

## **Government Response to the House of Lords EU Energy & Environment sub-Committee Report 'Brexit: Chemicals Regulation'**

The summary and conclusions can be grouped into three main sections.

- 1. Relationship with EU post Brexit (1,2,9,11)**
- 2. REACH IT concerns (5,6,7,8)**
- 3. Registration Concerns (3,4,10)**

The response addresses each of the 3 sections covering the issues raised. Consideration was made to answering each conclusion independently however the issues lend themselves for grouped responses.

### **Introduction**

The Government thanks the Committee for its report, "Brexit: Chemical Regulation." This response provides a reply to the Committee's recommendations, and an update on progress since its report was published.

The response outlines the work we have done both to prepare for a potential no-deal EU exit, and to develop proposals for a negotiated outcome where the UK would continue to participate in the European Chemicals Agency (ECHA). The joint programme of work between Defra, the Health and Safety Executive (HSE) and the Environment Agency (EA) has made good progress. We have worked with stakeholders to understand their concerns and to provide information on the work being done within Government to prepare for EU exit.

Our chemicals sector is world leading and one of the UK's largest manufacturing exporters by value. We fully recognise the economic importance of the sector and are working to ensure a smooth transition as we leave the EU, and an outcome which minimises friction, disruption and delay at our borders, and supports the continuation of integrated chemical supply chains with the EU. The UK is strongly committed to the effective and safe management of chemicals, to protect both the public and the environment. That will not change when we leave the EU.

The government has agreed in principle the terms of the UK exit from the EU, as set out in the Withdrawal Agreement. We have also agreed the broad terms of our future relationship as set out in the outline Political Declaration. For goods, including chemicals this includes a new free trade area that facilitates trade through a new customs arrangement, deep regulatory cooperation, and avoids any tariffs or quotas.

The agreement is still under consideration by Parliament. Nothing is agreed until everything is agreed and it is the duty of a responsible government to continue to prepare for all scenarios.

### **UK-EU relationship.**

#### ***Recommendation:***

***The chemicals sector is the UK's second biggest manufacturing industry, and provides substances that go into products we all use every day. Both the chemical industry and the many supply chains that rely on it could be strongly affected if Brexit disrupts current arrangements. It is vital for both human and environmental health that these substances are regulated safely after Brexit, in a way that allows chemical trade between the UK and EU to continue***

**Recommendation:**

***Given the large amount of chemical trade that takes place between the UK and EU, and the movement of international chemical markets towards the EU system, we support the Government's intention to remain aligned to REACH post-Brexit. We call on the Government to clarify the extent to which it intends to maintain that alignment in the long term.***

**Recommendation:**

***We welcome the Government's aim to continue to participate in REACH and ECHA post-Brexit, but we note that its red line on the UK's membership of the Single Market after Brexit casts significant doubt on the feasibility of this aim. As a consequence, the Government must be fully prepared to manage an independent UK regulatory regime for chemicals immediately post-Brexit.***

**Recommendation:**

***We are deeply concerned that the Government has not started making preparations for equipping a UK body to take on the task of regulating chemicals post-Brexit. The Government must clarify what body will take on ECHA's role if the UK ceases to participate in REACH, and the means by which independent, expert and transparent chemical risk assessments will take place post-Brexit.***

The European Union Withdrawal Act 2018 will bring directly effective EU law including the REACH legislation, into domestic law, meaning the standards established by REACH will continue to apply in the UK. This, in combination with the strategic direction set out in the 25 Year Environment Plan, and the non-regression provisions detailed in the draft Withdrawal Agreement, will allow environmental standards not only to be maintained but enhanced.

The proposed Withdrawal Agreement provides for an implementation period until 31 December 2020. The Political Declaration published on 22 November stated that the UK and EU would explore the possibility of cooperation of UK authorities with EU agencies such as the European Chemicals Agency (ECHA). We will carry on working with the European Union to see on what basis and under what conditions UK participation can take place. The exact arrangements will be a matter for the next phase of negotiations.

The government has made significant progress on day 1 readiness and the operability of a standalone UK chemicals regime.

In a scenario where the UK would operate a fully independent UK regulatory regime there is no uncertainty as to the regulatory authority. The Health and Safety Executive (HSE) is ready to act as the lead regulatory authority from the day the UK leaves the EU, building on their existing capacity and capability, in partnership with the Environment Agency (EA).

Preparing for a March 2019 no-deal and delivering Day 1 functionality is, and has been, a key priority since 2016. We are already well advanced in our preparations to ensure the HSE and EA have the resources and mechanisms they need to effectively regulate chemicals, in a way that safeguards human health and the environment. We are building domestic capacity to deliver the functions currently performed by ECHA and developing our own IT system to replace the REACH IT system. This system will replicate essential functions of the EU's REACH IT system, which registers and holds dossiers for new chemicals.

The plan we are enacting includes detailed delivery timelines for recruiting and training new staff; designing and procuring IT systems; and delivery of the necessary legislative and regulatory changes. These timelines are regularly reviewed to ensure that delivery remains on track.

## **Registrations**

### ***Recommendation:***

***The loss of access to 16,000 substances after Brexit would have a serious impact on the UK's chemical industry and the many supply chains that rely on it. We urge the Government to clarify as a matter of urgency whether it would automatically accept EU-27-led chemical registrations into a UK system in order to avoid such a cliff-edge, and if so how it would address concerns regarding the use of chemicals for which it cannot access the information that supports that registration. (Paragraph 25)***

### ***Recommendation:***

***We urge the Government immediately to clarify in what circumstances it is possible for UK-based chemical manufacturers and importers to transfer their registrations to an EU-based party before exit day, and, where this is not currently possible, to work with ECHA to enable such transfers to take place, thus avoiding a trading hiatus that would seriously affect both UK and EU businesses. (Paragraph 26)***

### ***Recommendation:***

***It is unclear whether either UK- or EU-27-based companies would be charged for registering a substance with the UK system. We call on the Government to clarify this issue and to explain what steps it intends to take to mitigate the economic impact of the UK's potential withdrawal from REACH on the UK's second biggest manufacturing industry. (Paragraph 42)***

We are aiming to continue participation in ECHA as part of our proposal for a UK-EU free trade area for goods. This will minimise any supply chain disruption and ensure uninterrupted market access from the point of exit.

