

Consultation on amendments to the Government Guidance Notes on the Waste Batteries and Accumulators Regulations 2009

Definition of a “portable” battery

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Department
for Environment
Food & Rural Affairs



Department
for Business
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Llywodraeth Cymru
Welsh Government



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**The Scottish
Government**

Introduction

This consultation seeks views on proposals to amend UK Government Guidance Notes¹ in order to address concerns about lack of clarity regarding the definition of “portable” batteries.

The proposed amendment will provide a clearer framework to help interpretation of whether a battery “*can be hand-carried by an average person without difficulty*”. It will remove the 4kg -10kg “grey area” and state a clear 3kg weight limit to determine whether a battery can be “hand carried”. This will not affect the other components of the existing definition and it will remain important for both producers and treatment operators to give consideration to the full range of factors when taking a view on whether a battery is portable or industrial.

The proposed change is expected to reduce both the number of portable battery producers and the UK’s overall portable battery tonnage and increase the collection of non lead-acid batteries.

Stakeholders are invited to provide comments on this proposal and its potential impacts in advance of the guidance being changed. In your response please make clear whether you agree or disagree with the proposed amendment to the guidance. Please send your comments by [insert date] to the following address:

Producer Responsibility Unit, Defra
Nobel House
17 Smith Square
London SW1P 3JR

Or you can send your comments by email to packaging@defra.gsi.gov.uk

Confidentiality & Data Protection

Information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31828/11-850-waste-batteries-and-accumulators-regulations-guidance.pdf

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Background

The Waste Batteries and Accumulators Regulations² were introduced in 2009 to implement the EU Batteries Directive. Producers (companies who place batteries on the UK market) are required to finance the collection, treatment and recycling of a proportion of the batteries they place on the UK market.

In order to protect the environment, the directive and regulations apply to all batteries and accumulators placed on the market in the EU and UK respectively, 'regardless of their shape, volume, weight, material, composition or use'³ and to all chemistries of batteries, with some exceptions⁴. Batteries are classified as portable, industrial and automotive⁵. Portable batteries have associated collection targets, whereas industrial and automotive batteries are prohibited from being disposed to landfill or by incineration⁶. Within each category, batteries are also categorised as lead-acid, nickel cadmium or 'other'.

Producers of portable batteries must be a member of a battery compliance scheme which is responsible for achieving its members obligations, including obtaining evidence of recycling and treatment from approved operators.

The published UK summary data shows that portable battery producer obligations are increasingly being met using lead-acid evidence, predominantly from collections of mixed category lead-acid batteries. In 2012, the proportion of members obligation met by lead-acid evidence was 83%, whereas the proportion of lead-acid batteries being placed on the UK market was 8%. As a result, the tonnage of portable lead acid batteries collected for recycling greatly exceeds the declared tonnage being placed on the UK market. In 2012, the UK had collected around 300% of the tonnage of portable lead acid batteries declared as placed on the market in the same period.

It is likely that most of these lead-acid batteries were being collected before the regulations were implemented and that the increase in evidence was due to more companies becoming approved to treat or export portable batteries. The proportion of non-lead-acid batteries being treated and recycled has actually decreased since the first collection year of 2010.

It is considered that this apparent 'over collection' of lead acid portable batteries is because of a difference in the way that the definition of a portable battery is being applied at the two ends of the chain i.e. placing on the market and collection. There is therefore a need for a clearer distinction between portable and industrial batteries in the guidance to the Batteries Regulations. This will ensure that both producers

² The Waste Batteries and Accumulators Regulations 2009, SI 2009 No. 890

³ Article 1, EU directive 2006/66/EC

⁴ Article 2, EU directive 2006/66/EC

⁵ Article 3, EU directive 2006/66/EC

⁶ Article 14, EU directive 2006/66/EC

and treatment operators are better able to apply the same criteria in respect of the batteries that they handle.

The Batteries Directive states that one of the metrics that should be used to come to a view on whether a battery is portable or industrial is whether it can be hand carried; the UK's current guidance allows a significant margin of discretion in this area. Only batteries in excess of 10kg in weight are defined as not able to be carried by hand and as such should be classed as industrial. Those below 4kg in weight are defined as able to be carried by hand and as such should be classed as portable (provided the other relevant criteria are met).

For batteries between the weights of 4kg and 10kg, the guidance says that there is no presumption and judgement will have to be made based on all available information. This means that when batteries are being placed on the market it is effectively the producer that decides whether a battery between 4kg and 10kg in weight is portable or industrial and when batteries are being treated it is for the treatment operator to make a separate decision.

It is therefore likely that the inconsistency in the figures for portable batteries that are collected and produced, can be explained by a combination of the lack of clarity in the Guidance and the different interests at play affecting producers and treatment operators; this combination of factors may have led to the current anomaly in the collection data.

This creates an immediate problem for the accuracy of the UK's reported portable battery collection rate. Albeit that it is clear a significant amount of portable lead acid batteries are being collected and recycled – such figures need to correlate with the amount of such batteries actually placed on the market.

