

## **CHEM Trust's written submission commenting on the UK Government's response to the Environmental Audit Committee on “Future of Chemicals Regulation after the EU Referendum” inquiry**

**October 2017**

### **1. Introduction**

CHEM Trust welcomed<sup>1</sup> the Environmental Audit Committee's report on “The Future of Chemical Regulation after the EU Referendum”, published on April 29<sup>th</sup> 2017; we had given written and aural evidence to the inquiry<sup>2</sup>.

The UK Government published a disappointing and vague response<sup>3</sup> to the EAC inquiry on 18<sup>th</sup> July 2017. The EAC then re-launched their inquiry<sup>4</sup>, calling for comments on the UK Government's response. Below are our comments.

### **2. About CHEM Trust**

CHEM Trust is a UK registered charity that works at European, UK and International levels to prevent man-made chemicals from causing long term damage to wildlife or humans, by ensuring that chemicals which cause such harm are substituted with safer alternatives.

We particularly focus on endocrine disrupting chemicals (EDCs), and on the EU's main chemicals regulation REACH. Four of our team were involved in environmental NGO work around the creation of REACH (for WWF and Friends of the Earth), and CHEM Trust itself has been going for 10 years – as has REACH<sup>5</sup>.

### **3. Why is the regulation of chemicals important?**

We are all exposed to hundreds of man-made chemicals in our daily life, coming from everyday products including furniture, packaging and clothes. The aim of chemicals regulation is to try and establish which of these chemicals are dangerous, and then to put in place measures to ensure that they are used safely, or not used at all. Chemical regulation is complicated – with tens of thousands of chemicals used in millions of products.

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<sup>1</sup> <http://www.chemtrust.org/eac-brexiteach-report/>

<sup>2</sup> <http://www.chemtrust.org/eac-reach-brexiteach-inquiry/>

<sup>3</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/313/31302.htm>

<sup>4</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/chemicals-regulation-government-response-17-19/>

<sup>5</sup> <http://www.chemtrust.org/reach-10-years-on/>

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It is critically important that the UK retains the same levels of protection from problematic chemicals after leaving the EU. This will only be possible if the UK stays in REACH, otherwise it will not have access to the most comprehensive database on chemicals use and properties and other key procedures such as the "authorisation" process.

#### 4. CHEM Trust's comments on the Government's response to the EAC

##### #1. It is not possible to simply amend REACH as a country must be a REACH member to access ECHA's safety database

*"The government will use the Repeal Bill (The European Union (Withdrawal) Bill) to convert EU law into UK law and use the powers to amend REACH, as well as other related chemicals regulation to make them work properly in the UK"*

Due to the centralised nature of EU chemicals law, it is not possible for the UK to simply amend REACH to make it work in the UK. REACH is managed by the European Chemical Agency (ECHA) which is responsible for the technical, scientific and administrative aspects of the implementation of this piece of legislation.

These concerns have been highlighted by the UN Special Rapporteur on the implications for human rights of the environmentally sound management of hazardous substances when a visit to the UK took place to assess the steps taken by the Government. The final report published in September 2017 addressed the possibility of leaving REACH:

*"There were concerns, however, that the Government has not adequately assessed the burden of additional responsibilities to be shouldered by environmental regulators to replace the role of various European Union bodies.*

*For example, the critical functions carried out by the European Chemicals Agency cannot simply be transferred into United Kingdom law<sup>6</sup>."*

This report includes amongst its key recommendations that the UK Government tries to negotiate to remain within European Union systems such as REACH.

In its Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee, the Government states that:

*"In certain scenarios, a UK body may need to start evaluating and authorising chemicals in the UK taking over functions currently performed at EU level<sup>7</sup>."*

However, the EU does not allow access to REACH database to countries outside of the REACH system, for example Switzerland and Turkey. This was confirmed on 27<sup>th</sup> September 2017, when ECHA published a new guidance on the UK's withdrawal from the EU highlighting that:

*"A major impact of the UK withdrawal will be the UK authorities' loss of access to this database as well as to the topical databases and IT tools that we provide for regulatory purposes. The UK authorities will also no longer be involved in using this data as only Member States are required to cooperate with us as partners in applying our regulatory processes"<sup>8</sup>*

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<sup>6</sup> Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to the United Kingdom of Great Britain and Northern Ireland\*, p. 7

<sup>7</sup> European Union (Withdrawal) Bill, Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee: [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20\(Withdrawal\)%20Bill.pdf](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20(Withdrawal)%20Bill.pdf)

<sup>8</sup> ECHA, *The UK's withdrawal from the EU*: <https://echa.europa.eu/fr/uk-withdrawal-from-the-eu>

In practice, this means that UK regulators will have to make decisions on chemical controls with very limited information and the result of this is likely to be a reduction in the protection of human health and the environment in the UK<sup>9</sup>.

A recent survey<sup>10</sup> shows that the British public – whether Remain or Leave voters – do not want any reduction in the regulations that protect people and the environment from potentially harmful chemicals after Brexit. The results of this survey show that although British people voted to leave the EU, they did not vote to end up less protected from harmful chemicals after Brexit.