To minimise these potential burdens on business in the event of a no-deal, we will put in place a number of transitional measures, as set out in the Technical Notice we published on 24 September 2018. To ensure continuity, we will “grandfather”, without any fee, all existing UK-held REACH registrations into the UK system. We will also set up a light-touch ‘notification’ system for downstream users that would become importers under UK REACH in order to protect supply chains into the UK. These arrangements are intended to provide the chemicals industry with vital time to prepare to comply with the UK system and avoid any “cliff edge”.

We published additional guidance on 4 December 2018 (<http://www.hse.gov.uk/brexit/uk-reach-additional-guidance.pdf>) providing further detail for business. This additional guidance was developed in close consultation with key representatives from the chemicals industry to ensure it is fit for purpose and delivers the essential information businesses need to prepare for a no-deal scenario. We recognise that industry still has further questions. We are engaging closely with industry to understand the questions and concerns it still has in order to ensure that we are able to continue to refine and develop the advice that we are giving about a no-deal exit.

We will continue to review the actions the government can take to mitigate no-deal EU exit impacts on industry including keeping under review the timeframes for the submission of the full technical information.

EU-27 based entities will not be able to register directly under an independent UK regime. They must register through an “Only Representative” (OR) or UK based entity. This mirrors the existing REACH provision where a non EU/EEA entity must use an OR. If a business wished to place new chemicals on both the EEA and UK markets, in a no-deal scenario, they would have to make two separate registrations, one through ECHA and one through the UK Agency (HSE). Post EU exit registration of substances under the UK REACH system will attract the same fee as under EU REACH.

The existing registration process under EU REACH does not provide for EEA/EU entities to establish ORs. While the UK remains a member of the EU and therefore subject to EU REACH, UK companies are unable to appoint an EU based “Only Representative”. Companies are however able to take steps towards this appointment.

EU/ECHA published ‘no-deal’ guidance earlier this year. This outlined an intended mechanism by which UK companies can transfer their registrations to EU based entities to maintain uninterrupted EU market access. Although this guidance has been updated ECHA has yet to give further information on some of the practicalities involved, albeit they have promised to do so in advance of exit date. While we have little influence over EU/ECHA policy and actions in this regard, we are continuing to encourage it to provide the further clarity needed to allow UK companies time to prepare.

We will continue to engage with stakeholders to spread key messages regarding business preparedness.

#### **UK REACH systems and data.**

##### ***Recommendation:***

***Swift progress towards establishing a UK chemicals database is crucial. We call on the Government to publish details of the progress made to date, and to set out its intentions for the database’s functionality, both immediately post-Brexit and in the longer term. (Paragraph 32)***

##### ***Recommendation:***

***We have serious doubts about the Government’s ability to populate a UK chemicals database with the necessary data. The Minister’s proposal unilaterally to “copy and paste” registration information from companies based in the other Member States is not credible and raises serious legal concerns, including over copyright and data protection. We therefore ask the Government, as a matter of urgency, to set out an alternative, more considered approach to securing this information in the event that consent is not ultimately granted. (Paragraph 33)***

##### ***Recommendation:***

***In addition, we find it extremely concerning that it may not be possible to establish which of the existing REACH registrations originate from UK companies. We call on the Government to set out the steps it is taking to resolve this issue. (Paragraph 34)***

##### ***Recommendation:***

***We note that if the UK is not able to access the REACH database post- Brexit, some tests may need to be re-conducted to obtain the necessary safety information. We urge the Government to consider what steps it could take to minimise or eliminate the need for additional animal testing if this scenario arises. (Paragraph 35)***

The UK REACH IT system will replicate critical functionality of the EU REACH IT system to provide continuity for UK business. REACH IT is being built in a phased approach,

prioritising all essential industry user functions, such as those relating to the registration of new substances.

We are developing the system with input from users in the chemical industry to ensure user requirements are met and streamlined wherever possible. This will continue into the longer term to ensure the effective and safe management of chemicals in the UK.

If there is no deal, registrants will need to provide information to the UK Agency (HSE) to support their grandfathered registrations. They will have two years to supply the full technical information currently required under EU REACH. The principle of 'no data, no market' is key to this and will be transposed into UK law from EU REACH at the point of exit. The HSE will require this information to provide assurance that industry is fulfilling its duty to ensure the safe use of chemicals.

We recognise that in a no deal scenario we will not be able to access the existing ECHA registration database. This is why we will put in place statutory provisions that detail the responsibilities, exact requirements and timeframe in which UK registrants must provide this information.

The UK has been in the forefront in opposing animal tests where alternative approaches could be used – the “last-resort principle”. In a no-deal scenario, we will retain that principle. Registrants will have to submit their testing proposals to the UK Agency (HSE) who will be able to reject them if they contain unnecessary tests on animals. We will encourage the UK Agency (HSE) to accept duplicate submissions where possible, recognising the validity of any animal testing that has already been undertaken and so avoid the need for further testing. This will not only reduce the potential burden on industry but maintain environmental and human health standards. The grandfathering of all existing UK-held REACH registrations into the UK system will further avoid the need to duplicate animal testing associated with re-registration.