

# BatteryBack Battery Compliance Scheme

## Scheme Rules

### 1. BATTERYBACK

BatteryBack is a producer compliance scheme as defined in the Waste Batteries and Accumulators Regulations 2009, scheme approval reference BCS2010864/E. It is operated by:

Scheme Name: BatteryBack Plc

Registered Address: Richmond House,  
Selby Road,  
Garforth,  
Leeds, LS25 1NB.

Companies House Registration No: 06904162

Telephone: 0113 385 4352

BatteryBack Plc is a wholly owned subsidiary of WasteCare (Group) Ltd, Companies House Registration Number: 03280384; Registered Office: Richmond House, Garforth, Leeds, LS25 1NB.

BatteryBack exists to enable producers of Batteries and Accumulators to meet their obligations under the Waste batteries and Accumulators Regulations. BatteryBack is operated by BatteryBack Plc who has no convictions as listed in Schedule 3 Part 1 (7) of the Regulations.

### 2. MEMBERSHIP

2.1 The relationship between BatteryBack PLC and Members is a contractual one based on these Scheme Rules and the membership application form which is authorised ("signed") by an appropriate signatory of the Member (as defined in Regulation 11(3) and Regulation 5 of the Regulations). The applicant is not deemed to be a member until the application form has been approved and accepted by BatteryBack.

2.2 The Scheme is open to all companies that place more than 1 tonne of portable batteries onto the UK market to which the Regulations apply. There is no minimum or maximum number of members. BatteryBack may also register small producers (less than 1 tonne of batteries per annum placed on the market) at BatteryBack's discretion.

2.3 Membership shall commence from the date of approval by BatteryBack of the member Application Form, and shall continue for a minimum of one compliance period (or the remainder of the current compliance period if membership commenced part way through a compliance period). Membership shall continue unless terminated by any of the following means:

2.3.1 By BatteryBack notifying the Member in writing that termination shall be on a specified date, not earlier than the end of the current compliance period, following a

breach by the Member of any of its obligations under this Agreement, if such a breach has not been remedied to the satisfaction of BatteryBack within 30 days of such a breach being notified to the Member in writing.

2.3.2 By BatteryBack giving notice prior to the 15<sup>th</sup> September in any given compliance period, in writing to the member.

2.3.3 By the Member giving notice by 30<sup>th</sup> June, in writing to BatteryBack.

### **3. MEMBERSHIP FEES**

3.1 Membership fees are in two parts, an annual subscription and the Environment Agency Fee. In addition, charges based on the amount of portable batteries placed onto the UK market by a member are made; these are separately identified on any invoices. BatteryBack shall give Members 30 days notice in writing of any change in its fee structure.

3.2 Charges are based on the current Regulations and associated guidance and expected recycling rates for the compliance period. Charges may be subject to change if the Regulations, guidance or interpretation are amended or the cost of portable battery evidence changes significantly.

3.3 Membership fees are reviewed annually and are based on the costs of administering and maintaining the Battery Compliance Scheme, and, in order to reflect the potential obligation arising, on the size of the producer in terms of the amount of portable batteries placed on the market.

3.4 Payment of fees and charges:

3.4.1 In the case of collection and treatment fees, these will be invoiced for the first time on 1<sup>st</sup> December prior to the compliance period of membership based on previous placed on the market data and then quarterly thereafter and are due to be paid in full within 30 days of the date of the invoice.

3.4.2 In the case of Membership fees, these will be invoiced upon joining the Battery Compliance Scheme for the first time and annually thereafter on the 1<sup>st</sup> December prior to the compliance period of membership. Fees are due to be paid in full within 30 days of the date of the invoice.

3.4.3 In the case of Environment Agency fees, these will be invoiced upon joining the Battery Compliance Scheme for the first time and annually thereafter on 1<sup>st</sup> December prior to the compliance period of membership. Fees are due to be paid in full within 30 days of the date of the invoice.

3.4.4 Where the Member has a small obligation, BatteryBack reserve the right to charge all of the charges referred to in 3.4.1 to 3.4.3 in one invoice on the 1<sup>st</sup> December prior to the compliance period of membership.

3.4.5 Where obligations and invoice values are estimated prior to the end of the compliance period, a reconciliation will be carried out when all relevant data has been

submitted. An additional invoice or credit note will then be issued dependant on the actual costs versus the estimated cost.

