Dear Norman,

Thank you for your letter of 6 March regarding the REACH Etc. (Amendments Etc.) (EU Exit) Regulations 2019 on 25 February.

There will be cases where, at the time of EU Exit, the European Commission has not made a final decision whether to grant the authorisation applied for by an EU/EEA based entity. Of the ten authorisation applications you refer to in your letter, in the normal course of the Commission timescale we would expect a number of those will have been given European Commission decisions at the time of exit and therefore grandfathered into UK REACH.

You ask at what stage an EU REACH authorisation decision will be considered valid. An authorisation is granted by means of a European Commission Implementing Decision, and it is this formal Commission decision which triggers Article 127H of the REACH SI. The decision is followed immediately by the notification to the recipient. A positive vote by Member States in the REACH Committee is a required part of the process but it does not represent the Commission’s decision. There is usually a 4-6 week gap between the two. In the case of authorisations, publication in the Official Journal is only for information purposes.

If at the time of exit an authorisation application (made by an EU/EEA based applicant), has not received a European Commission decision then a new application must be made to the Health and Safety Executive (HSE) for a UK REACH authorisation. We must remember that authorisations apply to substances of very high concern (SVHCs), including carcinogens and endocrine disruptors. There must be strong controls on how they are used. The Government does not believe it would be appropriate to provide for continued use within the UK of these SHVCs on the basis of future EU decisions. We cannot be sure the UK user will have the information they need to meet the human or environmental health protections conditions of the authorisation.

I recognise your concerns regarding the additional burdens companies may face in the event of a no deal. That is why, in the event of a no deal, we have ensured that both the administration fees and the information requirements for authorisations applications will remain the same as they currently are for EU REACH. In the case of fees, this means reductions of up to 90% for SMEs.
In respect to authorisations, we have also set out a number of transitional provisions in the proposed REACH etc. (Amendment etc.) (EU Exit) Regulations (REACH SI). Article 127H provides that existing UK downstream users of an EEA-held authorisation can continue to use the authorised substance after exit provided they meet the conditions of the “light touch” notification system as detailed the UK REACH Additional Guidance held on HSE.gov.uk.

With regard to compliance, HSE’s Policy Statement sets out the principles of proportionality, targeted action, consistency, transparency and accountability to which it works. HSE already operates with this approach to ensure compliance with REACH as set out in its HSE’s Strategy and guidance for enforcement of REACH in the UK. HSE has considerable experience as the UK competent authority under EU REACH and will work with companies to support the authorisation applications process. HSE also expects to continue the European Chemicals Agency’s practice of offering pre-submission information sessions to potential applicants, including SMEs. These sessions help to make sure that applications are fit for purpose and avoid unnecessary work on the part of the applicant.

We will continue to engage with stakeholders regarding no-deal regulatory requirements.

Yours sincerely,

Dr Therese Coffey MP