdom,

during each relevant compliance period.

(2) The information referred to in paragraph (1) must—

- (a) be in writing and signed by the appropriate person;
  - (b) specify the amount in tonnes of waste industrial and automotive batteries—
    - (i) taken back or collected, and
    - (ii) delivered to an approved battery treatment operator or an approved exporter; and
  - (c) be submitted in the format published by the Secretary of State under regulation 74.
- (3) The amount in tonnes of waste batteries referred to paragraph (2)(b) must be given by reference to—
- (a) each category of battery; and
  - (b) the chemistry type for each category of battery.
- (4) The information referred to in paragraph (1) must be provided for each compliance period on or before 31st March of the next year.

#### **Registration of producers: industrial batteries or automotive batteries**

42. With effect from 16th October 2009 a producer who places industrial or automotive batteries on the market for the first time in the United Kingdom must be registered with the Secretary of State unless—

- (a) the producer's details already appear on a register kept under regulation 76;
- (b) the producer is a member of a battery compliance scheme in relation to portable batteries and the scheme operator is under an obligation to ensure the producer is registered with an appropriate authority; or
- (c) the producer is also a small producer and is under an obligation to register with an appropriate authority under regulation 26(4).

#### **Application to register**

43.—(1) A producer who is required by regulation 42 to be registered must make an application for registration within 28 days of the first date on which that producer places industrial or automotive batteries on the market for the first time in the United Kingdom after 15th October 2009.

- (2) The application to the Secretary of State to register must—
- (a) be in writing and signed by the appropriate person;
  - (b) be in the format published by the Secretary of State under regulation 74; and
  - (c) contain the information set out in Schedule 2.

#### **Notification of changes to registration details**

44.—(1) If there is a change to the details entered in respect of a producer of industrial or automotive batteries on a register maintained under regulation 76, the producer must notify the Secretary of State of it within one month of the change.

- (2) If a producer of industrial or automotive batteries ceases to be a producer, the former producer must notify the Secretary of State of that change of circumstance within one month of the change.
- (3) A notification under this regulation must—
- (a) be made in writing and signed by the appropriate person;
  - (b) contain, in addition to notification of the change of details or circumstance, the name and battery producer registration number of the producer or former producer;
  - (c) be submitted in the format published by the Secretary of State under regulation 74.

(4) This regulation does not apply to a producer of industrial or automotive batteries who is also a producer of portable batteries.

#### **Duties of the Secretary of State in relation to registration of producers**

**45.**—(1) The Secretary of State must grant an application for registration where the applicant—

- (a) has complied with the requirements of regulation 43;
- (b) does not appear on a register maintained under regulation 76; and
- (c) has not stated in the information submitted under regulation 43(2)(c) that the applicant is a member of a battery compliance scheme.

(2) Otherwise the Secretary of State must refuse the application.

(3) Where an application for registration is granted, the Secretary of State must, within 28 days of receipt of the application—

- (a) confirm to the applicant in writing that the applicant is registered with the Secretary of State; and
- (b) subject to paragraph (4), allocate a new battery producer registration number to the applicant and confirm it in writing.

(4) If the applicant appeared on a register maintained under regulation 76 during any of the five compliance periods preceding the compliance period during which the application for registration is made, the Secretary of State must, instead of allocating a new battery producer registration number, allocate the applicant's most recently allocated battery producer registration number.

#### **Declaration of battery producer registration number**

**46.** A producer who is registered with the Secretary of State under regulation 45 must declare its battery producer registration number to any person to whom that producer intends to sell, sells or otherwise supplies batteries in the United Kingdom.

## **PART 6**

### **APPROVAL OF BATTERY COMPLIANCE SCHEMES**

#### **Application for approval of a proposed battery compliance scheme**

**47.**—(1) Subject to paragraph (3), an application for approval of a proposed battery compliance scheme must be made to the appropriate authority by the operator of the proposed scheme during the period specified in paragraph (2).

(2) The period referred to in paragraph (1) is, where the application is for approval in relation to—

- (a) the first compliance period, the period ending on or before 31st May 2009;
- (b) any other compliance period, the period commencing on 15th April and ending with 15th May in the year before the compliance period.

(3) An applicant may make an application for approval outside the period mentioned in paragraph (2) if a producer has notified the appropriate authority under regulation 15(2)(b) of its intention to join that proposed scheme.

(4) An applicant who makes an application for approval in reliance on paragraph (3) must do so within 28 days of the date of the notice served on the producer in question under regulation 54(4).

(5) An application for approval of a proposed scheme must—

- (a) be in writing and signed by the appropriate person;
- (b) include—
  - (i) the information set out in Part 1 of Schedule 3, which must be submitted in the format published by the appropriate authority under regulation 79;
  - (ii) a copy of an operational plan in respect of the next three compliance periods containing the information set out in Part 2 of Schedule 3; and
- (c) be accompanied by the scheme application charge.

### **Further information in respect of an application**

**48.**—(1) The appropriate authority may, if it considers that it requires further information to determine an application, serve a notice on the applicant specifying—

- (a) the information required; and
  - (b) the date by which it is required (being the date mentioned in paragraph (3)).
- (2) The appropriate authority must serve any notice under paragraph (1)—
- (a) in respect of an application made under regulation 47(1)—
    - (i) in respect of the first compliance period, on or before 30th June 2009;
    - (ii) in respect of any other compliance period, on or before 15th June of the year before that compliance period;
  - (b) in the case of an application made in reliance on regulation 47(3), within 28 days of the date of receipt of the application.
- (3) The applicant must provide the information not later than—
- (a) 31st August in the year before the compliance period in respect of which the approval is to take effect; or
  - (b) in the case of an application made in reliance on regulation 47(3), within 42 days of the date of the notice.

### **Approval of proposed schemes**

**49.**—(1) The appropriate authority must grant approval of a proposed scheme if—

- (a) the applicant has complied with regulation 47(5);
- (b) where the appropriate authority has served a notice under regulation 48(1) requiring further information, the applicant has complied with regulation 48(3); and
- (c) the authority is satisfied that the information and operational plan provided in accordance with regulation 47 demonstrate that the criteria for approval of a proposed scheme set out in Part 3 of Schedule 3 are met.

(2) Otherwise the appropriate authority must refuse approval of the proposed scheme.

(3) Where approval of a proposed scheme is refused under this regulation the appropriate authority is not under a duty to refund the whole or any part of the scheme application charge.

### **Notification of determination**

**50.**—(1) The appropriate authority must notify an applicant in writing of its determination to grant or refuse approval of a proposed scheme under regulation 49—

- (a) in the case of an application made under regulation 47(1), on or before 30th September of the year before the compliance period in respect of which approval is to take effect;

- (b) in the case of an application made in reliance on regulation 47(3) within 4 months of the date of receipt of the application.
- (2) A notification that the appropriate authority has made a determination to refuse approval must—
  - (a) state the reason for the decision; and
  - (b) inform the applicant of the right of appeal under Part 11.
- (3) If—
  - (a) an applicant appeals against a refusal of approval under regulation 49; and
  - (b) the outcome of that appeal requires the appropriate authority to grant approval,the authority must within 28 days of the date of the determination of the appeal notify the applicant of its determination to grant approval.

### **Effect and consequences of approval**

- 51.**—(1) Approval of a proposed scheme—
- (a) takes effect on the date of the determination to grant it; and
  - (b) remains in force unless that approval is withdrawn under regulation 54.
- (2) The appropriate authority must publish the following details of a battery compliance scheme—
- (a) the name of the scheme; and
  - (b) the name and address of the scheme operator.
- (3) Paragraph (4) applies if an appropriate authority grants or refuses approval of a proposed scheme further to an application made in reliance on regulation 47(3).
- (4) If this paragraph applies, the appropriate authority must notify each producer who served a notice under regulation 15(2)(b) in respect of the proposed scheme in writing of that determination within 14 days making it.

### **Conditions of approval**

- 52.**—(1) Approval of a battery compliance scheme is subject to the following conditions.
- (2) The scheme operator must—
- (a) comply with its obligations under Part 3;
  - (b) carry out the scheme’s operational plan;
  - (c) comply with its obligations under regulations 32(2) and 33(2);
  - (d) provide any information in relation to its obligations under Part 3 reasonably requested by the appropriate authority;
  - (e) inform the appropriate authority in writing of—
    - (i) any change in the person who is the scheme operator and, in the case where the scheme operator is a partnership or limited liability partnership, any change of partners;
    - (ii) any material change in—
      - (aa) the information provided under regulation 47(5)(b)(i);
      - (bb) the operational plan submitted under regulation 47(5)(b)(ii);
    - (iii) a conviction of the scheme operator for an offence under—

- (aa) regulation 89(2);
  - (bb) regulation 73(3) or (4) of the Waste Electrical and Electronic Equipment Regulations 2006(23); or
  - (cc) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(24), committed in the scheme operator's capacity as the operator of a scheme under those Regulations,
- within 28 days of any such change or conviction;
- (f) in respect of each compliance period other than the first compliance period, after 15th October and on or before 31st October in the year before the compliance period, inform the appropriate authority of the names of its scheme members and their battery producer registration numbers;
  - (g) provide the appropriate authority with an updated operational plan covering the next three compliance periods on or before 31st August of each year in respect of which the approval remains in force;
  - (h) pay the scheme subsistence charge to the appropriate authority on receipt of an invoice issued under regulation 79(2);
  - (i) make records available and provide information to the appropriate authority in compliance with regulations 22(2), 23 and 24.

(3) The scheme operator and the battery compliance scheme must continue to meet the criteria for approval of a proposed scheme set out in Part 3 of Schedule 3 (reading that Part as if references to the operator of a proposed scheme were to the scheme operator and references to a proposed scheme were to the battery compliance scheme).

#### **Annual confirmation of approval of a battery compliance scheme**

53. On receipt of an updated operational plan under regulation 52(2)(g), the appropriate authority must within 28 days—

- (a) notify its confirmation of approval to the scheme operator in writing; or
- (b) if it intends to withdraw approval under regulation 54, make the notification required by regulation 54(2).

#### **Withdrawal of approval of a battery compliance scheme**

54.—(1) The appropriate authority may withdraw approval of a battery compliance scheme where it is satisfied that—

- (a) there is a breach of any condition in regulation 52; or
- (b) the scheme operator knowingly or recklessly supplied false information in connection with —
  - (i) an application for registration made under regulation 26(3);
  - (ii) a notification made under regulation 29;
  - (iii) the application for approval of the battery compliance scheme made under regulation 47; or
  - (iv) compliance with any condition in regulation 52.

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(23) S.I. 2006/3289, as amended by S.I. 2007/3454.

(24) S.I. 2007/871, as amended by S.I. 2008/413. There are other amendments not relevant to these Regulations.

(2) Before the withdrawal of approval of a battery compliance scheme under paragraph (1) the appropriate authority must serve a notification in writing on the scheme operator which must state—

- (a) that approval of the scheme is to be withdrawn;
- (b) the reasons for the decision;
- (c) the right of appeal under Part 11; and
- (d) the date when the withdrawal of approval will take effect, which must not be earlier than the expiration of the time limit for an appeal against the notification.

(3) If an appeal against the decision to withdraw approval of the scheme is made and refused, the decision does not take effect on the date stated in the notification under paragraph (2) but instead takes effect at the end of the day on which the appeal is refused.

(4) If—

- (a) a notification has been served in accordance with paragraph (2); and
- (b) either—
  - (i) the time limit for an appeal has expired and no appeal against that notification has been made; or
  - (ii) an appeal has been made and refused,

the appropriate authority must within 14 days of the date of expiry or refusal (as the case may be) serve a notification in writing on each scheme member containing the information specified in paragraph (5).

(5) The information referred to in paragraph (4) is—

- (a) a statement that approval of the scheme has been withdrawn and the date when the withdrawal takes effect;
- (b) the reasons for the withdrawal;
- (c) the obligation of a producer under regulation 15(2).

