



The Future of Chemicals Regulation after the EU Referendum

A submission from the Royal Society of Chemistry to the House of Commons Environmental Audit Committee (EAC)

This document is our response to the Government response, published 29 September 2017, to the EAC report, published 29 April 2017, on its inquiry into 'The Future of Chemicals Regulation after the EU Referendum'.

Summary

Evidence taken as part of the EAC inquiry suggests that the transposition of EU chemicals regulation, such as REACH, into UK law will be complex. This is in part due to the fact that EU decision-making bodies, as specified in EU law, may no longer be accessible to the UK as a non-EU member. The Government's response to the inquiry confirms that the 'delegated powers' in the EU Withdrawal Bill will be used to enable the transposition of EU chemicals regulations 'to make them work properly' in UK law.

In this context, significant uncertainties persist in the area of chemicals regulation, particularly associated with the lack of clarity about what the legal relationship will be between the UK and the EU following 'exit day' and how the delegated powers will actually be used.

Going forwards, the following considerations are important towards ensuring future UK regulations can support trade and innovation effectively:

1. To provide clarity regarding future decision-making and enforcement in the area of chemicals regulation, it is critical to establish
 - a. how regulatory decisions will be made in the UK, including expert scientific input and
 - b. what legal relationship the UK will have with EU bodies that are currently key to decision-making regarding UK chemicals regulation.
2. It is vital that the UK Government and the UK scientific community can continue to cooperate and collaborate with EU bodies in order to
 - a. facilitate beneficial harmonisation of regulation
 - b. mitigate against unintended divergences in regulation and
 - c. influence the development of new regulation and ensure it is informed by scientific evidence
3. Any new legal mechanism establishing a new relationship between the UK and the European Chemicals Agency needs to be developed based on a clear understanding that the generation, sharing and evaluation of data is currently covered by EU law, but the functions of data sharing and evaluation may not be transposed easily and may require a new and specific agreement that may not be achieved through delegated powers alone.
4. We support the Government's initiative to understand and communicate how chemicals management is performed in other countries globally. This is important as a way of understanding options for regulatory harmonisation or agreements with trading partners and also in considering whether elements of other frameworks could be used in future UK regulation.

Expanded points

1. Clarity regarding decision-making related to chemicals regulation

For EU member states, judgements regarding EU law are taken by the European Court of Justice (ECJ). In the case of non-EU nations that are part of the European Free Trade Agreement (EFTA), judgements are made in the EFTA court. In the area of chemicals regulation, the European Chemicals Agency (ECHA) also has regulatory powers and decision-making functions.

The Government intends that EU regulations be transposed into UK law via the *EU Withdrawal Bill*. However, there is a gap in terms of decision-making and enforcement of regulations because it is highly unlikely that none of the ECJ, the EFTA court or ECHA will have jurisdiction or decision-making authority over the UK following EU Exit. In order to create more certainty on the future of chemicals regulation in the UK, and to enable efficient and orderly planning of a practical way forward, it is imperative to establish both what legal relationship the UK will have with key bodies such as ECHA and how regulatory decisions will be made in the UK.

In making any new UK law operable for chemicals regulation it will be essential to have structures in place to replace the EU functions that the UK currently relies on. UK committee structures will require expert scientific input and clear decision-making remits. These may evolve from existing bodies and require the development of new structures in the UK. See also Section 2a below re participation in ECHA scientific committees and networks.

The European Chemicals Agency (ECHA) published advice on 25 September 2017, targeted to industry on '[The UK's withdrawal from the EU](#)'. This website states what the situation would be for the UK on 'exit day' according to current EU law, if there are no further negotiations on this subject. It states that 'British participation [*in ECHA*] will come to an end'. ECHA states that it will 'continually populate these webpages as developments unfold'.

2. Cooperation with and participation in EU regulatory bodies

In its response to the EAC report, the Government states that 'We believe it is in the interests of the EU and the UK to continue cooperation in the regulation of chemicals.'

As the Government has recognised in its response, the chemicals industry is vital to UK prosperity both directly and because it is key for other sectors such as life sciences, energy, automotive and aerospace. To enable innovation and trade, it is in the best interests of the UK to develop ongoing harmonisation of regulatory approaches and therefore to ensure that UK regulators (i.e. from the Health & Safety Executive and Environment Agency) can continue to work together with EU regulators. Currently, such cooperation is effective via UK positions (as a member state) on EU committees (see point 2a below).

