



CHEMTrust

Protecting humans and wildlife
from harmful chemicals

Lloyd Owen
Clerk
Environmental Audit Committee

10th June 2020

Dear Lloyd,

Thank you for your letter of 27th May, asking what the approach set out by the Defra Minister in her letter of 22nd May will mean for the chemicals industry.

CHEM Trust is an environmental charity that works at both UK and EU levels, focussing on improving chemicals policy (see <https://chemtrust.org>). We are a registered stakeholder at the European Chemicals Agency and our team includes people who have been members of the UK Chemicals Stakeholder Forum since it started in 2000.

We are very grateful for the opportunity to input into the Committee's scrutiny of the Government's plans for regulating chemicals once the transition period ends, building on the important work it led on this issue in the last Parliament. We would like to respond to the Minister's letter and will particularly cover those issues you are keen to hear our views on.

We are deeply concerned about a number of features of a future UK REACH regime that will be weaker than the current protective framework of EU-REACH and will result in divergence from the EU. Further details at <https://chemtrust.org/brexit>. Our analysis is that without action, the environment and human health will be left less protected from problem chemicals post-Brexit. Our concerns include:

1. The Government's proposals for creating a parallel UK database.
2. The lack of mechanisms in the future regulator to ensure stakeholder representation, public participation and transparent decision-making.
3. Regulatory capacity - including experience and expertise of personnel in the Health & Safety Executive (HSE).
4. Areas in which the future system is likely to be further weakened if the UK does not remain within REACH as part of the UK's future relationship with the EU:
 - a. There are signs in the letter that Defra may extend timeframes, and potentially other requirements under UK-REACH, to reduce the costs and burdens on industry from complying with a parallel regulatory regime.
 - b. As an effect of the UK-US trade agreement.
 - c. There are signs in the letter that the UK may take a different, less protective approach to regulating chemicals than the EU's more precautionary approach.
 - d. Under powers in Schedule 19 of the Environment Bill.

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1. The Government's proposals for creating a parallel UK database

You asked about the Government's proposals for creating a parallel UK database, and in particular the feasibility of the timetable for transferring existing REACH registrations into the UK database.

One of the key deficiencies of a future UK system is the lack of access to the European Chemical Agency's (ECHA) database.

Without access, the UK will have to depend on more limited information, including a database that will essentially be empty for the first two years, until companies have delivered the UK's required safety data on their chemicals. Even after this phase-in period the UK database will have far less information in it than the EU's. This lack of data will make it hard for the UK to implement restrictions and authorisations on chemicals and to defend them from court challenges.

Access to the ECHA's database would also avoid the considerable costs and burdens on UK companies of re-registering and providing duplicate safety data on chemicals and are already registered with ECHA.

In her letter, the Minister acknowledged that "the transition to UK REACH will take some adjustment" but said "we believe that the benefits of having control of our own laws outweigh the costs". However, it is difficult to identify any benefit of creating a duplicate database and parallel regulatory regime. The duplication of data will not generate any new information that protects the environment, consumers or workers, but will just recompile information that is already available under EU REACH.

It would be useful to find out from the Minister areas in which the Government is looking to diverge from the EU. At a debate in the Lords on 16th March, the Minister for State the Rt Hon Zac Goldsmith highlighted more rigorous rules minimising animal testing as an area the UK might want to diverge. However, establishing a new database could in fact involve duplicating tests on animals, if a company is unable to access the full data relating to an existing EU REACH registration.

Regulatory divergence

In his letter of 30th April to the Minister, the EAC Chairman rightly asked how regulatory consistency will be maintained to ensure environmental protection, and standards of chemical regulation and safety are raised rather than lowered over time. This is a vital question. Currently, we are unaware how the UK is even planning to consider EU decisions under its own regulatory framework.

On the basis of current plans, without a mechanism, or even a commitment, to align with EU restrictions and authorisations, the UK regime will inevitably diverge from the EU. This could result in the UK becoming the new "dirty man of Europe" and a dumping ground for hazardous chemicals banned or restricted in the EU.

There are a number of examples of problem chemicals on which the EU is moving towards a restriction that provide a good test of the UK's future approach and areas on which we are likely to diverge from the EU in the medium term.