It also stores up a potential problem for the future; currently many producer compliance schemes are able to comply with the Batteries Regulations using evidence generated by lead acid battery recycling alone. This creates a lack of incentive to invest in the collection/recycling of other portable battery types. If the infrastructure for collecting and recycling other portable batteries is not developed incrementally over the coming years, the UK may be unable to achieve the 2016 EU target of 45%.

The Proposal

We propose to amend the definition of “portable” batteries contained in the Government Guidance Notes to introduce a single weight threshold of 3kg so that any battery weighing 3kg or below will be considered to be hand-carriable (see Annex A).

This will remove the grey area described above and should improve the credibility and consistency of the data we report to the Commission thereby reducing the risk of infraction. 3kg has been chosen because this is in line with HSE guidance on manual handling and minimises the estimated cost increase to producers (see Annex B). However, views are sought on the level at which to set the weight threshold; whether this figure is 2, 3 or 4kg is less important than providing clarity by removing the grey area.

We anticipate amended guidance will be ready for publication in October 2013 and will take effect from 1 January 2014. Approved Battery Treatment Operators (ABTOs) will need to review their sampling and inspection plans and agree revised protocols, which reflect the revised definition, with the relevant environment agencies by 1 January 2014. Battery Compliance Schemes (BCSs) will have the opportunity apply the revised definition to their members’ placed on the market data for previous years so that their recycling obligation for 2014 onwards reflects the new definition. Data on UK battery recycling performance published to date will not be amended.

Impacts of the proposed change

- Simplifies the definition of “portable” and makes it easier for all to understand what is required.
- Greater accuracy and consistency of placing on the market data and waste battery collection figures.
- Brings the UK more closely into line with other member states, many of whom have simple weight limits of around 2-4kg.
- There will need to be a substantial increase in the collection and recycling of other chemistries of portable batteries if the UK and producers are to continue to meet their collection targets – we estimate they would need to more than double to meet the 25% target for 2012. Whilst this is a substantial increase, the next EU target year is 2016 which provides some time for adjustment. Also anecdotally we are aware that potentially significant quantities of other chemistries are being collected through the nationwide network of collection points and being stock-piled.
- A reduction in the number of producers exceeding the small producer deminimis of 1 tonne per annum thereby reducing the number of companies needing to register with battery compliance schemes.
- A reduction in the portable battery recycling obligation for the UK overall and for all producers; we estimate setting a weight threshold of 3kg would reduce the quantity of lead-acid batteries classified as portable by 36% (22% for a 4kg threshold and 80% for 2kg), by 5% for Nickel Cadmium (0% for a 4kg threshold and 10% for 2kg) and by 10% for other chemistries (0% for a 4kg threshold and 15% for 2kg).
- Increased costs of collection and recycling per tonne for producers that remain within the scope of the requirements; we estimate costs to producers will increase from an average of £945 per tonne to £1400 per tonne (assuming the collection rate for lead-acid batteries reduces to 100% as a result of the change in definition). These costs are assumed to increase to £1300 and £1600 if the weight threshold was reduced to 4kg or 2kg respectively.
- We believe the net change in costs to producers is likely to be minimal, and could even result in net savings, because the increased in cost of collection and recycling is likely to be offset the reduction in producer obligations. The tables in Annex B provide a breakdown of these calculations.

Questions

Question 1: Do you agree the proposed amendment to the guidance is necessary to address the apparent over-collection of portable lead-acid batteries? Do you have a preference for whether the weight threshold is set at 4kg, 3kg or 2kg? Please provide reasons for your response.

Question 2: What tonnage of other chemistry portable batteries did you collect/receive in 2012, 2011 & 2010 that has not been recorded in your quarterly returns?

Question 3: For schemes: what proportion of your members would no longer exceed the small producer deminimis of 1 tonne per annum?

Question 4: For producers/schemes: By what proportion would your placed on the market data for portable batteries (both lead-acid and other chemistries) be reduced if the weight threshold was set at (a) 4kg, (b) 3kg and (c) 2kg?

Question 5: For ABTOs/ABEs: By what proportion would the evidence you issue for portable batteries (both lead-acid and other chemistries) be reduced if the weight threshold was set at (a) 4kg, (b) 3kg and (c) 2kg?

Question 6: Do you agree with our estimated increase in costs of collecting and recycling a tonne of batteries to producers arising from the weight thresholds of (a) 4kg, (b) 3kg and (c) 2kg? Please give reasons for the answer and if you do not agree please elaborate on your reasons.

Question 7: We welcome any other comments on the proposals and assessment of impacts you may wish to make.

In respect of all your answers above, please provide as much detail and elaboration as possible so we can fully understand your responses.

