Evidence from CHEM Trust and Wildlife & Countryside Link

Introduction

1. The latest data on planetary boundaries shows that chemical pollutants have already exceeded a safe operating space for our planet and that 1 in 6 deaths worldwide are attributable to pollution. UK REACH must ensure the UK tackles the current chemicals pollution crisis and protects consumers, workers and the environment from harmful chemicals in the UK and beyond. To be world-leading, UK REACH must be ambitious and use the best available science and data from around the world while taking a dynamic, and precautionary approach to assessing, managing and restricting chemicals of concern.

2. In these 12 key asks for the UK Chemicals Strategy (most of which concern UK REACH), 30 health and environmental organisations have identified the key reforms that should be adopted by the UK if the government is to deliver on its commitment to be a “world leader on environmental protection”. These are:
   I. Apply the precautionary principle;
   II. Phase out the most hazardous chemicals from consumer products, for all non-essential uses;
   III. A plan to address endocrine-disrupting chemicals including timelines to phase them out;
   IV. Phase out the use of PFAS and other very persistent chemicals;
   V. Speed up regulation of harmful chemicals and avoid regrettable substitution by adopting a grouping approach;
   VI. Address the combined exposure to chemicals (the ‘cocktail effect’) through incorporating a Mixture Assessment Factor (MAF) in all chemical assessments.
   VII. Maintain and expand on workers’ health and safety;
   VIII. Ensure a clean circular economy with products that are safe by design;
   IX. Develop an effective monitoring and alert system;
   X. Stop the continued accumulation of legacy chemicals in the environment;
   XI. Remain aligned with the world-leading chemical regulation EU REACH;
   XII. Ensure more transparency and use of all relevant science for assessing health risks.

State of play: UK REACH

1. A primary function of UK REACH is to undertake risk management measures for chemicals which are causing harm to human health and/or the environment. However, to date, UK REACH has only considered a fraction of the chemicals that need urgent action. For example, the UK has initiated just two restrictions on hazardous substances since the UK exited the EU, compared to 5 that have been adopted in the EU and another 20 that have been initiated. In our view this is due to a lack of operational capacity and lack of chemical safety data, as well as the insistence that all risk management measures on hazardous chemicals should go through a separate UK analysis which largely duplicates -but is separate to- EU REACH processes.

2. The UK’s failure to keep pace with the scale and volume of EU risk management measures risks becoming a chasm with the introduction of the EU’s Restrictions Roadmap and reforms under
the EU’s Chemicals Strategy for Sustainability, if fully or largely implemented. The emergence of a *more ‘light touch’, less protective approach to chemical safety in the UK*, e.g. the *change of approach* to identifying ‘Substances of Very High Concern’ is a concerning development. Without action to close the divide, this will result in lowered levels of protection from hazardous chemicals for UK workers, consumers and the environment.

3. **Operational capacity:** the National Audit Office’s recent inquiry *‘Regulating after EU Exit’* reported that the UK Regulator (the Health & Safety Executive, HSE) had increased its staff by 46% between September 2020 and March 2022 to take on new responsibilities that were previously managed by the European Chemicals Agency. It found that HSE was facing challenges in recruiting experienced toxicologists and losing a quarter of staff time on training staff in-house. It concluded that these capacity constraints may delay regulatory decisions. The Public Accounts Committee more recently *reported* that after regulators received funding settlements in 2021, they have since been asked to model headcount reductions of up to 40%. The PAC concluded that if carried out, this ‘would make the current regulatory models unsustainable unless it was alongside legislative change and fundamental reform’.

4. **UK REACH is less effective than it should be due to a lack of data.** UK REACH does not have the comprehensive safety data needed for identifying, controlling and enforcing protections from known chemical risks. The deadlines for the chemicals industry to provide this data are due to be extended for the second time to 2026 for the most hazardous and highest tonnage substances and 2029-30 for the remaining substances. The proposed model for UK registrations remains under discussion.

5. The UK REACH competent authorities have also stipulated that companies will not have to resubmit full technical dossiers and risk assessments registered with EU-REACH. *This will not provide the same level of health and environmental protection as if the UK were able to continue to access this information*. Reliance on publicly available data about a substance’s properties and generic uses will be insufficient for evaluating and screening many substances, particularly those with complex endpoints. It’s also unclear if this model is viable, as intellectual property laws could make it difficult to publish some publicly available data.

