

9 Windsor Framework: Classification, Labelling and Packaging of Chemicals⁸⁷

These EU documents are politically important because:

- they apply in Northern Ireland (NI) and will create further divergence between Great Britain and NI, potentially affecting the supply of relevant goods to the NI market; and
- they may influence the direction of future policy in Great Britain.

Action

- Write to the Minister.
- Draw to the attention of the Northern Ireland Affairs Committee.

Overview

9.1 Workers and consumers handle chemicals on a daily basis and require information so that chemicals can be supplied, handled and used safely. Given that many chemicals are traded internationally, the United Nations developed the UN Globally Harmonized System of classification and labelling of chemicals (UN GHS)⁸⁸ so that information can be provided consistently across languages, alphabets and different levels of literacy. It includes the use of pictograms⁸⁹ to communicate hazard information.

9.2 While the UN GHS is a voluntary framework, it was made mandatory in the EU in 2008 through the Classification, Labelling and Packaging (CLP) Regulation.⁹⁰ The EU recently added six new hazard classes to the EU CLP Regulation.

9.3 Under the terms of the Windsor Framework (previously known as the Northern Ireland Protocol),⁹¹ Northern Ireland (NI) must continue to apply various EU laws, including the EU CLP Regulation. This means that the changes will affect the placement of chemicals on the NI market, including by suppliers from Great Britain (GB).

87 (a) Proposal for a Regulation amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures; 16258/22, [COM\(22\)748](#); Legal base: Article 114(1) TFEU; Department: Health and Safety Executive (Department for Work and Pensions); Devolved Administrations: Consulted; ESC number: 42166; (b) [Commission Delegated Regulation \(EU\) 2023/707](#) of 19.12.2022 amending Regulation (EC) No 1272/2008 as regards hazard classes and criteria for the classification, labelling and packaging of substances and mixtures; C(2022) 9383 + Annex; Legal base: Regulation (EC) No 1272/2008; Department: Health and Safety Executive; Devolved Administrations: Consulted; ESC Number: 42169.

88 United Nations Economic Commission for Europe, '[About the GHS](#)' [Accessed 20 April 2023].

89 United Nations Economic Commission for Europe, '[GHS pictograms](#)' [Accessed 20 April 2023].

90 [Regulation \(EC\) No 1272/2008](#) of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006

91 The European Union and the United Kingdom agreed on 24 March 2023 that the Protocol on Ireland/Northern Ireland as amended by [Joint Committee Decision No 1/2023](#) should be known as the 'Windsor Framework'. This was confirmed in [Joint Declaration No 1/2023](#) of the Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

9.4 In her [Explanatory Memorandum](#) (EM)—submitted before agreement was reached on changes to the implementation of the NI Protocol—the responsible Minister (Mims Davies MP) described the EU’s adoption and establishment of six new hazard classes into the EU CLP Regulation, without first gaining UN GHS agreement as “a significant break with the established international convention”. The UK has no plans to establish similar hazard classes into the GB CLP Regulation without consensus at UN GHS and will consider its position and feed into discussions at UN GHS in the first instance. The Minister considered that the EU’s approach could harm trade and could harm businesses in NI.

9.5 Since her EM was submitted, the House of Lords Ireland/Northern Ireland Protocol Sub-Committee has engaged in correspondence⁹² with the Minister. The Minister confirmed that the legislation still applies to NI under the terms of the Windsor Framework, including goods moved from GB to NI.

The Commission’s proposal

9.6 The Commission published two separate legal texts.

9.7 The first text is a [proposal](#) to amend the EU CLP Regulation. These changes need to be debated and agreed by both the Council and the European Parliament before they take effect. The proposal suggests the following changes:

- more comprehensive identification and classification of chemical hazards by improving the efficiency and effectiveness of the EU CLP Regulation’s harmonised classification process and strengthening incentives and provisions for duty holders to appropriately classify substances;
- improved hazard communication by introducing obligatory labelling rules for readability such as minimum font size and colour, greater use of fold-out labels, a new framework for the sale of chemicals in refillable containers, simplified rules and additional derogations for chemicals sold to consumers in bulk (such as fuel) and in very small packaging, and voluntary digital labelling of chemicals; and
- addressing legal gaps and ambiguities in relation to distance sales, including online sales, and extending the requirement to notify hazard information on mixtures to poison centres to include distributors placing chemicals on the market across borders or rebranding/relabelling mixtures.

