



Windsor Framework Democratic Scrutiny Committee

OFFICIAL REPORT (Hansard)

Regulation (EU) 2024/2865 Amending Regulation
(EC) No 1272/2008 on Classification, Labelling and
Packaging of Substances and Mixtures

5 December 2024

NORTHERN IRELAND ASSEMBLY

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Classification, Labelling and Packaging of Substances and Mixtures

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Members present for all or part of the proceedings:

Mr Philip McGuigan (Chairperson)
Mr David Brooks (Deputy Chairperson)
Dr Steve Aiken
Mr Jonathan Buckley
Mr Declan Kearney
Mr Peter Martin
Ms Kate Nicholl
Ms Emma Sheerin
Mr Eóin Tennyson

Witnesses:

Mr Gareth Lyons	Department for the Economy
Mr Mark McGregor	Department for the Economy
Mr Aaron McKendry	Department of Health
Ms Jennifer Stewart	Department of Justice

The Chairperson (Mr McGuigan): I welcome again Mark McGregor, Gareth Lyons, Aaron McKendry and Jennifer Stewart. I hand over to you.

Dr Aiken: Sorry Chair, just before we begin. Have you seen the updated explanatory memorandum (EM)?

Mr Mark McGregor (Department for the Economy): Yes.

Dr Aiken: That is fine.

Mr McGregor: Thank you, Chair. Yes, the EM arrived with us yesterday evening, quite late in the day. Some people here have seen it, and some have not. We have not had time to give it a great deal of consideration, but we will turn to certain elements of it.

I do not propose to go into the classification, labelling and packaging (CLP) provision in great detail: we have discussed it in the previous two meetings. It sets out uniform requirements for suppliers to classify, label and package hazardous chemicals appropriately before placing them on the market.

I turn to the EM. I hope that members have it. As I say, we have only had a brief look at it this morning. There are elements that I want to bring to your attention. The UK Government's assessment of the regulation is paragraphs 21 and 22:

"The UK Government acknowledges the merit of the Regulations' overall aims to improve the identification and classification of hazards, hazard communication"

and that they will

"address the issues of non-compliance, legal gaps and ambiguities.

The UK Government is considering whether to incorporate some of the measures described above into the domestic regime".

That "above" refers to the measures impacting Northern Ireland:

"For example, the introduction of rules pertaining to label formatting and voluntary digital labelling; labelling exemptions for chemicals supplied without packaging or contained in very small packaging; and the requirement to specify more hazard information in advertisements. The UK Government is currently investigating the scientific and technical basis and the wider policy context including developments at UN GHS that may justify the incorporation of similar revision measures into the assimilated CLP Regulation."

That indicates some intention of the UK Government to look at it and consider some aspects of alignment.

I turn to paragraphs 42 to 46, which comment on the consultation and the financial implications. Again, the UK Government say that they will keep that area under review:

"with a view to ensuring the continued free flow of goods across the whole UK Internal Market".

They are also:

"currently considering the amendments described above, with a view to potential changes to the domestic regime - and in some instances may proceed with similar amendments on a UK-wide basis - which will reflect the Government's commitment to protecting the UK Internal Market".

There is a brief comment about HSE's consultation:

"HSE is undertaking informal engagement with key internal and external stakeholders to investigate the scientific and technical basis and the wider policy context that may justify the incorporation of similar revision measures into the assimilated CLP regulation"

that is applicable in GB.

Finally, I want to highlight the part on financial implications. We previously discussed a figure of £88,000 that was in the previous EMs and an extract from a draft EM. That figure has not appeared in this EM, so you should discount it from your considerations. HSE has not stood over that figure and moved it into the full EM.

Under "Financial Implications", the EM states:

"The UK Government is continuing to work to better understand the potential financial impacts",

and that the Government expect

"limited Northern Ireland-specific implications".

It goes on to say:

"There may be certain familiarisation costs that may be incurred by actors in the supply chain ... and by employees who may need to be aware of the new classes at the point of import,

manufacture or formulation. Manufacturers, importers and distributors will have to relabel products for the new formatting standards; and larger companies could have to relabel products quicker than currently to adhere to the six-month deadline when changes in classification introduce new or more severe hazard categories. The impacts of distance-selling measures and conditions for refill and how businesses will choose to respond are still being explored. However some of the costs of the legislative package may be offset to a limited extent by the savings from the simplification of the labelling rules."

