

EXPLANATORY MEMORANDUM TO

THE CLASSIFICATION, LABELLING AND PACKAGING OF CHEMICALS (AMENDMENTS TO SECONDARY LEGISLATION) REGULATIONS 2015

2015 No. 21

1. This Explanatory Memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The EU direct acting Regulation (EC) No [1272/2008](#) on classification, labelling and packaging of substances and mixtures (the CLP Regulation) introduces the new EU classification system for hazardous chemicals. [Directive 2014/27/EU](#)¹ amends 5 health and safety Directives to align them with the CLP Regulation. The Classification, Labelling and Packaging of Chemicals (Amendments to Secondary Legislation) Regulations 2015 (the “Regulations”) transpose Directive 2014/27/EU by amending the relevant domestic legislation. The 5 Directives amended by Directive 2014/27/EU are:

[The Safety Signs at Work Directive \(92/58/EEC\)](#)
[The Chemical Agents Directive \(98/24/EC\)](#)
[The Carcinogens and Mutagens Directive \(2004/37/EC\)](#)
[The Pregnant Workers Directive \(92/85/EEC\)](#)
[The Young Persons at Work Directive \(94/33/EC\)](#)
 - 2.2 The Regulations also make amendments to domestic health and safety and related regulations to replace references to the current classification system, contained in the [Chemicals \(Hazard Information and Packaging for Supply\) Regulations 2009](#) (CHIP) to be revoked, with references to the CLP regulations.
 - 2.3 The instrument amends the following legislation:
 - [The Health and Safety \(Safety Signs and Signals\) Regulations 1996 \(SI 1996/341\)](#)
 - [The Pipelines Safety Regulations 1996 \(SI 1996/825\)](#)
 - [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) Regulations 1997 \(SI 1997/2962\)](#)
 - [The Health and Safety \(Enforcing Authority\) Regulations 1998 \(SI 1998/494\)](#)
 - [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Employment of Young Persons\) Regulations 1998 \(SI 1998/2411\)](#)

¹ Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures.

- [The Management of Health and Safety at Work Regulations 1999 \(SI 1999/3242\)](#)
- [The Merchant Shipping and Fishing Vessels \(Safety Signs and Signals\) Regulations 2001 \(SI 2001/3444\)](#)
- [The Health and Safety at Work etc. Act 1974 \(Application to Environmentally Hazardous Substances\) Regulations 2002 \(SI 2002/282\)](#)
- [The Control of Lead at Work Regulations 2002 \(SI 2002/2676\)](#)
- [The Control of Substances Hazardous to Health Regulations 2002 \(SI 2002/2677\)](#)
- [The Dangerous Substances and Explosive Atmospheres Regulations 2002 \(SI 2002/2776\)](#)
- [The Regulatory Reform \(Fire Safety\) Order 2005 \(SI 2005/1541\)](#)
- [The Fire Safety \(Scotland\) Regulations 2006 \(SSI 2006/456\)](#)
- [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Carcinogens and Mutagens\) Regulations 2007 \(SI 2007/3100\)](#)
- [The Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007 \(SI 2007/3544\)](#)
- [The REACH Enforcement Regulations 2008 \(SI 2008/2852\)](#)
- [The Co-ordination of Regulatory Enforcement \(Regulatory Functions in Scotland and Northern Ireland\) Order 2009 \(SI 2009/669\)](#)
- [The Merchant Shipping and Fishing Vessels \(Health and Safety at Work\) \(Chemical Agents\) Regulations 2010 \(SI 2010/330\)](#)
- [The Control of Asbestos Regulations 2012 \(SI 2012/632\)](#)
- [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations 2013 \(SI 2013/1506\)](#)

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP) has been progressively implemented since 2009 and comes fully into force on 1 June 2015. It replaces the current EU classification system for hazardous chemicals in the [Dangerous Substances Directive](#) (DSD) and [Dangerous Preparations Directive](#) (DPD), which currently deal with the classification, hazard communication and packaging of chemicals in the EU. These Directives are implemented in the UK by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP). The CHIP Regulations are revoked by the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013, the revocations first taking effect on 1 June 2015.

4.2 The CLP Regulation implements in the EU the United Nations Globally Harmonised System on the classification and labelling of chemicals and is primarily about ensuring free trade as it introduces a classification system that is recognised internationally and thus removes barriers to trade that currently exist due to the different systems being used worldwide. Chemicals are classified and labelled so that those using them have information about their hazardous effects to enable them to take suitable precautions to protect both people and the environment.

4.3 Amending Directive 2014/27/EU updates references used to define the scope of application of the Directives and the details of the warning signs and labels to be used for hazardous chemicals. Amending Directive 2014/27/EU is transposed by the Regulations, which make amendments to domestic health and safety and merchant shipping regulations. The Scrutiny History and Transposition Note are in Appendices 1 and 2. Amendments are also required to domestic health and safety and related legislation to replace references to the current classification scheme, which will become obsolete with the revocation of the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP) Regulations in June 2015, with references to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP).

4.4 The Regulations use the enabling power in paragraph 1A of Schedule 2 to the [European Communities Act 1972](#) to insert ambulatory references. These ambulatory references (which allow updates to the underlying EC Regulation to have automatic effect) are limited and relate only to specified articles and annexes in the CLP Regulation where technical updates are frequently made to reflect technical progress.

5. Territorial Extent and Application

5.1 The Regulations make amendments to statutory instruments with different territorial extent; UK, GB, England and Wales and Scotland. None of the amendments made change the territorial extent of the relevant SI.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The policy objective is to transpose Directive 2014/27/EU and align domestic regulations with the new EU classification system contained in the CLP Regulation. Clear alignment of relevant domestic regulations with CLP ensures that the regulations remain workable and avoids confusion.

