Net Zero, Energy and Transport Committee
Tuesday 10 February 2026
6th Meeting, 2026 (Session 6)

UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI):

    - The Chemicals (Health and Safety) (Amendment, Consequential and Transitional Provision) Regulations 2026

2. The process for how the Scottish Parliament considers consent notifications is set out in the SI Protocol. See **Annexe A** for further details.

The Chemicals (Health and Safety) (Amendment, Consequential and Transitional Provision) Regulations 2026

3. On 12 January, the Cabinet Secretary for Climate Action and Energy wrote to the Committee to give notice that the Scottish Government proposed to consent to this SI. Her letter is in **Annexe B,** and the formal SI notification is in **Annexe C**. The notification sets out that the UK Government intends to lay the SI on 24 February 2026.

4. The Committee has been asked to respond by 12 February.

5. The Committee received written evidence on the proposed SI from:

    - Fidra

6. These Regulations are made under section 14 (power to revoke or replace) and section 20 (power to make provision for different purposes or areas, and to make supplementary etc provision) of the Retained EU Law (Revocation and Reform) Act 2023.

7. The instrument amends the three following pieces of assimilated law that relate to chemicals safety:

    - Regulation (EC) No 1272/2008 of the European Parliament and of the Council 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 (GB Classification Labelling and Packaging Regulation (GP CLP))
- Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (GB Biocidal Products Regulation (GB BPR))
- Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast) (GB Prior Informed Consent GB PIC))

8. The notification summary sets out the following changes proposed through this SI.

GB Classification Labelling and Packaging Regulation (GP CLP)

9. This SI amends GB CLP in three ways:

- Consolidation of the process for recommending mandatory classifications for chemicals, removing the automatic link that obliges the Health and Safety Executive (HSE) to consider EU classification opinions and form its own opinion on these. This removes the requirement for the HSE to look at every new EU classification proposal and decide, within a fixed time, whether it should be adopted. The notification states that the changes should increase and speed up EU alignment if implemented as intended in the HSE work plan. The HSE will have a new obligation to compile and keep updated a work plan of mandatory classification proposals showing which proposals it will assess and will be obliged to consult the Devolved Governments in producing, reviewing and amending this work plan. This plan can include ‘fast-track proposals’ from jurisdictions (including the EU) that use the same UN classification system and follow transparent processes.
- Removal of the obligation for GB companies to notify the HSE of the self-classifications they use for the chemicals they supply, and the obligation for HSE to host a database that makes these notified self-classifications public. Companies are still obliged, under parallel regulation (UK REACH, GB BPR and GB Plant Protection Products Regulations), to self-classify and label the chemicals they supply and apply mandatory classifications and labelling where those apply. Although they will no longer need to report those classifications to the HSE, the same information will be available in the supply chain through labelling. The summary notification states that the equivalent EU database is available to all and is commonly used by chemical users outside the EU already.
- Removal of a duplicative part of the Devolved Government consent procedure for mandatory classification decisions. Currently, the HSE must send its recommendations to the Devolved Government Ministers before the Secretary of State seeks consent. This first step will be removed as the same information is shared at the consent making stage of the process. Technical guidance notes for mandatory classifications will be moved from the annex of the GB CLP

Regulation to the HSE's website. This avoids needing a new statutory instrument every time the notes require updating.

GB Biocidal Products Regulation (GB BPR)

10. The Great Britain Biocidal Products Regulation ((EU) No 528/2012) controls how biocidal products such as insecticides, rodenticides and disinfectants are sold and used to control harmful organisms. These products, and the active substances in them, are subject to authorisation and approval for use following an application. The application must prove that the substance can be used safely without detriment to 'non-target organisms' or people's health. Each active substance is approved for specific 'product types' and every approval has an expiry date. Once that date passes, the substance and any product containing it can no longer be sold unless the approval is renewed.

11. This SI amends GB BPR in three ways, as follows:

- Postponement of expiry dates that fall between 23 June 2026 and 30 January 2031 for all biocidal 'active substance/product type combinations'. These approvals will not expire until 31 January 2031, which means that all products on the GB market that rely on these active substances with in-scope uses can remain on the GB market until that date. The expiry dates for 173 active substances fall between 23 June 2026 and 30 July 2031. The summary notification states this is necessary to allow the HSE to develop a longer-term solution to deal with its backlog of evaluations of applications under the regulation. Applications are made by GB-businesses wishing to (continue to) market active substances and the biocidal products that contain them, and these must be evaluated for time-limited approval before they can be marketed (or before an existing approval can be renewed).
- Amendment of the conditions for which an emergency permit can be granted for the use of an unauthorised biocidal product. The summary notification states this is needed for ongoing uses like drinking water purification to prevent repeated renewals of an emergency permit and to incentivise industry to submit applications for authorisation of such products under the normal procedure. Extensions to emergency permits will continue to require a decision by the Secretary of State or Devolved Authority and can be cancelled at any time if they are no longer deemed necessary, an application for authorisation is rejected, or there is a decision not to authorise the product.
- Amendment of Article 60(2) on data protection rules that apply to new and existing active substances. This amendment corrects an error that was transposed from the EU GBR through EU Exit SIs.

