

Response to the Environmental Audit Committee inquiry on “The Future of Chemicals Regulation after the EU Referendum”

24 October 2017

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 90 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK’s energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 26 million homes and every business in Britain. Over 619,000 people in every corner of the country rely on the sector for their jobs with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry adds £83bn to the British economy, equivalent to 5% of GDP, and pays over £6bn in tax annually to HMT.

Executive summary

- Energy UK members have registered numerous substances with the European Chemicals Agency (ECHA) for the purposes of compliance with the Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and the Biocidal Products Regulation (BPR), and have spent a significant amount of time and resources to do so.
- Energy UK welcomes commitments by the Government to retain a high level of chemicals regulation once the UK leaves the EU.
- However, Energy UK is concerned that the Government has not yet considered the practical consequences and resulting costs for companies in making the transition to a new regime for chemicals regulation.
- We are concerned that the default position of the UK Government on chemicals regulation risks forcing UK companies and the Health & Safety Executive (HSE) to regenerate and reprocess all of the data used for compliance with EU chemicals regulations over the last decade.
- The cost of repeating the work carried out by UK and EU companies and ECHA on chemical safety over the last decade and the administrative cost of re-registering and re-authorising substances would be significant. It is likely to be both a burden to UK taxpayers and have a harmful impact on the competitiveness of UK companies.

- However, these costs are unnecessary, as there are options available to avoid or minimise the work required to implement a UK replacement scheme for chemical regulation.
- For example, the retention of links with ECHA once the UK leaves the EU is likely to provide a cost-effective solution to the gaps in data held in the UK on chemicals, and the administration of existing registrations and authorisations.

Energy UK's submission

1. Based on the UK Government's response to the Environmental Audit Committee's last inquiry on this subject, we understand that the UK Government has committed to implementing a similar system to REACH in the UK once the UK leaves the EU. Energy UK welcomes the commitments that the Government has made to retaining high levels of environmental and health and safety regulation once the UK leaves the EU, as we consider that this regulation is vital to ensure that the UK continues to protect the health and safety of its workforce and the environment.
2. The sample drafting example included in DExEU's recent memorandum for the Delegated Powers and Regulatory Reform Committee¹ demonstrates how the UK Government might simply transpose REACH and BPR by moving powers and responsibilities in existing UK law from ECHA and the European Commission to the HSE and the Secretary of State. Whilst we appreciate the efforts made by Government to ensure that chemicals regulations are in place once the UK leaves the EU, we are concerned that the Government has not yet made any similar public commitment to the provision of tools and databases for companies to use to comply with these regulations which are due to come into force in just under one year's time.
3. Compliance with REACH and BPR is currently achieved via submissions to ECHA using their tools such as IUCLID, and these submissions are supported by data gathered and generated by other EU companies and Competent Authorities. As participants in the committees and fora of ECHA, the UK has so far enjoyed unrestricted access to these tools and this data. This allows companies to make submissions to ECHA using data already held by ECHA by either buying into consortia, paying for Letters of Access, or directing ECHA to data generated by national Competent Authorities. The use of such data reduces the cost burden on industry by reducing the obligation for companies to repeat tests already carried out by others.
4. On its new website², ECHA has made it clear that if the UK leaves the EU without any new deal in place, the UK would cease to have any access to ECHA's networks, tools and databases. If UK companies and the HSE find that they do not have access to these tools and databases once the UK leaves the EU, it will be necessary to recreate them in order for companies to comply with the replacement regulations.
5. The costs to companies and the HSE in generating new data and recreating the databases that ECHA has built over the last decade are also likely to be high. In particular, industrial costs are likely to be much more burdensome in repeating this exercise, as these costs would be shared across a much smaller pool of companies

¹ Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee, Department for Exiting the European Union, [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20\(Withdrawal\)%20Bill.pdf](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20(Withdrawal)%20Bill.pdf) [accessed 17/10/2017]

² ECHA webpage on the UK's withdrawal from the EU, <https://echa.europa.eu/uk-withdrawal-from-the-eu>, [accessed 17/10/2017]

than they were when the data was generated at an EU level. Such costs would be likely to harm the competitiveness of UK companies once the UK leaves the EU.

6. Many companies may be at risk of losing access to data that they have already paid for once the UK leaves the EU. The consortia that they joined to produce this data, or the Letters of Access that they have bought for this data, are often regulated by strict data sharing rules which specify that this data may only be used for the purposes of REACH and/or BPR compliance. Companies may therefore not have the right to use this data for compliance with UK chemicals regulations. There is a risk to UK companies that these consortia could refuse to allow this data to be used for compliance with non-EU regulations, or charge large fees to use it for compliance with UK legislation. In either case, this would put UK companies at a disadvantage to their European counterparts. We consider that it is possible that if the UK Government were to retain links with ECHA once the UK leaves the EU, that ECHA recognition of the UK regulations could allow UK companies to continue to access this data at no extra cost.
7. In evidence previously presented to this Committee, Julie Girling MEP highlighted a report by the European Parliament's Policy Department which "*estimated that replacing ECHA and implementing national chemicals legislation could cost up to €224 million in administrative costs*".³ Energy UK is concerned that UK operators which have already registered substances under EU regulations and paid the significant fees for doing so could be required to re-pay similarly high fees for re-registration or re-authorisation to comply with UK legislation once the UK leaves the EU. This would effectively result in double charging for UK companies and would harm the competitiveness of UK industry. The Government should look for all opportunities for cost-effective administration of the future chemicals regulatory regime. We consider that recognition of existing REACH and BPR registrations and authorisations may be a particularly cost-effective solution.
8. The cost to the UK as a whole of not securing access to ECHA's tools and databases is both large and unnecessary. The imposition of these unnecessary costs would represent a burden to UK taxpayers or will harm the competitiveness of UK companies, or both. We therefore encourage the UK Government to give early consideration to the full range of solutions to the issue of gaps in data held in the UK on chemicals once the UK leaves the EU, and to give a high priority to low cost solutions. We consider that, in particular, the retention of links with ECHA would be an effective, low cost solution.

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³ *Written evidence submitted by Julie Girling MEP*, ECR0036, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/eu-chemicals-regulation/written/45745.pdf> [accessed 17/10/2017]