

Environment Bill: briefing for Commons Committee

17 November 2020

Regulation of chemicals (Clause 125 and Schedule 19)

Introduction

Clause 125 and Schedule 19 of the Environment Bill provide the Secretary of State with wide ranging powers to amend the Registration, Evaluation, Authorisation & restriction of Chemicals ([REACH](#)) Regulation and the REACH Enforcement Regulations 2008. This would allow the government to amend the main text of UK REACH law, although it also lists a number of protected provisions which cannot be modified.

Amendments to UK REACH would be made through further regulations. Schedule 19 of the bill states these can only be made if they are consistent with Article 1 of REACH, which sets out its aims and scope. Paragraph 1(6)(b) of the Schedule says the Secretary of State must, before beginning consultation on any amending regulations, publish an explanation of why they are consistent with Article 1, in “the manner which the Secretary of State considers appropriate”.

We are concerned about granting the Secretary of State such a sweeping power to amend the main UK REACH text. While we do not object to the principle of an amending power, as currently drafted it could be used to reduce the level of protection for the public and the environment from hazardous chemicals.

This concern is borne out by recent experience of secondary legislation in which drafting errors can lead to an accidental weakening or changed interpretation of laws. For example, a change on endocrine disrupting chemicals nearly slipped through in 2019. Fortunately, this was [spotted by the UK Trade Policy Observatory](#) and was eventually [corrected by the government](#). This does though highlight the risks of allowing changes to such significant areas of public protection law via technical secondary legislation on which there is often no public consultation and limited parliamentary scrutiny.

The proposed new UK regulatory system will not provide the same level of protection for the public and the environment from harmful chemicals as the EU’s REACH Regulation, which the UK was instrumental in developing. This is the most advanced regulation system in the world, and is managed by the European Chemicals Agency (ECHA). The optimal outcome would be for the UK to negotiate continued participation in the REACH system, via associate membership of or very close co-operation with ECHA, as part of its future relationship with the EU.

Earlier this year the government [confirmed](#) it was not seeking to participate in REACH as part of the UK’s future relationship with the EU and will establish a separate UK chemicals regulatory regime from 1 January 2021. [Until recently](#), the government was committed to exploring with the EU in future relationship negotiations for the UK to remain within REACH, for example via associate membership of ECHA.

Several helpful amendments have been proposed on Schedule 19. We set out below our support for amendments 175, 176 and 198 and NC11 in particular and why these are necessary.

The precautionary principle – amendment 198

The precautionary principle will be an essential safeguard as the new UK chemicals regime is rolled out and develops over time. **Amendment 198** would require ministers, in considering consistency with Article 1 of the REACH Regulation, to pay specific attention to the precautionary principle.

It would be very helpful if the minister could use the opportunity provided by this amendment to issue a clear statement in relation to the precautionary principle and Article 1. This should explain the objectives of the regulation and how the precautionary principle is hard wired into Article 1, to provide absolute clarity that the UK system will continue to be underpinned by the precautionary principle, in order to ensure that active substances or products placed on the market do not adversely affect human or animal health or the environment. **An unequivocal ministerial clarification that the government remains committed to this important principle in relation to chemicals would be very welcome.**

Protecting consumer rights – amendment 176

The bill gives the Secretary of State for Environment the power to amend UK REACH and the REACH Enforcement Regulations 2008. However, specified elements of REACH are excluded from the Secretary of State's amending power. The principle of establishing "protected provisions" is welcome. However, we are concerned that certain key articles are not included within the table of protected provisions set out in paragraph 6 of Schedule 19.

The government has [said](#) the proposed 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. These include the aim and scope of the REACH Regulation, the principle of "no data, no market" and animal testing as a last resort.

It is difficult to see how the government's rationale applies to Articles 32 to 34.

Article 32 and Article 34 relate to consumer information and rights and establish a duty to communicate information down and up the supply chain, while Article 33 enshrines consumers' right to know about substances of very high concern in every day products.

Under Article 33, suppliers of articles which contain a substance of very high concern are required to provide sufficient information in response to consumer requests about that product to allow its safe use, including disclosing the name of the substance. These are substances that, for example, meet the criteria for classification as carcinogenic, mutagenic or toxic to reproduction or are persistent, bio-accumulative and toxic. **This is an essential public policy safeguard and it is not clear why the government would wish to exclude it from the list of protected provisions.**

We therefore support amendment 176, which would add Article 32, 33 and 34 of REACH to the "protected provisions" that may not be amended under the Schedule 19 power.

Transparent consultation – amendment 175

This amendment would improve transparency as it would require the Secretary of State, before making regulations under this Schedule, to publish and lay a report before Parliament.

This report should explain the nature and extent of the consultation undertaken under paragraph 5, a summary of consultation responses received, a statement on how effect has been given to the responses and the reasons for not giving effect to those recommendations or advice contained in the responses which have not been given effect.

We support **amendment 175** as it would ensure that any changes to chemicals protections are properly publicised and communicated to Parliament, improving scrutiny and transparency and reducing the risk of protections being weakened or changed without proper consultation.

Maintaining parity with EU REACH – New Clause 11

After the transition period has ended, the UK should stay as close as possible to EU REACH, in order to achieve our ambitions of protecting the environment and human health. This will prove to be much more cost effective and will prevent unnecessary work, time and money being spent on system duplication. A worst case scenario of significant divergence could result in the UK becoming a dumping ground for hazardous chemicals banned or restricted in the EU.

We therefore support **New Clause 11** which would help maintain parity with EU REACH, and related regulations such as the Nitrates Directive, and ensure the retention of robust chemical regulation. It would also make seeking to gain associate membership of ECHA a government objective for trade negotiations.

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