ANNEX A – Revised definition of a portable battery within the Government Guidance Notes

A **portable battery** means any battery or battery pack which is:

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

Examples of a **portable battery** include:

- *The AA or AAA batteries used to power a remote control that may accompany appliances such as televisions and DVD players.*
- *The battery used to power a portable MP3 player.*
- *The battery used to power a laptop or mobile phone.*
- *The button cell fixed to the motherboard of a personal computer or laptop, or used to power a wristwatch*

When reaching a view on the type of battery you have placed on the market, one aspect of the definition of a portable battery is that it “*can be hand-carried by an average person without difficulty*”. This is not defined in the Directive. Therefore, a framework has been developed in conjunction with the enforcement authorities to aid interpretation of what it means:

- In the absence of any evidence to the contrary a battery weighing **3kg or less than 4kg** will be presumed to be capable of being hand carried without difficulty by the average natural person.
- In the absence of evidence to the contrary a battery weighing over ~~40~~ **3kg** will be presumed NOT to be capable of being hand carried without difficulty by the average natural person.
- ~~For batteries that fall between these two weights there is no presumption and a judgment will have to be made based on all available information. That information may include but is not limited to the weight and shape of the battery, to any facility making hand carrying more likely such as handles or carrying straps for example.~~

ANNEX B – Cost implications to producers

No change to UK guidance (baseline)

Year	Tonnes of batteries placed on market	Proportion collected	UK Obligation	Estimated cost per tonne	Estimated producer costs
2008		2%			
2009	45,700	2%			
2010	43,500	10%	4,400	£945	£4,158,000
2011	39,800	18%	8,000	£945	£7,560,000
2012	36,600	25%	9,600	£945	£9,072,000
2013	36,600	30%	10,980	£945	£10,376,100
2014	36,600	35%	15,260	£945	£14,420,700
2015	36,600	40%	17,440	£945	£16,480,800
2016	36,600	45%	19,620	£945	£18,540,900

Assumptions:

- 2012 market data has been used as a benchmark for future compliance periods
- Average compliance costs to producers £945 per tonne
- Tonnes collected data estimated as obligation from 2013

Change to 4kg hand-carriability limit

Year	Tonnes of batteries placed on market	Proportion collected	UK Obligation	Estimated cost per tonne	Estimated producer costs	Cost comparison against baseline
2008		2%				
2009	45,700	2%				
2010	43,500	10%	4,400	£945	£4,158,000	£0
2011	39,800	18%	8,000	£945	£7,560,000	£0
2012	36,600	25%	9,600	£945	£9,072,000	£0
2013	36,600	30%	10,980	£945	£10,376,100	£0
2014	35,940	35%	12,579	£1,300	£16,352,700	£1,474,200
2015	35,940	40%	14,376	£1,300	£18,688,800	£1,248,800
2016	35,940	45%	16,173	£1,300	£21,024,900	£423,900

Assumptions:

- Estimated drop in lead-acid market tonnage = 22%
- 2012 market data has been used as a benchmark for future compliance periods
- Tonnes collected data estimated as obligation from 2013
- Assumed increase in cost per tonne from 2014 takes account of differential between value of scrap lead and waste batteries.

Change to 3kg hand-carriability limit

Year	Tonnes of batteries placed on market	Proportion collected	UK Obligation	Estimated cost per tonne	Estimated producer costs	Cost comparison against baseline
2008		2%				
2009	45,700	2%				
2010	43,500	10%	4,400	£945	£4,158,000	£0
2011	39,800	18%	8,000	£945	£7,560,000	£0
2012	36,600	25%	9,600	£945	£9,072,000	£0
2013	36,600	30%	10,980	£945	£10,376,100	£0
2014	32,230	35%	11,281	£1,400	£15,792,700	£914,200
2015	32,230	40%	12,892	£1,400	£18,048,800	£608,800
2016	32,230	45%	14,504	£1,400	£20,304,900	£-296,100

Assumptions:

- Estimated drop in lead-acid market tonnage = 36%
- 2012 market data has been used as a benchmark for future compliance periods
- Tonnes collected data estimated as obligation from 2013
- Assumed increase in cost per tonne from 2014 takes account of differential between value of scrap lead and waste batteries.

Change to 2kg hand-carriability limit

Year	Tonnes of batteries placed on market	Proportion collected	UK Obligation	Estimated cost per tonne	Estimated producer costs	Cost benefit/cost gain against baseline
2008		2%				
2009	45,700	2%				
2010	43,500	10%	4,400	£945	£4,158,000	£0
2011	39,800	18%	8,000	£945	£7,560,000	£0
2012	36,600	25%	9,600	£945	£9,072,000	£0
2013	36,600	30%	10,980	£945	£10,376,100	£0
2014	29,230	35%	10,231	£1,600	£16,368,800	£1,490,300
2015	29,230	40%	11,692	£1,600	£18,707,200	£1,267,200
2016	29,230	45%	13,154	£1,600	£21,045,600	£444,600

Assumptions:

- Estimated drop in lead-acid market tonnage = 80%
- 2012 market data has been used as a benchmark for future compliance periods
- Tonnes collected data estimated as obligation from 2013
- Assumed increase in cost per tonne from 2014 takes account of differential between value of scrap lead and waste batteries.