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Environmental Permitting

Environmental Permitting Guidance The Waste Batteries and Accumulators Directive

**Environmental Permitting (England and Wales) Regulations
2007 (as amended)**

Draft guidance for Consultation – May 2009



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



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1. Introduction

About this guidance

- 1.1 This guidance is part of a series of documents which accompany the Environmental Permitting (England and Wales) Regulations 2007 SI 2007 No. 3538 (“the Regulations”)¹ as amended by the Waste Batteries and Accumulators Regulations 2009².
- 1.2 The series consists of the Environmental Permitting Core Guidance³, which describes the general permitting and compliance requirements, and guidance on each of the European Directives implemented through the regime⁴. Separate guidance is available where the local authority regulates⁵.
- 1.3 This Guidance is about the European Community (EC) Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (“the Directive”), insofar as it relates to permitting the treating and/or recycling of batteries in England and Wales (i.e. Article and 12(2) and Annex III of the Directive). The Waste Batteries and Accumulators Regulations 2009 (SI 2009 No 890) apply other provisions of the Directive.
- 1.4 This guidance is being published to help those regulating and operating sites for the treatment and recycling of batteries, but it will also be of interest to others. The guidance sets out the views of the Secretary of State for Environment, Food and Rural Affairs (Defra) and the Welsh Ministers on how the Directive should be applied and how particular terms should be interpreted. However, only the national or European Courts can give a definitive interpretation of the legislation.
- 1.5 This guidance should be read in conjunction with the Environmental Permitting Core Guidance⁶. Reference should also be made to the Guidance on the Waste Framework Directive⁷.
- 1.6 The Batteries and Accumulators Regulations 2009 amend the Environmental Permitting Regulations to include the relevant permitting requirements of the Directive by adding Schedule 18A and making other amendments (reproduced in this document as Annex 1).
- 1.7 Chapter 2 provides guidance on the scope of the permitting element of the Directive. Chapter 3 sets out how the Regulations transpose the relevant parts of the Directive and describes the requirements of the Directive which will be delivered through environmental permits.

¹ Available at www.defra.gov.uk/environment/epp/guidance.htm

² Draft regulations available at:

<http://www.berr.gov.uk/whatwedo/sectors/sustainability/batteries/page49501.html>

³ Available at www.defra.gov.uk/environment/epp/guidance.htm

⁴ *Ibid.*

⁵ Available at www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/manuals.htm

⁶ Available at www.defra.gov.uk/environment/epp/guidance.htm

⁷ *Ibid.*

- 1.8 A copy of the Directive is provided in Annex 2.
- 1.9 A separate glossary of terms is available⁸. The glossary briefly explains the meaning of many words, phrases and acronyms used in the Regulations.

The Batteries and Accumulators and Waste Batteries and Accumulators Directive

- 1.10 The Directive is a waste stream specific directive which supplements the Waste Framework Directive (2006/12/EC). The Batteries Directive seeks to improve the environmental performance of batteries and accumulators and of the activities of all those involved in the life cycle of batteries and accumulators, ie producers, distributors, end users and those involved in the treatment and recycling of waste batteries and accumulators.
- 1.11 Information on the transposition of the remainder of the Directive can be found on the Department for Business, Enterprise and Regulatory Reform website⁹.

⁸ Available at www.defra.gov.uk/environment/epp/guidance.htm

⁹ Available at <http://www.berr.gov.uk/whatwedo/sectors/sustainability/batteries/page30610.html>

2. Scope of the Directive

What is a waste battery or accumulator?

- 2.1 The Batteries Directive (Article 2) applies to all batteries except those used in equipment designed specifically for military or space applications. For the purposes of the Batteries Directive, a waste battery is any battery which falls within the Waste Framework Directive's definition of waste.

3. Permitting Requirements

- 3.1 This chapter describes the Directive requirements that environmental permits must deliver and how the Permitting Regulations apply these requirements.
- 3.2 Paragraph 1 of Schedule 18A to the Regulations applies the requirements of the Schedule to waste batteries and accumulators.
- 3.3 Paragraph 3 of Schedule 18A to the Regulations requires the regulator to exercise its relevant functions so as to ensure compliance with Article 12(2) of the Batteries Directive. This makes reference to Annex III Part A of the Directive which sets out the requirements for the treatment and storage of waste batteries and accumulators that:
- (a) treatment as a minimum, includes the removal of all fluids and acids;
 - (b) the treatment and storage site including temporary storage, at treatment facilities must have impermeable surfaces with weatherproof covering in appropriate areas or suitable containers.
- 3.4 The term ‘relevant functions’ is defined to include the grant and refusal of permits, setting conditions within those permits and securing compliance with those permits (regulation 9 and see chapters 5, 6 and 10 of the Environmental Permitting Core Guidance).
- 3.5 The Environment Agency is the regulator for waste operations (regulation 32(5)) and is responsible for ensuring that operators meet the relevant technical standards of the Directive.