9.8 The second text is a [Delegated Regulation](#).⁹³ Tabled by the Commission in December 2022, it is now law as it was not opposed by either the Council or European Parliament within two months.

9.9 The proposed new hazard classes introduced into the EU CLP Regulation by the delegated act are:

- endocrine disrupting (‘ED’) (one for human health and one for the environment);

92 House of Lords European Affairs Committee Protocol on Ireland/Northern Ireland Sub-Committee, ‘[Correspondence with Ministers 10 May 2022–13 June 2023](#)’, p.117–123.

93 Commission Delegated Regulation (EU) 2023/707 of 19 December 2022 amending Regulation (EC) No 1272/2008 as regards hazard classes and criteria for the classification, labelling and packaging of substances and mixtures.

- persistent, bioaccumulative and toxic ('PBT');
- very persistent and very bioaccumulative ('vPvB');
- persistent, mobile and toxic ('PMT'); and
- very persistent and very mobile ('vPvM').

9.10 To support the new classes, the delegated act adds new definitions and scientific and technical criteria to classify substances and mixtures under the various classes.

UK Government position

Concerns about the EU policy initiatives

9.11 The Minister said in her EM that the adoption and establishment of six new hazard classes into the EU CLP Regulation, without first gaining agreement at the United Nations Globally Harmonized System of classification and labelling of chemicals (UN GHS), is a significant break with the established international convention. This would result, she said, in not only greater divergence between the GB Classification Labelling and Packaging Regulation ('GB CLP Regulation') and EU CLP systems but greater differences between the EU CLP Regulation and other countries and jurisdictions that adopt UN GHS. This works against an underlying principle of UN GHS to harmonise regulations at a global level and to facilitate trade.

9.12 The Minister considered it likely that the introduction of new hazard classes unilaterally by the EU without agreement at UN GHS would have a significant impact on trade and the ability of companies outside the EU to access the EU Single Market. The need to comply with them could be seen as offering a competitive advantage in the market to companies in the EU (who need to comply with EU legal requirements to place their products on the market) in relation to accessing the EU Single Market over countries outside of the EU.

9.13 In her correspondence with the House of Lords, the Minister confirmed that a working group on "potential hazard issues and their presentation in GHS" was agreed by the UN GHS Sub-Committee of experts in December meeting. The working group is focusing on the hazard issues identified in the EU's Delegated Regulation. This work is likely, explained the Minister, to take a considerable amount of time to complete, potentially beyond the current UN GHS 2023–2024 biennium work programme. UK officials are involved and have already attended relevant meetings.

Windsor Framework

9.14 In her [EM](#), the Minister noted that the legislation would apply to NI under the terms of the NI Protocol. Since the EM was written, the Protocol has been amended and is now known as the Windsor Framework. The Minister has written⁹⁴ to the House of Lords confirming that the legislation will still apply under the terms of the Windsor Framework.

94 Letter from Mims Davies MP to Lord Jay of Ewelme, dated 30 March 2023, [Correspondence with Ministers 10 May 2022–13 June 2013](#), p.121

9.15 In her correspondence with the House of Lords, the Minister noted that, under the Windsor Framework, the UK and the EU have agreed to establish new mechanisms for stakeholder engagement within those structures, including business and civic society groups, to ensure their expertise and insight can inform discussions about how the agreement operates in practice. The UK and the EU will also establish new structured expert groups to allow detailed UK-EU discussion of new rules applied under the Windsor Framework across the full range of issues—including on goods regulation—with new commitments to engage earlier and more intensively to look at the implications of new rules. She added that, through the new Special Goods Body, there is also the opportunity for early engagement on new rules, with the ability to find appropriate solutions through the Joint Committee. This, she said, would be an important mechanism for considering future UK and EU rule changes to ensure that their interaction does not inadvertently lead to any new unnecessary regulatory barriers.

Impact on Northern Ireland

9.16 NI businesses will be required to classify and label substances placed on the EU Single Market (including within NI) considering the new hazard classes and criteria where they apply. This, said the Minister, would result in a cost of training and familiarisation for competent persons to accurately classify the hazards in accordance with the new rules.

