

Environmental Audit Committee

Oral evidence: [The Future of Chemicals Regulation after the EU Referendum](#), HC 912

Tuesday 7 February 2017

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[Watch the meeting](#)

Members present: Mary Creagh (Chair); Caroline Lucas; Scott Mann; Kerry McCarthy; Dr Matthew Offord; Mr Gavin Shuker.

Questions 1-35

Witnesses

I: Dr Apolline Roger, University of Sheffield, Dr Michael Warhurst, Executive Director, CHEM Trust, and Elizabeth Shepherd, Partner, Eversheds LLP.

Written evidence from witnesses:

- [Dr Apolline Roger](#)
- [CHEM Trust](#)

Examination of witnesses

Witnesses: Dr Apolline Roger, Dr Michael Warhurst and Elizabeth Shepherd.

Q1 Chair: I call the Committee to order for our first session on chemicals regulation after we leave the European Union. It is my pleasure to welcome today Dr Apolline Roger, from the University of Sheffield, Elizabeth Shepherd, a partner at Eversheds LLP specialising in environment health and safety law, and Dr Michael Warhurst, Executive Director of CHEM Trust, which works to prevent chemicals causing long-term damage to humans and wildlife. You are all very welcome indeed. Thank you for coming and thank you for the evidence that you submitted, which has been a revelation to all of us.

It is a very active debate. Some of us were here until 12.30 debating last night and we will be debating again today the future of the regulatory environment after we leave the EU, potentially totally leaving REACH or remaining part of it in some ways. How do the available models for the development of future chemicals regulation compare in practical terms? Ms Roger, perhaps you would like to start on that because you have done a helpful grid.

Dr Roger: Yes. I think you can think about the two big models as being maybe REACH and the US, and I think that my colleagues might agree with me that the REACH model—the EU model—is the more advanced. It is the more ambitious. I think the US has been struggling for quite some time with a system that is not ambitious enough and they have been trying to reform it for quite some time too. That is also why some of the states in the States, like California for example, have adopted a system that is quite like REACH. REACH is not perfect, that is for sure, but I am afraid it is maybe the best system we have out there.

Elizabeth Shepherd: REACH has been under development for many decades now and industry has largely embraced it as a robust system of chemical regulation. It has really formed the gold standard that other jurisdictions are looking to emulate, whether it is Korea, whether it is Switzerland, whether it is Turkey. I am sure we will discuss it, but I think there is a lot of concern as to what happens if we leave the EU without having access to REACH or some form of REACH and how that is going to work out. I would agree with Apolline that TSCA—the Toxic Substances Control Act in the US—cannot be compared directly with REACH and I would say that REACH is in many respects further ahead than TSCA, even though TSCA has been recently reformed.

Dr Warhurst: I would agree with those points. REACH in itself has been in force for 10 years—it has its 10th anniversary this year—but it builds on previous systems, which were there, and arguably TSCA in the US is actually more like the EU's previous systems to REACH. So there were decades of development. You can see in Nigel Haigh's evidence, for example, the decades of development from the early 1970s on chemicals policy. I think the point with chemicals is that, because they are at the



root of the economy, they are in everything and it is about trying to work out how to control that when you are dealing with tens of thousands of substances, often where safety data is lacking or the safety data is in one company and it hasn't come out. The aim of REACH is to try to have that single database in Helsinki and a single system.

The fact that it is so centralised is the thing that is a challenge for the UK and why, if you take an option that means remaining part of it—some sort of free trade agreement or whatever—you could still be in those databases having that information. If you are outside, like for example Switzerland, then you end up copying it because there is really not much else you can do, because you cannot access the full data. You have to work in a very imperfect world—the Swiss will copy it out, without any consideration of what their local companies want to do, because they have to commit themselves to try to be the same as the EU.

Q2 Chair: What are the practical implications of that? Let's take the scenario where we have our own UK REACH. What are the practical implications for businesses if that happens?

Dr Warhurst: First, you would have to decide whether you want companies to register the safety information on their chemicals because you will not be able to get the whole REACH data. If that happens, obviously that is an extra burden for companies.

There is also a system in REACH to try to share the costs of registration and to try to reduce the number of animal tests, which are in themselves expensive, but all those legal contracts would not be valid in a UK REACH. You would have to create a whole new set of legal contracts, which would be very burdensome, or you can take the system the Swiss use where you ignore your existing chemicals. You only deal with new chemicals coming through and you get them registered and, for the existing chemicals, you just copy whatever REACH does in terms of restricting them.

So you have this problem that the UK will not have that full data. The UK could build a big chemical agency, a big computer. That obviously does not exist yet. The software does not exist. With REACH, they spent years planning how to make the massive computer database and managed to do it but the UK has not started that job. But all those things could be done and we still would not have the data that is in REACH.

Q3 Chair: Thank you. Ms Shepherd, do you have any comments on the practicalities of this?

Elizabeth Shepherd: Yes. One aspect is data access and, to build on that, when the companies have bought access to data, which they need for REACH registration purposes, that data is for EU REACH, and so they may find that they haven't actually bought access to the data that they can use to do a registration within the UK to comply with any new UK REACH that we might put in place. That is very important and is causing



significant concern now for industry. For example, when businesses now are preparing for registrations—and there are many, many new REACH registrations coming up for 2018—they are looking at their data access agreements and checking whether they are only buying access to EU REACH or whether it allow them to access the data on a wider basis. That is very important.

The second point I would add to what has been said is that if businesses are supplying from the UK into the EU, they still have to comply with the EU standards of legislation. I am sure that we will come on to the risks of divergence but they will have to be very mindful—and I think we need to be very mindful—of concerns about pan-European supplies in the REACH context.

Dr Roger: To add to that, I think the main concern of the industry—and rightly so—is what happens with the current registration and with the current authorisations. Would they still be valid? Also, if there is a UK REACH then it means that the companies in the UK are not seen as EU companies anymore. So the impact on the supply chain is that the downstream users, which are in the EU, will now be the importers on the REACH. They will have the obligation to actually register the chemicals, except if the UK company organises an only representative and nominates somebody within the EU to actually do the registration. So it changes the whole dynamic here, which can be quite complicated and it is not always possible to nominate an only representative. It is possible only for the manufacturers but it is not possible for the distributors of chemicals, so it will not always be possible.

