



The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020
CHEM Trust briefing for parliamentarians and policy makers
December 2020

Summary

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.

This Statutory Instrument (SI) reflects the difficulty of replicating EU REACH on a national basis that has been regularly highlighted over the years. The government's plans for an independent chemicals regulatory regime will impose considerable costs and burdens on industry in having to comply with an unnecessary duplicate system, and will result in a regime that will be less protective of human health and the environment than the system it is replicating, with greater potential for deregulation. It remains in the best interest of us all - of industry, as well as for maintaining high environmental and public health protections - for the UK to negotiate with the EU to continue to actively participate in EU REACH, the best chemicals regulatory system in the world.

This SI has recently been drawn to the special attention of Parliament by the Secondary Legislation Scrutiny Committee (SLSC) because of a number of concerns about the ability of the Health & Safety Committee to take on its regulatory role and the lack of access to the full chemicals' safety data.¹ Many of these concerns were raised by Parliament last year, but have not been addressed in the interim.² Our concerns relating to the SI are set out below.

Background

1. Harmful chemicals are found in many everyday products we come into regular and close contact with, from furniture and cosmetics, to toys and clothes. Recent data showing that all English water bodies are polluted with chemicals above acceptable limits highlights the importance of robust regulation of chemicals that aims to ensure that hazardous chemicals are used safely, or not at all, and prevents their release into the environment.³
2. Until the end of 2020, the UK falls within the most advanced chemicals regulatory system in the world, the REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Regulation, managed by the European Chemicals Agency (ECHA). When it was created in 2007, REACH shifted the burden of proof for the safety of chemicals from regulators to industry, requiring safety data for all chemicals produced at over 1 tonne p/a.
3. The Government is not seeking to participate in REACH as part of the UK's future relationship with the EU and is establishing an independent chemicals regulatory regime to start operating 1 January 2021. The Government has transposed the REACH regulation

¹ House of Lords Secondary Legislation Scrutiny Committee, 34th Report of the Session 2019-21 (SLSC Report), 19 November 2020, <https://committees.parliament.uk/publications/3557/documents/34373/default/>.

² The 2019 REACH SI was debated on a motion of regret in the Lords on [26 March 2019](#) and was debated in the Commons on [25 February 2020](#).

³ <https://environment.data.gov.uk/catchment-planning/>

into UK law and all existing EU REACH registrations will be grandfathered into the GB regime, but this relies on companies accessing and re-registering the full package of safety data registered with ECHA into the UK system.

Extension of deadlines for submitting information

- Schedule 2 of the SI amends the REACH etc (Amendment etc.) (EU Exit) Regulations 2019 to extend the deadline by which companies that have registered chemical substances with EU REACH or downstream users importing substances must provide full safety data for those substances. The deadline has been extended from two years after exit day (31st December 2020) to staggered over a period of 6 years +300 days; so that the full registration dossier on substances will now need to be submitted within 2, 4 or 6 years from 28th October 2021, depending on tonnage band and hazard profile.

Cost to business of re-registering data on substances already registered under REACH

- According to the Chemicals Business Association, UK firms do not own the testing data that is required to support registrations under UK REACH. The majority of testing data is owned by consortia of European companies.⁴ To reuse the data for the UK system, companies may need to obtain permission from all members of the original consortia and would likely have to pay for the extension of rights. If this cannot be obtained, the companies may have to reconduct tests to establish safety information, which could involve duplicate animal testing. UK industry estimates it will cost £1 billion to comply with UK REACH, which includes the cost of re-submitting full registration dossiers already available under EU REACH.⁵ The Explanatory Memorandum states that the aim of this phased approach is to “allow companies sufficient time to negotiate access to information where necessary and to form joint registrations.”⁶

