

**THE BATTERIES AND
ACCUMULATORS (PLACING ON
THE MARKET) (AMENDMENT)
REGULATIONS 2012**

Government Guidance Notes

APRIL 2012

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About this Guidance

This Guidance is intended to help those placing batteries and accumulators, or products that contain or incorporate batteries and accumulators, on the UK market, to understand the application of the Batteries and Accumulators (Placing on the Market) (Amendment) Regulations 2012 (Statutory Instrument 2012 No.1139). These new Regulations add a provision to the Batteries and Accumulators (Placing on the Market) Regulations 2008; they do not change any of the provisions in those Regulations. A link to the guidance for the 2008 Regulations can be found at the end of this document.

2. The Guidance aims to explain the Regulations as interpreted by the Department for Business, Innovation and Skills (BIS). These Regulations affect the whole of the UK.

3. The Guidance is intended to be informative and provide explanation and examples to illustrate the requirements of the legislation. It cannot cover every situation and of course it may be necessary for you to consider the relevant legislation carefully to see how it applies in your circumstances. However, if you do follow the guidance it will help you to comply with the law and reduce the impact that waste batteries have on the environment.

4. The Regulations may be revised from time to time, so businesses that may be affected should take care to keep themselves informed of changes. Such changes will normally be publicised on the BIS website. Details of contacts for further information are given at the end of the document.

5. The Government also has guidance notes relating to the Waste Batteries and Accumulators Regulations 2009. Those Regulations deal with requirements related to the collection, treatment and recycling of waste batteries. A link to the guidance for the 2009 Regulations can be found at the end of this document.

6. This guidance has been designed to comply with the “Code of Practice on Guidance on Regulation 2009”. This was published in October 2009 and a copy can be seen at the BIS website at <http://www.bis.gov.uk/files/file53268.pdf>

Background

7. The Batteries and Accumulators (Placing on the Market) (Amendment) Regulations 2012 (hereafter referred to as “the Regulations”) enable the UK to apply and enforce Commission Regulation (EU) No. 1103/2010 of 29 November 2010. That European Commission Regulation establishes rules as regards capacity labelling of portable secondary (rechargeable) batteries and automotive batteries and accumulators. The establishment of these rules was a requirement of Directive 2006/66 of 6 September 2006 on batteries and accumulators and waste batteries and accumulators.

8. These UK Regulations specifically require any person wishing to place on the market new automotive or secondary (rechargeable) batteries, and products that contain or incorporate such batteries, to comply with the technical requirements set out in the Commission Regulation from 31 May 2012.

9. These Regulations do not affect the application of other existing legal requirements for batteries and accumulators such as those regarding safety, the protection of health, existing transport requirements or provisions on hazardous waste. This means that existing legislation that affects batteries, products containing or incorporating batteries, and relevant hazardous substances, must also be complied with.

10. The Commission Regulation was published in the Official Journal of the European Union (EU) on 30 November 2010. The requirement will take effect for all EU member States from 31 May 2012. The Commission Regulation can be seen on the European Commission’s website via the link at the end of this document.

Scope of the Regulations

11. Directive 2006/66/EC applies to all types of batteries, regardless of their shape, volume, weight, material composition or use, and whether or not they are incorporated into products, although there are some exemptions.

12. These Regulations only set requirements that apply to automotive batteries and secondary (rechargeable) portable batteries.

13. The Regulations do not apply to either:

- (i) batteries used in equipment connected with the protection of an European Economic Area (EEA) country’s essential security interests, such as arms, munitions and war material, and intended for specifically military purposes; or
- (ii) batteries used in equipment designed to be sent into space.

14. These exemptions are related to the actual **use** of the particular batteries concerned, rather than their design though, in many cases the batteries may be designed specifically for specialist use. The Batteries and Accumulators (Placing on the Market) Regulations 2008 and its accompanying guidance set out the scope and exemptions in full; these Regulations do not make any amendments in those respects.

Enforcement

15. Responsibility for enforcement of these Regulations falls to the Secretary of State for Business Innovation and Skills. The Secretary of State has appointed the National Measurement Office (NMO), an executive agency of the Department to enforce these Regulations. The NMO already enforces the Batteries and Accumulators (Placing on the Market) Regulations 2008.

16. The written guidance notes to the Batteries and Accumulators (Placing on the Market) Regulations provides full explanation of the enforcement regime for those Regulations. The section to this guidance entitled “Key Requirements” explains how these Regulations fit into that regime.

