



**British Battery
Manufacturers Association**

**Response by the British Battery Manufacturers Association to
HMG's consultation document of 20 December 2007 on
the implementation of the batteries directive**

Thursday, 13 March 2008

Index

INTRODUCTION	1
DETAILED COMMENTS	1
SECTION 2: APPROACH TO DEFINITIONS	1
SECTION 3: SINGLE MARKET PROVISIONS	1
<i>Question 1: Views on exemptions for electric vehicles</i>	1
<i>Question 2: Views on approach to “placing on the market”</i>	1
<i>Question 3: Capacity marking</i>	2
<i>Question 4: Enforcement regime</i>	2
<i>Question 5: Removal of waste batteries: potential for free movement of goods issues</i>	3
SECTION 4: PORTABLE BATTERIES AND ACCUMUATORS	3
<i>Question 6: Which of the two broad approaches to devising a compliance system is likely to be most effective in meeting the objectives of the directive and support producers meet their obligations?</i>	3
<i>Question 7: What features are essential for an effective and low cost compliance system?</i>	3
<i>Question 8: What risks apply to the approaches and models set out?</i>	3
Assessment of consultation proposals	4
Scope of producer responsibility: collection from end users (consumers).....	5
<i>Question 9: Views on alternative two-tier approach</i>	6
<i>Question 10: What is essential for scheme(s) operational plan(s)? How do we ensure accountability?</i>	7
Compliance system structure.....	7
Collective system.....	7
Diverse system.....	8
Responsibilities.....	8
<i>Questions 11, 12 & 13: Interim targets</i>	10
<i>Questions 14 & 15: Small producers</i>	10
<i>Question 16: Distance sellers</i>	11
<i>Question 17: Possible exemption for very small retailers</i>	11
<i>Question 18: Effective and efficient methods of collection?</i>	11
CONCLUSION	12

Introduction

1. We are pleased to respond to the Government's consultation on the implementation of the batteries directive.
2. The size of the challenge is not one to be underestimated. If the objectives of the directive are to be met, we shall need to see a significant change – or at least a speed in the pace of change – in consumer behaviour. Unique amongst the commodities that are subject to this type of environmental legislation, portable batteries are small and easily disposed of in household waste, and have little or no intrinsic value.
3. Further, they have comparatively minor environmental impact. So not only is it difficult *per se* to meet the collection targets in the directive, it is even more difficult to do so without generating a net environmental cost, and at proportionate financial cost.
4. Our detailed comments follow.

Detailed comments

Section 2: Approach to definitions

5. We agree the approach taken to the definition of “portable battery”. We believe that this approach is consistent with the directive, clear and practical.
6. We also agree the approach to the definition of “producer”, but we do not believe that this is followed consistently in the consultation document when discussing the responsibilities of the different stakeholders. In particular, the descriptions used in §4.9 appear permissive rather than descriptive, and much less clear.

Section 3: Single market provisions

Question 1: Views on exemptions for electric vehicles

7. BBMA has no comment here, and sees no implications arising from the different requirements of the two directives.

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

8. We believe that there is an unintended double negative in the second sentence of §3.4. We believe that this sentence should read

“We do not believe that the new directive will require distributors or retailers to cease making them available to consumers or remove them from the shelves...”.

9. We agree with this interpretation. It would be nonsense to require the removal of product from the distribution chain due to subsequent changes in legislation when the product had met all requirements pertaining at the time it entered the distribution chain.
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 a 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 specially 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 September 26th 2008 including the sales of batteries to power EEE under warranty.

Question 3: Capacity marking

12. It is not possible to define a test for the capacity of primary batteries that will give a definitive result. Capacity depends upon a number of variables, including the sort of use to which the battery is put, the ambient temperature, etc. The same considerations do not apply to secondary (rechargeable) batteries.
13. A capacity marking on primary batteries would, therefore, be potentially misleading to consumers. Article 21(7) of the directive gives the Technical Adaptation Committee (TAC) the ability to grant exemptions from the marking requirements. We believe that it would be in the interests of consumers for the TAC to exempt primary batteries from the capacity marking requirement.
14. If it is not possible to exempt primary batteries from the capacity marking provisions *per se*, we support the EPBA's proposal for the marking to direct consumers to a website where detailed information can be found. The detailed level of information that would be required in the light of the variables which impact on capacity is such that it cannot be placed on the battery itself.
15. Any marking on the battery will require changes in production, which will require an adequate lead time.