Existing permits

- 3.6 Where any environmental permit issued before the coming into force of the Waste Batteries and Accumulators Regulations 2009, authorises a waste operation which involves treatment of waste batteries or accumulators; and does not require compliance with Article 12(2) of the Batteries Directive. 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.”
- 3.7 “Treatment” has the meaning given in Article 3(10) of the Batteries Directive.” that is as any activity carried out on waste batteries and accumulators after they have been handed over to a facility for sorting, preparation for recycling or preparation for disposal.

Annex 1—Extract from (Schedule 10 to the Environmental Protection Waste Batteries and Accumulators Regulations 2009)

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

1.—(1) The Environmental Permitting (England and Wales) Regulations 2007⁽¹⁰⁾ are amended as follows.

(2) In regulation 2(1)—

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

““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 53 of Schedule 3, insert—

“Storage of waste portable batteries at a collection point

54.—(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;

⁽¹⁰⁾ S.I. 2007/3538.

“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.”.

Annex 2–The Waste Batteries and Accumulators Directive

DIRECTIVE 2006/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 6 September 2006****on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof and Article 95(1) thereof in relation to Articles 4, 6 and 21 of this Directive,

Having regard to the proposal from the Commission ¹,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of Regions ³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁴, in the light of the joint text approved by the Conciliation Committee on 22 June 2006,

Whereas:

(1) It is desirable to harmonise national measures concerning batteries and accumulators and waste batteries and accumulators. The primary objective of this Directive is to minimise the negative impact of batteries and accumulators and waste batteries and accumulators on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment. The legal base is therefore Article 175(1) of the Treaty. However, it is also appropriate to take measures at Community level on the basis of Article 95(1) of the Treaty to harmonise requirements concerning the heavy metal content and labelling of batteries and accumulators and so to ensure the smooth functioning of the internal market and avoid distortion of competition within the Community.

(2) The Commission Communication of 30 July 1996 on the Review of the Community Strategy for Waste Management established guidelines for future Community waste policy. That Communication stresses the need to reduce the quantities of hazardous substances in waste and points out the potential benefits of Community-wide rules limiting the presence of such substances in products and in production processes. It further states that, where the generation of waste cannot be avoided, that waste should be reused or recovered for its material or energy.

(3) The Council Resolution of 25 January 1988 on a Community action programme to combat environmental pollution by cadmium ⁵ stressed the limitation of the uses of cadmium to cases where suitable alternatives do not exist and the collection and recycling of batteries containing cadmium as major elements of the strategy for cadmium control in the interests of the protection of human health and the environment.

(4) Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances ⁶ has brought about an approximation of Member States' laws in this field. However, the objectives of that Directive have not been fully attained. Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁷ and Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ⁸ also underlined the need for Directive 91/157/EEC to be revised. Directive 91/157/EEC should therefore be revised and replaced in the interests of clarity.

¹ OJ C 96, 21.4.2004, p. 29.

² OJ C 117, 30.4.2004, p. 5.

³ OJ C 121, 30.4.2004, p. 35.

⁴ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 354), Council Common Position of 18 July 2005 (OJ C 264 E, 25.10.2005, p. 1) and Position of the European Parliament of 13 December 2005 (not yet published in the Official Journal). European Parliament Legislative Resolution of 4 July 2006 (not yet published in the Official Journal) and Decision of the Council of 18 July 2006.

⁵ OJ C 30, 4.2.1988, p. 1.

⁶ OJ L 78, 26.3.1991, p. 38. Directive as amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

⁷ OJ L 242, 10.9.2002, p. 1.

⁸ OJ L 37, 13.2.2003, p. 24. Directive as amended by Directive 2003/108/EC of the European Parliament and of the Council (OJ L 345, 31.12.2003, p. 106).

(5) In order to achieve its environmental aims, this Directive prohibits the placing on the market of certain batteries and accumulators containing mercury or cadmium. It also promotes a high level of collection and recycling of waste batteries and accumulators and improved environmental performance of all operators involved in the life cycle of batteries and accumulators, e.g. producers, distributors and end-users and, in particular, those operators directly involved in the treatment and recycling of waste batteries and accumulators. The specific rules needed to do this are supplementary to existing Community legislation on waste, in particular Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste¹, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste² and Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste³

(6) In order to prevent waste batteries and accumulators from being discarded in such a way as to pollute the environment, and to avoid end-user confusion about the different waste management requirements for different batteries and accumulators, this Directive should apply to all batteries and accumulators placed on the market within the Community. Such a wide scope should also ensure economies of scale in collection and recycling, as well as optimal resource saving.

(7) Reliable batteries and accumulators are fundamental for the safety of many products, appliances and services, and are an essential energy source in our society.

(8) It is appropriate to distinguish between portable batteries and accumulators on the one hand and industrial and automotive batteries and accumulators on the other. The disposal of industrial and automotive batteries and accumulators in landfill sites or by incineration should be prohibited.

