ECR0022

Written evidence submitted by the Chemical Regulations Self Help Group

Several suggestions have come out of recent meetings of the Chemical Regulations Self Help Group for ideas which may be helpful to both regulators and the chemical industry in the event of full withdrawal from the Single Market.

The group comprises 50 company members active in the chemical industry as manufacturers, formulators, importers, exporters and distributors, and around 10 consultants and service providers. Most company members are SMEs.

The group believes that, prior to CLP and REACH, UK legislation regarding health and safety, environmental protection and chemical safety were robust and should be reinstated where possible.

However we recognise that REACH has improved the amount and quality of data on chemical hazards, and that through improved labels and SDSs this has improved safety for chemical users, so it is important that this process continues.

It is also important that our systems closely mirror the EU and other large marketplaces to facilitate trade, and do not contain extra requirements which would inhibit import and export of valuable materials.

The ideas in this document do not necessarily reflect the views of all the group members, and are offered as practical suggestions rather than political viewpoints.

Summary of suggestions:

- Implement GHS rather than CLP
- Ensure that UK investment in EU-REACH registrations is protected
- Suggestions for recognising EU-REACH and running a parallel UK-REACH system
- Suggestions for a new, simpler UK-REACH law

1. Implement GHS rather than CLP

Rather than implement CLP in full and then alter it a later date, it would be more effective in terms of parliamentary time to implement GHS instead, and to amend legislation which refers to CLP to be amended to refer to GHS.

As GHS and CLP are relatively closely related, (more so than when CLP was first published in 2008), this should provide continuity with CLP.

The method for adoption could be analogous to the Carriage of Dangerous Goods Regulation, which, rather than including a lot of detail, refers to ADR, RID and other European versions of these UN standards. It is suggested that, like the Carriage of Dangerous Goods Regulation refers to ADR, the new law ("UK-GHS") could refer to specific chapters of the "Purple Book".

1.1. GHS hazards to be adopted

In order to keep classification and communication of hazards as stable as possible, it is recommended that the UK adopts exactly the same hazard groups as Europe, that is all of the GHS hazard classes, with the exception of:

- Hazard classes in Revision 6 of GHS, that is densitised explosives, category 1, H206, categories 2 and 3, H207, category 4, H208; and pyrophoric gases, H232.

Hazard classes up to Revision 5 not adopted into CLP, that is flammable liquid and vapour, category 4, H227; acute oral toxicity category 5, H303; acute dermal toxicity category 5, H313; acute inhalation toxicity category 5, H333; aspiration toxicity category 2, H305; skin irritation category 3, H316; eye irritation category 2B, H320; and acute aquatic toxicity category 2, H401 and category 3, H402.

Where GHS provides a choice of category limits, e.g. Toxic for Reproduction, it is recommended that the UK adopt the same limits as those adopted by the EU.

1.2. Adoption of CLP non-GHS hazards

At the moment, several UK laws refer to the non-GHS hazards within CLP, known as the EUH statements.

To enable consistency with these existing UK regulations, and to enable trade between the UK and the EU to continue without any unexpected delays, it is recommended that the UK adopt all of these EUH statements as additions to GHS, at least in the first instance.

1.3. Updating UK law with revisions of GHS

It is recommended that, for the time being, the UK remains on the same GHS revision schedule as the EU, that is to adopt GHS revision 5, with a view to adopting revision 6 at the same time as the EU.

1.4. Adoption of Harmonised Classifications

GHS does not contain any Harmonised Classifications, although these have been an intrinsic part of first CHIP and then CLP for decades.

It is recommended that the Harmonised Classifications list from CLP is adopted in the first instance, that is the new UK-GHS law should refer to Table 3.1 of Annex II to the CLP regulation. This should enable the Harmonised Classifications to be updated in parallel to CLP automatically.

1.5. Adoption of SDSs from GHS

Safety Data Sheets should be adopted from GHS into the new proposed law.

