CHEMTrust
Protecting humans and wildlife from harmful chemicals

Briefing

Review of UK REACH
Three years on
February 2024

1. Introduction
This month, UK REACH published its work programme for 2023-24, with just a few weeks left to run of the period it covers.

It marks just over three years since the UK left the EU system and established UK REACH as an independent, standalone system for regulating chemicals.

While the EU continues to progress (albeit slowly) in banning harmful chemicals and controlling pollution at source, the UK's regulation of chemicals is standing still. The system is also being eroded by a weakening of its chemical safety rules and processes. This may result not only in the dumping of products that no longer meet higher EU standards but on the UK market also the potential for the UK to manufacture of chemicals and products containing chemicals that the EU has restricted for being too harmful.

2. The UK continues to fall behind EU protections
While the EU continues to make progress on improving its chemicals regulatory system and banning or controlling harmful chemicals – despite recent setbacks – the UK is moving more slowly and demonstrating less ambition. This is set out in a table of the differences in protections - https://chemtrust.org/divergence-table/ - and the examples below.

2.1. Classifications for Endocrine Disrupting Chemicals
The decision by the UK Government to only match new **EU classifications** for better identifying known and suspected **endocrine disrupting chemicals** (EDCs) if they are adopted globally, which could take many years. By comparison, the EU plans to phase out all substances identified as EDCs from toys, paving the way for better protection of children, who are particularly vulnerable to adverse impacts from EDCs.

2.2. Harmful substances on the 'authorisation list'
The UK has added no new substances to its **authorisation list**, compared to five added to the EU's list, including Tetraethyllead in aviation fuel. Companies cannot use or manufacture any substance on the list unless given 'authorisation' by the regulatory agency. To get this, a company must demonstrate that either the risks arising from the use(s) applied for are adequately controlled or that no alternatives are available, and the socioeconomic benefits outweigh the risks arising from the uses. Analysis suggests that applications to use substances on the list are more likely to succeed in the UK, such as for chromium trioxide, a carcinogenic chemical linked to increased risk of lung and throat cancer.

2.3. Restrictions on harmful substances

The UK has **yet to adopt a single new ban or restriction on a harmful substance, compared to 8 new restrictions on harmful substances adopted in the EU**. So far, it has initiated two restrictions (on harmful substances in tattoo ink and lead in ammunition), compared to 17 initiated by the EU. It is positive that the UK's proposed restriction on harmful substances used in tattoo ink restricts the vast majority of substances in the scope of the EU's, but it is still weaker than the EU's.

2.3.1 The gap with the EU is set to become a chasm over the coming years if the EU's Restrictions Roadmap is fully implemented. The roadmap accelerates EU restrictions by targeting entire groups of widely used chemicals of concern, such as bisphenols and brominated flame retardants. If fully implemented, it would lead to an estimated 5-7,000 chemicals being banned by 2030.

2.3.2 In its work programme, the regulator, the Health & Safety Executive (HSE), **deprioritised 12 harmful substances on which the EU has either adopted or initiated a restriction**. This list includes the use of lead in PVC and a restriction on PAHs used in synthetic football pitches and playgrounds that are linked to increased cancer risk, both of which have been adopted by the EU. The reasons it gives show the regulator is setting a higher bar for evidence of harm than the EU before taking action.

2.3.2.1 The reasons it gives for deprioritising these restrictions show the regulator is setting a higher bar for evidence of harm before taking action and taking a less precautionary approach than the EU. Its reasons include wanting more evidence that a substance is harmful or that the substance poses a risk specifically in Great Britain (when GB-specific data is not available), or the existence of voluntary targets or measures as an effective alternative to regulation. The absence of evidence should not equate to the absence of proof of harm, and the regulator should apply the precautionary principle in cases where the scientific evidence is uncertain, but the risks are high. In deprioritising a restriction on lead in PVC, the regulator considered PVC a minor source of exposure to lead compared to other sources. This is an example of the Government's preference for proportionate regulation, taking action on issues that represent the highest risk. However, it ignores a significant source of lead emissions. The restriction in the EU was expected to "prevent up to 8.4 tonnes of lead emissions per year, at the benefit of people's health, in particular for children" and to "promote recycling and save 1.5 million tonnes of CO2 emissions every year."