In the supply chain it is possible that the EU companies will not want to keep on doing business with the UK companies because that will make it very complicated. Also the UK has quite a big business with only representatives, so companies specialised in actually registering chemicals for other non-EU companies. I think it is 40% of registrations in the UK that are done by only—

Q4 **Chair:** How many, sorry?

Dr Roger: 40% I think. I saw that in the written evidence but I think that is quite right. So 40% are not done by the companies but by only representatives for other companies. That means that that business concretely will not exist anymore because the only representative needs to be in the EU. They will need to relocate or lose the business, so that is definitely something that needs to be taken into account.

There is something else to take into account—it is quite detailed, but the devil lies in the detail here—which is, what about the exemption from the authorisation? For some users you don't have to ask for an authorisation if those users are covered by other EU regulations, for example the plant protection products regulations, cosmetics regulations and so on. If the UK does not apply those regulations anymore, and if there is no special agreement with the EU to consider that the UK is still applying those



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regulations correctly, it means that the UK companies will need an authorisation even though the EU companies do not.

I don't know if that was completely clear but—

Q5 **Chair:** Yes, it was clear but we might need to digest it a little bit. We will certainly look at the Hansard. Yes, we are on a very steep learning curve and we are at the bottom of it at the moment.

Can I come back to you, Ms Shepherd, about 2018? Is this the under 100 tonnes chemicals registration?

Elizabeth Shepherd: Yes.

Q6 **Chair:** When is the deadline for the under 1 tonne registration or are we not worrying about that yet?

Elizabeth Shepherd: It is the end of May 2018, which is the last deadline for—

Q7 **Chair:** For everything, including under one and under 100?

Elizabeth Shepherd: Yes.

Dr Warhurst: It is over one.

Elizabeth Shepherd: It is over one and under 100.

Dr Warhurst: So one to 10 and 10 to 100 are both the same.

Q8 **Chair:** When is under one or is there not a deadline for that, it is just in the mists?

Elizabeth Shepherd: No. It is always over 1 tonne.

Chair: So you don't have to register for under 1 tonne?

Elizabeth Shepherd: No.

Q9 **Chair:** Thank you. That is another learning point for us. I just wanted to come back on the only representatives. Dr Roger, you said it is 40% of all registrations, so how many businesses do you think that is or, Ms Shepherd, I wondered if you knew. There are lawyers. There are consultancies. How many of these businesses are there for people—any estimates?

Dr Roger: Do you know exactly?

Elizabeth Shepherd: I don't know exactly.

Dr Roger: I don't know exactly, I am sorry. I can check and come back to you.

Q10 **Chair:** That would be really helpful, thank you. What about the Prime Minister's red line on remaining subject to the jurisdiction of the ECJ? Does that impact on our ability to remain engaged with REACH or does it



not matter?

Elizabeth Shepherd: That is an interesting one. In theory, we could leave behind the ECJ but there was the case in, I think, September 2015, when the European Court of Justice overturned some guidance by ECHA, the European Chemicals Agency, on notification of substances of very high concern, SVHCs, in articles. There is an obligation to notify down the supply chain where your article contains more than a particular percentage of SVHCs.

Under ECHA guidance, previously, that had been interpreted as 0.1% of SVHC in the whole article and there were disagreements between member states as to whether that was right: should it be the whole article or should it be the components in the article? ECHA guidance said it is the whole article. The ECJ in September 2015 said, "No, you look at each component in the article". So, for example, you take a shoe where you have the upper part, the lower part and the welt in between. Previously, it was: you look at the whole shoe. Is the SVHC content more than 0.1%? After the ECJ case, you look at each individual component and you can imagine whether it is a car, whether it is a shoe, many different types of articles are complex articles containing many different components. You look at each one.

We could say in the UK we are going to leave the ECJ behind, but the danger is we would be carrying along with us, indirectly, decisions of the ECJ if we wanted to keep our regulation in the UK consistent with the rest of the EU. So, indirectly, there is a challenge there and I think that is the best example I can give of how that would work.

Dr Warhurst: Yes. I think beyond that we would only be allowed to be in REACH obviously if the EU 27 accepted that.

Q11 **Chair:** Can we talk about what costs and conditions you think they would put on that?

Dr Warhurst: I think one of the first ones would be that we were legally obliged by a mechanism to follow REACH. The obvious one is ECJ but also the EEA countries are fully within REACH. Norway sends experts. They can sit in committees in the agency. They can access all the data. The only thing they don't have is a vote, but they do contribute to discussions. They do produce dossiers on chemicals to be restricted and obviously they are bound by the EFTA Court, which is different from the ECJ. Interestingly, the EFTA Court is not mentioned in the White Paper from last week. So the ECJ is a known. Annex A talks about a number of different mechanisms that are used, including joint committees and this sort of thing, so there are other mechanisms out there but the EFTA Court is not mentioned.

The key thing is that the EU will only let us be in REACH if we are bound in some way, but it may be that that would not have to be the ECJ. We would also have to pay some money but that might not be that different



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from what we pay now. I understand it is not a huge amount of money that we pay to REACH, because a lot of REACH activities are financed by registration fees from industry, for example.

At the moment, REACH is only available to EU member states and to EEA EFTA member states. It is not currently part of any free trade agreement, but there doesn't really seem to be a reason why it could not be part of an EU free trade agreement because, essentially, almost anything can be in a free trade agreement with the EU but clearly there would be conditions.

Another one that is worth mentioning—it has already been mentioned that there are other bits of legislation—is within REACH itself there is something called a chemical safety report, which talks about safe use of a chemical, and that makes direct reference to the laws on occupational health and safety and also on industrial emissions. So that is another challenge.

My understanding is the Swiss did want to be in REACH but would not accept the ECJ and did not have those legal arrangements. I am not an expert on the Swiss. That is what I have heard as the reasoning. But the point is it is possible to do and, if that was the case, then the UK would not have to invent a new system. We would need to make sure the legal base was okay but it wouldn't be a question of creating some new thing and we would still be in line with what others are doing.