9.17 The Minister noted that there are a number of changes affecting packaging and labelling, with which NI businesses would need to comply. For the first time, for example, the sale of chemicals (such as, but not limited to, detergents) at refill stations will be regulated. NI businesses will be required to comply with this, which may bring about changes to labelling and packaging, such as dispensers.

9.18 In correspondence with the House of Lords, the Minister said that the Government would continue to work with officials in NI government departments on any practical steps that might be taken to mitigate the impact of the legislation.

Divergence between GB and NI

9.19 The Minister noted divergence between the GB CLP and EU CLP Regulations has occurred since the UK's withdrawal from the EU and the end of the implementation period but will be exacerbated by the EU's establishment of new hazard classes.

9.20 Importers, said the Minister, have a legal obligation to ensure their substances and mixtures are compliant with the EU CLP Regulation requirements. For movements from GB to NI, the legal obligation therefore falls on NI-based businesses importing the substances, rather than GB-based suppliers. However, the Health and Safety Executive encourages GB-based suppliers and NI-based businesses to co-operate to meet classification and labelling requirements by sharing any necessary information, evidence or data wherever possible and where business contracts permit.

9.21 The Minister cautioned that some GB-based businesses may become dissuaded from engaging with the NI market when faced by regulatory barriers, in particular if policies in England, Scotland or Wales move in a different direction while NI's options are constrained by the Windsor Framework.

UK-wide considerations

9.22 The Minister confirmed that the Government would take note of the revised EU rules as part of considering potential future reforms to the GB CLP Regulation. Chemicals policy engages a mix of reserved and devolved competence. In GB, occupational safety and health, consumer safety, and product labelling are reserved matters under the devolution settlements while environmental protection and public health are devolved competences to the devolved administrations.

9.23 The GB CLP Regulation is covered under the UK Chemicals and Pesticides Provisional Common Framework, developed jointly by the UK Government, Devolved Governments, the Health and Safety Executive and the Environment Agency. The GB administrations will consider how to address any issues raised by the NI Executive, including potentially modifying their proposals to mitigate any negative impacts that may have been identified.

Our assessment

9.24 We are largely content with the information provided by the Minister in her Explanatory Memorandum. There are three outstanding issues on which we will seek further information. The first is the extent to which the arrangements for enhanced EU-UK dialogue under the Windsor Framework have been useful in this instance. The second is to note that the focus of the Government appears to have been on the impact of the new legislation on NI and how to mitigate that impact. We are keenly aware, however, that GB businesses will face the same rules whether shipping to NI or to the EU. We will ask the Minister if there is any indication that GB businesses will choose in any case to self-classify along the lines of the new hazard classes, thus pre-empting to a degree both the international discussion as well as consideration of future GB policy options. Finally, we will seek confirmation from the Minister that the Government will not base its domestic policy on the approach adopted by the EU but will, instead, continue to pursue international-level dialogue in the first instance.

Action

9.25 We have written to the Minister as set out below. We are drawing the proposal and our chapter to the attention of the Northern Ireland Affairs Committee

Letter from the Chair to the Parliamentary Under-Secretary of State (Mims Davies MP), Department of Work and Pensions

We considered your Explanatory Memorandum on the above EU instruments at our meeting on 12 July 2023. We took note too of the information that you have provided in response to correspondence from the House of Lords the Ireland/Northern Ireland Protocol Sub-Committee.

We would welcome your response to the following queries:

- To what extent have the arrangements for enhanced EU-UK dialogue under the Windsor Framework been useful for discussions on these texts?

- Is there any indication that GB-based businesses will choose to self-classify along the lines of the new hazard classes, thus pre-empting to a degree both the international discussion as well as consideration of future GB policy options?
- Can you assure us that the Government will not base its domestic policy on the approach adopted by the EU but will, instead, continue to pursue international-level dialogue in the first instance.

We look forward to a response within ten working days.

5 Windsor Framework: Classification, Labelling and Packaging of Chemicals³⁵

These EU documents are politically important because:

- they apply in Northern Ireland (NI) and will create further divergence between Great Britain (GB) and NI, potentially affecting the supply of relevant goods to the NI market; and
- they may influence the direction of future policy in Great Britain.

Action

- Report to the House.
- Draw to the attention of the Northern Ireland Affairs Committee.