(6) Where approval is withdrawn under this regulation the appropriate authority is not under a duty to refund the whole or any part of the scheme application charge or the scheme subsistence charge.

## **Charges**

**55.**—(1) Notwithstanding the power to make a charging scheme under section 41 of the Environment Act 1995(25), the Environment Agency and SEPA may impose charges in accordance with paragraph (2) until—

- (a) those charges are superseded by such a charging scheme; or
- (b) 1st April 2013,

whichever is the earlier.

(2) The charges referred to in paragraph (1) are—

- (a) an application charge (which is required to be paid under regulation 47(5)(c)) of £17,000 for each battery compliance scheme;
- (b) annually, a subsistence charge (which is required to be paid under regulation 52(2)(h)) for each battery compliance scheme of—
  - (i) £118,000; and

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(25) 1995 c. 25. Section 41 is amended by regulation 95 of and Schedule 8 to these Regulations. There are other amendments which are not relevant to these Regulations.

- (ii) £680 for each scheme member.

## PART 7

### DISPOSAL, TREATMENT AND RECYCLING

#### **Prohibition on disposing of waste automotive and industrial batteries in a landfill or by incineration**

**56.**—(1) No person may dispose of waste industrial or automotive batteries in a landfill or by incineration.

(2) Paragraph (1) does not affect the disposal of residues of any batteries that have undergone both treatment and recycling in accordance with these Regulations.

(3) In this regulation, “landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste<sup>(26)</sup> but does not include any operation excluded from the scope of that Directive by Article 3(2).

#### **Requirement for approval of battery treatment operators and exporters**

**57.**—(1) No person may issue a batteries evidence note in relation to the treatment and recycling of waste portable batteries unless—

- (a) that person is at the time of issue an approved battery treatment operator;
- (b) the waste portable batteries have been accepted at a specified site by that operator for treatment and recycling; and
- (c) the operator is approved to issue such evidence notes in respect of waste portable batteries accepted at that site for treatment and recycling.

(2) No person may issue a batteries evidence note in relation to waste portable batteries exported for treatment or recycling unless that person is at the time of issue an approved battery exporter who is approved to issue such evidence notes.

(3) No person may treat or recycle waste industrial or automotive batteries unless—

- (a) that person is at the time of the treatment or recycling an approved battery treatment operator;
- (b) the waste industrial or automotive batteries have been accepted at a specified site by that operator for treatment and recycling; and
- (c) the operator is approved to treat and recycle waste industrial or automotive batteries accepted at that site for treatment and recycling.

(4) Paragraph (3) does not apply where the waste industrial or automotive batteries have previously been accepted by an approved battery treatment operator for treatment and recycling at a specified site approved for those purposes and the person carrying out the treatment or recycling is doing so for or on behalf of that operator.

(5) No person may export waste industrial or automotive batteries for treatment or recycling unless that person is at the time of export an approved battery exporter.

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(26) OJ No L 182, 16.7.1999, p 1. Directive as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p 1).

### Application for approval

**58.** An application for approval of a battery treatment operator in respect of a site or for approval of an exporter under this Part must be made to the appropriate authority and must—

- (a) be in writing and signed by the appropriate person;
- (b) contain the information set out in Part 1 of Schedule 4, which must be submitted in the format published by the appropriate authority under regulation 80; and
- (c) be accompanied by the treatment, recycling and export application charge.

### Decision in relation to application

**59.**—(1) An application for approval made—

- (a) by a battery treatment operator to—
  - (i) issue batteries evidence notes in respect of waste portable batteries accepted at a site for treatment and recycling; or
  - (ii) treat or recycle waste industrial or automotive batteries accepted at a site for treatment and recycling; or
- (b) by an exporter to—
  - (i) issue batteries evidence notes in respect of waste portable batteries that are exported for treatment or recycling in one or more specified treatment or recycling operations at a named site outside the United Kingdom, or a combination of such operations, or
  - (ii) to export waste industrial or automotive batteries for such purposes,

must be granted where the appropriate authority is satisfied as to the matters set out in paragraph (2) and must otherwise be refused.

(2) The matters referred to in paragraph (1) are—

- (a) for the purposes of paragraph (1)(a)—
  - (i) that the applicant is a battery treatment operator;
  - (ii) that the applicant will comply with the conditions referred to in regulation 63(1); and
  - (iii) that the application has been made in accordance with regulation 58; and
- (b) for the purposes of paragraph (1)(b)—
  - (i) that the applicant is an exporter;
  - (ii) where the application for approval relates to one or more treatment or recycling sites outside the EEA, that the minimum treatment requirements set out in paragraph 10(3)(b) of Schedule 4 and the requirements as to minimum recycling efficiencies set out in paragraph 10(3)(c) of that Schedule will be met;
  - (iii) that the applicant will comply with the conditions referred to in regulation 63(2); and
  - (iv) that the application has been made in accordance with regulation 58.

(3) Where approval is refused under this regulation, the appropriate authority is not under a duty to refund the whole or any part of the treatment, recycling and export application charge.

### Notification of decision

**60.**—(1) The appropriate authority must notify the applicant in writing of its decision under regulation 59 no later than 12 weeks after the application was made.

- (2) A notification that the appropriate authority has decided to grant approval must state—
  - (a) in the case of the approval of a battery treatment operator—

- (i) whether the operator is approved to issue batteries evidence notes in respect of waste portable batteries accepted by that operator for treatment and recycling and, if so, must specify the site to which the approval relates; and
- (ii) whether the operator is approved to treat and recycle waste industrial and automotive batteries accepted by that operator for treatment and recycling and, if so, must specify the site to which the approval relates; and
- (b) in the case of the approval of a battery exporter—
  - (i) whether the exporter is approved to issue batteries evidence notes in respect of waste portable batteries that are exported for treatment or recycling outside the United Kingdom, and, if so, must specify the site to which the approval relates; and
  - (ii) whether the exporter is approved to export waste industrial or automotive batteries for such purposes, and, if so, must specify the site to which the approval relates.
- (3) A notification that the appropriate authority has decided to refuse approval must state—
  - (a) the reason for the decision; and
  - (b) the right of appeal under Part 11.
- (4) If—
  - (a) an applicant appeals against a decision to refuse approval; and
  - (b) that appeal is successful,

the appropriate authority must within 28 days of the date of the determination of the appeal notify the applicant of its decision to grant approval under regulation 59.

### **Effect and consequences of a grant of approval**

- 61.**—(1) Where approval is granted under regulation 59 it will take effect—
- (a) where the application is made in the year before that for which the applicant has applied to be approved—
    - (i) from 1st January in the year for which the applicant has applied to be approved where the decision to grant approval was made before that date; and
    - (ii) in all other cases, from the date of the decision,
 and will remain in force until 31st December in the year for which the applicant has applied to be approved;
  - (b) where the application is made during the year for which the applicant has applied to be approved, from the date of the decision, and will remain in force until 31st December in that year.
- (2) In these Regulations, “relevant approval period” means the period for which a grant of approval that has been made under this regulation remains in force.

### **Application for extension of approval of an exporter to an additional site**

- 62.**—(1) An application made by a battery exporter to extend an approval granted under regulation 59 to include an additional site to which that exporter wants to export waste batteries for treatment or recycling must be made to the appropriate authority and must—
- (a) be in writing and signed by the appropriate person;
  - (b) contain the information set out in paragraph 8 of Schedule 4, which must be submitted in the format published by the appropriate authority under regulation 80; and
  - (c) be accompanied by the extension of approval charge.

(2) An application to extend an exporter's approval to include an additional site located within the EEA must be granted by the appropriate authority where it is satisfied that the application has been made in accordance with paragraph (1), and must otherwise be refused.

(3) An application to extend an exporter's approval to include an additional site located outside the EEA must be granted by the appropriate authority where it is satisfied that—

(a) that site will meet the minimum treatment requirements set out in paragraph 10(3)(b) of Schedule 4 and the requirements as to minimum recycling efficiencies set out in paragraph 10(3)(c) of that Schedule; and

(b) the application was made in accordance with paragraph (1),  
and must otherwise be refused.

(4) The appropriate authority must notify the applicant in writing of a decision made under paragraph (2) or (3) no later than 12 weeks after the application was made and, if the decision is a decision to refuse approval, such a notification must state—

(a) the reasons for the decision; and

(b) the right of appeal under Part 11.

(5) Subject to regulation 64, where an application is granted under paragraph (2) or (3), it takes effect from the date of that decision or the date that the applicant's grant of approval under regulation 59 took effect, whichever is the later date, and remains in force until the date that the applicant's approval granted under regulation 59 expires.

(6) Where extension of approval is refused under this regulation the appropriate authority is not under a duty to refund the whole or any part of the extension of approval charge.

### **Conditions of approval**

**63.**—(1) An approved battery treatment operator must comply with the conditions set out in—

(a) Part 2 of Schedule 4; and

(b) if approved to issue batteries evidence notes in respect of waste portable batteries accepted at a specified site, Part 3 of Schedule 4.

(2) An approved battery exporter must comply with the conditions set out in—

(a) Part 2 of Schedule 4; and

(b) if approved to issue batteries evidence notes in respect of the treatment and recycling of portable batteries outside the United Kingdom, Part 4 of Schedule 4.

### **Suspension and cancellation of approval**

**64.**—(1) The appropriate authority may suspend or cancel the approval of a battery treatment operator or exporter where it appears to it that the person who is approved has failed, or is likely to fail, to comply with any of the conditions specified in Part 2 of Schedule 4.

(2) The appropriate authority may suspend or cancel the approval of a battery treatment operator or exporter to the extent that it relates to the issuing of batteries evidence notes where it appears to it that the person who is approved has failed, or is likely to fail to comply with any of the conditions in—

(a) in the case of an approved battery treatment operator, Part 3 of Schedule 4;

(b) in the case of an approved battery exporter, Part 4 of Schedule 4.

(3) Where—

(a) an approved battery treatment operator is approved in relation to two or more specified sites; or

- (b) an approved battery exporter is approved in relation to two or more sites outside the United Kingdom,

the appropriate authority may limit a suspension or cancellation under paragraph (1) or (2) to one or more of those sites.

(4) Where the appropriate authority is no longer satisfied that the minimum treatment requirements set out in paragraph 10(3)(b) of Schedule 4 or that the requirements as to minimum recycling efficiencies set out in paragraph 10(3)(c) of that Schedule are met in relation to waste batteries exported to a site outside the EEA, the appropriate authority must cancel the approval of an exporter to the extent that it relates to that site.

(5) Where the appropriate authority suspends or cancels a grant of approval under paragraph (1) or (2) or cancels the approval of an exporter to the extent that it relates to a site under paragraph (4) it must serve on the battery treatment operator or exporter concerned a notification in writing stating—

- (a) its decision to suspend or cancel (as the case may be) the grant of approval;
- (b) the extent of the suspension or cancellation (as the case may be);
- (c) its reasons for the decision;
- (d) the right of appeal under Part 11;
- (e) in the case of a cancellation, the date when the cancellation will take effect, not being earlier than the expiration of the time limit for an appeal against the notice; and
- (f) in the case of a suspension—
  - (i) the date when the suspension will take effect, not being earlier than the date of receipt of the notification;
  - (ii) the period of the suspension; and
  - (iii) any steps which are required to be taken in order to bring the suspension to an end.

(6) Where an appeal against a decision to suspend or cancel the approval of a battery treatment operator or exporter is pending—

- (a) a decision to cancel the approval of a battery treatment operator or an exporter will not take effect until the appeal is disposed of and—
  - (i) if the appeal is dismissed or withdrawn, the decision will take effect from the end of the day on which the appeal is dismissed or withdrawn; and
  - (ii) if the appeal body determines that the decision of the appropriate authority must be altered, the decision will not take effect until the appropriate authority gives effect to the determination;
- (b) a decision to suspend approval of a battery treatment operator or an exporter will remain in force.

(7) The approval of a battery treatment operator or exporter ceases to have effect—

- (a) on the date on which that person ceases to be a battery treatment operator or an exporter (as the case may be);
- (b) if that person requests that its approval should be cancelled, with effect from the date of cancellation that person specifies.

