



13 February 2009

**CONSULTATION DOCUMENT ON THE IMPLEMENTATION OF THE BATTERIES AND ACCUMULATORS AND WASTE BATTERIES AND ACCUMULATORS DIRECTIVE (2006/66/EC) - WASTE BATTERY COLLECTION AND RECYCLING PROVISIONS**

**INTRODUCTION**

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Waste Working Party.
3. UKELA makes the following comments on the Consultation Document on the Implementation of the Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC) - Waste Battery Collection and Recycling Provisions.

**PORTABLE BATTERIES**

**What are your views on the proposed level of the small producer exemption?**

4. UKELA believes that exempting those producers who have less than a 0.01% market share is a fair and reasonable approach to take, but is concerned at the lack of information about the market for portable batteries in the UK revealed by paragraph 3.16 of the consultation document. It is likely that more market information will become available as producers register with Batteries Compliance Schemes, but that information may reveal the size of the market to be very different from that on which the Impact Assessment and the proposed 3 tonne exemption threshold have been based. UKELA therefore urges BERR to keep the exemption threshold under review and to change it if necessary once more accurate information on the size of the market has been collated. UKELA also notes that the level of the exemption threshold is subject to approval by the European Commission and that BERR may need to change it if the proposed 3 tonne threshold is not approved.

**What are your views on the proposals for approval of portable Batteries Compliance Schemes?**

5. UKELA queries why a two-stage approval process is required for Batteries Compliance Schemes, when the approval process for packaging waste and WEEE compliance schemes is a one-stage process. Adding a second stage to the approval process is likely to add to the administrative burden for both regulators and applicants, as well as creating uncertainty for applicants, who may be granted provisional approval only to be refused final approval. While UKELA notes that applicants have a right of appeal at both stages, it is concerned that the proposed process still presents the regulator with a second opportunity to refuse approval where a decision to refuse provisional approval has been overturned on appeal.

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**What are your views on the proposed requirements on portable Batteries Compliance Schemes?**

6. The proposed requirements on portable Batteries Compliance Schemes appear to be proportionate and reasonable.

**What are your views on the provisions for publicity for consumers?**

7. Placing responsibility for publicity on compliance schemes appears to be the most pragmatic solution, but given that compliance schemes will be in competition with each other for members, there will still be scope for conflicting and counter-productive messages.

**What are your views on the proposals for the issue of evidence of portable batteries treatment and recycling?**

8. UKELA does not see any issues with the proposals for the issue of evidence, which it notes mirror the procedure for the issue of evidence under the packaging waste and WEEE regimes.

**What are your views on the proposed interim targets in the draft regulations?**

9. UKELA has no comment on the level of the proposed interim targets, and considers that adopting interim targets is a sensible way of measuring progress towards the targets prescribed in the Directive.

**What are your views on the proposed exemption for small distributors?**

10. Given that the main reason behind the proposed 16kg exemption threshold is to ensure that the environmental benefits of recycling the batteries collected outweigh the environmental impact of transporting small quantities of batteries, UKELA does not understand the rationale for also including the proposed 280m<sup>2</sup> threshold. This would mean that stores with a floor area over 280m<sup>2</sup> which sell less than 16kg of batteries annually would still have to accept waste batteries from end-users. UKELA therefore suggests that the take-back exemption in Regulations 23 and 24 should apply to any store which sells less than 16kg of batteries annually, irrespective of the store's floor area.

**What are your views on the proposal for schemes to accept batteries from economic operators and Competent Public Authorities?**

11. UKELA notes the comments in paragraph 3.75 of the consultation document regarding reverse haulage, and supports a regulatory framework which encourages reverse haulage in order to reduce the transport costs for distributors and the associated environmental impacts. UKELA agrees that the movement of waste batteries must comply with legislation on hazardous waste and dangerous goods, but the consultation document does not address the issue of whether hauliers undertaking reverse haulage on behalf of distributors will also need to be registered as waste carriers under the Control of Pollution (Amendment) Act 1989. UKELA believes that those undertaking the reverse haulage of small quantities of waste batteries should not be required to register as waste carriers, but suggests that this issue be clarified in the regulations or the accompanying guidance.