GB Prior Informed Consent (GB PIC)

12. The Great Britain Prior Informed Consent Regulation ((EU) No 649/2012) implements the UK's obligations as a party to the international Rotterdam Convention on the Prior Informed Consent Procedure for Certain Chemicals and Pesticides in International Trade. It identifies a list of highly hazardous chemicals agreed for listing under the Convention or subject to control or ban under assimilated Regulations and places obligations with respect to the export and import of these chemicals.

13. This SI amends GB PIC in four ways, as follows (None of these changes affect the UK's compliance with the Rotterdam Convention):

- Removal of an additional obligation required prior to the export of some hazardous chemicals, so that the same approach can be used for all hazardous chemicals listed under the regulation when it comes to export from GB. This brings these chemicals into line with the rules already used for all other chemicals listed under GB PIC.
- Removal of a redundant customs requirement for GB-based companies when exporting small amounts of GB PIC-relevant chemicals. In cases of export not covered by the main requirements of GB PIC (for example, small quantities of relevant chemicals being used for research and development), GB-based exporters currently have to obtain a special reference identification number that must be included in their export declaration. This is not a requirement of the Rotterdam Convention and has never been used by customs authorities in GB. This SI proposes removing the requirement.
- Removal of redundant part of a requirement to annually review GB PIC listed chemicals, where this part refers to chemicals agreed and listed under other international conventions. Currently, the list of chemicals GB PIC applies to is reviewed every year. Two parts of the list relate to chemicals that are banned from export, including those controlled under the Stockholm Convention on Persistent Organic Pollutants. The SI removes the annual review for these two parts and ensures that GB PIC is updated at the same time that changes are made to listings under GB legislation on Persistent Organic Pollutants following changes to the Stockholm Convention.
- Changing responsibility for updating the GB PIC chemicals list from the Secretary of State to the Health and Safety Executive. This change will mean updates resulting from agreements under the Rotterdam Convention can be made more quickly.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

14. The notification says that Scottish Ministers are content to consent to the SI because overall it should maintain or increase alignment with the EU on chemical classifications over the current situation, while the other changes that propose

reducing alignment on process should not adversely affect outcomes in terms of protections for people and the environment, should support GB-based business, and are necessary changes to support the functioning of the regimes in a UK-only setting.

15. The notification also says that Scottish Ministers are content to give consent to the SI on the basis that the amendments it proposes will increase and speed up EU alignment, especially on GB CLP classifications under the proposed "fast track proposals" procedure. The amendments that are proposed relate to both reserved and devolved competence, but there would not be a meaningful way in which any of the amendments could be progressed via a Scottish Statutory Instrument.

16. There is no statutory requirement on the UK Ministers to seek the consent of (or consult) Scottish Ministers before using this power, so as a matter of law, UK Ministers could go ahead regardless of whether the Scottish Ministers or Scottish Parliament agree. However, the UK Government has made a political commitment to the Scottish Government that it "will seek agreement on REUL Act Statutory Instruments including devolved provision" (as reported in a Third Bi-annual Scottish Government REUL Act Update), 7 February 2025".

Next steps

17. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.

18. If the Committee is not content with the proposal, it should include in its letter to the Scottish Government one of the following recommendations:

- That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution

- That the Scottish Government should not consent to the provision being made in a UK SI laid solely in the UK Parliament and should instead request that the provision be included in a UK SI laid in both Parliaments under the joint procedure.

- That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

Clerks to the Committee
February 2026

Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.

2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.

3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.

4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**

5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.

6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—

   - Agree. If so, the Scottish Ministers would then withhold their consent.
   - Not agree. If so, the Parliament will debate the issue.