Entry into force

17. The Regulations come into force on 31 May 2012.

Compliance

18. Any persons placing on the market automotive and secondary (rechargeable) portable batteries or products that contain or incorporate those types of batteries must comply with these Regulations.

19. There is no prescribed method to demonstrate compliance. However, any persons placing such batteries on the market may wish to consider the role that technical declarations, technical analysis and test reports could play. The Batteries and Accumulators (Placing on the Market) Regulations 2008 include the defence of “due diligence” which is available where a person can show he took all reasonable steps and exercised all due diligence to avoid committing an offence.

Definitions

20. Definitions of terms used in these Regulations can be found in the UK's 2008 and 2009 Batteries Regulations and their respective written guidance notes. For convenience, this guidance reproduces an annex that is intended to help determine battery type.

The Batteries and Accumulators (Placing on the Market) (Amendment) Regulations 2012

Key Requirements

Regulation 1:

21. The Regulations come into force in the UK on 31 May 2012. This is the same application date required by all member States of the European Union.

22. Batteries lawfully placed on the market before 31 May 2012 may continue to be legally sold on to end-users and others in the supply chain, even if they do not comply with the requirements of these Regulations.

Regulation 2:

23. Regulation 2(2) inserts a new regulation 5A into the Batteries and Accumulators (Placing on the Market) Regulations 2008 – hereafter referred to as the “Principal Regulations” - to give effect to the requirement for capacity labelling in accordance with the Commission Capacity Labelling Regulation (1103/2010). This applies to portable secondary (rechargeable) batteries and automotive batteries and accumulators referred to in Article 1 of the Commission Regulation which are placed on the market on or after 31st May 2012. Article 1.2 of the Commission Regulation excludes the application of that Regulation to those batteries and accumulators referred to in Annex I to that Regulation.

24. Regulation 2(3) amends Regulation 15 of the Principal Regulations to provide for the enforcement of and sanctions relating to the new Regulation 5A and Regulation 2(4) allows for the recovery of costs of enforcement in the event of a conviction for an offence relating to a contravention of Regulation 5A.

25. Regulation 2(5) inserts a provision into the Principal Regulations requiring the Secretary of State to review the operation and effect of the Principal Regulations (as amended by these Regulations) and publish a report within five years of 31st May 2012 and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Principal Regulations (as amended) should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Principal Regulations or to amend them.

Questions and Answers

Size of label

Q: To what does the minimum size of a “label” refer?

A: It refers to the minimum size of the information that shows the battery capacity.

Accuracy

Q: The standard for automotive batteries allows a $\pm 10\%$ accuracy. Can I use this to “round-up” the capacity of my automotive batteries by 10%?

A: The intention of the Commission Regulation is that batteries be labelled in a way that provides helpful and accurate information for consumers regarding the capacity of the battery. This is in order to provide information on which customers and potential customers can make informed decisions about which batteries to buy. The $\pm 10\%$ allowance is included in the Commission Regulation because the relevant IEC standard does not explicitly specify the level of accuracy for the measured performance or capacity data. This allowance should not be used to inflate the capacity marked on batteries as that would mislead consumers and traders and would be an unfair commercial practice contrary to the Consumer Protection from Unfair Trading Regulations 2008 or misleading advertising contrary to the Business Protection from Misleading Advertising Regulations 2008.

Batteries not intended for removal from products

Q: Do I have to label batteries not intended for removal from products?

A: No, portable secondary (rechargeable) batteries incorporated or designed to be incorporated in products before being provided to end users, and not intended to be removed pursuant to Article 11 of the Batteries Directive are exempt from the capacity labelling requirements. The guidance notes to the Batteries Regulations 2008 explain the circumstances where products can be placed on the market with batteries not intended for removal/replacement by users. This guidance is supplemented by NMO guidance and a link to this is at the end of this document.

Batteries manufactured outside the EU

Q: Do batteries made outside the EU need to meet these requirements?

A: Yes, the requirements apply to batteries placed on the EU market irrespective of where they are manufactured.

Single Use (Primary) Portable Batteries

Q: Are there capacity labelling requirements for single use portable batteries?

A: No, the Regulations do not require these types of batteries to be capacity labelled.

Contact Points for Further Information

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National Measurement Office:

<http://www.bis.gov.uk/nmo/enforcement/batteries-home>

Business Link

The Business Link website provides broad advice on compliance related issues. Their website address can be found at:

<http://www.businesslink.gov.uk/bdotg/action/home>

Reference Documents

Link to the BIS batteries web page with guidance on the 2008 and 2009 Batteries Regulations.