If you look at the White Paper again, it does talk specifically about the idea of continuing single market arrangements in certain areas. It mentions chemicals as having an in-depth harmonised regulatory system and it also mentions making arrangements with the European Chemicals Agency potentially. So I think that the Government appears to be at least floating those ideas, although obviously it would all need to be subject to negotiation.

Q12 Chair: Dr Roger said there would obviously be collapsing business for the only representatives and issues around reducing market share for downstream users, who will just buy from European businesses rather than British businesses to avoid having to become the registrants. If I can ask you, Ms Shepherd and you Dr Warhurst, what you think the risks to trade are.

Elizabeth Shepherd: In my view, unless we have some sort of transition arrangement that will kick in when we leave the EU, I think there is a very real risk of a market freeze on product supply, because I see a huge task ahead in terms of replicating the arrangements that we already have run for us, through ECHA, through the European Commission, and it is such an enormous task because we are so heavily reliant on the European institutions to administer and regulate the whole system. I think, if there isn't a system in place from the moment we leave the EU, we could find that we don't have a system that is ready to take the UK registrations or administer them. We could have a situation, for example,



where a company has applied for an authorisation under EU REACH but it hasn't been finalised at the point we leave the EU. What happens to that? Is that situation in limbo? Can that company not supply? If we are not ready to be up and running at the moment we leave the EU, how can UK companies who find their existing REACH registrations invalid supply into the EU? So I would welcome some form of transitional arrangement—albeit at a cost—that gives us access to the European institutions.

ECHA, for example, has over 600 employees. Now, HSE has huge technical competence in many areas, particularly having been so involved with biocides issues and pesticides, but it is the sheer manpower required to replicate the tasks that ECHA fulfil. Then there are the many committees within ECHA: the risk assessment committee, the committee of socio-economic analysis and so on. Where is all that going to be found? So, to me, there are a number of major threats to ongoing supply for industry from the point we leave the EU.

Q13 **Chair:** Anything further to add?

Dr Warhurst: Yes. I think the thing to realise as well is that we are not just talking about chemicals or mixtures of chemicals, like paint or something like that. We are talking about products. So this carpet has dyes on it, and dyes or other components of this carpet could be restricted under REACH. So you are not just talking about classic chemicals. That chair will have some brominated flame retardants in it probably. Some of them may already be banned in REACH because there is a gradual—I think the thing to understand on chemicals is we are nowhere near having addressed the problem. We have big problems from the past, well known examples like CFCs or PCBs, which are now in high enough levels in whales still to prevent them breeding.

We have more recent ones—like brominated flame retardants—and what we are doing is the classic way you go through chemicals one by one, “We have enough evidence that that is a problem. Let's take it off the market. It's accumulating in breast milk or whatever. Let's move to the next one”. That is what is happening in flame retardants. It is happening in till receipts, where the EU has just banned—well, there is a phase in of several years—Bisphenol A, a chemical that is used in till receipts to help them go black with heat. That will come in and obviously, if the UK had not done that ban, then the great thing you could do if you had lots of till receipt paper is you would sell it all in the UK because you wouldn't have to sell it in—I mean France has already banned it.

Chair: So it would be chemical dumping. Yes.

Dr Warhurst: Yes. It would become a dumping ground. So you are talking about general products. I think that is the key thing. The general products have to follow REACH as well. If there is a restriction on a chemical they must follow it.



Then I think you also need to look beyond REACH a bit. There are areas where REACH is referred to but there are also, for example, food contact materials. A food contact material is any material that comes into contact with food deliberately, so this cup and this bottle and this lid and the coating on the lid. Those are all food contact materials. Again, there are EU laws on food contact materials. Strangely, they are quite thorough. They are not in any way perfect for plastics and they are almost non-existent for paper and card and inks. There is a big fuss now—there has been a big report, 330 pages, done by the Commission's research arm, saying the system doesn't work. Lots of companies like Nestlé are complaining about it. So they are probably going to do a new system but, again, that would be a new system that maybe is initiated this year or next year. The UK has a big food industry. How do we deal with that issue?

This stuff is administered by EFSA, the European Food Safety Authority, which, again, is on the Government's list of issues we might need to talk to the EU about. The point is that chemicals are not just in REACH. They are also in other things. In the case of food contact, it is strangely disconnected from REACH. So, in fact, having or not having REACH has actually no impact on your food contacts. It is a completely different system, which is a bit irrational, as we have been saying, but there are so many different areas out there and they will all affect the ability to move around Europe.

Q14 Caroline Lucas: I want to put my duvet over my head, I think, because it is too complicated. I wanted to explore a little bit about the UK's expertise, because we were quite involved I think in the setting up of REACH and so forth. If we were indeed instrumental in developing the current approach within REACH, how has our role developed since then and are we still leading the process of chemicals regulation or have we now got to the point where we are being more led rather than leading?

Elizabeth Shepherd: It is a collaborative process, but I think the UK is and has been highly respected in terms of technical expertise and its contribution to date. I know that the UK plays an active part on the member state committee of ECHA. It is also involved in the forum for enforcement of REACH, which is done with representatives of the competent authorities from member states, so I would say it continues to play an active role on the European stage in REACH and certainly, as you say, it has had a—I think the UK was responsible for assessing a number of active substances for biocidal purposes.

Again, the biocides regime sits alongside REACH but it is a completely separate regime and you have to have your active substance. Biocides are lubricants, slimicides, disinfectants, preservatives, hugely used in industry, and they have a separate regime that says that the active biocidal substance has to be approved at EU level, so there is a system within the European Commission for that and then, whoever wants to use that biocidal substance in a product, so a lubricant in industry, say, has



to apply to the national authority at present for approval. The approval of active substances at EU level has been divided out among the member states. I know that the UK was the member state responsible for assessing quite a number of active substances under the biocidal products regime in the early stages. That is why I say we have considerable expertise. We have considerable respect.

Q15 Caroline Lucas: I suppose my next question was, do we have enough expertise? If we are trying to set up our own regulatory system outside of REACH, would we still have the skills and the knowledge here in the UK to do that?

Elizabeth Shepherd: I would say not, and that is not to undervalue the huge contribution made to date but it is simply the vastness of the task. We would be trying to replicate a small version of ECHA and, when you look across the broad spectrum of what ECHA actually does, it is huge. So I don't think that currently the HSE, for example, could take on that vast body of work without a huge influx of people and funding.