7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UK SI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

Annexe B: Correspondence from the Cabinet Secretary for Climate Action and Energy

Dear Edward,

THE CHEMICALS (HEALTH AND SAFETY) (AMENDMENT, CONSEQUENTIAL AND TRANSITIONAL PROVISION) REGULATIONS 2026

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

This SI amends three Regulations in the area of chemicals safety. The attached notification details the changes the SI proposes, and lays out the reasons why I am content on behalf of Scottish Ministers to consent to it.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 12 February 2026.

Yours sincerely,

GILLIAN MARTIN

Annexe C: Notification to the Scottish Parliament

Name of the SI(s) (if known) or a title describing the policy area

The Chemicals (Health and Safety) (Amendment, Consequential and Transitional Provision) Regulations 2026

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI (including reserved provision)

The Chemicals (Health and Safety) (Amendment, Consequential and Transitional Provision) Regulations 2026 make changes to three pieces of assimilated law (the law formerly known as retained EU law) that relate to chemicals safety using powers contained in sections 14(1) to (3) and (4)(b) and (e) and 20(1) of the Retained EU Law (Revocation and Reform) Act 2023.

This Statutory Instrument (SI) amends:

- Regulation (EC) No 1272/2008 of the European Parliament and of the Council 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 (GB Classification Labelling and Packaging Regulation ("**GP CLP"**);
- Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (GB Biocidal Products Regulation ("**GB BPR"**); and
- Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast) (GB Prior Informed Consent; "**GB PIC"**)

These three chemicals safety Regulations apply to areas of reserved and devolved competence, including protection of the environment and public health. These Regulations confer various decision-making powers on the Secretary of State which can only be exercised with the consent of Devolved Government Ministers. Where changes are proposed by this SI in relation to the exercise of these functions, the consent provisions remain unchanged.

Previous amendments to the GB BPR were made by the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019, the Biocidal Products (Health and Safety) (Amendment) Regulations 2022, and the Biocidal Products (Health and Safety) (Amendment and Transitional Provision etc.) Regulations 2024, and the GB

Biocidal Products (Amendment) Regulations 2025. The consent of Scottish Ministers to these four instruments was scrutinised by the Scottish Parliament.

The GB CLP was previously amended by the Classification, Labelling and Packaging of Substances and Mixtures (Amendment and Consequential Provision) Regulations 2023 under the Retained EU law (Revocation and Reform) Act 2023 powers. These Regulations made minor updates which were not subject to the consent of Scottish Ministers.

The GB PIC Regulation was previously amended by The Genetic Technology (Precision Breeding) Regulations 2025. These Regulations made minor updates to GB PIC.

GB CLP

The Great Britain Classification, Labelling and Packaging Regulation ((EU) No. 1271/2008) provides the legislative means by which the UK continues to adopt and give legal effect to the internationally agreed voluntary system of hazard identification and communication called the United Nations Globally Harmonized System on classification and labelling of chemicals (UN GHS). The Regulation places a duty on GB-based companies to evaluate and classify the hazards of the chemicals they supply under this system, label and package accordingly, and pass safety information on their chemicals through the supply chain to ensure their safe use and disposal to protect people's health and the environment. The Regulation also requires the Health and Safety Executive (HSE), as the Agency for GB CLP, to propose mandatory classifications and labelling for substances with the most serious hazard types. Chemical suppliers have to use these mandatory classifications and labelling elements when classifying relevant chemicals and providing information on them.

This SI amends GB CLP in three ways, as follows.

1. It replaces Articles 37 and 37A with a new single Article 37 which removes the obligation for the HSE to consider every technical recommendation for a new and revised "harmonised" hazard classification for chemicals coming from the equivalent EU CLP Regulation and form an opinion on the need for "mandatory" classifications within a set timeframe under GB CLP - harmonised (in EU CLP) and mandatory (in GB CLP) classifications are essentially the same thing. The proposed Article 37 requires the HSE to set up a work plan for its evaluation of proposals which can include proposals (to be called "fast track proposals") from jurisdictions (including the EU) that the HSE deems to have similarly adopted the UN GHS classification system and have similarly transparent procedures, as well as other proposals which are not "fast track proposals" (made by the HSE itself or a GB-based third party). These other proposals are the same as those that are the subject of the current Article 37A.

The Devolved Governments of Scotland and Wales must be consulted when the Agency is producing, reviewing or making material changes to the work plan. The decision-making process, that includes the requirement for the Secretary of State to seek consent from Devolved Government Ministers, is largely unchanged for proposals which are not fast track proposals, but is accelerated for fast track proposals, as this proposed amendment removes the requirement for the HSE to form its own opinion on a fast-track proposal.

