

1994 No. 232

HEALTH AND SAFETY

The Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994

Made - - - - - *2nd February 1994*

Laid before Parliament *7th February 1994*

Coming into force in accordance with regulation 1

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to batteries and accumulators containing dangerous substances, in exercise of the powers conferred on him by that section and of all his other enabling powers, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations, which extend to Great Britain, may be cited as the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994 and shall come into force as follows:

- (a) except for regulation 4 and regulation 6 to the extent that it applies to regulation 4, they shall come into force on 1st March 1994; and
- (b) regulation 4 and regulation 6 to the extent that it applies to regulation 4 shall come into force on 1st August 1994.

Interpretation

2.—(1) In these Regulations, a reference to a battery or accumulator is a reference to a source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary (non-rechargeable) batteries or secondary (rechargeable) cells containing—

- (a) either—
 - (i) more than 25mg mercury per cell; or
 - (ii) in the case of alkaline manganese batteries, more than 0.025% mercury by weight;
- (b) more than 0.025% cadmium by weight; or
- (c) more than 0.4% lead by weight.

(2) In these Regulations, unless the context otherwise requires—

“collection” means the gathering, sorting and/or grouping together of spent batteries and accumulators;

“Community” means the European Community;

“the Directive” means Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances(c);

“disposal” means any operation, provided that it is applicable to batteries and

(a) S.I. 1993/595.
(b) 1972 c.68.
(c) OJ No. L78, 26.3.91, p.38.

accumulators, included in Annex II A to the Framework Directive;

"excluded appliance" means an appliance within the list of categories of appliance contained in Annex II to the Directive and which is set out in Schedule 1 hereto;

"the Framework Directive" means Council Directive 75/442/EEC (a) as amended by Council Directive 91/156/EEC (b);

"heavy metal content mark" means, in the case of a battery or accumulator—

- (a) which contains mercury, the chemical symbol "Hg";
- (b) which contains cadmium, the chemical symbol "Cd"; or
- (c) which contains lead, the chemical symbol "Pb";

"market" has the same meaning as in the Directive or the Marking Directive, as the context may require;

"the Marking Directive" means Commission Directive 93/86/EEC adapting the Directive to technical progress (c);

"prohibited battery" has the meaning given by regulation 3(2) below;

"recovery" means any operation, provided that it is applicable to batteries and accumulators, included in Annex II B to the Framework Directive;

"relevant heavy metal content mark" in relation to a battery or accumulator means the heavy metal content mark which comprises the chemical symbol which relates to the heavy metal content of that particular battery or accumulator;

"separate collection mark" means one of the symbols shown in Article 2 of the Marking Directive and which, subject to regulation 4(2)(a) below, are set out as to their forms in Schedule 2 hereto; and

"spent" in relation to a battery or accumulator means a battery or accumulator which is not re-usable and is intended for recovery or disposal.

Prohibition on marketing of certain types of batteries

3.—(1) No person shall market a prohibited battery.

(2) For the purposes of these Regulations, "prohibited battery" means—

- (a) an alkaline manganese battery which contains more than 0.025% of mercury by weight; or
- (b) in the case of an alkaline manganese battery for prolonged use in extreme conditions, which contains more than 0.05% of mercury by weight,

but in the case of either (a) or (b) above excludes alkaline manganese button cells or batteries composed of button cells.

(3) For the purposes of paragraph (2)(b) above, "extreme conditions" includes, but without prejudice to the generality of the expression, temperatures below 0 degrees Centigrade or above 50 degrees Centigrade or where that battery is likely to be exposed to shocks.

Marking of a battery or accumulator

4.—(1) Without prejudice to regulation 3 above and subject to paragraph (3) below, a separate collection mark and the relevant heavy metal content mark shall be printed on a battery or accumulator or, as the case may be, on the packaging for that battery or accumulator in accordance with paragraph (2) below—

- (a) in relation to a battery or accumulator manufactured in Great Britain for sale in the Community, by the manufacturer thereof; or
- (b) in a case where—
 - (i) the manufacturer thereof is not established in Great Britain;
 - (ii) the battery or accumulator is to be marketed in Great Britain; and
 - (iii) a separate collection mark and the relevant heavy metal content mark have not already been printed thereon or, as the case may be, on the packaging thereof,

(aa) by the manufacturer's authorised representative established in Great Britain; or

(a) OJ No. L194, 25.7.75, p.47.

(b) OJ No. L78, 26.3.91, p.32.

(c) OJ No. L264, 23.10.93, p.51.

(bb) by the person in Great Britain responsible for placing that battery or accumulator on the market.

