



Department
for Environment
Food & Rural Affairs

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

Definition of a “portable” battery

January 2015



Llywodraeth Cymru
Welsh Government





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Introduction

This consultation seeks views on proposals to amend UK Government Guidance¹ 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 weight limit to determine whether a battery can be “hand carried” and is therefore a portable battery. This will not affect the other components of the existing definition and it will remain important for both producers, treatment operators and exporters to give consideration to the full range of factors when taking a view on whether a battery is portable or industrial.

The proposed change to the guidance is expected to 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 22 February 2015 to the following address:

Producer Responsibility Unit, Defra
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17 Smith Square
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Or you can send your comments by email to packaging@defra.gsi.gov.uk

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¹ <https://www.gov.uk/waste-batteries-and-accumulators-technical-guidance>

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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 that 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. There are 5 Battery Compliance Schemes with a total of 504 members in 2014. The 10 largest producers account for around 54% of the total UK obligation.

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 2013, the UK collected around 470% 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 is 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. when placing on the market and at collection/reprocessing. 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 and

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

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 difference 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 discrepancy in the data collected.

This creates a 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 now developed, it may prove difficult to achieve the 2016 EU target of 45%.

The Proposal

Within the Waste Batteries and Accumulators Regulations, 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.

We propose to amend the guidance to introduce a single weight threshold of 4 kg so that any battery weighing below this will be considered to be able to be “hand-carried”.

This will remove the grey area described in the previous section and should improve the credibility and consistency of the data reported to the Commission, thereby reducing the risk of infraction. The limit of 4kg has been chosen because this is in line with other member states and minimises the estimated cost increase to producers (see Impact Assessment). However, views are sought on the level at which to set the weight threshold.

We anticipate amended guidance will be ready for publication in early 2015 and will take effect as soon as practical. 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. 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 2015 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, most of whom have simple weight limits of around 3-4kg.
- 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. 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.
- Potential for a reduction in the number of producers needing to register with Battery Compliance Schemes, due to the reduction in the number of producers exceeding the small producer de minimis.
- Potential for a reduction in the portable battery recycling obligation for the UK overall and for all producers;
- 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 £1,000 per tonne to £1,250 per tonne (assuming the collection rate for lead-acid batteries reduces to 100% as a result of the change in definition).

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?

Question 1a: Do you support a weight threshold of 4kg? If not, what level would you set the threshold?

Question 1b: Please provide reasons for your response to question 1.

Question 2: For schemes/ABTOs/ABEs: What tonnage of other chemistry portable batteries did you collect/receive in 2011, 2012 and 2013 that has not been recorded in your quarterly returns?

Question 3: For producers/schemes: Would your placed on the market data be reduced following a change of definition?

Question 3a: What would the change be if the weight threshold was set at (a) 4kg or (b) 3kg?**Question**

4: For schemes: Would any of your members fall below the 1 tonne de minimis following a change of definition?

Question 4a: How many producers would this affect with a threshold of (a) 4kg or (b) 3kg?

Question 5: For ABTOs/ABEs: Would the amount of evidence you issue for portable batteries (both lead-acid and other chemistries) reduce following a change of definition?

Question 5a: What would the change be if the weight threshold was set at (a) 4kg and (b) 3kg?

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 and (b) 3kg?

Question 6a: 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

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 4kg or less 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 4kg will be presumed NOT to be capable of being hand carried without difficulty by the average natural person.