3.5 The Member will pay all monies due under this Agreement in full, without deduction.

3.6 Should any monies payable by the Member to BatteryBack be outstanding for more than 30 days, BatteryBack reserve the right to terminate this agreement as indicated in section 2.3.1 above. BatteryBack reserves the right to take legal action and the full enforcement procedures are detailed in Section 7.

#### **4. MEMBERSHIP RULES**

4.1 The Member shall provide BatteryBack with the information required under Regulation 11 of the Regulations in connection with its membership of the BatteryBack Battery Compliance Scheme (BCS). This information is supplied by the Member fully completing the application form and quarterly data submissions. This information shall be stated to be accurate and signed by an appropriate person from the Member as defined in Regulation 11(3), Regulation 5 and the BatteryBack Member Application Form.

4.2 The Member shall notify BatteryBack forthwith, and in any case within 14 days, of any material changes in the information previously supplied. This information can be submitted, by e-mail to [complianceservices@wastecare.co.uk](mailto:complianceservices@wastecare.co.uk) or by post to the registered address.

4.3 The Member shall provide BatteryBack on request, with any other information relating to their membership of BatteryBack BCS and their obligations under the Regulations.

4.4 This information provided by the Member shall be, to the best of the Member's knowledge, true and accurate having regard to the nature of the request.

4.5 BatteryBack shall keep copies of all documentation from Members as required under the terms of the Regulations.

4.6 The Member agrees that BatteryBack shall be entitled to provide such information to the Environment Agency or any other such body to which BatteryBack would be obligated.

4.7 A producer may not be a member of more than one BCS in respect of a compliance period unless the producer was a member of a scheme whose approval was withdrawn under Regulation 54 during that compliance period.

4.8 Members should submit quarterly placed on the market data by weight and category of portable batteries placed onto the UK market by the 14<sup>th</sup> of the month following the end of the quarter. This enables BatteryBack to comply with the requirements of the Regulations for uploading the data for battery scheme members. Data should be submitted utilising the web based data portal or BatteryBack data forms. BatteryBack reserves the right to surcharge the member if data is submitted after the 14<sup>th</sup> deadline or resubmitted.

4.9 Members should keep records of all information submitted to BatteryBack for a minimum of 4 years, as required by the Regulations.

4.10 Members must declare their battery producer registration number to any person to whom they intend to sell, sells or otherwise supplies batteries in the United Kingdom as required under Regulation 30 of the Regulations.

#### **BatteryBack Plc**

Richmond House, Garforth, Leeds, LS25 1NB  
Tel: 0844 800 5671 • Fax: 0113 385 4322 • [www.batteryback.org](http://www.batteryback.org)

4.11 Members may manage their obligation with prior agreement from BatteryBack so that BatteryBack can ensure that it generates the correct amount of evidence to fulfil the obligation of its members.

4.12 Members who wish to manage some or all of their obligations for collection, treatment and recycling of batteries should indicate the amounts for which they will take responsibility.

4.13 All evidence notes obtained by members managing their own obligations should be forwarded to BatteryBack.

4.14 Members must inform BatteryBack of any anticipated significant variations in their placed on the market data. Failure to inform BatteryBack of such changes may result in additional costs for battery evidence for the Member.

## **5. BATTERY RECYCLING SERVICES DISCLAIMER**

5.1 Participation in the BatteryBack battery recycling service is voluntary and the Member agrees that participation in the scheme is on a voluntary basis and is at the Member's sole option, discretion and risk. BatteryBack does not give any endorsement or make any warranties of any kind, whether express or implied, in relation to the BatteryBack battery recycling service and all warranties as to the quality of the service are excluded to the fullest extent permitted by law.

5.2 It is the Member's responsibility to ensure that they comply with the instructions regarding the storage of waste batteries which are available on the BatteryBack website, or available on request. The Member agrees that they will be responsible for any losses they or any third party may suffer due to a failure by them to comply with the instructions or otherwise in connection with the services. For the avoidance of doubt, BatteryBack will not be responsible to the Member or any third party for any business loss (including loss of profits, revenue, contracts, anticipated savings, data, goodwill or wasted expenditure) or any indirect or consequential loss incurred or suffered by the member arising directly or indirectly out of your use of the BatteryBack battery recycling services.

