

Environmental Audit Committee

Oral evidence: [Chemical Regulation after the UK has left the EU](#), HC 1769

Tuesday 4 December 2018

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Members present: Mary Creagh (Chair); Mr Philip Dunne; Mr Robert Goodwill; Kerry McCarthy; John McNally; Dr Matthew Offord.

Questions 1-90

Witnesses

I: Dr Michael Warhurst, Executive Director, CHEM Trust; Nigel Haigh OBE, Honorary Fellow, Institute for European Environmental Policy; Elizabeth Shepherd, Partner, Eversheds Sutherland.

II: Nishma Patel, Chemicals Policy Director, Chemical Industries Association; Peter Newport, CEO, Chemical Business Association; Susanne Baker, Head of Programme, Environment and Compliance, techUK; Ellen Daniels, Head of Public Affairs and Policy, British Coatings Federation.

Examination of Witnesses

Witnesses: Dr Michael Warhurst, Nigel Haigh OBE and Elizabeth Shepherd.

Q1 Chair: We are very pleased to be holding a follow-up session today to the chemicals inquiry that was slightly stymied by the early general election in March 2017. We are coming back to it 20 months later, to see what has happened, what has progressed, what is new and what has changed. It seems that, every time we talk about chemicals, Parliament has a spasm of excitement. We are slightly lighter today because we have people in all sorts of different places, doing all sorts of different things. We are going to try to finish very punctually, because we obviously have a lot of business on today, which could run until 3 o'clock in the morning. Can I ask our witnesses to introduce themselves, please?

Nigel Haigh: I am Nigel Haigh. I remain an honorary fellow of the IEEP, the Institute for European Environmental Policy, although it is many years since I was its director. I have followed European environmental policy since its inception, and have always found chemicals policy the most original and intellectually stimulating area, which is why I am pleased to be a trustee of CHEM Trust, of which Michael is the Director.

Elizabeth Shepherd: I am Elizabeth Shepherd. I am a partner in the law firm Eversheds Sutherland, with a specialist interest in the regulation of chemicals.

Dr Warhurst: I am Michael Warhurst. I am executive director of CHEM Trust, which is a charity that focuses on reducing the harm from harmful chemicals. We work at both UK and EU level. I have been doing this sort of thing for about 20 years.

Q2 Chair: Let us make a start. The Government told our inquiry that they wanted to seek associate member of REACH. The only problem is that that does not exist as a thing yet. It is a single-market mechanism. How are the Government going to square this circle? Is associate membership possible?

Elizabeth Shepherd: Associate membership is possible. Anything is possible through negotiation. The Government gave very useful indicators in the White Paper in July about what associate membership could mean, because there are a number of variables in that.

Q3 Chair: Do you mean the Chequers proposal?

Elizabeth Shepherd: Yes. Associate membership meant really one set of regulatory checks, so that that would enable market access to both the UK and the EEA. That is important for the chemicals sector. It also meant participation, active participation, in expert groups. There would be a financial contribution, but that expert participation is perceived to be important. It would mean access to the ECHA database, which is



fundamental, and I expect you may want to talk about it, but it would mean regulatory consistency in order to maintain the market access. There are very clear indications as to what that could mean. It is workable.

Q4 Chair: The political declaration says in article 4 that the UK will lose access to all EU databases. Things have moved on since Chequers, have they not? We now have a political declaration that says we will not have access to databases. What is your interpretation of that, as a lawyer?

Elizabeth Shepherd: As a lawyer, that gives me great concern, because it is difficult to see how market access will be maintained post-Brexit without access to the database and so on. The withdrawal agreement is very clear that we will have very limited access to committee meetings, to expert groups and to the database. That does give me concern as a lawyer about how we would maintain regulatory consistency and so on.

Q5 Chair: It is article 8, sorry, my apologies. Article 8 provides that the UK will cease to have access to any network, information system or database established on the basis of Union law. We are not allowed to access a network to which we are no longer entitled to have access. It is pretty explicit. That is the bit that really shocked me when I read the political agreement: no more databases, for whatever thing.

Elizabeth Shepherd: Yes, we would be locked out. It is very difficult to see how the UK would maintain market access in a viable way going forward without any access, because there would be a question of duplicating what there is in the ECHA database. There are a number of very fundamental problems with that.

Chair: We may come on to that.

Nigel Haigh: I just wanted to make the point that the regulation that established REACH and ECHA has no provision for a non-EU member state to be part of REACH. This is unlike the regulation that established the European Environment Agency, which says that any European country can join. The only way the UK can be an associate member of REACH is if there is a treaty between the UK, the EU and the other member states. That is how Norway is part of REACH, by virtue of the European Economic Area agreement. I would assume the free trade agreement that will be negotiated in the transition period will end up with a treaty which states—if it is agreed—that the UK becomes an associate member or member of REACH.

Chair: You are perhaps a bit more optimistic.

Dr Warhurst: The scenario of the UK remaining in some form of associate membership in REACH is something that we looked at early on in CHEM Trust. We have established that, in the case of Switzerland, which was also interested in joining REACH, it was told that it needed to accept, first, the idea of adopting EU decisions without a vote; secondly, the ECJ; and thirdly, alignment with a whole group of other chemical laws



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that are relevant to REACH implementation. The Chequers agreement said the UK would accept EU decisions without a vote and accept ECJ for agencies, as it was described, like ECHA. It is positive that the political declaration, while it has this text on leaving databases, has a separate text that specifically mentions ECHA, basically saying we have agreed that we would talk about associate membership of ECHA and a few other agencies. What is significant in the political declaration is that the issue is open to discussion, but obviously that gives you no idea how it will conclude. The loss of databases is the default position at the end. If there is no transition, it is the default position at the end of March next year; if there is a transition, it is the default position at the end of the transition. The hope would be that an agreement could be negotiated. The political declaration certainly leaves that open.

Q6 Chair: That is the same position they have adopted for aviation and transport. It is the hope and optimism strategy.

Elizabeth Shepherd: Yes, it is an agreement to agree, but it is encouraging that it is specifically in there that there could be discussion of the sorts of issues that we have talked about, around associate membership.

Q7 Chair: You have mentioned the transition period. Do you see our participation in REACH carrying on seamlessly during the transition period or do you see any bumps in the road?

Dr Warhurst: My understanding is that everything continues as it is now, except that the UK will be excluded from many processes. We do not know how many. My understanding is that there is supposed to be guidance that goes from the Commission to the EU's agencies, but the expectation is that there will be quite a lot of processes that the UK has to be removed from, because the essential test is whether it is of benefit to the EU 27 for the UK to be there. We can assume the UK will have access to all the databases, though, because that is the only way the UK can continue to implement and enforce REACH, but it will probably lose access to quite a lot of processes. Undoubtedly, it is not going to have a vote and it has already been decided that it cannot lead assessments of chemicals, but there is an uncertainty as to exactly what the access is going to be at this point.

Elizabeth Shepherd: A key word in article 128(5) of the draft withdrawal agreement is "exceptionally". Only in exceptional circumstances will the UK be invited to participate in committee meetings and group meetings. It is a very limited basis for participation during the transition period, which is concerning. It is certainly more limited than, for example, applies to Norway now.

Q8 Chair: You are saying that, after March, we will have less participation than Norway does.

Elizabeth Shepherd: Yes, absolutely, because Norway, for example, continues to be an evaluating competent authority for the purposes of



REACH when it is evaluating substances, which is a fundamental part of REACH. Norway seems to be part of the Sevilla process for determining BAT—best available technique—conclusions or BREFs. It has the ability to attend meetings and raise agenda items, but there is no suggestion based on the draft withdrawal agreement that the UK would have that opportunity.

Q9 **Chair:** What are the implications of that for UK business, for your clients?

Elizabeth Shepherd: My clients are very concerned that the UK will be behind the curve. They will not have advance notice of the issues going forward. The UK regulator, HSE, is no longer involved in the evaluation of substances. HSE has, to date, played a very active part in evaluating chemicals. In fact, the chemicals that were assigned to HSE for the 2018-19 period have been moved away from the UK already to other evaluating authorities. Businesses are concerned that they will lose the insight that participation gave them and the opportunity to influence the shape of regulation.

Q10 **Nigel Haigh:** A consequence of this is that REACH will be weaker because it will lose UK input. What concerns me is the global issue. Chemicals are manufactured throughout the world. Wherever they are manufactured, they end up in the furthest corners of the world. We all know that whales and polar bears have PCBs in them. Chemicals, therefore, have to be regulated across the globe in all countries. Although there are a number of international agreements on chemicals, REACH is the trendsetter. It is the benchmark that other countries use when developing their chemicals policies and chemicals legislation. With Britain leaving the EU, whether or not it is part of REACH, REACH will be weaker; ECHA will be weaker; it will have less expertise. If Britain is completely outside the single market, the single market will drop from over 500 million people to 450 million people. It will have less clout in the world and therefore chemicals protection worldwide will diminish. On the whole, the debate in Britain has been what effect Brexit will have on British industry and environmental protection in the UK. I am asking you to think also that it will have an effect globally, adversely.

Chair: That is very helpful.

Q11 **Mr Goodwill:** There is a bit of déjà vu for me, because I was on the European Parliament ENVI Committee when the REACH regulations were being considered. I remember long arguments about retesting the back catalogue, animal testing and de minimis levels. It is interesting to come back. The House of Lords Energy and Environment Sub-Committee has suggested that the Government lack a credible action plan for no deal. We have already mentioned some of the no-deal scenarios. What are the main challenges of no deal and what still needs to be addressed? If there is a cliff edge, do we have any parachutes?

Elizabeth Shepherd: Should I start from the legal perspective with the sort of issues I see clients raising? The priority to mention is the no-deal Brexit paper on chemicals regulation or REACH. The Government have



set out—I think it is from August—steps that UK businesses can take to make sure they maintain UK market access and EEA market access. For the UK, there is the grandfathering. There are transition periods for submitting full data packages, which we can talk about separately. For maintaining EEA access, they are giving the option of transferring REACH registrations from the UK to an EEA company, but businesses are finding that this is not as straightforward as it would at first appear.

First, thinking of the grandfathering in the UK, the paper says that existing UK REACH registrations would be grandfathered into a new UK REACH. The key word there is “existing”: existing when? There is a lot of detail missing here. Is it “existing” at the moment we leave the EU, or will there be a transition period, say, a month or six weeks before? The irony is that, if you transfer your REACH registrations to, say, an affiliate in the EU 27 before we leave, you may lose your existing UK REACH registration, which means you have nothing to grandfather at the time of exit.