2.4 Regulatory Priorities

2.4.1 **It is striking how few of the actions identified for regulatory priorities in 2022-3 have been delivered, almost two years later.** This delays regulatory action to prevent harm to our health and environment from prolonged exposure to harmful chemicals.

Examples: from the five substances identified as regulatory priorities for 2022-3, compared to action at EU level:

2.4.1.1 PFAS are a family of over 10,000 chemicals used particularly for their water and grease-repellent properties. These 'forever chemicals' are extremely persistent in the environment and can cause long-term damage to wildlife, people and natural resources such as drinking water. NGOs are advocating action to achieve a PFAS-free economy in the UK in the next decade or so. The Regulatory Management Options Analysis (RMOA) on **PFAS** promised for 2022-3 has been published, but restriction(s) - which are subject to legislative deadlines by which the regulator must submit its proposals - have not been initiated. Only a ban on PFHxS, a sub-set of PFAS, has been adopted

during this time following its ban internationally. This brings to a total 3 sub-sets of PFAS that are banned via the international treaty on persistent organic pollutants, the Stockholm Convention, plus the subgroup TDFAs, that was inherited from when the UK was in the EU. Except for these, all other PFAS are currently allowed to be produced and used in consumer products or industrial applications in the UK. Our European neighbours are already benefitting from better regulation on PFAS with new statutory standards on drinking water and new food standards, as well as a ban already in force and another expected to be adopted very soon on sub-sets of PFAS. Importantly, the EU has also published its proposal for a universal restriction of PFAS as a class. HSE anticipates restrictions on "a wide range of industrial and consumer uses" of PFAS, including a restriction on their use in fire-fighting foams, which are urgently needed to reduce pollution levels. Its proposals also fall short of and use a narrower definition of **PFAS** than EU proposals. The work programme also warns that "much of HSE's capacity to develop restrictions over the next five years will be devoted to PFAS", affecting its ability to prevent harm from other chemicals.

2.4.1.2 **Intentionally added microplastics** are those that have been deliberately added to products, such as infill material used on artificial turf pitches, fertilisers and paints. They are a significant source of microplastic pollution and one of the most preventable sources. A restriction on intentionally added microplastics has been in force in the EU since October 2023, which is considerably more wide-ranging than the UK's 'world-leading' ban on microbeads in rinse-off products. HSE has commissioned an external organisation to conduct a further evidence review, which will not be completed until much later this year, with no indication as to whether the Government supports matching the EU ban or a partial ban or no ban. The delay will mean they will continue to pollute and accumulate in our ecosystems and food chains.

2.4.1.3 Globally significant exposure rates have been recorded amongst the UK public and wider environment for **flame retardants**. These are added to a range of products from mattresses to sofas and have been linked to a wide range of human health problems, from behavioural and developmental issues to increased risk of certain cancers, as well as impacts on our environment. The review to 'feed into wider chemicals policy' promised for 2022-3 has not yet been published. By comparison, the EU Restrictions Roadmap proposes a group restriction on brominated flame retardants, which is expected to be initiated in 2025. The EU has also added eight flame retardants to its list of Substances of Very High Concern since the UK left the EU system, such as TBBPA , which is used mainly in electronics, while no substances of any kind have been added to the equivalent UK list. High exposure in the UK has been linked to the over-use of flame retardants as a way for manufacturers to get through the flame test for upholstered furniture. Despite many years of pressure on the Government to change furniture regulations to remove the test, a recent consultation proposes retaining it. A flammability test along the lines of that in California and the EU would reduce the need to use these harmful chemicals while improving fire safety.

3. Watering down of UK chemical safety rules

At the same time as falling behind EU standards, the UK has been going backwards in some areas. Some examples of rules and processes that have been weakened post-Brexit are set out below.

3.1. 'No data, no problem'

The principle of 'no data, no market' is the requirement on manufacturers, importers and users of chemicals to provide sufficient safety data for all chemicals they place on the market so that the

regulator can check that the industry understands the risks of the chemicals they use, and to provide a basis for regulatory decisions and controls. Last year, the Government announced a new model for registration data, the Alternative Transitional Registration model. The new model will reduce to a 'minimum' information on chemical hazards and environmental and health effects, so that the industry does not have to incur the cost of accessing this information registered at EU level. Without this information, it will be much harder for the regulator to conduct its own evaluation and risk assessment programme, to independently assess and evaluate risks from harmful substances, and to implement and legally defend controls on them. It would require the regulator to chase the information it needs to do its job, and worryingly, it would not necessarily have enough information to know what it's missing. The way to minimise costs to the industry while upholding high safety standards is to align with EU risk management decisions, which rely on full registration data and thorough analysis of the risks. The new UK model also signals a broader ideological shift to a more US-style risk-based approach regulation, which is less protective than the EU's.

