

EXECUTIVE NOTE

DRAFT : THE WASTE BATTERIES (SCOTLAND) REGULATIONS 2009

1. The above Instrument is proposed to be made in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999 (“the 1999 Act”). The Instrument is subject to affirmative resolution.

POLICY OBJECTIVES

2. Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (“the Directive”) (copy attached) contains provision, included at Articles 8(1) (tailpiece), 12(2) and 14 and Annex III Part A, aimed at protecting the environment from the hazardous compounds found in industrial and automotive batteries and at improving the environmental performance of operators involved in the storage and treatment of all waste batteries. Specifically, it prohibits the disposal of untreated industrial and automotive batteries to landfill or by incineration and requires waste operators to meet certain minimum storage and treatment requirements before they may handle waste batteries.

3. Implementation of those provisions in Scotland falls to the Scottish Government and SEPA.

CONSULTATION

4. The draft Regulations were the subject of joint UK/devolved Government consultation with SEPA and batteries producers, waste management companies and their respective trade associations in December 2008, in accordance with the requirements of section 2(4) of the 1999 Act.

EFFECT OF THE REGULATIONS

5. The Directive will be transposed substantively for the whole of the UK by the UK Government’s the Batteries and Accumulators (Placing on the Market) Regulations 2008 (S.I. 2008/2164) and the Waste Batteries and Accumulators Regulations 2009 (currently before the UK Parliament). Neither of those Regulations transposes the prohibitions on the disposal of industrial and automotive batteries and the storage and treatment requirement on operators as regards Scotland.

6. Those provisions are transposed by the draft Waste Batteries (Scotland) Regulations 2009. They do so by-

amending the Landfill (Scotland) Regulations 2003 so as to add untreated industrial and automotive batteries to the list of wastes that may not be disposed of to landfill;

amending the Waste Management Licensing Regulations 1994 and the Pollution Prevention and Control (Scotland) Regulations 2000 so as to require SEPA to

incorporate in a relevant licence or PPC permit after 1 January 2010 a condition prohibiting the incineration of untreated industrial and automotive batteries;

amending the Waste Management Licensing Regulations 1994 so as to require SEPA to incorporate in a relevant licence conditions that waste batteries may only be stored on an impermeable surface and under weatherproof covering or in suitable containers and that they must be drained of all fluids;

making a blanket amendment to existing waste management licences and landfill and PPC permits that incorporates the new storage and treatment requirement and disposal prohibition.

7. The draft Regulations also transpose the Directive's requirement at Article 8(1)(tailpiece) for producer-funded waste portable battery collection points to be exempt from current permitting controls. They do so by disapplying relevant offences under section 33(1)(a) and(b) of the Environmental Protection Act 1990 to such collection points.

8. The draft Regulations also make a consequential technical amendment to section 56 of the Environment Act 1995. The definition of "environmental licence" is amended so as to allow SEPA to charge for registrations in connection with the collection of waste batteries in accordance with any charging scheme under section 41.

Financial effects

9. The draft Regulations have no Scottish Government or local authority financial implications. (Not making them, however, would mean infraction proceedings and a subsequent fine which the Scottish Government would be responsible for paying.)

10. SEPA, as regulator, will incur regulatory costs but will be able to recover these through a scheme of fees and charges as noted at paragraph 8 above.

11. In theory, waste operators will incur compliance costs in meeting the draft Regulations' requirement for waste batteries to be stored on an impermeable surface and under weatherproof cover. In practice, it is unlikely that any will need to do so; the operators most likely to be handling waste batteries will most likely be those already involved in waste electrical and electronic equipment and end-of-life vehicles, where similar prescription already exists.

12. A Regulatory Impact Assessment is attached.

REGULATORY IMPACT ASSESSMENT ON THE WASTE BATTERIES (SCOTLAND) REGULATIONS 2009

1. This RIA discusses the potential costs, benefits and risks which could affect businesses, charities and the voluntary sector from The Waste Batteries (Scotland) Regulations 2009.

Purpose and intended effect

2. The Waste Batteries (Scotland) Regulations 2009 ('Regulations') aim to transpose the tailpiece of Article 8(1) and Articles 12(2) and 14 of Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and address transitional matters arising. That is they-

prohibit the disposal of untreated industrial and automotive batteries and accumulators to landfill or by incineration;

require operators storing batteries and accumulators to do so only on an impermeable surface and under weatherproof covering;

amend existing licenses granted under the Waste Management Licensing Regulations 1994 and existing permits granted under the Pollution Prevention and Control (Scotland) Regulations 2000 so as to incorporate the new restrictions;

amend the terms of exemptions granted under the Waste Management Licensing Regulations 1994 to incorporate the new restrictions.

3. The Regulations are being made in parallel with UK Government Regulations that introducing producer responsibility for the collection, treatment and recycling of waste batteries and accumulators.