(9) Examples of industrial batteries and accumulators include batteries and accumulators used for emergency or back-up power supply in hospitals, airports or offices, batteries and accumulators used in trains or aircraft and batteries and accumulators used on offshore oil rigs or in lighthouses. Examples also include batteries and accumulators designed exclusively for hand-held payment terminals in shops and restaurants, bar code readers in shops, professional video equipment for TV channels and professional studios, miners' lamps and diving lamps attached to mining and diving helmets for professionals, back up batteries and accumulators for electric doors to prevent them from blocking or crushing people, batteries and accumulators used for instrumentation or in various types of measurement and instrumentation

equipment and batteries and accumulators used in connection with solar panel, photo-voltaic, and other renewable energy applications. Industrial batteries and accumulators also include batteries and accumulators used in electrical vehicles, such as electric cars, wheelchairs, bicycles, airport vehicles and automatic transport vehicles. In addition to this non exhaustive list of examples, any battery or accumulator that is not sealed and not automotive should be considered industrial.

(10) Examples of portable batteries and accumulators, which are all-sealed batteries and accumulators that an average person could carry by hand without difficulty and that are neither automotive batteries or accumulators nor industrial batteries or accumulators, include single cell batteries (such as AA and AAA batteries) and batteries and accumulators used by consumers or professionals in mobile telephones, portable computers, cordless power tools, toys and household appliances such as electric toothbrushes, razors and hand-held vacuum cleaners (including similar equipment used in schools, shops, restaurants, airports, offices or hospitals) and any battery or accumulator that consumers may use for normal household applications.

(11) The Commission should evaluate the need for adaptation of this Directive, taking account of available technical and scientific evidence. In particular, the Commission should carry out a review of the exemption from the cadmium ban provided for portable batteries and accumulators intended for use in cordless power tools. Examples of cordless power tools are tools that consumers and professionals use for turning, milling, sanding, grinding, sawing, cutting, shearing, drilling, making holes, punching, hammering, riveting, screwing, polishing or similar processing of wood, metal and other materials, as well as for mowing, cutting and other gardening activities.

(12) The Commission should also monitor, and Member States should encourage, technological developments that improve the environmental performance of batteries and accumulators throughout their entire life cycle, including through participation in a Community ecomanagement and audit scheme (EMAS).

(13) In order to protect the environment, waste batteries and accumulators should be collected. For portable batteries and accumulators, collection schemes achieving a high collection rate should be established. This means setting up collection schemes so that end-users can discard all waste portable batteries and accumulators conveniently and free of charge. Different collection schemes and financing arrangements are appropriate for the different battery and accumulator types.

¹ OJ L 114, 27.4.2006, p. 9.

² OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

³ OJ L 332, 28.12.2000, p. 91.

(14) It is desirable for Member States to achieve a high collection and recycling rate for waste batteries and accumulators so as to achieve a high level of environmental protection and material recovery throughout the Community. This Directive should therefore set minimum collection and recycling targets for Member States. It is appropriate to calculate the collection rate on the basis of average annual sales in preceding years, so as to have comparable targets for all Member States that are proportionate to the national level of battery and accumulator consumption.

(15) Specific recycling requirements should be established for cadmium and lead batteries and accumulators in order to attain a high level of material recovery throughout the Community and to prevent disparities between Member States.

(16) All interested parties should be able to participate in collection, treatment and recycling schemes. Those schemes should be designed to avoid discrimination against imported batteries and accumulators, barriers to trade or distortions of competition.

(17) Collection and recycling schemes should be optimised, in particular in order to minimise costs and the negative environmental impact of transport. Treatment and recycling schemes should use best available techniques, as defined in Article 2(11) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control¹. The definition of recycling should exclude energy recovery. The concept of energy recovery is defined in other Community instruments.

(18) Batteries and accumulators can be collected individually, by way of national battery collection schemes or together with waste electrical and electronic equipment, by way of national collection schemes set up on the basis of Directive 2002/96/EC. In the latter case, as an obligatory minimum treatment requirement, batteries and accumulators should be removed from the collected waste electrical and electronic equipment. After their removal from the waste electrical and electronic equipment, batteries and accumulators are subject to the requirements of this Directive, notably they count for achieving the collection target and are subject to recycling requirements.

(19) Basic principles for financing the management of waste batteries and accumulators should be set at Community level. Financing schemes should help to achieve high collection and recycling rates and to give effect to the principle of producer responsibility. All producers as defined by this Directive should be registered. Producers should finance the costs of collecting, treating and recycling all collected batteries and accumulators minus the

profit made by selling the materials recovered. However, under certain circumstances, the application of de minimis rules to small producers could be justified.

(20) The provision of information to end-users on the desirability of separate collection, the collection schemes available and end-users' role in the management of waste batteries and accumulators is necessary for successful collection. Detailed arrangements should be made for a labelling system, which should provide end-users with transparent, reliable and clear information on batteries and accumulators and any heavy metals they contain.

(21) If, in order to achieve the objectives of this Directive, and, in particular, to achieve high separate collection and recycling rates, Member States use economic instruments, such as differential tax rates, they should inform the Commission accordingly.

(22) Reliable and comparable data on the quantities of batteries and accumulators placed on the market collected and recycled are necessary for monitoring whether the objectives of this Directive have been achieved.

(23) Member States should lay down rules on the penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(24) In accordance with Paragraph 34 of the Interinstitutional agreement on better law-making², Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.

(25) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission³.