Businesses are asking me, “What shall I do? How can I plan for this? I do not know what to do. I have to choose between UK market access and EEA market access”. These are the businesses that are planning. Some still are not, because they are not sure what to do. I would also make the point that businesses are saying to me, “It is not that straightforward just to transfer REACH registrations, because we have to have an affiliate in the EU, or create an affiliate”. Then REACH compliance is not the only consideration. Tax, customs, logistics and a whole range of business-related issues determine where they would move their REACH registrations to, to keep EEA market access. There are a number of challenges there. There is also the data-access point. Businesses are coming to me very concerned.

Q12 Mr Goodwill: Could there be tax problems if they establish in another EU country, which says, “Look, this chemical is registered here; therefore you should be paying your tax in this country”?

Elizabeth Shepherd: Yes, that will effectively be the situation. They have to decide whether they want to be subject to tax in the Netherlands, Germany, France or wherever. The problem is that, unless companies organise themselves before Brexit to take the steps that the Government are suggesting they should in the no-deal situation, there could be a problem with market access. There is also a problem with EEA market access for a company based in the UK with UK REACH registrations that does not have an affiliate in the EEA. They have nobody to transfer it to, assuming they can do the legal entity change, to comply with the rules of REACH. If they do not have anyone to transfer the registration to, that is a problem because their customer in the EEA becomes subject to regulation under EU REACH. It needs a registration but it cannot register until it is the importer; in other words, when we have left the EU. It cannot be preparing for it now. There could be a market freeze on products going from the UK to EEA due to Brexit, if all the ducks are not



in a row in terms of REACH compliance in the UK and the EEA. There are significant gaps in the Government's thinking in preparing for that.

- Q13 **Mr Goodwill:** It sounds like companies are unclear on what they need to do but, even if they were clear, would 16 weeks be a reasonable timeframe in which to do it?

Elizabeth Shepherd: It is a challenge. There are concerns as to what the Government's enforcement policy is going to be, even in the UK, if they have not done what they are supposed to do. Chances are there will be some gaps in all this. What is the compliance approach going to be? Would there be enforcement in the UK? Would there be enforcement in the EU if somebody does not have REACH registration in the right place? Overall, the technical notice on REACH is quite high level and broad brush, but now is the time to focus on the detail, come forward and say to businesses, "Yes, these are the situations that are challenging. Let us focus on these and provide some answers".

- Q14 **Mr Goodwill:** What about the other way round, where a chemical is produced in the European Union, registered with REACH, but is then exported to the UK for maybe a mission-critical application in a particular factory or plant? Is that going to be affected?

Elizabeth Shepherd: The Government notice covers that, in the sense that it says a UK company in that situation that has previously relied on an EU registration does not need to immediately worry about the situation. It has 180 days in which to notify HSE and give HSE some basic details about the chemicals. Then there will be a period, as yet unknown, to make a full registration in the UK, with all the issues around data access that that entails. We can possibly come on to those. In principle, that scenario is covered, to take the pressure off UK business.

- Q15 **Mr Goodwill:** It is less of a problem for EU businesses exporting here than British businesses exporting to Europe in the event of a cliff-edge, no-deal Brexit.

Elizabeth Shepherd: Correct, yes.

Dr Warhurst: The reasoning behind that is that the EU 27 are working hard to avoid disruption in the EU 27. In those processes, they do not consider the UK to be an issue because the UK is leaving, so everything on the EU side is designed to make life easy for the EU. The UK to some extent has then to pick up the pieces on its side. We have some big concerns about what they are doing in the no-deal preparations because of this process where the law is transferred, so REACH is transferred into the UK, but it will remove large parts of REACH when it comes to stakeholder involvement. The chemical agency as it stands has committees made up of member state experts but also stakeholders from industry, environment, health and unions. The UK proposes to delete all that as not functional in the UK system, and everything just heads into a chemical agency that is somewhat like HSE. There are decisions made by committees of people with stakeholder engagement in the chemical



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agency, which will apparently just be made by a civil servant. For example, where a chemical is designated as being of very high concern, it is done by committees and votes in ECHA. That just transfers into this chemical agency with no clear stakeholder engagement. We are very concerned about that narrowing down and, indeed, that ECHA itself has a lot of environment and public health expertise while, if it is mainly HSE, HSE does not have environment or public health expertise.

Q16 Mr Goodwill: Yes, I think that was the point you made last time you appeared before this Committee. Has anything changed? Presumably they would need expertise in public health, in quite complex environmental issues, endocrine disruptors and all those other issues. Has anything changed at the HSE?

Dr Warhurst: No, not that we are aware of. We are more worried now that we know more about the no-deal plans. The line is always that, in the no-deal process, we copy across the EU law and adapt things that do not work, so everything is going to be the same. Crucially, they are deleting all those stakeholder processes. They are just claiming they would not work, which is clearly not true. You could do them. You could involve devolved Administrations in the agency here. That could be a solution to some of the devolution issues. The other key thing is that the UK body will make its own decisions with its staff, and there is no obligation for those decisions to be the same as the EU ones so, as soon as we leave in that no-deal situation or at the end of a transition without a deal, the UK will take different decisions from the EU.

Q17 Mr Goodwill: Are you saying the transitional period is absolutely vital to ensure an orderly progression from where we are now to where we are going to be when we have finally left fully?

Dr Warhurst: We need the transition, definitely, because a no-deal option is not good for protecting the environment or health. If no trade deal is agreed during the transition, at the end of the transition you are in the same place; you just have a few more years of, to an extent, uncertainty. Obviously, in the withdrawal agreement we have the backstop. The backstop for Great Britain is the customs union. It is very clear that under that situation, because there is not an alignment on the regulatory side, England, Wales and Scotland would not be in REACH if it was just into that customs backstop. We would leave REACH at the end of the transition as we went into that backstop, whereas Northern Ireland would be in REACH. It is completely unclear what sort of representation in the processes Northern Ireland would have, but the Northern Ireland backstop lists REACH in the list of legislation that must continue to be applied in Northern Ireland.

Q18 Mr Goodwill: What advice would you give to Members of Parliament as they cast their votes next Tuesday, in terms of the continued health and prosperity of the UK chemicals industry?



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Dr Warhurst: I would say no deal is a very bad idea. That is the main thing.

Q19 **Mr Goodwill:** Do you have anything to add to that, other than nodding?

Elizabeth Shepherd: I would agree. You asked whether it is more of a problem for UK companies exporting to the EEA. There is a concern there, in the sense that exporting from the UK to an EEA customer that might end up with a REACH registration itself is a bad situation. The customer, say, in France or Germany might have to do its own REACH registration, which will take time and add cost. The concern I am hearing from UK businesses is this: "What is to stop my customers going elsewhere? They do not need to get their product from the UK. They might want to but the increased cost will make the UK less competitive".

Q20 **Mr Goodwill:** Particularly if they are not an end user and they are selling on again, I presume.

Elizabeth Shepherd: Yes, absolutely. There are some concerns there. Continuity of market access with minimum disruption is vital for the chemicals sector.

Nigel Haigh: Can I talk about British legislation and agencies dealing with chemicals? Chemicals policy in Britain began with the Control of Pollution Act 1974 and the Health and Safety at Work etc. Act 1974. There has effectively been no British chemicals legislation since, and there is no British chemicals agency; we have not needed one, because it has all been done by the EU. We are now in the position where we might be leaving the EU—I hope we will not, but it is possible that we will—and we have to create something entirely new. I get the sense, and I have not studied it as closely as Michael and Elizabeth, that the Government are doing a patchcock job to get us over the edge, to have something going.

If you stood back rationally and said, "Let us look at this new subject and develop proper British legislation with a proper agency", you would not put it all in the Health and Safety Executive. They are experts in health and safety at work. They do not know about public health. They do not know about the environment. They get advice from the Environment Agency. The HSE and the Environment Agency have jointly been the competent authority for dealing with EU legislation. Outside the EU, Britain needs a modern chemicals law and a modern chemicals agency. It could look to Sweden, Denmark or the Netherlands, all of which have a chemicals law. We do not have a chemicals Act. This is something for the Government and Parliament in the longer term. I put that down on the table so that we do not just think about what we are going to do in the next few months.

Q21 **Kerry McCarthy:** Can I ask about regulatory divergence and what the impact would be on companies importing and exporting into the EU if the UK decides to take a slightly different path in what it regulates? For



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example, if the EU changes the treatment of particular substances or issues new authorisations after we are out of REACH, environmental organisations have concerns that the UK would go down a different path. Do you have concerns along those lines?

Nigel Haigh: It is going to be a muddle, is it not, if we diverge? There are two possibilities. We are committed to non-regression so that whatever has been agreed at EU level, at the point that we finally sever from the EU, we will have to abide by.

Q22 **Kerry McCarthy:** That applies as of what date? In terms of future changes, non-regression would not apply, would it?

Nigel Haigh: Elizabeth will correct me, but I think we have to accept everything that is agreed by the EU during the transition period, so the date comes at the end of the transition period. At that point, we can decide to follow all EU legislation, so there is full alignment. That makes trade easier. It does not make it easy but it makes it easier. If there is divergence, British companies will have to abide by EU legislation for anything they export to the EU, but we could manufacture and use inside the UK substances that are banned in the EU. You will find that environmentalists will raise their voice about that.

Dr Warhurst: To continue on this, the key thing with REACH and with chemicals laws is that they are very dynamic. If you have a non-regression where you are not supposed to go backwards, the point with REACH is that it is constantly going forwards, so you get more safety data on a chemical or you conclude that one is like another one and restrict it. Non-regression is very weak on REACH because we do not know all the chemical problems. There are also a lot of concerns about how non-regression will be enforced. That is part of the whole enforcement of the withdrawal. In the backstop, there is a non-regression clause. There is something beyond non-regression for industrial emissions, though, something that involves the joint committee. Alignment is something you see—

Q23 **Chair:** Can I interrupt you on that? The backstop is a live issue because we are expecting an environment Bill very soon. In that backstop, there is the ability for members of the public and public authorities to sue the Government. Clearly, in that backstop, the EU thinks that that ability gives the ECJ the right to sue the UK Government if it is in breach, for example, of industrial emissions or chemical regulation in the future. I throw that out as a possible interpretation of the law and defer to people who are lawyers.