For the reasons explained above, the only way to be sure of achieving this objective is for the UK to stay in the EU's chemicals regulatory system REACH after Brexit.

In the speech delivered by the Prime Minister on 9<sup>th</sup> October one of the points she made was that:

*“...there will be areas where we want to achieve the same goals in the same ways, because it makes sense for our economies<sup>11</sup>.”*

Considering the complexity involved in managing chemicals safely – and the impact that they have on the economy, human health and the environment – REACH should be prioritised as one of those areas where the UK shares the same goals as the EU.

## **#2. Uncertainty regarding Registration after March 2019 is creating a high burden for industry**

*“The Government recognises the costs that industry has already invested to comply with EU legislation and the status of existing or future REACH registrations made by UK-based companies are a key consideration.*

*We have been listening to what businesses and others have been telling us about their concerns for the future and the potential impacts and opportunities of EU Exit, and will continue do so.*

*As with other EU legislation we will remain bound by REACH until the point of exit. This includes the legal obligation on UK-based businesses to register substances manufactured or imported in the 1–100t tonnage band by the May 2018 deadline. We are therefore continuing our drive, through the HSE, to raise awareness of this deadline and encourage registration.*

*The UK Chemicals Stakeholder Forum has also published guidance to help and support industry, in particular SMEs and downstream users, to meet this obligation.”*

Although the UK will remain bound by REACH until the exit date, CHEM Trust is very concerned about the lack of a clear and tangible proposal to resolve this issue only 18 months away from March 2019. Particularly when on 27<sup>th</sup> September 2017, ECHA released a guidance on the UK withdrawal from the EU which emphasised the impact of the UK not being in REACH. As this guidance states, from 30<sup>th</sup> March 2019 registrations in REACH by a UK-based company “will therefore, be regarded as non-existent, as your company will, after the UK withdrawal, be based in a “third country” outside the EU/EEA<sup>12</sup>”. Hence, if the UK is outside REACH then all UK-based registrations and authorisations must be moved to entities in EU27/EEA Member States.

<sup>9</sup> If a new registration system was created in the UK, it would not have the same volume of information in it as is in the REACH database. It is important to emphasise that at present much of the information in the REACH databases is actually owned by companies and industry consortia, not by the ECHA.

<sup>10</sup> Poll conducted on behalf of [SumOfUs](http://www.sumofus.org) and CHEM Trust by GQR Research, see: <http://www.chemtrust.org/uk-poll/>

<sup>11</sup> <https://www.gov.uk/government/speeches/pm-statement-on-leaving-the-eu-9-oct-2017>

<sup>12</sup> ECHA, *The UK's withdrawal from the EU*: <https://echa.europa.eu/fr/uk-withdrawal-from-the-eu>

ECHA's Director of Cooperation reiterated this at a Conference organised by Chemical Watch in collaboration with CHEM trust on 29<sup>th</sup> September 2017<sup>13</sup>. He pointed out that the agency cannot speculate about the outcomes of the negotiations but simply assumes that, as scheduled, the UK will become a third party on 30th March 2019 and on that date UK companies will see their REACH registrations become non-existent unless they have transferred them to another EU or EEA country.

The only way that the Government can guarantee that companies will not have to register again is by committing to keeping the UK in REACH after Brexit.

### **#3. Negotiations should aim at the UK remaining in REACH**

*"REACH is a single market measure so any company wanting to place products on the EU market will still have to use REACH, whatever our future relationship with the EU. We intend to achieve a satisfactory outcome for the UK and EU chemicals sector on registration, regulation and trade."*

CHEM Trust welcomes the Government's intention to achieve a satisfactory outcome for the UK and the EU sector on registration, regulation and trade. Evidently a good outcome would be one which supports the chemical industry and at the same time guarantees that the people of the UK and the environment will not end up less protected than those in the EU after Brexit.

CHEM trust 's view is that this can only be achieved if the UK stays in REACH for example, by including it in any Free Trade Agreement (FTA) negotiated with the rest of the EU. Otherwise, supply chains would be disrupted, costs for UK industry would increase, and public health and quality of environment in the UK would be threatened.

It is important to emphasise that other REACH processes should also be retained. For example, the REACH authorisation process, which controls the use of substances of very high concern. If the UK doesn't implement Authorisation, companies will be able to use chemicals in the UK that could not be used in the EU, which would reduce health and environmental protection in the UK.

### **#4. Creating a new system would be costly**

*"The costs required to implement any post-exit UK regulatory framework will be affected by many factors, including negotiations, and it would not be appropriate to pre-judge their outcome."*

Defra's Deputy Director of EU environment told the Committee that Defra was trying to understand the costs of the different types of relationships the UK could have with ECHA and this could be several tens of millions of pounds<sup>14</sup>.

As the Government's response pointed out, the cost of creating a new system will depend on many factors. However, it is clear that a new system will not be able to provide the same level of protection and it will be very expensive (although it is not clear yet just how expensive it will be).