Question 4: Enforcement regime

16. We are broadly of the view that the proposed enforcement regime is likely to be effective, and that it is broadly proportionate. We make some specific comments below. To some extent, however, proportionality is more a matter of how the regime is implemented than of the regime itself. We would expect to see a risk based approach, such that the very significant powers proposed here would be used in a targeted way commensurate with identified levels of likely breach of the requirements rather than randomly.
17. We do not accept the proposal in §3.8 not to have a defence of due diligence. This breaks the laws of natural justice. The argument that the defence is inappropriate is not intellectually sound: if the fault were to be obvious because of the lesser complexity of batteries, a defence of due diligence would not be sustained. Due diligence should not, however, be a defence against requiring the removal of defective product from the market.
18. Enforcement by test purchases (§3.11) will need to recognise the shelf life of portable batteries.
19. §3.12 recognises the issue of finding the responsible producer once a non-compliant battery has been discovered in the distribution chain, at retail level or elsewhere. This will be nigh on impossible in the case of counterfeit batteries – a growing problem – or in the case of batteries placed on the market by producers who have not registered. Integrity of the distribution chain is the only effective way of dealing with these problems, and we propose that HMG should either make it a requirement on those in the distribution chain only to buy from a legitimate source – to be defined – or to make the retailer responsible where the producer cannot be identified.

Question 5: Removal of waste batteries: potential for free movement of goods issues

20. The Draft Commission Guidance allows the definition of “readily removable” to include removal by a professional (as part of a service operation for example), removal by the end user with tools (using a screwdriver for example) and removal both during the lifetime of the product and at the end of life, all dependant on the appliance in question.
21. As long as the producer has the freedom to design the appliance in the most appropriate way taking into account product performance, safety, power supply, medical and data integrity factors, we feel the above guidance provides a practical approach to the requirements.
22. We would not support any attempt to force a particular design onto different groups of appliances. For example to make it a requirement that batteries are removable by the end user without the use of tools for rechargeable electric toothbrushes. Within any appliance group the approach needs to vary for each individual product type and this is best determined by the producer who has the legal responsibility towards the integrity and safety of the products he places on the market.
23. If some countries go beyond copying out the text of the directive supplemented by the Draft Commission Guidance this definitely has the potential to affect “free movement of goods” in the EU market and in consequence we would strongly recommend that this measure is harmonised under Art 95(1) of the Treaty.
24. The provision may require the complete redesign of some products. Therefore sufficient lead time should be allowed before the provision becomes mandatory.

Section 4: Portable batteries and accumulators

Question 6: Which of the two broad approaches to devising a compliance system is likely to be most effective in meeting the objectives of the directive and support producers meet their obligations?

Question 7: What features are essential for an effective and low cost compliance system?

Question 8: What risks apply to the approaches and models set out?

25. The BBMA has identified a number of key principles which we believe will need to be met by the compliance system if it is to be fully effective and cost effective:
 - The system should achieve compliance with the directive.
 - Compliance should be achieved in the most cost effective way possible.
 - Producers should exercise control over the compliance system.
 - Obligations should be shared fairly between all producers, including in accordance with their market share by weight.
 - The solution proposed for achieving compliance should not create a value or a market in waste batteries or in evidence notes.
 - The compliance system should be based on competition between suppliers where this drives efficiency, but based on collective action where this is needed to ensure efficacy.

26. The Association has considered the compliance system options set out in the consultation document in the light of these principles:
- Proposal 1a: Single national compliance scheme with full and associate membership.
 - Proposal 1b: Single national compliance scheme with full membership only.
 - Proposal 2a: Multiple schemes with a coordinating body.
 - Proposal 2b: Multiple schemes without a shared coordination body.