3.2. Substances of Very High Concern (SVHC)

In December 2021, the Government introduced changes to the UK's SVHC list, which many of us warned would weaken rules that help to drive innovation in safer alternatives. Entry on the SVHC List carries immediate obligations on companies to provide sufficient information to their downstream customers and consumers to allow safe use, and puts substances in line for further regulatory attention. Just over two years after these changes, the situation is worse than anticipated, with the UK list falling into disrepair. Over the last three years, the EU has added 31 substances to its SVHC list, while no substance has been added to the UK's list, or is expected to be added in this Parliament.

3.3. Retained EU Law Act

The system is also facing deregulatory threats from the Retained EU Law Act**.** For example, the downgrading of important EU legal judgements on, or 'interpretive' effects of, assimilated chemical safety laws, and the use of powers in the Act to revoke or weaken these laws. Last year, these powers were used to remove obligations on companies to provide information to 'poison centres' (by removing Annex VIII of the Classification, Labelling and Packaging Regulation) that advise healthcare workers on the right treatment to give patients that have been accidentally poisoned by hazardous chemicals. This change made voluntary an EU obligation to provide appropriate information, which has recently been further improved and strengthened.

4. What are the reasons for the above?

In our view, the primary reasons for the UK falling behind EU standards are a lack of capacity in the system (of data and staff), as well as an interest in a more 'light touch' regulatory approach. It does not seem that the government has sufficient capacity to fulfil its new regulatory responsibilities post-Brexit to an equivalent scale and pace as the EU, with a Lords committee and the NAO highlighting skills shortages among regulators.

There are also pushes in the system against new regulations. It is unclear if this is due to the growth duty on HSE or to initiatives under 'Better Regulation' guidance, which require lots of information to evidence the need for regulation, or if it's indicative of a more 'risk-based' approach, which requires more evidence of harm before taking action. However, the effect is that all the regulatory priorities burden the regulator with additional preparatory work gathering evidence and analysing risk management options. This delays action and hinders the regulator's ability to take swift action to prevent the threats to our health and environment from exposure to harmful

chemicals. Instead, UK REACH could be using comprehensive EU analysis of the risks posed by chemicals, and the measures needed to ensure that they are used safely or not at all.

There is also a lack of transparency in how policy and regulatory decisions are made, compared to EU REACH, which allows greater scope for backdoor lobbying, risking what was described by a select committee as “an ever-present danger of regulatory capture by powerful interests”. In particular, the regulator wants data to evidence risks specifically within Great Britain before taking action. We cannot see how use or exposure in GB may differ from 27 European countries, given both have similar industrial sectors, to such an extent that it justifies the delays and cost of a parallel evaluation programme that reconsiders extensive EU analysis of the risks posed by chemicals and the measures that are needed to ensure that they are used safely, or not at all.

An early evaluation of the implementation of UK REACH predicted that there were opportunities in the UK to make up for time lost at the start of the process with increased speed of political decision-making. It reported that “HSE said that ‘the period between opinion-making by HSE and decision-making by the Secretary of State is expected, on average, to be shorter than under EU REACH’”. However, this has not been the reality, with changes in ministers and lack of parliamentary time most likely delaying decision-making. For example, HSE recommended two substances for the UK authorisation list in 2021, with no timescales for when the Government will make a decision on whether to add them or not.

4. Next steps

We must s**trengthen UK REACH**, by ensuring it meets or exceeds EU chemical laws and standards. A regulatory system based on the one in Switzerland, which defaults to aligning with EU chemical safety laws, would provide a long-term, cost-effective and sustainable approach to regulating chemicals. It would also provide a way of minimising costs to the industry while upholding high standards.

Further information:

UK REACH Work Programme 2023-24, including:

- Rationale for prioritising substances in the UK REACH work programme: 2023 to 2024
- UK REACH activities 2022-3

CHEM Trust divergence table on the differences between UK and EU regulatory bans or controls on harmful substances