6. There is also a *lack of institutional accountability in UK REACH to ensure transparent and open decision-making*, particularly in relation to HSE decisions to reject or de-prioritise EU controls. This leaves the system more vulnerable to influence from backdoor lobbying. It is a secretive process (it is unclear which stakeholders officials have received input from), and no strong and transparent justification is needed for rejecting EU controls. Some of its reasons include: wanting more evidence a substance is harmful; unscrutinised claims by some in the chemicals industry, for example that alternatives do not exist; wanting evidence of a substance’s use as a regrettable substitute; the existence of substances from the same group that could be used as regrettable substitutes (but with no follow-up to look into the whole group). *‘Regrettable substitution’* happens when one banned chemical is replaced with another unregulated one from the same group. The substituted substance may have similar properties and function but can be just as harmful. Furthermore, the lack of tripartite and transparency means that decisions that impact on workers’ health and safety are not being made by consulting those who represent workers.

7. **The slow pace of the EU REACH regulation has been transposed to UK REACH:** The UK REACH regulation is transposed from EU REACH 2007 legislation, which - while providing the highest standards globally - has nonetheless failed to meet its original objective of speeding up protections in the face of *rapidly growing* use of hazardous chemicals. The Defra Chemicals
Strategy theme paper rightly acknowledges chemical threats are “in many cases, outstripping the current pace of regulation”, and a recent EEB report *The Need for Speed* analyses why EU REACH 1.0 regulation is failing to keep step with chemical threats. As this report and other analysis has shown, the reasons for this slowness include:

I. The notion of ‘no data, no market’ is not implemented; it is often more a case of ‘no data, no problem’. Almost all chemicals on the EU market (93%) lack critical information about their potential hazards, including carcinogenicity. Instead of regulating chemicals of high concern with the data available, they are put on hold based on some of the data not being available. The result is that exposure to a hazardous chemical continues for many years before robust regulatory action is taken.

II. Delays in the system: once on the market, it takes officials decades to gain accurate data to prove “unacceptable risk” and phase out chemicals known to be dangerous. Mainly because in some cases chemical companies can prolong this process by resisting attempts to provide the necessary data or by challenging the process in court.

III. Regulating substances one by one: if a ban is finally agreed upon, companies often substitute one banned chemical with another unregulated one from the same group (the process described above known as ‘regrettable substitution’).

Policy objectives and solutions to reform UK REACH

8. **UK REACH must be strengthened to address the risks that hazardous chemical exposure and contamination pose to the environment and to human health.** It must also be strengthened to provide certainty to UK businesses. This will drive innovation in safer and more sustainable chemicals within the UK chemicals industry, while underpinning a healthier and more sustainable future for UK citizens and the environment. This should be done through:

9. **A safer, faster and more cost-effective model.** This would default to adopting EU risk management decisions but retain the sovereign ability to diverge after a request, subject to demonstrable reasons why the UK context is different, that was open to challenge. This would maintain high protections for our health and the environment from hazardous chemicals but minimise duplication and divergence costs on industry and the public purse: a win-win. **The benefits of this would be:**

   I. This system would mean registrations could be relatively simple (the Swiss model), addressing the difficulties outlined in paragraph 4 above on data. It would provide certainty and predictability and be low cost to industry. This Swiss system does not require full registration data for chemicals that are registered in EU REACH but adopts EU risk management decisions, which has access to full data and can properly evaluate the risks. Although it follows EU decisions on regulating chemicals as a default, it retains the ability to deviate.

   II. **Polling** shows strong public support for high regulatory standards on chemical safety. There could be a potential public outcry if Great Britain starts becoming a dumping ground for substances or products that do not comply with higher EU standards.

   III. **Cost-effectiveness:** it would provide a sustainable model that would allow the UK to focus its limited capacity to go further and faster than the EU or on areas where
the UK context is demonstrably different.

