
STATUTORY INSTRUMENTS

2009 No. 890

The Waste Batteries and Accumulators Regulations 2009

PART 6

APPROVAL OF BATTERY COMPLIANCE SCHEMES

Application for approval of a proposed battery compliance scheme

47.—(1) Subject to paragraph (3), an application for approval of a proposed battery compliance scheme must be made to the appropriate authority by the operator of the proposed scheme during the period specified in paragraph (2).

(2) The period referred to in paragraph (1) is, where the application is for approval in relation to—

- (a) the first compliance period, the period ending on or before 31st May 2009;
- (b) any other compliance period, the period commencing on 15th April and ending with 15th May in the year before the compliance period.

(3) An applicant may make an application for approval outside the period mentioned in paragraph (2) if a producer has notified the appropriate authority under regulation 15(2)(b) of its intention to join that proposed scheme.

(4) An applicant who makes an application for approval in reliance on paragraph (3) must do so within 28 days of the date of the notice served on the producer in question under regulation 54(4).

(5) An application for approval of a proposed scheme must—

- (a) be in writing and signed by the appropriate person;
- (b) include—
 - (i) the information set out in Part 1 of Schedule 3, which must be submitted in the format published by the appropriate authority under regulation 79;
 - (ii) a copy of an operational plan in respect of the next three compliance periods containing the information set out in Part 2 of Schedule 3; and
- (c) be accompanied by the scheme application charge.

Further information in respect of an application

48.—(1) The appropriate authority may, if it considers that it requires further information to determine an application, serve a notice on the applicant specifying—

- (a) the information required; and
- (b) the date by which it is required (being the date mentioned in paragraph (3)).

(2) The appropriate authority must serve any notice under paragraph (1)—

- (a) in respect of an application made under regulation 47(1)—
 - (i) in respect of the first compliance period, on or before 30th June 2009;

- (ii) in respect of any other compliance period, on or before 15th June of the year before that compliance period;
- (b) in the case of an application made in reliance on regulation 47(3), within 28 days of the date of receipt of the application.
- (3) The applicant must provide the information not later than—
 - (a) 31st August in the year before the compliance period in respect of which the approval is to take effect; or
 - (b) in the case of an application made in reliance on regulation 47(3), within 42 days of the date of the notice.

Approval of proposed schemes

- 49.**—(1) The appropriate authority must grant approval of a proposed scheme if—
- (a) the applicant has complied with regulation 47(5);
 - (b) where the appropriate authority has served a notice under regulation 48(1) requiring further information, the applicant has complied with regulation 48(3); and
 - (c) the authority is satisfied that the information and operational plan provided in accordance with regulation 47 demonstrate that the criteria for approval of a proposed scheme set out in Part 3 of Schedule 3 are met.
- (2) Otherwise the appropriate authority must refuse approval of the proposed scheme.
- (3) Where approval of a proposed scheme is refused under this regulation the appropriate authority is not under a duty to refund the whole or any part of the scheme application charge.

Notification of determination

- 50.**—(1) The appropriate authority must notify an applicant in writing of its determination to grant or refuse approval of a proposed scheme under regulation 49—
- (a) in the case of an application made under regulation 47(1), on or before 30th September of the year before the compliance period in respect of which approval is to take effect;
 - (b) in the case of an application made in reliance on regulation 47(3) within 4 months of the date of receipt of the application.
- (2) A notification that the appropriate authority has made a determination to refuse approval must—
- (a) state the reason for the decision; and
 - (b) inform the applicant of the right of appeal under Part 11.
- (3) If—
- (a) an applicant appeals against a refusal of approval under regulation 49; and
 - (b) the outcome of that appeal requires the appropriate authority to grant approval,
- the authority must within 28 days of the date of the determination of the appeal notify the applicant of its determination to grant approval.

Effect and consequences of approval

- 51.**—(1) Approval of a proposed scheme—
- (a) takes effect on the date of the determination to grant it; and
 - (b) remains in force unless that approval is withdrawn under regulation 54.

(2) The appropriate authority must publish the following details of a battery compliance scheme—

- (a) the name of the scheme; and
- (b) the name and address of the scheme operator.

(3) Paragraph (4) applies if an appropriate authority grants or refuses approval of a proposed scheme further to an application made in reliance on regulation 47(3).

(4) If this paragraph applies, the appropriate authority must notify each producer who served a notice under regulation 15(2)(b) in respect of the proposed scheme in writing of that determination within 14 days making it.

Conditions of approval

52.—(1) Approval of a battery compliance scheme is subject to the following conditions.

