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CHEM Trust response to the Call for Evidence from DEFRA & DECC re Review of the Balance of Competences Between the UK & the EU re the Environment & Climate Change

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EU CHEMICALS POLICY

Some chemicals used by industry and found in commercially available products have been shown to be dangerous to the environment and human health and therefore have to be controlled. Any restrictions on marketing and use, or labelling requirements, affect trade and therefore are made at EU level in order to maintain the integrity of the EU internal market. If the UK ceased to be a member of the EU it would still be bound by EU standards for products that it exported to the EU. It would also have less say when chemicals are controlled in the future.

EU chemicals policy has evolved in a series of steps starting in the 1970s and was revised and largely consolidated in 2006 into a single Regulation 1907/2006 known as REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals). REACH is still developing, but the EU now has in place a maturing regime for controlling chemicals which is providing a model for countries outside the EU.

Chemicals policy effectively started when the OECD called on its member countries in 1973 to place restrictions on PCBs in response to a number of incidents including poisoned rice oil in Japan and appalling bird deaths in the Irish Sea. This prompted the UK to introduce powers to control the marketing and use of chemicals in the Control of Pollution Act 1974 and the EU to do the same in Directive 76/769. Over the years, the marketing of many substances were restricted in the EU under that Directive including: asbestos, lead in paint, marine anti-fouling paint, cadmium, and fire retardants. These powers have been subsumed into REACH.

In the early 1970s a debate developed in both Europe and the USA about the need for an 'early warning' system for new chemicals. This led to the Toxic Substances Control Act 1976 (TOSCA) in the USA and to EU Directive 79/831. This Directive was original in the sense that nothing like it existed in any Member State or elsewhere. It required information on tests to be exchanged between Member States and once clearance was granted in one, access to the whole EU market was ensured. It worked well. Industry supported it because they could see that a

single system was more efficient than having to go through different hoops in different countries. They were also concerned that rules being made in the USA under TOSCA could be used to discriminate against European exports to the USA and wanted a system that would give the EU greater strength to negotiate with the USA than say, Germany, UK or France negotiating on their own. This is an example of synergy between trade and environmental objectives. The argument applies to REACH today.

The next step, dealing with the more difficult problem of the many thousands of chemicals already on the market, was initially less successful. The Existing Substances Regulation 793/93 involved manufactures sending existing data to the Commission; the drawing up of priority lists of chemicals needing attention; and work on risk assessments being shared among the Member States. It worked so slowly that eventually it became obvious that reform was required. This led to REACH. It is worth noting that the allocation of risk assessments between the Member States was very uneven. By 2003 it was as follows: NL 5, UK 4 (+ 1 shared with F), D 2, and one each for I, SP, F, A, DK). REACH attempts to solve this problem by placing responsibility on the manufacturers to carry out tests and assessments and on a new European Chemicals Agency (ECHA) to evaluate them. Member States remain free to carry out their own evaluations but the burden has been lifted off their shoulders by ECHA which should offer economies of scale. If the UK left the EU it would either have to create a new bureaucracy or continue to rely on ECHA while having little or no control over it.

REACH is the longest, most complicated and contentious item of EU environment legislation. The costs are large and so should be the benefits. The Commission published a White Paper and consulted widely before making its proposal. During negotiations there were inevitable conflicts between industrialists and environmentalists which were reflected in the debates in the European Parliament. There were also conflicts between Member States in Council and between Directorates-General of the Commission and between Committees of the Parliament. Member States with important chemical industries (Germany's is by far the largest in the EU) have different interests from those with smaller industries and for whom maintaining the Baltic or the Rhine unpolluted is a high priority.

During negotiations a joint letter was sent to the Commission by the German Chancellor (Schroeder) the French President (Chirac) and the British Prime Minister (Blair) setting out certain ideas on the way forward. This was unprecedented. In the UK, both the Houses of Parliament held inquiries and published reports as did the Royal Commission on Environmental Pollution. The UK, jointly with Hungary, made a proposal to simplify the registration procedure which was incorporated into the Regulation. The UK held the Presidency of the Council during an important stage in the negotiations and helped influence the outcome.

REACH, whatever its faults, has gone through an intensive process of gestation in which many compromises have been made to reconcile different interests. This is as it should be. The result is a more robust regime than exists anywhere in the world. It is hard to imagine any Member State on its own developing such a regime. The Commission in its recent review of REACH has concluded that no changes should be made just yet. REACH is still evolving and will doubtless be reviewed again. The registration process is not yet complete, the process of evaluating registrations needs to be intensified, enforcement action for non-registration or inadequate data submissions have yet to be undertaken, the issues of criteria for endocrine disruptors, and how to deal adequately with assessing mixtures of chemicals still have to be resolved. These are all issues to which the UK should continue to be actively contributing with a view to protecting the environment and human health and ensuring a prosperous chemicals industry.

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