(26) Since the objectives of this Directive namely protecting the environment and ensuring the proper functioning of the internal market cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

¹ OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

² OJ C 321, 31.12.2003, p. 1.

³ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

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(27) This Directive applies without prejudice to Community legislation on safety, quality and health requirements and specific Community waste management legislation, in particular Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles¹ and Directive 2002/96/EC.

(28) As regards producer responsibility, producers of batteries and accumulators and producers of other products incorporating a battery or accumulator are responsible for the waste management of batteries and accumulators that they place on the market. A flexible approach is appropriate to enable financing schemes to reflect differing national circumstances and to take account of existing schemes, particularly those set up to comply with Directives 2000/53/EC and 2002/96/EC, while avoiding double charging.

(29) Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment² does not apply to batteries and accumulators used in electrical and electronic equipment.

(30) Automotive and industrial batteries and accumulators used in vehicles should meet the requirements of Directive 2000/53/EC, in particular Article 4 thereof. Therefore the use of cadmium in industrial batteries and accumulators for electrical vehicles should be prohibited, unless they can benefit from an exemption on the basis of Annex II to that Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter

This Directive establishes:

(1) rules regarding the placing on the market of batteries and accumulators and, in particular, a prohibition on the placing on the market of batteries and accumulators containing hazardous substances; and

(2) specific rules for the collection, treatment, recycling and disposal of waste batteries and accumulators to supplement relevant Community legislation on waste and to promote a high level of collection and recycling of waste batteries and accumulators.

It seeks to improve the environmental performance of batteries and accumulators and of the activities of all economic operators involved in the life cycle of batteries and accumulators,

e.g. producers, distributors and end-users and, in particular, those operators directly involved in the treatment and recycling of waste batteries and accumulators.

Article 2

Scope

1. This Directive shall apply to all types of batteries and accumulators, regardless of their shape, volume, weight, material composition or use. It shall apply without prejudice to Directives 2000/53/EC and 2002/96/EC.

2. This Directive shall not apply to batteries and accumulators used in:

(a) equipment connected with the protection of Member States' essential security interests, arms, munitions and war material, with the exclusion of products that are not intended for specifically military purposes;

(b) equipment designed to be sent into space.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) 'battery' or 'accumulator' means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (nonrechargeable) or consisting of one or more secondary battery cells (rechargeable);

(2) 'battery pack' means any set of batteries or accumulators that are connected together and/or encapsulated within an outer casing so as to form a complete unit that the enduser is not intended to split up or open;

(3) 'portable battery or accumulator' means any battery, button cell, battery pack or accumulator that:

(a) is sealed; and

(b) can be hand-carried; and

(c) is neither an industrial battery or accumulator nor an automotive battery or accumulator;

(4) 'button cell' means any small round portable battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment and back-up power;

(5) 'automotive battery or accumulator' means any battery or accumulator used for automotive starter, lighting or ignition power;

¹ OJ L 269, 21.10.2000, p. 34. Directive as last amended by Council Decision 2005/673/EC (OJ L 254, 30.9.2005, p. 69).

² OJ L 37, 13.2.2003, p. 19. Directive as last amended by Commission Decision 2006/310/EC (OJ L 115, 28.4.2006, p. 38).

(6) 'industrial battery or accumulator' means any battery or accumulator designed for exclusively industrial or professional uses or used in any type of electric vehicle;

(7) 'waste battery or accumulator' means any battery or accumulator which is waste within the meaning of Article 1(1)(a) of Directive 2006/12/EC;

(8) 'recycling' means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;

(9) 'disposal' means any of the applicable operations provided for in Annex IIA to Directive 2006/12/EC;

(10) 'treatment' means any activity carried out on waste batteries and accumulators after they have been handed over to a facility for sorting, preparation for recycling or preparation for disposal;

(11) 'appliance' means any electrical or electronic equipment, as defined by Directive 2002/96/EC, which is fully or partly powered by batteries or accumulators or is capable of being so;

(12) 'producer' means any person in a Member State 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 of 20 May 1997 on the protection of consumers in respect of distance contracts¹, places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the territory of that Member State on a professional basis;

(13) 'distributor' means any person that provides batteries and accumulators on a professional basis to an end-user; (14) 'placing on the market' means supplying or making available, whether in return for payment or free of charge, to a third party within the Community and includes import into the customs territory of the Community;

(15) 'economic operators' means any producer, distributor, collector, recycler or other treatment operator;

(16) 'cordless power tool' means any hand held appliance powered by a battery or accumulator and intended for maintenance, construction or gardening activities;

(17) 'collection rate' means, for a given Member State in a given calendar year, the percentage obtained by dividing the weight of waste portable batteries and accumulators collected in accordance with Article 8(1) of this Directive or with Directive 2002/96/EC in that calendar year by the average weight of portable batteries and accumulators that producers either sell directly to end-users or deliver to third parties in order to sell them to end-users in that Member State during that calendar year and the preceding two calendar years.

¹ OJ L 144, 4.6.1997, p. 19. Directive as last amended by Directive 2005/29/EC (OJ L 149, 11.6.2005, p. 22).