The final paragraph notes:

"There may also be some cost reductions for impacted NI-based suppliers. For example, the introduction of additional derogations ... will exempt some suppliers from incurring CLP Regulation compliance costs. Moreover, the broader use of fold-out labels may result in closer regulatory alignment with international chemicals regimes and thus, lead to indirect savings for NI suppliers through the avoidance of relabelling costs."

Those are some of the key points that I have pulled out, having had a very brief time to review the explanatory memorandum. That is the only additional information that we have had since we last spoke. If the Committee has received the trade data from HMRC, it has not been shared with officials yet.

The Chairperson (Mr McGuigan): Mark, thank you. As I said, this is your third time here, so we have had ample opportunity to go over this. Obviously, we have a new EM in front of us. The bottom of paragraph 45 states:

"some of the costs of the legislative package may be offset to a limited extent by the savings from the simplification of the labelling rules".

Will you elaborate a wee bit on that?

Mr McGregor: I will turn to Gareth for that.

Mr Gareth Lyons (Department for the Economy): The option to use fold-out labels and digital labels as part of the new CLP regulation is really for companies that will be delivering products to multiple areas in the EU where different languages are spoken. They can therefore use one label and have fold-out options to cover every nation. That is simpler than having to print a label for each market and will bring down the cost, if you are involved in those markets. The same idea applies to digital labels: instead of having different languages on the label, there will be some kind of QR code that links to a website on which the supplier can put usage information in multiple languages. That will simplify the process for companies supplying to multiple markets.

The Chairperson (Mr McGuigan): Thank you. We have had one consultation response on this, from Fuels UK, which raised the issue of the sale of packaged heating oil directly to consumers. Is that likely to be impacted on by the regulation?

Mr Lyons: I do not believe so. There are changes to refilling in general, but those for fuel are limited. All that it asks for there is that any fuel pump has the relevant warning labels and information on it.

The biggest change is that, if you go to a petrol station and buy fuel to fill a fuel canister, whether that is home heating oil or any other fuel, they will have to provide some kind of label that can be attached to the canister that you bring so that the consumer is aware of what is in that canister and aware of any safety recommendations, usage, etc for that. There are some changes for fuel, but, as far as I am aware, there is nothing that is wildly different.

The Chairperson (Mr McGuigan): Another issue that Fuels UK raised was the reclassification of — I have never read this word before and am not particularly familiar with it — cumene and the possible impact on the sales of aviation gasoline and jet fuels to private pilots. Is that likely to have an impact?

Mr McGregor: That is not one that we have looked at in any detail. We have not engaged with anybody in the aviation industry or those who supply fuel for aircraft.

The Chairperson (Mr McGuigan): Do you mean that you have not looked at it because you do not think that it is an issue or —?

Mr McGregor: No, we have not delved into individual product groups and how they are affected. CLP is a wide regulation that applies to a huge range of substances and mixtures across different regulatory regimes. Many thousands of things are within scope, and we will examine something only if somebody has raised a specific issue.

Mr Lyons: I would need to see the actual question and look at it in detail, but, if it is about reclassification due to the new hazard classes, that bit of the regulation is already in force. That cannot be changed at this time.

The Chairperson (Mr McGuigan): OK. Fair enough.

Dr Aiken: Thanks very much indeed, team. We seem like good friends now. We seem to be talking all the time.

I have a quick one. Paragraph 22 of the EM says:

"The UK Government is considering whether to incorporate some of the measures described".

I always get very nervous when anybody, in a government report, uses the words "some" or "may", which means, "We mightn't" and, "We won't".

My real concern with that is that the regulation is to be introduced over a time frame of between two and five years. That is my understanding of the EU directive. We get various things — bulk fuels and all the other things that are covered by this — from GB because we are part of the supply chain at the moment, but what happens if the GB regulations do not change? I am really worried about that phrase "incorporate some of the measures", because, if there is a disparity, does that mean that those goods will not be able to be used in Northern Ireland?

Mr McGregor: It does not necessarily mean that they will be unable to be used. There are two parallel regulatory regimes, so they will have different compliance aspects for them.

Dr Aiken: That adds cost to the whole process.

Mr McGregor: They may be broadly similar and just have one hazard classification that needs an extra box ticked on the form. It will depend on the individual situation. If it is compliant in GB under its CLP currently, the regulations other than the hazard classes have not diverged greatly. This would be bigger, but the bulk of their compliance would be in place; it would only be the additional measures that they are looking at.