Dr Warhurst: To finish the point I was making, the complexity of enforcement is very high but we know from member state comments afterwards, and you can see it in the minute document that was produced at the end of the Council a couple of weeks ago, that there was a lot of push by member states to extend from non-regression to alignment on a lot of issues. There is a big concern that, if the UK is in this customs



union without the ability to do tariffs, if the UK is not aligning, it will undercut production costs within that market. If the UK manages to get into REACH in a negotiated agreement or by going a Norway-type route, there will definitely be a requirement for alignment. There are other scenarios with other types of relationships.

But non-regression is going to stay there. The only time you do not get non-regression is with no deal. Then the question is where the alignment goes. The problem is that, while the political statements have always been essentially trying to imply that nothing changes after exit day because we have copied everything over from the EU, we have already heard comments from people, for example, from the HSE, saying, "We might introduce a new impact assessment stage in classifying chemicals". We know the UK loves impact assessments, except for Brexit, obviously. Our worry is that, where decisions are being made on a scientific basis at EU level, we will suddenly say, "That would cost quite a lot of money, so we are not going to do it". The divergence will happen quite quickly.

Elizabeth Shepherd: The concern for industry is the cost of complying with two sets of regulation if divergence does happen. That is certainly a possibility. Confirming what Michael just said, there are situations in which the UK could choose to go its own same way in terms of, for example, classification and labelling of chemicals. To start with, we will be aligned with the EU, but HSE will be the evaluating authority going forward for all chemicals in the UK. There is a strong possibility of divergence there, with an ongoing impact on our ability to trade and challenges for regulatory alignment generally, not just within the EU but worldwide.

Q24 **Kerry McCarthy:** Are there opportunities? If we do not meet the higher standards, that would restrict entry to some markets, and new products we come up with might even be banned or would not be eligible to be sold within those markets. Not necessarily from your point of view, but from the point of view of companies, would there be British companies that see commercial opportunities in entering markets, operating to different standards and developing chemicals that they can then sell elsewhere in the world and perhaps at a cheaper price? Do you think that is likely to happen?

Elizabeth Shepherd: It is certainly possible that some might see that opportunity, but the price you pay is lowering the standards of environmental protection and safety protection. That is the danger.

Nigel Haigh: I picked up that India has made it clear to the UK that, in a trade deal between India and the UK, it would wish chemicals law restrictions to be weaker than the EU ones. Doubtless, British companies could see an opportunity in selling something to India, which is quite a big and growing market. That could happen. That is making my point that chemicals are a global issue and REACH is the benchmark. We would be undercutting it and India would be suffering.



Dr Warhurst: The US is in a similar position. The US has probably the least developed regulatory system—of a developed country, that is. Yes, there would need to be, and there would be, a lot of public concern over any attempt to do that. Food standards are talked about a lot more than chemical standards, but it is a very similar thing. There is also a big question from the point of view of the UK industry as to how much benefit they would actually gain. It is more likely to be about bringing in cheaper competitors from the US or from India.

Q25 **Kerry McCarthy:** They would gain more than our companies would gain.

Dr Warhurst: Yes, they would gain more than we do. Then, if the EU knows about these things happening, these are more reasons to increase checks at ports, to make sure these lower-quality products are not getting in. As soon as the UK deregulates, there will be both a direct impact from whatever is agreed in any treaty with the EU, and an indirect impact on what the EU might think necessary in terms of checks on borders.

Q26 **Kerry McCarthy:** What about China? You mentioned India. Is there a similar dynamic with China? I do not know if China has a chemicals industry of its own to any reasonable extent. It seems to be involved in most things.

Nigel Haigh: They are building a chemicals law, which actually has a lot of similarities with REACH. This is making my point that REACH is the benchmark that other countries follow. It is perfectly possible that they might be weaker for some chemicals and Britain might be able to sell to China.

Dr Warhurst: China has a very big chemical industry and, in general, there is a lot of chemical industry in Asia. China is copying quite a number of aspects of EU legislation to some level. I also have the impression that some countries are trying more to export their regulatory approach than others. I get less of an impression that China does that versus the US, which is always going round the world with the revised, new-name NAFTA type thing. The trade deal that they renegotiated with Canada and Mexico has chemical elements in it, saying that chemicals must essentially be regulated in the way the US wants them to be regulated. The US is always trying to export its regulatory approach in trade deals. India certainly has commented on that. Potentially, China is less likely to do that. China is more of a regulatory importer than a regulatory exporter.

Nigel Haigh: During the negotiation of REACH, there was an extraordinary campaign organised by the United States during the presidency of the last Bush, not the one who has just died, but his son. They got 12 countries throughout the world to gang up together and say that REACH would be a dreadful thing to happen. The EU paid no attention, went ahead and adopted REACH despite this huge opposition. The Americans organised it. Not many people know about this. It



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occurred to me that, if the EU had not existed, had Britain on its own or Germany on its own tried to adopt a stringent piece of regulation, that bullying by the United States might well have worked. Because the EU has such a big market, it could go ahead and do it. It is a trendsetter. Britain being out of it will weaken it in that role.

Dr Warhurst: To follow up on that, what is interesting about that is that the US is obviously a big powerful, global economy, and it got a whole load of other global economies, but because it does not have a vote in the EU it was not able to stop it. There were all sorts of things going on in the EU, and all sorts of debates on the detail of REACH, but it went through. I went to the US a few times and the Americans were very shocked when REACH went through, because they had assumed that, for them, it was so obviously stupid that it would never happen. Then suddenly it got through the last stages and they had to admit it was going to happen. Even the US, which will do lots of lobbying, gather companies together at its embassies in Europe and work out which country each company goes for, did not manage to do it. It shows the power of having a vote in the EU. Any form of Brexit will mean that the UK will not have that vote. The UK may wish to lobby the EU. It might even be sitting around the table, if it is a Norway/associate member, but it will not have a vote.

Chair: Our predecessor Committee visited Washington to look at TSCA, the chemical regulations Act, and we came away thinking that any country that did not ban asbestos was probably not a model for UK regulation.

Q27 **Mr Dunne:** You touched on the status of the database. I would like to press you a little more on that. Can you indicate how well prepared the Government are, compared with when we last discussed this, in setting up an alternative UK database to REACH?

Elizabeth Shepherd: There have been some fairly confident statements about setting up a database and getting the IT in place, but I do not know where it is up to in practice. The Government have recently appreciated the scale of the challenge. There was a perception at one point that the UK could just take the data from the ECHA database and replicate it in the UK. That absolutely cannot happen. As you will know, it is very likely that ECHA has copyright in the actual database, in the portal, in the software. There is actually a legal notice on the ECHA website that says the prior written consent of ECHA is required for any copying or commercial use of the database. How the UK Government are responding to this, dealing with it, what is in their mind when they say companies should submit a full data package within two years if they have existing REACH registrations in the EU that are grandfathered, how they are going to do that, and whether the IT will be there, I do not know.

There are two issues. There is the database and there is the IT around it, the software in the EU that is used for REACH regulations and the



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registrations. The EU is on version 6 of IUCLID. There is also the separate IT portal for biocidal products, called R4BP 3, which is in its third iteration. Prior informed consents have an ePIC portal on the EU website. All that will have to be replicated in the UK. There are no up-to-date indications as to where that is up to.

Q28 Mr Dunne: You have had no confirmation from the Government that the intention to copy and paste is forming part of the negotiations.

Elizabeth Shepherd: It has been mentioned in committee meetings, but copying and pasting it is out of the question. Having access to it under licence is a completely different matter. I hope that would be a fundamental part of any negotiation around associate membership. There are two issues, really. We cannot just copy and paste. Also, UK companies may not have all the access they need to populate the UK database, even if they want to, because of the complex data access rights around ownership of individual data, rights to refer and so on.

Q29 Mr Dunne: Might this work two ways? I hear what you say about the overarching concern. In relation to the copyright of individual bits of data, you are saying there is a level of copyright that ECHA has by virtue of material being on its database, but the underlying companies will also have copyright of their own data, which they are populating on that database, some of which will be UK copyright presumably. That is currently available to ECHA. Companies may want to continue to maintain that. Will they be able to retrieve information that they may think they have copyright for, but they have chosen to register through one of their EU subsidiaries and may no longer have copyright?

Elizabeth Shepherd: There are multiple issues here. There is the ECHA copyright for the database, and then there are the rights to individual studies, test data and so on. I have talked about the ECHA copyright. In terms of copyright of studies, who actually owns it would need to be looked at. It could be owned by the UK company. It could be owned by somebody else. It could even be owned by the testing house that prepared the study. That is a level of copyright that would need to be analysed.

Also, there are private rights around data, because fundamental to REACH is the fact that you have to be able to demonstrate you have rights to the data that you are using for registration purposes. That has been happening through what are called SIEFs, the substance information exchange forums, and through private arrangements. Companies are having to look at what rights they have to the original data package they supplied to ECHA. That is challenging. Not all companies can find the paperwork they originally used. There might have been reorganisations, restructuring, people who have left, and they cannot find it. When they do find it, they may find the rights are limited. For example, it might be limited to use for REACH, so they could not use it for K-REACH. Equally, they could not use it for UK REACH. They have to look at that.



The other issue is that, when companies buy access, they sometimes limit it to the particular company that is doing the registration. If a company in France, a French subsidiary of a group—and I have a number of clients in this situation—bought the data in its own name, maybe years ago, an affiliate in the UK might not have the right to buy it, to use it, to refer to it. That UK company is having to negotiate new rights.

The other problem is that, once we leave the EU, we will not be bound by the data-sharing rules of ECHA, which require data-sharing costs to be fair, transparent and non-discriminatory, with rights of referral to ECHA if there is a problem; it will be a matter of private contract, buying those rights again, potentially. Organised companies are doing that detailed analysis now to see what they have, what they will need and how they are going to plug the gap, but it is not straightforward.

Q30 **Mr Dunne:** How well prepared do you think those companies are?

Elizabeth Shepherd: There is a long way to go, I am afraid. I have been asked whether two years is long enough for companies that will have to submit a full data package, and it may not be. Evaluation under REACH is a big issue at present and some companies are having to share the cost of extra testing, for example. Unravelling data-sharing arrangements is a challenge now, even while we are still part of the EU. I cannot imagine what it is going to be like after we leave. Many companies will not be sufficiently prepared.

