

Environment Bill Committee briefing: UK REACH

13 July 2021

Summary

This briefing is on behalf of the environmental coalitions [Greener UK](#) and [Wildlife and Countryside Link](#) and has been produced in partnership with [CHEM Trust](#).

The UK REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) regime began operating in 2021, following the decision not to seek to remain within the EU REACH system managed by the European Chemicals Agency (ECHA). Regulators have the challenging task of establishing a 'better' regime covering Great Britain (with Northern Ireland remaining within EU REACH) with a fraction of the EU's budget and staffing and without access to ECHA's full chemical safety database. **Provisions in this bill give the Secretary of State the power to alter the UK REACH system – including through deregulation – which is causing instability.**

The UK is already falling behind EU protections. Divergence is set to widen over time, despite assurances that the UK [would not diverge for the sake of it](#) and the considerable associated economic and political costs. The current regulatory processes for GB controls lack transparency and do not match the pace of EU action. They also do not appear to consider or attempt to mitigate the effects of divergence.

We support amendment 293E which would remove the possibility that a Secretary of State might lower current standards while enabling them to easily meet or exceed new EU protections and standards. It would also oblige the government to transparently justify any decision to deviate from EU control on chemicals.

Non-regression from chemical protections and standards

Schedule 20 of the bill gives the Secretary of State wide ranging powers to amend UK REACH Regulations and the [REACH Enforcement Regulations 2008](#). Such amendments would have to be in line with [Article 1 of REACH](#), which outlines its aim and scope. Several provisions are protected from modification by SI under these powers.

We are concerned about granting the Secretary of State such a sweeping power to amend the main UK REACH text, which could be used to reduce the level of protection for the public and the environment from hazardous chemicals. For example, a change on endocrine disrupting chemicals nearly slipped through via secondary legislation in 2019. Fortunately, this was [spotted by the UK Trade Policy Observatory](#) and was eventually [corrected by the government](#). This amendment would prevent as a minimum regression (via SI) from standards as they exist currently.

Powers to allow parity with EU REACH

Commentators including the Institute for Government and Nigel Haigh OBE have highlighted the difficulties of easily adopting new EU standards or protections, as ministers no longer have powers to implement EU measures through secondary legislation. They propose a practical, legislative change that would allow the UK to easily align where it chooses to do so, which would not ["prejudice the UK's newly reacquired sovereignty"](#).

The need for such a mechanism will likely grow in the coming years, including because of improvements to protections from hazardous chemicals set out in the EU Chemicals Strategy for Sustainability. In response to Day 3 of Committee, the minister's [written reply](#) suggested that Schedule 20 could be used to mirror EU developments. It would be helpful to get further clarification, including whether the powers could be used to adopt legislative changes set out in the EU Chemicals Strategy, such as those to address combined exposure to chemicals (the 'cocktail' effect), or hazard based prevention measures for reducing exposures to endocrine disrupting chemicals. To be effective, these powers would also need to override the legislation requiring a lengthy process to develop new controls within UK REACH.

Requiring deviation from EU controls to be transparently justified

GB is already falling behind EU controls

The UK is already falling behind EU protections, meaning our environment and UK consumers are on course to receive less protection than in the EU, with divergence set to widen over time.

Restrictions

Substances that pose risks to health and/or the environment can be "restricted", including through a total ban on a substance, bans on certain uses or concentrations, or requirements for technical measures or specific labelling. UK REACH has [initiated restrictions](#) on just two harmful substances in its first year, compared to 13 that are either in the last stages of the EU's REACH restriction process or have been adopted since the end of the transition period. The first annual work plan does not include restrictions on substances on which ECHA has adopted an opinion, such as the intentional use of microplastics, expected to prevent more than 90 per cent of pollution caused by intentionally added microplastics. This compares to the UK's partial microbeads ban, which only applied to wash off cosmetics, which [prevents less than 9 per cent](#). It is unclear when, or even if, those substances on which ECHA has adopted an opinion will be considered in UK REACH.

The fact that UK REACH is only able to analyse a fraction of EU restrictions in development, may reflect a relative lack of staff and resources. The two restrictions under consideration will have to pass through a UK REACH process that will largely duplicate the completed EU processes and will take around 2.5 years. In the meantime, Defra estimates that between 2-6 restrictions come into force each year in the EU, a process that is set to be accelerated, given the EU Restrictions Roadmap that will take forward fast-track restrictions covering groups of chemicals that fall into particular hazard categories.