IV. **Minimising the impact of divergence on Northern Ireland.** Greener UK have set out the importance of ensuring the continuity of standards in Northern Ireland with the EU’s to protect the single biogeographic region on the island of Ireland, and to guarantee the integrity of the internal market between Northern Ireland and the Republic of Ireland; on which so many businesses are dependent, including the agri-food sector. The adoption of an EU risk management approach would therefore provide for the continued protection of these benefits and create additional safeguards for the UK’s shared environmental assets and internal market.

10. **Enabling UK REACH to build on EU REACH more easily** is essential given the UK’s limited capacity, but on the condition that if the UK makes use of (and does not duplicate) EU risk evaluations it should adopt risk management decisions made on the basis of them. In our view, it’s unlikely the UK context is significantly different to other countries in the EU, as it has similar industrial sectors. For safety’s sake, the decision not to adopt an EU protection should not be taken as easily as it is currently and should not be so open to representations from the chemicals industry to defend its products from restrictions.

11. **Institutional mechanisms to ensure open and transparent decision-making,** which would make the system less susceptible to backdoor lobbying and industry capture. Currently industry seems to be very closely involved in determining HSE decisions about what to regulate. A protective and transparent system would assume the applicability of EU risk management measures to the UK, with divergence based on evidence that UK use and therefore exposure is significantly different (higher, as well as lower).

12. **Speeding up regulatory processes:** The following measures are needed to speed up UK REACH processes, and are also mirrored in the debates at EU level which is focused on addressing this problem in the revision of REACH:

   I. **Regulate groups of substances** – from the candidate list through authorisation and restriction - to prevent regrettable substitution and the ‘no data, no problem’ situation that pervades many aspects of REACH. Targets and timeframes should be set to speed up phasing out groups of substances of most concern.

   II. Instead of assessing chemicals one by one and removing them when they are found to be unsafe, **regulation should be reorientated away from reaction, towards prevention** and avoiding their production.

      a. A key measure for reducing chemical pollution is to set out a clear timetable for banning the most harmful chemicals from consumer products.

      b. The concept of “essential use” helps to determine the trade-off between enabling any essential roles of hazardous chemicals with reducing our overall chemical burden. This concept sets out criteria to ensure that the most harmful chemicals are only allowed if their use is necessary for health, safety or is critical for the functioning of society AND if there are no acceptable alternatives.

   III. **The burden of evidence required for controls and classification must be reduced to create a more protective and responsive system.** The Government seems
interested in integrating New Approach Methodologies (NAMs) (non-animal methods and test protocols) into regulatory risk assessment. If NAMs are to be integrated while continuing to make progress on chemical safety, they must be accepted by industry and regulators for removing a substance from – as well as placing it on – the market, despite uncertainties. For example, the proper protection this will require would mean the demonstrated ability to classify substances as both category 2 and category 1 carcinogens, reproductive toxins or endocrine disruptors based on NAMs, including read-across.

IV. Clear incentives to companies to provide comprehensive and relevant data. The chemicals industry should not be rewarded for delays or poor-quality information. HSE should be given greater powers to ensure registration dossiers are compliant, such as:
   a. Revocation of registration numbers in cases of clear non-compliance;
   b. Additional fees for actions causing the regulator extra workload.

13. The current system is static, not dynamic. Continual and automated monitoring and surveillance of the entire universe of scientific papers need to be implemented. So that if new studies indicate health and/or environmental problems, they can be immediately flagged for scrutiny. The UK could lead the way in this area.

14. The Government must strengthen the balance between generic and specific risk assessment. There is a push from some in industry for the UK to pursue an exclusively ‘risk-based’ approach to chemicals, and to reject generic approaches to risk management (GRA). Specific risk assessment requires both hazard identification and exposure assessment, which requires information on the use to which it is put. An accurate specific risk assessment requires a lot of data and resources and inevitably includes uncertainties and ambiguities – and generally takes many years, during which time exposure continues (and may increase). Uncertainties may include unintended and unknown uses, the harm caused by a substance (which may not be fully identified in toxicity tests) and what is a safe exposure limit (PFOA and PFOS TDI values have decreased significantly as new evidence emerges).