Dr Warhurst: One interesting parallel is in Turkey. Turkey has a customs union with the EU, and one of the things it has to do as part of that is to bring a range of laws into alignment with the EU. They have their REACH system and they are currently working on data population, but the problem is that they have no access to the REACH database as it stands. They have the problem that they are asking companies to register data, and this is causing all sorts of issues where you have this data ownership. It is also worth saying that there was a lot of expectation, particularly from the US side but also beyond that, that the EU would never be able to deliver this REACH structure, it was going to be too difficult, the database would not work and things like this. There was a huge amount of work done. REACH implementation plans were put together. The database has actually worked remarkably well for a large public IT project.

The UK is saying, “We are going to be able to copy, somehow, this database. We are going to start with a database with no data”, and then they have various schemes for how they are going to get data into it. Our biggest worry is that, almost as part of no-deal planning, they want to be able to say, “We have copied your REACH. You do not need to do all these extra checks on our stuff as it is going”, but it is going to be like a pretend REACH structure. You have copied it across and you have a few officials in the HSE who are supposed to be doing this, but how much are they really going to do over the years that follow, other than just the



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basics to make a system operational? They are not going to be fishing in there, saying, “We think this chemical may need to be restricted”.

You will end up with something that is pretending to be like REACH, but really is just a minimalistic machine that tries to do enough to keep the EU happy, or indeed the WTO happy, if we try to go to the WTO saying that the EU should not block this because we are doing much the same thing. There is a big worry about what they can do and then what is really being tried. The public sector will be under so much pressure if you have a no-deal situation. The resources that go there are going to be limited.

Q31 **Mr Dunne:** In the event of no deal, what would that do to UK companies if they no longer had access to the REACH database? In the immediate term, what would happen to them? What could they do with their product?

Elizabeth Shepherd: They have time, under the grandfathering and other arrangements in a no-deal scenario, to prepare. They have a period of time, two years in the case of the grandfathered registrations, and during that period there can be market continuity.

Dr Warhurst: That is within the UK market. The EU market is separate.

Q32 **Mr Dunne:** That is for selling product in the UK.

Elizabeth Shepherd: Yes.

Q33 **Mr Dunne:** Can UK manufacturers seeking to sell product into the EU on day 1 after a no deal do so?

Elizabeth Shepherd: Yes, they can. UK manufacturers can appoint an only representative in the EU. That can work. That is contemplated in the ECHA questions and answers. They have been thinking about that for some time—fine. Importers into the UK are going to be okay. There could be a problem the other way. As I mentioned, if a company does not have an affiliate it can transfer registration to, that is where the issue lies.

In terms of data access, there is not going to be a data access problem in the UK to start with, but it is over time that is the problem. What is going to happen? How are we going to get the data? Will it mean companies having to buy new tests? If they cannot buy the access, will they have to have new tests carried out themselves, which they have already had carried out for the purposes of EU REACH? That is a worry. What about animal testing, which is a big concern? One of the objectives of REACH is to have animal testing as a last resort. If you cannot access those studies because they are lodged in the ECHA database and are not accessible to UK companies, does that mean more animal testing? There are a number of issues that need to be ironed out, but on day one is there an issue with the database? No, but it will become apparent quite quickly.



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Dr Warhurst: On day one, there will be an issue for any company that is trying to send stuff to the EU and has not done what is described in the ECHA questionnaires about moving registration to other entities in Europe. Any companies thinking, "Whatever, I will just wait; it is all going to be fine" are in trouble. There is a mechanism for companies to use but they have to use it; otherwise you could have things on day one after 30 March. It depends how they want to enforce.

Elizabeth Shepherd: If you have not done it before 29 March, there could be problems.

- Q34 **Mr Goodwill:** We are talking about sending pallets of chemicals or tanker-loads of chemicals. What if I am selling, say, a machine tool that has lubricating oil in it, has been painted with a particular paint and may have other chemicals in it? Would that not be affected because it is a finished product, or would the chemicals in it still need to go through the same process?

Dr Warhurst: It is a complex one, to do with deliberate release.

Chair: We will save that one for the industry representatives, who may have a more granular approach, unless anyone has a very quick sentence.

Elizabeth Shepherd: It is slightly different for articles.

Nigel Haigh: Article 7 of REACH deals with articles, and it is very restricted. Motor cars with screen-wash in them are covered by this provision. You can drain the screen-wash and then fill it when you are on the other side. I tried to get my mind round it and failed, so I cannot really help this Committee, other than to say there is a provision for articles. The people who know most are the Society of Motor Manufacturers and Traders, because they use 13,000 chemicals that are registered, they say, many of which are incorporated in the finished product.

Dr Warhurst: It is worth saying that there are two different things here. We have the discussion of REACH registration, and then there are other REACH provisions. REACH does have restrictions in it. It could say articles are not allowed to have more than this percentage of a chemical. A REACH restriction would apply to your product going into Europe. If the EU was not confident that that restriction was being met, it might wish to inspect it. That is on the restriction side. On the registration and to what extent bringing a substance into Europe within an article has to be registered, that is when we are dealing with this quite narrow group where you have an intentional release of that substance. It has been established that, for example, where a car tyre loses bits of rubber, that is not viewed as an intentional release, whereas a screen-wash is.

- Q35 **Chair:** Ms Shepherd, how many of your clients, percentage-wise, have done the only representative route—all of them, half of them?



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Elizabeth Shepherd: It is difficult to be specific in percentages, but a number of them are contemplating it. They do not need to do it just yet, because they can enter into a contract that has a suspensive conditional term in it, so they can appoint an OR but it will not become effective until Brexit. You cannot appoint an OR from the UK until Brexit because we will not be a third country until then.

Q36 **Chair:** It is that legal conundrum you described at the beginning. They have to take steps but they cannot take steps until Brexit has happened.

Elizabeth Shepherd: Yes, in those circumstances. They can transfer their registrations to an EU 27 country, if they want, if they have a family group across the EU. Subject to reconciling tax, data access and all the rest of it, they could transfer it to a company in France, the Netherlands or whatever. But, once they have transferred them, are the UK Government going to say, "You do not have an existing registration, so you cannot grandfather. Choose between one market and another"? That is the conundrum. I am not aware of companies that have put in practice the planning yet, but they are looking very carefully at their options and have different contingencies in place, including possibly having a branch office in the EU, if the worst comes to the worst. That is another option to explore, as opposed to transferring the registrations.

Chair: That is very helpful.

Q37 **Dr Offord:** Back in October, I asked the Minister a question about REACH, and in response she said the Government have "taken appropriate steps to ensure that a regulatory scheme for chemicals will be ready before the UK leaves the EU in 2019". I wanted to get your perspective on that. I can see Dr Warhurst looking away. How effective has the Government guidance been for the different operations of chemical regulations?

Elizabeth Shepherd: It has been very encouraging. It was encouraging in August/September, but it is troubling now that we are so close, given what businesses are facing in practice. We have not talked about the shipment of waste from the chemicals sector, for example. That is causing some worries, because there is supposed to be a procedure for re-approval if you have waste leaving the UK, going to, say, France. Where that goes beyond Brexit, what happens? They will have to have that re-approved. Businesses are coming to me and asking, "What is the process for this? I have not been told. What should I do?"

Q38 **Chair:** Is that chemical waste or waste as in garbage?

Elizabeth Shepherd: It is waste from the chemicals sector, which could be going to another country in the EU for recycling and probably coming back. These are long-term arrangements and approvals take some time. They cannot wait until too close to the deadline; otherwise there is a problem. Their permits only allow them to store so much of this on site in the UK, so they are worried about non-compliance in the UK.



Q39 **Chair:** It is the Environment Agency regulating that.

Elizabeth Shepherd: Yes, it is the Environment Agency or Natural Resources Wales. Yes, there are issues there. There is a lot of detail missing. Companies are coming to me and asking, "From a legal perspective, what do you think?" We do not have all the answers yet.

Q40 **Dr Offord:** We will delve a little further. I think our report was published in April so the Government were aware, and I certainly was aware, that chemical regulation was a problem in leaving the European Union but, Ms Shepherd, you spoke about time. We have 115 days to go yet, so the Government have plenty of time to resolve this issue. In those 115 days, what would you like to see? You say you would like to see some specific details. What would they be?

Elizabeth Shepherd: I would like to see some more details about transfers of registrations and what exactly the situation is going to be. That, to me, is really important. The overarching framework, which was issued in August, could be reissued, to give reassurance to business that what it said then is actually coming to fulfilment. I have not seen any sign of that being refreshed. I know these technical notices were updated. I know we had one on classification and labelling that was updated last week. Clearly there is an ongoing process, but we are so close now, as you have identified, that some of the practicalities that business is raising should be addressed.

Dr Warhurst: We have what we have been told about the no-deal plans. It took a long time for that to emerge. None of our concerns have been answered, really: the stakeholder representation, the commitment to following what the EU does on chemicals and the issues around the database. We are generally concerned. We have the advantage that we are not industry. We do not have to move registrations about, but it is a slightly extraordinary situation that it really is not very long away at all and we still have a huge lack of information. We have met people in Defra and expressed our concerns. When a decision was going to be made in the agency in Helsinki, I pointed out that it would be made in the agency. A lot of REACH decisions are made in the agency. Some of them go up to the European Commission. The model in the UK is supposedly that things are done in this chemical agency HSE type thing, and then some decisions, the Commission ones, go up to the Secretary of State. You have this split.

I started to describe the sort of decisions that were made in the agency. Would that be one civil servant? Would the civil servant talk to their manager before designating a chemical that is of very high concern? It just did not seem to have been thought about fully. When we raised the issue about stakeholder involvement, they said, "There is an input procedure on statutory instruments". You cannot go in there and say, "You have missed this scientific study. Why do you not have that in there?" There is an unwillingness. Essentially, Defra is finding this so complicated anyway that it does not particularly want to address other issues like public



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representation, which has interesting issues given that the UK is signed up to the Aarhus convention.

Elizabeth Shepherd: There is so much for the HSE to do. So much responsibility for so many aspects of chemical regulation is being placed on its shoulders. As Michael mentioned, there is ECHA and there are many committees that contribute to the opinions of ECHA. It is hugely challenging.

Nigel Haigh: Can I reiterate that this makes the point I was making earlier? In my view, what is being done by the Government now is a desperate attempt to have in place something that looks as if it is real, in order to get us over the edge. But, in the long run, that will not hold. Britain will need a new system that deals with things like stakeholder involvement, which there clearly is not in the present system. This is something for the future and obviously Parliament will have a role in that.