Dr Warhurst: Just to follow up, the UK is very heavily involved in the ECHA committees. There is a risk assessment committee, the socio-economic assessment committee. UK experts are on there. They are doing work on there. The UK is always very active in decision-making at EU level in this area, not always in the way that someone like CHEM Trust would agree with the UK line but the UK is definitely not sitting back and not being present. Obviously, there are UK staff at the agency in Helsinki. There are UK staff on the board of appeal. They have a special board of appeal structure so that people don't have to go straight to the European Court of Justice. They can go to a board of appeal first.

So there are very, very strong UK links and I think on the issue about capacity, you could imagine you could employ lots more people but that would be difficult. There aren't so many trained people. It may be that people might prefer to stay in Helsinki or somewhere else and it still would not necessarily get you the information; well, it wouldn't get you the information that you need.

Dr Roger: I think when we talk about capacity, we talk about people and resources but we also have to think about the whole system that exists right now within REACH. We are talking about IT tools, for example, technical guidance, and it would take time and resources to develop these IT tools and explain how to use them and so on. I think that question of capacity has to be thought through. That is much more complex than it looks, and it already looks complicated.

There is something else that may relate more to the question that you asked before on a trade. There is concrete capacity and there is perceived capacity, and I think the reputation of your chemical regulation does matter for trade and also for international trade. I remember when I lived in the States I saw some products, especially toys, saying, "Complies with EU regulations", which is quite surprising when you think



about a sovereign country, isn't it? I think REACH now has a reputation that is really good, so we also have to think about capacity and trade and whether that will have an impact on how UK products are seen. If we are involved in international trade, we also have to think about the fact that maybe UK companies will have to do three registrations—one for REACH, one for the UK and one for some other country—so that has to be taken into account too.

Q16 Caroline Lucas: Just quickly, I want to follow up with Dr Warhurst on the emerging risks, whether or not we have chemicals expertise on that in particular, and whether or not our decision-makers are fully informed of public safety impacts. Can we look at it from that perspective very specifically?

Dr Warhurst: The thing that I think is missed a lot about the EU is that if you have 28 countries and a few other EEA people in the room, and in the discussions and producing the material, the amount of information they have is so much higher and they have slightly different interests, so in some ways it represents a much more participative process with a wider range. So you end up with a lot of information that is coming through, for example from a Swedish scientist doing something or a Danish scientist. So the information at EU level, in terms of discussions, is also at a much higher level than you would get in the UK. The UK has some researchers doing good work but not the scale that we get from the whole EU.

Take the example of perfluorochemicals, which have been used in non-stick frying pans, in Teflon—and other brands—in waterproof clothing and in fire foams. They are very, very persistent. They are a group of chemicals. There are probably about 3,000 of them. They are also used in food packaging. What is happening, in the classic way, is that some years ago 3M announced that they had found this chemical in every blood stock they looked at—this was PFOS originally—and then gradually people have gone through other chemicals in that list. Then we have Sweden that says there are about 3,000 around. They are in groundwater, they are in our bodies and they have interesting effects on the immune system in children.

It is very, very complicated because there are so many of these chemicals and the problem you find is that even with a system like REACH you tend not to get companies saying, "Well, you are worried about this chemical. You probably should look at this other chemical we are also producing", because unfortunately the company tends to carry on producing that chemical as long as it can until someone notices that is the next one on the list. You have to be able to handle that, and this is why chemicals regulation is so complex, because you are dealing with lots of uses of lots of chemicals with limited information. Even beyond that, you have the issue of how you deal with the reality that we are always exposed to mixtures of chemicals, which basically the regulatory systems try to ignore because it is even more complicated.



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So the complexity is very high and the UK, while we have some good people, does not have the capacity to do all of that.

- Q17 **Caroline Lucas:** The last point was about the contribution that the UK has made to the development of the mechanisms of REACH. How much do you think that could and should be taken into account in the negotiations? Given that we were partly responsible for this thing, do you think that gives us a better argument to say that we should still have access to it?

Dr Warhurst: I think the UK was very important. REACH was a very, very controversial process. The UK helped initiate it and also helped make a set of crucial deals during the process, but I am not sure that is going to make any difference now. I think there is goodwill to the UK in these processes but it will probably be a set of fairly straightforward things to do with the legal checks on it and that sort of thing, as to whether the UK gets it or not, so I think our past record is not necessarily going to help us.

- Q18 **Scott Mann:** How are you? Elizabeth, you mentioned transitional measures and having a transitional arrangement. When we have left the European Union, where do you think the authority for chemicals regulation should lie? Do you think it should be something that is devolved to areas around the UK, in much the same way as some environmental legislation is currently, and to what extent does this approach to chemicals regulation and enforcement vary between devolved nations?

Elizabeth Shepherd: I would say it is in the interests of the UK to follow a consistent path because we have already touched on the challenges of manufacturers, for example, in the UK having to comply with UK REACH, and then when they send it over to the EU there might be another set of rules. Imagine how awful it would be for different rules to be applying in England, Scotland and Wales and so on. If we are looking for some sort of mutual recognition—which I believe is very important as part of a transitional arrangement as a minimum—then the closer we are to having the same rules as a bloc the better, and I would hope we had a shared interest in the same rules applying for a UK REACH as opposed to the devolved Administrations having different approaches.

- Q19 **Scott Mann:** Is that view shared by everybody else as well?

Dr Warhurst: I suppose from my point of view there are different things. Mutual recognition is not going to work for registration anyway, clearly. It is more the—

Elizabeth Shepherd: Well, I can explain.

Dr Warhurst: Yes.

Chair: Do please.



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Elizabeth Shepherd: What I mean is that we could have a transitional arrangement whereby, if there is a UK REACH registration already on the day we leave, then that should work for that company to supply its product into Europe so that the person in the new EU is a downstream user and is not treated as a new importer having to make a new registration in the EU. Likewise, with someone manufacturing product in the EU and having registrations to cover its substances in that product, when it sends that product to the UK it would be helpful if the UK acknowledged that we will treat that as a registration. We do not need a new registration in the UK, avoiding the double compliance cost and my worry about market freeze when we leave. You could have some sort of arrangement.