(8) Where approval is suspended or cancelled under this regulation the appropriate authority is not under a duty to refund the whole or any part of the treatment, recycling and export application charge or the extension of approval charge.

## Charges

**65.**—(1) Notwithstanding the power to make a charging scheme under section 41 of the Environment Act 1995(27), the Environment Agency and SEPA may impose the charges set out in paragraph (2) until—

- (a) those charges are superseded by such a charging scheme; or
- (b) 1st April 2013,

whichever is the earlier.

(2) The charges referred to in paragraph (1) are—

- (a) the application charge (which is required to be paid under regulation 58(c)) set out in paragraph (3);
- (b) an extension of approval charge (which is required to be paid under regulation 62(1)(c)) of £110.

(3) The application charge is—

- (a) for an applicant who is a battery treatment operator—
  - (i) if the applicant gives the undertaking mentioned in paragraph (4), £500 for each site in respect of which the application is made;
  - (ii) otherwise, £2,590 for each site in respect of which the application is made;
- (b) for an applicant who is an exporter—
  - (i) if the applicant gives the undertaking mentioned in paragraph (4), £500;
  - (ii) otherwise, £2,590.

(4) The undertaking referred to in paragraph (3) is an undertaking, in respect of the relevant approval period, to—

- (a) issue batteries evidence notes in respect of not more than 15 tonnes of waste portable batteries; and
- (b) accept not more than 150 tonnes of waste automotive and industrial batteries for treatment and recycling.

(5) If an approved battery treatment operator or an approved batteries exporter—

- (a) gives the undertaking;
- (b) pays the charge set out in paragraph (3)(a)(i) or (3)(b)(i); and
- (c) subsequently exceeds either of the limits in respect of which the undertaking was given,

that battery treatment operator or exporter is from the date the limit was exceeded liable to pay the appropriate authority the balance of the charge which would have been payable had the undertaking not been given.

## Reporting

**66.**—(1) An approved battery treatment operator or approved battery exporter must provide reports to the appropriate authority—

- (a) in the case of information relating to waste portable batteries, for each quarter period of a relevant approval period on or before the last day of the month following the end of that quarter period; and

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(27) 1995 c. 25. Section 41 is amended by regulation 95 of and Schedule 8 to these Regulations. There are other amendments which are not relevant to these Regulations.

- (b) in the case of information relating to waste industrial and automotive batteries, for each relevant approval period on or before 31st January of the year following the end of that approval period.
- (2) The reports referred to in paragraph (1) must be in writing, be signed by the appropriate person, be in the format published by the appropriate authority under regulation 80 and include details of—
- (a) in the case of an approved battery treatment operator—
- (i) the total amount in tonnes of waste batteries accepted by that approved battery treatment operator at a specified site for treatment and recycling (“relevant waste batteries”) and, for waste portable batteries, the amount by reference to each battery compliance scheme from which they were accepted;
  - (ii) the total amount in tonnes of relevant waste batteries treated and recycled by that approved battery treatment operator;
  - (iii) the amount in tonnes of relevant waste batteries delivered to an approved battery exporter for treatment and recycling outside the United Kingdom;
  - (iv) where paragraph (iii) applies, the name and address of the exporter referred to in that paragraph; and
  - (v) where paragraph (i), (ii) or (iii) applies, details of the amount in tonnes of relevant waste batteries must be provided by reference to—
    - (aa) each specified site;
    - (bb) each category of battery; and
    - (cc) the chemistry type for each category of battery;
- (b) in the case of an approved battery exporter, the total amount of waste batteries in tonnes accepted and then exported for treatment and recycling by reference to—
- (i) each category of battery;
  - (ii) the chemistry type for each category of battery;
  - (iii) the total number of batteries evidence notes issued;
  - (iv) for waste portable batteries, the battery compliance scheme from whom they were accepted.
- (3) The reports referred to in paragraph (1) must not include details of any waste batteries which have not arisen as waste in the United Kingdom.
- (4) An approved battery treatment operator or approved battery exporter must also provide a report to the appropriate authority on or before 31st May in the year following the relevant approval period which must—
- (a) be from an independent auditor; and
- (b) demonstrate to the satisfaction of the appropriate authority that—
- (i) the treatment of waste batteries accepted at a specified site, in the case of an approved battery operator, or exported, in the case of an approved battery exporter, meets the minimum treatment requirements set out in paragraph 10(3)(b) of Schedule 4;
  - (ii) recycling of waste batteries accepted at a specified site, in the case of an approved battery operator, or exported, in the case of an approved battery exporter, meets the requirements as to minimum recycling efficiencies set out in paragraph 10(3)(c) of that Schedule;
  - (iii) the batteries evidence notes issued by the approved battery treatment operator or approved battery exporter during the relevant approval period are consistent with the amount of waste portable batteries in tonnes accepted at a specified site for

treatment and recycling or exported for treatment and recycling in that relevant approval period.

- (5) For the purposes of paragraph (4), an “independent auditor” means—
- (a) an auditor who would be eligible for appointment as the statutory auditor of the approved battery treatment operator or the approved battery exporter under Part 42 of the Companies Act 2006<sup>(28)</sup>; or
  - (b) an auditor who is—
    - (i) independent of the approved battery treatment operator or approved battery exporter;
    - (ii) independent of any operator of a battery compliance scheme; and
    - (iii) a member of a professional body for auditors that is recognised as such by the appropriate authority.

### **Record keeping**

**67.**—(1) An approved battery treatment operator or approved battery exporter must maintain records that enable completion of the reports referred to in regulation 66(1) and (4) in relation to a relevant approval period.

(2) A record maintained under this regulation must be kept for four years from the date on which it is made and must be made available to the appropriate authority on demand.

## **PART 8**

### **POWERS AND DUTIES OF THE SECRETARY OF STATE**

#### **Information for end-users of batteries**

- 68.** The Secretary of State must ensure, in particular through information campaigns, that—
- (a) end-users of batteries are fully informed of the potential effects on the environment and human health of the substances used in batteries;
  - (b) end-users of industrial batteries and automotive batteries are fully informed of—
    - (i) the desirability of not disposing of waste batteries as unsorted municipal waste and of participating in their separate collection so as to facilitate treatment and recycling;
    - (ii) their role in contributing to the recycling of waste batteries;
    - (iii) the collection and recycling schemes available to them; and
    - (iv) the meaning of the crossed out wheeled bin symbol shown in Schedule 5 and the chemical symbols “Hg”, “Cd” and “Pb”<sup>(29)</sup>.

#### **Batteries evidence notes**

**69.** The Secretary of State must approve a format for batteries evidence notes.

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<sup>(28)</sup> 2006 c. 46.

<sup>(29)</sup> Regulation 5 of the Batteries and Accumulators (Placing on the Market) Regulations 2008 (S.I. 2008/2164) requires the marking with the crossed out wheeled bin symbol of batteries or battery packs placed on the market in the UK. Regulation 6 of that instrument requires the marking of batteries placed on the market in the UK where they contain more than the prescribed proportion of mercury, cadmium or lead with the chemical symbols, respectively “Hg”, “Cd” or “Pb”.

### **Overarching objective: maximising collection of portable batteries**

**70.**—(1) The Secretary of State must keep the collection rates of all battery compliance schemes under review in order to establish whether, having regard to the environmental impact of transport, the schemes are together meeting the overarching objective of maximising the separate collection of portable batteries in the United Kingdom.

(2) If the Secretary of State considers that the overarching objective is not being met, the Secretary of State must take such steps as the Secretary of State considers necessary to ensure it will be met.

(3) In this regulation—

“collection rate” means for any scheme in a compliance period the percentage obtained by dividing the weight of portable batteries for which the scheme supplies batteries evidence notes under regulation 25 in respect of that compliance period by the average weight per year of portable batteries that scheme members place on the market for the first time in the United Kingdom during the relevant period;

“the relevant period” means—

- (a) for the compliance period 2010, the year 2009;
- (b) for the compliance period 2011, the years 2009 and 2010;
- (c) for a compliance period after 2011, the compliance period and the two preceding compliance periods.

### **Increased environmental performance**

**71.**—(1) In relation to battery manufacturers established in the United Kingdom, the Secretary of State must promote research and encourage improvements in the overall environmental performance of batteries throughout their entire life cycle as well as the development and marketing of batteries which contain smaller quantities of dangerous substances or which contain less polluting substances, in particular as substitutes for mercury, cadmium and lead.

(2) In this regulation “dangerous substance” means any substance which has to be considered dangerous under Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances(30), as amended from time to time.

### **New recycling technologies**

**72.** The Secretary of State must—

- (a) encourage the development of new recycling and treatment technologies;
- (b) promote research into environmentally friendly and cost-effective recycling methods for all types of batteries; and
- (c) encourage treatment facilities to introduce certified environmental management schemes in accordance with Regulation 2001/761/EC of the European Parliament and of the Council allowing voluntary participation by organisations in a Community management and audit scheme(31).

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(30) OJ No L 196, 16.8.1967, p 1; English special edition, Series I chapter 1967, p 234. Directive as last amended by Commission Directive 2009/2/EC (OJ No L 11, 16.1.2009, p 6).

(31) OJ No L 114, 24.4.2001, p 1. Regulation as last amended by Commission Regulation 2006/196/EC (OJ No L 32, 4.2.2006, p 4).

### **Information for appropriate authorities in relation to producers of industrial or automotive batteries**

73.—(1) Where the Secretary of State grants an application for registration made under regulation 43 in respect of a producer of industrial or automotive batteries, the Secretary of State must within 14 days of the date the application is granted provide the appropriate authority with—

- (a) details of the information submitted by the producer under regulation 43(2)(c);
- (b) the producer's battery producer registration number.

(2) Where the Secretary of State receives a notification under regulation 44, the Secretary of State must within 14 days of receiving the notification send a copy of it to the appropriate authority.

### **Reports and information provided by producers of industrial and automotive batteries**

74. The Secretary of State must publish the format in which—

- (a) the information referred to in regulation 40 must be submitted to the Secretary of State in accordance with that regulation;
- (b) the information referred to in regulation 41 must be submitted to the Secretary of State in accordance with that regulation; and
- (c) an application under regulation 43 and a notification under 44 must be submitted to the Secretary of State in accordance with those regulations.

### **Monitoring**

75. The Secretary of State must monitor—

- (a) compliance by producers with their obligations under Part 5;
- (b) the accuracy of the information provided by any person in connection with the reporting requirements in regulation 40 or 41; and
- (c) the accuracy of the information provided by producers in an application for registration made under regulation 43 or a notification under regulation 44,

and in order to do so the Secretary of State may appoint any person to act on the Secretary of State's behalf.

## **PART 9**

### **DUTIES OF THE APPROPRIATE AUTHORITIES**

#### **Registration of producers**

76.—(1) The appropriate authority must maintain and make available in accordance with this regulation a register relating to—

- (a) those producers who are registered with it in accordance with regulation 26; and
- (b) those producers who are registered with the Secretary of State in accordance with regulation 42 and whose details have been provided to the appropriate authority by the Secretary of State under regulation 73(1),

and containing the information specified in Schedule 6.

(2) The appropriate authority must—

- (a) ensure that the register is open to public inspection at its principal office free of charge at all reasonable hours; and

- (b) permit any person on request to obtain copies of entries in the register on payment of a reasonable charge.
- (3) The register may be kept in any form but must be indexed and arranged so that any person inspecting it can readily trace information contained in it.
- (4) The appropriate authority must amend the relevant entry in the register to record any change to the information entered and must note the date on which the amendment is made.
- (5) Where the appropriate authority receives—
  - (a) a notification under regulation 29(2); or
  - (b) information from the Secretary of State under regulation 73(2),
 stating that a producer has ceased to be a producer, that producer's details must not be removed from the register until the compliance period in which the producer ceased to be a producer has ended.
- (6) The appropriate authority must publish the format in which—
  - (a) an application for registration made under regulation 26(3) or 26(4); or
  - (b) a notification made under regulation 29,
 must be made.