5.3 Nothing in this disclaimer shall exclude or limit BatteryBack's liability for death or personal injury resulting from BatteryBack's negligence or that of BatteryBack's servants, agents or employees or any liability for fraud or for any other liability that cannot be excluded or limited by law.

## **6. BATTERY RECYCLING CONTAINERS**

6.1 Battery recycling containers provided by BatteryBack remain the property of BatteryBack. The containers supplied by BatteryBack are only to be used for the recycling of portable batteries as defined in the Regulations.

## **7. CONFIDENTIALITY**

7.1 BatteryBack will hold all documents and information received by BatteryBack in connection with the performance of the Agreement in strict confidence. Such documents and information

will not be disclosed by BatteryBack, its staff or agents to any third party without the permission of the Member unless a duty to disclose is imposed under statute or by Court order.

## **8. OBLIGATIONS**

### **8.1 Members:**

8.1.1 The Member agrees that it will carry out its obligations under this Agreement in compliance with the requirements of the Regulations.

8.1.2 The Member agrees that it will allow BatteryBack access to premises and provide relevant information required to undertake a compliance audit from time to time. At least 14 days notice shall be provided to the Member of any such audit.

### **8.2 BatteryBack:**

8.2.1 BatteryBack shall carry out its obligations under this Agreement in compliance with the Regulations, furthermore;

8.2.2 BatteryBack has the right to publish the names of the membership of BatteryBack in its annual report or other literature, unless expressly requested by the member to the contrary.

## **9. ENFORCEMENT PROCEDURES**

In the event of a breach of member rules or obligations the following enforcement procedures may be invoked:

- a) Telephone or e-mail contact will be made with the primary contact of the Member organisation stating exactly what the breach has been and the regulatory impact on the Member and the Scheme and asking for the breach to be addressed.
- b) If after 28 days no satisfactory resolution of the breach has been achieved, a formal written request will be issued to the Member stating exactly what the breach has been and the regulatory impact on the Member and the Scheme and asking for the breach to be addressed.
- c) If the breach has not been addressed by the Member within 14 days of the issuing of the letter, a board member of BatteryBack Plc would, by registered letter, request a meeting with the Member who signed the Membership application form.
- d) If there is no response to the letter, or a timely meeting is not agreed to, or a satisfactory resolution of the breach is not achieved following a meeting, BatteryBack reserves the right to take legal action and to inform the Environment Agency of the situation.

## **10. DISPUTE & ARBITRATION PROCEDURES**

### **Dispute Procedure**

The following is the procedure to be followed in the event of dispute (other than a breach of rules or obligations) between members or between members and the operator of the BatteryBack scheme:

10.1 The party raising the dispute must set out in writing the characteristics or other circumstances (the 'statement of the dispute'), which lead to the dispute.

10.2 The party raising the dispute must send a copy of the statement of the dispute to the other party in the dispute and invite the other party to attend a meeting to discuss the matter.

10.3 The meeting must take place before any action is taken and both parties must take all reasonable steps to attend the meeting. In the case of a members' dispute, a representative of BatteryBack should attend the meeting. In the case of a dispute between the member and the scheme, either party can nominate another scheme member to attend the meeting.

10.4 The meeting must not take place unless-

- (a) the party raising the dispute has informed the other party to the dispute what the basis was for including in the statement under paragraph (8.1) the ground or grounds given in it, and
- (b) the other party to the dispute has had a reasonable opportunity to consider his response to that information.

10.5 The meeting decisions should be minuted by the 'independent' meeting attendee.

### **Arbitration Procedure**

10.6 If either party to the dispute is not satisfied by the outcome of the meeting, then the dispute shall be referred to arbitration.

10.7 In the event of a reference to arbitration, the parties to the dispute shall agree an arbitrator or if not agreed within 7 days an arbitrator shall be nominated at the request of either party by the Chartered Institute of Arbitrators.

10.8 The parties to the dispute agree that the decision of the arbitrator shall be final.

10.9 BatteryBack and the members agree that the costs of the arbitrator shall be paid as directed by the arbitrator. The arbitrator's decisions will be further subject to Late Payment Legislation.