I agree with you, you can't have mutual recognition of registrations necessarily as such but you could have a practical arrangement going forward, which means the status quo is almost preserved so you are minimising disruption to business, minimising costs at that point, until we have built up our UK REACH with all the mechanisms we need to take it forward. There might be a cost to that, we might need input from ongoing access to ECHA and so on for a period to help us with that and access to REACH-IT, which is the IT tool that Apolline rightly talked about. It would give us a breathing space that would be practical for business and allow us to move forward on a consistent regulatory basis.

Q20 **Scott Mann:** Do other non-EU countries pay to access the current system at the moment?

Elizabeth Shepherd: Non-EU countries have no access. It is the EU and the EEA.

Dr Warhurst: If there is a chemicals register, you just accept that whatever as a transitional thing. I think there will be a limit to how much help the EU would give the UK if the UK was going to create a separate system during that transition, because it is not very much in their interest.

Going back to the devolution question, I think it is very interesting. If you are still with REACH then it makes no difference, essentially. You could improve enforcement or whatever, which would probably be a good thing to do. If you are leaving REACH and then copying it out fully, again devolution probably would not come into it. But as soon as there is a possibility that chemical X is being restricted and the EU manufacturer in the UK goes to the UK Government saying, "You don't really need to do that here, do you? We have this risk assessment that shows it is completely fine" and the UK Government say, "We are not going to do the same as the EU", then you have the issue as to whether Scotland, for example, could say, "Sorry, but we want to be in line with REACH". If England decides to water down REACH that is one thing, but Scotland might want to be in line with it. At that moment suddenly the dynamic would change.



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Scott Mann: Then the question will change back. Okay.

- Q21 **Chair:** Can I come back on that? Does Scotland have the authority legally to do that? Surely this is UK-wide. There is something in the UK environmental law—I think it was yours, Ms Shepherd—about how companies definitely did not want to see this sort of devolution. They might want enforcement devolved but not the actual framework devolved. Dr Warhurst, you are saying the Scots could suddenly decide. Who has competence?

Dr Warhurst: They couldn't suddenly decide, although there is a devolution of environment to some level.

Dr Roger: I think for devolution in REACH you have to distinguish between the pillars. You have registration, evaluation, authorisation and restriction. For registration it would be very complicated to have different REACH and I don't think that would be manageable resource-wise for the companies. For evaluation, if everybody contributes, why not? For authorisation and restriction, it would be very hard to go under the protection of the EU because that would be part of the deal, but I think we do need to consider the situations where authorities maybe want to go beyond.

Today it is a possibility for the UK to go beyond the protection offered by REACH. It is conditioned and it is quite hard but still it is a possibility, depending on whether we stay within REACH or not. If we do stay within REACH it might be necessary to negotiate also some clauses, some provisions, to be able to go beyond the protection offered by REACH. If it is a UK REACH then it might make sense for the devolved Administrations to have the right to go beyond the protection offered by the UK REACH, because they do have the environment competence and the agriculture competence.

- Q22 **Chair:** They won't have their own REACH agency to make those decisions. Are you saying that Wales, Scotland and Northern Ireland are going to replicate mini UK REACHs?

Dr Roger: No, but today they are involved in enforcement, as you said. If I remember correctly, Scotland and Wales are involved in the enforcement of the use of chemicals. In Northern Ireland it is use and also in the supply chain. The control of the supply chain is centralised for England, Wales and Scotland and registration is also centralised. What it means is that today they don't have that capacity but they do have a capacity to assess the risk to the environment of certain substances. For example, today Scotland has the right to limit the use of some pesticides that are authorised for the UK. That is where it is very hard to draw a strict line between what is trade, environment or agriculture, and that is why I think we need to distinguish between the different pillars.

We talked a bit about mutual recognition. The tricky part with mutual recognition and registration is that if we do think about mutual recognition, that means that the information that the UK authorities



require from the companies has to be exactly the same as that required in the EU. Also you will need to have some exchange of information agreement between the ECHA and the UK authorities. That is not a problem; it is possible; it is actually allowed by REACH. But my question is: if we do require exactly the same information, is it not some kind of redundancy that maybe should be avoided? Maybe it would be better to negotiate to be within REACH for registration.

Scott Mann: That is probably a question above my pay grade.

Chair: I think it is above all of our pay grades.

Dr Warhurst: I think as far as REACH goes, they will not break away from the idea that there is one REACH database. It must be a registration on that database or they can go through the computerised evaluation processes. There is one system and all the work comes out of that database. There would not be a situation where you could say, "We have just registered it over here in the UK". You would have to register it in the EU in the same way, I would argue.

On the Scotland-type example, you can argue you don't need much capacity to copy exactly what the EU has done because you have it as a piece of legislative text. If Scotland wished to say, "We will copy everything" and England were saying, "We are looking at the appropriateness for the English economy", that could be done. Obviously it would disrupt trade within the UK but Scottish companies would benefit from better trade with the EU and that might be a decision that Scotland wanted to take.

Elizabeth Shepherd: There could be a tension there, I accept that, but I see REACH as touching on a number of different areas. As you mentioned, it is environment, it is trade, but I think REACH is a very important single market regulation that has contributed towards the harmonisation of chemicals, not just within the EU but on a global scale. It links through to the CLP regulation, the classification, labelling and packaging regulation, which is part of global harmonisation and it is all linked to trade, I would say. If you were to start to look at the devolved Administrations and say it might be in Scotland's interest to do something differently, there could be some tensions but overall I would say it is in everyone's interest to work towards something that is workable for the UK as a whole that can align itself in the best way possible to EU REACH. It is possible that somebody could argue for increased regulation but I think REACH is pretty robust as it is. There will always be some arguments that REACH should be diluted, and that is another challenge, but we do set ourselves more difficulties, more hurdles to overcome, if we veer from what we have already, in my view.

Q23 **Kerry McCarthy:** The Government have said that they will transpose UK legislation over with this great repeal Act. We have had evidence from Andrea Leadsom that about a third of environmental legislation will not lend itself easily to that process. We have also heard that chemicals



regulation may be part of that. What are your views on how this will work, won't work or could be made to work? I hesitate because I feel like I am opening up yet another can of worms.