Access to full chemical safety data

- While a two-year timeframe for submitting data was clearly challenging for industry, this lack of full chemical safety data will make it very difficult for the HSE to identify and control hazardous chemicals, and to defend controls from legal challenge. For example, the EU has started a process to restrict Per and Polyfluoroalkyl Substances (PFAS) chemicals as a group (of >4,500 chemicals).⁷ These substances are used in non-stick pans, waterproof fabrics, food packaging and cosmetics, and have been linked to cancers, thyroid disease, obesity and reproductive problems. The Government has said it will consider how these chemicals are managed in its forthcoming Chemical Strategy,⁸ but without a relationship with ECHA, it does not currently seem feasible that UK REACH will have the capacity for such a complex restriction. It also runs the risk of being challenged in court by chemical companies challenging the evidence used for the legal restriction, which could result in the regulator having to withdraw a control. Such legal challenges happen in the EU system, for example, Chemours is currently challenging, in the European Court of Justice, a decision to designate its GenX PFAS as a Substance of Very High Concern.
- In response to concerns raised by the SLSC about the lack of data, Defra said the regulator will be able to look at “the substantial amount of publicly available information”, including

⁴ CBA News, 30 October 2020, <https://www.chemical.org.uk/about-us/cba-news/cba-welcomes-improvements-uk-reach-workability-affordability/>

⁵ [FT](#), 3 August 2020

⁶ Explanatory Memorandum to the REACH etc (Amendment etc) (EU Exit) Regulations 2020, https://www.legislation.gov.uk/ukdsi/2020/9780348213300/pdfs/ukdsiem_9780348213300_en.pdf

⁷ <https://www.foodpackagingforum.org/news/eu-ministers-recommend-pfas-restrictions>

⁸ [WPQ 113464](#), 16 November 2020.

the publicly accessible part of the ECHA database.⁹ However, the detail on safety tests and on uses is generally confidential; it is not sufficient for the UK to rely on the publicly accessible information from the EU's REACH system. After receiving the Department's explanation, the SLSC summarised: **“in the absence of complete access to EU REACH or a data sharing agreement with the EU in this area..This could undermine HSE's ability to regulate chemicals safely and effectively”**.

Issues to raise with the Minister:

- **What assessment has been made by Defra about whether publicly available information will be sufficient for implementing controls on hazardous chemicals and defending them from legal challenge?**

A deal on data sharing with the EU

8. In response to concerns about access to data, the Government has confirmed it has proposed a “data-sharing agreement with the EU” as part of a future trade agreement with the EU.¹⁰ Analysis of ECHA's close cooperation agreements with non-EEA countries suggests that aligning with REACH controls and related EU chemical laws is a likely pre-condition for negotiating access to its database.¹¹ A commitment to align with the EU on REACH, could provide a constructive basis on which to agree a close partnership on chemicals that would provide access to ECHA's safety database.

Issues to raise with the Minister:

- **The Minister recently said the EU has so far rejected sectoral annexes in future partnership negotiations.¹² Is this still the case? What response has the EU given to the UK's proposal for accessing ECHA safety data and did it outline any preconditions for exploring this option?**

Regulatory divergence and chemical dumping

9. On the basis of current plans, without a mechanism to keep step with new 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 in unscrupulous manufacturers dumping products on the UK market that do not meet EU standards. These regulations could further widen UK divergence from the EU: the GB chemical safety database will be populated over nine years after the EU's was assembled and even then, will have less information in it on chemical properties and uses. At the same time the EU will be taking forward the biggest reform of its chemicals' safety laws in over a decade. Its recently published [Chemicals Strategy for Sustainability](#) has the potential to phase-out the most hazardous substances that are harming our health and the environment, including proposals for phasing out the most harmful substances from consumer products. High alignment of the UK system with the EU system has commercial benefits as well. The CBI has said that 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 is UK dependent on the EU as a market.
10. If the UK does not remain aligned to EU REACH, trade deals with countries with weaker systems for regulating chemicals (which includes almost all non-European countries

⁹ SCLC Report, p.5 <https://committees.parliament.uk/publications/3557/documents/34373/default/>

¹⁰ SLSC Report, p.6.