Article 4

Prohibitions

1. Without prejudice to Directive 2000/53/EC, Member States shall prohibit the placing on the market of:

(a) all batteries or accumulators, whether or not incorporated into appliances, that contain more than 0,0005 % of mercury by weight; and

(b) portable batteries or accumulators, including those incorporated into appliances, that contain more than 0,002 % of cadmium by weight.

2. The prohibition set out in Paragraph 1(a) shall not apply to button cells with a mercury content of no more than 2 % by weight.

3. The prohibition set out in Paragraph 1(b) shall not apply to portable batteries and accumulators intended for use in:

(a) emergency and alarm systems, including emergency lighting;

(b) medical equipment; or

(c) cordless power tools.

4. The Commission shall review the exemption referred to in Paragraph 3(c) and submit a report to the European Parliament and to the Council by 26 September 2010, together, if appropriate, with relevant proposals, with a view to the prohibition of cadmium in batteries and accumulators.

Article 5

Increased environmental performance

Member States which have manufacturers established on their territory shall promote research and encourage improvements in the overall environmental performance of batteries and accumulators throughout their entire life cycle as well as the development and marketing of batteries and accumulators which contain smaller quantities of dangerous substances or which contain less polluting substances, in particular as substitutes for mercury, cadmium and lead.

Article 6

Placing on the market

1. Member States shall not, on the grounds dealt with in this Directive, impede, prohibit, or restrict the placing on the market in their territory of batteries and accumulators that meet the requirements of this Directive.

2. Member States shall take the necessary measures to ensure that batteries or accumulators that do not meet the requirements of this Directive are not placed on the market or are withdrawn from it.

Article 7

Overarching objective

Member States shall, having regard to the environmental impact of transport, take necessary measures to maximise the separate collection of waste batteries and accumulators and to minimise the disposal of batteries and accumulators as mixed municipal waste in order to achieve a high level of recycling for all waste batteries and accumulators.

Article 8

Collection schemes

1. Member States shall ensure that appropriate collection schemes are in place for waste portable batteries and accumulators. Such schemes:

(a) shall enable end-users to discard waste portable batteries or accumulators at an accessible collection point in their vicinity, having regard to population density;

(b) shall require distributors to take back waste portable batteries or accumulators at no charge when supplying portable batteries or accumulators, unless an assessment shows that alternative existing schemes are at least as effective in attaining the environmental aims of this Directive. Member States shall make public such assessments;

(c) shall not involve any charge to end-users when discarding waste portable batteries or accumulators, nor any obligation to buy a new battery or accumulator;

(d) may be run in conjunction with the schemes referred to in Article 5(2) of Directive 2002/96/EC. Collection points set up to comply with point (a) of this paragraph shall not be subject to the registration or permit requirements of Directive 2006/12/EC or Council Directive 91/689/EEC of 12 December 1991 on hazardous waste¹.

2. Provided that the schemes meet the criteria listed in Paragraph 1, Member States may:

(a) require producers to set up such schemes;

(b) require other economic operators to participate in such schemes;

(c) maintain existing schemes.

3. Member States shall ensure that producers of industrial batteries and accumulators, or third parties acting on their behalf, shall not refuse to take back waste industrial batteries and accumulators from end-users, regardless of chemical composition and origin. Independent third parties may also collect industrial batteries and accumulators.

4. Member States shall ensure that producers of automotive batteries and accumulators, or third parties,

¹ OJ L 377, 31.12.1991, p. 20. Directive as last amended by Regulation (EC) No 166/2006.

set up schemes for the collection of waste automotive batteries and accumulators from end-users or from an accessible collection point in their vicinity, where collection is not carried out under the schemes referred to in Article 5(1) of Directive 2000/53/EC. In the case of automotive batteries and accumulators from private, non-commercial vehicles, such schemes shall not involve any charge to end-users when discarding waste batteries or accumulators, nor any obligation to buy a new battery or accumulator.

Article 9

Economic instruments

Member States may use economic instruments to promote the collection of waste batteries and accumulators or to promote the use of batteries and accumulators containing less polluting substances, for instance by adopting differential tax rates. If they do so, they shall notify the measures related to the implementation of those instruments to the Commission.

Article 10

Collection targets

1. Member States shall calculate the collection rate for the first time in respect of the fifth full calendar year following the entry into force of this Directive. Without prejudice to Directive 2002/96/EC, annual collection and sales figures shall include batteries and accumulators incorporated into appliances.

2. Member States shall achieve the following minimum collection rates:

(a) 25 % by 26 September 2012;

(b) 45 % by 26 September 2016.

3. Member States shall monitor collection rates on a yearly basis according to the scheme set out in Annex I. Without prejudice to Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics², Member States shall transmit reports to the Commission within six months of the end of the calendar year concerned. Reports shall indicate how they obtained the data necessary to calculate the collection rate.

4. In accordance with the procedure referred to in Article 24(2):

(a) transitional arrangements may be laid down to address difficulties faced by a Member State in satisfying the requirements of Paragraph 2 as a result of specific national circumstances;

² OJ L 332, 9.12.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 783/2005 (OJ L 131, 25.5.2005, p. 38).

