

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

20 January 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 is not aware of any issue that would prevent the transposition of REACH and the Biocidal Products Regulation (BPR) into UK legislation within two years of Article 50 of the Treaty of Lisbon being triggered.
- Significant resources would be required to cover the need for extra staff and the development of a computer system to administer a UK chemicals management system. These resources would be dependent on the amount of work transferred to the UK Regulators in the transposition of REACH and BPR.
- The future administration of chemical legislation depends to a large degree on the future relationship with the EU.
- Energy UK is not aware of any evidence of significant shortcomings in the pre-existing UK legislation on chemical safety that were rectified by the introduction of REACH and BPR.
- If the future relationship with the EU allows the UK Government to diverge from REACH:
 - Energy UK would support a move from hazard-based regulation (as per REACH) to risk-based regulation (as per pre-existing UK legislation).
 - Energy UK would support the use of existing product standards and certification in place of a generic registration system.

Transposition

1. Energy UK considers that the most significant challenge that the UK Government is likely to face when transposing the European Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and the Biocidal Products Regulation (BPR) through the Great Repeal Bill will be in identifying and allocating sufficient resources to administer REACH (or a similar replacement system), particularly if the UK ceases to participate in the bodies and networks of the European Chemicals Agency (ECHA). If adequate resource can be identified and allocated to the appropriate Regulators, then Energy UK is not aware of any issue that would prevent the Government from writing primary legislation similar to REACH and BPR within two years of triggering Article 50 of the Treaty of Lisbon; however, depending on the future relationship with the European Union (EU), we consider that it might be in the interests of the UK Government to pursue a divergent approach to certain aspects of REACH and BPR.
2. The UK's ability to transpose REACH and BPR should not be significantly affected by the UK's future relationship with the EU. Once the UK has left the EU, the Government may or may not be free to pursue a divergent approach from REACH and BPR, depending upon the new relationship (e.g. Single Market membership), but in either case it is highly likely that the direct transposition of REACH and BPR would be welcomed by the EU. Therefore, Energy UK can foresee no legal barriers to the creation of a similar system to REACH and BPR if the Government were to choose to copy the system used in the EU, with (for example) the Health and Safety Executive acting in place of the European Chemicals Agency (ECHA).

Administrative, Policy and Regulatory Implications

3. The future administration of chemical legislation depends to a large degree on the future relationship with the EU.
4. If the UK were to maintain a relatively close relationship with the EU (i.e. Single Market membership), then it may be possible for the majority of the administrative work for REACH and BPR to carry on unchanged, with ECHA being responsible for processing registrations, producing opinions and identifying substances of concern, whilst the Health and Safety Executive (HSE) and the Environment Agency (EA)/Scottish Environment Protection Agency (SEPA)/Northern Irish Department of the Environment (DoE) take responsibility for enforcement. This would be possible if the UK were to continue to participate in the bodies and networks of ECHA. Currently, this participation is limited to Member States of the EU and the European Economic Area (EEA). EEA Member States are entitled to participate in all ECHA bodies and networks, but do not have the right to vote in these.
5. If the UK were to maintain a less close relationship with the EU, then it is unlikely that it would be able to participate in any ECHA activities, so would be required to replicate these at a national level. The amount of extra resource required to replace the role currently played by ECHA would depend entirely on the UK's future approach to chemicals regulation.
6. The UK already had a substantial body of chemical regulation prior to the introduction of the REACH and BPR regimes, which ensures that businesses provide a high level of protection for the public, their staff and the environment. Given this, it is likely that elements of the REACH and BPR regimes are already carried out by UK Regulators, or

could be readily reintroduced. Nonetheless, if the Government were to choose to transpose REACH's and BPR's registration requirements without access to the services provided by ECHA, then significant resources would be required to cover the need for extra staff and the development of a computer system to manage the registrations.