2. The SI will remove the obligation for GB-based companies to notify the HSE of additional relevant classifications they assign to the chemicals they supply in GB, and will remove the obligation for the HSE to host a database of such notified classifications. Companies are still obliged to self-classify and label the chemicals they supply and apply mandatory classifications and labelling where those apply. Although they will no longer need to report those classifications to the HSE, the same information will be available in the supply chain through labelling.
3. The SI makes two other more minor changes. It removes a redundant part of the decision-making process for new and revised classifications under GB CLP (currently the HSE must send a copy of the HSE's recommendations on classification proposals to Devolved Government Ministers before the Secretary of State seeks consent to decisions based on those recommendations; the SI removes this first step to reduce unnecessary administration as the same information is shared at the consent-making part of the process). It relocates technical guidance notes pertaining to mandatory classifications from the annex of the GB CLP that details them to the HSE's website, to avoid the need for an SI every time these notes need to be updated.

GB BPR

The Great Britain Biocidal Products Regulation ((EU) No 528/2012) governs the placing on the market and use of biocidal products, which are a diverse range of products such as insecticides, rodenticides and disinfectants that are used to control harmful organisms. Biocidal products and the "Active Substances" contained within them (chemicals that confer the biocidal effect) are subject to authorisation and approval for use following an application by industry. The application, evaluated by the HSE as the Agency under the Regulation, must prove that the substance can be used safely without detriment to "non-target organisms" or people's health. Active substances are regulated on the basis of the proposed uses of the products they are contained in, referred to as "product types". The Regulation also sets an expiry date after which the active substance and the products that contain it can no longer be sold and used, unless approval or authorisation is renewed via a renewal application.

This SI amends GB BPR in three ways, as follows.

1. Through amendment of Article 14, the SI will postpone expiry dates that fall

between 23 June 2026 and 30 July 2031 to 31 July 2031 for all biocidal “active substance/product type combinations”, unless a decision on an approval is taken before 31 July 2031. This means that biocidal products currently on the GB market that contain affected active substances and that have relevant uses (“product types”) can remain on the market until 31 July 2031. The expiry dates for 173 active substances fall between 23 June 2026 and 30 July 2031.

2. The SI amends Article 55(1) which sets out the process for permitting the emergency use of an unauthorised biocidal product where there is a significant danger to public health, animal health or the environment that cannot be contained by other means. Currently emergency authorisations are granted for an initial 180 days and then may be extended for up to a further 550 days through a decision by the Secretary of State or Devolved Authority (Scottish Ministers). The SI proposes that emergency authorisations, when extended beyond their initial 180 days, may also continue to apply until an application for the product’s use has been received and authorised, where the use of the biocidal product is not likely to be temporary. Extensions to emergency permits will continue to require a decision by the Secretary of State or Devolved Authority and can be cancelled at any time if they are no longer deemed necessary, an application for authorisation is rejected, or there is a decision not to authorise the product.
3. The SI amends Article 60(2) on data protection rules that apply to new and existing active substances. This amendment corrects an error that was transposed from the EU GBR through EU Exit SIs.

GB PIC

The Great Britain Prior Informed Consent Regulation ((EU) No 649/2012) implements the UK’s obligations as a party to the international Rotterdam Convention on the Prior Informed Consent Procedure for Certain Chemicals and Pesticides in International Trade. It identifies a list of highly hazardous chemicals agreed for listing under the Convention or subject to control or ban under assimilated Regulations and places obligations with respect to the export and import of these chemicals.

This SI amends GB PIC in four ways, as follows. None of these changes affect the UK’s compliance with the Rotterdam Convention.

1. The SI proposes to remove additional conditions that apply to certain chemicals listed in the Regulation when an entity in the UK is exporting such a chemical, through changes to Article 14. For this subset of chemicals subject to GB PIC, the exporter must request that the Designated National Authority of the importing country acknowledges and consents to the importation. Often such requests are not answered, even following repeated attempts, causing barriers and delays to export. The SI removes conditions that apply to this subset of

chemicals so that a waiver can be used to remove this requirement, as is the case for all other chemicals listed under GB PIC.