Q41 **Dr Offord:** A figure that I have been supplied with says that 20% of chemical businesses are not aware of the impact Brexit will have on their organisations. I do not know how correct that is. I would have thought it would be a bit more, if I consider some businesses in my constituency. People are literally making a living rather than considering the impacts of things that happen in Brussels. I am also aware Defra has undertaken some training programmes around the country. What more do you believe the industry and Defra need to do to educate people, to let them know what the regulatory impact will be when we leave the European Union either with a deal or without a deal?

Elizabeth Shepherd: There should be active engagement with the trade associations, which we will come on to. CIA and BCF are doing a great job in raising awareness. Hopefully, companies are engaging with them. More could possibly be done now by Government to drive home the steps that need to be taken or the issues that should be considered, because a lot of businesses, particularly smaller businesses, are waiting to see and then allowing themselves very little time. It is easier to do that. They may not have the resource to dedicate to a Brexit plan, and you can understand that. More needs to be done to raise awareness, possibly through refreshing, again, the overarching framing notice on a no-deal Brexit, with specific reference to specific sectors, and then getting that ongoing liaison with the trade associations.

Chair: There is much to be done and a lot of food for thought. Thank you very much indeed.

Examination of Witnesses

Witnesses: Nishma Patel, Peter Newport, Susanne Baker and Ellen Daniels.

Q42 **Chair:** I welcome our witnesses. Can I ask you to introduce yourselves,



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please?

Ellen Daniels: I am Ellen Daniels. I am head of public affairs and policy at the British Coatings Federation. We represent manufacturers of paint, printings and wall coverings.

Susanne Baker: I am Susanne Baker. I head up the environment and compliance programme at techUK. We are the trade association for companies in the digital economy.

Peter Newport: I am Peter Newport, chief executive of the Chemical Business Association, representing chemical distributors, which in this context are importers and exporters. I am also managing director of the Regulatory Facilitation Company subsidiary that deals with REACH compliance services, and I am chairman of the Alliance of Chemical Associations.

Nishma Patel: I am Nishma Patel. I am chemicals policy director at the Chemical Industries Association. We represent the UK chemical manufacturing industry.

Q43 **Chair:** Thank you very much. There are some familiar faces here from a couple of years ago. Thank you all very much indeed. I saw most of you sitting through the first session. I am going to dive in. In the evidence you have given us, we have heard that as many as 55% of chemical industry companies do not have an effective plan for no deal. What would happen if we did leave with no deal?

Nishma Patel: No deal would essentially mean, if I can put it lightly, catastrophic effects on the chemical industry here in the UK. This is not only because, as we talked about in the last session, our supply chains are so interconnected. It does not just affect UK businesses here; it also affects European businesses in terms of REACH regulation. But this is also because the amount of information we have on what we need to do here to comply with UK REACH is very limited. A lot more clarity is needed; a lot more certainty is needed. Even with that, the proposals that have been made by the Government are simply at the moment not achievable by businesses. There are so many gaps in them. We would need more than an hour to talk about all of those in detail.

Q44 **Chair:** Let us talk quickly about this new database. How are your industries connecting in with that new database? It lives in the HSE. Am I right? No, I am wrong. Okay, where does the database live? Who is on it? How is all that going? Have you seen any prototypes?

Nishma Patel: Is this the database holding chemicals information or the IT system? Can I just clarify?

Q45 **Chair:** It is the one in the UK that the Government are setting up and have asked for £6 million to set up.

Nishma Patel: You mean the REACH IT system.



Chair: Yes, in the UK.

Nishma Patel: Yes. We have now seen some prototypes of the IT system. From what we see and what we have heard, it will provide some basic functionalities to deal with the day one issues around regulating and complying with REACH. It may allow us to do what is called the basic notifications, for example. Beyond that, we have not yet seen whether it will at some point, or when it will, bring the full capacity and functionality that the ECHA REACH IT system brings.

Q46 **Chair:** Businesses are reluctant to speak to us. We have had the same problems as we had a year and a half ago. I had one industry representative who told me that Brexit is a business-killing issue for his company. But they are not willing to come and talk to us directly, because they do not want to give their competitors a heads up about the challenges they are facing. What can you tell us as industry representatives?

Susanne Baker: I would only mirror what Nishma said: no deal would be disastrous for our sector. In terms of literal impacts, it will all depend on the detail that we are still awaiting from Government to fill the gaps in the technical notice. There is so much missing at the moment that it is hard to start to quantify what the impact is likely to be and where the risks lie. Until we see more, it is virtually impossible to estimate the kind of impact it is likely to have, particularly on our manufacturing members.

Ellen Daniels: In addition to that, our supply chains are very interconnected with the EU. For example, of my members, 98% will have some form of trade with the EU; 55% of the raw materials that my members use comes from the EU. If you do not have that ease of trade, you are really making the UK look like an unattractive place to manufacture.

Peter Newport: From our perspective, REACH regulation at the EU level comprises thousands of pages of regulation and guidance. Industry has to deal with the detail. What we have at the moment is an 11 or 12-page technical notice. That is not a helicopter view or a satellite view; it is a view from the moon. For industry, we have no clue what we are going to have to comply with at the detail level. You have talked about preparation. The time is critical. Industry has been saying for two years that we want certainty and we want it now. Here we are two years later without certainty, so compliance will be difficult for us. Putting aside the uncertainties of what will come out and whether the UK will ratify the deal, our sector, and collectively all other sectors, are literally praying for a deal of some sort. If we do not get it, the impacts are unconscionable.

Q47 **Chair:** One of those impacts has been reported recently in the papers. It is said that leaving with no deal could start a national crisis as crucial chemicals used in water purification are imported to the UK from Europe. Obviously, they risk getting caught in border chaos if we have no deal. They are volatile chemicals; they need to arrive just in time. What



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happens to our water supplies?

Peter Newport: Our context is not water supply; it is energy supply. Going back to the days when DECC existed, we have been dealing with the resilience of UK energy supplies. There are certain substances that are used in the water systems of power stations to prolong their life. If that substance, which is made in Europe and imported to the UK, is not available, you can halve the operating life of nuclear, coal and gas-fired power stations. That is a critical substance. We have presented this directly to Defra. The company involved went to them with us to present the issue.

Q48 **Chair:** When?

Peter Newport: This was done earlier this year, in late September.

Q49 **Chair:** What was Defra's response?

Peter Newport: They understood the issue and said they would take it into consideration. We have provided other information to Defra about companies that are setting up overseas, because they cannot have their substances lost. It will affect, critically, the fundamental viability of their business so they are creating offices in Dublin, Frankfurt and Holland, and they are transferring business there. As they transfer that business, the feedback they have given to Defra, BEIS and HMRC at meetings is that they have found the tax take on profits in other countries to be somewhat different to the UK and, therefore, there is an attractiveness to transferring that business. There are clearly costs to doing so, but if you transfer the profits as well, and the tax take is taken by, in effect, remaining members of the EU 27, it will mean there will be an impact on the UK Exchequer and what we can fund going forward in terms of Government programmes.

Q50 **Chair:** You do not know about this issue of the water purification chemicals.

Peter Newport: I am aware of the issue, but I have not been involved directly in it.

Nishma Patel: We have had some involvement in it. Talking to the water industry, I know there has been a whole lot of work going on recently around what the critical materials are that the industry needs. Similarly, in the gas industry there are critical materials needed that come from the EU 27, including the odour to the gas that we use at home. Again, there are big supply chain issues if we end up in a no-deal scenario.

Q51 **Chair:** The smell that alerts you to the fact you have left your gas tap on is an imported chemical that we may not be able to import?

Nishma Patel: Yes.

Chair: Is that a just-in-time chemical as well?

Nishma Patel: I would have to confirm that.



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Chair: Could you have a look at that and write to us with a follow-up?

Nishma Patel: Yes.

Q52 **Chair:** What is the chemical in the water? Do we know its name?

Nishma Patel: There are a number of chemicals they have identified, but the water industry would probably have the information around what those are and which ones are critical for the UK.

Q53 **Chair:** Where does this chemical come in? Does it come in through several port points or one? How is it distributed in the UK?

Nishma Patel: That is not information we have at the moment.

Peter Newport: In terms of the substance in the energy sector, it is hydrazine.

Chair: Okay, we are going well beyond A-level chemistry now.

Peter Newport: Luckily, I am not a chemist so I can duck that. It is imported by a distributor into the UK and supplied to the power stations, among other clients for the substance. Its stock is now held in two locations in the UK.

Chair: It is one distributor.

Peter Newport: One distributor is providing the majority of the market.

Q54 **Chair:** Would it be fair to say that that is replicated across lots of different industries where there are critical chemicals and maybe one or two suppliers?

Peter Newport: It depends on your definition of "critical". We are talking here about the resilience of UK plc in terms of energy supply. But, even if you are a small manufacturer of a widget, it may be critical for you. I do not think we can dismiss the smaller uses, because when you multiply them all, it has an impact on the economy.

Q55 **Chair:** They cannot afford perhaps the legal advice and industry membership fees that you charge. Susanne, what do small electronics firms say?

Susanne Baker: The concern is really around products or substances that allow or support manufacturing, and substances that allow for the repair of existing products. That is the main focus within techUK. We are less concerned with day one of Brexit. What we have seen so far gives us some confidence that supply chains can continue under the arrangements the UK Government have set out in the technical notice.

More concerning for us are the costs and regulatory burden in the longer term. What data is required to be submitted as part of this notification process? How long do new registrants have before they need to supply a full registration dossier? Will companies that have simply a letter of



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access to data be required to submit a full registration dossier in the same amount of time as a lead registrant under REACH that is based in the UK? What happens for substances that are approaching bans immediately after Brexit? What is the process for applying for authorisation? What happens to companies covered by upstream authorisations held by companies in Europe? The list goes on. We are also worried about the HSE capabilities. Do they have enough staff and expertise? No, they do not.

Q56 **Chair:** Is this where the database is? There were some shaking heads when I said that HSE had the database. Where does it live physically?

Peter Newport: Defra is developing the database.

Q57 **Chair:** It is going to be in the Department.

Susanne Baker: They are developing it.

Peter Newport: We do not know. It is not clear at this stage. Defra is doing the development and testing work, but whether it will sit in Defra or HSE is not clear to me.

Q58 **Chair:** We have civil servants developing a database that will then be used by industry.