For example, Per and Polyfluoroalkyl Substances (PFAS), used in non-stick pans, waterproof fabrics, food packaging and cosmetics, which have been linked to cancers, thyroid disease, obesity and reproductive problems. There is already a restriction for some PFAS, and the EU is now officially starting a process to restrict these chemicals as a group (of >4,500 chemicals) (<https://echa.europa.eu/de/-/five-european-states-call-for-evidence-on-broad-pfas-restriction>).

Matthew Offord MP recently asked if the UK will restrict non-essential uses of PFAS chemicals, which would match action at EU level. In his answer, the Minister deferred a decision to the Chemicals Strategy ([here](#)). The UK needs to commit to phasing out PFAS now, rather than kick this decision down the road to a chemicals strategy which keeps getting delayed. The aim of this strategy (first announced in the Government's 25 Year Plan for the Environment) was to set out "our approach as we leave the EU"; it therefore cannot be the case that we do not get to see or scrutinise it until a year or so into the new UK REACH regime.

Furthermore, as you will hear in submissions from industry and from the CBI, the chemicals sector is among the industries with the least to gain from any deviation from EU rules, as the sector is so tightly regulated and the UK is so dependent on the EU as a market. It is deeply regrettable that the Government has dropped the interest of the last Government to remain aligned to and within EU REACH. REACH sets the de facto global standard and remaining aligned to it is vital not only for accessing the single market, but for Global Britain, expanding our exports and global trading relationships.

The feasibility of the timetable for transferring existing REACH registrations into the UK database

In her letter, the Minister says that the two-year time period for businesses to submit the necessary data is being kept under review and the Government is also looking at other ideas to reduce the burdens on industry. Clearly, these timescales will be challenging for the industry. But any relaxation of the requirements will make it even more difficult for the UK to identify and control the use of hazardous chemicals. Over time it is possible that further divergence will occur in respect to exemptions, timeframes and even substances, that would result in a weakening of the regulatory system. Rather than relax regulatory requirements, the answer is to negotiate a close partnership with the EU on chemicals that would involve access to ECHA's database and alignment with its controls.

Decision Making Process and Roles and Responsibilities

On the basis of what is known about current plans, from the information provided in the letter, the UK regime will not have adequate mechanisms for stakeholder engagement and public participation. This will result in a more closed and less transparent system than ECHA's, that could be more susceptible to industry lobbying.

EU REACH is not just a list of rules, but a governance mechanism that would be difficult to replicate on a national basis. It offers value for money through the sharing of resources, expertise and workload across EU countries. Duplication of work is avoided through the co-ordination of those countries' activities on risk assessment and data sharing avoids unnecessary animal testing. National regulation is also more limited when economic interests are at play. It has been found that EU countries generally propose chemicals for ECHA's Candidate List as a "Substance of Very High Concern" (SVHC), when that chemical does not play an important economic role within its own borders.

ECHA has a management committee and numerous technical committees, and stakeholders from industry and NGOs and trade unions are permitted to participate in these meetings (with no vote). This ensures that the best information is available for these discussions and the work of ECHA can be challenged, helping to avoid mistakes and to ensure that decisions are made more independently and transparently.

On 4th June 2019, the solicitors Leigh Day issued a Judicial Review [Pre-Action Protocol Letter](#) on behalf of CHEM Trust, which argued that the proposed post-Brexit rules for chemicals and pesticides set out in the REACH regulations were not a proper reflection of the EU laws they were

supposed to be copying and would weaken the protections of hazardous chemicals post-Brexit. Part of this evidence for this claim was the way in which the future UK REACH system does not replicate ECHA's committee structure which allows for stakeholder participation, replacing it only with an obligation for HSE to obtain external advice. Further information about the legal challenge can be found here <https://chemtrust.org/uk-government-reply-chemicals-brexit/>.

It is very welcome that more information has been provided about the structure of the future regulator in the Minister's letter, notably its plans for regular and occasional observers from stakeholder organisations and for establishing a pool of independent scientific advisers for "the opinion-forming processes". This is the first official confirmation of these plans we have seen and they have not yet been presented in full to the UK Chemicals Stakeholder Forum, of which CHEM Trust is a member. However, this information is still only a snapshot of how the future regulator will operate after the transition period, due at the end of this year – much more information is needed on future policy processes (of restrictions and authorisations), who will be making decisions and how they will be made, and how this will be done transparently (e.g. will those making decisions be publicly listed and meeting minutes and opinions be published?).