Assessment of consultation proposals

Proposals 1a and 2b

27. We reject proposals 1a and 2b since we do not believe that they would meet our principles.
28. It is clear that, under Proposal 1a, certain producers – perhaps particularly those who are also distributors – would have access to supplies of used batteries that would be easier to get hold of than those available to other producers. This, in itself, is helpful in meeting the directive's targets. But if, for example, associate members who might also be distributors were to collect significantly more batteries than needed to meet their producer obligation, this would inevitably create a value in those associate members' collected batteries, and thus a market.
29. Proposal 2b would be unlikely to ensure full compliance in our view. It would also not offer the necessary control over the system for producers. All stakeholders have been consistent in their concern that the challenge being faced in meeting the collection targets is very significant. It will be necessary to have a single interface with consumers – particularly in terms of information and collection network – to have any realistic chance of meeting those targets. Proposal 2b would not provide this single voice to consumers.

Proposal 1b

30. Proposal 1b – which we prefer to see as a “collective” rather than a “single” system – closely meets our principles. As the consultation document notes, this approach provides greatest efficiency and clarity, which will undoubtedly create greatest efficiency in terms of messaging and collection of batteries. It provides the least risk of not meeting the collection targets.
31. However, we acknowledge the concerns expressed in the consultation document that a collective system without competition might not have the same incentives as multiple schemes to minimise costs to producers through competition. We see it as important, therefore, that the efficiencies produced by a collective system's single approach are limited to those functions where the same efficiencies would not be delivered by competition. These are functions such as information to consumers, management of collection networks, etc.
32. Other functions – the transport of collected batteries, their treatment and recycling – would be subject to competition. Competition could come from companies offering some or all of these functions: in the latter case, we believe that these would tend to be existing or proposed operators of compliance schemes since these are or would be organised to provide just these services.
33. Since, under a collective system, producers would not be able to influence the system by choosing which compliance scheme to join, it is essential that the coordination body should be under the control of producers, or significantly within their influence.

Appropriate governance of the coordination body is a prerequisite of our support for a collective system.

Proposal 2a

34. Proposal 2a also meets most of our principles. However, to be effective:

- The coordination body would need to be responsible for or have some control over the collection network (and for meeting the collection target if this is deemed to be a producer responsibility) as well as providing information to end users to ensure maximum collection efficiency.
- The coordination body would need to be responsible for allocating to the competing compliance schemes their responsibilities for the transport, treatment and recycling of collected batteries based on the market share by weight of their members.
- There would need to be a restriction on the number of compliance schemes to ensure that allocation would work effectively, that there was no chance of creating a value in used batteries and trading of evidence, and that the environmental impact due to transport would be minimised.

35. With the acceptance of these points – which we regard as fundamental to the scheme's success – its overall shape would be very similar to that of Proposal 1b, again with our comments taken into account. The essential difference would be that, under 1b the collective scheme itself would organise competition between suppliers whereas, under Proposal 2a, suppliers (compliance schemes) would compete directly to offer producers services, and then contract with the coordination body. (See §49-56 below.)

Scope of producer responsibility: collection from end users (consumers)

36. We have raised the issue of the scope of producer responsibility under the batteries directive with Defra on six occasions. To date, the issue is unresolved between us. It is an issue that cannot remain undecided: it is fundamental to the structure of the compliance system. It is our view, based on the clear language used in the directive, that producers' responsibility begins with "the collection of collected batteries": ie, after the point at which used batteries have been collected from end users, or consumers.

37. Section 4 of the consultation document initially acknowledges this by referring at §4.2 (second bullet) to producers financing "the net costs of collection, treatment and recycling of all separately collected portable batteries" [our emphasis]. Similarly, the document recognises that, whilst the directive gives the responsibility for collection, treatment and recycling of "batteries collected under the directive", it gives HMG only the discretion to require producers to set up schemes for collection from end users:

"The directive requires Member States to ensure appropriate collection schemes for portable batteries are in place. This may be done by requiring producers to set up schemes. It also requires producers to set up schemes for the recycling and treatment of waste batteries. Producers are required to finance the cost of collection (as well as treatment and recycling) of batteries collected under the directive."

38. Having precisely set out the different requirements of the directive, the consultation document then concludes, with no further argument or reasoning:

"We consider that producers should therefore have the responsibility for developing schemes for the collection, recycling and treatment of waste batteries themselves as they will be able to influence the way the schemes achieve the directive's requirements so as to ensure that this is done as efficiently as possible."

