

Submission from Chem Trust

- Schedule 2 amends the REACH etc (Amendment etc.) (EU Exit) Regulations 2019 to extend the deadline by which companies that have registered chemical substances with EU REACH or downstream users importing substances must provide full safety data for those substances. The deadline has been extended from two years after exit day (31st December 2020) to staggered over a period of 6 years +300 days; so that the full registration dossier on substances will now need to be submitted within 2, 4 or 6 years from 28th October 2021, depending on tonnage band and hazard profile.
- The aim is to reduce the burden on industry of complying with the new regime, but these burdens were well known at the time the SI was laid last year, and this will extend the period by which the new regulator will be incapacitated in its primary function of protecting human health and the environment from harmful substances. It will make it difficult, if not impossible, for the HSE to implement legally enforceable restrictions on and authorisations for chemicals without this data.
- This change reflects the difficulty of replicating EU REACH on a national basis that has been regularly highlighted over the years, i.e. that a system that is a supplicant to the European Chemicals Agency, without a formal cooperation model, was not a robust or workable regulatory system. However, the Government provided reassurances that it would maintain protections for the environment and human health (including following legal action in response to last year's SI), indeed a 'better' system was promised that had the flexibility. This change will (in addition to other factors) make the system considerably weaker and less protective than REACH. The UK is likely to diverge and fall even further behind the EU as a result of this extension (without a mechanism to match EU controls on chemicals) that could result in the dumping of products on the UK market that do not meet EU standards. The industry has recently said this change is only a "small step in the right direction" in relation to minimising the costs and burdens of a duplicate system it considers a waste of time, and this SI sets a precedent for further deregulation to reduce burdens further. These burdens could most easily be avoided if the UK were to seek to negotiate with the EU to remain within and aligned to REACH; this remains the best option for our environment and public health, as well as for industry, either in current trade negotiations or in the future.

21 October 2020

Defra's response

- UK REACH will retain the principles and fundamental approach of the EU REACH system, with its aims of ensuring a high level of protection of human health and the environment, as well as enhancing innovation and competitiveness. The current Regulations are necessary to help ensure that the REACH regulation will operate effectively in the domestic context, and to implement the Northern Ireland Protocol.
- Under the Northern Ireland Protocol, UK REACH will regulate the GB market while EU REACH will continue to apply to Northern Ireland. The domestic REACH regime is still referred to as 'UK REACH' because Northern Irish actors will be able to participate directly in it for some purposes. It will also reduce the potential for confusion following the references to UK REACH over the last two years, and is consistent with the government's aims in the United Kingdom Internal Market Bill.

- Since the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 were made, we have undertaken a focused evidence gathering exercise with a number of key stakeholders, both NGOs and across industry, to better understand the challenges associated with the transition to UK REACH.
- As a result of that work, we believe that extending and phasing the deadlines as provided for by this SI will facilitate more complete and better-quality registration dossiers. That will ultimately mean that UK authorities will have access to better quality data on which to make decisions.
- We are also providing for data on the higher tonnage and higher risk chemicals to be submitted first. This prioritisation further mitigates the environmental and health risks, and mirrors that provided for by EU REACH when it was first established.
- It is not correct to imply that HSE will not have access to any information about substances in the absence of the full registration data. They will, for example, be able to look at the substantial amount of publicly available information, from the EU and elsewhere, and what action is being taken internationally in respect of particular substances, including by the EU. HSE will also have the power to request information from industry.
- Once HSE has developed an initial regulatory proposal from the various information sources available to it, it must then follow the processes specified in the legislation, including consultation and the use of independent scientific advice. All of these processes contribute to the robustness of the recommendation that is finally submitted to the Secretary of State.
- As context to their regulatory activities, HSE will produce an annual work programme to inform their work. The EU candidate list of substances that meet the criteria for inclusion in Annex 14 (substances subject to authorisation) will be carried into UK REACH at the end of the transition period. HSE will also produce recommendations of priority substances for inclusion in Annex 14 within 12 months of the end of the transition period, and then every two years.
- The Government's position on not remaining within the jurisdiction of the European Courts of Justice (ECJ), means that we are not seeking alignment with EU REACH or participation in the European Chemicals Agency (ECHA).
- In February, the Government published its approach to negotiating a future relationship with the EU. That includes a proposal for a chemicals annex as part of the EU Free Trade Agreement. A deal on data sharing with the EU could mitigate the need for industry to provide full data packages.
- It would not be appropriate to automatically implement future EU decisions under UK REACH. This is because the EU will no longer consider the impact of their decisions on Great Britain. We can take their decisions into account but we will need to consider, in each case, whether they are right for Great Britain.

27 October 2020