

Post-Brexit chemicals regulation and the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020

December 2020

Briefing for parliamentarians and policy makers

In brief

Environmental groups, animal rights charities, health campaigners and the chemicals industry remain concerned that the government's plans for an independent regulatory regime for chemicals will put the environment, human and animal health and business interests at risk. In light of shortcomings of the UK's approach, continued UK participation in the EU's regime would be the best result for chemicals regulation in the UK. In the absence of continued participation, a number of concerns remain regarding the current drafting of the REACH amendment SI. This SI has recently been [drawn to the special attention](#) of the House of Lords by the Secondary Legislation Scrutiny Committee (SLSC) because of a number of concerns, including the ability of the Health and Safety Executive (HSE) to take on its regulatory role and the lack of access to chemical safety data.

Our specific concerns relating to the amended SI include:

Budget and capacity

The government has so far failed to demonstrate that the chemical regulator in the UK, the Health and Safety Executive (HSE), will be equipped with the necessary skills and capabilities that at least match what has been provided by the European Chemicals Agency (ECHA). Introducing the original SI to parliament, then Resources Minister Thérèse Coffey indicated the budget would likely be £13 million a year, a figure that has not been updated. Around 40 staff are being recruited to work specifically on REACH within Defra, and the HSE is looking to recruit a total of 130 new staff, although only a fraction of this total have so far been recruited.

In a UK system, the HSE will have a similar number of chemicals to regulate – upwards of 20,000 – as ECHA does through REACH with an annual budget of around €100 million and 400 members of staff. We therefore have serious concerns about the lack of staff with the necessary public health/environmental expertise, particularly in the short term. The SLSC has shared this, noting: "We remain deeply concerned, however, about the impact and costs of introducing the new domestic REACH regime and the readiness of the Health and Safety Executive (HSE) to take on its new regulatory role at the end of the [Transition Period], especially as the recruitment and training of expert staff is not yet complete."

We encourage Peers to call on the government to urgently set out how the UK system will be staffed and resourced to ensure current levels of protection endure.

Lack of full safety data for years to come

As the government has so far failed to agree a data sharing mechanism for chemical safety dossiers, the new SI extends the deadline for companies to provide full safety data from the original two years after the end of the transition period to either two, four or six years from 28 October 2021, depending on tonnage and hazard profile.

These full safety dossiers, which will replicate what has been jointly submitted to EU REACH over the course of the last decade, are necessary for the regulator to identify and control hazardous chemicals, and to defend controls from legal challenge.

In response to concerns over data, Defra has said the regulator will be able to use “the substantial amount of publicly available information”, including the publicly accessible part of the ECHA database. But this information is not adequate for proper regulation. It is, of course, not as comprehensive as the full safety dossiers that allow for proper assessment and regulation of risk, including making legally defensible decisions on restrictions.

As the SLSC [concluded](#), it is deeply concerning that “HSE will not have access to the full chemicals safety data currently held by EU REACH”.

The government must demonstrate that publicly available information will be sufficient for implementing legally defensible controls on hazardous chemicals and release an estimate of the additional costs to UK businesses from re-registering chemicals for a UK regime.

Chemical regulation in the UK

For the past 13 years, chemical use in the UK has been regulated through REACH, the EU’s chemical regime. Before it was established, industry used chemicals without evaluating their safety, giving the European Commission “justified concern” about significant increases in cancers, endocrine disruptions and environmental harm. Since 2007, REACH has developed a database to assess safety risks and regulate 21,000 unique substances. It replaces dangerous chemicals with safer ones, and makes manufacturers responsible for managing the risks. This helps keep the public and environment safe from dangerous chemicals, and avoids the duplication of tests – including on animals – through companies sharing data and information. It also allows free movement of substances throughout the EU.

Post-Brexit chemical regulation

REACH is a complicated regulation. As it applies directly to member states and is administered at EU level, it was one of the most difficult regulations to transpose into UK law. Industry and environment sector respondents alike have strongly supported the need for the UK to stay in REACH or, at the very least, maintain close alignment.