Susanne Baker: Yes. There have been testing rounds with companies to test the functionality of the prototype, but the actual tool to submit information into the EU database will be upgraded at the end of the year. We are already going to be diverging on the system, because ECHA is updating its own system while we are developing ours based on the old one. Equally, one of the big concerns we have also heard from members is around SIEFs. Members of the previous panel referred to the substance information exchange forums. These allow companies to form clusters around one substance and adhere to the principle within REACH of one registration per substance. It helps to share the costs associated with a registration dossier, but it also helps to minimise animal testing.

So far, the technical notice is completely silent on SIEFs. It is completely silent on how companies can work together to complete the data required under a UK REACH system. From our point of view, this needs to be built into the functionality of the prototype from day one because you need to start to develop legal agreements between groups of companies looking to submit a registration dossier. Otherwise, you could end up with multiple testing to bridge holes in datasets or people replicating costs because they are all busy requiring letters of access to the same datasets. It is an illogical gap at the moment.

Ellen Daniels: Moreover, under UK REACH, you would have the same tonnage bans as there are within EU REACH. Presumably, you would be registering more volumes in the lower volume bands, because you are simply registering them for the UK market. Most of our members are formulators, so they will be using hundreds of different raw materials.



They will not be REACH registrants, but they will be getting access to the registered materials. Lots of these are high-value, low-volume raw materials, so it might not be economically viable to register it in such a small market, which means that my members will not have access to some of these niche materials, again making the UK look like quite an unattractive place to manufacture paint.

Q59 Chair: You are basically saying that we are going to lose some of our competitive advantage, first because of the taxation points that you were making, Peter, and then because this specialism, this British inventiveness and innovation, with new products and coatings, will be lost because it will not be viable to register them under the new UK programme. Is that correct?

Ellen Daniels: Yes, exactly. In my industry, only half of my members are UK owned. The rest are mostly European and American owned. If you have different sets of regulation in the UK compared to the EU and you are a European-owned company, why would you manufacture something in the UK? If you have different regulations and if you have customs and administrative issues, why would you continue to manufacture in the UK instead of just moving your manufacturing plant to the EU, where you can get products to your customers more quickly and you do not have as many regulatory or administrative burdens.

Q60 Chair: Have you seen examples of that happening in the coatings industry?

Ellen Daniels: We have not had any actual examples of that yet. I know that many of them are looking at, for instance, getting extra warehousing and opening EU subsidiaries and EU legal entities. They are starting to look at those as possibilities.

Chair: It is a long, slow puncture of the chemicals industry.

Ellen Daniels: Yes.

Nishma Patel: I was at one of the Defra workshops that have been held, which have been quite useful in stakeholder engagement. We have had quite a few European companies attend some of the recent ones. At the London one in particular, I remember quite clearly one European company asking, "Why would our UK subsidiary pay again to register a chemical in the UK?" It is based on Ellen's point around market size: we have the EU 27 market versus the UK market. "How can we justify paying that money again for a much smaller market when we could potentially source something within the EU 27 or elsewhere and avoid that cost?"

Q61 Chair: Do you have any idea what the cost of registration would be? Do you have any numbers or are we still on the strategic view from the moon?

Nishma Patel: We have done some analysis around the costs. At the last session, we mentioned that the cost really varies around data, because you cannot put a figure on the cost of data. It will vary based on



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what data you need and so on. The estimate we have come to, based on UK registrations done so far under EU REACH, has been to the tune of £500 million.

Q62 Chair: Yes, because it was £250 million when we did our report, but you have had the new scheme. It is now £500 million.

Nishma Patel: Yes. That took us up to 2018 registrations. It takes all three deadlines into consideration.

Peter Newport: We have done some analysis work based on our own experience within our consultancy subsidiary where we have transparency of costs for registration by tonnage band. Assuming that the almost 21,800 substances that have been registered under EU REACH might also need to be registered for UK REACH—bearing in mind that this is a fraction of the over 100,000 substances on the European EINECS and ELINCS lists—using our average costs, we have come to a range of £500 million to £1.5 billion. As a result, when the ACA, the Alliance of Chemical Associations, wrote to Minister Thérèse Coffey we used the figure of £1 million. But that is based on an assumption that the letter of access costs are replicated. If we get free access to data, that will go and there will only be the registration costs and any consultancy costs.

Q63 Chair: You have some unknown unknowns and some known unknowns.

Peter Newport: If we do not get access to the data—there are commercial reasons why European companies might not wish to share data with the UK manufacturers, because some of their competitors might disappear, and help load their plants—the worst point is that the original estimated cost of REACH in the impact assessment of the EU was €5 billion over the 11-year period. In 2012, ECHA announced that that sum had already been spent. There is no transparency on the total cost of REACH compliance at the EU level. It is not anywhere to be found, because it is held across thousands of companies. Even taking the €5 billion, if, in the worst scenario, we have to replicate all the testing, bearing in mind that it will be at today's costs, not the costs from 2010, 2013 and 2018, the figure could be £6 billion. That is simply unsustainable for UK chemical manufacturing and distribution, as importers. We are talking about the context of the chemical industry, but the chemical industry underpins so many other industries that the impact on UK plc will be catastrophic. Susanne has mentioned some of the impacts for her sector alone.

Q64 Chair: I am just trying to slice and dice it. Is the £6 billion the cost of the UK's data or is that the cost of re-registering in REACH?

Peter Newport: If we have to do all 21,800 substances all over again, including testing, fees payable to the competent authority, in this case UK HSE, which it has been said will be equivalent to the ECHA fees, at the same sort of level but in sterling, plus the consultancy costs and in-house management costs, we could come to £6 billion. I know that is a very large figure. We are trying to avoid that because we think we will end up



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somewhere between that worst-case scenario—it is the absolute worst case—and somewhere different. We just do not know.

Chair: I certainly hope so for the sake of our manufacturing industry.

Q65 **Mr Dunne:** You have covered some of the questions I was going to ask in relation to the challenges we have in regulatory divergence. Can you see any opportunities from regulatory divergence?

Nishma Patel: Earlier this year, we did a bit of a study in some of the big economies around the chemical industry. We looked at Brazil, the US Canada, Japan and one other that I cannot remember at the moment. We looked at the regimes they had. They are all following a REACH-like regime. If we diverge, the opportunities are outweighed by the cost of trying to do something different. Perhaps in the long run we may be able to find a more efficient way to run the REACH regime. I do not know. It could be one possibility. But if globally, as a chemical manufacturing industry, we are all looking to a REACH-like regime, why start again with a new one when we have spent 10 years, a decade's worth of work, investing in one? That money could be spent on doing something more, on improving the environment here in the UK, rather than undoing the system we have already taken part in.

Ellen Daniels: In my industry, it has been seen that proximity matters. For instance, we surveyed our members and asked whether they saw free trade agreements being beneficial, whether that was with Australia or the States, for example. Some 61% said that proximity to market was more important than establishing new free trade deals. Particularly in our case, paint is very heavy to ship. Seven out of the top 10 exporting destinations for my industry are within the EU.

Susanne Baker: From our perspective, members could not come forward with any benefits of leaving REACH or having our own UK REACH system. I have heard some small manufacturing plants suggesting that it might make life a bit easier for them. But, overwhelmingly, the feeling is that access to the European market remains the most important aspect. Alignment, therefore, with EU REACH is highly desirable if it ensures EU market access.

Peter Newport: We are in exactly the same position as colleagues. We surveyed our members, and 60% export to the European Union. The key to accessing the European Union is compliance with European Union regulation. Were we to diverge, the concern is that the EU may not trust the UK and may have to impose controls if we go to a lesser standard in any way, shape or form. If we go to a better standard, hopefully they would accept that and cross-recognise it. But even that is not certain. For us, some form of continued alignment going forward is really essential.

Q66 **Mr Dunne:** You touched on the estimated costs. Are there any other bureaucratic burdens that are not directly related to cost?



Nishma Patel: The timing would be a big issue, not just the time we have between now and March 2019 in terms of a no deal, but the timing proposed under the UK REACH proposal. You have 60 days to honour the grandfathering requirement and provide basic information, but, as manufacturers, a bigger issue is that you have two years to manufacture with a full data package. As you have heard before, it is not just about moving a registration from one system to another; you need to entangle the legal contracts that go with it. You need to renegotiate the access to data. If you do not have it, you need to test, which takes a lot longer than two years to do in itself.

Looking at other systems around the world, Turkey was mentioned earlier today. There is expected to be a much smaller portfolio of substances that need to be registered, and they have much more time. I think they have three years to register. EU REACH itself provided eight years for three tonnage-phased deadlines to register. Two years is extremely ambitious.

Susanne Baker: To repeat what my colleagues have said, the assumption that existing registrants will simply pass us the data is away with the fairies. There are competitive reasons that some companies will not want to share their data. Two years is simply not enough to renegotiate and/or try to access the data and, if that is unsuccessful, to replicate the data to complete a registration dossier. We have some members who we think might be some of these new registrants, simply because they have never had to think about REACH before. They have been moving products from one factory to another. If you have printer cartridges that are sent off for re-manufacturing, they are sent away to the EU. They are sent to Germany or the Czech Republic and brought back in-filled. The mixture inside there will now fall under REACH, with new registration obligations attached to that. We do not know what data is required. We do not have written confirmation in the technical notice of how long those companies have to prepare a registration dossier. We need to know now to allow those conversations with existing registrants to start to happen, because there is simply not enough time to get everything in place otherwise.

Q67 **Mr Dunne:** Are you speaking on the assumption that we have a deal and are in the transition period, or is this under grandfathering rights, which would apply with no deal?

Susanne Baker: Grandfathering rights only apply to those that already hold registrations. I am thinking about companies that have not had any registration obligations before and have simply been moving product across Europe. Because of the new border, those companies will become registrants. That is in a no-deal scenario.

Peter Newport: Through our subsidiary, I have to sign the letter of access agreements on behalf of our global OR clients and third-party representative clients. Every single agreement, without exception, states that access to the data is for European Union REACH in one way, shape



or form of wording. It does not give any access for UK REACH. When you get access, it is an electronic token that tells ECHA that the data that has been lodged by the SIEF, or the lead registrant can be accessed by that company as a joint registrant. The company does not get the data itself. This assumption that the UK will be able to get the data as companies and lodge it within two years is just that: an assumption. It remains to be seen what the view of the owners of the data will be in terms of sharing that data.

