

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

2012 No. 1139

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 To implement Article 21(2) of Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC and Commission Regulation (EU) No 1103/2010 of 29 November 2010 establishing pursuant to that Directive as regards the capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Batteries and Accumulators (Placing on the Market) Regulations 2008 (SI 1998/2164) (the Principal Regulations), which implemented Directive 2006/66/EC, set out the requirements with which all types of battery must comply when placed on the market. These requirements extend to the chemical content and the labelling of batteries. Article 21(2) of that Directive required batteries to be labelled with their capacity and provided for detailed rules implementing that requirement to be laid down. Those rules are contained in Commission Regulation (EU) No 1103/2010 as regards capacity labelling of portable secondary batteries (i.e. rechargeable household batteries) and automotive batteries. The instrument to which this memorandum relates amends the Principal Regulations in order to implement Article 21 and give effect to the Commission Regulation by imposing a requirement for rechargeable batteries to be marked with their capacity.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The requirements of Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators that relate to the design and manufacture of new batteries and accumulators were transposed in the UK by the Batteries and Accumulators (Placing on the Market) Regulations 2008. The exception was Article 21.2 requiring capacity labelling.

7.2 This instrument is necessary to implement Article 21.2 and give effect to Commission Regulation (EU) No. 1103/2010. The main practical effect will be to require all rechargeable batteries, including those made outside the EU, to be labelled in line with the standards commonly currently adopted within the EU on a voluntary basis. The labelling will provide information to the consumer about the performance of the battery. The Directive required that “member States shall ensure that the capacity of all portable and automotive batteries and accumulators is indicated on them in a visible, legible and indelible form by 26 September 2009”. It added that “Detailed rules for the implementation of this requirement, including harmonised methods for the determination of capacity and appropriate use, shall be laid down in accordance with the procedure referred to in Article 24(2) no later than 26 March 2009” (the “procedure” being the “Committee procedure”). The Commission stakeholder consultation process took longer than anticipated to arrive at a detailed approach that was acceptable to member States.

7.3 This instrument adds capacity labelling to the requirements that portable secondary (rechargeable) and automotive batteries must comply with before being placed on the market and extends the existing batteries enforcement regime to this type of labelling.

- Consolidation

7.4 There are no current plans to consolidate the 2008 Regulations with these amendments and the minor previous amendment to them.

8. Consultation outcome

8.1 Consultation on this labelling requirement was carried out by the European Commission and its technical consultant between 2007 and 2010. The conclusion of this process was that there was no suitable standard for the capacity labelling of single use portable batteries so no such standard has been prescribed. The prescribed standards therefore only apply to types of batteries where capacity labelling is already the norm in Europe in order to standardise the labelling for the benefit of the consumer. There are currently some small quantities of batteries where labelling is not in line with the

requirement but these are non-EEA manufactured batteries, such as some motorcycle batteries that are currently labelled to a different standard.

8.2 Since the technical standard required for labelling is set out in precise detail in the Commission Regulation, which is directly applicable, member States cannot transpose the requirements. It was therefore not appropriate to have a formal written UK consultation since the Government could not ask stakeholders about the policy approach. It was more appropriate to liaise directly with stakeholders and their representative organisations in order to understand the potential impact of the requirement and the needs with regard to written guidance.

9. Guidance

9.1 BIS has published guidance on the Principal Regulations which can be seen at <http://www.bis.gov.uk/policies/business-sectors/environmental-and-product-regulations/environmental-regulations/batteries-and-accumulators>

9.2 The European Commission has its own “Questions and Answers” on the Batteries Directive which can be seen at <http://ec.europa.eu/environment/waste/batteries/index.htm>

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be of minimal cost. The Commission Regulation limits its scope only to types of batteries where capacity labelling is already the norm and specifies a standard which is already complied with by the small handful of UK manufacturers of the types of batteries that are within scope. UK importers of these types of batteries will need to ensure that they specify batteries from their suppliers that comply with the new requirement, but this is not considered a significant additional burden since they already have to specify batteries that meet existing technical requirements relating to battery composition and labelling for recycling.

10.2 The impact on the public sector is estimated to be of minimal cost. There is additional enforcement activity for the National Measurement Office who will have to check that goods being placed on the UK market are compliant, but this can be carried out alongside existing, similar work.

10.3 In view of the limited impacts described above, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Commission Regulation is a single market requirement which does not allow for a different approach for small firms. However, in transposing the Directive itself, the

UK chose policy options that reduce burdens for small business in relation to both portable battery producer and portable battery retailer obligations.

12. Monitoring & review

12.1 The Regulations 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 1st June 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.

13. Contact

13.1 Peter Cottrell at the Department for Business, Innovation and Skills, email: peter.cottrell@bis.gsi.gov.uk can answer any queries regarding the instrument.

This Transposition Note explains how Article 21(2) of Directive 2006/66/EC of the European Parliament and Council has been transposed

This Transposition Note, in tabular form, explains how the Batteries and Accumulators (Placing on the Market) (Amendment) Regulations 2012 transpose Article 21(2) of Directive 2006/66/EC of 6th September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC.

The Directive

Directive 2006/66/EC provides for the labelling and chemical content of batteries and accumulators and for the responsibility of their producers to recycle batteries and accumulators. The single market aspects of the Directive (with the exception of Article 21(2) have previously been implemented by the Batteries and Accumulators (Placing on the Market) Regulations 2008.

Article	Objective of Article	Implementation
21(2)	Requires the capacity of all portable and automotive batteries and accumulators to be indicated on them in a visible, legible and indelible form by 26 September 2009. It provides that detailed rules to implement this requirement, including harmonised standards, should be laid down in accordance with the procedure in Article 24(2) no later than 26 March 2009. The detailed rules were laid down by Commission Regulation (EU) No 1103/2010 of 29 November 2010 for rechargeable batteries only	Regulation 2(2) amends the Batteries and Accumulators (Placing on the Market) Regulations 2008 by inserting a new regulation 5A which implements Article 21(2) and requires rechargeable batteries to be labelled with their capacity in accordance with Commission Regulation 1103/2010. Regulation 2(3) and (4) makes consequential amendments making failure to comply an offence and enabling a court to order a person convicted of failing to comply to reimburse the Secretary of State for the costs of testing the batteries.