Background

4. The Batteries Directive aims to improve the environmental performance of new batteries and of the activities of producers, distributors, end-users and operators involved in the treatment and recycling of waste batteries at end of life. The principal elements of the Directive are-

- restriction on the levels of "heavy metals" (mercury and cadmium) used in the manufacture of new batteries;
- collection targets for waste batteries, viz - 25% of sales volumes by 26 September 2012, increasing to 45% by 26 September 2016;
- recycling targets for the treatment of waste batteries, viz – 65% for lead acid batteries, 75% of nickel-cadmium batteries and 50% for all other battery types;

- prohibition on the disposal of untreated industrial and automotive batteries to landfill or by incineration; and
- minimum storage standards for waste batteries prior to treatment.

5. The provisions relating to the heavy metals are a reserved matter. They have been transposed by the UK Government. The provisions relating to producer responsibility for the collection and recycling of spent batteries are a devolved matter. However, since there will be a single compliance mechanism for producers wherever they may be in the UK the Scottish Government has agreed, for the sake of legislative simplicity and ease of enforcement, that the UK Government should transpose those provisions for Scotland.

6. The Regulations that are the subject of this RIA therefore address only those requirements of the Directive that are not reserved and do not derive from producer responsibility.

7. Impact assessments for the implementation of the Directive as a whole are contained elsewhere in this consultation document and in the joint UK/Devolved Government “Consultation Document on the Implementation of the Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC)”, published on 20 December 2007 under BERR reference number URN 07/1701.

Rationale for government intervention

8. The new prohibitions and treatment requirements will reduce the risk of potential negative impact on human health and the environment arising from the recovery and disposal of hazardous materials found in batteries and accumulators. Sites for storing waste batteries will be regulated under the current Waste Management Licensing (WML) regime.

9. Failure to make the Regulations will result in a UK infraction of the Directive, for which the Scottish Government will be responsible.

Consultation

- **Within government** – the UK and other devolved Governments; SEPA.
- **Public consultation** – companies and trade associations making or importing batteries or electrical goods, companies and trade associations engaged in the waste management industry.

Options

10. Option 1 – do nothing

Doing nothing means making no effort to implement the Directive’s permitting provisions, leaving it instead to operators to introduce the minimum storage standards at their own hand.

11. This option would be inconsistent with the wider implementation structure being introduced by the UK Government, to which the Scottish Government has already agreed. Furthermore, failure to make the Regulations will result in a UK infraction of the Directive, for which the Scottish Government will be responsible.

12. Option 2 – self regulation

This solution is not available, and is essentially Do Nothing by another name. The obligation is on the UK as a member state to transpose the Directive's requirements into domestic law.

13. Option 3 – legislation

This is what the Directive demands. However, the blanket amendments to existing waste management licenses and pollution prevention and control permits means that the burden on operators is minimised since they do not have to apply (or pay) for a variation of the terms of their license or permit in order to remain compliant.

Costs and benefits

14. Sectors and groups affected – The businesses most likely to handle waste batteries are landfill operators, incinerator operators, sites dealing with waste electrical and electronic equipment, metal salvage operators and vehicle dismantlers. Local authority civic amenity sites are also affected. Stringent permitting requirements already apply to these sites and it is considered unlikely that operators will have to upgrade their sites to comply with the Regulations' requirement to store waste batteries on an impermeable surface and under weatherproof covering.

15. Benefits - the Regulations will promote sustainability and recycling by prohibiting the disposal of untreated industrial and automotive batteries by incineration and to landfill. They will also prevent damage to the environment resulting from hazardous leachate from stored batteries penetrating unprotected ground.

16. Costs – The only potential costs will be on operators of waste sites that handle separately-collected waste batteries. They will be required to store them on an impermeable surface, in suitable containers and under weatherproof cover.

17. The firms most likely to be involved in that activity are those already involved in the storage and treatment of waste electrical and electronic equipment (WEEE) and storage and treatment of end of life motor vehicles (ELVs). In each case there is a requirement on operators to store the WEEE or ELV under similar conditions. Those companies will, therefore, not be involved in any upgrading costs arising from the Regulations.

18. The cost of enforcing environmental legislation is covered by fees and charges paid by operators to SEPA. The activities covered by the Regulations fall within the scope of SEPA's charging regime and will not lead to any public-sector costs.

Small/Micro Firms Impact Test

19. The Regulations form a very small part of UK transposition of the Directive. Trade bodies representing both large and small firms have been consulted at UK level. The firms affected by the Regulations will be waste operators involved in the storage or treatment of scrapped motor vehicles and electrical goods. Since the principal requirement of the Regulations – to store waste batteries only on an impermeable surface and under suitable weatherproof covering – is already in place for operators involved in the storage and treatment of end-of-life vehicles and waste electrical and electronic equipment it is unlikely that any existing operators will be affected.

Competition assessment

20. The Regulations are not expected to have any significant impact on competition. The requirements laid down do not present any particular barrier to entry for new firms wishing to enter the waste management sector. Furthermore, the same provisions are being introduced by the rest of the UK at the same time so there will be no distortion of competition as regards Scottish businesses and their competitors elsewhere.