Dr Roger: REACH is a perfect example of one of the regulations that cannot be transposed automatically, cannot be copy-pasted. As we explained, it is mostly a governance structure so it needs to be recreated. Then, of course, there can be a system like Switzerland's where they have their own registration system and then just copy everything else for authorisation and restriction. That is possible. Switzerland's text just refers to REACH literally, "Just look at the annex XV operation then you will know what is the law". That is possible, but for registration it is creating a new governance structure.

Elizabeth Shepherd: We are always going to be playing catch-up if we are not careful. We may say we will follow REACH but we will always be behind the curve and not only will we not have a vote on the direction of REACH for specific chemicals and the evaluation, testing and so on, we will not be at the table discussing them. The EEA countries are at the table, albeit they don't have a vote. We risk not being at the table at all.

The other point I would make is that we are not just talking about REACH here. We are talking about biocides, which I mentioned. We are talking about CLP and also other regulations that have come in as a result of international conventions affecting chemicals. We have the Rotterdam Convention that led to the PIC regulation, which is prior informed consent. We have the Stockholm Convention that led to the POPs regulation, which is persistent organic pollutants. We have a similar situation from Montreal that led to the ozone depleting substances regulation.

Q24 **Kerry McCarthy:** How much of that is not affected by us leaving the EU? On the natural environment, we hear a lot of people talking about the Berne Convention and how we will still be bound by that and that is our saviour when it comes to environmental protection. Presumably some of these conventions are outside the EU framework, or are they not?

Elizabeth Shepherd: It needs to be looked at. There is a lot of focus on REACH, understandably because that is the big name regulation, but there are these other regulations that have come in as a result of conventions that need to be looked at to see whether, for example, we are a party to the convention in our capacity as a member of the EU or not, and then what is the consequence of that. But either way there are international conventions, international standards, and I go back to the fact that we are working on a world stage. Global harmonisation has been a consistent theme and we need to look at the mechanics of what we do about these other regulations that have come in as a result of conventions, but they are examples of the direction of travel of chemical regulation to which it is to be subject.



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Dr Warhurst: Some of those may be easier in terms of the great repeal Bill because they will be in UK legislation and some of them are much simpler, they are short lists of chemical, but it will be varying and they need to be looked at. This point about if we are not in the EEA is not just that we are not around the table. We don't even have access to all the data. There is stuff in the chemical database in Helsinki that is confidential or protected by ownership, because a lot of that data does not belong to the chemical agency, it belongs to some consortium of chemical companies. There is all sorts of stuff we would not even be able to see. On the transposition, you could create your big UK REACH but if all they are essentially doing is copying out REACH then do you need a big UK REACH? You could just have three civil servants sitting there cutting and pasting the documents. It is a strange situation.

My understanding is that part of the purpose of the great repeal Bill is not necessarily to say, "This is where we want to get to" but, "This is a precaution in case we drop out of the EU". The idea of the great repeal Bill, on something like REACH, is to make sure that if the UK dropped out after two years after Article 50 because we had not made a deal, there would be a legal framework in place the next day. That is why the great repeal Bill debate becomes quite complex because in some ways it is a sort of precautionary parachute. It is a parachute thing but it is not necessarily what you are aiming for. As a parachute you might say we will try to copy an EU chemicals agency thing or we will just say we are going to copy everything that REACH does, which may be the easiest option, but that is not necessarily what you are trying to get the UK towards. The great repeal Bill, as far as I understand it, particularly in this sort of case, is just the sort of emergency option if everything else falls apart. Literally two years after Article 50, we would drop out of the EU overnight.

Dr Roger: To add to what Elizabeth was saying, when we talk about following REACH it actually means following a lot of other regulations. That is the point that Elizabeth was starting to make with the regulations that implement those conventions and the UK is also a party to those conventions. REACH refers to some other regulations. The CLP is maybe the most important, so if we follow REACH we follow CLP. But REACH also refers, for example, to the regulation on the use of animals for scientific purposes, so we also need to follow that. The scope of REACH itself is defining a relation with other regulations, so maybe we need to follow those too. You are pulling a thread and there are a lot of things coming, so you need to think about that.

Q25 **Kerry McCarthy:** Do you see similar problems in other areas of environmental law that you are involved in?

Dr Roger: I am sorry, yes.

Q26 **Kerry McCarthy:** I didn't think for one moment you would say no, but could you give some very quick examples?



Dr Roger: When it is a regulation and it is about product standards, there is a good chance that you will have a similar situation. I am thinking right now about the Ecodesign Directive, which would be a good example.

Elizabeth Shepherd: I see a difference between directives and regulations. With directives it is different because you have UK law implementing the directive and usually the Environment Agency is at the helm already. With regulations it applies directly across the EU and you have EU institutions at the heart of it. Chemical regulation tends mostly to be derived from regulations, unfortunately. A lot of waste-related directives—the Waste Electrical and Electronic Equipment Directive, the WEEE directive—already have UK systems in place run by the Environment Agency so they are simpler. I am afraid most of the challenges lie around chemical regulation. I think we are all agreed it is not just about REACH; it is all the related regulation of chemicals.

Chair: I think that came out of our previous inquiries—that this is a knotty problem.

Dr Warhurst: I think it is worth saying that even with those ones, they are constantly changing. The hazardous substances within the Water Framework Directive are changing, so then you have to decide: do you just copy the EU or do you do something different and what does that mean down the line?

Q27 **Mr Gavin Shuker:** Could you explain really concisely—and you have referred a lot to this throughout this evidence session—what you believe to be the key environmental and business threats of us developing a system that is independent of REACH?

Dr Warhurst: On the environmental and health threats, we have the complexity of chemicals and it is a difficult area to regulate. It is constantly changing and new science is coming out and that science is showing problems. It is showing chemicals affecting wildlife or affecting human health. The point is how fast we would be responding to that if we were not in REACH and if we did not have access to that information. It could be more damage in our rivers, more damage to workers, because worker safety is a very important part of REACH. It is the core information on chemicals to go into worker safety, whether it be concerns about the Bisphenol A in till receipts getting on to the hands of cashiers and then affecting their developing foetus if they are pregnant, which was the main thing they were looking at, or whether it be clothes being washed in a detergent that is illegal in Europe, but that was made in Asia, and enough of that chemical—they are called alkylphenols—comes out to affect sewage effluence in terms of the ability to feminise fishes. There is a new restriction on that.

