



CHEMTrust

Protecting humans and wildlife
from harmful chemicals

Policy Input

Initial CHEM Trust comments on UK government plans for a new UK chemicals regulatory system in event of a no-deal Brexit.

These brief notes are written in response to a meeting at DEFRA on Thursday 28th June at which we were shown a presentation outlining how the UK plans to transfer EU chemicals law REACH into UK law in the event of a no-deal exit from the EU.

Note that CHEM Trust was not given a copy of this presentation, nor have we received any other documentation from the UK Government. This means that these notes are only an initial response to incomplete information. It is unfortunate that the UK government has abandoned its long-standing commitment to adequate consultation on important policy decisions.

Our overall position on Brexit and chemicals policy

CHEM Trust's overall position is that if Brexit happens then the UK should aim to stay part of REACH, for example including it in any Free Trade Agreement negotiated with the rest of the EU. 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.

We are also communicating the same message to the EU27 side of the negotiations, arguing that it is also in the EU's interests for the UK to stay in REACH.

We welcome the fact that the Prime Minister has called for the UK to have an 'associate membership' of the European Chemicals Agency ECHA. We look forward to seeing more details of this proposal, including what the UK accepts as being the likely conditions set by the EU for this to be permitted. Our analysis is that the conditions are likely to include¹:

- 1) The UK would have to follow all decisions on chemicals in REACH, without a vote on these decisions, but hopefully with the opportunity to be involved in the discussions (as Norway is);
- 2) The UK would have to continue to implement and follow a number of other chemical-related EU laws, such as those on factory pollution and worker health.

¹ <http://www.chemtrust.org/uk-reach-brexit/>

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3) The UK would need to accept the supervision of the European Court of Justice (ECJ), or something very similar, like the European Free Trade Area (Efta) court, which EEA countries like Norway use.

Note that we would see it as preferable for the UK to remain fully involved in EU chemicals policy, but this would require the UK to remain as an EU Member State.

CHEM Trust's initial views on the proposed UK chemicals system

We appreciate the opportunity to comment on the Government's proposals for the chemical regulatory system that would be put into place in the event of a no-deal Brexit. However, it is hard to do this on the basis of a PowerPoint presentation that we were not permitted to take away with us.

We understand that on REACH, in line with other policy areas, the UK Government plans to copy across the EU law and only modify it to ensure workability. At first glance this might be assumed to ensure that such an approach would keep the UK's chemical regulation in line with the EU – while in reality this is not the case.

As explained to us at the meeting, all existing chemical controls would be copied across. However, for future controls the UK would just work with a simplified copy of the EU's decision-making process in REACH, based around an Agency that would be "designated" by the Secretary of State, mainly based at the Health and Safety Executive.

This proposed approach raises a number of significant concerns:

1) The lack of any commitment to mirror EU outcomes on chemical regulation

We were told that the proposed legislation will not have any provision to ensure that the UK's controls on chemicals will remain the same as the EU's post-Brexit. There will not be any text to copy-across from future EU decisions on restricting chemicals etc, instead everything will be dependent on the decisions made in the new UK 'Agency' and by the Secretary of State.

Without any automatic provision for copy-across of EU restrictions and other regulatory measures, it is clear that UK controls on chemical use could rapidly diverge from those in the EU. If the UK controls fell behind those of the EU then the protection of human health and the environment would be reduced.

2) The lack of effective methods for overview and involvement of stakeholders and others in the UK Agency

The EU chemicals agency ECHA has a number of layers of oversight for its activities, with a Management Board which includes Member States and stakeholders. It also has various technical committees where Member States have a voting role and where stakeholders can participate. This approach means that the work of ECHA can be challenged and made more effective.

We were told that the intention is to remove all these layers of oversight for the UK Agency, and to replace them only with an ability or obligation on the Agency to obtain external scientific advice. This is not an effective way of ensuring well informed and well-balanced decision making.

One example that we raised at the meeting was the process of adding a chemical to the candidate list of Substances of Very High Concern. In ECHA this would be

discussed by the Member State Committee, while in the UK Agency we were told that this would just be done within the Agency, with no involvement of others.

Without oversight (like ECHA's Management Committee) and engagement (like stakeholders and others present at MSC, RAC, SEAC etc) the new Agency is likely to become a secretive quango which operates on behalf of its main 'clients', DEFRA and the chemical industry.

It was acknowledged at the meeting that there is a wish to have the Agency as a UK-wide body, but that there had not yet been agreement with the devolved administrations. One partial solution to this problem could be to have a Management Board for the Agency, made up of voting representatives from devolved administrations, central government and the various environment and health agencies (like EA, SEPA and Public Health England), and with non-voting representation of other stakeholders.

3) No commitment to update regulations in line with REACH

We were told that there was no plan to automatically update the UK regulations as REACH is updated – for example if the EU agreed an 'implementing act' to clarify the responsibility of companies to update their registration dossiers.

In addition, we raised concerns about the future impact of the Governments 'Better Regulation' agenda. This agenda has included a commitment to only bring in new regulations if three times the amount of regulation (measured on the basis of cost to companies) is removed. If this approach was applied to UK chemicals legislation, then it would make it very difficult for UK regulations to be updated. It is vital that this 'regulatory budget' approach is not applied to UK chemicals regulation post-Brexit.

4) An unreliable level of protection from chemicals imported into the UK

We were told that the UK plans to use the extended Safety Data Sheets passing through the supply chains of products imported into the UK as a way of gathering the data on chemicals that are not registered within the UK system (which will be the majority of chemicals). We are unconvinced that such an approach will give a high level of protection for human health and the environment, and whether it is really feasible for the UK to build a chemical safety database from this information.

Conclusions

It is hard to judge the UK Government's proposals without a proper written description of what is planned. However, the limited information we have been told is enough to make CHEM Trust very concerned about what is being proposed.

The creation of a new UK 'chemical agency' with minimal engagement and oversight by stakeholders, along with no commitment to follow EU decisions on controlling chemicals, are both developments of great concern to CHEM Trust.

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CHEM Trust, 3rd July 2018
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For more information on our work on Brexit, see <http://www.chemtrust.org/brexit>