We note the proposals include no role for stakeholders to participate in decision-making process, only to observe. In comparison, ECHA works with a range of accredited stakeholders that participate in committees, publicly listed [here](#). It sets out its approach to engagement with stakeholders ([here](#)), which involves actively consulting them and keeping them informed of changes.

It is also disappointing the Government has developed no role for committees in the substance evaluation process; only an informal, ad hoc arrangement for asking the opinion of the Hazardous Substances Advisory Committee (HSAC) and/or the Committee on Toxicity (CoT), rather than embedding their role into decision-making. In comparison, decisions under EU REACH are made by committees of experts from EU Member States (such as the Committees for Risk Assessment and the Committee for Socio-Economic Analysis), rather than by staff in ECHA.

In its response to the PAP letter from Leigh Day last year, the Government made a commitment that the "administrative arrangements" it puts in place "*will not undermine the opportunities for public participation and stakeholder engagement in the REACH system*" and that it "*would work with stakeholders to develop [...] transparency arrangements*". It is time for these arrangements to be set out and consulted on in full.

Regulatory capacity and expertise

On regulatory capacity at the end of transition, the Minister mentions the Environment Agency (EA), as well as the Health and Safety Executive (HSE) as the relevant regulators

While the HSE has acted as the UK's competent body within the EU REACH regime overseen by ECHA (working with the Environment Agency), that does not mean it is adequately prepared or equipped to be the central regulatory body in an entirely new UK chemicals regime. CHEM Trust has serious concerns about the capacity, resources available to, experience and expertise of personnel in those regulators to replicate the functions of the European Chemicals Agency in such a complex field. ECHA has over 600 staff and a budget topping €100m – and has still not been able to check every substance after more than a decade's work. It is not clear from the Minister's reply how much funding is being provided to develop capacity ready for day 1 of the new regime, how many full-time members of staff it is recruiting, when and for what roles, and what their training will involve.

HSE will also need to do this alongside very considerable new responsibilities for making workplaces safe during the coronavirus pandemic and for establishing a new building safety regulator in the wake of the Grenfell Tower disaster. While the Government has recently made up to £14million additional funding available to HSE for its Covid-19 related work, over the past decade the agency has received a £70million budget cut, resulting in a substantial reduction in

staffing. In its response to the PAP letter from Leigh Day, the Government stated that the existing HSE Board and Management Board would take over the functions of ECHA's Management Board, but it is difficult to see how this existing structure is adequate without reform (and appointment of members with chemicals expertise), if it is to perform such an extensive new role.

We would expect the Government to consult shortly on the terms of reference for the delegation of powers from ECHA to the HSE and the EA, including with regard to public participation, stakeholder engagement and transparency, and how they will collaborate with other agencies.

Public Health

A particular concern about the capacity of HSE relates to its lack of public health expertise. The HSE's expertise is currently focussed on worker safety, not the health of the general public.

The current structure for the implementation of chemicals regulation in the UK is led by the Health and Safety Executive (HSE), with environmental aspects dealt with by the Environment Agency. The lack of a clear home for the protection of public health from hazardous chemicals was highlighted during the EAC's inquiry on toxic chemicals in everyday life. For example, when Tracey Logan and Richard Szwagrzak found that emissions from their new furniture resulted in a level of formaldehyde in their bedroom over 13 times the WHO limit, HSE was unable to help as they only considered the worker exposure limits (which is higher). The terms of reference for any future delegation of powers from ECHA should take forward the EAC's recommendation that the *"UK's public health bodies should be given responsibility for monitoring, researching the impact of chemicals on public health, and recommending restrictions and other controls on groups of problematic chemicals. They should be given adequate funding and staffing for research and policy development"*.

Without such an allocation of responsibility to the UK's public health bodies (i.e. including Public Health England), together with adequate funding and staffing for research and policy development, public health will not be properly protected.

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In addition to signs that the Government may relax some requirements under UK REACH, we would also like to highlight other factors that could weaken the UK's chemical protection standards if the UK does not remain within and aligned to REACH as part of its future relationship with the EU:

b. As an effect of the UK-US trade agreement

The United States has long singled out the EU's REACH chemicals regulatory system as a non-tariff barrier to trade that hinders exports of US products. The US chemicals regulatory system is considerably weaker than the EU's, so closer harmonisation between the US and UK could result in the relaxation of UK regulations. Further details at <https://chemtrust.org/how-a-us-uk-trade-deal-threatens-our-protection-from-hazardous-chemicals/>.

c. A different approach to regulating chemicals post-Brexit?