Overview

5.1 The UN Globally Harmonized System of classification and labelling of chemicals (UN GHS)³⁶ exists so that information can be provided consistently across languages, alphabets and different levels of literacy. While the UN GHS is a voluntary framework, it was made mandatory in the EU in 2008 through the Classification, Labelling and Packaging (CLP) Regulation.³⁷ The EU recently added six new hazard classes to the EU CLP Regulation.

5.2 Under the terms of the Windsor Framework (previously known as the NI Protocol),³⁸ NI must continue to apply various EU laws, including the EU CLP Regulation. This means that the changes will affect the placement of chemicals on the NI market, including by suppliers from GB.

5.3 We summarised the Commission's proposals in our [Report](#) of 12 July 2023,³⁹ following which we [wrote](#) to the responsible Minister (Mims Davies MP) seeking further information. The Minister [responded](#) on 1 August, as we have summarised below.

35 (a) Proposal for a Regulation amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures; 16258/22, [COM\(22\)748](#); Legal base: Article 114(1) TFEU; Department: Health and Safety Executive (Department for Work and Pensions); Devolved Administrations: Consulted; ESC number: 42166; (b) [Commission Delegated Regulation \(EU\) 2023/707](#) of 19.12.2022 amending Regulation (EC) No 1272/2008 as regards hazard classes and criteria for the classification, labelling and packaging of substances and mixtures; C(2022) 9383 + Annex; Legal base: Regulation (EC) No 1272/2008; Department: Health and Safety Executive; Devolved Administrations: Consulted; ESC Number: 42169.

36 United Nations Economic Commission for Europe, '[About the GHS](#)' [Accessed 20 April 2023].

37 [Regulation \(EC\) No 1272/2008](#) of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006

38 The European Union and the United Kingdom agreed on 24 March 2023 that the Protocol on Ireland/Northern Ireland as amended by [Joint Committee Decision No 1/2023](#) should be known as the 'Windsor Framework'. This was confirmed in [Joint Declaration No 1/2023](#) of the Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

39 European Scrutiny Committee, Twenty-First Report (2022–23) HC 119–xix, chapter 9 (12 July 2023).

UK Government position

5.4 Concerning the extent to which the arrangements for enhanced EU-UK dialogue under the Windsor Framework have been useful for discussions on these texts, the Minister draws particular attention to the Joint Consultative Working Group (JCWG) structured sub-group on manufactured goods and the new Special Goods Body. She says that, through this new governance framework, there is the opportunity for early engagement on planned EU rules, with scope to agree appropriate solutions through the Withdrawal Agreement Joint Committee. This, she says, will be an important mechanism for considering future UK and EU rule changes to ensure that their interaction does not inadvertently lead to any new regulatory barriers. It will mean, she says, that the regulatory environment in N I can be better tailored to suit consumer and business needs.

5.5 As to whether any GB-based businesses are choosing to self-classify in accordance with the EU’s new hazard classes, the Minister says that UK officials are not aware of any such instances. Moreover, says the Minister, industry stakeholder groups have not raised with officials any cases of GB duty holders (i.e. manufacturers, importers or downstream users) voluntarily applying the new EU hazard classes to substances or mixtures being placed on the GB market.

5.6 Finally, the Minister says that the UK will engage with the UN GHS consideration of the scientific evidence behind the new EU classifications. UK officials will also consider the wider policy context of any changes agreed at the UN GHS before adopting any changes in hazard classifications to the GB CLP. Officials will continue to actively contribute to the UN GHS informal working group on “potential hazard issues and their presentation in GHS”. The Minister explains that this large group, of which the UK is a member, is comprised of delegates including the USA, Canada, EU Member States, China, Japan, international trade associations and Non-Governmental Organisations.

Our assessment

5.7 We raised three issues with the Minister, all of which have been addressed to a degree. The EU’s new hazard classifications are already part of EU law, and it appears that further substantive policy developments will depend on international discussions.

5.8 We will continue to monitor to developments in this area—including the use of the new arrangements for enhanced UK-EU dialogue under the Windsor Framework—but we require no further information from the Government.

Action

5.9 We are reporting the Minister’s reply to the House. We are drawing the Minister’s reply and this chapter to the attention of the Northern Ireland Affairs Committee.



