

Health and Safety Executive Board		Paper No: HSE/08/78	
Meeting Date:	26 November 2008	FOI Status:	Partially closed
Type of paper:	Above-the-line	Exemptions:	Section 22 – Annex A Section 35 – Paragraphs 4(b) and (c), 13-14, 22- 25, 26(b) and Annexes B and C
Trim reference:			
CONSULTATION DOCUMENT ON THE PROPOSED CHEMICALS (HAZARD INFORMATION AND PACKAGING FOR SUPPLY) REGULATIONS 2009 AND CONSIDERATION OF THE COMPETENT AUTHORITY FOR THE EUROPEAN CLASSIFICATION, LABELLING AND PACKAGING OF SUBSTANCES AND MIXTURES REGULATION			

Purpose of this paper

1. To seek Board agreement to the publication of the Consultative Document on amendments to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (CHIP), and to initiate the process to establish the Competent Authority under the European Classification, Labelling and Packaging of Substances and Mixtures Regulation (CLP Regulation).

Timing

2. Urgent. Clearance required on 26 November. The CLP Regulation is expected to be published in the Official Journal in November or December 2008, entering into legal effect 20 days later. We need to avoid conflict in regulations at both EU and national level. In order to accommodate these legal changes at the next appropriate common commencement date – 6 April 2009 – we need to consult reasonably quickly.
3. On 12 August, on behalf of the Board the Chair approved a compressed consultation period of 8 weeks to speed implementation of these changes.

Recommendation

4. That the Board:
 - a) approves the publication of the Consultative Document on the proposed CHIP Regulations at Annex A. (Annex C provides the detailed Instructions to the Legal Adviser's Office on drafting CHIP 4);
 - b) → ←

Background

5. CHIP is a key part of Great Britain's chemical regime. It requires suppliers of chemicals to give health, safety and environmental information on dangerous chemicals by means of labels on packaging and safety data sheets. This enables users to take appropriate precautions.
6. CHIP implements several Single Market Directives; the Dangerous Substances Directive (DSD); the Dangerous Preparations Directive (DPD); and the Safety Data Sheets Directive (SDSD) the latter now repealed by REACH. HSE leads on negotiations related to these Directives and any proposed Adaptations to Technical Progress (ATPs).

7. These Directives will be replaced by the forthcoming European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures (CLP Regulation), through which the European Union will adopt the UN's Globally harmonised System (GHS). Papers MISC/08/11, HSC/MISC/07/10, HSC/07/58 and HSC/07/08 have set out the detail of GHS, the European Commission's proposed regulation, the UK's negotiating strategy and, most recently the outcome of Member State negotiations and UK consultation.
8. On 3 September, the European Parliament voted to secure a First Reading Deal with the Council on the CLP Regulation to adopt the GHS in EU Member States. We anticipate that CLP Regulation will be published in the Official Journal in November or December, and will come into force 20 days after publication.
9. Directive 121/2006 is essentially 'tidying up' legislation consequent to REACH. The substantial provisions will be implemented by Defra, which has the policy lead, in its SI providing national enforcement measures for REACH. However, other aspects relating to classification and labelling are sensibly taken as amendments to the administrative provisions that sit alongside CHIP (ie the Approved Classification and Labelling Guide). Although these are no more than changes of references, the automatic early stage infraction process within the European Commission has resulted in reference to 121/2006 in a recent Article 226 letter. The Directive should have been implemented by 31 May 2008.