#### **Information for appropriate authorities and the Secretary of State in relation to producers of portable batteries**

- 77.—(1) Where an appropriate authority grants an application for registration made under regulation 26(3) or 26(4) in respect of a producer of portable batteries who is also a producer of industrial or automotive batteries, the appropriate authority must within 14 days of the date the application is granted provide the Secretary of State with—
- (a) details of the information submitted in respect of the producer under regulation 27(b);
  - (b) the producer's battery producer registration number.
- (2) If an appropriate authority receives a notification under regulation 29 in respect of a producer of portable batteries who is also a producer of industrial or automotive batteries, the appropriate authority must within 14 days of receipt of the notification send a copy of it to the Secretary of State.
- (3) If an appropriate authority ("the first authority")—
- (a) receives a notification under regulation 29 in respect of a scheme member or small producer; and
  - (b) another appropriate authority ("the second authority") maintains the register on which the information in relation to that scheme member or small producer is entered,
- the first authority must within 14 days of receipt of the notification send a copy of it to the second authority.

#### **Monitoring**

78. The appropriate authority must monitor—
- (a) compliance by producers with their obligations under Parts 2 and 3;
  - (b) the accuracy of the information provided in, or in connection with, a declaration of compliance;
  - (c) compliance by scheme operators with their obligations under Parts 3 and 4;
  - (d) compliance by approved battery treatment operators and approved battery exporters with their obligations under Part 7;

- (e) the accuracy of the information provided by a scheme operator or small producer in an application for registration made under regulation 26(3) or (4);
- (f) the accuracy of the information provided by a scheme operator or small producer in a notification made under regulation 29;
- (g) the accuracy of the information provided by any person in connection with the requirements to provide information or report in regulation 13, 16(5) and (6), 23, 24 or 66;
- (h) the accuracy of the information provided by scheme operators in support of or in connection with an application for approval under regulation 47, together with any changes notified under regulation 52;
- (i) the accuracy of the information provided by an approved battery treatment operator or an approved battery exporter in support of or in connection with an application for approval made under regulation 58;
- (j) the accuracy of the information provided by an approved battery exporter in support of or in connection with an application for an extension of a grant of approval made under regulation 62.

#### **General duties in relation to battery compliance schemes**

- 79.—(1) The appropriate authority must maintain and publish a list of—
- (a) all battery compliance schemes that it has approved under regulation 49; and
  - (b) the scheme operators.
- (2) The appropriate authority must issue an annual invoice for payment of the scheme subsistence charge to each scheme operator.
- (3) The appropriate authority must publish the format in which—
- (a) the information referred to in—
    - (i) regulation 13;
    - (ii) regulation 16(5) and (6);
    - (iii) regulation 23; and
    - (iv) regulation 24,must be submitted to it in accordance with those regulations; and
  - (b) the information referred to in Part 1 of Schedule 3 must be submitted to it in an application for approval made under regulation 47.

#### **General duties in relation to approved battery treatment operators and approved exporters**

- 80.—(1) The appropriate authority must maintain and publish a list of all approved battery treatment operators and approved battery exporters.
- (2) The appropriate authority must publish the format in which—
- (a) an approved battery treatment operator or an approved battery exporter must provide reports under regulation 66;
  - (b) the information set out in Part 1 of Schedule 4 must be submitted to it in an application for approval made under regulation 58 or in an application for an extension of a grant of approval made under regulation 62.

#### **Information: portable batteries**

- 81.—(1) The appropriate authority must publish information—

- (a) on the total amount of portable batteries placed on the market for the first time in the United Kingdom in a compliance period by—
    - (i) small producers; and
    - (ii) the scheme members of each battery compliance scheme; and
  - (b) on the total amount of waste portable batteries that are collected by each battery compliance scheme in a compliance period.
- (2) The information referred to in paragraph (1) must be based on the information provided to the appropriate authority—
- (a) by producers under regulation 12(2);
  - (b) by small producers under regulation 13;
  - (c) by the scheme operator under regulations 23 and 24; or
  - (d) by another appropriate authority.

## PART 10

### DISCLOSURE OF INFORMATION

#### **Disclosure of information**

82.—(1) Subject to paragraph (2), information of any description may be disclosed by—

- (a) the Secretary of State;
- (b) an appropriate authority; or
- (c) an enforcement authority,

to any person for the purpose of facilitating the carrying out by the Secretary of State, that appropriate authority or that enforcement authority of any of their functions under these Regulations.

(2) Nothing in paragraph (1) authorises a disclosure of information which contravenes any express restriction on disclosure imposed by an enactment passed or any other instrument made in the United Kingdom, or in any part of the United Kingdom (ignoring any restriction which allows disclosure if authorised by an enactment or instrument).

(3) Information which—

- (a) is information which relates to a trade secret of any person; or
- (b) otherwise is or might be commercially confidential in relation to any person,

and which is disclosed to a person under or by virtue of paragraph (1) may not be disclosed by that person to any other person otherwise than in accordance with the provisions of this regulation or the law of, or of any part of, the United Kingdom, which authorises or requires such disclosure.

(4) Any authorisation under or by virtue of paragraph (1) of the disclosure of information by or to any person must also be taken to authorise the disclosure of that information by or to any officer of that person who is authorised to make the disclosure or to receive the information.

## PART 11

### APPEALS

#### Right of appeal

- 83.**—(1) An appeal may be made by—
- (a) a scheme operator or an operator of a proposed scheme;
  - (b) a battery treatment operator or an exporter,
- against a decision of the Environment Agency, SEPA or the Department of the Environment.
- (2) An appeal—
- (a) against a decision of the Environment Agency must be made to the Secretary of State or to the Welsh Ministers, as determined by paragraph (3);
  - (b) against a decision of SEPA must be made to the Scottish Ministers; and
  - (c) against a decision of the Department of the Environment must be made to the Planning Appeals Commission.
- (3) An appeal against a decision by the Environment Agency must be made—
- (a) to the Secretary of State where—
    - (i) in the case of an appeal by a scheme operator, operator of a proposed scheme or battery exporter, the registered office of the person making the appeal or, if that person is not a company registered in the United Kingdom, its principal place of business in the United Kingdom, is located in England;
    - (ii) in the case of an appeal by a battery treatment operator, the site to which the decision relates is located in England; and
  - (b) to the Welsh Ministers where—
    - (i) in the case of an appeal by a scheme operator, operator of a proposed scheme or battery exporter, the registered office of the person making the appeal or, if that person is not a company registered in the United Kingdom, its principal place of business in the United Kingdom, is located in Wales;
    - (ii) in the case of an appeal by a battery treatment operator, the site to which the decision relates is located in Wales.
- (4) For the purposes of an appeal by a person mentioned in paragraph (1)(a), a decision means a decision to—
- (a) make a determination to refuse approval of that operator’s proposed scheme under regulation 49;
  - (b) withdraw approval of that scheme operator’s battery compliance scheme under regulation 54.
- (5) For the purposes of an appeal by a person mentioned in paragraph (1)(b), a decision means a decision to—
- (a) refuse under regulation 59 to grant an application for approval made by that battery treatment operator or that exporter;
  - (b) refuse to grant an extension of a grant of approval made to that exporter under regulation 62; or
  - (c) suspend or cancel a grant of approval made in relation to that battery treatment operator or that exporter under regulation 64.

(6) For the purposes of this Part and Schedule 7, “appeal body” means whichever of the following an appeal is made to in accordance with this regulation—

- (a) the Secretary of State;
- (b) the Welsh Ministers;
- (c) the Scottish Ministers; or
- (d) the Planning Appeals Commission.

### **Procedure of appeals**

**84.**—(1) Where an appeal is made to an appeal body under regulation 83, that body may—

- (a) appoint a person, with or without payment, to determine the appeal; or
- (b) refer any matter involved in the appeal to such person as that body may appoint for the purpose, with or without payment.

(2) If the appellant so requests, or the appeal body so decides, the appeal must include a hearing (which may, if the person hearing the appeal so decides, be held wholly or partly in private).

(3) Part 1 of Schedule 7 has effect with respect to the procedure of any such appeal.

(4) Paragraphs (1) to (3) do not apply in the case of an appeal to the Planning Appeals Commission and where an appeal is made to that appeal body under regulation 83, Part 2 of Schedule 7 has effect in relation to the procedure of the appeal.

### **Determination of appeals**

**85.** Where, on an appeal made under regulation 83, the appeal body determines that the decision of the appropriate authority must be altered it will be the duty of that appropriate authority to give effect to the determination.

## **PART 12 ENFORCEMENT**

### **Enforcement authorities**

**86.**—(1) Except as provided by paragraph (2), it is the duty of the Secretary of State to enforce these Regulations and in doing so the Secretary of State may appoint a person to act on the Secretary of State’s behalf.

(2) It is the duty of the following authorities to enforce Parts 2 and 3, regulations 32(2), 33(2) and Parts 6 and 7—

- (a) in England and Wales, the Environment Agency;
- (b) in Scotland, SEPA; and
- (c) in Northern Ireland, the Department of the Environment.

(3) No proceedings for an offence under these Regulations may be instituted in England, Wales or Northern Ireland except by or on behalf of an enforcement authority.

(4) Nothing in these Regulations authorises an enforcement authority to bring proceedings in Scotland for an offence.

(5) In these Regulations, “enforcement authority” means any person mentioned in this regulation.

## Enforcement notices

**87.**—(1) Where an enforcement authority has reasonable grounds for suspecting that any of the requirements of the following regulations have not been complied with—

- (a) regulations 7, 9, 11 to 13, 15, 16 and 18;
- (b) regulations 19, 21 to 25, 32 and 33;
- (c) regulations 26 and 29;
- (d) regulations 31 and 34;
- (e) regulations 35, 36, 38 to 44 and 46;
- (f) regulations 63, 66 and 67,

it may serve a notice on—

- (i) in a case under sub-paragraph (a), the producer;
- (ii) in a case under sub-paragraph (b), the scheme operator;
- (iii) in a case under sub-paragraph (c), the scheme operator or small producer (as the case may be);
- (iv) in a case under sub-paragraph (d), the distributor;
- (v) in a case under sub-paragraph (e), the producer; and
- (vi) in a case under sub-paragraph (f), the approved battery treatment operator or the approved battery exporter (as the case may be).

(2) A notice which is served under paragraph (1) must—

- (a) be in writing;
- (b) state that the enforcement authority suspects that a requirement of these Regulations referred to in paragraph (1) and specified in the notice (“the specified requirement”) has been contravened;
- (c) specify the reason it is suspected that the specified requirement has been contravened;
- (d) require the person on whom the enforcement notice is served (“the relevant person”)—
  - (i) to comply with the specified requirement; or
  - (ii) to provide evidence to the enforcement authority demonstrating that the specified requirement has been met;
- (e) specify the period of time within which the relevant person must comply with the enforcement notice; and
- (f) warn the relevant person that unless the specified requirement is complied with, or evidence has been provided within the period specified in the notice, the person may be prosecuted.

(3) Where an enforcement authority serves an enforcement notice on a person under this regulation, proceedings for an offence under regulation 89 may not be commenced unless the time limit specified for compliance in the enforcement notice has expired.

## Powers of entry and inspection

**88.**—(1) For the purposes of carrying out any functions under these Regulations, an enforcement officer may exercise the powers of entry and inspection in this regulation.