7.2 The amendments in the relevant regulations which transpose the amending Directive in health and safety and merchant shipping regulations, ensure that the original policy intention of the regulations in relation to the protection of workers from hazardous substances can continue to be met when CHIP is revoked. The Regulations also make consequential amendments to other domestic health and safety regulations and references in related regulations to ensure that these regulations maintain an equivalent scope of application when CHIP is revoked. This will also ensure these regulations continue to fulfil their original policy intention, providing protection for workers and the wider public by appropriate means including; enforcement, fire safety and the safety of pipelines.

7.3 Amendments are also made to preserve transitional arrangements required as part of the revocation process of CHIP made under the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013 are preserved. There are also minor amendments to the REACH Enforcement Regulations 2008, to update references to the [Docks Regulations 1988](#).

Consolidation

7.4 The current European Commission review of all EU Occupational Safety and Health Directives, including those amended by Directive 2014/27/EU, is likely to result in legislative proposals from the Commission in 2016 to change the existing Directives. Once the Commission tables any proposals, we will be in a better position to consider consolidation.

8. Consultation outcome

8.1 The consultation ran for 8 weeks, the consultation document [CD269](#) was made available on the HSE website and stakeholders were alerted to its publication. There were 32 respondents, the majority of whom demonstrated in their answers they were well informed regarding the Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP) and the domestic regulations being amended. The introduction of the CLP Regulation is widely supported by business and comments received as part of the consultation welcomed the proposals to ensure clear alignment of relevant domestic regulations with the CLP Regulation. The proposed amendments were strongly supported as being sufficient to implement Directive 2014/27/EU, with over 90% of respondents in agreement.

8.2 No changes were made to the proposed Regulations as a result of the consultation, as there were no responses that indicated the proposals did not transpose the Directive in an appropriate way. The consultation successfully tested and confirmed a number of assumptions and estimates made in the impact assessment. A number of revisions to the impact assessment were made on the basis of information received during the consultation including an increase in the familiarisation costs associated with signage changes and wage estimates, and the inclusion of sign replacement due to wear and tear. HSE received a number of useful comments regarding clarification of signage changes which will be addressed in supporting guidance. An analysis of the responses is available on the [HSE website](#).

9. Guidance

9.1 HSE's website will be updated to ensure the information on hazardous substance signage is up-to-date. Guidance explaining the changes will be published prior to the Regulations coming into force in 2015.

10. Impact

10.1 The impact on business and civil society is estimated to be a total one-off cost of £4.5 million, resulting from familiarisation and changes to some of the signs required for hazardous substances. To mitigate the impact of these changes HSE will provide guidance to reassure businesses that a risk-based and proportionate enforcement approach will be taken in relation to any failure to display the correct sign after the required date. The Impact Assessment describes the benefits to business of ensuring that the law remains workable so as to avoid causing confusion and the resulting costs and economic efficiency losses. While it has not been possible to quantify these benefits it is expected that the costs of inconsistent and confusing legislation would be considerable.

10.2 The impact on the public sector is estimated to be a total one off-cost of £1.2 million.

10.3 An Impact Assessment will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11 Regulating small business

11.1 The legislation applies to small businesses. The limited changes to signs will affect some small businesses who use and store particular hazardous substances. The number of affected signs and the costs of replacing them are expected to correlate closely with business size, meaning that small businesses should not be disproportionately affected.

11.2 To minimise the impact of the requirements on small business the approach taken is to provide guidance to reassure businesses that a risk-based and proportionate enforcement approach will be taken in relation to any failure to display the correct sign after the required date. Micro units (0 – 9 employees) were excluded from the impact assessment, as they are likely to be small, less complex premises and processes so are more likely to rely on the labelling provided by the supplier on packaging to provide the necessary warning information, rather than signage. Organisations that represent small businesses were consulted and the majority of respondents supported this assumption.

12 Monitoring & review

12.1 The parts of the Regulations that transpose the Directive will be reviewed in line with Government policy, ie before the fifth anniversary of the Regulations. The first report of this review will be published before 6 April 2020.

13. Contact

13.1 Sarah Mallagh at the Health and Safety Executive; Tel: 0151 951 4560 or email: sarah.mallagh@hse.gsi.gov.uk can answer any queries regarding the instrument.

Scrutiny History

1 Directive 2014/27/EU was the subject of Commission proposals 7036/13, COM (2013) 102: Proposal for a Directive of the European Parliament and of the Council amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC and Directive 2004/307/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures. COM (2013) 102 was the subject of a Government explanatory memorandum submitted to parliament dated 15 March 2013.

2 Lords EU Scrutiny Committee: the proposal was cleared at the Committee's meeting on [10 June 2013](#). Commons EU Scrutiny Committee: the proposal was cleared at the Committee's session on [24th April 2013](#).

TRANSPOSITION NOTE

Transposition note for the implementation of Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (“the Directive”).

The Classification, Labelling and Packaging of Chemicals (Amendments to Secondary Legislation) Regulations 2015 transpose the Directive in accordance with the following table.

Article	Purpose	Implementation	Responsibility
Article 1	Amendments to Directive 92/58/EEC	Regulations 3 and 9	Secretary of State
Article 2	Amendments to Directive 92/85/EEC	Regulations 5 and 8	Secretary of State
Article 3	Amendments to Directive 94/33/EC	Regulations 7 and 8	Secretary of State
Article 4	Amendments to Directive 98/24/EC	Regulations 12, 13 and 20	Secretary of State
Article 5	Amendments to Directive 2004/37/EC	Regulations 12 and 16	Secretary of State
Article 6	Transposition	Does not require transposition	
Article 7	Entry into force and application	Does not require transposition	
Article 8	Addressees	Does not require transposition	