15. Knowing the use to which a chemical will be put is increasingly challenging as the UK moves towards a circular economy promoting the re-purpose, and recycling of goods and materials. Even though it is purported to be a more scientific approach, it can lead to time-consuming evaluations and adds to the problem of ‘paralysis by analysis.’ Given these uncertainties, it’s also important to regulate groups of the most hazardous chemicals in a generic way on the basis of their uses (e.g. in toys or consumer products) as these uses can result in the exposure of vulnerable people and the wider environment to hazardous chemicals in the use phase or after disposal.

16. Closing gaps in chemicals regulation: This includes identifying and minimising exposure to Endocrine Disrupting Chemicals through generic risk assessment, applying an assessment factor to consider exposure to chemical mixtures, regulating the use of very persistent and mobile chemicals, and strengthening enforcement mechanisms to ensure regulations are met.

The threat from the Retained EU Law Bill

17. The Retained EU Law (Revocation and Reform) Bill gives Ministers powers to decide whether to amend, retain or revoke retained EU law (REUL). It also contains a ‘sunset clause’ which means that all REUL will be revoked by default at the end of December 2023 unless Ministers
actively decide to save it by that point.

18. Government Departments and the Devolved Administrations therefore have only 14 months to determine the fate of thousands of pieces of REUL, many of which contain essential protections for the environment and human health.

19. **All the key pieces of UK law regulating hazardous chemicals are on the REUL dashboard and therefore technically covered by this legislation.** This includes the 2006 REACH regulation (1907/2006), but also European Regulation (EC) No 1272/2008 on the Classification, Labelling and Packaging of chemicals (CLP), which is responsible for identifying and communicating hazardous properties of chemicals. Both REACH and CLP work together to provide a comprehensive legal framework. The dashboard also includes related chemical safety laws including the Toy Safety Regulation and Cosmetics Product Regulation, which restrict the use of certain chemicals in these products.

20. The EU REACH Regulation includes requirements to provide safety data on substances registered in the UK, to the list of substances that have been restricted or placed on the authorisation list (in Annexes 17 and 14). Various REACH statutory instruments have adapted this structure to work in a UK context (i.e. replacing ECHA will HSE), but the majority of UK REACH regulations are part of REUL.

21. **The Bill puts chemicals regulations at risk. It allows ministers to revoke or significantly amend these laws with little oversight or engagement.** In the absence of assurances from Ministers that REACH and related regulations will be preserved, there is also great uncertainty and concern about their future. This poses a number of risks to the public, the environment and to businesses.

22. Firstly, UK REACH currently restricts over 2,000 hazardous chemicals which are known to have damaging human health and/or environmental impacts including chemicals such as lead and cadmium. Under EU REACH, these restrictions built up over the course of 13 years. It includes a list of Substances of Very High Concern likely to be subject to regulatory controls in future. The EU list is used by companies around the world to make decisions about what substances to use and is a powerful driver for industry to switch to safer alternatives. The laws also automatically prohibit the use of substances identified as carcinogenetic, mutagenic and reprotoxic from cosmetics and children’s toys.

23. **The timeframe of 14 months for reviewing retained EU law is unrealistic given the capacity constraints already facing Defra and other competent authorities.** It will also act as a major distraction from existing priorities such as the delivery of legally binding targets required by the Environment Act 2021. We note that the government missed a key legal deadline on these targets when it failed to lay draft targets statutory instrument(s) in Parliament by 31 October. However, the unrealistic timetable is but one of many concerns we have about the Bill. The broad, ambiguous wording of powers to amend or revoke REUL will confer excessive discretion on Ministers, with little parliamentary scrutiny and no provision for public consultation.

24. Furthermore, **throwing UK rules into doubt will create uncertainty and instability for business, and very likely deter investment.**
25. Given the above, and given that the Retained EU Law Bill has in its scope at least 2,400 pieces of legislation (at least 570 of which are Defra regulations, but this number is likely to be much higher), it is our view that the Bill should be withdrawn.

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This submission is supported by the following organisations:

- Wild Fish
- Rivers Trust
- Whale and Dolphin Conservation
- Soil Association
- Marine Conservation Society
- Breast Cancer UK
- Angling Trust
- Buglife
- Fidra
- Greater Manchester Hazards Centre
- The Cancer Prevention and Education Society