¹¹ “Brexit and chemicals: future partnership arrangements between the UK and ECHA”, CHEM Trust, 21 April 2020, <https://chemtrust.org/echa-models/>

¹² WPQ 111495, 9 November 2020.

including the US) could result in a weakening of our chemical protection standards and the import of products containing problem chemicals banned in the EU.¹³

Issues to raise with the Minister:

- **The Government has acknowledged that chemical dumping is a ‘possibility’ and it is working hard to ensure this does not happen.¹⁴ Will the Government actively match new controls on chemicals implemented at EU level to ensure this does not happen?**
- **The EU recently announced the biggest reform of its chemicals’ safety laws in over a decade, will this widen the regulatory gulf between it and UK? Is the Government looking to adopt similar policies, for example will it ban all but essential use of the most harmful chemicals in consumer products?**

Controls on hazardous chemicals

11. In response to the call for regulatory alignment, Defra 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.”¹⁵ However, the EU has to consider impacts across the EU, and there is no reason why the impact would be so different in the UK. The main issue is often whether safer alternatives are available, and there is no reason this should be different in the UK vs Germany, France or Sweden. We are concerned that the assessment of each control as to whether it is “right for the UK” suggests primarily an economic argument which could undermine controls on chemicals that pose risks to our environment and public health. For example, 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.¹⁶ We are keen to stress the need for divergence from EU decisions only where a decision will be more protective of public health and the environment.

Issues to raise with the Minister:

- **Will s/he ensure that any exceptions to EU controls are publicly justified and open to challenge by NGOs and others?**

The readiness and capacity of the Health & Safety Executive (HSE) to take on its new regulatory role

12. There are serious concerns about the **capacity**, resources available to, experience and expertise of personnel at **Health and Safety Executive** to replicate the functions of the European Chemicals Agency in such a complex field. ECHA has an annual budget of approximately €100million and 400 staff specifically for REACH, out of a total of 600 staff. It’s likely HSE will not have to regulate significantly fewer substances than ECHA, but with a fraction of its workforce and budget. In its response, Defra confirmed that the Department will be recruiting 40 staff specifically for REACH. In addition, of the 130 new staff it aims to recruit across all new chemicals’ regimes, there have only been 30 job offers to date.

To raise with the Minister:

¹³ This is set out in more detail in CHEM Trust’s submission to the Trade Bill Committee, <https://chemtrust.org/how-a-us-uk-trade-deal-threatens-our-protection-from-hazardous-chemicals/> and to the EU International Agreements Sub-Committee inquiry on UK-US trade negotiations, <https://committees.parliament.uk/writtenevidence/13551/html/>

¹⁴ Lord Callahan in a House of Lords [Debate on REACH and CE](#), Thursday 17 September 2020.

¹⁵ [SLSC Report](#), p.5.

¹⁶ <https://chemsec.org/revealed-economic-interests-not-health-concerns-dictate-eu-chemicals-legislation/>

- **Does the HSE has sufficient capacity and staff to take on its new role? For example, will it be able to keep pace with future EU decisions on hazardous chemicals so timely consideration can be given as to whether they should be implemented in UK REACH?**

Transparency/ accountability of GB REACH\

13. There are also serious concerns about the **lack of** mechanisms in the future regulator to ensure **stakeholder representation and transparent decision-making**. This will result in a more closed and less transparent system than ECHA's, that would be more susceptible to industry lobbying. 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. The committee structure helps to ensure its work can be challenged and the best information is available for these discussions, helping to avoid mistakes and to ensure that decisions are made more independently and transparently.

To raise with the Minister:

- **Will the Government engage with environmental and public health stakeholders on developing an open and transparent structure?**

Remaining within and aligned to EU REACH

14. A close partnership with the EU on chemical regulation (that would ideally involve negotiating associate membership of the European Chemicals Agency) would avoid the costs and disruption on industry of a second system, but retain the high environmental, safety and health standards the UK currently enjoys. This is an option that could be negotiated with the EU over the years ahead, for example an annex on chemicals could be added to an UK-EU deal, if one is not included in an agreement this year.
15. REACH sets the de facto global trading standard and remaining aligned to it is vital for expanding our exports and global trading relationships, as well as for accessing the single market (the destination for 60% of its exports). It offers value for money through sharing of resources, expertise and workload. Duplication of work is avoided through the co-ordination of Member State activities on risk assessment at national level and the fact registration is completed centrally. Data sharing at an EU level additionally avoids unnecessary animal testing. It also provides for a transparent decision-making structure, with high levels of stakeholder engagement.

Issues to raise with the Minister:

- **It will cost the chemicals industry an estimated £1 billion to comply with GB REACH. What evidence does the Government have of any benefits to environment, human health or industry that the UK could gain from its decision not to seek to participate in the European Chemicals Agency, and how will this offset the costs?**

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