Enforcement, sanctions and monitoring

21. SEPA will be the enforcing authority for the Regulations. The Regulations make provision for new conditions to be applied to existing and new waste management licenses and pollution prevention and control permits. Operators will be subject to the same range of penalties for a breach of the new conditions as they already do for breaches of conditions generally, ie, a fine of up to £40,000 or a prison term of up to 2 years if convicted on indictment.

Declaration and publication

22. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

RICHARD LOCHHEAD

Cabinet Secretary, Rural Affairs and the Environment

22 April 2009

TRANSPOSITION NOTE

setting out the transposition of those aspects of Directive 2006/66/EC of the European Parliament and Council on batteries and accumulators and waste batteries and accumulators (“the Directive”) dealt with in the Waste Batteries (Scotland) Regulations 2009 (“the current Regulations”).

The Directive aims to improve the environmental performance of batteries and of the activities of those involved in the life cycle of batteries, e.g. producers, distributors, end-users and waste operators. The Directive contains rules concerning (1) the placing on the market of batteries and (2) the collection, treatment, recycling and disposal of batteries in order to promote a high level of separate collection and recycling and ensure safe treatment and disposal.

The Directive provisions concerning placing on the market largely relate to reserved matters under the Scotland Act 1998 and are implemented by the Batteries and Accumulators (Placing on the Market) Regulations 2008 (S.I. 2008/2164). Many of the provisions concerning collection, recycling etc are also being transposed on a UK basis, through regulations which provide for a single set of producer responsibility arrangements (the Waste Batteries and Accumulators Regulations 2009, currently before the UK Parliament). However, other provisions relating specifically to exemptions from domestic waste legislation, treatment of waste batteries and disposal of waste industrial and automotive batteries are dealt with in the current Regulations.

The table set out below indicates how those provisions of the Directive dealt with in the current Regulations are transposed. A copy of the transposition note accompanying the Waste Batteries and Accumulators Regulations 2009 is attached for information, and indicates how the remaining provisions of the Directive are implemented.

Those aspects of the current Regulations relating to the treatment conditions in Annex III, Part A of the Directive come into force on 6th July 2009, while those relating to the ban on landfill and incineration of waste industrial and automotive batteries come into force on 1st January 2010. The later coming into force date for these provisions reflects the need to ensure that the producer responsibility arrangements provided for in the Waste Batteries and Accumulators Regulations 2009 are fully functioning at the time the ban comes into effect, so that the necessary alternatives to incineration and landfill are available.

Article	Objective	Implementation
8(1) (tailpiece)	Exempts collection points for waste portable batteries set up to comply with Article 8(1)(a) from the registration and permit requirements of the Waste Framework Directive (2006/12/EC) and the Hazardous Waste Directive (91/689/EEC).	Regulation 3 of the current Regulations disapplies the criminal offences of keeping and depositing controlled waste without a waste management licence (Environmental Protection Act 1990 section 33(1)(a) and (b)) from these collection points. This ensures there will be no requirement for registration or permitting (because no

		offence is committed by operating the collection point without either).
12(2) and Annex III, Part A	Requires treatment of waste batteries to meet the minimum requirements set out in Annex III, Part A	Regulation 4(4) of the current Regulations inserts a new regulation 12C into the Waste Management Licensing Regulations 1994. This requires SEPA to ensure that any site licence granted or varied on or after 6 th July 2009 contains such conditions as SEPA considers necessary to give effect to these treatment conditions. Regulation 8 of the current Regulations contains transitional provisions modifying site licences in force on 6 th July 2009 to incorporate these treatment conditions. Regulation 4(6) to (10) amend existing exemptions to the requirement for waste management licensing which relate to treatment or storage of waste batteries so as to make eligibility for such exemptions conditional on compliance with these treatment conditions, while regulation 4(4) inserts a new provision into the 1994 Regulations providing that other exemptions are not to be interpreted as extending to waste batteries.
14	Prohibits the incineration or disposal to landfill of waste industrial and automotive batteries (though not of treated and recycled residues).	Regulation 4(4) of the current Regulations inserts a new regulation 12D into the Waste Management Licensing Regulations 1994. This requires SEPA to ensure that any site licence granted or varied on or after 1st January 2009 authorising incineration contains conditions prohibiting the incineration of waste industrial and automotive batteries (but not

		<p>residues). Regulation 6(5) inserts a corresponding new provision into the Pollution Prevention and Control (Scotland) Regulations 2000 in respect of PPC permits, while regulation 9 contains transitional provision modifying existing site licences and PPC permits in force on 1st January 2010.</p> <p>Regulation 7 amends regulation 11 of the Landfill (Scotland) Regulations 2003 to add waste industrial and automotive batteries (but not residues) to the list of wastes which must not be accepted at landfills as of 1st January 2010. (Regulation 10 of the 2003 Regulations already requires landfill permits to contain appropriate conditions to secure compliance with regulation 11). Regulation 10 of the current Regulations contains transitional provision modifying existing landfill permits in force on 1st January 2010.</p>
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