In addition to the effect of future trade deals with countries which have weaker systems for regulating chemicals, the Minister also suggested the UK might take a different approach to regulating chemicals than the EU's. She said that "UK REACH will retain the principles and fundamental approach of the EU REACH system, with its aims of ensuring a high level of protection of human health and the environment, *as well as enhancing innovation and competitiveness*" (our italics). She also said that the Government "will be looking at approaches taken by other chemicals regimes across the world"; unless those countries are within EU REACH, these systems will inevitably be weaker. This wording really concerns us and suggests that the

Government may be planning on moving towards US-style chemicals regulation system, which would be less effective and would allow chemicals that are banned in the EU to be used in the UK.

d. Under powers in Schedule 19 of the Environment Bill

Schedule 19 of the Environment Bill provides the secretary of state with wide-ranging powers to amend REACH (as transposed into UK law) and the REACH Enforcement Regulations 2008, although there are a number of areas that are 'protected'. It is unclear why some aspects of EU-REACH (that have been cut and pasted into UK law) are not protected. The Minister's letter sets out a rationale as to why some articles are protected and others are not; she says that the "23 protected provisions have been carefully selected to preserve the "what" of the aims and principles of REACH, but to avoid freezing the detailed "how" it operates".

However, it is unclear why, for example, Articles 33 and 34 of REACH are not protected from easy amendment, as they require companies to provide information about "Substances of Very High Concern" (SVHC) to industrial users of that product and in response to requests from consumers. These articles enshrine a core principle, protecting consumers right to know about hazardous chemicals in products they are using every day. It also provides a mechanism by which market pressure can help to drive 'a race to the top', away from hazardous chemicals and their replacement with safer alternatives, helping to create new business opportunities and markets in safer and less harmful chemicals.

The Government's decision not to seek associate membership of REACH

You asked for feedback on the Government's decision not to seek associate membership of REACH.

A close partnership with the EU on chemical regulation (that would ideally involve negotiating associate membership of the European Chemicals Agency, but other options are also available) would retain the high environmental, safety and health standards the UK currently enjoys within REACH, and would also avoid the costs and disruption of a second regulatory system on industry and manufacturing. The best outcome for all stakeholders remains a partnership that ensures that the UK remains closely aligned with the EU's world-leading REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Regulation, including active participation in the work of the European Chemicals Agency ECHA.

On the 19th May, the UK Government published its draft legal text for a free trade agreement with the EU, along with a number of annexes, including one on chemicals. The UK's text makes it clear, in Article 8.2, that the UK is interested in sharing information on chemicals. It is, however, currently unclear what the UK Government envisages by data-sharing and if it is specifically looking to negotiate access to ECHA's chemical safety database under Article 120 of REACH. This provision is mentioned in existing MOUs, with the stipulation it would require a separate international agreement. However, this mechanism has never been used and no country outside the EEA (European Economic Area) has yet secured access to ECHA's database.

This annex leaves open the possibility of sharing chemical safety data, which we view as positive; though it is not clear that the UK is ready to accept the alignment with EU decisions that is likely to be one of the EU's pre-conditions for such sharing.

Progress on developing a UK Chemicals Strategy and what this should contain.

We set out above our concerns about the delays to the development of a UK Chemicals Strategy. When the Government issues its call for evidence, CHEM Trust will set out the need for the Strategy to:

- **Ensure high level of protection for people and the environment:** by urgently phasing out the most dangerous chemicals, developing an action plan for very persistent chemicals, adopting grouping for chemical regulation, addressing mixture toxicity, introducing an early

warning system, addressing hazardous chemicals in products such as Food Contact Materials and detoxifying the circular economy.

- **Allocate the resources** necessary for 1) monitoring (including environmental and ecological monitoring and biomonitoring); 2) enforcement (applying the polluter pays principle).
- **Prioritise prevention and precaution.**

Thank you for the opportunity to provide feedback on the Government's plans for chemicals regulation post-Brexit. Please do not hesitate to get in touch if you have any queries about any of the above.

Yours sincerely,

Dr Michael Warhurst,
Executive Director,
CHEM Trust.