Although the EU have placed their SDS law within REACH, this is a cumbersome approach and not as practical as having all forms of communication for supply under a single law and set of regulations.

Removing SDSs out of REACH will make it simpler to decide which parts of REACH should be adopted in the UK.

In the event that UK-REACH requires extra information to be placed on the SDS, this could be added into the new law at a later date.

1.6. Recommendation on "Minimum Information" and acceptance of other jurisdictions' labels (and SDSs)

UK-GHS should be written so that its requirements are considered to be "minimum information" for labels and SDSs.

This would allow extra GHS and / or CLP information to be displayed as well, meaning that companies supplying both the UK and EU would continue to have one set of labels and SDSs for both marketplaces, it would be "business as usual".

A "minimum information" policy would also allow GHS labels and SDSs to be accepted where they display extra GHS information not adopted in the UK. This would facilitate international trade in chemicals by reducing the need to reclassify or relabel.

For industrial chemicals, where extra labelling information is required in the UK, extra information could be placed on an additional label, rather than requiring full relabelling (there is precedence for this with the use of stick-on "dead fish dead tree" symbols on CHIP labels).

However it should be made very clear to UK companies that they are NOT to carry out new animal testing in order to classify for GHS hazards which have not been adopted in the UK.

1.7. Amending legislation which is currently based on CLP

If the new UK-GHS law is written as suggested, the chemical regulations, Statutory Instruments etc which refer to CLP could be rewritten quickly and easily to refer to it instead of CLP with no effect on UK industry.

However, this would also give an opportunity to correct some anomalies which have arisen recently, and enable the HSE and EA to regulate chemical hazards more effectively.

Some examples of this are the Control of Major Accident Hazards, 2015 (the removal of Heavy Fuel Oil as a Named Substance; and clarifying chrome plating baths as environmental hazard only for COMAH purposes); and the definition of waste (altering this so that materials which can be recycled or have beneficial use are not included on a technicality).

However, such improvements could come after Brexit if there is a tight schedule for changing the rules, and could be carried out in consultation with the regulators (HSE, EA) and industry.

1.8. Enforcement of proposed UK-GHS law

CLP is currently enforced under H&SW Act 1974, and it is recommended that H&SW Act is amended so that the new law is enforced under this. The HSE would therefore be the enforcing authority, as they are at present.

2. Ensure that UK investment in EU-REACH registrations is protected

A significant amount of money has been invested by the UK chemical industry in REACH registrations.

Failure to permit UK registrations to be valid in Europe would probably violate EU property law.

The group is aware that, within the EU and ECHA, some people are reading EU law to mean that REACH would cease to apply to the UK as soon as Article 50 is triggered.

This could be interpreted by ECHA as making all UK-based REACH registrations invalid e.g. on the grounds that the legal entity is no longer based in the EU.

It is recommended that, if possible, this is clarified, and if REACH will not apply after Article 50 is triggered, then arrangements for UK REACH registrations to be valid should be made beforehand.

2.1. UK-purchased REACH registrations prior to Brexit should be valid post-Brexit

In order to facilitate trade in chemicals between the EU and UK, it is seen as essential that UK REACH registrations purchased prior to Brexit are still valid in the EU after Brexit.

To do this, manufacturers and importers based in the UK will require the facility to transfer registrations to ORs based inside the EU, both inside REACH-IT (and IUCLID6), and for the data purchased. UK based ORs will lose their business, or have to set up legal entities in the EU.

This transfer should be free of charge at ECHA, and also should not require the repurchase of data supporting such registrations, although a small admin fee (perhaps capped at 100 euros per company transfer) could be payable to the Lead Registrants involved.

As described above, ideally such transfers should take place prior to Article 50 being triggered, to prevent UK REACH registrations being automatically rendered invalid.

2.2. EU-REACH registrations after Brexit for UK companies

After Brexit, any UK manufacturer or importer who wishes to register for EU-REACH will have to use an OR based in the EU.