Argument

CHIP amendments driven by the CLP Regulation

10. Most of the proposed amendments to CHIP reflect the advent of the CLP Regulation at EU level. There are three main changes.
11. Firstly, the proposed CHIP amendments allow duty holders to meet the requirements of the CLP Regulation instead of CHIP, in line with the transition arrangements in the EC Regulation. These arrangements comprise a two-stage process whereby substances have to be reclassified and relabelled by 1 December 2010, and mixtures (previously called preparations) by 1 June 2015. As the CLP Regulation will be adapted to technical progress by means of Commission regulations – the first adaptation is already planned for June 2009 – the references in CHIP to the CLP Regulation have been 'future proofed' by using an ambulatory reference, ie by referring to the CLP Regulation "as amended from time to time". The substantive requirements of CHIP are switched-off from 1 June 2015.
12. Secondly, the proposed CHIP amendments provide for enforcement of the CLP Regulation. This is straightforward as the scope of the CLP Regulation is essentially the same as CHIP and the same enforcing authorities (mainly HSE and LAs) continue to do the same as they do now under CHIP. No changes to inspectors' warrants will be needed.
 - a) → ←
13. Finally, changes to the classification system inevitably trigger changes to downstream legislation on the control of chemicals. Some of these changes are being made at EU level, as alongside the CLP Regulation are amendments to the Detergents Regulation and to certain Directives on cosmetics, toys, volatile organic compounds, end-of-life vehicles, waste electrical and electronic equipment, and paints and varnishes. The changes are minor ones of terminology and reference.

We have agreed with OGDs that these should be taken forward by the departments concerned, mainly BERR and Defra. However, we can expect the Commission to bring forward other changes, including changes to HSE-led legislation such as the Chemicals Agent Directive and the Seveso II Directive (COSHH and COMAH in our national legislation). These aspects are being monitored and, in the case of Seveso II, the relevant HSE staff are already actively engaged in discussions at EU level.

Other CHIP Amendments

14. Two other changes to CHIP are proposed in addition to those required by the advent of the CLP Regulation.
15. The first is to complete the 'tidying up' required by Directive 121/2006. This mainly involves altering references to the library of test methods following their transfer from Annex V of the Dangerous Substances Directive (now deleted) to a new Commission Regulation (No. 440/2008) made under Article 13(3) of REACH. The test methods themselves are unchanged. In CHIP, the test methods are referenced in the Approved Classification and Labelling Guide (ACLG). The appropriate changes will be made and the ACLG will be re-issued. Although these changes are essentially editorial, it is important that they are made promptly as the Commission's automatic process that initiates possible infraction has started.
16. The second proposed change is to discontinue the Approved Supply List (ASL), which lists in CHIP the harmonised classifications and labels for around 7000 substances. The list is updated at intervals of approximately 18 months to 2 years, typically by the addition of several hundred new entries and the revision of a similar number. The list, in both the existing EU classification system and in the new GHS-based system, will be incorporated in the CLP Regulation. It is also available in on-line, searchable databases which in future will be maintained by the European Chemicals Agency (ECHA). We propose, therefore, to take this opportunity to discontinue publication and periodic reissue of the ASL. We consulted publicly on this proposals in a CD issued earlier this year on the previous amendments of CHIP to implement the 2nd ATP of the Dangerous Preparations Directive. The response was broadly favourable.

Consultation

17. Through the CLP Regulation consultation process, we have established an industry wide network of contacts, in addition to the specialists on the ACTS Standing Committee on Hazard Information and Packaging (SCHIP), OGDs and agencies and the Devolved Administrations. We will consult these contacts again in addition to the 1500 subscribers to HSE's chemicals web pages.

Presentation

18. The HSE web site will carry an announcement about the proposed CHIP regulations and the launch of the consultation process once publication of the CD has been approved. We will also alert our industry and OGD networks. The CD will be free of charge and available for download and response on the HSE web site. Printed copies will be available on request.

Costs and Benefits

19. A draft Summary: Intervention and Options form has been completed for the proposed CHIP regulations. As the regulations do not introduce any additional

duties or burdens on either duty-holders or regulators, the impact costs are deemed negligible. The costs and benefits of the CLP Regulation were fully evaluated and can be found at: <http://www.hse.gov.uk/ria/chemical/eughhs.pdf>

Financial/Resource Implications for HSE

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Action

24. That the Board:

- a) agrees publication of the Consultative Document at Annex A and notes the Chair's agreement to a compressed consultation period; and
- b) → ←

Paper Clearance

27. This paper was produced by Jan Harris and Robin Foster, and was cleared by the SMT.

Board paper HSE/08/78 Annex B

→CLOSED

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