(2) Subject to the production if so requested of evidence of authorisation as an enforcement officer, an enforcement officer may—

- (a) enter at any reasonable time any premises (other than premises occupied only as a person’s residence) which that officer considers it necessary to enter;

- (b) on entering any premises by virtue of sub-paragraph (a)—
    - (i) be accompanied by such other persons as may appear to the officer necessary and, where there is reasonable cause to apprehend any serious obstruction in the execution of the enforcement officer’s duty, a constable; and
    - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) make such examination and investigation as may in the circumstances be necessary;
  - (d) take such measurements and photographs and make such recordings as are considered necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (e) take samples, or cause samples to be taken, of any records, parts of any records, copies of any records, copies of parts of any records, products and parts of products found in or on any premises which the enforcement officer has power to enter;
  - (f) in the case of any such sample of a record or product as is mentioned in sub-paragraph (e), take possession of it and detain it for so long as is necessary for any of the following purposes—
    - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which the enforcement officer has the power to do under that sub-paragraph;
    - (ii) to ensure that it is not tampered with before examination of it is completed; and
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to an enforcement notice under regulation 87;
  - (g) require any person who is considered to be able to give information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of any person other than a person nominated by that person to be present and any person whom the enforcement officer may allow to be present) such questions as the enforcement officer thinks fit to ask and to sign a declaration of the truth of the answers given;
  - (h) require the production of, or where the information is recorded in computerised form the furnishing of extracts from, any records—
    - (i) which are required to be kept under these Regulations, or
    - (ii) which it is necessary to see for the purposes of an examination or investigation under sub-paragraph (c),
 and inspect and take copies of, or of any entry in, the records; and
    - (i) require any person to afford such facilities and assistance with respect to any matters or things within that person’s control or in relation to which that person has responsibilities as are necessary to enable the enforcement officer to exercise any of the powers conferred on the enforcement officer by this regulation.
- (3) In the application of paragraph (2)(b)(i) to Northern Ireland, “constable” has the meaning given in section 43A of the Interpretation Act (Northern Ireland) 1954(32).
- (4) If a justice of the peace, on written information on oath—
- (a) is satisfied that there are reasonable grounds to believe that any information or material relevant to any examination or investigation under paragraph (2)(c) is on any premises; and
  - (b) is also satisfied either that—
    - (i) admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant has been given to the occupier; or

- (ii) an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,
- the justice may by warrant under the justice's hand, which continues in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force.
- (5) In the application of paragraph (4)—
- (a) to Scotland, “justice of the peace” includes a sheriff and a stipendiary magistrate and references to written information on oath are to be construed as references to evidence on oath; and
- (b) to Northern Ireland, the references to a “justice of the peace” are to be construed as being references to a “lay magistrate” as defined in section 9 of the Justice (Northern Ireland) Act 2002<sup>(33)</sup>.
- (6) An enforcement officer on entering any premises by virtue of this regulation may direct that those premises, or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (2)(c).
- (7) An enforcement officer who by virtue of this regulation enters any premises which are unoccupied or from which the occupier is temporarily absent, must leave them as effectively secured against unauthorised entry as they were found.
- (8) Nothing in this regulation authorises any person to stop any vehicle on a highway.
- (9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(g) is admissible in evidence in England, Wales and Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal proceedings.
- (10) Nothing in this regulation compels the production by any person of a document of which that person would be entitled to withhold production on grounds of—
- (a) legal professional privilege on an order for discovery in an action in the High Court; or
- (b) confidentiality in proceedings in the Court of Session in Scotland.
- (11) In these Regulations “enforcement officer” means—
- (a) an officer of an enforcement authority who is authorised in writing by that authority to act as an enforcement officer for the purposes of this Part; and
- (b) a person authorised in writing by the Secretary of State to act as an enforcement officer for the purposes of this Part.

## PART 13

### OFFENCES AND PENALTIES

#### Offences

- 89.**—(1) A producer is guilty of an offence who—
- (a) contravenes or fails to comply with any requirement of—
- (i) regulation 7 (financing: portable batteries);

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<sup>(33)</sup> 2002 c. 26. Section 9 is amended by Schedule 13 to the 2002 Act itself and is further amended from a date to be appointed by paragraph 41 of Schedule 3 to that Act. Section 9 has also been amended by the Constitutional Reform Act 2005 (c. 4), Schedule 5, paragraph 117.

- (ii) regulation 9 (duty to be a member of a battery compliance scheme);
  - (iii) regulation 11 (information provided to operators of battery compliance schemes);
  - (iv) regulation 12 (record keeping);
  - (v) regulation 13 (reporting: portable batteries placed on the market by a small producer);
  - (vi) regulation 15 (duty to join another scheme on withdrawal of approval);
  - (vii) regulation 16 (treatment, recycling, record keeping and reporting after withdrawal of scheme approval);
  - (viii) regulation 18 (declaration of compliance by producer);
  - (ix) regulation 26(4) (duty of a small producer to register);
  - (x) regulation 29 (notification of changes to registration details);
  - (xi) regulation 30 (declaration of battery producer registration number);
  - (xii) regulation 35 (take back: industrial batteries);
  - (xiii) regulation 36 (collection: automotive batteries);
  - (xiv) regulation 38 (treatment and recycling);
  - (xv) regulation 39 (record keeping);
  - (xvi) regulation 40 (reporting: industrial and automotive batteries placed on the market);
  - (xvii) regulation 41 (reporting: waste batteries);
  - (xviii) regulation 42 (registration of producers: industrial batteries or automotive batteries);
  - (xix) regulation 43(1) (timing of an application by a producer to register);
  - (xx) regulation 44 (notification of changes to registration details);
  - (xxi) regulation 46 (declaration of battery producer registration number);
- (b) furnishes information under regulation 11 (information provided to operators of battery compliance schemes), 27 (application by a small producer to register), 29 (notification of changes to registration details), 43 (application by a producer to register) or 44 (notification of changes to registration details) and either—
- (i) knows the information to be false in a material particular; or
  - (ii) furnishes the information recklessly and it is false and misleading in a material particular;
- (c) furnishes a declaration of compliance under regulation 18 (declaration of compliance by producer) and either—
- (i) knows the information provided in, or in connection with, the declaration to be false in a material particular; or
  - (ii) furnishes the information recklessly and it is false and misleading in a material particular;
- (d) furnishes a report under regulation 13 (reporting: portable batteries placed on the market by a small producer), 16(5) or (6) (reporting: portable batteries), 40 (reporting: industrial and automotive batteries placed on the market) or 41 (reporting: waste batteries) and either—
- (i) knows the information provided in, or in connection with, the report to be false in a material particular; or
  - (ii) furnishes the information recklessly and it is false and misleading in a material particular.
- (2) A scheme operator is guilty of an offence who—

- (a) contravenes or fails to comply with any requirement of—
    - (i) regulation 19 (financing: portable batteries) other than a failure to comply with regulation 19(1)(a) in respect of the compliance period 2010 or 2011;
    - (ii) regulation 21 (treatment and recycling);
    - (iii) regulation 22 (record keeping);
    - (iv) regulation 23 (reporting: batteries placed on the market by scheme members);
    - (v) regulation 24 (reporting: waste batteries);
    - (vi) regulation 25 (declaration of compliance by battery compliance scheme);
    - (vii) regulation 26 (registration of scheme members);
    - (viii) regulation 29 (notification of changes to registration details);
    - (ix) regulation 32(2) (duty to arrange for and ensure collection from distributors);
    - (x) regulation 33(2) (duty to accept waste portable batteries without charge);
  - (b) furnishes a report under regulation 23 (reporting: batteries placed on the market by scheme members) or 24 (reporting: waste batteries) or makes a notification under regulation 29 (notification of changes to registration details) and either—
    - (i) knows the information provided in, or in connection with, the report or notification to be false in a material particular; or
    - (ii) furnishes the information recklessly and it is false and misleading in a material particular;
  - (c) furnishes a declaration of compliance under regulation 25 (declaration of compliance by battery compliance scheme) and either—
    - (i) knows the information provided in, or in connection with, the declaration to be false in a material particular; or
    - (ii) furnishes the information recklessly and it is false and misleading in a material particular.
- (3) A distributor is guilty of an offence who contravenes or fails to comply with any requirement of—
- (a) regulation 31 (take back);
  - (b) regulation 34 (prohibition on showing the costs of collection, treatment and recycling of portable batteries).
- (4) An approved battery treatment operator or an approved battery exporter is guilty of an offence who—
- (a) contravenes or fails to comply with any requirements of—
    - (i) regulation 63 (conditions of approval);
    - (ii) regulation 66 (reporting);
    - (iii) regulation 67 (record keeping);
  - (b) furnishes a report under regulation 66 (reporting) and either—
    - (i) knows the information provided in, or in connection with, the report to be false in a material particular; or
    - (ii) furnishes such information recklessly and it is false and misleading in a material particular.
- (5) An enforcement officer or other person who enters any premises by virtue of regulation 88 (powers of entry and inspection) is guilty of an offence if that officer or person discloses to any

other person any information obtained by the officer in the premises with regard to any secret manufacturing process or trade secret, unless—

- (a) the disclosure was made in the performance of the officer's duty;
  - (b) the person from whom the information was received has consented to the disclosure; or
  - (c) the information was disclosed more than 50 years after it was received.
- (6) A person is guilty of an offence who—
- (a) contravenes or fails to comply with any requirement of regulation 56 (prohibition on disposing of waste automotive and industrial batteries in a landfill or by incineration);
  - (b) contravenes or fails to comply with any requirement of regulation 57 (requirement for approval of battery treatment operators and exporters);
  - (c) discloses information in contravention of regulation 82 (disclosure of information);
  - (d) without reasonable cause, fails to comply with an enforcement notice served under regulation 87 (enforcement notices);
  - (e) without reasonable cause, fails to comply with a requirement imposed under regulation 88 (powers of entry and inspection);
  - (f) intentionally obstructs—
    - (i) an enforcement officer acting in the execution of these Regulations; or
    - (ii) any person accompanying the enforcement officer in accordance with regulation 88(2)(b)(i) and assisting in the exercise or performance of the officer's powers or duties under these Regulations;
  - (g) without reasonable cause, fails to give to an enforcement officer acting in the execution of these Regulations or any person referred to in paragraph (6)(f)(ii) any assistance or information which may reasonably be required by them for the performance of the enforcement officer's functions under these Regulations;
  - (h) without reasonable cause, fails to produce a record or information when required to do so by an enforcement officer acting in the execution of these Regulations or any person referred to in paragraph (6)(f)(ii);
  - (i) furnishes to an enforcement officer acting in the execution of these Regulations or any person referred to in paragraph (6)(f)(ii) any information which the person furnishing—
    - (i) knows to be false or misleading in a material particular; or
    - (ii) furnishes recklessly and it is false or misleading in a material particular.
- (7) If an offence under these Regulations committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on the part of the officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(8) If the affairs of a body corporate are managed by its members, paragraph (7) applies in relation to the acts and defaults of a member in connection with the functions of management of that member as if the member were a director of the body.

- (9) If an offence under these Regulations committed by a partnership is shown—
- (a) to have been committed with the consent or connivance of a partner; or
  - (b) to be attributable to neglect on the part of a partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(10) If an offence under these Regulations committed by an unincorporated body, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the body or a member of its governing body, or
- (b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(11) In this regulation—

- (a) “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) “partner” includes a person purporting to act as a partner.

### **Penalties**

**90.**—(1) A person who is guilty of an offence under—

- (a) regulation 89(1)(a)(xi);
- (b) regulation 89(1)(a)(xxi); or
- (c) regulation 89(3)(a) by reason of a contravention of regulation 31(1)(b),

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who is guilty of any other offence under regulation 89 is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment to a fine.

### **Commencement of proceedings**

**91.**—(1) In England and Wales a magistrates’ court may try an information, and in Northern Ireland a magistrates’ court may try a complaint, in relation to an offence under these Regulations if the information is laid or if the complaint is made within twelve months from the time when the offence is committed.

(2) In Scotland summary proceedings in relation to an offence under these Regulations may be begun at any time within twelve months from the time when the offence is committed.