2. In cases of export not covered by the main requirements of GB PIC (for example, small quantities of relevant chemicals being used for research and development), GB-based exporters have to obtain a special reference identification number that must be included in their export declaration. This is not a requirement of the Rotterdam Convention and has never been used by customs authorities in GB, so this SI proposes removing the requirement through changes to Articles 2 and 19.
3. There is a current requirement to review annually the list of chemicals GB PIC applies to. Two subsets on which the list is based refer to chemicals that are prohibited from export (one of these is derived from another International Convention, the Stockholm Convention on Persistent Organic Pollutants). Through changes to Article 23, the SI will remove the review requirement for these two subsets and ensure that GB PIC is updated at the same time that changes are made to listings under GB legislation on Persistent Organic Pollutants following changes to the Stockholm Convention.
4. Finally, this SI amends Article 23 of GB PIC so that the Designated National Authority (for GB, the HSE) is responsible for reviewing and updating the GB PIC list rather than the Secretary of State, as is currently the case. This change will mean updates resulting from agreements under the Rotterdam Convention can be made more quickly.

EU Alignment

The changes proposed by the SI will bring closer alignment with the EU in some cases, but in others will not. The changes that will not increase EU alignment affect processes that are already uncoupled from the equivalent EU regimes following EU exit. It should be noted that the EU continues to consider amendments to equivalent EU Regulations under its so-called simplification omnibus packages.

For the **GB CLP**, the new provisions relating to “fast track proposals” in Article 37(5) should mean that EU opinions on chemical classifications can be adopted faster and in a more transparent way than is currently the case, as long as they are contained in the HSE’s work plan. The HSE is required though to consult with Devolved Governments on the workplan which should allow us to ensure that EU opinions that are of relevance to the GB market and that do not have socioeconomic implications become “fast track proposals”. The current Article 37 directs the Agency to consider classification opinions coming out of the EU and form its own opinion on these, so HSE’s opinion can differ from the EU, although to date divergence has been limited (ca. 11% of cases and in most cases only minor differences).

The removal of the requirement for companies to notify the HSE of their self-

classifications and for the HSE to host a public database of these notified classifications (see paragraph 2 under heading **GB CLP** above) represents a reduction in alignment in terms of process and transparency; but as the self-notifications assigned by industry for any given substance could differ from those notified under the equivalent EU regime the impact in terms of practice is less clear, though companies will still be able to access the EU information through the EU's publicly available database.

For **GB BPR**, the postponement of expiry dates in the proposed amendment to Article 14(5) is likely to represent a further loss of alignment where current expiry dates were inherited from authorisations that were granted while the UK was still an EU Member State. However, the current authorisation and approvals processes of GB BPR are entirely decoupled from the equivalent EU regime, so differences between authorisation periods for biocidal products between the UK and EU have and will continue to occur (expiry dates under GB BPR for various active substances have previously been postponed three times since EU exit; extensions to expiry dates are common for individual biocidal product applications under both EU and GB regimes when renewal application evaluation work is delayed). Also, because the two systems operate independently, over time there will be increasing differences between specific product applications between the two markets.

The changes to Article 55(1) of the emergency permit provisions depart from the same process in the EU, where similar amendments have not been made. The effect will be to extend the period an unauthorised biocidal product can be used in specific circumstances in GB; but in practice the difference is likely to be minimal because in many cases, and for specific cases where these powers have been used in GB, an application has been received in the EU so their use can continue without the need to use emergency permits (the product can continue to be used while the application is evaluated).

The other changes, including those to **GB PIC**, are less significant and in our view do not impact EU alignment.

Ministers are content to consent to the SI because overall it should maintain or increase alignment with the EU on chemical classifications over the current situation, while the other changes that propose reducing alignment on process should not adversely affect outcomes in terms of protections for people and the environment, should support GB-based business, and are necessary changes to support the functioning of the regimes in a UK-only setting.

Laying Date

UK Government intends to lay the instrument before the UK Parliament on 24 February 2026. As the SI is being made using powers in section 14(1) to (3) of the Retained EU Law (Revocation and Reform) Act 2023 and is subject to the

affirmative procedure, it must be made before 23 June 2026 before powers to make regulations under that section expire in accordance with section 14(9) of that Ac.

Details of the provisions that Scottish Ministers are being asked to consent to.