(b) a common methodology shall be established for the calculation of annual sales of portable batteries and accumulators to end-users by 26 September 2007.

Article 11

Removal of waste batteries and accumulators

Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed. Appliances into which batteries and accumulators are incorporated shall be accompanied by instructions showing how they can be removed safely and, where appropriate, informing the end-user of the type of the incorporated batteries and accumulators. These provisions shall not apply where, for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery or accumulator.

Article 12

Treatment and recycling

1. Member States shall ensure that, no later than 26 September 2009:

(a) producers or third parties set up schemes using best available techniques, in terms of the protection of health and the environment, to provide for the treatment and recycling of waste batteries and accumulators; and

(b) all identifiable batteries and accumulators collected in accordance with Article 8 of this Directive or with Directive 2002/96/EC undergo treatment and recycling through schemes that comply, as a minimum, with Community legislation, in particular as regards health, safety and waste management.

However, Member States may, in accordance with the Treaty, dispose of collected portable batteries or accumulators containing cadmium, mercury or lead in landfills or underground storage when no viable end market is available. Member States may also, in accordance with the Treaty, dispose of collected portable batteries or accumulators containing cadmium, mercury or lead in landfills or underground storage as part of a strategy to phase out heavy metals which, on the basis of a detailed assessment of the environmental, economic, and social impacts, shows that this disposal option should be preferred over recycling.

Member States shall make public this assessment and notify draft measures to the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services¹.

2. Treatment shall meet the minimum requirements set out in Annex III, Part A.

3. Where batteries or accumulators are collected together with waste electrical and electronic equipment on the basis of Directive 2002/96/EC, batteries or accumulators shall be removed from the collected waste electrical and electronic equipment.

4. Recycling processes shall, no later than 26 September 2010, meet the recycling efficiencies and associated provisions set out in Annex III, Part B.

5. Member States shall report on the levels of recycling achieved in each calendar year concerned and whether the efficiencies referred to in Annex III, Part B have been met. They shall submit the information to the Commission within six months of the end of the calendar year concerned.

6. Annex III may be adapted or supplemented to take account of technical or scientific progress in accordance with the procedure referred to in Article 24(2). In particular:

(a) detailed rules regarding the calculation of recycling efficiencies shall be added no later than 26 March 2010; and

(b) the minimum recycling efficiencies shall be evaluated regularly and adapted to best available techniques and in the light of the developments referred to in Paragraph 1, second subparagraph.

7. Before proposing any amendment to Annex III the Commission shall consult relevant stakeholders, in particular producers, collectors, recyclers, treatment operators, environmental organisations, consumer organisations and employee associations. It shall inform the committee referred to in Article 24(1) of the outcome of this consultation.

Article 13

New recycling technologies

1. Member States shall encourage the development of new recycling and treatment technologies, and promote research into environmentally friendly and cost-effective recycling methods for all types of batteries and accumulators.

2. Member States shall encourage treatment facilities to introduce certified environmental management schemes in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community ecomanagement and audit scheme (EMAS)².

¹ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

² OJ L 114, 24.4.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 196/2006 (OJ L 32, 4.2.2006, p. 4).

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Article 14

Disposal

Member States shall prohibit the disposal in landfills or by incineration of waste industrial and automotive batteries and accumulators. However, residues of any batteries and accumulators that have undergone both treatment and recycling in accordance with Article 12(1) may be disposed of in landfills or by incineration.

Article 15

Exports

1. Treatment and recycling may be undertaken outside the Member State concerned or outside the Community, provided that the shipment of waste batteries and accumulators is in compliance with Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community¹.

2. Waste batteries and accumulators exported out of the Community in accordance with Regulation (EEC) No 259/93, Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste² and Commission Regulation (EC) No 1547/1999 of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92)39 final does not apply³ shall count towards the fulfilment of the obligations and efficiencies laid down in Annex III to this Directive only if there is sound evidence that the recycling operation took place under conditions equivalent to the requirements of this Directive.

3. Detailed rules for the implementation of this Article shall be laid down in accordance with the procedure referred to in Article 24(2).

Article 16

Financing

1. Member States shall ensure that producers, or third parties acting on their behalf, finance any net costs arising from:

(a) the collection, treatment and recycling of all waste portable batteries and accumulators collected in accordance with Article 8(1) and (2); and

(b) the collection, treatment and recycling of all waste industrial and automotive batteries and accumulators collected in accordance with Articles 8(3) and (4).

2. Member States shall ensure that the implementation of Paragraph 1 avoids any double charging of producers in the case of batteries or accumulators collected under schemes set up in accordance with Directive 2000/53/EC or Directive 2002/96/EC.

3. Member States shall oblige producers, or third parties acting on their behalf, to finance any net costs arising from public information campaigns on the collection, treatment and recycling of all waste portable batteries and accumulators.

4. The costs of collection, treatment and recycling shall not be shown separately to end-users at the time of sale of new portable batteries and accumulators.

5. Producers and users of industrial and automotive batteries and accumulators may conclude agreements stipulating financing arrangements other than the ones referred to in Paragraph 1.