We also understand that EU restrictions [will be considered](#) in UK REACH on the basis of unspecified criteria and whether they are "right for Great Britain", but this analysis will not be published. It is unclear how GB circumstances might differ to justify taking a different or less protective approach. It would be useful to ask the government to confirm what criteria are used.

Substances of Very High Concern

Substances are identified as Substances of Very High Concern (SVHCs) based on their intrinsic hazards, including those identified as carcinogenic, mutagenic, reprotoxic or persistent, bio accumulative, and toxic. SVHC identification puts a substance in line for eventual phase out, after which it cannot be used without authorisation. Entry on the Candidate List also carries with it immediate obligations on companies to provide information to allow safe use and is often a starting point for protective measures.

The UK has already fallen behind the EU on its SVHC Candidate List. It has not included the [2 substances](#) added to the ECHA list in January and a further [8 substances](#) added this month. These include three closely related brominated flame retardants with carcinogenic properties, and Bisphenol B, an endocrine disruptor that is almost identical to the better-known Bisphenol A, which is banned in thermal paper and being phased out from everyday products. As set out in the UK REACH [work programme 2021-22](#), the HSE will analyse substances on the ECHA list not only for whether they meet the SVHC hazard criteria, but whether “SVHC identification is appropriate”. It adds this “will often” involve a Risk Management Options Analysis, which is likely to delay regulatory action. All this suggests a lighter touch, less protective regulatory approach for GB than in the EU.

Authorisations

Substances placed on the “Authorisation List” are destined for phase out and require an “authorisation” decision for use for a particular purpose, only if no alternatives are available. It is not clear how HSE will recommend substances from the Candidate List for prioritisation. ECHA’s recommendations are primarily based on full safety registration dossiers submitted by companies. As the deadline for companies to submit dossiers on Candidate List substances is 28 October 2025, it would be sensible for the UK to automatically adopt ECHA’s recommendations until then.

Divergence for the sake of divergence

When concerns were raised last year about potential harmful effects of divergence, the government implied a working assumption of reasonably close alignment with the EU, with the ability to diverge where appropriate. It repeatedly said the UK would [not diverge for the sake of it](#) and was “[unlikely to diverge very much](#)” over the short term, while the UK will not have access to registration dossiers. As outlined above, the current approach seems to default to divergence with no compelling justification provided.

Political, economic, environmental and public health impact of divergence

Recent reports from the [Institute for Government](#) (IfG) and the [Tony Blair Institute for Global Change](#) highlight areas where divergence could be beneficial and areas where there are considerable political and economic costs attached. They argue it’s better to consciously pick areas with clear benefits from divergence but minimise pointless divergence. Both gave chemicals regulation as an example of the latter, recommending a pragmatic decision to closely align with EU REACH.

The costs of divergence include increased expense and complexity for businesses that also export to the EU. As the Chemicals Industries Association [has said](#), companies will continue to manufacture to EU standards as they do not “have the luxury” to operate differing regimes and EU rules set the “global bar”. Divergence also risks deepening trade barriers between GB and NI – the “Irish Sea border” – as well as the integrity of the UK internal market and relationships with the devolved administrations, as some areas of chemicals policy are devolved. Significant divergence giving the UK a competitive advantage risks triggering rebalancing measures by the EU, such as retaliatory tariffs, under the UK-EU Trade & Cooperation Agreement. The public [also supports](#) high regulatory standards.

Remaining closely aligned with EU REACH would ensure that UK consumers and the environment continue to benefit from the EU’s relatively high protections as they continue to improve. It would also avoid unscrupulous manufacturers dumping products in the UK that fail to meet EU standards.

The need for transparency of any decision to not adopt an EU protection

There is no reason why EU controls should not be automatically adopted in the UK when their impact would not be significantly different in the UK. The process for prioritising restrictions and for identifying substances as SVHCs is highly likely to result in deviations from EU controls that are less protective of public health or the environment, with no accountability. Any decision to take a less protective control should be fully justified and open to scrutiny and even to challenge.

We therefore support Amendment 293E, which places an obligation on the government to transparently justify any decision to deviate from EU control on chemicals.

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