It is also crucial that the UK scientific community can continue to cooperate with EU scientific committees related to regulation. This will mitigate against unintended divergence of UK and EU chemicals regulations that will likely arise if such relationships are not maintained.

2a. Note on participation in ECHA scientific committees and networks

ECHA operates regulatory and scientific committees that are vital to the implementation of EU chemicals regulation. ECHA's recent guidance states that on exit day 'The UK will need to withdraw their appointed members from these bodies'. The EU bodies referred to here are *the ECHA Management Board, ECHA Member State Committee (MSC), Risk Assessment Committee (RAC), Socio-economic Analysis Committee (SEAC), Biocidal Products Committee and the Forum for the Exchange of Information on Enforcement*.

When EU chemicals regulations are transposed into UK law, this means that the delegated powers in the EU Withdrawal Bill (particularly under clause 7) will be needed to enable UK public bodies to perform the decision-making functions that these EU committees previously carried out on the UK's behalf.

There are also important UK and EU networks of regulators and scientists that enable chemicals regulations to operate, provide data security and provide support to industry. ECHA current guidance also states that on exit day, 'the United Kingdom will cease to be part of these networks', namely the Security Officer's Network (SON) overseeing links to databases and the network of correspondents from national BPR, CLP and REACH helpdesks. These are important networks for the practical operation of REACH, CLP and Biocides regulations, and so losing access to them will pose a significant challenge for UK companies and regulators.

Between now and exit day, ECHA has indicated that it will transfer the roles of UK leads, currently acting as 'rapporteurs' on key substance safety assessment dossiers for inclusion on the Candidate List or that are under discussion for REACH restriction, to other EU member state bodies. The role of substance 'rapporteur' is crucial in providing scientific and technical evidence at EU level. At the point that ECHA effects this change, the UK will lose key scientific influence in the EU decision-making process for many substances important to the UK chemicals sector.

3. Access to data that is critical to developing and implementing regulation

Sharing data internationally is critical for the future of UK chemicals regulation. Changes in our legal relationship with the EU will have an impact on the UK's ability to share data with the EU and to access EU databases. This will have implications for trade as well as impacting on our ability to develop any new UK regulatory regime through sharing of data and scientific collaboration.

A specific consequence of restricted access to data would be that it would become extremely challenging to fully implement REACH, as transposed into UK law, in a similar way to that applied whilst the UK is a member of the EU. ECHA's recent guidance states that on exit day 'the United Kingdom will no longer have access to our databases or participate in our regulatory, enforcement coordination or other processes'. This would mean that UK Government scientists will lose access to all of ECHA's databases and functions and will be in a position similar to that of a general member of the public in a 'third country'.

Safety data is a corporate asset under REACH, and the EU Commission Implementing Regulation 2016/9 came into force in January 2016 within REACH, to make sure data is shared fairly between companies prior to its confidential submission to ECHA. UK industry is responsible for submitting data to ECHA under confidential mechanisms. The UK Government then reviews the data and through EU committees the UK contributes to the decisions made, based on the data in the substance dossier. If the UK Government cannot in the future see the same dossier of data as regulators in the EU, decisions regarding UK regulation that impact on trade and industry may be different from those taken in the EU.

4. Insights from chemicals regulatory frameworks globally

The Government states that "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. 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.'

International collaboration and cooperation at a scientific level is important to international trade. Regulations continue to evolve globally, in a complex technical manner, as science advances and new ways of performing chemical safety assessment emerge. The world is moving towards ever increasing harmonisation of chemical safety assessment approaches, arguably influenced strongly by the EU, and through interactions at OECD level as well as with bodies such as the United Nations, World Health Organisation and World Trade Organisation.

We support the action by the UK Government to seek to understand and communicate how chemicals management is performed in other countries globally, with a view to both understanding the basis of chemicals regulations for future trading partners and to considering whether elements of other frameworks could be used in the UK. We suggest it would be useful to look at the chemicals regulations in countries such as Canada, Korea and Japan, which have different regulatory systems but have recently established successful agreements with the EU.

Contact

The Royal Society of Chemistry would be happy to discuss any of the points raised in our response in more detail. Any questions should be directed to Dr Camilla Alexander-White, Programme Manager in Environment & Regulation alexanderwhitec@rsc.org, 01223 432438.

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