UK ORs will have to set up a subsidiary within the EU, or cease to function as ORs within Europe. However, it is likely that ORs will also be required under UK-REACH, as they existed under NONS.

2.3. EU-REACH registrations should be valid in the UK post-Brexit

In any UK version of REACH, EU-REACH registrations held by UK companies via an OR should be valid in the UK.

A simple mechanism should be set up to verify this, rather than duplicating the systems at ECHA. Alternatively, a parallel registration system which accepts IUCLID6 dossiers with a change in legal entity for the UK would be acceptable (as per the Swiss system).

This will mean that any UK companies or EU companies holding REACH registrations for substances (via an OR) will not be required to re-register those substances in the UK. In this situation, the labelling and SDS must continue to contain the data from the EU-REACH dossier.

3. Suggestions for recognising EU-REACH and running a parallel UK-REACH system

For many EU-REACH registration holders, the simplest option is that the UK should pay to retain membership of the EU-REACH "club". However, there are hints from the EU that this would be impossible under EU law, and that there is no political will to allow this.

In the event that the UK is still within the EU on 1st June 2018, most companies will have to register their existing substances under EU-REACH.

Assuming that the UK continues to recognise EU-REACH registrations, but that the EU does not recognise UK registrations, unique UK-REACH registrations would mainly be for novel substances.

A parallel version of REACH could be introduced, similar to the NONS system.

The old UK NONS regulations (SI 1982 no 1496, as amended) could be quickly rewritten to mirror EU-REACH, with a 1 tonne per annum minimum registration threshold, the same tonnage bands, and the same data requirements.

Like NONS, UK-REACH could be enforced via the H&SW Act 1974.

Initially, authorised and restricted substances could be kept the same as in the EU by reference to the relevant parts of the REACH regulation.

Later, the UK could consider setting up a new UK-REACH system.

4. Suggestions for new, simpler UK-REACH law

In the event that the UK leaves the EU prior to the EU-REACH registration deadline of 1st June 2018, the situation becomes much more complex. Alternatively, the UK may wish to implement a parallel system to REACH first, and then bring in its own regime later.

Although many UK companies would still have to register for EU-REACH in 2018 in order to continue to supply the EU, there are companies who only manufacture and supply the UK, who would suddenly become eligible for UK-REACH registration.

The HSE have expressed concern that they cannot duplicate EU-REACH per se for the full range of chemicals expected to be registered in 2018.

The UK leaving REACH before the 2018 registration deadline (e.g. when Article 50 is triggered) could even be considered as "force majeure".

Options for dealing with this include:

- Extend the UK-REACH registration deadline for several years, giving the HSE time to invest in the necessary systems (e.g. 2020 for 10 – 100 tonnes; 2025 for 1 – 10 tonnes)

- Alter the registration requirements to make them easier to manage (difficult to do if all testing is retained)
- Scrap REACH entirely, (although international law requires countries to have some form of chemical control legislation by 2020)
- Or draft a new, simpler, law which achieves the aims of REACH in a more risk-based and pragmatic way than EU-REACH

4.1. Minimise the overlap of REACH with existing UK legislation

REACH is often described as improving standards in worker safety, environmental protection and consumer protection.

While this may be true in some parts of the EU, it is not the case in the UK, where worker safety around hazardous materials is handled under COSHH; environmental protection is handled under Environmental Permitting, and Consents to Discharge to sewer, surface water and groundwater; and consumer protection is handled under a plethora of legislation.

Some parts of EU-REACH, such as the Exposure Scenarios, also appear to place duties on vendors of chemicals to carry out risk assessments on behalf of their customers, in effect removing the principle of "caveat emptor". But however well-informed a vendor is, they will never be able to carry out a risk assessment for worker or environmental protection as well as their purchaser can.

Removing these types of requirement will simplify REACH and restore the legal liability for the use of hazardous chemicals with the user, where it has traditionally sat under UK common law, with the vendor only being responsible for the provision of information on the hazards of the material.