Summary of the proposals

GB CLP

1. Removal of obligation to review EU classification opinions, introduction of "fast track" proposals, and consolidation of Articles 37 and 37(A). This proposal removes the obligation for HSE to review all chemical classification opinions published by the Risk Assessment Committee of the European Chemicals Agency under EU CLP and produce its own opinion, which can differ from that in the EU, which then forms the basis for decisions on mandatory classifications under Article 37 of GB CLP. It also consolidates Article 37(A), whereby HSE itself, a third party or the Devolved Governments can submit a proposal for mandatory classification ("other proposals"), into (the new) Article 37. In doing so, HSE is seeking to better prioritise its evaluation activity and ensure that the EU classification proposals it continues to consider are relevant to the GB market. The amendment requires HSE publish, keep under review and in the event of change publish an updated version of a work plan for its evaluation of proposals, and must identify any fast-track proposals for inclusion in the work plan. The Agency must also consult the devolved governments when producing, reviewing or making material changes to the work plan. The amendment also removes the obligation for HSE to produce its own opinion and consult on this for fast track proposals and replaces this with a lighter touch process, whereby these proposals are progressed to mandatory classification decisions based on an HSE technical report only. Fast track proposals can also be considered from all jurisdictions meeting criteria outlined in the SI (a country that has adopted the UN GHS similarly to the UK and has a transparent classification system based on public consultation). When drawing up the work plan, HSE must have "particular regard" to Article 36 of GB CLP; Article 36 says that HSE must produce classification proposals for the most hazardous chemicals as well as proposals for other chemicals HSE deems of concern or where it is appropriate to do so on a case-by-case basis.

   In practice it is only the EU that fulfils the criteria for fast track proposals currently. The amendment will allow the HSE to consider EU classification opinions faster once they have been included in the work plan, and where

these are non-contentious progress them to decision making for mandatory classifications under GB CLP more quickly. The reference to Article 36 will mean that HSE will consider the majority, if not all, proposals from the EU. Any cases that HSE deem contentious would then be funnelled through the "other proposals" route in the workplan which requires HSE to produce its own opinion and consult on it. The requirement for the Agency to have particular regard to Article 36 also means new hazard classes that have been agreed in the EU but have not yet been considered for addition to GB CLP can be considered on a case by case basis.

The SI does not include any specific obligations on timescales or content of the work plan that HSE must set up, other than that the work plan will set out the HSE's evaluation of proposals and identify fast track proposals for inclusion. However, the HSE will have a statutory requirement to publish and keep the work plan under review. The Scottish Ministers' understanding is that the workplan will cover a period of 3 years and be subject to annual review, and the HSE will seek to produce the first draft within 6 months of the SI coming into force. Scottish Government officials expect detail of this to be included in the accompanying explanatory memorandum for the SI. HSE stress the necessity in maintaining some flexibility in this process because this is a new approach and so workable timescales are uncertain (and once REUL powers lapse, there will be no way of amending the legislation without new primary legislation). The new Article 37 does however oblige HSE to consult the Devolved Governments in producing, reviewing and making material changes to the workplan. The Scottish Ministers are content that this gives an appropriate level of scrutiny and assurance that the changes here will overall increase necessary protections with respect to classification and EU alignment.

2. <u>Removal of "self-classification notification" and obligation for HSE to host a "self-classification" database.</u> Companies supplying chemical products on the GB market are obliged to label packaging with mandatory classifications and any other classifications that are necessary to be communicated in the supply chain to ensure the product's safe use. This means chemical companies must work out how to classify their chemicals as well as checking for available mandatory classifications under GB CLP. It is the additional obligations, that (i) the companies must also notify the HSE of the classifications they derive for their products and (ii) the HSE must host a database of these classifications, that this SI removes.

   The obligation for suppliers to continue classifying their products is the most important element of this aspect of GB CLP and this proposal does not change that. Under related chemicals safety legislation (UK REACH, GB BPR and GB Plant Protection Products (GB PPP) Regulation ((EC) No 1107/2009), suppliers are obliged to provide classification information in the supply chain and

chemicals within scope of GB BPR and GB PPP mush have mandatory classifications. The HSE has not hosted this database and does not use the notified self-classifications. Experience under EU CLP shows that companies supplying the same chemical can differ in their self-classifications, which adds uncertainty for those using the database (which remains freely accessible for all).

3. Minor changes: changes to Devolved Government consent process for mandatory classification decisions and relocation of technical guidance notes.
The SI removes part of the current consent process which has proved to be duplicative whereby HSE officials write to Devolved Government Ministers to notify them of classification opinions ahead of UK Government Ministers formally writing to Ministers seeking consent (at which point the opinions are again shared). Experience since EU exit has shown that the first step is duplicative and unnecessary and so is removed by this SI. Secondly, some classifications listed in GB CLP include guidance notes. When changes are needed for these guidance notes, this can only be done by an SI. This SI moves technical guidance notes to HSE's website, which means they can be updated more easily and should also increase their visibility for companies that use them when classifying their chemicals.