39. The single asserted reason for reaching this view is untrue. It is apparent that final decisions on the shape and structure of the compliance system will be taken by the Secretary of State. This is implicit in the current consultation, and has been made explicit in meetings with Defra officials over recent months. Further, as we have discussed with Defra and BERR on numerous occasions, the collection targets may only be met if all collection channels are used to their maximum effect. HMG is far better positioned than producers to achieve that.
40. It is clear, therefore, that the Secretary of State has discretion to delegate to producers the responsibility in the directive to collect batteries from end users but that this is not a direct or automatic requirement of the directive. However, in view of the facts set out above, which we believe not to be disputed, and HMG's own description of the directive's requirements, it is apparent to us that either the Secretary of State has not exercised his discretion and simply assumed – as has been put to us by officials and is repeated in §4.13 – that “all producer responsibility directives work in this way”; and / or that the conclusion reached is unreasonable in view of the limited ability of producers to meet the requirements of the directive when compared with the ability of the Secretary of State.
41. For these reasons, we do not accept that producers should be responsible for the collection of used batteries from end users. Indeed, recent discussions with Defra and BERR have progressed these arguments to the point where we understand that it is agreed between us that:
- The directive places a clear responsibility upon distributors (retailers) to take back used batteries.
 - The directive places a clear responsibility on producers to transport, treat and recycle used batteries that have been collected from end users.
 - The directive gives member states discretion on the responsibility for any additional infrastructure for the collection of used batteries from end users necessary to meet the directive's other requirements.
42. We believe it to be axiomatic that HMG should exercise that discretion proportionately and reasonably and in the light of the directive's requirements.

Question 9: Views on alternative two-tier approach

43. The two tier approach discussed in §4.56 of the consultation paper is wholly consistent with the terms of the directive insofar as it reflects the requirement on distributors to take back used batteries, and specifies the responsibilities of producers to be the collection, treatment and recycling of collected batteries.
44. We welcome this approach. To minimise the environmental impact due to transport we believe that retailers should be required to use reverse distribution to assemble collected batteries at consolidation points for onward transport, treatment and recycling (the responsibility of producers). The waste regulations would need amendment to ensure that the exemption from the provisions of Directives 2006/12/EC and 91/689/EEC provided by Article 8(1)(d) of the directive should extend to reverse distribution.
45. We believe that reverse distribution via distributors should become the main means of collecting used batteries from end users. The directive places an unambiguous responsibility on distributors to meet this requirement, and it will be possible via the public information campaigns provided for in the directive to advise consumers to take their used batteries to larger retail outlets.
46. Other means of collecting used batteries from consumers would be voluntary. We anticipate, for example, that some local authorities may wish to collect used portable batteries from their constituents either at civic amenity sites or via doorstep collection as

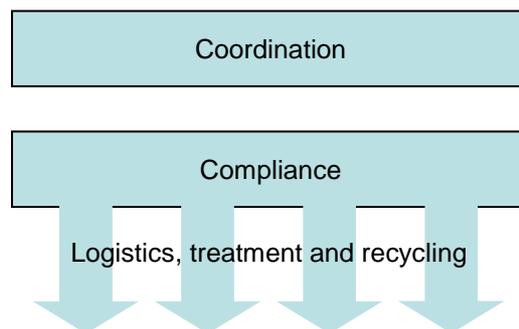
part of an integrated recycling collection. Where this voluntary collection takes place, producers should be willing to pick up and transport collected batteries from agreed or approved consolidation points.

47. However, producers should not have the responsibility to pick up all collected batteries outside of approved consolidation points. To do so would be to generate an unacceptably high environmental impact due to transport. Modest collections – eg by schools, libraries, employers, etc – could be returned via larger retailers. Larger collections outside of approved consolidation points could be picked up at the discretion of the coordination body, that discretion to be exercised on the basis of the quantity of batteries concerned and the environmental impact of doing so.
48. Should this approach not achieve the required collection rates, then HMG should revisit its decision not to require local authorities to institute a system of doorstep collection of used batteries as part of the regular refuse collection system.

Question 10: What is essential for scheme(s) operational plan(s)? How do we ensure accountability?