<http://www.bis.gov.uk/policies/business-sectors/environmental-and-product-regulations/environmental-regulations/batteries-and-accumulators>

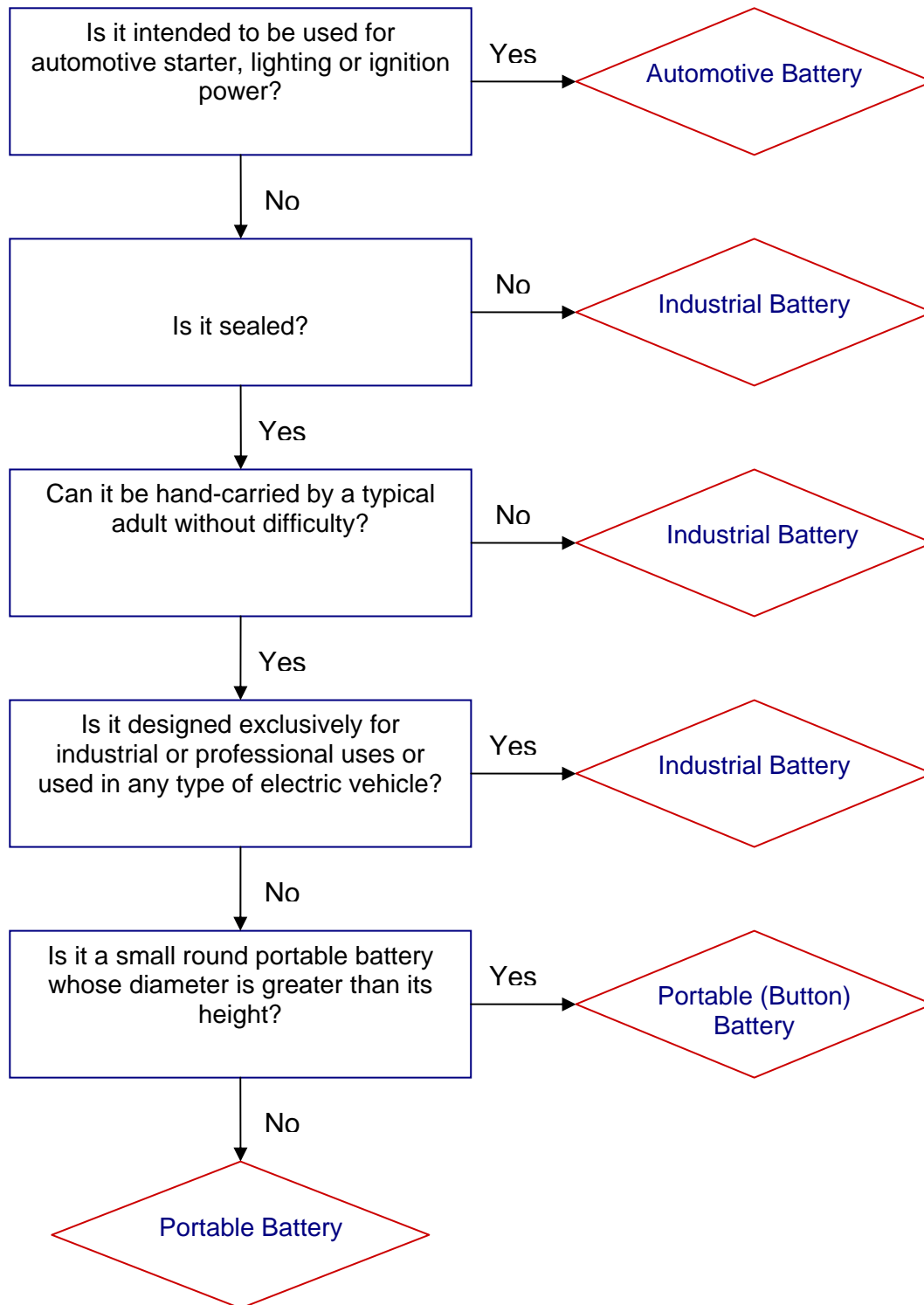
Link to the National Measurement Office web page:

<http://www.bis.gov.uk/nmo/enforcement/batteries-home>

Links to the European Commission web page:

<http://ec.europa.eu/environment/waste/batteries/index.htm>

ANNEX A FLOW DIAGRAM TO ASSIST WITH DETERMINING BATTERY TYPE



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