GB BPR

1. Postponement of Approval Expiry dates. This proposal will ensure up to 173 active substance/product types will remain available on the GB market until 31 July 2031 subject to a renewal application being submitted. Some expiry dates under GB BPR have previously been postponed three times since EU exit using powers in Article 14(5) of the GB BPR.
HSE currently prioritises applications for new active substances to be evaluated rather than renewals (and some other types of application); of the 173 active substance/product types affected, renewal applications for 88 have been submitted so far. HSE cannot evaluate such a large number of applications under current arrangements before the approvals lapse (when in the EU, this work would have been shared out amongst Member States).
The postponement will prevent significant impacts to the GB market for both users of the products and suppliers. Products containing relevant active substances with relevant uses would be subject to a phased removal from the GB market even when applicants had submitted renewal applications. Users of these products will still have to adhere to current conditions for safe use while the products are still on the market. More significant uses of products in scope of the postponement are to prevent the spread of disease, prevent damage to businesses (including loss of stock) and homes, and maintaining integrity and efficiency of ships on the sea. Should specific concerns with the approval of an active substance be identified, HSE can move to evaluate such cases at any

time.

The postponement will allow work on reforming the biocides regime to be developed to prevent this situation occurring again. HSE previously consulted on the potential to use other jurisdictions', including the EU's, evaluations of active substances, and given commitments in the UK Government's Environmental Improvement Plan in the areas of other chemicals safety legislation we would expect similar proposals for longer term reform to follow, and for Devolved Governments to be fully consulted in their development.

2. Changes to the emergency permit process. Changes to Article 55(1) will allow unauthorised biocidal products to be kept on the GB market for specific, controlled uses until the biocidal product is authorised (in addition to the current arrangements for time-limited permits), in cases where the need for use is unlikely to be temporary, for example in the case of products used to disinfect drinking water. Article 55(1) is only to be used where there is a danger to public health, animal health or the environment that cannot be controlled by other means. The amendment will prevent the repeated use of current Article 55(1) powers..
The amended Article 55 will mean that so long as an application has been received for the product that HSE deems to meet the current criteria in Article 55(1) (*danger to public health, animal health or the environment that cannot be controlled by other means*) and the new criterion (*use is unlikely to be temporary*), the granted emergency permit will apply until the evaluation is completed and authorisation is granted. However, the emergency permit can be cancelled at any time should one of the following be met:
• no application is received for the active substance(s) or the biocidal product by relevant deadlines.
• the application is rejected by the HSE.
• a non-approval decision is taken on the active substance(s) which is being used in the biocidal product the emergency permit is for.
• a decision is taken not to authorise the biocidal product.
• the conditions for issuing derogations in Article 55(1) are no longer fulfilled, or
• for any other reason which appears to the HSE to make cancellation necessary or appropriate.

If cancelled, the HSE can apply a grace period for users to adjust and stocks of product to be used up. Where existing emergency permits are in place from when the new provisions apply, HSE also proposes transitional measures which would allow the new provisions to apply.

3. Changes to data protection rules. This proposal extends the scope of data

protection (third party companies that wish to market an active substance or product containing it must enter into a data sharing agreement with the company that owns the data necessary for the third party companies' application) so that all cases where it was originally intended under EU BPR that data protection would apply equally are covered. Currently the Article only applies to decisions on active substance approvals taken by the Secretary of State under Article 9. In the SI the scope is extended to cover approval decisions made under Articles 28(1) and 89(5) and relevant approvals under Articles 89(5) and 90(2) of EU BPR before the end of the EU Exit implementation period. The SI also extends the scope of Article 60(2) to cover renewal or review of an active substance for decisions taken under Article 15(3)). The amendment will mean that companies that paid for expensive testing and data generation will not be at a commercial disadvantage. The change is related to the recent SI to amend Article 95(5) of the GB BPR in this regard.

GB PIC

1. Amending the conditions that apply to the granting of a 'waiver' from the requirement to seek consent from importing country's Designated National Authority. For some chemicals in scope of GB PIC, for example those that can cause cancer, it is not possible to use one of the conditions set out in the Regulation for a time-limited waiver that applies to other chemicals in scope of GB PIC to remove the need to gain the consent of the importing country authorities before the chemical can be exported from GB. In practice it is often not possible to get a response to repeated requests for consent from the importing country, meaning that export is delayed. Removing this aspect of GB PIC will mean all chemicals in scope of GB PIC that require explicit consent will have the same conditions for this waiver, create certainty for GB business, and will not result in any loss of protections for GB or the receiving country.