Compliance system structure

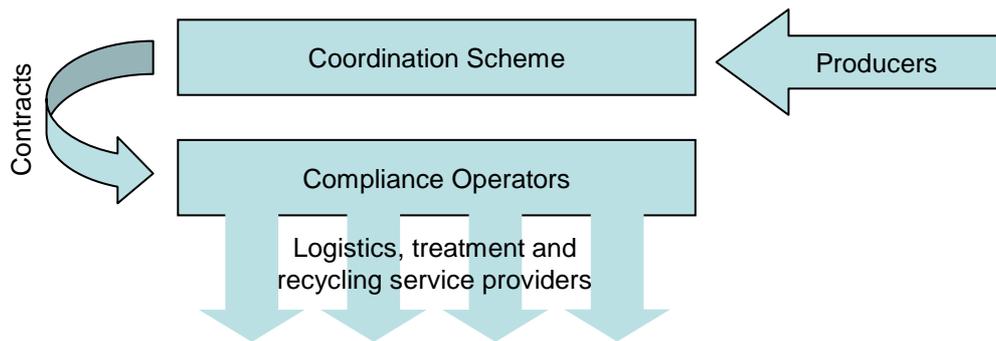
49. Irrespective of the decisions on the approach to be taken to the directive's implementation, we believe that the system to be adopted should have fundamentally the same structure – set out below.



50. This enables those parts of the system which are more effectively conducted collectively – such as the interface with consumers, collection of data, etc – to be managed by the coordination body, whilst providing for competition to drive efficiency in logistics, treatment and recycling.

Collective system

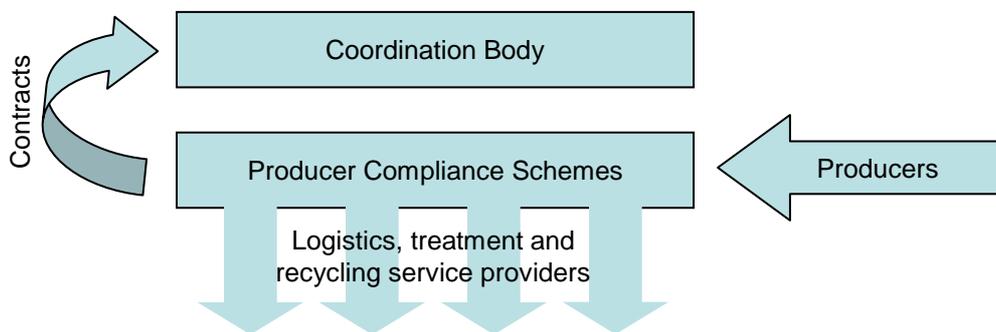
51. The essential structural difference between a collective [single] system and a diverse [multiple] one is the point in the structure where producers contract. Under a collective system, all producers would join the coordination scheme (coordination body under the diverse system) which would then contract competitively with a number of compliance operators, which would then themselves contract with service providers.



52. Competition and continuity in the face of any commercial failures would be ensured by the coordination scheme contracting with a number of compliance schemes and thus with a variety of service providers.
53. It would be possible for the coordination scheme to contract directly with service providers, but we anticipate that the relationship would normally be with existing compliance schemes because of existing commercial arrangements and because we envisage the coordination scheme being a very lean organisation without the skillset to manage some of the compliance functions as efficiently as current compliance schemes.
54. Compliance operators (compliance schemes under the diverse system below) would be much more likely themselves to contract with logistics, treatment and recycling service providers. We anticipate that, under the collective or diverse approach, there may be a degree of consolidation at the treatment level where there are few operators and the economies of scale are likely to be greatest.
55. The coordination body would be controlled by producers. This is essential because producers would have no discretion over which body / scheme to join, and they would otherwise have responsibility without authority.

Diverse system

56. Under a diverse system, producers would join compliance schemes – as, for example, in the case of the WEEE and packaging systems – and the compliance schemes would then fund the coordination body in proportion to the market share of their members by weight. As in the collective system, compliance schemes would contract with service providers.



Responsibilities

57. In each case, the responsibilities of the coordination scheme / body would include:
 - Registration of producers. We anticipate that this may include producers of portable, industrial and automotive batteries.
 - Recording of producer market statistics.

- Calculation of producer market share (by weight).
- Supervision and custody of compliance evidence reports from compliance schemes.
- Publicity campaigns.
- Providing the single point of contact for all stakeholders who wish to collect batteries on a voluntary basis.
- Clearance by compliance schemes and service providers of collected batteries from approved consolidation points.
- Allocation of collection sites to compliance schemes in the case of the diverse system according to the market share by weight of their members in the portable battery sector.
- Interface with the Environment Agency to report and to initiate enforcement action in the case of compliance failures.
- Provision of compliance statistics to HMG and is the single point of contact for HMG on all issues concerning implementation and compliance with the battery.