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Sir William Cash CH MP

Chair of the European Scrutiny Committee
House of Commons
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1 August 2023

Dear Sir William,

EM 16258/22: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures and C(2022) 9383 and COMMISSION DELEGATED REGULATION (EU) .../... of 19.12.2022 amending Regulation (EC) No 1272/2008 as regards hazard classes and criteria for the classification, labelling and packaging of substances and mixtures

Thank you for your letter of 12 July asking for further information following the submission of an Explanatory Memorandum, dated 1 February 2023, on the above regulations. I would also like to thank you for granting an extension to the original deadline of 26 July until 9 August 2023.

Committee asked for further information on:

- the extent to which the arrangements for enhanced EU-UK dialogue under the Windsor Framework have been useful for discussions on the proposed Regulation and Delegated Regulation;
- whether there is any indication that GB-based businesses will choose to self-classify along the lines of the new hazard classes (that were introduced via the Delegated Regulation); and
- an assurance that the Government will not base its domestic policy on the approach adopted by the EU but will, instead, continue to pursue international-level dialogue in the first instance.

I welcome the opportunity to respond on behalf of the Government, which is set out in the Annex below.

I am copying this letter to Lord Jay of Ewelme, Chair of the House of Lords Protocol on Ireland/Northern Ireland Sub-Committee; Stuart Stoner, Clerk of the Lords Protocol on Ireland/Northern Ireland Sub-Committee; Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee; Les Saunders, EU Document Scrutiny Manager, Foreign Commonwealth & Development Office; Stephen Taylor and Tarla Patel, Health and Safety Executive Scrutiny Coordinators; and the Secretariat of the Northern Ireland Assembly Committee for Agriculture, Environment and Rural Affairs.

A handwritten signature in grey ink that reads "Mims". The signature is written in a cursive, flowing style.

Mims Davies MP
Minister for Social Mobility, Youth and Progression

To what extent have the arrangements for enhanced EU-UK dialogue under the Windsor Framework been useful for discussions on these texts?

1. As you will be aware, under the Windsor Framework we have established a number of joint UK-EU fora aimed at managing implementation issues as well as longer-term issues of regulatory divergence, as they may affect Northern Ireland. These include the Joint Consultative Working Group (JCWG) structured sub-group on manufactured goods and the new Special Goods Body.
2. Through this new governance there is the opportunity for early engagement on planned EU rules, with scope to agree appropriate solutions through the Withdrawal Agreement Joint Committee. This will be an important mechanism for considering future UK and EU rule changes to ensure that their interaction does not inadvertently lead to any new regulatory barriers. It will mean that the regulatory environment in Northern Ireland can be better tailored to suit consumer and business needs.

Is there any indication that GB-based businesses will choose to self-classify along the lines of the new hazard classes, thus pre-empting to a degree both the international discussion as well as consideration of future GB policy options?

3. HSE officials engage regularly with the GB Classification, Labelling and Packaging (GB CLP) stakeholders through a range of internal and external events. HSE policy officials are not aware of any GB-based businesses choosing to self-classify in accordance with the new hazard classes introduced into EU CLP. Moreover, industry stakeholder groups have not raised with HSE policy officials any cases of GB dutyholders applying the new EU CLP hazard classes to substances or mixtures being placed on the GB market.
4. Article 4(1) of the GB CLP Regulation requires dutyholders (i.e. manufacturers, importers and downstream users) to classify substances or mixtures in accordance with Title II of the Regulation before placing them on the market. Under Article 25(3) of GB CLP, dutyholders can include supplemental labelling information, provided that the information does not contradict or cast doubt on the validity of the information specified by those elements or cause confusion to the user.

Can you assure us that the Government will not base its domestic policy on the approach adopted by the EU but will, instead, continue to pursue international-level dialogue in the first instance.

5. The UK will engage with the UN Globally Harmonised System of classification and labelling of chemicals (UN GHS) Sub-Committee's careful consideration of the scientific evidence behind the new EU classifications, which the EU introduced via EU CLP last year. HSE officials will also consider the wider policy context, of any changes agreed at the UN GHS, before adopting any changes in hazard classifications to GB CLP. HSE will continue to actively contribute to the UN GHS Sub-Committee informal working group on "potential hazard issues and their presentation in GHS". This large group, of which the UK is a member, is comprised of delegates including the USA, Canada, EU Member States, China, Japan, International Trade Associations and Non-Governmental Organisations.