6. This Article shall apply to all waste batteries and accumulators, irrespective of the date of their placing on the market.

Article 17

Registration

Member States shall ensure that each producer is registered. Registration shall be subject to the same procedural requirements in each Member State. Such requirements for registration shall be established in accordance with the procedure referred to in Article 24(2).

Article 18

Small producers

1. Member States may exempt producers which, relative to the size of the national market place very small quantities of batteries or accumulators on the national market, from the requirements of Article 16(1), on the condition that this does not impede the proper functioning of the collection and recycling schemes set up on the basis of Articles 8 and 12.

2. Member States shall make public such draft measures and the grounds for proposing them and notify them to the Commission and other Member States through the Committee referred to in Article 24(1).

3. The Commission shall, within six months of notification as referred to in Paragraph 2, approve or reject the draft measures after having verified that they are consistent with the considerations set out in Paragraph 1 and do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. In absence of a decision by the Commission within this period, the draft measures shall be deemed to have been approved.

¹ OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

² OJ L 166, 1.7.1999, p. 6. Regulation as last amended by Commission Regulation (EC) No 105/2005 (OJ L 20, 22.1.2005, p. 9).

³ OJ L 185, 17.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 105/2005.

*Article 19***Participation**

1. Member States shall ensure that all economic operators and all competent public authorities may participate in the collection, treatment and recycling schemes referred to in Articles 8 and 12.
2. These schemes shall also apply to batteries and accumulators imported from third countries under non-discriminatory conditions and shall be designed to avoid barriers to trade or distortions of competition.

*Article 20***Information for end-users**

1. Member States shall ensure, in particular through information campaigns, that end-users are fully informed of:

- (a) the potential effects on the environment and human health of the substances used in batteries and accumulators;
- (b) the desirability of not disposing of waste batteries and accumulators as unsorted municipal waste and of participating in their separate collection so as to facilitate treatment and recycling;
- (c) the collection and recycling schemes available to them;
- (d) their role in contributing to the recycling of waste batteries and accumulators;
- (e) the meaning of the symbol of the crossed-out wheeled bin shown in Annex II and the chemical symbols Hg, Cd and Pb.

2. Member States may require economic operators to provide some or all of the information referred to in Paragraph 1.

3. Where Member States require distributors to take back waste portable batteries and accumulators pursuant to Article 8, they shall ensure that such distributors inform end-users about the possibility of discarding waste portable batteries or accumulators at their sales points.

*Article 21***Labelling**

1. Member States shall ensure that all batteries, accumulators and battery packs are appropriately marked with the symbol shown in Annex II.
2. Member States shall ensure that the capacity of all portable and automotive batteries and accumulators is indicated on them in a visible, legible and indelible form by 26 September 2009. Detailed rules for the implementation of this require-

ment, including harmonised methods for the determination of capacity and appropriate use, shall be laid down in accordance with the procedure referred to in Article 24(2) no later than 26 March 2009.

3. Batteries, accumulators and button cells containing more than 0,0005 % mercury, more than 0,002 % cadmium or more than 0,004 % lead, shall be marked with the chemical symbol for the metal concerned: Hg, Cd or Pb. The symbol indicating the heavy metal content shall be printed beneath the symbol shown in Annex II and shall cover an area of at least onequarter the size of that symbol.

4. The symbol shown in Annex II shall cover at least 3 % of the area of the largest side of the battery, accumulator or battery pack, up to a maximum size of 5 x 5 cm. In the case of cylindrical cells, the symbol shall cover at least 1,5 % of the surface area of the battery or accumulator and shall have a maximum size of 5 x 5 cm.

5. Where the size of the battery, accumulator or battery pack is such that the symbol would be smaller than 0,5 x 0,5 cm, the battery, accumulator or battery pack need not be marked but a symbol measuring at least 1 x 1 cm shall be printed on the packaging.

6. Symbols shall be printed visibly, legibly and indelibly.

7. Exemptions from the labelling requirements of this Article may be granted in accordance with the procedure referred to in Article 24(2).

*Article 22***National implementation reports**

1. Member States shall send the Commission a report on the implementation of this Directive every three years. However, the first report shall cover the period until 26 September 2012.

2. Reports shall be drawn up on the basis of a questionnaire or outline established in accordance with the procedure referred to in Article 24(2). The questionnaire or outline shall be sent to Member States six months before the beginning of the first period that the report is to cover.

3. Member States shall also report on any measures that they take to encourage developments affecting the impact of batteries and accumulators on the environment, in particular:

- (a) developments, including voluntary steps taken by producers, reducing quantities of heavy metals and other hazardous substances contained in batteries and accumulators;

- (b) new recycling and treatment techniques;

- (c) economic operators' participation in environmental management schemes;

(d) research in those fields; and

(e) measures taken to promote waste prevention.

4. The report shall be made available to the Commission no later than nine months after the end of the three-year period concerned or, in the case of the first report, no later than 26 June 2013.

5. The Commission shall publish a report on the implementation of this Directive and on the impact of this Directive on the environment and on the functioning of the internal market no later than nine months after receiving the reports from Member States in accordance with Paragraph 4.