## **PART 14**

### **AMENDMENTS TO OTHER ENACTMENTS**

#### **Amendments to other enactments**

**92.** Schedule 8 (which contains amendments to other enactments) has effect.

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**Status:** *This is the original version (as it was originally made). UK  
Statutory Instruments are not carried in their revised form on this site.*

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7th April 2009

*Lord Davies of Abersoch*  
Minister for Trade and Investment,  
Department for Business, Enterprise and  
Regulatory Reform

## SCHEDULE 1

Regulations 18 and 25

### PART 1

#### Information and declaration to be included in a declaration of compliance by a producer

1. The name and address of the producer.
2. The name and title of the signatory of the declaration.
3. The date of the declaration.
4. The compliance period to which the declaration relates.
5. In relation to the waste portable batteries in respect of which the declaration is being issued—
  - (a) a declaration that the producer's obligation under regulation 7(2)—
    - (i) has been met; or
    - (ii) has not been met; and
  - (b) the amount in tonnes of waste portable batteries for which the producer has financed the costs of collection, treatment and recycling during the relevant compliance period.

### PART 2

#### Information and declaration to be included in a declaration of compliance by a scheme operator

6. The name and address of the scheme operator.
7. The name and title of the signatory of the declaration.
8. The date of the declaration.
9. The compliance period to which the declaration relates.
10. In relation to the waste portable batteries in respect of which the declaration is being issued—
  - (a) a declaration that the scheme operator's obligations under regulation 19(1)—
    - (i) have been met; or
    - (ii) have not been met; and
  - (b) the amount in tonnes of waste portable batteries for which the scheme operator has financed the costs of collection, treatment and recycling during the relevant compliance period.

## SCHEDULE 2

Regulations 27 and 43

#### Information to be included in an application for registration of producers

1. The date of the application for registration.
2. The name of the producer and any brand name under which the producer operates or intends to operate in the United Kingdom.

3. The following contact details for the producer—
  - (a) the full postal address (including post code) and telephone number of—
    - (i) the producer’s registered office; or
    - (ii) if the producer is not a company registered in the United Kingdom, the producer’s principal place of business in the United Kingdom;
  - (b) a website address; and
  - (c) where available, a fax number and e-mail address.
4. An address for service of notices on the producer if different from the addresses mentioned in paragraph 3.
5. The name and telephone number of a contact person for the producer, and, where available, a fax number and e-mail address, for that person.
6. An indication of which categories of battery the producer is placing or intends to place on the market in the United Kingdom.
7. Information as to—
  - (a) whether the producer is meeting or intends to meet its responsibilities under these Regulations individually or collectively; and
  - (b) if collectively—
    - (i) the name of the battery compliance scheme of which the producer is a member;
    - (ii) the name of the scheme operator; and
    - (iii) the address and telephone number of the registered office of the scheme operator or, if not a company registered in the United Kingdom, the principal place of business and telephone number of the scheme operator in the United Kingdom.
8. If the producer has been registered under these Regulations within the last 5 compliance periods the producer’s battery producer registration number.
9. A signed declaration of the truth of the information provided and the name and title of the signatory of the declaration.

## SCHEDULE 3

Regulations 47 and 49

### Approval of proposed schemes

## PART 1

### Information to be included in an application for approval

1. The name of the proposed scheme.
2. The name of the operator of the proposed scheme.
3. The address and telephone number of—
  - (a) the registered office of the operator of the proposed scheme; or
  - (b) if the operator is not a company registered in the United Kingdom, the principal place of business and telephone number of that operator in the United Kingdom.

4. Where the operator of the proposed scheme is a partnership or a limited liability partnership, the names of all the partners or members of the partnership, as the case may be.
5. An address for service of notices if different from that referred to in paragraph 3.
6. Confirmation that the rules of the proposed scheme provide—
  - (a) that a scheme member must apply to join the scheme for a minimum period of—
    - (i) one relevant compliance period; or
    - (ii) in the case of a producer who does not become a producer until after the start of a relevant compliance period, the remainder of that relevant compliance period;
  - (b) that where a scheme member's membership is cancelled, any such cancellation does not take effect until the end of the compliance period.
- 7.—(1) A statement as to whether or not the operator of the proposed scheme has been convicted of an offence under—
  - (a) regulation 89(2);
  - (b) regulation 73(3) or (4) of the Waste Electrical and Electronic Equipment Regulations 2006(34); or
  - (c) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(35), committed in the operator's capacity as an operator of a scheme under those Regulations.(2) If the operator has been convicted of such an offence, an explanation of—
  - (a) how every contravention which resulted in such a conviction occurred;
  - (b) any steps which have been taken to ensure that such a contravention will not recur.
8. Confirmation that the rules of the proposed scheme provide—
  - (a) for an arbitration procedure to determine disputes between scheme members and between scheme members and the scheme operator;
  - (b) for dissemination of important information to scheme members in an accurate and timely way;
  - (c) in the case of withdrawal of approval under regulation 54, for the allocation of batteries evidence notes owned by the proposed scheme to each scheme member in proportion to the quantity of batteries placed on the market by the member, relative to the other members, in the compliance period up to the point of such withdrawal.

## PART 2

### Information to be included in the operational plan

9. The operational plan must include the following information in relation to each of the three compliance periods—
  - (a) details of the financial resources and technical expertise that will be available to enable the performance of the obligations of the operator of the proposed scheme under Part 3 of these Regulations;
  - (b) details of how the operator of the proposed scheme will ensure that the scheme will discharge that operator's obligations under regulation 19(1);

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(34) S.I. 2006/3289, as amended by S.I. 2007/3454.

(35) S.I. 2007/871, as amended by S.I. 2008/413. There are other amendments not relevant to these Regulations.

- (c) details of how the operator of the proposed scheme will ensure that that operator's obligations under Part 3 of these Regulations will be complied with in a timely manner;
- (d) details of—
  - (i) how the operator of the proposed scheme will fulfil its duty to arrange for and ensure the collection of waste portable batteries from distributors under regulation 32(2);
  - (ii) the facilities the operator of the proposed scheme will provide to ensure that economic operators and waste collection authorities are able to exercise their right under regulation 33(1);
  - (iii) the scheme information campaign.

**10.** In paragraph 9(d)(iii), “the scheme information campaign” means a campaign to disseminate information to ensure that end-users of portable batteries are fully informed of—

- (a) the desirability of not disposing of waste batteries as unsorted municipal waste and of participating in their separate collection so as to facilitate treatment and recycling;
- (b) the collection and recycling facilities available to them;
- (c) their role in contributing to the recycling of waste batteries;
- (d) the meaning of the symbol of the crossed-out wheeled bin shown in Schedule 5 and the chemical symbols “Hg”, “Cd” and “Pb”(36).

## PART 3

### Criteria for approval of a proposed scheme

- 11.** That the rules of the proposed scheme provide—
- (a) that a scheme member must apply to join the scheme for a minimum period of—
    - (i) one relevant compliance period; or
    - (ii) in the case of a producer who does not become a producer until after the start of a relevant compliance period, the remainder of that relevant compliance period;
  - (b) that where a scheme member's membership is cancelled, any such cancellation does not take effect until the end of the compliance period;
  - (c) for an arbitration procedure to determine disputes between scheme members and between scheme members and the scheme operator;
  - (d) for dissemination of important information to scheme members in an accurate and timely way;
  - (e) in the case of withdrawal of approval under regulation 54, for the allocation of batteries evidence notes owned by the scheme to each scheme member in proportion to the quantity of batteries placed on the market by the member, relative to the other members, in the compliance period up to the point of such withdrawal.
- 12.** That the proposed scheme has the necessary resources and systems in place to—
- (a) carry out its operational plan;
  - (b) maintain up to date records of its scheme members, including—
    - (i) the information necessary to comply with regulation 29; and

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(36) Regulation 5 of the Batteries and Accumulators (Placing on the Market) Regulations 2008 (S.I. 2008/2164) requires the marking with the crossed out wheeled bin symbol of batteries or battery packs placed on the market in the UK. Regulation 6 of that instrument requires the marking of batteries placed on the market in the UK where they contain more than the prescribed proportion of mercury, cadmium or lead with the chemical symbols, respectively “Hg”, “Cd” or “Pb”.

- (ii) their battery producer registration numbers;
  - (c) comply with the scheme operator's obligations under regulation 19 in an appropriate and timely manner;
  - (d) keep, update and make available records to the appropriate authority as required by regulation 22;
  - (e) provide information to the appropriate authority as required by regulations 23 and 24;
  - (f) submit declarations of compliance and supporting batteries evidence notes as required by regulation 25;
  - (g) ensure that scheme members are registered with the authority as required by regulation 26 and notify the authority of changes to registration details as required by regulation 29;
  - (h) check that the information provided to it by its scheme members under regulation 11 is as accurate as reasonably possible and ensure that the scheme operator will meet the same standard when submitting that information to the appropriate authority; and
  - (i) maintain good environmental practices.
13. That the operator of the proposed scheme is likely to be able to meet the expected treatment, recovery and recycling obligations for the three compliance periods covered by the operational plan.
14. That the proposed scheme is likely to—
- (a) assist in meeting the United Kingdom's obligation to maximise the separate collection of waste batteries; and
  - (b) in doing so, have regard to the environmental impact of transport.
15. That the operator of a proposed scheme—
- (a) will co-operate with the other scheme operators to ensure the collection of waste portable batteries from distributors in accordance with regulation 32(2);
  - (b) will provide reasonably situated and accessible facilities to ensure that economic operators and waste collection authorities are able to exercise their right under regulation 33(1);
  - (c) will operate a scheme information campaign which will ensure that end-users of portable batteries are fully informed of the points listed in paragraph 10(a) to (d);
  - (d) has viable plans to collect a quantity of waste portable batteries which is neither significantly higher or significantly lower than the quantity required to satisfy the scheme operator's obligation under regulation 19(1)(a) to finance the net costs for which each scheme member is responsible.

#### SCHEDULE 4

Regulations 58, 59, 62 to 64 and 66

#### Approval of battery treatment operators and exporters

### PART 1

#### Information to be included in an application for approval

1. The name of the battery treatment operator or exporter.
2. The registered office address and telephone number of the battery treatment operator or exporter or, if the battery treatment operator or exporter is not a company registered in the United Kingdom, its principal place of business and telephone number in the United Kingdom.

3. Where the battery treatment operator or exporter is a partnership or a limited liability partnership, the names of all the partners or members of the partnership, as the case may be.

4. Where the battery treatment operator or exporter is a body other than a company registered in the United Kingdom, partnership or limited liability partnership, the name of a person having control or management of that body.

5. An address for service of notices if different from that referred to in paragraph 2.

6. The year for which approval is applied for.

7. In the case of an application made by a battery treatment operator for approval to—

- (a) issue batteries evidence notes in respect of waste portable batteries accepted for treatment and recycling; or
- (b) treat and recycle waste industrial or automotive batteries accepted for treatment and recycling.

the name and address of each site in relation to which the battery treatment operator is applying for that approval.

8. In the case of an application made by an exporter—

- (a) the name and address of each site to which it is proposed to export batteries for treatment or recycling;
- (b) in respect of each site named in accordance with sub-paragraph (a)—
  - (i) the amount in tonnes of waste batteries that it is proposed to export to that site for treatment or recycling by reference to each category of battery; and
  - (ii) the applicable treatment or recycling operations carried out by that site.
- (c) whether approval is sought to issue batteries evidence notes.

9. Confirmation of whether or not the battery treatment operator or exporter has been convicted of an offence under these Regulations; and where a positive confirmation is given an explanation of how the contravention of these Regulations which resulted in the conviction occurred and what steps have been taken to ensure such a contravention will not occur in the future.

## PART 2

### General conditions of approval

10.—(1) An approved battery treatment operator must ensure that the requirements of sub-paragraph (3) are met in relation to waste batteries accepted at a specified site by that approved battery treatment operator for treatment and recycling by, or on behalf of, that approved battery treatment operator.

(2) An approved battery exporter must ensure that—

- (a) waste batteries are exported for treatment or recycling at a site in relation to which the exporter is approved; and
- (b) the requirements of sub-paragraph (3) are met by each establishment or undertaking to which it exports waste batteries for treatment or recycling.