Theresa May’s government [sought](#) ‘associate membership’ of ECHA, which administers REACH, after Brexit. This would have allowed continued access to the REACH database and participation in the transparent, scientifically informed decision making processes. The current administration has neither sought such membership, nor provided any compelling justification for so not doing, citing abstract calls to sovereignty.

What other concerns remain over UK chemicals regulations?

The UK’s independent chemicals regime will have other seriously adverse consequences in addition to those highlighted above.

1. Animal testing could increase

REACH has minimised animal tests through data sharing and other measures. This was heavily promoted by the British delegation when REACH was created. Cruelty Free International previously estimated the number of tests across REACH's first 11 years to be around 4 million – considerably fewer than original estimates predicted. Animals tested thus far include fish, quail and tens of thousands of rabbits. Given the potential that UK companies will have to duplicate tests already conducted if they cannot agree access to information in the REACH database, there is a risk that animal tests will be reconducted. When pressed by a parliamentary committee, Minister Coffey [admitted](#) that there could be an increase in animal testing if the UK left EU REACH.

2. There would be a lack of oversight and democratic participation to protect against risks and socioeconomic impacts

We remain concerned that the government has yet to replace the supporting committees that were stripped away by the original REACH SI and that ensure that, at an EU level, decisions are based on the best scientific advice. The SI removed Article 76, which established a Committee for Risk Assessment; a Committee for Socio-economic Analysis; and a Member State Committee, 'responsible for resolving potential divergences of opinions on draft decisions'. These committees allow for stakeholders from industry, NGOs and trade unions to help inform decisions. In the UK version, this is replaced by a duty for HSE to seek external advice, but no formal, standing committees of experts and stakeholders will be established to look at the scientific knowledge about chemicals.

Furthermore, the SI established that the Secretary of State will make some final decisions relating to the status of particular chemicals. This could be concerning when ministers have in some cases advocated diverging from the EU's strict rules. For example, Minister Coffey, when she was responsible for chemicals, said she would not necessarily want to follow EU restrictions on DecaBDE. DecaBDE is a flame retardant with links to cancer, endocrine disruption and nervous system toxicity (etc). It is restricted in the EU and several US states. We believe that ECHA and HSE advice should only be diverged from where a decision will be more protective of public health and the environment.

Defra has [said](#) that "it is not possible to replicate such a committee structure [as that used by ECHA, comprising representatives from member states] within the UK", but its current proposals do not establish any committees or allow for sufficient scientific advice or public participation. They therefore increase the risk of erosion of protections and of damaging divergence from best practice over time.

3. Businesses will face considerable duplicate fees for no discernible gain

The duplicate regime will impose unnecessary costs on UK businesses at a time that they can ill afford it and for no discernible gain. The chemicals industry, which employs 500,000 people in the UK, contributes £15 billion to the economy, and sends 60 per cent of its exports to the EU, is concerned about a duplication of existing safety dossiers. Just 5,000 of EU REACH's 21,000 registrations were led by UK companies, and even those registrations will include safety data that is held by EU companies, with agreement that it only be used for the purposes of REACH registration. To reuse the data for a UK system, companies might need to obtain permission from all members of the original consortia (not just the specific companies that own the data) and would likely have to pay for the extension of rights. If this cannot be obtained, the companies would have to reconduct tests to establish safety information.

According to UK industry, it could cost £1 billion to comply with UK REACH, which includes the cost of re-submitting full registration dossiers already available under EU REACH.

Conclusion

The UK is not prepared to manage chemicals in a way that adequately protects the environment, human and animal health, and UK businesses or that ensures at least equivalent standards and protections to those that we currently enjoy. **We urge the government to address the deficiencies in the REACH SI as it is currently drafted, either by updating the existing draft or by way of a further statutory instrument.**

This briefing was written by:

Libby Peake, head of resource policy, Green Alliance, for the Greener UK coalition
e: lpeake@green-alliance.org.uk; t: 020 7630 4529

GREENER UK