Dr Aiken: The point that was raised by the fuel distributors or whoever it was about the fuel additive that goes into aviation fuel is interesting. Obviously, aviation fuel is the same across the piece, but different additives will have different classifications in different countries based on how they are used. I am being a bit of a spotter here, but this is what happens with additives in aviation fuel. The concern has been raised — it is not just there; it is about other areas — that, if these things are brought in, that would mean that they would not be able to be used here, and we would have to source them from other places, which would potentially mean extra cost.

Mr McGregor: If a current GB supplier declines to comply with the new factors, they would be unable to supply the market, and I assume that they would look at options within the supply chain. The like of aviation fuel is a worldwide market, and the supply chain will be across the EU. There could be a chain that goes from the EU to GB to us, so the compliance will have happened earlier in the chain than the GB stage.

Dr Aiken: We say that, at the moment, there is no divergence because the rules match up across the whole piece, but, obviously, when this comes in, as the rules change, we will be looking at potential divergence.

Mr McGregor: Yes, we are looking at potential divergence.

Dr Aiken: I am not trying to put words into your mouth, but that could happen.

Mr McGregor: There have already been minor incidences of divergence in the CLP regime. When there have been assessments of regulatory management of risk, which is done by HSE, the scientific opinions have differed slightly. There may be one additional hazard class or one that did not make it into GB or was at a lower level. To date, whilst we are aware of those divergences taking place, nobody has raised a supply-chain issue where the market has not adapted to that change.

Dr Aiken: I have one final question, with your indulgence, Chair. The GB regulations are based on the UN convention process — the CHG or whatever it is. I am full of three-letter abbreviations (TLAs) or multiple-letter abbreviations and beyond at the moment. Are the EU regulations following that path?

Mr McGregor: There is the global aspect of the UN globally harmonized system of classification and labelling of chemicals (GHS), and aspects of that are reflected in both regimes. In this instance, particularly around the hazard classes, the EU is moving ahead of the rest of the world.

Dr Aiken: It is moving ahead of —?

Mr McGregor: Yes. It is adding additional risk factors, including carcinogenic, mutagenic, persistent, mobile, very toxic and forever chemicals. Those additional hazard areas are being added —

Dr Aiken: That gets to my point. This is what I was trying to get to: if GB is following the UN convention and the EU is going ahead of the UN convention, that is where the divergence occurs.

Mr McGregor: Yes — an aspect of it. Discussions are already taking place on that at the UN level, with the EU trying to recommend that the rest of the world looks at that. That tends to happen on occasion: the rest of the world will look at it and acknowledge that, because the EU is such a big market, they will comply globally in order to access that main market.

Mr Buckley: Thanks very much for the presentation. Like the Chair, I was a wee bit unaware of what cumene meant. We certainly do not put it in our cars — or maybe we do, and we just do not know.

Following on from our discussions with you in our previous encounters, you have already said that the CLP regulations cover a wide range of chemicals. Jet fuel is one example of how we may not have assessed what the impact would be because the market is so vast. If you are not making a specific query, it is probably hard to gather in all the information.

In our last couple of encounters, we discussed our concerns about the level of stakeholder engagement when it comes to the chemicals industry in particular. Have there been any attempts to ascertain further evidence from those stakeholders about what the potential impact would be, beyond that which the Committee has done in our Citizen Space, where we had just one response? I remember you saying that there were so many significant players and that it was about trying to pull them all together.

Mr Lyons: Yes. The HSE carried out a stakeholder engagement on 8 October and spoke to stakeholders across GB about supply issues to Northern Ireland and what the impact could be on CLP. The HSE has not given us any read-out on what happened at that meeting. It has said only that it has asked the stakeholders to come back before Christmas with any further information. It also wants detail, for example, on the potential costs of changing labels, and it will give us a statement, potentially, in January. That information is not available at this time.

Mr Buckley: That is interesting. That evidence would be absolutely key to my decisions in the Committee, given what the potential impact would be.

Was that stakeholder engagement at the joint consultative working group (JCWG), or was it a subset of that?

Mr Lyons: No, I believe that it was an engagement between the HSE and business directly; it was an internal working group. We were not involved in that at all.

Mr Buckley: OK. Is the HSE aware of the time pressures that the Committee faces in relation to decisions on inquiries?

Mr Lyons: Absolutely.

Mr Buckley: OK. We will wait with interest to see what comes of that. Who comprises the joint consultative working group?

Mr McGregor: I am sorry —?