(3) The requirements of this sub-paragraph are that—

- (a) treatment and recycling of waste batteries—
  - (i) uses best available techniques, in terms of the protection of health and the environment;

- (ii) complies, as a minimum, with Community legislation, in particular as regards health and safety and waste management;
  - (b) treatment of waste batteries meets the following minimum requirements—
    - (i) treatment must, as a minimum, include removal of all fluids and acids; and
    - (ii) treatment and any storage, including temporary storage, at treatment facilities must take place in sites with impermeable surfaces and suitable weatherproof covering or in suitable containers;
  - (c) subject to sub-paragraph (4), recycling of waste batteries meets the following minimum recycling efficiencies and associated requirements—
    - (i) recycling of 65% by average weight of lead-acid batteries, including recycling of the lead content to the highest degree that is technically feasible while avoiding excessive costs;
    - (ii) recycling of 75% by average weight of nickel-cadmium batteries, including recycling of the cadmium content to the highest degree that is technically feasible while avoiding excessive costs; and
    - (iii) recycling of 50% by average weight of other waste batteries.
- (4) The requirements of sub-paragraph (3)(c) are not required to be met at any time before 26th September 2011.

**11.** An approved battery treatment operator or approved battery exporter must comply with the requirements of regulation 66.

**12.—(1)** An approved battery treatment operator must hold a relevant authorisation in respect of any treatment of waste batteries accepted at a specified site to be carried out by it.

- (2) In sub-paragraph (1), “relevant authorisation” means one of the following—
- (a) an environmental permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2007(37);
  - (b) an exempt waste operation under the Environmental Permitting (England and Wales) Regulations 2007 or any other operation exempt from the requirements of section 33(1) (a) and (b) of the Environmental Protection Act 1990(38) under those Regulations.
  - (c) a permit granted under regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000(39);
  - (d) an authorisation granted under section 6 of the Environmental Protection Act 1990(40) (“the 1990 Act”);
  - (e) a waste management licence granted under section 36 of the 1990 Act(41);

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(37) S.I. 2007/3538.

(38) 1990 c. 43. Section 33(1) was amended section 120 and Schedule 24 of the Environment Act 1995 (c. 25), and by regulation 73 and paragraphs 2 and 4 of Schedule 21 to the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538).

(39) S.S.I. 2000/323 as amended by the Solvent Emissions (Scotland) Regulations 2004 (S.S.I. 2004/26). There are other amendments not relevant to these Regulations.

(40) 1990 c. 43. Section 6 was amended by paragraph 48 of Schedule 22 to the Environment Act 1995 (c. 25) and, in relation to England and Wales, by S.I. 2000/1973 with corresponding amendments in relation to Scotland made by S.S.I. 2000/323.

(41) Section 36 was repealed in relation to England and Wales by S.I. 2007/3538. There are other amendments to that section not relevant to these Regulations. It was amended by paragraph 68 of Schedule 22 and Schedule 24 to the Environment Act 1995 and, as regards Scotland, by the Nature Conservation (Scotland) Act 2004 (asp 6), Schedule 7, paragraph 7 and by the Natural Heritage (Scotland) Act 1991 (c. 28), Schedule 2, paragraph 10.

- (f) an exemption registered or otherwise permitted under regulation 18 of the Waste Management Licensing Regulations 1994<sup>(42)</sup>;
- (g) a permit granted under regulation 10 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>(43)</sup>;
- (h) an exemption registered under regulation 18 of the Waste Management Licensing Regulations (Northern Ireland) 2003<sup>(44)</sup>;
- (i) a waste management licence granted under article 8 of the Waste and Contaminated Land (Northern Ireland) Order 1997<sup>(45)</sup>.

### PART 3

#### Conditions of approval relating to portable batteries: approved battery treatment operators

- 13.** An approved battery treatment operator must not issue a batteries evidence note unless—
- (a) it relates to waste portable batteries accepted at a specified site for treatment and recycling by, or on behalf of, that approved battery treatment operator in a relevant approval period;
  - (b) it is issued with respect to waste portable batteries that have arisen as waste in the United Kingdom;
  - (c) it specifies the quantity in tonnes of waste portable batteries that have been accepted for treatment and recycling.
- 14.** An approved battery treatment operator must record a quantity of waste portable batteries on a batteries evidence note in tonnes.
- 15.** An approved battery treatment operator must retain a duplicate copy of any batteries evidence note issued by it and make that duplicate available for inspection by the appropriate authority at all reasonable times.
- 16.** An approved battery treatment operator must not issue a batteries evidence note for more than the total amount of waste portable batteries—
- (a) accepted at a specified site for treatment and recycling by, or on behalf of, the approved battery treatment operator in the relevant approval period; and
  - (b) which is capable of being recycled no later than the end of the year following the relevant approval period.
- 17.** An approved battery treatment operator must not issue a batteries evidence note in respect of any waste portable battery that has previously been accepted by another approved battery treatment operator.
- 18.** An approved battery treatment operator must issue batteries evidence notes in the format approved by the Secretary of State under regulation 69.
- 19.** An approved battery treatment operator must issue a batteries evidence note only to—
- (a) a scheme operator;

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<sup>(42)</sup> [S.I. 1994/1056](#) as amended by the Waste Management Licensing (Amendment) Regulations 1998 ([S.I. 1998/606](#)), the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) (No. 3) Regulations 2005 ([S.I. 2005/1728](#)), the Waste Management Licensing Amendment (Scotland) Regulations 2006 ([S.S.I. 2006/541](#)) and the Environmental Permitting (England and Wales) Regulations 2007 ([S.I. 2007/3538](#)) (which revoked regulation 18 in relation to England and Wales). There are other amendments not relevant to these Regulations.

<sup>(43)</sup> [S.R. 2003/46](#).

<sup>(44)</sup> [S.R. 2003/493](#).

<sup>(45)</sup> [S.I. 1997/2778 \(N.I. 19\)](#).

(b) a producer of portable batteries who is not a scheme member or a small producer.

**20.** An approved battery treatment operator must not issue a batteries evidence note which relates to waste portable batteries accepted for treatment and recycling in any relevant approval period after 30th April in the year following the relevant approval period.

**21.** An approved battery treatment operator must not arrange for the export of waste portable batteries which it has accepted other than by an approved battery exporter.

## PART 4

### Conditions of approval relating to portable batteries: approved battery exporters

**22.** An approved batteries exporter must not issue a batteries evidence note unless—

- (a) it relates to waste portable batteries accepted by that exporter in a relevant approval period for treatment and recycling at a site in relation to which the exporter is approved;
- (b) it is issued in respect of waste batteries that are exported in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste<sup>(46)</sup> with respect to waste portable batteries that have arisen as waste in the United Kingdom and that have been exported for treatment and recycling at an establishment or undertaking outside the United Kingdom;
- (c) it is issued with respect to waste portable batteries that have arisen as waste in the United Kingdom;
- (d) it specifies the quantity in tonnes of waste portable batteries that have been accepted for export for treatment and recycling.

**23.** An approved batteries exporter must record a quantity of waste portable batteries on a batteries evidence note in tonnes.

**24.** An approved batteries exporter must retain a duplicate copy of a batteries evidence note issued under these Regulations and make it available for inspection by the appropriate authority at all reasonable times.

**25.** An approved batteries exporter must not issue a batteries evidence note—

- (a) for more than the total amount of waste portable batteries exported by that exporter; or
- (b) for waste batteries that are partially treated or recycled in the United Kingdom before being exported by that exporter.

**26.** An approved batteries exporter must issue batteries evidence notes only in the format approved by the Secretary of State under regulation 69.

**27.** An approved batteries exporter must issue a batteries evidence note only to—

- (a) an scheme operator;
- (b) a producer who is not a scheme member or a small producer.

**28.** An approved batteries exporter must not issue a batteries evidence note which relates to waste batteries accepted for treatment or recycling in any relevant approval period after 30th April in the year following the relevant approval period.

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<sup>(46)</sup> OJ No L 190, 12.7.2006, p 1.

SCHEDULE 5

Regulation 68

Crossed out wheeled bin symbol



SCHEDULE 6

Regulation 76

Register of producers

1. The name of the producer and any brand name under which the producer operates in the United Kingdom.
2. The following contact details for the producer—
  - (a) the full postal address (including post code) and telephone number of—
    - (i) the producer's registered office; or
    - (ii) if the producer is not a company registered in the United Kingdom, the producer's principal place of business in the United Kingdom;
  - (b) a website address; and
  - (c) where available, a fax number and e-mail address.
3. An address for service of notices on the producer if different from the addresses mentioned in paragraph 2.
4. An indication of the categories of battery placed on the market by the producer.
5. Information as to—
  - (a) whether the producer meets its responsibilities under these Regulations individually or collectively; and
  - (b) if collectively—
    - (i) the name of the battery compliance scheme;
    - (ii) the name of the scheme operator; and
    - (iii) the address and telephone number of the registered office of the scheme operator or, if not a company registered in the United Kingdom, the principal place of business and telephone number of the scheme operator in the United Kingdom.
6. The producer's battery producer registration number.
7. The date of the application for registration.

## SCHEDULE 7

Regulation 84

### Appeals

#### PART 1

##### Procedure of appeals (other than those to the Planning Appeals Commission)

1.—(1) Where a person wishes to appeal to an appeal body under regulation 83, that person must do so by notice in writing served on that appeal body.

(2) The notice mentioned in sub-paragraph (1) must be accompanied by—

- (a) a statement of the grounds of appeal;
- (b) where the appeal relates to refusal to grant approval under regulation 49 or 59, a copy of the appellant's application and any supporting documents;
- (c) where the appeal relates to refusal to grant an extension of approval under regulation 62, a copy of the appellant's application and any supporting documents;
- (d) where the appeal relates to withdrawal of approval under regulation 54, a copy of the notification of the decision and any supporting documents;
- (e) where the appeal relates to suspension or cancellation of approval under regulation 64, a copy of the notification of the decision and any supporting documents;
- (f) a copy of any correspondence relevant to the appeal;
- (g) a copy of any other document relevant to the appeal; and
- (h) a statement indicating whether the appellant wishes the appeal to include a hearing or to be determined on the basis of written representations.

(3) The appellant must serve a copy of the notice of appeal on the appropriate authority whose decision is being appealed together with copies of the documents mentioned in sub-paragraph (2).

2.—(1) Subject to sub-paragraph (2), notice of appeal must be given before the expiry of the period of two months beginning with the date of the decision that is the subject of the appeal.

(2) The appeal body may for good reason at any time allow notice of an appeal to be given after the expiry of the period mentioned in sub-paragraph (1).

3. Where under regulation 84(2) the appeal includes a hearing, the person hearing the appeal must, unless appointed to determine an appeal under regulation 84(1)(a), make a written report to the appeal body that appointed the person under regulation 84(1)(b) which must include conclusions and recommendations or reasons for not making any recommendations.

4.—(1) The appeal body or other person determining an appeal must notify the appellant in writing of the decision and of the reasons for that decision.

(2) If the appeal body determines an appeal after a hearing under regulation 84(2), it must provide the appellant with a copy of any report made to it under paragraph 3.

(3) The appeal body or other person determining an appeal must, at the same time as notifying the appellant of the decision, send the appropriate authority a copy of any document sent to the appellant under this paragraph.

## PART 2

### Appeals to the Planning Appeals Commission

5. A person who wishes to appeal to the Planning Appeals Commission (“the appeals commission”) under regulation 83 shall give to the appeals commission notice in writing of the appeal together with a statement of the grounds of appeal and the appeals commission shall as soon as is reasonably practicable send to the appropriate authority whose decision is being appealed a copy of that notice together with the statement of the grounds of appeal.

6. An appellant may withdraw an appeal by notifying the appeals commission and the appeals commission shall as soon as is reasonably practicable notify the appropriate authority whose decision is being appealed.

7. Notice of appeal in accordance with paragraph 5 is to be given before the expiry of the period of two months beginning with the date of the decision that is the subject of the appeal.

8. The appeals commission shall determine the appeal and paragraphs (1), (3), (4) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991<sup>(47)</sup> shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

9. The appeals commission shall determine the process for determining appeals taking into account any requests of either party to the appeal.