58. The compliance schemes / operators would be responsible for:

- Arranging and organising the pick up, transport, treatment and recycling of collected batteries from collection points.
- The annual registration of all its members with the Coordination Body under the diverse system.
- An annual report on statistics to the Coordination Body.
- The payment of registration and other fees owed by their members to the Coordination Body under the diverse system.
- Reporting the weight of batteries picked up from allocated collection sites to the coordination body so as to inform the accurate and punctual function of the allocation process.
- Reporting evidence of compliance to the coordination body.

Allocation of collection sites to compliance schemes under the diverse system

59. We regard the role of allocation of collection sites – and thus collected batteries – to specific compliance schemes by the coordination body as a fundamental requirement of the efficient operation of the diverse system. The collective system automatically balances costs; but the diverse system could allow for compliance schemes to compete for collected batteries without any specific allocation.

60. This would inevitably lead to used batteries gaining a value and thus to the creation of a market in them. This violates one of our fundamental principles for an effective implementation system. Our opposition is based on experience of other similar schemes where such a market has been created. This experience shows that some compliance schemes would be able to gain access to more batteries than they required, and potentially hold to ransom schemes that were not able to gain access to the quantities that they needed.

61. This is an area where competition between suppliers does not drive efficiency, but one where collective or concerted action is needed to ensure efficacy. If HMG is of the view that allocation of collected batteries could not be provided for under the diverse system, then it would be our view that that system would not be tenable and that the only effective way forward would be under the collective system.

62. Under a collective system, the coordinating body would be able to balance the costs incurred by all compliance schemes between producers on the basis of their market share by weight. This would ensure that costs would be attributed equitably amongst producers, and that there was no value generated in used batteries and thus no market in them, whilst competition between compliance schemes would minimise costs. Equally, however, we regard producer control of the coordination scheme in the collective system as an essential prerequisite.

Questions 11, 12 & 13: Interim targets

63. We agree that there should be at least indicative interim targets. It will be important for producers, HMG and other stakeholders to be able to have some measure of the likelihood of the collection targets being met, and this can only be done on the basis of monitoring the increase in collection leading up to the effective target date.
64. It is tempting to draw a straight line from the current collection levels to 25% and monitor the increasing collection levels against that. In practice, we believe that the impact of the introduction of publicised schemes for collection will be less uniform. Experience elsewhere and in local schemes in the UK suggests an initial burst might occur, as consumers use the new routes to dispose of used batteries that have been lying around the house. This might be followed by a dip, and then something approaching either a straight line increase or a logarithmic curve.
65. Experience can be modelled and more sophisticated target graphs drawn. Given the likely consumer behaviour to which we refer here, however, the important thing to monitor is the trend in collection rates. We need to be clear that the graph is heading in the right direction rather than specific milestone targets being hit. That will allow those responsible for collection from end users to take action if the trend suggests that the 25% target will not be hit.
66. This makes it difficult to set meaningful statutory targets. This would be doubly so if punitive penalties were to be set for missing what would inevitably be arbitrary milestones. Statutory targets would be acceptable if the action to be taken if they were missed were to be corrective rather than punitive.

Questions 14 & 15: Small producers

67. It will be important to emphasise the fact that there can be no exemption from the requirement for all producers to register.
68. We urge caution in the use of the exemption from the financing requirements of the directive. We believe that the derogation is designed to apply only to very small producers, and are concerned that HMG may have somewhat larger producers in mind when the consultation says (§4.74) that "The exemption would mean that larger producers who would be covered by the regulations have to do much more to ensure that the directive's overall targets were met." (We understand Defra to say at the second stakeholder meeting on the consultation that the word "not" was inadvertently missing from this sentence.)
69. In our view, exemptions should only be given to small producers who, taken together, would have merely a minor impact on the cost and effort required of other producers. A total maximum percentage should be set beyond which exemptions should not be given. Otherwise, we are concerned that a large number of apparently small producers could be exempted which, taken together, could have a significant impact on the duties of others. For the same reason, market shares should be considered by battery chemistry: a small producer overall could have a significant share of a particular battery type.