Mr Buckley: A discussion on the proposed regulations took place with the JCWG subgroup on manufactured goods 12 months ago.

Mr McGregor: Oh, right, yes. That is a subgroup of the Joint Committee, which is one of the structures of the Windsor framework. It brings together at official level members of the UK Government and the European Commission to discuss emerging areas of the Windsor framework. It allows mainly GB/UK to raise issues or queries around proposals such as application to Northern Ireland and other queries that those officials may have around future proposals. Those are official-level discussions where we share information.

Mr Buckley: Were there specific discussions about this regulation at that committee? Did the UK Government indicate any impact that there would be on Northern Ireland at this stage?

Mr McGregor: The discussion on it would have been that it was applicable under the Windsor framework and there would be a notification in the future, in line with the notification procedure. There was no detailed discussion on impacts, but the EU published its impact assessment, and we have provided that in the pack.

Mr Buckley: Essentially, then, discussions at that group were higher-level and more about whether the regulation applies or does not apply, as opposed to the details.

Mr McGregor: Yes, it is for officials to prepare and have early warning of what is coming down the track and if it is likely that notification will be required.

Mr Buckley: I am stepping back to the consultation with the stakeholders in GB, about which it was good to hear. Do we know how many that pertains to?

Mr Lyons: No, not that conversation. We know how many replied to the online consultation that was carried out. I think that it was around 400, so it was a good response rate. The data on that has not been published. It is available, but we want to spend more time working on the data and analysing it before publishing.

Mr Buckley: Thank you very much.

Mr Martin: I have a simple question relating to paragraph 10 of the Department's document; it relates to something that Gareth mentioned. Does petrol does fall into the assessment of the new CLP regulations?

Mr Lyons: It does.

Mr Martin: Correct me if I am wrong about this. If your car runs out of petrol, you stop, you get your petrol canister out of the back of the car, you go to the garage, you go to the pump and you pump four litres of petrol into your canister. Sometimes, my wife phones me and says, "Will you go and get four litres of petrol?". That has happened. Under the directives, the garage would need to provide you with a sticker for that canister to say that it is petrol.

Mr Lyons: Yes, there has to be the option for the consumer to get that.

Mr Martin: Is it mandatory for them to give you a sticker for your canister, once you have got your fuel?

Mr Lyons: No, there is a difference. There are refilling station regulations. If you are in a shop buying detergent, for example, there must be a member of staff available to do that for you. That member of staff has to be there. That is not the case for fuel at a petrol pump, but there must be the option for the consumer to get a label if they wish to do so.

Mr McGregor: That could be at the till or at the place where you get rubber gloves and that kind of thing. You can take a sticker and stick it on the outside of the canister.

Mr Martin: Got it. So, it is an optional thing, rather than somebody saying, "There's some petrol".

Mr Lyons: Optional — *[Inaudible.]*

Mr McGregor: It is compulsory to provide the label; it is optional, in that instance, for the consumer to take the label and stick it on.

Mr Lyons: When I first read it, I had concerns about unmanned petrol stations, of which there are quite a few around Northern Ireland. It would be a massive concern to have to employ staff to stand there and hand out stickers. There are derogations; that is not required.

Mr Martin: That is where I was going. I was wondering if it was mandatory to be given a sticker that said that it was petrol. Apart from the ridiculousness of it all, you would know that you had bought petrol, because you will have just filled your canister with petrol. I was concerned about what the forward impact would be on unmanned petrol stations, for example, if it was going to be mandatory for them to have someone there to stick labels on petrol canisters. That is it from me, Chair.

Ms Nicholl: It is nice to see everyone again. I have a question to follow on from the last time that I saw you. Do you have an update on the chemical stakeholders forum? You said that you were looking into having that established.

Mr McGregor: No, there is not, unfortunately — actually, not unfortunately. As you will understand, our activity has been focused on this Committee and other work around it. We have put a deadline into our branch plans. We are looking to deliver that forum in the first quarter of 2025. Obviously, we will have to consult the other Departments and have the Minister agree terms of reference and all that kind of thing. We are progressing, but, with current demands, we are not expecting to have anything established before the first quarter of next year.

Other than the CLP regulations, there is not a lot of chemicals legislation in the pipeline. We are waiting for the next European Commission work programme to come out. It will have more chemicals legislation in it. At present, there is no other stuff on which we need to get views from business immediately, so we think that we could manage that little bit of delay in getting that established.

Mr Lyons: Yes, we have had discussions with other Departments about it. The initial discussions were positive. It looks like it should be doable, going forward.