(2) For the purposes of paragraph (1) above—

- (a) a separate collection mark shall be printed on a battery or accumulator — as the case may be, on the packaging for that battery or accumulator in accordance with the requirements specified in Article 4(1) and (3) of the Marking Directive which for the purposes of these Regulations are set out in paragraphs 1 and 3 of Schedule 3 hereto; and
- (b) the relevant heavy metal content mark shall be printed on a battery or accumulator or, as the case may be, on the packaging for that battery or accumulator in accordance with the requirements of Article 4(2) and (3) of the Marking Directive which for the purposes of these Regulations are set out in paragraphs 2 and 3 of Schedule 3 hereto.

(3) Paragraph (1) above shall not apply in relation to a battery or accumulator which is marketed in Great Britain on or before 31st December 1995 and which was manufactured in, or imported into, the Community before the date on which this regulation comes into force.

Batteries or accumulators for incorporation into appliances

5.—(1) In relation to an appliance (other than an excluded appliance) into which a battery or accumulator is or, as the case may be, is to be incorporated, the manufacturer of that appliance shall ensure that the battery or accumulator which is or, as the case may be, is to be incorporated therein can be readily removed, when spent, by the consumer.

(2) An excluded appliance shall be accompanied by instructions which—

- (a) inform the user of the appliance of the content of environmentally hazardous batteries or accumulators contained in the appliance; and
- (b) show how the batteries or accumulators can be removed safely.

Enforcement

6.—(1) If the Secretary of State is notified that a battery or accumulator has not been marked in accordance with regulation 4 above, the Secretary of State may give notice—

- (a) in relation to a battery or accumulator which has been manufactured in Great Britain, to the manufacturer thereof; or
- (b) in the case where the manufacturer thereof is not established in Great Britain and the battery or accumulator is being marketed in Great Britain to—
 - (i) the manufacturer's authorised representative established in Great Britain; or
 - (ii) the person in Great Britain responsible for placing that battery or accumulator on the market,

specifying the matters mentioned in paragraph (3) below.

(2) If the Secretary of State is notified that an appliance or an excluded appliance, as the case may be, does not meet the requirements of regulation 5 above which apply to it, the Secretary of State may give notice to the manufacturer thereof specifying the matters mentioned in paragraph (3) below.

(3) The following matters shall be specified in a notice given under paragraph (1) or (2) of this regulation—

- (a) the respects in which—
 - (i) that battery or accumulator has not been marked in accordance with regulation 4 above; or
 - (ii) that appliance or excluded appliance, as the case may be, does not meet the requirements of regulation 5 above which apply to it; and
- (b) that within the period specified in the notice the person to whom it is given must take steps to ensure that—
 - (i) in the case of a battery or accumulator which has not been marked in accordance with regulation 4 above, any battery or accumulator of the same type which—

- (aa) in relation to a notice under paragraph (1)(a) above, is placed on the market in the Community; or
- (bb) in relation to a notice under paragraph (1)(b) above, is placed on the market in Great Britain, by that person is so marked;
- (ii) in the case of an appliance which has not been manufactured in accordance with the requirements of regulation 5(1) above, any appliance of the same type which is placed on the market in the Community by that person is so manufactured; or
- (iii) in the case of an excluded appliance which does not meet the requirements of regulation 5(2) above, any excluded appliance of the same type which is placed on the market in the Community by that person does so meet those requirements.

(4) A notice under this regulation shall specify the date on which it is to take effect, the grounds for the decision to serve a notice and the period within which the necessary steps must be taken.

Offences

7.—(1) Subject to paragraphs (2) and (3) below, any person who without reasonable excuse contravenes or fails to comply with any of the provisions of regulation 3 above or any notice served pursuant to regulation 6 above within the period specified in that notice shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(2) For the purposes of paragraph (1) above, in relation to a failure to comply with the provisions of regulation 3 above it shall be a “reasonable excuse”, without prejudice to the generality of that expression, if that person believes (with reasonable cause) that the prohibited battery will not be used in the Community.

(3) Where the commission by any person of an offence under paragraph (1) above is due to the act or default of some other person, that person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Offences by corporations

8.—(1) Where an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed guilty of the offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

Patrick McLoughlin
Parliamentary Under Secretary of State
for Trade and Technology
Department of Trade and Industry

2nd February 1994

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 91/157/EEC on batteries and accumulators containing more than specified levels of dangerous substances (mercury, cadmium or lead) and Commission Directive 93/86/EEC which provides symbols to indicate the separate collection of such batteries and accumulators as well as the relevant chemical symbol to indicate their heavy metal content. The Regulations extend to Great Britain.