If it is not made available and you have to replicate the tests, some of the testing regimes take 12 months. You have to decide commercially that you wish to proceed. You then have to find a test house that has the capacity to do the tests, place the order and wait in the queue. They get the results 12 months later. It can take them three months to prepare a peer-reviewed summary of the testing they have done. It can be anything up to 18 or 19 months just to get the testing done and to get data you can use. Within a further five months it then has to be submitted, alongside other things like chemical safety reports and chemical safety assessments, into the system. That is going to be extremely challenging.

As the Alliance of Chemical Associations, we wrote on 31 October to Minister Coffey pointing out the difficulties. We have received an acknowledgement, which took one line. There was a further line that said she had referred it to her colleagues. We have been talking to her colleagues about these issues since 26 September. They are basically just ignoring the issues that industry has and sailing on. There is a first-pass version of the technical notice. Defra is working on a second version. We have provided some input in the form of tracked changes to the document. There is more red on the page than there is black. But the fundamental issues that we have raised in terms of access to data are not being addressed. The Government's position appears to be that they have decided what is going to happen, and that is that. There are officials in Defra who can understand the points we are making, but they are under direction from on high.

If we carry on in that direction and we end up with a hard Brexit, I fear that we may struggle to get the data available within two years. Then UK industry will be in non-compliance with its own regulation, because the Government did not listen when the regulation was being drafted.

Q68 John Mc Nally: From what we are hearing so far, I have to say I do not envy your position between now and the end of March. Peter, I will address my questions to you principally, about the impact of the uncertainty on UK businesses, which we have been speaking about quite a lot this morning already. In evidence to a previous inquiry, the CBA said that 20% of your members were considering leaving the UK as a result of that uncertainty. Can you tell us where you are at this present moment?

Peter Newport: To set this in context, our membership is broken down into global players that already have an EU presence, pan-European



players that already have an EU presence and then the smaller and micro-sized companies that do not. A number of those companies have already set up offices in other EU 27 member states and they have transferred REACH registrations there to enable their business to continue. They have accepted that this will potentially cause them some problems, under the legal position with registrations at point of exit that was referred to by Eversheds earlier. They just feel that to protect their business in the long-term future they have to take action now. Those companies will still retain a presence in the UK. They will not abandon it, because it is a fundamental home market. But a proportion of that business that was declared for UK profit, and hence tax, will disappear overseas.

Q69 John Mc Nally: Can I get down to practicalities? You touched on this earlier. How prepared are the businesses running the UK's utilities, ports and critical infrastructure at the moment? Somebody in the last session mentioned the ports authorities. I do not know whether you are able to comment on this; I hope you are. I believe that not all ports have gained authorised economic operator accreditation. That accreditation is recognised across all international trade authorities, including the EU. That means it has secure customs controls and traceability, as far as I am aware. Forth Ports is next door to my constituency of Falkirk, which includes Grangemouth. I believe they own Tilbury Docks as well. I believe that these accreditations are still in process for some of these big ports. Some of them have not even applied for accreditation. How is that going to impact on the problem they are going to face in a very practical manner?

There is one last thing I would add to that. If we do not get these accreditations through in time, will that present opportunities or challenges for people who operate out of Northern Ireland? Where does that leave the other devolved nations? That was a lot of questions.

Peter Newport: If I can go back to the fundamentals of the authorised economic operator first, it is a system that is run by Her Majesty's Revenue and Customs in the UK. On the one hand, customs would probably rightly assert that it is a very robust system. From my members' perspective, many of which are very small businesses, it is overly bureaucratic and it is a multi-page nightmare. They simply cannot be bothered to apply, because it is too difficult. It takes too much time. As one of you said earlier, they are too busy trying to earn a living. From our sector, there has been a low level of take-up. Some of the larger companies, particularly the logistics service providers that are global or pan-European, have taken it up and they have AEO status.

I cannot speak for the ports. I know there has been a lot of analysis work done by other trade bodies like the Freight Transport Association in this area. Work has been done to raise awareness of the issues. We hear from various sources apocryphal stories about the M20 becoming a lorry park post a hard Brexit, because there is nowhere else to put the lorries as they prepare to leave the country. There is a similar problem, no doubt,



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in Coquelles and Calais in France, at the entrance to the tunnel on the French side, and for the ferries there. We are seeing very proactive moves by the port of Rotterdam and only yesterday the port of Antwerp. Antwerp is running an event in Birmingham early next year. They want to come and talk to UK industry about the benefits of Antwerp and routing stuff through there. You can see that competing ports on the continent see this as a significant opportunity.

Q70 John Mc Nally: They are not sitting on their hands.

Peter Newport: They are not sitting on their hands.

Nishma Patel: There is also a very practical issue around ports. There is a just-in-time issue, but, by their very nature, there is only a certain timeframe in which chemicals can sit in a lorry in traffic purely due to their properties. They might be in a refrigerator or they might be polarising substances. Beyond that, either they are non-functional or non-viable, or there is an inherent danger to society.

Peter Newport: One of our members is a pan-European transport operator of chemicals in ISO tank containers. There is about 30,000 litres of substance per tank container. They are already looking, and have been for four months now, at renting an ex-Ministry of Defence airfield to store thousands of shipping containers of assorted chemicals. Even if they can do the deal to rent, they then have to get local authority approval because it will become a notified site. They will have to get Health and Safety Executive and the Environment Agency joint COMAH competent authority approval to run that site. That will not be forthcoming in much less than six months, at least.

They are struggling to find a site where they can help customers stockpile chemicals because, as quickly as you may want the flexibility to deal with a potential peak and a hard Brexit, there are chemical regulations that still have to be complied with. The HSE is quite clear: there are no waivers; there are no free passes. Understandably, for safety and environmental reasons, they have to undertake their due diligence, check a site out and make sure it is going to be operated safely. There are legal constraints that prevent the industry from providing some element of flexibility and protection by stockpiling.

There is a lot of discussion about stockpiling going on at the moment in other sectors. There was a report last night on the BBC about frozen food storage. It is at capacity. There is no more available, even if companies wanted it.

Q71 John Mc Nally: On that point, I had an email last week from a big company in my constituency that supplies foods to millions of people. Ice cold storage in Scotland is totally at capacity. The implication for the businesses they supply today is that they cannot do any more. Nothing operates in isolation. That is the picture I am getting.



Ellen Daniels: Much like what Peter said, going back to AEO status, I have spoken to a few of my larger members and they are going through the process of applying for authorised economic operator status. I am not sure whether the smaller ones are. Again, it is quite a timely process. With regard to the ports, in my industry there is a lot of concern about delays at the border. We are a just-in-time industry. I know some members have been looking at rerouting. If they have raw materials coming in at Dover, they are looking at rerouting it through other ports that might not be as busy. On stockpiling, warehousing and extra warehouse space is becoming incredibly expensive, unsurprisingly. Some members are looking at that just in case they have a month where, for example, they are not able to get in the raw materials they need to continue trading and competing with their European competitors.

Q72 **Dr Offord:** As you witnessed the previous panel, you will certainly be aware of the questions I asked about the guidance on the future of REACH. I wanted to gain your perspective on that. Ms Patel, I know your organisation has produced a briefing note. The recent House of Lords inquiry also identified some gaps. It would be useful to hear your perspective on where you feel the Government could be addressing those gaps.

Nishma Patel: Is this in terms of no deal?

Dr Offord: It is both, really.

Nishma Patel: If I take the no-deal scenario and the UK REACH proposal that is in place at the moment, let me pick out the top three gaps. What does “full data package” mean? At the moment, very few companies in the UK have access to a full data package, and therefore we cannot submit that. If we cannot submit it, the UK database that will hold all this information on chemicals will fall flat on its face. We will not be protecting our environment; we will not be looking after society. Clarification on the data package is key.

Secondly, timing within UK REACH needs to be reassessed. The two-year proposal is not achievable. That needs to be reassessed. The third gap that needs to be filled is providing more clarity on what a UK only representative can do. These are companies or entities that represent an importer from the EU or any other part of the world bringing chemicals into the UK. What are their obligations? What can they do? When do they need to register? What information do they need to provide? Can they go through this notification system that UK importers can use? Can an only representative do that? At the moment, that information is missing from the guidance.

Q73 **Dr Offord:** Does anyone else have anything to contribute?

Susanne Baker: From a downstream perspective, for the users of chemicals, we want greater clarity around the process for authorisation. Will we allow continued use in controlled circumstances for substances that have been banned under REACH where there is an economic and



social case for doing so? What is the process for applying for substances that are due to be banned immediately after we leave the EU? The technical notice is completely silent on restrictions. What will happen to those? What is the process we are going to adopt thereafter? Restrictions normally impact on articles and control the use of substances in products on the whole, but they can also impact on how chemicals can be used in a manufacturing process and for other purposes. We would like more clarity around SIEFs. Will they be a feature of UK REACH and what will be the process for companies to identify other companies with a similar interest in the same substance?

Q74 Dr Offord: There is also the issue of Government engagement with the industry. I do not want to pick on Ms Patel again, but you mentioned that you had recently attended an event. How useful has that been? What more do the Government need to do to engage with these issues so that industry is aware of what could happen, particularly in light of no deal?

Nishma Patel: I have been to a few. The good thing about these events is that it is getting out to companies that are perhaps not members of trade associations and have not been so engaged with the process from when it commenced. In that sense, it has been good. They have been providing some good presentations from Defra, HSE and BEIS around what the implications are for the UK industry. The bit that worries me at the moment is that a lot of concerns, some of which have been expressed here, have been raised at these events. The response I see from the Department on the proposals is, "We will take it away and consider it". That is not providing the certainty and clarity that businesses need.

Obviously, we hope we do not end up in a no-deal situation and there is some sort of deal there. It gives us the implementation period that industry needs. But, if we do, we do not have much time. Someone mentioned a hundred and something days. We do not have much time. We need a lot more. It is not just REACH we are looking at. There are a whole host of other regulations. There is VAT, customs and tax. A business needs to deal with all this in one go. That is going to be the biggest issue in terms of no deal. We need more than, "We will go away and consider it".