Ms Nicholl: OK, thank you.

Mr Brooks: My question relates to what you said about the aviation fuel issue: that you have not done a deep dive yet and that the chemicals industry is so vast that there are so many areas that you could not really do that. I go back to a point made in the previous session: in your opinion, are you not doing that largely because of a capacity issue? Do we do not have the capacity to do everything, or is it that, in terms of a risk assessment, it is considered exceptionally low-risk? Ideally, would you or the Executive at large do more proactive work?

It comes back to the concern that some of the stakeholders that we will consider in the Committee are not likely to have the wherewithal to engage — they may not even consider engaging — with the Committee or give things to the Committee when we are looking at EU regulations coming down, particularly for SMEs. What is the risk, and should we do more if we had the capacity to do more?

Mr McGregor: Really, in this instance, the breadth of the regulation is so wide, and it sits over other regimes as well. This is providing hazard categories, and the substance or mixture may go into another regulatory regime. It may be a plant protection product, and it may be regulated under legislation pertaining to the registration, evaluation, authorisation and restriction of chemicals (REACH). There could be a wide range of areas that it falls into. We are not talking about just hundreds of products; we are talking about tens of thousands.

Mr Brooks: I guess that there would be options, would there not? As always, there is the "Do nothing" or the "Do everything" approach, and then there is somewhere in between. Do you think that, ideally,

we, as an Executive, not just your Department, should look to do more proactive work in engaging stakeholders? Would you do that, ideally, or is it a case of considering it as very low-risk?

Mr McGregor: I cannot speak for other Departments in the Executive on what they should do. For our part, we should have done more. It would have been better, had we had more done in this instance. It was unfortunate that the time frames meant that we did not discover that there was not going to be the engagement that we wanted until it was too late in the process. We are working for that in the future. That is the key aim of that stakeholder forum, and we will look at a wide range of industry bodies in that.

Previously, on exit and the no-deal preparations, we engaged with industry and what businesses should be getting involved in. There was a little more engagement on that, and it gave us an idea of just how wide and diverse the market is and the impact due to our having so many SMEs and microbusinesses. We have had huge interest from people who make scented candles because the scents are generally brought in. That was a group that engaged earlier in the process; they did not engage this time. That is what we are working at. We realise that there is a deficit in the engagement of business in this area and our ability to get them engaged. Because of the breadth and the impacts, we are working towards that, but we need a wide range of stakeholders to represent all areas.

Mr Brooks: Thank you for your commentary on that. This is not about trying to pin down or get at any Department on this. This is about understanding that we all have a role to play and about making sure that Northern Ireland is appropriately protected from any negative consequences from things that are coming along. It is all-important that we understand that risk and whether we need to look at how the work is resourced and what emphasis is put on it by the Executive at large. It is something that we need to do. What you have said validates some of the concerns that we have been raising, so thank you very much.

On some of the other issues, I have asked questions in previous sessions and am happy with that. Thank you very much.

The Chairperson (Mr McGuigan): OK. We have a raft of information to go through when we start to look at our report, so thank you very much Mark, Gareth, Aaron, and Jennifer, for your third attempt.

Dr Aiken: I just have a quick one, Chair, just while they are here. The HSE working group, you said, had 400 stakeholders or something like that.

Mr McGregor: Yes. That was GB contacts. That is where we have a real problem. We have no in with the industry in GB, so they went out to their general contacts in GB.

Mr Lyons: To clarify, the 400 stakeholders were the people who answered in the consultation. There was then a separate group, where they spoke to businesses in person at a meeting. They spoke to them separately.

Dr Aiken: Just through the Chair, the HSE —?

The Chairperson (Mr McGuigan): We are not going to have it in time.

Dr Aiken: No, but they might have minutes of the meeting that they might share with us.

Mr Lyons: They told me that they will not share the minutes until January. We can certainly ask again, but that is what I have been told.

The Chairperson (Mr McGuigan): The time frame on that—

Dr Aiken: Maybe we could write to them and say, "We have a real problem with the timescales". If the HSE says that it will not provide the minutes until January, they will be done before Christmas anyway because it will shut down just before Christmas and the minutes will be done beforehand. Maybe we should write to them, Chair.

Mr Brooks: Even if they could be viewed in a private session.

The Chairperson (Mr McGuigan): I will allow the witnesses to leave. We will have a conversation among ourselves.

Dr Aiken: Thanks everybody. See you again soon.