We would not be accessing that information in the same way. You could argue we could copy everything, but I think there is one key aspect that has not been discussed. Registration is something you have to do to get



things into the EU and restriction will affect products like a chair going into the EU. The process within REACH that is called authorisation is about identifying the chemicals that have properties of very high concern—maybe they accumulate or they cause cancer or they disrupt the hormone system—and then prioritising those. People are going to have to apply to carry on using them. The key word in that is “use”, because authorisation as it stands only covers use of a chemical within the EU and EEA. When there have been debates on authorisation of all sorts of different chemicals, whether it is phthalates in PVC as a plasticiser or whatever, as they stand they have effect only within the EU and EEA. A restriction might later follow and that would affect all the imports, but the key thing is that we could have a situation where in the UK we are using chemicals that are not able to be used in the EU because of that.

Q28 Mr Gavin Shuker: For you, in terms of the environmental key risk of a standalone system, it is about the speed of being able to respond to challenges that come along. I take from that that you don’t feel that there is as strong a concern that there would be a structural reason why we would have, say, lower standards by being one country on our own as opposed to being part of a block of 27 or 28.

Dr Warhurst: I think we could have lower standards. That is possible. It has even been expressed by Government as an option. In the specific case of authorisation, unless the UK decided to implement authorisation within the UK you would get lower standards because chemicals would be used that were not being used in the rest of Europe. But I do think there is a risk of lower standards and there is also a risk of drift. The great thing about an EU law is that, while in the case of REACH it is revised every five years and there is a revision process going on now, it is difficult just to get rid of it. The UK could easily one year say we are going to do this and then two years later it has changed and particularly if there is strong economic interest behind it.

It is worth mentioning that one area we have not discussed is things like the rules around chemicals used in something like fracking where you have a whole other massive debate. In the EU you have the Groundwater Directive and other things like that.

Q29 Mr Gavin Shuker: Can I ask you about the business risk as well as the environmental one?

Dr Roger: For the business risk I think it is what we discussed: impact on the supply chain, impact on the business of only representatives that exist in the UK.

For the environment there is something we discussed just before that I would like to add. As you might have noticed, it is not easy to understand the chemical risks and it is not easy to understand chemical legislation. That means that the lobbies are quite powerful because they have information, and it is normal. Right now the centre of power is the EU, so



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the lobbying strategies are directed towards that. If the centre of power moves to the UK, the lobbying will relocate. The industry lobby will be ready for that but the UK NGOs, except of course CHEM Trust, are not very active on chemical questions. Do they have the expertise to counter the weight of the industry lobby? I am not so sure.

Another thing we discussed about the contribution of the UK to REACH is if you look at which countries propose substances to place on the candidate list to be then subjected to authorisation, I think the UK has proposed two when Germany has proposed 49.

Elizabeth Shepherd: I am concerned about the impact on UK competition. The ability of UK business to remain competitive could be adversely affected if we are no longer part of REACH and do not have a robust UK REACH to replace it, which is going to be a challenge because of playing catch-up and not being at the heart of the discussion. I think British business faces increased cost because of having to comply with double systems. It faces the administrative challenges with that: the cost of complying, the cost of buying data potentially in order to do new registrations that it did not anticipate. You have to remember that a lot of businesses have already spent money on REACH compliance and they are having to buy again, potentially. I am concerned that the extra costs will make British business less competitive in general, when you take energy costs and so on into account, compared with costs of other countries that are not subject to similar type regulation.

Clearly there is a risk of regulation diverging and us having to comply with two sets of laws. This is apart from the compliance costs of REACH, complying with different sets of standards depending on the ultimate destination of our products. I am also concerned that there could be a gap in market supply. As I have said, this is a concern post-Brexit. I am not seeing industry fighting against REACH and saying in general, "This is our opportunity to go for lower standards because it will be cheaper and easier". I am not seeing that. I see industry as looking for and welcoming a level playing field where they know where they stand, are open to scrutiny and they want to get it right.

Q30 **Mr Gavin Shuker:** Finally on this, everything that I have heard today confirms my natural bias about whether we should be members of the European Union or not. Say if I took an alternative view, I might suggest what a fantastic opportunity this is for us to pivot, perhaps look to harmonise more with the United States over the European Union and so on. What are the reasons why that would either be a good or a bad idea?

Dr Warhurst: I think the basic point is that it is acknowledged by most that REACH is the most advanced and influential system in the world. It is half a billion people, a bigger population than the US, affected by REACH. It is the one that is looked to by China or Korea. Korea has its K-REACH. It is the globally influential one. The US has just redone its TSCA and changed it a bit. At the moment no one really knows how that is going to be implemented because there are other slight uncertainties in the US



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regarding President Trump and what he is going to do to the EPA. I don't think anyone is really looking to that as a model. Then you essentially have REACH, which is the one that people are concerned about around the globe. I think we need to think outside. If you are a Chinese exporter and someone tells you that the UK is going to have its own system and it is going to be different, you probably are not going to be very impressed by that.

The thing we need to look at is also the combination of this and other Brexit uncertainties. The natural thing for a company might be to derisk its supply chain. It wants to make its supply chain simpler, meaning not having any of it in the UK, because then you derisk from the UK dropping out of the EU without any controls in or you reduce the chance of some UK person saying, "Now we have this new regulation and you haven't filled in this form". You derisk your supply chain by not having anything in the UK. That is a substantial economic risk.

Elizabeth Shepherd: I think the only businesses that would be at an advantage by lower regulation are the businesses that operate on our island on their own. They are not looking to send products outside the UK. Any business that does look to send product outside the UK is going to have to comply with EU REACH in any event. They would be looking for one set of regulations for their UK supplies and another for elsewhere, which would not seem to make commercial sense.

Q31 **Mr Gavin Shuker:** You believe that the EU 27 will continue to be a very significant market for us into the future and it already is our largest export market.

Elizabeth Shepherd: Yes, absolutely.

Mr Gavin Shuker: I apologise for trying to make it really explicit but—

Q32 **Dr Matthew Offord:** Dr Warhurst, you mentioned the Chinese and asked why they would want a different system. Are there any opportunities if the UK decided to pursue a divergent system outside of the current EU regulations?