Regulation 4 requires the marking of such batteries and accumulators (or, in appropriate cases, the packaging) with a separate collection mark and the relevant heavy metal content mark. In the case of a battery or accumulator manufactured in Great Britain for sale in the Community, the obligation is placed on the manufacturer; if that is not the case, the obligation is placed on the manufacturer's authorised representative established in Great Britain or the person in Great Britain placing the battery or accumulator on the market. The marking requirements do not apply to batteries or accumulators which are marketed in Great Britain before 1st January 1996 provided they have been manufactured or imported into the Community before regulation 4 comes into force.

Regulation 5(1) requires manufacturers to ensure that such a battery or accumulator can be readily removed, when spent, by a consumer from appliances (other than those referred to in Schedule 1 to the Regulations) into which it has been incorporated. Regulation 5(2) requires excluded appliances (referred to in Schedule 1) to be accompanied by instructions as regards the matters specified in this provision.

Under regulation 6, the Secretary of State may give notice if a battery or accumulator, to which the Regulations relate, is not marked in accordance with regulation 4 or an appliance or excluded appliance does not meet the requirements of regulation 5 which apply to it. In the event of a failure to comply with such a notice, in the absence of any reasonable excuse the person on whom it is served will be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale (regulation 7). In addition, regulation 8 provides for offences by corporations.

The alternative separate collection marks are set out in Schedule 2. The detailed provisions as to the size and place both for a separate collection mark and for the relevant heavy metal content mark are contained in Schedule 3.

In addition, regulation 3 prohibits the marketing of certain alkaline manganese batteries containing mercury; anyone breaching that regulation will be guilty of an offence and liable on summary conviction to a fine, not exceeding level 1 on the standard scale, under regulation 7. Regulation 8 would also apply in those circumstances.

The Regulations come into force on 1st March 1994 except for the marking requirements (regulation 4 and, to the extent that it applies to regulation 4, regulation 6) which come into force on 1st August 1994.

A Compliance Cost Assessment in respect of these Regulations is available and a copy can be obtained from Environment Division, Department of Trade and Industry, Desk 3/096, 151 Buckingham Palace Road, London SW1W 9SS.

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SCHEDULE 1

(Regulation 2(2))

(List of categories of appliance contained in Annex II of the Directive)

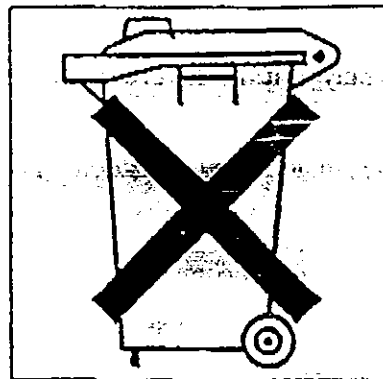
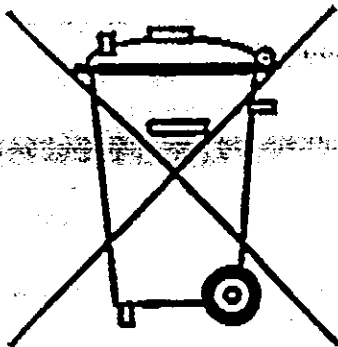
1. Those appliances whose batteries are soldered, welded or otherwise permanently attached to terminals to ensure continuity of power supply in demanding industrial usage and to preserve the memory and data functions of information technology and business equipment, where use of the batteries or accumulators is technically necessary.
2. Reference cells in scientific and professional equipment, and batteries and accumulators placed in medical devices designed to maintain vital functions and in heart pacemakers, where uninterrupted functioning is essential and the batteries and accumulators can be removed only by qualified personnel.
3. Portable appliances, where replacement of the batteries by unqualified personnel could present safety hazards to the user or could affect the operation of the appliance, and professional equipment intended for use in highly sensitive surroundings, for example in the presence of volatile substances.

SCHEDULE 2

(Regulation 2(2))

(The Separate Collection Mark)

The mark indicating separate collection shall consist of one of the roll-out containers crossed through as shown below:



SCHEDULE 3

(Regulation 4)

(Article 4 in the Marking Directive)

1. The separate collection mark shall cover 3% of the area of the largest side of the battery or accumulator, up to a maximum size of 5 cm x 5 cm. For cylindrical cells the mark shall cover 3% of half the surface area of the battery or accumulator and shall have a maximum size of 5 cm x 5 cm.

Where the size of the battery or accumulator is such that the mark would be smaller than 0.5 cm x 0.5 cm, the battery or accumulator need not be marked but a separate collection mark measuring 1 cm x 1 cm shall be printed on the packaging.
2. The relevant heavy metal content mark shall be printed beneath the separate collection mark. The relevant heavy metal content mark shall cover an area of at least one quarter of the size of the separate collection mark.
3. The separate collection mark and the relevant heavy metal content mark shall be printed visibly, legibly and indelibly.