70. Finally, we suggest that a total exemption for small producers would be the wrong way to go. Rather, producers below a threshold should be charged a set fee rather than paying strictly according to the weight of batteries placed on the market.

Question 16: Distance sellers

71. Others may be better placed to comment than the BBMA, but we support the contention in the consultation document that distance sellers should not be allowed to avoid their take-back obligations.

72. Those distributors who do not have the physical infrastructure to allow in-store take-back should be required to provide a *Freepost* return postal service.

73. §4.82 recognises the difficulty of capturing data on portable batteries that are sold by non resident distributors by remote or distance means. The document notes the desirability of including these batteries in the calculation of collection targets in the interest of best meeting the environmental aims of the directive.

74. Potentially of much greater significance will be to remove from the collection target calculation those batteries that are exported from the UK after use for reuse elsewhere, perhaps particularly in the BRIC countries. Many schemes for the collection of unwanted mobile phones or laptop computers refurbish these devices which are then exported – together with their batteries – for use in less developed countries. If a means is not found to exclude these batteries from the calculation of the collection targets, those targets will become unattainable.

Question 17: Possible exemption for very small retailers

75. We note that the directive does not give grounds for exempting distributors from the requirement to take-back used batteries except where, as the consultation document notes, “an assessment shows that alternative existing schemes are at least as effective in attaining the environmental aims of this directive”. We believe that this potential derogation applies to the requirement as a whole and not to specific classes or types of distributor; and we agree the implication in the consultation document that such an assessment would not show alternative existing schemes to be effective.

76. However, we note that in §4.56 of the consultation paper, HMG proposes that it may be more proportionate to provide smaller retailers with an alternative means of complying with their obligations. We understand that this might be a financial contribution towards the costs of collection from end users. We would not be opposed to this, but we are concerned that the level of any such payment should not be such that small retailers would be dissuaded from selling batteries.

Question 18: Effective and efficient methods of collection?

77. We do not agree with a number of the assertions made about collection schemes in the consultation document (§4.90 *et seq*). Specifically, as we have commented above (§36 *et seq*), HMG has yet to provide any clear case for its proposal to delegate to producers the responsibility for collection of batteries from end users (Article 8.2(a) of the directive). It is our view, therefore, that:

- It is unreasonable for HMG (§4.90 and §4.97) to assert that producers should be responsible for establishing and maintaining an adequate network of collection points.
- The assertion that the costs of providing a portable battery collection point at each civic amenity site that is a DCF should fall on producers (§4.95) “as required by the directive” is wrong in fact. Article 16 of the directive limits the financial

responsibilities of producers to “any net costs arising from ... the collection, treatment and recycling of all waste portable batteries collected [our emphasis] in accordance with Article 8(1) and (2)”.

- It is premature to state that local authorities “will not be obliged to provide a collection service” (§4.100). Before the completion of the WRAP trials, it is impossible to know what role local authorities would need to play to meet the targets and whether they would do so voluntarily. To dismiss even the remote possibility of obligation at this stage is to risk the targets not being met.
- Further, Article 7 of the directive (“Overarching objective”) states that Member States should “take necessary measures ... to minimise the disposal of batteries and accumulators as mixed municipal waste”. It appears inconsistent with this objective to ignore the activities of municipal waste operators.
- Taken together, the position set out in the consultation document leaves producers in an impossible position. Defra has acknowledged during our recent discussions the difficulties of producers seeking to reach agreement with individual local authorities, and offered to act as honest broker in collective discussions between producers and local government. To state that (a) there will be no compulsion and that (b) producers will pay totally undermines any negotiating position producers might have. To remove the offer of playing honest broker – whether by omission or commission – merely makes producers’ position even worse.

78. We believe that it was far sighted of HMG to commission WRAP to undertake battery collection trials and it seems clear that sound evidence based decision making would require consideration of the results of those trials before reaching firm conclusions on the best methods of collection. We are reluctant to give firm views at this stage, therefore. However, on the basis of the positions taken by HMG in the consultation paper, it is apparent to us (see §45 *et seq* above) that the major route for collection of used batteries from end users will be retailer take back with other approaches being taken only on a voluntary basis.

Conclusion

79. We hope very much that BERR and Defra find these comments useful. We look forward to a continuing dialogue to achieve our shared aims of implementing the directive in a proportionate and cost effective way.