**CHARGES (PORTABLE BATTERIES)**

**Is the approach to recovering the costs of regulating schemes reasonable?**

12. UKELA believes that the proposed approach is proportionate and reasonable.

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**Is the approach to recovering the costs of regulating obligated producers of portable batteries reasonable?**

13. UKELA believes that the proposed approach is proportionate and reasonable.

**Are the proposed thresholds reasonable? Would it be better to distinguish between lead/acid batteries and the rest, rather than between portable, industry and automotive batteries?**

14. UKELA has no comments on the proposed thresholds.

#### **INDUSTRIAL BATTERIES**

**Do you agree that these producer obligations - which result in an entitlement for end-users to request free take-back, while continuing to allow other arrangements to operate - are the simplest means of providing the necessary producer responsibility safety net? If not, can you suggest a better alternative?**

15. UKELA supports the proposed general approach for industrial batteries that builds on the existing strong commercial market in recycling larger lead-acid batteries in the UK, thereby minimising administrative and regulatory burdens, while achieving good environmental outcomes. As identified in earlier stakeholder consultations, it is important not to intervene unnecessarily. In that context, BERR's proposal appears to be the simplest means to achieve the necessary producer responsibility safety net.

**Do you agree with the proposal to dispense with the notion of producers of industrial batteries being required to become members of compliance schemes, and with the suggestion that such producers, when not members of portable Battery Compliance Schemes, should register with BERR, rather than the Environment Agencies?**

16. UKELA agrees with the proposal, with the objective of not creating barriers to the strong commercial market in recycling these batteries. This position could be reviewed in the event of a collapse in that market and subject to, say, three-yearly review.

**Do you agree that it is right to confine producer obligations to battery chemistries they place on the market?**

17. UKELA believes the proposed approach to be a proportionate regulatory approach for this category of batteries.

**Do you foresee difficulties in producers being able to submit accurate total sales data which reflects exports by their customers?**

18. UKELA has no comment on this issue, as it has limited knowledge of the practicalities for batteries producers of maintaining or obtaining such sales data.

#### **AUTOMOTIVE BATTERIES**

**Do you agree that these producer obligations - which result in an entitlement for certain final holders to request free take-back, while continuing to allow other arrangements to operate - are the simplest means of providing the necessary producer responsibility safety net. If not, can you suggest a better alternative?**

19. UKELA supports the proposed general approach for industrial batteries that builds on the existing strong commercial market in recycling larger lead-acid batteries in the UK, thereby minimising administrative and regulatory burdens, while achieving good environmental outcomes. As identified in earlier stakeholder consultations, it is important not to intervene unnecessarily. In that context, BERR's proposal appears to be the simplest means to achieve the necessary producer responsibility safety net.

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**Do you agree with the proposal to dispense with the notion of producers of automotive batteries being required to become members of compliance schemes, and with the suggestion that such producers, when not members of portable Battery Compliance Schemes, should register with BERR, rather than the Environment Agencies?**

20. UKELA agrees with the proposal, with the objective of not creating barriers to the strong commercial market in recycling these batteries. This position could be reviewed in the event of a collapse in that market and subject to, say, three-yearly review.

**Do you foresee difficulties in producers being able to submit accurate total sales data which reflects exports by their customers?**

21. UKELA has no comment on this issue, as it has limited knowledge of the practicalities for batteries producers of maintaining or obtaining such sales data.

#### **OTHER LEGISLATION**

**We invite comments on the proposed level of offences and penalties in the regulations.**

22. The proposed offences and penalties in the regulations are comparable with those in the packaging waste and WEEE regimes, and UKELA therefore believes them to be appropriate.

**What are your views on the Draft Scottish legislation?**

23. UKELA has no comments on this question.

#### **IMPACT ASSESSMENTS**

**Do you agree with the costs and benefits for the UK of these provisions as set out in the partial impact assessments (Annexes C, D and E)? Please provide evidence to support your view.**

24. UKELA has no comments on this question.

Contact:

Angus Evers

Convenor, UK Environmental Law Association Waste Working Party

c/o SJ Berwin LLP, 10 Queen Street Place, London EC4R 1BE

Telephone: 020 7111 2763

Email: [angus.evers@sjberwin.com](mailto:angus.evers@sjberwin.com)

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