Peter Newport: BEIS has organised the recent events in Leeds, London and, later this week, in Liverpool. It is interesting that those events were in effect sold out, although they were free, within hours or days. The demand for information is far greater than can be covered at three meetings of around 70 to 80 attendees. The scope of the meetings was fairly wide so you could end up with four department heads from one company, which then meant that other companies were not able to attend. I know BEIS is considering running more of these events in the new year, but there is pressure from industry to find out more direct from the horse's mouth. The various trade bodies are doing a lot to share information with their members, but Nishma is right: lots of companies are not members of trade associations or are not members of trade



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associations that can provide a level of support. It needs to be counterbalanced by input from Government.

But the concern from my side is that we are talking about a satellite view of what might happen. There is no detail. Companies comply, by law, with detail, not overview. We need to move that forward. We are looking again for more certainty about what we are going to be facing. Whether it will be a hard or soft Brexit will be decided hopefully fairly soon. If it is a hard Brexit, there is going to be a massive amount of work for Government to do to take the very high-level preparation work they have done to anything that is like workable. Our ask would be for more realistic timescales for the full dataset provision, because we do not believe that two years is feasible, and nobody is listening to us.

Susanne Baker: I was going to also mention the fact that I have members who tried to apply to attend these events. It all sold out in an hour. They are limited by the space. We wonder whether a meeting of that sort is the right format. Webinars would give more companies access to Government officials, and they are desperate for it. We desperately need the additional guidance that Defra has promised us. We need it as soon as possible. We need to see the detail of the legislation itself, again, as soon as possible.

Q75 **Chair:** Where is this registration going to happen? Is it going to happen in the environment Act? Where have they told you that it is going to be legislated for?

Susanne Baker: I understood it was going to be early next year.

Chair: Will it be in the environment Bill?

Susanne Baker: No, it will be its own—

Peter Newport: There will be a separate statutory instrument for REACH UK.

Q76 **Chair:** It is going to come through as an SI?

Peter Newport: We believe so, yes. On the question of webinars, that proposal was made by the ACA at a meeting with BEIS before the events were finalised, but unfortunately the timescales were such that they wanted to make sure they ran the events and therefore did not have enough time to organise AV broadcasting of webinars for all those events. Whether it will occur next year if they run some more events, I do not know.

Q77 **Chair:** Does the SI have to happen before exit day?

Peter Newport: Yes.

Susanne Baker: Yes.

Q78 **Chair:** Does it worry you when you hear the Secretary of State telling the House of Lords that UK companies can set up only representatives when,



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legally, they cannot?

Peter Newport: Yes. It worries us when various members of the Department say they are not aware of industry's issues, because we have certainly been providing the information to the key staffers within Defra with lead on the portfolio. Our assumption is that they therefore brief the Ministers they report to, who then report through to the Secretary of State, but seemingly not.

Q79 **Chair:** We have the Secretary of State here with us on 18 December, I believe, so we will be pushing some of these issues.

Ellen Daniels: I would just echo what colleagues have said. The stakeholder engagement events have been very helpful. I went to the London one. We had presentations from BEIS and HMRC. It was really quite wide ranging. I know my members who attended found it really useful, but, by far, overwhelmingly, the most interesting presentations were from Defra and HSE on chemical regulations. The amount of engagement from the audience was astronomical, really. It just shows how keen they are to know what is going on, to know how they will need to comply in the event of no deal. It really shows how much they need certainty in this area.

Dr Offord: That answers my last question.

Q80 **Mr Goodwill:** The first point I was going to raise is about the impact of not having access to the REACH database and the potential for re-testing chemicals. There was mention of 21,800 substances, and you talked about a figure of 6 billion—was that pounds or euros? How would that relate to the number of animals that might need to be tested? That was the big issue with REACH. Will we now have to start testing lots of chemicals on lots of animals when they have already been tested before and proven to be non-toxic?

Peter Newport: It really depends on how a hard Brexit pans out and the negotiations by industry with the owners of the data as to whether they can secure copies of the data already used for EU REACH. If they cannot, and they end up having to repeat the testing, yes, there will be potentially significant impacts on animal testing. Again, this is something the ACA covered in its letter to Minister Coffey. We thought the UK was committed to avoiding animal testing. Certainly, EU REACH is. The "one substance, one registration" approach of EU REACH enabled that to a degree. As industry, we do not really want to repeat animal testing. Why would we? It is expensive, if nothing else. It takes a long time. We would prefer to access the data that is already available, but we do not own it. We do not have that access. It has to be negotiated in some way, which may cost money or may not. It may prove impossible. We just do not know.

Susanne Baker: The level of detail around the data that is required under REACH depends on the volume of that substance being placed on the market. That was considered on an EU basis. The higher the volume,



the more the detail that is required in the registration dossier. Equally, if that substance is known to have noxious qualities, as you would expect, a more detailed dataset is required. One of the issues is that we do not know what tonnage band a particular substance might fall into within the UK, because that calculation has never been done before. This goes back to the point about the importance of having SIEFs to understand what sort of tonnages we are talking about across the market. Then we will understand the level of data that is required to submit the legally compliant registration dossier.

Peter Newport: There is high-level data available on the ECHA website, but by country it covers number of substances and number of registrants. It is not broken down into tonnage bands, so there is no real way of extrapolating that to get a feel for what the impacts might be on the UK.

Q81 **Mr Goodwill:** The question I asked in the first session was about chemicals that are part of finished products. We talked about windscreen-washer fluid. Because it could be removed from the car, it would not necessarily be covered. But there are products that contain chemicals. You mentioned printers, which have ink in them already. We have machines that have been painted with the wonderful products of the British Coatings Federation. How will they be affected? Once it is in a finished product, will that not need to be followed up with documentation, particularly if it is going to be exported to the EU?

Susanne Baker: There will be registration obligations for those downstream users where there are substances inside that product that are—someone mentioned this earlier—destined for intentional release. There was lots of debate when REACH first came in around fragrance in scented candles. Would that be captured, or ink in a pen? Companies will have to go back to that guidance and understand for their particular product whether it fits that definition of intention release. If it does, they will have new registration obligations.

Q82 **Mr Goodwill:** If I was producing pens here in the UK, my best option might be to buy some ink from Europe, stick it in the pen and then I have the documentation that fits the European market. Is that an option?

Susanne Baker: Yes, provided that you have access to the data for the registration dossier.

Q83 **Mr Goodwill:** Finally, I know we have heard about the correspondence with Minister Coffey. In the event of no deal, the Government intend that the UK will have a database capable of replicating the ECHA's registration function on day one, but that other less crucial functions will take time to be implemented. What sort of functions could we do without? Which of those less crucial functions could wait a while before they then became needed?

Peter Newport: That decision has already been made for us, in that the database system will record notifications and data. The other functionality is being put back, as that note says, to a later date.



Q84 Mr Goodwill: Is that the grandfathering you were talking about or is that something separate from the grandfathering?

Peter Newport: This is just the system the UK is setting up for £5.8 million, which is being tested, although not yet stress tested. It is just going to record the raw data on the chemical substances and the notifications from the start, and then there is the intention to add more functionality later, but we have no transparency over what the elements of that functionality will be and when they will arrive. If you look at the EU's IUCLID system—they are talking about IUCLID 6 currently and they are moving on to IUCLID 7—it has taken more than 10 or 11 years' worth of development to reach this stage. The UK is going to do it in 11 months. But we are only going to do part of it, which will be the two essential elements of notification and registration of data.

Nishma Patel: The other thing to point out is that the ECHA REACH IT system has functionalities for delivering both REACH compliance and CLP compliance. At the moment, as far as we are aware, in the UK the basic REACH IT system will not be delivering any sort of system for CLP IT compliance. That decision or how that will be addressed has yet to be seen. We could end up with more than one IT system to deal with the whole chemicals regulatory portfolio.

Q85 Mr Goodwill: Is there any good news at all?

Chair: I am glad you said that. I was about to sum up.

Peter Newport: It is a nice day outside.

Q86 Chair: That is changing fast. You mentioned £8 million. The Government had said £5.8 million. Has that cost now gone up?

Peter Newport: No, it is £5.8 million.

Q87 Chair: Okay, so as far as you are aware it has not cost any more than that. We have the Department developing a database that will be used by an external agency. What could possibly go wrong there, given Government IT projects? Tell me about RAPEX, this fast, dangerous chemicals thing. We are losing access to that, or we hope we will not. We are optimistic that we may be able to get access if we negotiate, et cetera. What happens to RAPEX? How do your members use RAPEX? What happens to things being pulled off the market? What are the implications of not having access to the RAPEX database, which has the notifications for dangerous chemicals?

Susanne Baker: One thing we recognise is that our Trading Standards is considerably under-resourced. Co-operation between member states has been extremely important in determining whether there are products that do not meet REACH restrictions and restrictions under other chemical legislation. As I understand it, we are going to develop our own version of RAPEX.

Q88 Chair: How is that going to work? Is that going to come in the future?



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Susanne Baker: It is under development at the moment by the Office for Product Safety and Standards, the OPSS, which sits in BEIS. As I understand it, the idea is that we will populate it ourselves. RAPEX is public, so anyone can go on to the database and look at what products have been pulled into that system. The idea is that, if we have our own system, we can then have something to barter with and try to agree some co-operation around the exchange of information at a market-surveillance level.

Q89 **Chair:** My understanding is that we have not been great feeders into that system; we have been great users and takers out of it, because of the denuding of Trading Standards. Is that correct?

Susanne Baker: I have not done any analysis of it to be able to say with certainty, but we would certainly have concerns about the enforcement capability of Trading Standards and the resources it has at its disposal.

Q90 **Chair:** I can see colleagues behind you from CHEM Trust nodding. On this statutory instrument, basically we are going to legislate for the entire foundation industry of UK manufacturing with one of 800 statutory instruments that are going to be banged through. Do we know whether it will be done under the positive or negative procedure? That is probably a technical thing we should ask the Secretary of State. I am wondering whether Parliament has the right to call it in for a further vote on the Floor of the House.

Susanne Baker: I understand that is going to be the case because of the complexities around REACH and the changes that are required to make it operational in the UK.

Chair: Yes, okay, so it will be done under the affirmative procedure. Thank you.

Things have moved on since we last met, and not in a good way. We are obviously going to be voting on this next Tuesday, if the timetable is adhered to. If I can reassure you, there is a feeling in Parliament that there is no appetite for no deal, and there will be amendments voted on next week that try to state Parliament's agreement on that. Whatever our views on the Committee are, I am sure nobody wants to see the sort of no-deal scenario that you have painted for us today coming to fruition. I hope I can leave you with that small crumb of comfort. Thank you all very much indeed for your attendance today.