



Provisional Common Framework for Chemicals and Pesticides 26th November 2020

CHEM Trust welcomes the opportunity to respond to the Provisional Common Framework for Chemicals and Pesticides, that has been prepared for the end of the Transition Period.

CHEM Trust is a UK registered charity that works at EU, UK and international levels to prevent manmade chemicals from causing long-term damage to wildlife or humans, by ensuring that harmful chemicals are substituted with safer alternatives.

1. Do you agree with the rationale for a Common Framework for chemicals and pesticides?

It is difficult to make an assessment about the provisional common framework without sight of the Concordat, as this will set out how future processes will operate, and common standards will be agreed, within GB REACH.

In our view, the Framework and Concordat should ensure the following:

- A level playing field within the UK, incorporating strong, enforceable clauses on non-regression and with commitments to ensuring policy progression that meets the highest standards. So that, for example, the structure should ensure that standards cannot be imposed by HSE/Defra that effect devolved matters. None of the UK legislatures should be hampered in their ability to move at faster speeds in introducing and implementing much needed protections from hazardous chemicals for the environment and public health in those areas where it has devolved competence. The framework should instead provide a mechanism by which higher ambition can initiate upwards revision of common standards.
- Decisions are based on principles of cooperation, co-decision, subsidiarity and consent, along the same lines as the principles of the EU single market.

Without the Concordat it is difficult to assess the extent to which the Framework meets the above criteria and provides a sound basis for setting out a common UK or GB approach as this provides the detail of how it will operate and be governed. For example, the regulatory regime should be supported by the type of inter-governmental model that underpins the committee structure of the European Chemicals Agency, where all EU Member States participate in decision-making, including in the Committee for Risk Assessment (RAC) and the Committee for Socio-economic Analysis (SEAC), which develop and adopt opinions on controls.

It is welcome that the Framework states it respects the decision-making powers set out in devolution settlements and established constitutional conventions. In assessing the extent to which the common framework meets the above principles, it would be desirable if it or the Concordat included reference to the following (not an exhaustive list):

- The safeguard clause of Article 129 REACH that allows DAs to implement emergency restrictions and other controls.

- Other areas in which DAs have devolved competence (i.e. for the environment and public health, with trade a reserved competency).
- The ability of the WG and SG to independently request that HSE prepares a restriction dossier for chemicals that pose risks.

2. Do you agree the scope we have set out for this Framework, and the exclusions?

Yes.

The part of the document which sets out the scope of the Framework states that “where DA Ministers give consent, the Secretary of State may make regulations on behalf of the DAs to cover whole or part of the UK”.

However, the GB regime will be considering on a case-by-case basis whether to implement controls on chemicals that have been implemented at EU level. The Secretary of State has said: “it would not be appropriate to automatically implement future EU decisions under UK REACH. This is because the EU will no longer consider the impact of their decisions on Great Britain. We can take their decisions into account but we will need to consider, in each case, whether they are right for Great Britain.”

Any decision NOT to take action and to match the EU control would be more significant than any decision to legislate; such as any decision not to mirror an EU restriction on a hazardous chemical or to add a substance to the GB Candidate List that has been classified as a Substance of Very High Concern and added to the ECHA Candidate List. If the UK does not keep pace, it will result in regulatory divergence from the EU and could result in GB becoming a dumping ground for products which do not meet EU regulations. It is therefore necessary that the consent given by DA Ministers must apply to any decision by the HSE NOT to match action at EU level; otherwise a lower standard could effectively be unilaterally imposed on the other parties.

3. Do you agree with the interdependencies identified?

NRW SEPA NIEA should provide advice directly to HSE, rather than via the EA.

4. Do you have any specific areas of concern with the proposals?

There are huge weaknesses within GB REACH, which will provide considerably less protection than the system it's replacing, with much greater potential for deregulation.

A commitment to mirror EU outcomes on hazardous chemicals would allow GB to go further and faster than the EU, would address many concerns about the system and would provide a credible basis from which the UK could seek access to ECHA's chemical safety database (although participating in ECHA would be more preferable).

For example, without such a commitment, trade in chemicals will be disrupted between Northern Ireland and the rest of the UK. While the mutual recognition principle would ensure that goods from Northern Ireland are accepted in all parts of Great Britain, the Northern Ireland Protocol would take primacy for goods from Great Britain to Northern

Ireland. So that if GB goods do not comply with relevant EU rules on chemicals, they could not be placed in the NI market.

The other aspects of GB REACH that concern us include:

- The BREACH system will start with an empty database that won't even contain the basic registration data on chemicals for over 6 years, and even then, will have much less information in it on chemical properties and uses than in REACH. We think this will make it very difficult for it to implement controls on chemicals, particularly to defend them from legal challenge.
- In comparison to ECHA, there are currently inadequate mechanisms for oversight and scrutiny and for stakeholder engagement and public participation. The result, we think, will be a more closed and less transparent system.
- It will not have the same level of resource, expertise and capacity as ECHA. It is likely to have to regulate the same number of substances, but with a fraction of ECHA's workforce and budget. While all EU controls will be automatically looked at, Defra has said that all risk management measures should have a UK-specific risk management analysis performed before the measure is initiated in UK REACH. With decisions having to go through such a UK bottleneck, we can see the UK falling behind the EU very quickly through a lack of capacity. For example, the EU is in the process of taking forward a restriction on Per and Polyfluoroalkyl Substances (PFAS) substances as a group (of >4,500 chemicals) used in non-stick pans, waterproof fabrics, food packaging and cosmetics, which have been linked to cancers, thyroid disease, obesity and reproductive problems. If GB does not mirror a future restriction, it could become a dumping ground for products containing PFAS, becoming the new "dirty man of Europe" again. Without a relationship with ECHA, we are concerned the UK will not have the capacity for such a complex restriction, nor sufficient data to respond to any legal challenges from industry.
- Without alignment, there will be much greater room for manoeuvre for regulatory cooperation with the weaker and less protective US system, as part of a future US-UK trade deal.

However, the Government has promised not only to maintain protections, but to provide a better system. We would therefore expect it to meet or exceed new EU chemical related laws. We therefore would urge that the UK remains aligned with REACH on chemical regulation, ideally by staying in REACH via associate membership of ECHA