### **#5. The Switzerland chemicals regulation's model would be less effective and would mean a loss of sovereignty for the UK**

*"Our priority will be to make sure that chemicals continue to be effectively and safely managed, as well as encouraging the continued growth of the UK's chemical industry. In doing this, we will need to reflect the future trade relationship between the UK and EU and our ambitions in other international markets, while minimising disruption to complex import/export supply chains."*

<sup>13</sup> <http://www.chemtrust.org/brexit-chemicals-conference/>

<sup>14</sup> <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/912/912.pdf>, p.6

*We are therefore looking into how chemicals are regulated in a number of different non-EU countries as part of considering options for developing the UK's regulatory regime in the longer term."*

CHEM Trust is extremely concerned about the fact that the Government is looking into how chemicals are regulated in a number of different non-EU countries as part of considering options for developing the UK's regulatory regime.

The EU's chemicals law, REACH is the leading regulatory system in the world, assembling the best database of chemical properties and uses. It has made more progress on problematic chemicals than any other regulatory system. For example, the EU is the first region in the world that has just agreed to ban the use of the chemical Bisphenol A (BPA) in thermal paper till receipts using REACH, due to evidence that it could impact the developing foetus of pregnant shop workers. REACH has also played a leading role in protecting ecosystems and wildlife from many problematic chemicals, for example restricting the presence of hormone-disrupting nonylphenol ethoxylates (NPE), in imported textiles.

The evidence from other non-EU countries (Switzerland, for example) is that a country is either in REACH or outside it. If a country is in it, like EU and EEA members, it participates in ECHA regulatory processes, and it can access the REACH database so it has full information on the safety of chemicals. If a country is outside REACH, it cannot get access to these regulatory processes or the database. This means that the UK will have to make decisions on chemical controls with very limited information and the result of this is likely to be a reduction in the protection of human health and the environment.

If the UK leaves REACH the only option left is to create a new regulatory system which would end up copying REACH's decisions. Two main areas of concern regarding a potential new system include:

- If the UK doesn't move at least as fast at controlling the use of chemicals as the EU system, it would be likely to become a 'dumping ground' for products that had been restricted by REACH.
- Without access to the full REACH database, the UK authorities might have problems defending any legal challenges to controls in the UK. Potentially this could put the UK Government in the situation of having to stand up in court and explain that a chemical was banned, but unfortunately it would not have had access to most of the data in order to justify any such ban.

Chemicals policy is so integrated into supply chains and dependent on such complex databases that there isn't really such a thing as national sovereignty in this area. CHEM Trust's view is that the UK will be more sovereign if it is in the room, discussing controls on hazardous chemicals (as Norway is) rather than sitting outside copying decisions.

Keeping the UK in REACH is the only way to ensure the chemical supply chain whilst at the same time ensuring the same level of protection for the UK's environment and its citizens' health.

## 5. Conclusions

In CHEM Trust's view the UK should aim to stay as close as possible to REACH, for example including it in any Free Trade Agreement negotiated with the rest of the EU.

In her latest Brexit speech given on 9th October, the Prime Minister Theresa May confirmed that the UK will have the same goals in some areas and it will look to pursue them in the same way as the EU; CHEM Trust's view is that chemicals should be one of these stated areas.

The fact that 63%<sup>15</sup> of the British public do not want any reduction in the regulations that protect them from potentially harmful chemicals after Brexit and that sectors so diverse as the environmental NGOs and the chemical industry share the vision of a post-Brexit Britain which is still aligned as close as possible to REACH, shows clearly the multiple benefits of the EU 's world-leading chemical laws.

We consider that any new regulatory system would be expensive to create and would be very unlikely to provide the same level of protection of public and the environment.

## 6. For more information

For more about our views on the importance of REACH and other EU environmental regulation to the UK, see:

- Our submission to the Environmental Audit Committee's inquiry into "*The Future of Chemicals Regulation after the EU Referendum*": <http://www.chemtrust.org/wp-content/uploads/chemtrust-evidence-eac-brexit-jan17.pdf>
- Our Blog "*Will Brexit risk our health?*": <http://www.chemtrust.org/eac-reach-brexit-inquiry/>
- Our blog before the EU referendum in June 2016: <http://www.chemtrust.org/eu-chemicals-euref/>
- Our submission to the Environmental Audit Committee's inquiry into EU/UK Environmental Policy in 2015: <http://chemtrust.org/wp-content/uploads/chemtrust-responseeacInquiryeuenv-19thnov15.pdf>
- Our evidence to the UK Government review of the "*Balance of Competences Between the UK & the EU re the Environment & Climate Change*" in 2013: <http://chemtrust.org/wp-content/uploads/Review-of-the-Balance-of-CompetencesFINAL.pdf>

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<sup>15</sup> Poll conducted on behalf of [SumOfUs](#) and CHEM Trust by GQR Research, see: <http://www.chemtrust.org/uk-poll/>