## **11. EVIDENCE NOTE DISTRIBUTION**

In the event that the approval of BatteryBack's Battery Producer Compliance Scheme is withdrawn by the Environment Agency, previously collected Evidence Notes owned by BatteryBack will be allocated to each scheme member in proportion to the quantity of batteries placed on the market by the member, relative to the other members, in the compliance period up to the point of such withdrawal.

## **12. COMMUNICATIONS**

### **BatteryBack Plc**

Richmond House, Garforth, Leeds, LS25 1NB  
Tel: 0844 800 5671 • Fax: 0113 385 4322 • [www.batteryback.org](http://www.batteryback.org)

Important information concerning the scheme and its operation is disseminated to members via e-mail to the nominated contact, unless the member prefers other forms of contact. All official notices will be sent for the attention of the Company Secretary at the registered office of the member. Information will also be disseminated via the BatteryBack website and via regular e-mail newsletters. In addition a dedicated Member telephone helpline is available.

### **13. INDEMNITY**

13.1 The Member hereby agrees to indemnify BatteryBack from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all legal and other costs and expenses) and from and against all actions and proceedings which may be commenced taken or made against BatteryBack arising in relation to or in connection with:-

13.1.1 any material failure by the Member duly and punctually to provide any information which the Member is obliged to provide under the Conditions

12.1.2 any of the information provided by the Member under the Conditions being false, inaccurate, misleading or incomplete in any material respect

13.2 BatteryBack shall not be liable to the Member by reason of any representation or any implied warranty condition, or other term, or under any duty at common law, or under the express terms of the Agreement for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever) and whether caused by the negligence of BatteryBack its employees or agents or otherwise) which arise directly or indirectly out of or in connection with the performance of the Agreement.

### **14. DEFINITIONS**

"application form" – means the application form and any attachments signed by the member and BatteryBack Plc.

"appropriate person" has the meaning given in regulation 5;

"batteries evidence note" or "evidence note" means an evidence note issued by—

- an approved battery treatment operator, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling, or
- an approved battery exporter, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling outside the United Kingdom;

"battery" means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or consisting of one or more secondary battery cells (rechargeable; an accumulator);

"BatteryBack" - The battery compliance scheme operated by BatteryBack Plc.

"battery compliance scheme" or "scheme" means a battery compliance scheme that has been approved under regulation 49;

“battery producer registration number” means the registration number allocated to a producer by the appropriate authority under regulation 28 or by the Secretary of State under regulation 45;

“category of battery” or “battery” means any of the following types of batteries—

- automotive batteries;
- industrial batteries;
- portable batteries;

“compliance period” means the year 2010 (“the first compliance period”); or any year following the first compliance period;

“company registered in the United Kingdom” means a company registered in any part of the United Kingdom under the Companies Act 2006; the provisions of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 that remain in force; and any former enactment relating to companies; but a company incorporated outside the United Kingdom which has registered particulars under those Acts is not registered in the United Kingdom for the purposes of these Regulations;

“Environment Agency” - The Environment Agency of England and Wales

“Environment Agency fee” – the annual producer charge shown in Regulation 55(2)(b)(ii).

“evidence note” – a note in relation to the treatment and recycling of waste portable batteries in a format approved by the Secretary of State.

“portable battery” means any battery which is sealed, can be hand-carried by an average natural person without difficulty (i.e. <4Kg), and is neither an automotive battery nor an industrial battery;

“producer” means any person in the United Kingdom that, irrespective of the selling technique used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts, places batteries, including those incorporated into appliances or vehicles, on the market for the first time in the United Kingdom on a professional basis;

“proposed scheme” means a proposed battery compliance scheme that is the subject of an application for approval made under regulation 47;

“quarter” or “quarter period” means a period—

- commencing on 1st January and ending on 31st March;
- commencing on 1st April and ending on 30th June;
- commencing on 1st July and ending on 30th September; or
- commencing on 1st October and ending on 31st December;

“regulations” – means the Waste Batteries and Accumulators Regulations 2009, and any subsequent amendments.

“relevant compliance period” means a compliance period in respect of which a person has any obligation under regulation 7(2), 19(1), 35(2) or 36(2);

“scheme member” or “member” means, in relation to BatteryBack battery compliance scheme, a producer who is a member of that scheme;

“scheme operator” means the operator of a battery compliance scheme;

“writing” includes text that is transmitted by electronic means, received in legible form, and capable of being used for subsequent reference; and

“year” means a calendar year commencing on 1st January