Article 23

Review

1. The Commission shall review the implementation of this Directive and the impact of this Directive on the environment and the functioning of the internal market after receiving reports from Member States in accordance with Article 22(4) for the second time.

2. The second report that the Commission publishes in accordance with Article 22(5) shall include an evaluation on the following aspects of this Directive:

(a) the appropriateness of further risk management measures for batteries and accumulators containing heavy metals;

(b) the appropriateness of the minimum collection targets for all waste portable batteries and accumulators set out in Article 10(2), and the possibility of introducing further targets for later years, taking account of technical progress and practical experience gained in Member States;

(c) the appropriateness of the minimum recycling requirements set out in Annex III, Part B, taking account of information that Member States provide, technical progress and practical experience gained in Member States.

3. If necessary, proposals for revision of the related provisions of this Directive shall accompany the report.

Article 24

Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 18 of Directive 2006/12/EC.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of procedure.

Article 25

Penalties

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those measures to the Commission by 26 September 2008 and shall inform it without delay of any subsequent amendment to them.

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 September 2008. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of all existing laws, regulations and administrative provisions adopted in the field covered by this Directive.

Article 27

Voluntary agreements

1. Provided that the objectives set out in this Directive are achieved, Member States may transpose the provisions set out in Articles 8, 15 and 20 by means of agreements between the competent authorities and economic operators concerned. Such agreements shall meet the following requirements:

(a) they shall be enforceable;

(b) they must specify objectives with the corresponding deadlines;

(c) they must be published in the national official journal or an official document equally accessible to the public and transmitted to the Commission.

2. The results achieved must be monitored regularly, and reported to the competent authorities and the Commission, and made available to the public under the conditions set out in the agreement.

3. The competent authorities shall ensure that the progress made under such agreements is examined.

4. In cases of non-compliance with the agreements, Member States shall implement the relevant provisions of this Directive by legislative, regulatory or administrative measures.

*Article 28***Repeal**

Directive 91/157/EEC is repealed with effect from 26 September 2008. References to Directive 91/157/EEC shall be construed as references to this Directive.

*Article 29***Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

*Article 30***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

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ANNEX I

MONITORING OF COMPLIANCE WITH THE ARTICLE 10 COLLECTION TARGETS

Year	Data collection		Calculation	Reporting requirement
X (*)+1	Sales in year 1 (S1)			
X+2	Sales in year 2 (S2)	—	—	
X+3	Sales in year 3 (S3)	Collection in year 3 (C3)	Collection rate (CR3) = $3 \cdot C3 / (S1 + S2 + S3)$	
X+4	Sales in year 4 (S4)	Collection in year 4 (C4)	Collection rate (CR4) = $3 \cdot C4 / (S2 + S3 + S4)$ (Target set at 25 %.)	
X+5	Sales in year 5 (S5)	Collection in year 5 (C5)	Collection rate (CR5) = $3 \cdot C5 / (S3 + S4 + S5)$	CR4
X+6	Sales in year 6 (S6)	Collection in year 6 (C6)	Collection rate (CR6) = $3 \cdot C6 / (S4 + S5 + S6)$	CR5
X+7	Sales in year 7 (S7)	Collection in year 7 (C7)	Collection rate (CR7) = $3 \cdot C7 / (S5 + S6 + S7)$	CR6
X+8	Sales in year 8 (S8)	Collection in year 8 (C8)	Collection rate (CR8) = $3 \cdot C8 / (S6 + S7 + S8)$ (Target set at 45 %.)	CR7
X+9	Sales in year 9 (S9)	Collection in year 9 (C9)	Collection rate (CR9) = $3 \cdot C9 / (S7 + S8 + S9)$	CR8
X+10	Sales in year 10 (S10)	Collection in year 10 (C10)	Collection rate (CR10) = $3 \cdot C10 / (S8 + S9 + S10)$	CR9
X+11	Etc.	Etc.	Etc.	CR10
Etc.				

(*) Year X is the year including the date mentioned in Article 26.

*ANNEX II***SYMBOLS FOR BATTERIES, ACCUMULATORS AND BATTERY PACKS FOR SEPARATE COLLECTION**

The symbol indicating 'separate collection' for all batteries and accumulators shall be the crossed-out wheeled bin shown below:



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ANNEX III

DETAILED TREATMENT AND RECYCLING REQUIREMENTS

PART A: TREATMENT

1. Treatment shall, as a minimum, include removal of all fluids and acids.
2. Treatment and any storage, including temporary storage, at treatment facilities shall take place in sites with impermeable surfaces and suitable weatherproof covering or in suitable containers.

PART B: RECYCLING

3. Recycling processes shall achieve the following minimum recycling efficiencies:
 - (a) recycling of 65 % by average weight of lead-acid batteries and accumulators, including recycling of the lead content to the highest degree that is technically feasible while avoiding excessive costs;
 - (b) recycling of 75 % by average weight of nickel-cadmium batteries and accumulators, including recycling of the cadmium content to the highest degree that is technically feasible while avoiding excessive costs; and
 - (c) recycling of 50 % by average weight of other waste batteries and accumulators.
-