Dr Warhurst: I don't think there really are. The first thing to say would be that if we are trying to get some sort of deal with the EU, the EU is going to be alive to the possibility of the UK trying to become the deregulated place. The EU would work to make that difficult for the UK, I would be pretty sure. I think the point is that the UK is not big enough. If we had the population and the economy of the US then maybe it would make a difference. The problem is that the EU is a much bigger economy than ours. There is a limit.

If you are an exporter from China you are probably hassled enough having the US there and the EU there and then everyone else more or less copying and you don't particularly want to be told that the UK is going to do something different. It is worth noting that even in the US the chemicals regulations traditionally have not been driven by the



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federal level. They have been driven by California because California has a very big economy that does a lot of regulation.

I do not really see an opportunity there unless it is that sort of bargain basement, "We don't care what happens in the UK. We can do things as cheaply as possible and not worry about the environment".

Q33 Dr Matthew Offord: What components would you think will be maintained that we currently have? We have issues about public health and the environment. Which are the most important?

Dr Warhurst: There is a very strong argument from the UK side and the EU side, if the Government goes, as it has said, for a free trade agreement, to have these things as a lump in the free trade agreement, that the UK continues to participate, without a vote obviously in these things, but these are scientific processes and the UK would be able to contribute information into them. I think that is the most rational from a UK industry point of view, a UK health and environment point of view and also from an EU point of view because they retain the level playing field that they will want. I suspect if the UK signs up to that on one side then the EU will be happier with signing up to other things elsewhere because they feel there would be a level of protection and a level playing field for competition.

Q34 Dr Matthew Offord: You also mentioned that in the United States, California is the lead for the country. Do you believe there would be any kind of restrictions or freedoms that the United States will have most likely if it is the largest trading country with the United Kingdom?

Dr Warhurst: Unless the UK decided to adopt the US system, which would to some extent throw away our European trade, it is somewhat unlikely. The federal regulations on chemicals have been weak for decades in the US and so it has been state-based. The revision of TSCA was supposed to create a better federal system but remained with the opportunity for states to act if the federal one didn't. I think that is what is essentially going to happen. If the EPA is not able to do the work it is supposed to do then all you will get is more state activity. It is not just California, other states do things as well, so you will end up with a more split-up US market on chemicals than is already the case.

The other thing that is always worth mentioning on the US is that the legal environment is very different. The companies that disclosed the perfluorochemical contamination of people are having to pay out many millions of dollars in legal cases in a way that does not happen here. The European and UK system tends to be more based on regulation whereas the US system has a lot of different legal mechanisms that makes it a very different system.

Q35 Dr Matthew Offord: You will be aware of the UK Government's approach to the use of neonicotinoids and the problems that that has created. Do you think there is any benefit for the United Kingdom to



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undertake more of a risk-based approach rather than the hazard-based approach that the EU currently favours?

Dr Warhurst: I think the risk and hazard one is—

Chair: Sorry, I am keen to hear from the other witnesses on this and can I ask if you have any other points to make?

Elizabeth Shepherd: On the risk aspect, there is a perception that in the EU it is more hazard and not risk and there is a bit of an element of the two. Take, for example, the risk assessment committee of ECHA that does apply a risk-based approach when advising ECHA whether there should be a restriction attached to a substance or whether it should go on the authorisation list. There is a lot of risk analysis that informs the decisions ultimately made by ECHA and the European Commission.

Dr Roger: I could not agree more. I think there is a perception that REACH is more hazard-based than risk-based, but I am not sure it is true. For registration, yes, it is all chemicals, whatever the risk, but we do need information on the chemicals to know which ones are presenting a risk. For authorisation, it is true that originally it is hazard-based in the sense that chemicals are placed on the candidate list and then the authorisation list because of the hazard that it presents, but the practice has changed and now the states are doing a risk management analysis that brings back the risk assessment into the authorisation pillar. I think there is much more perception that it is hazard-based rather than risk-based. It is very much risk-based.

For the opportunities in risk, the UK system could have a lower protection and could have a higher protection and both are opportunities of risk. I think the US has had a lot of issues with the TSCA. The EPA was not able to ban asbestos in its time. That shows that the regulation is quite weak and I definitely think that there would be a risk to align there. We do work with REACH right now. It is one of the most ambitious regulations in the world for chemical regulation. The companies have adapted to it and it would be a shame to take a step back when it does not cost us more to keep on aligning. The idea that there would be economic gain in lowering the standard is not even winning in the sense that it has been proven now that ambitious standards, especially in chemical regulation, can bring a lot of economic benefits, including the development of a green chemistry industry, which can then gain a share in the total market.

We do need to think long term and not try to make protection of the environment, health and the economy enemies, when they are not in that area.

Dr Warhurst: On the hazard issue, what you are always dealing with is an estimate. We estimate the hazard of this chemical to be this and in a few years' time you will find that your estimate was wrong and it is more hazardous. What the EU system has is that in certain areas you use the intrinsic hazard of a chemical—this chemical causes cancer or this



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chemical kills bees—and you do what is rightly called a generic risk assessment. You say, “This chemical causes cancer. We don’t want it in toys that children play with”. You can call it hazard-based. You ban all cancer-causing chemicals from toys, but it is also a generic risk assessment: this is something that children will have.

Pesticides is about open release into the environment. You have your estimate of the hazard, which in the case of neonicotinoids has changed a lot even in the last year. The estimate of the hazard is constantly getting worse. The idea of the EU system is to try to be more protective because things like bees are important to the environment. There has been a specific debate on pesticides that is slightly different and it has been interesting that there have been Ministers saying that they want to make the system more risk-based. You have both elements in that and if you have a chemical that has particular properties of concern, there are also provisions to allow continued use, if it is needed, within the pesticides system. Even when hazard is being used because something is going generally into the environment, there are still provisions that if there is a really serious problem with a particular plant pest then you can continue to get authorisation for it.

Chair: Thank you all very much indeed for a fascinating session. We are going to have to go away and digest at great length the information that that you have given us, both the written information and the oral information today. Thank you all very much indeed. To be continued. Thank you.