2. Removal of requirement for special reference identification number for out-of-scope exports. For small quantities of chemicals that are exported for research and development purposes or in an emergency situation, despite these exports being otherwise exempted from the scope of GB PIC, the exporter must obtain a Special Reference Identification Number (SRIN) from HSE to include in their customs declaration to proceed. This provision was introduced prior to EU exit to align with an electronic system introduced in the EU. As this electronic system was not introduced in GB, the requirement is redundant, and the SRIN is not used by customs officials. Removing this obligation will reduce administrative burden on the HSE and exporters where there is no gain.

3. Removal of requirement to review the list of substances already subject to export bans. Chemicals in scope of GB PIC are listed in five parts of the GB

PIC list. Two of these parts list chemicals that are already subject to bans on export under the international Stockholm Convention or other assimilated law (currently only the UK Mercury Regulation). Removing the requirement to review these two parts annually (alongside the other three parts of the list) means that any changes to the two parts that come from international agreements can be implemented at the same time that changes to the UK Persistent Organic Pollutants Regulation, that implements the Stockholm Convention in GB, are made.

4. Changing responsibility for reviewing and updating GB PIC listings. At EU exit reviewing and updating the GB PIC listings was made a responsibility of the Secretary of State. This review requires technical assessment against set criteria in GB PIC for chemicals not listed under other international Conventions like the Stockholm Convention. This administrative change means that HSE can amend the GB PIC list faster as the Secretary of State does not play a role in the technical work itself.

Does the SI relate to a common framework or other scheme?

Yes. The three regulations that this SI proposes to amend are covered by the provisional Chemicals and Pesticides Common Framework.

Summary of stakeholder engagement/consultation

The HSE ran a public consultation on their programme for chemicals reform between 23 June and 18 August 2025. The consultation attracted about 300 responses. A response to this consultation has yet to be published,(publication will happen before this SI is laid), but the HSE has shared relevant elements of the draft response report with Scottish Government. Scottish Government informally approached a number of Scottish stakeholders to gather their thoughts on the proposals. HSE's consultation included the proposals represented in the SI as well as a number of other proposals. We understand that industry stakeholders are by and large content with the proposals, as they should: ease some regulatory burdens and non-tariff barriers on for example reporting; further extend biocidal product authorisations; and also increase pragmatic EU alignment on classifications between GB and EU. The consultation however drew criticism from non-governmental organisations, who found the consultation to be vague and lacking in detail; this meant that, based on their reading, the proposals indicated that the HSE was pursuing a deregulatory agenda to reduce the resources required to operate the three regulations. They found the proposals for amendments to the GB CLP and GB BPR most concerning. The consultation did not detail specific legislative proposals, offering instead descriptions of amended

processes and outcomes, which may have led to such concerns.

A note of other impact assessments, (if available)

The HSE has not conducted an impact assessment for any of the proposed changes. The annual impact on business was deemed to be below the de minimis threshold of +/- £10 million equivalent annual net direct cost to business.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Although this SI is made under powers in the Retained EU Law (Revocation and Reform) Act 2023, Scottish Ministers are content to give consent to the SI on the basis that the amendments it proposes will increase and speed up EU alignment, especially on GB CLP classifications under the proposed "fast track proposals" procedure. The amendments that are proposed relate to both reserved and devolved competence, but there would not be a meaningful way in which any of the amendments could be progressed via a Scottish Statutory Instrument.

The UK Government is not proposing to legislate in relation to Scotland without the Scottish Ministers consent, and adequate opportunity for scrutiny will be given to the Scottish Parliament.

Therefore, the Scottish Ministers consider that consenting to this SI is acceptable.

Intended laying date (if known) of instruments likely to arise

24 February 2026

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The Parliament has 28 days for scrutiny.

Information about any time dependency associated with the proposal

As the SI is to be made using powers under section 14(1) to (3) and (4)(b) and (e) of the Retained EU Law (Revocation and Reform Act 2023, the SI is subject to the affirmative procedure and must be made before 23 June 2026 when those powers expire.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

The EU introduced several new hazard classes to its Classification, Labelling and Packaging Regulation that have not yet been agreed within the UN GHS. These new classes are being discussed at UN level, and should an agreement be reached, we understand the EU is likely to consider this and amend their

legislation accordingly, and that at this point the UK would also consider adoption of the new hazard classes. The changes to Article 37 mean that the HSE is able to consider EU classifications that use these new hazard classes under the provisions of Article 36.

The EU also continues to consider and propose changes to EU chemicals safety regulation under its simplification omnibus packages which affect both the equivalent EU Regulations to GB CLP and GB BPR.

Any significant financial implications?

Scottish Government is not aware of any significant implications from these proposals.