

HSECC.210/08

27 June 2008

Intellect response to:

Consultation Document on the implementation of the Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC) – May 2008

Question 1: Do the provisions set out in Part 2 (Prohibitions and labelling requirements) of the Regulations make clear what is expected of persons placing batteries on the market in order to comply?

The provisions seem clear but:

Capacity Rating: There is serious concern at the requirement for capacity marking given the variety of discharge rates; the variety is such that common capacity rating is impractical and of dubious value to the consumer.

Timescale: The requirement to implement on 26 Sep 09 is too soon following the regulations being laid before Parliament by 26 Mar 09. 6 months is an inadequate period of time and should be extended from the proposed 6 months to 18 months.

Spare parts: The provisions impose marketing restrictions on the sale of replacement batteries as there is no derogation in favour of portable batteries sold as spare parts. Without such derogation end users may be forced to discard electrical equipment as a consequence that a replacement battery cannot be supplied. Examples are:

Laptop batteries have a model specific form factor. Upon discontinuation of a laptop model a lifetime buy of these specifically shaped batteries may be done.

Specific products may need specific voltages/ampereage and therefore composed batteries.

This contradicts the policy principle adopted in other legislation such as directive 2002/95/EC, which allows spare parts to be placed on the market after its transposition date. We suggest that it is allowed to sell batteries covered by the marketing restrictions of Part 2 as replacement parts for existing equipment still in service by September 26th 2008 including the sales of batteries to power EEE under warranty.

Question 2: The UK continues to raise the issue of the “removal of waste batteries and accumulators” from appliances with the Commission – UK guidance notes will be developed in line with the Commission’s interpretation and application. What additional information do you believe should be included on removability in the UK’s own guidance notes?

Intellect members are adamant that removability is subject to a uniform EU ruling. The alternative is that additional information on removability will be variously interpreted thus creating a barrier to trade.

Question 2: Views on approach to “placing on the market”

10. Article 6.2 imposes marketing restrictions on the sale of replacement batteries, as there is no

derogation in favour of portable batteries sold as spare parts. Without such derogation, end users may be forced to discard electrical equipment as a consequence that a replacement battery cannot be supplied. Examples are:

Laptop batteries have a model specific form factor. Upon discontinuation of a laptop model a life-time buy of these specifically shaped batteries may be done.
Specific products may need specific voltages/amperage and therefore composed batteries.

11. This contradicts the policy principle adopted in other legislation such as directive 2002/95/EC, which allows spare parts to be placed on the market after its transposition date. We suggest that it is allowed to sell batteries covered by the marketing restrictions of 6.2 as replacement parts for existing equipment still in service by 26 September 2008 including the sales of batteries to power EEE under warranty.

Question 3: Does the proposed Part 3 (Enforcement) identify all the issues that should be covered by the draft regulations? If not, what does it fail to identify?

The enforcement proposal addresses the necessary issues. Members are pleased that the defence of due diligence has been accepted.

Question 4: Do you think that any of the proposed enforcement provisions are not necessary to enable the Secretary of State / enforcement authority to carry out their duties to enforce these regulations effectively?

Intellect believes that the proposed enforcement arrangements are suitable but there is a need for a government-funded enforcement body if they are to be effective.

Question 5: Do you agree with the costs and benefits for the UK of the Internal Market provisions asset out in the partial Impact Assessment (attached at Annex C)?

The costs and benefits seem reasonable. However, the assessment for enforcement costs (£50,000 - £200,000) seems inadequate to ensure proper compliance.

Question 6: Do you have any other comments that might aid the consultation process as a whole?

Although not covered by the consultation members remain concerned, especially in the light of the UK implementation of the WEEE Directive, that producer responsibility may become producer liability as a result of over-collection by commercial compliance schemes. Battery collection must not go the way of WEEE collection.