## SCHEDULE 8

Regulation 92

### Amendments to other enactments

#### Amendment to the Environment Act 1995

1.—(1) Section 41(1) of the Environment Act 1995<sup>(48)</sup> (power to make schemes imposing charges) is amended as follows.

(2) After paragraph (f), insert—

“(g) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators, as amended from time to time, each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed.”.

#### Amendments to the Environmental Permitting (England and Wales) Regulations 2007

2.—(1) The Environmental Permitting (England and Wales) Regulations 2007<sup>(49)</sup> are amended as follows.

(2) In regulation 2(1)—

(a) after the definition of “appropriate authority”, insert—

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<sup>(47)</sup> S.I. 1991/1220 (N.I. 19) as amended by S.I. 1999/663 and S.R. 2003/430 (N.I. 8).

<sup>(48)</sup> 1995 c. 25. Section 41(1) has been amended by S.I. 2005/894, 2005/1806 (W. 138), 2007/1711, 2007/3106, 2008/3087.

<sup>(49)</sup> S.I. 2007/3538.

“the Batteries Directive” means Directive [2006/66/EC](#) of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive [91/157/EEC](#)”;

(b) after the definition of “waste”, insert—

““waste battery or accumulator” has the meaning given by Article 3(7) of the Batteries Directive, but does not include any waste which is excluded from the scope of that Directive by Article 2(2);”.

(3) In regulation 35, after paragraph (1), insert—

“(m) Schedule 18A (provision in relation to waste batteries and accumulators).”.

(4) After regulation 68, insert—

#### **“Further provision in relation to waste batteries and accumulators**

**68A.**—(1) Paragraph (2) applies to any environmental permit which—

(a) immediately before the coming into force of the Waste Batteries and Accumulators Regulations 2009, authorised a waste operation which involves treatment of waste batteries or accumulators; and

(b) does not require compliance with Article 12(2) of the Batteries Directive.

(2) If this paragraph applies, the environmental permit must be read as if it contained the following condition—

“Treatment of waste batteries and accumulators must meet the minimum requirements set out in Annex III, Part A of Directive [2006/66/EC](#) of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive [91/157/EEC](#).”.

(3) In this regulation, “treatment” has the meaning given in Article 3(10) of the Batteries Directive.”.

(5) After paragraph 52 of Schedule 3, insert—

#### **“Storage of waste portable batteries at a collection point**

**53.**—(1) Storage of waste portable batteries, including hazardous waste, at a collection point.

(2) In this paragraph—

“collection point” means a place where end-users are able to deposit waste portable batteries at the premises of a distributor fulfilling its duty to take back such batteries under regulation [31\(1\)](#) of the Waste Batteries and Accumulators Regulations 2009;

“distributor” and “portable battery” have the meaning given in regulation [2\(1\)](#) of those Regulations.”.

(6) The following Schedule is inserted in the appropriate place—

“SCHEDULE 18A

Regulation 35(m)

Provision in relation to waste batteries and accumulators

#### **Application**

1. This Schedule applies in relation to waste batteries and accumulators.

### Exercise of relevant functions

2. The regulator must exercise its relevant functions so as to ensure compliance with Article 12(2) of the Batteries Directive.”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations partially implement Directive [2006/66/EC](#) of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive [91/157/EEC](#) (OJ No L 266, 26.9.2006, p 1). There is a relevant corrigendum which affects the date mentioned in Article 12(4) (OJ No L 311, 10.11.2006, p 58).

Other implementing measures are the Batteries and Accumulators (Placing on the Market) Regulations 2008 ([S.I. 2008/2164](#)), which implement Articles 4, 6(2), 11 and 21(1), (3), (4), (5) and (6) and the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009 ([S.R. 2009/157](#)), which make provision in Northern Ireland for appropriate authorities to charge battery compliance schemes, treatment facilities and exporters of waste batteries.

Part 1 of the Regulations contains general provision.

The Regulations apply to all batteries other than those used in certain equipment connected with the essential security interests of EEA states and equipment designed to be sent into space (regulation [6](#)). In the Regulations, references to batteries include references to accumulators.

The Regulations divide batteries into three categories: automotive batteries, industrial batteries and portable batteries. Those terms are defined in regulation [2\(1\)](#).

### Portable batteries

Parts 2, 3, 4 and 6 of the Regulations make provision specifically in relation to portable batteries.

Part 2 imposes obligations on producers of portable batteries (the term “producer” is defined in regulation [2\(1\)](#)).

Regulations [7](#) and [8](#) require that producers of portable batteries other than small producers (defined in regulation [2\(1\)](#)) each finance the costs of collection, treatment and recycling of a share of all the portable batteries placed on the market for the first time in the United Kingdom.

Regulation [9](#) requires producers of portable batteries other than small producers to join a battery compliance scheme and regulation [10](#) provides that such membership exempts a producer from its financing obligation and the need to demonstrate individual compliance with that obligation.

Regulation [11](#) requires scheme members to provide information to battery compliance schemes, regulation [12](#) requires them to keep records and regulation [13](#) requires small producers to provide information to the appropriate authority.

Regulation [14](#) sets the charge which an appropriate authority in England, Wales or Scotland may make in relation to small producers. This applies until 1st April 2013, or until the appropriate authority makes a charging scheme, whichever is earlier. Equivalent provision is made in respect of Northern Ireland by the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009 ([S.R. 2009/157](#)).

Regulations 15 to 18 apply to a producer of portable batteries after withdrawal of approval of the battery compliance scheme to which it belongs, until it has joined a new scheme. The producer must join another scheme within a specified time and in the meantime must fulfil its financing obligation itself, ensure that the batteries it collects are delivered for treatment and recycling, keep records, and make quarterly reports and an annual declaration of compliance to the appropriate authority. Part 1 of Schedule 1 contains the details which must be included in such a declaration.

Part 3 makes provision in relation to battery compliance schemes and registration of producers of portable batteries.

Regulation 19 requires a scheme operator to finance the sum of its members' collection, treatment and recycling obligations, as well as the costs of collection, treatment and recycling of any waste batteries it collects in excess of those obligations and the costs of a scheme information campaign.

Scheme operators must ensure that all waste batteries they collect are delivered for treatment and recycling to an approved battery treatment operator or an approved exporter (regulation 21).

Regulations 22 to 24 provide that scheme operators must report on the amounts of batteries placed on the market for the first time in the UK by their members, the amounts of waste batteries collected by them and delivered for treatment and recycling, and must make an annual declaration of compliance with their financing obligations. Part 2 of Schedule 1 contains the details which must be included in such a declaration.

Regulations 26 to 29 require producers of portable batteries to be registered with the appropriate authority and changes to the registration information to be notified. Schedule 2 sets out the information which must be supplied with an application for registration.

Part 4 makes provision in relation to the obligations and rights of distributors of portable batteries and of other economic operators. Regulation 31 requires distributors of portable batteries to take back waste portable batteries free of charge. The requirement does not apply to small distributors (defined in regulation 31). Regulation 32 requires scheme operators to arrange on request for the pick up from distributors of the waste batteries taken back. Regulation 33 requires scheme operators to accept waste portable batteries from economic operators at facilities provided by the scheme operators.

Part 6 provides for the approval of battery compliance schemes. Applications are made under regulation 47 to the appropriate authority and must include the information set out in Part 1 of Schedule 3 and an operational plan containing the information set out in Part 2 of Schedule 3. Further information may be requested under regulation 48. Regulation 49 requires the approval decision to be made using the criteria for approval of a proposed scheme set out in Part 3 of Schedule 3.

Approvals remain in force unless they are withdrawn (regulation 50). Regulation 51 contains conditions of approval. They include annual submission of an updated operational plan covering the next 3 compliance periods. Breach of these conditions are a ground for withdrawal of scheme approval; withdrawal of approval is dealt with by regulation 54.

Regulation 55 sets the charges which an appropriate authority in England, Wales or Scotland may make in relation to the approval and subsistence of a battery compliance scheme. These apply until 1st April 2013, or until the appropriate authority makes a charging scheme, whichever is earlier. Equivalent provision is made in respect of Northern Ireland by the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009 (S.R. 2009/157).

### **Automotive and industrial batteries**

Part 5 of the Regulations makes provision specifically in relation to industrial and automotive batteries.

Regulation 35 imposes obligations on producers of industrial batteries to take back waste industrial batteries free of charge from end-users of such batteries on request. Regulation 36 imposes obligations on producers of automotive batteries to collect waste automotive batteries free of charge from final holders of such batteries on request (see regulation 2 for the definition of a final holder

of automotive batteries). However, producers of industrial and automotive batteries may enter into contracts making alternative arrangements for financing the costs of the collection, treatment and recycling of waste batteries (regulation 37).

Producers of industrial and automotive batteries must ensure that all waste batteries they take back or collect are delivered for treatment and recycling to an approved battery treatment operator or an approved exporter (regulation 38).

Regulations 39 to 41 provide that producers must report on and keep records of the amount of batteries placed by them on the market for the first time in the UK and the amount of waste batteries collected by them and delivered for treatment and recycling.

Regulations 42 to 46 require producers to be registered with the Secretary of State and to notify any changes in the registration information. Schedule 2 sets out the information which must be supplied with an application for registration.

### **Provision common to all categories of battery**

Part 7 makes provision in relation to disposal, treatment and recycling of waste batteries.

Regulation 56 prohibits the disposal in England, Wales and Northern Ireland of waste industrial or automotive batteries in landfill or by incineration.

Regulation 57 restricts the issue of batteries evidence notes (evidencing the delivery of waste portable batteries for treatment and recycling) to approved battery treatment operators and approved exporters. The evidence notes must relate to waste portable batteries accepted by them at sites to which their approval relates. Regulation 57 also prohibits the treatment and recycling of waste industrial or automotive batteries by anyone other than an approved battery treatment operator or an approved battery exporter who has accepted those waste batteries at a site to which their approval relates.

Regulations 58 to 61, read with Part 1 of Schedule 4, set out the procedure for approval of a battery treatment operator or exporter. Regulation 62 provides for extension of an exporter's approval to cover sites not covered by the original approval.

Regulation 63 and Parts 2, 3 and 4 of Schedule 4 set out the conditions of approval of a battery treatment operator or battery exporter. In particular, Part 2 of that Schedule includes requirements relating to treatment standards and recycling efficiencies, and Parts 3 and 4 make provision relating to the issue of batteries evidence notes. Breach of these conditions is grounds for suspension or cancellation of approval (regulation 64).

Regulation 65 sets the charges which an appropriate authority in England, Wales or Scotland may make in relation to the approval of battery treatment operators and exporters. These apply until 1st April 2013, or until the appropriate authority makes a charging scheme, whichever is earlier. Equivalent provision is made in respect of Northern Ireland by the Waste Batteries and Accumulators (Charges) Regulations (Northern Ireland) 2009 (S.R. 2009/157).

Regulations 66 and 67 impose on approved battery treatment operators and approved exporters, respectively, requirements to report to the appropriate authority and to keep records.

Part 8 makes provision in relation to the powers and duties of the Secretary of State. Part 9 and Schedule 6 impose duties on the appropriate authorities. Part 10 makes provision in relation to disclosure of information. Part 11 and Schedule 7 makes provision for appeals. Part 12 makes provisions for enforcement. Part 13 provides for offences and penalties. Part 14 (regulation 92) and Schedule 8 make amendments to other enactments.

An Impact Assessment of the effect that this instrument will have on the costs of compliance to businesses and the environmental benefits is available from the Business Group, Department for Business, Enterprise and Regulatory Reform (BERR), 1 Victoria Street, London SW1H 0ET and at [www.berr.gov.uk/sectors/sustainability](http://www.berr.gov.uk/sectors/sustainability). As these Regulations partially transpose a Directive,

a transposition note setting out how the Government has transposed the Directive in the United Kingdom has been prepared. Copies of the Impact Assessment and transposition note are available from BERR as above. Copies of these documents have been placed in the libraries of both Houses of Parliament and are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.