Future of Chemical Industry and UK Chemical Regulation

7. In the UK, legislation such as the Control of Substances Hazardous to Health (COSHH), the Control of Major Accident Hazards (COMAH) and the Dangerous Substances and Explosive Atmosphere Regulations (DSEAR) ensure that businesses protect the public, their staff and the environment from potentially harmful substances and their usage on industrial sites. These regulations pre-dated the introduction of the EU REACH and BPR regimes. Energy UK is not aware of any evidence of significant shortcomings in the pre-existing UK legislation on chemical safety that were rectified by the introduction of REACH or BPR.
8. REACH is designed to be a comprehensive piece of chemicals legislation that “*ensures a high level of protection of human health and the environment*” across the EU, including in Member States with relatively undeveloped chemicals legislation. Given the comprehensive coverage of the pre-existing UK legislation, there is inevitably a degree of overlap between this and the REACH regime.
9. The UK's departure from the EU may therefore give the Government the opportunity to replace REACH with a new regime which simplifies the arrangements for UK chemical regulation. A review could be carried out to confirm that there are no significant gaps in existing UK legislation that would need to be addressed upon an exit from REACH. The UK regime would need to be designed to ensure that goods manufactured in the UK can be imported into the EU. A challenge will be to meet EU import requirements without imposing additional complexity on the UK's regulation of chemical safety
10. Energy UK considers that the 'ALARP' (As Low As Reasonably Practicable) principle should guide future UK chemical regulation, as it already does for the UK regulation of Health & Safety in general. This principle requires that businesses ensure that all reasonable steps are taken to minimise risks posed to the public, staff and environment. The use of a hazardous substance would therefore only be permitted by the Regulator if the Regulator is satisfied that the residual risk is 'ALARP'. Such steps might include using a less hazardous substitute substance, using a more dilute form of the hazardous substance, or increased process automation. This risk-based approach is in contrast to REACH's current hazard-based approach which seeks to eliminate certain hazards, irrespective of the risk they pose or the benefits derived from their use.
11. For materials that provide substantial benefits to society from their use, with a minimal associated risk in practice, the hazard-based approach of REACH can be overly conservative and inflexible. The substances initially banned by REACH were relatively uncontroversial as alternatives were readily available and the risks posed by the use of these substances were high; however, as more substances are designated as Substances of Very High Concern (SVHC) by ECHA and banned in future on the basis of their hazardous properties alone, the problems caused by a hazard-based approach are likely to be exacerbated. For example, hydrazine is used as a precursor to produce the propellant in car air-bags in highly regulated industrial installations, but has nonetheless been identified by ECHA as a SVHC.

12. REACH's requirement for all producers of more than 1 tonne per year of any substance to register their substance with ECHA has resulted in extra costs for businesses, including those from the associated testing requirements. In some cases, this has not delivered any corresponding benefits in practice for the public, staff or the environment from a reduced chemical risk. This is because the generic registration process requires that a large amount of substance data be submitted to ECHA which may be of little to no relevance depending on the nature or intended use of the substance. As a result of this, superfluous testing must be carried out to demonstrate that products conform to the specification used in the original registration in addition to existing routine testing to satisfy product and safety standards.
13. For example, Pulverised Fuel Ash (PFA) from coal-fired power stations is routinely tested for certification to EN450 for use as a replacement for Portland cement, but in order to ensure compliance with REACH, all producers of PFA across Europe had to form a consortium to produce a Substance Identity Profile for PFA and then register their own products with ECHA individually. This registration process provided ECHA with similar data to that required for certification to EN450, and cost each producer approximately £50,000 in fees as well as a significant amount of time to produce the relevant registration dossiers. The registration of non-hazardous substances such as PFA is unnecessarily burdensome and does not reduce the risk posed to the public, staff or the environment.
14. Given the EU's extensive suite of product standards, we believe that REACH and BPR registration acts as a form of double regulation which is significantly more complex and expensive than product standards developed to deliver a high level of protection of human health and the environment for a specific product. We would therefore suggest that if the future relationship with the EU were to allow for divergence from REACH and BPR, the UK should seek to use existing product standards and certification in place of a generic registration system.
15. If the UK ceases to participate in the bodies and networks of ECHA, then in order to export substances to the EU, businesses will be required to register with ECHA through a Third-Party Representative (and ensure that their products are REACH and BPR compliant). This requirement will apply whatever the detailed UK arrangements are for chemical regulation, so it does not prevent future UK arrangements from diverging from REACH and BPR requirements, if this is considered appropriate.

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