(2) The scheme operator must—

- (a) comply with its obligations under Part 3;
- (b) carry out the scheme's operational plan;
- (c) comply with its obligations under regulations 32(2) and 33(2);
- (d) provide any information in relation to its obligations under Part 3 reasonably requested by the appropriate authority;
- (e) inform the appropriate authority in writing of—
 - (i) any change in the person who is the scheme operator and, in the case where the scheme operator is a partnership or limited liability partnership, any change of partners;
 - (ii) any material change in—
 - (aa) the information provided under regulation 47(5)(b)(i);
 - (bb) the operational plan submitted under regulation 47(5)(b)(ii);
 - (iii) a conviction of the scheme operator for an offence under—
 - (aa) regulation 89(2);
 - (bb) regulation 73(3) or (4) of the Waste Electrical and Electronic Equipment Regulations 2006(1); or
 - (cc) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(2), committed in the scheme operator's capacity as the operator of a scheme under those Regulations,within 28 days of any such change or conviction;
- (f) in respect of each compliance period other than the first compliance period, after 15th October and on or before 31st October in the year before the compliance period, inform the appropriate authority of the names of its scheme members and their battery producer registration numbers;
- (g) provide the appropriate authority with an updated operational plan covering the next three compliance periods on or before 31st August of each year in respect of which the approval remains in force;
- (h) pay the scheme subsistence charge to the appropriate authority on receipt of an invoice issued under regulation 79(2);

(1) S.I. 2006/3289, as amended by S.I. 2007/3454.

(2) S.I. 2007/871, as amended by S.I. 2008/413. There are other amendments not relevant to these Regulations.

- (i) make records available and provide information to the appropriate authority in compliance with regulations 22(2), 23 and 24.
- (3) The scheme operator and the battery compliance scheme must continue to meet the criteria for approval of a proposed scheme set out in Part 3 of Schedule 3 (reading that Part as if references to the operator of a proposed scheme were to the scheme operator and references to a proposed scheme were to the battery compliance scheme).

Annual confirmation of approval of a battery compliance scheme

53. On receipt of an updated operational plan under regulation 52(2)(g), the appropriate authority must within 28 days—

- (a) notify its confirmation of approval to the scheme operator in writing; or
- (b) if it intends to withdraw approval under regulation 54, make the notification required by regulation 54(2).

Withdrawal of approval of a battery compliance scheme

54.—(1) The appropriate authority may withdraw approval of a battery compliance scheme where it is satisfied that—

- (a) there is a breach of any condition in regulation 52; or
- (b) the scheme operator knowingly or recklessly supplied false information in connection with—
 - (i) an application for registration made under regulation 26(3);
 - (ii) a notification made under regulation 29;
 - (iii) the application for approval of the battery compliance scheme made under regulation 47; or
 - (iv) compliance with any condition in regulation 52.

(2) Before the withdrawal of approval of a battery compliance scheme under paragraph (1) the appropriate authority must serve a notification in writing on the scheme operator which must state—

- (a) that approval of the scheme is to be withdrawn;
- (b) the reasons for the decision;
- (c) the right of appeal under Part 11; and
- (d) the date when the withdrawal of approval will take effect, which must not be earlier than the expiration of the time limit for an appeal against the notification.

(3) If an appeal against the decision to withdraw approval of the scheme is made and refused, the decision does not take effect on the date stated in the notification under paragraph (2) but instead takes effect at the end of the day on which the appeal is refused.

(4) If—

- (a) a notification has been served in accordance with paragraph (2); and
- (b) either—
 - (i) the time limit for an appeal has expired and no appeal against that notification has been made; or
 - (ii) an appeal has been made and refused,

the appropriate authority must within 14 days of the date of expiry or refusal (as the case may be) serve a notification in writing on each scheme member containing the information specified in paragraph (5).

(5) The information referred to in paragraph (4) is—

- (a) a statement that approval of the scheme has been withdrawn and the date when the withdrawal takes effect;
- (b) the reasons for the withdrawal;
- (c) the obligation of a producer under regulation 15(2).

(6) Where approval is withdrawn under this regulation the appropriate authority is not under a duty to refund the whole or any part of the scheme application charge or the scheme subsistence charge.

Charges

55.—(1) Notwithstanding the power to make a charging scheme under section 41 of the Environment Act 1995(3), the Environment Agency and SEPA may impose charges in accordance with paragraph (2) until—

- (a) those charges are superseded by such a charging scheme; or
- (b) 1st April 2013,

whichever is the earlier.

(2) The charges referred to in paragraph (1) are—

- (a) an application charge (which is required to be paid under regulation 47(5)(c)) of £17,000 for each battery compliance scheme;
- (b) annually, a subsistence charge (which is required to be paid under regulation 52(2)(h)) for each battery compliance scheme of—
 - (i) £118,000; and
 - (ii) £680 for each scheme member.

(3) 1995 c. 25. Section 41 is amended by regulation 95 of and Schedule 8 to these Regulations. There are other amendments which are not relevant to these Regulations.