However, the main benefit of UK-REACH would be to ensure that vendors have generated (or bought) good quality information on the hazards of their substances, so that labels and SDSs are good quality and do not contain significant information gaps, as was often the case prior to EU-REACH.

The point of UK-REACH should be the generation of good quality data on chemical hazards, and, via UK-GHS, the accurate communication of those hazards through labels and SDSs.

Whatever UK-REACH ends up being like, the requirement for the provision of appropriate data to support the production of good quality labels and SDSs must be retained. This means that test data will continue to be required for all GHS hazard categories and end-points adopted by the UK.

4.2. UK-REACH should be a "minimum information" standard

UK-REACH could be a set of minimum standards, and other jurisdictions' registrations should be recognised where they meet the UK's standards, not just the EU.

This was how NONS worked within the EU, where a NONS registration in one country was accepted in all other member countries. Going back to the NONS model would enable the UK to trade with any other member states which secede, and also other countries. Prior to REACH, NONS was working towards mutual recognition with Canada and Australia, and this idea could be re-opened.

The minimum information should be based around the data required for GHS labels and SDSs, as this is the key benefit of REACH.

4.3. UK REACH should consider simplified uses

Under UK-REACH, it is recommended that substances should be registered, along with basic information on uses.

It is the experience of UK companies that the detailed use registration required by EU-REACH is very bureaucratic, and has little effect on the safe use and handling of chemicals.

A basic distinction should be made between substances which are for industrial use only, and those which are acceptable for consumer and professional use.

4.3.1. Industrial chemicals

Where substances are industrial use only, they should be handled on sites which hold an Environmental Permit.

There should be a presumption that all chemicals legally available on the UK market should be available to all companies which hold an Environmental Permit, as long as these substances are listed on their Permit and handled safely in accordance with the SDS. Substances which are allowed on industrial sites should not be restricted or authorised.

This suggestion would require the EPR system to be extended to include formulators and re-packers, but will allow handling of chemicals in legally-controlled industrial workplaces, with legal limits on environmental emissions. Worker safety would continue to be handled under COSHH.

4.3.2. Consumer and professional use chemicals

Certain hazardous substances should be restricted for consumer use, and in some cases for professional use as well.

It is suggested that there could be a tiered risk assessment process for hazardous substances to allow use within industry; then professional use; then consumer use.

4.4. UK-REACH should cover banned and restricted substances

To meet the requirements of international law, certain chemicals are banned, or severely restricted (eg the use of certain pesticides, or chemicals which can be used as chemical weapons).

These bans and restrictions should be included within UK-REACH, if not already covered by other UK legislation.

4.5. The SDS should contain substance-specific Occupational Exposure Limits and Environmental Exposure Limits

If specific individual uses are not registered, there is no need for a Chemical Safety Report, or for an extended Safety Data Sheet, (although they could be provided voluntarily for EU-REACH registered substances).

Instead, SDS authors could provide a basic, conservative calculation of Occupational Exposure Limits and Environmental Exposure Limits in Section 8 of the SDS.

However, individual users of chemicals would also be free to carry out their own risk assessment e.g. to demonstrate how they handle the chemicals in compliance with COSHH and their EPR permit.

4.6. Remove PBT and vPvB assessments

EU-REACH includes non-GHS hazard categories PBT and vPvB. These are new concepts worldwide, and should not be included within UK-REACH unless they are adopted within GHS.

4.7. Consider a new REACH model

EU-REACH is widely recognised as having been very expensive to comply with, particularly for companies registering small tonnages per annum.

Consideration should be given to adopting a different approach in UK-REACH:

- in Canada, the government use tonnage and risk to pre-screen chemicals of concern, so that not all chemicals are required to provide a full dataset.
- in Australia, the data requirements on new substances are tiered for tonnage on the basis of hazards and risks, so the process is more logical.

Both these systems identify more hazardous chemicals, and focus on extra testing only where necessary.

If the EU model of REACH is adopted, rules on data sharing should be altered to ensure that small tonnage band companies are not disadvantaged.

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