

# A CROSSROADS FOR CHEMICALS

Questions for the new UK  
Government on its chemical  
policy in an international  
context



The increasing attention being paid by the press to the harmful effects of what are being called ‘forever chemicals’ will keep shining a spotlight on the adequacy of our controls over chemicals.

As long ago as 2018 Theresa May’s Government committed itself to producing a **UK strategy for controlling chemicals**. Six years later, despite work behind the scenes, no draft for public consultation has yet appeared. The Royal Society of Chemistry (RSC) has recently published ideas that include the training of staff needed to regulate chemicals and the eventual creation of a UK Chemicals Agency. Our new Government must now decide what it thinks of these ideas and whether or not it wants to honour the previous Government’s commitment to publishing a chemicals strategy.

Just before the election, Defra began consulting on ways to modify the **registration of chemicals**. This would involve diverging further from the EU Regulation known as REACH (Registration, Evaluation, Authorisation and restriction of Chemicals). UK REACH is based on EU REACH. Since Northern Ireland is bound by EU REACH it will mean further divergence between NI and Great Britain as well.

These two issues can be decided upon quite separately and are described separately below. International developments, including in the EU, are also touched on.

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## The need for a UK Chemicals Strategy

While UK REACH is potentially the most powerful item of legislation to control chemicals it is not the only one. Harmful chemicals move through water, air, soil, products and food to reach vulnerable targets even at long distances from their first release. Many other bodies have responsibility along these pathways (for example the Environment Agency, local authorities and the Office for Product Safety and Standards): for authorising discharges to air and water; for inspecting the quality of drinking water; for controlling the quality of rivers and seas; for regulating waste management sites; for controlling transport; for checking the sale of products containing chemicals; and for monitoring the presence of chemicals in humans and in the environment.

UK REACH, and EU REACH from which it is derived, have two key tasks. They empower an organisation, a) to collect data about the harmful effects of chemicals from manufacturers and then, b) to evaluate the data and to impose any necessary bans or restrictions on its sale and use. These tasks are analogous to those of the medicines agencies that exist in several countries. The intention is to prevent chemicals polluting humans and the environment before they are emitted. In the EU these tasks are carried out by the European Chemicals Agency (ECHA) based in Helsinki with a staff of over 500. Post Brexit this task is being duplicated in the UK with some difficulty by the Health and Safety Executive (HSE) with a much smaller staff.<sup>1</sup>

Because of the power of REACH, it is easy to think that chemicals policy is confined to evaluating individual chemicals and restricting their use. That is a narrow view. A broader view is that chemicals policy must be concerned with minimising harmful effects throughout their whole commercial and environmental life cycles by coordinating and stimulating the bodies responsible for all stages of those life cycles.

At present the UK lacks any one institution charged with taking an overview of all the effects of chemicals, one that can coordinate and stimulate the various bodies that authorise releases and monitor the presence of chemicals, and one that can assess achievements and point to problems ahead. That is the argument for the creation of a new **UK Chemicals Agency**.<sup>2</sup>

The RSC has now developed these ideas with all the authority of a learned society.<sup>3</sup> The RSC argues the “current UK regulatory framework for chemicals is not fit for purpose,” and has found the current system to

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1 <https://www.nao.org.uk/wp-content/uploads/2022/05/Regulating-after-EU-Exit.pdf>

2 <https://product.enhesa.com/273563/the-case-for-a-dedicated-uk-chemicals-agency-and-chemicals-act>

3 <https://product.enhesa.com/273563/the-case-for-a-dedicated-uk-chemicals-agency-and-chemicals-act>



be short term, reactive, uncoordinated, and with inefficiencies that are poor value for money. It proposes several steps including: short training courses to upskill civil servants and industry specialists; a commitment to a National Centre for Chemicals and Risk Research (CCRR); and the evolution of CCRR into a UK Chemicals Agency.

## Registering chemicals in the UK

Under REACH no chemical can be sold until the manufacturer has registered it and supported the registration with specified data. REACH calls this 'no data, no market'. For sales within the EU (and NI) manufacturers must register their chemicals with the ECHA, while for sales within GB (that is, UK minus NI) they must register them with the HSE. The registration must be accompanied by prescribed data about hazards, as well as data on uses and exposures.

Hazard data can be very expensive to generate, and the data will be commercially valuable. Manufacturers of the same chemical may have formed a consortium to obtain it. A manufacturer who has already registered with ECHA (for sales in the EU) now has to incur the additional costs of registering with HSE (for sales in GB) and may have to pay others in the consortium to use their data. To avoid significant costs falling on British manufacturers after the UK's exit from the EU took effect the UK Government decided to accept EU registrations as temporarily exempting them from reregistering in GB. This 'grandfathering' effectively meant that the UK has been relying on EU law and an EU Agency (ECHA) that administers it. The deadline for full GB registrations has been postponed.<sup>4</sup>

In order to reduce costs, Defra has now proposed a new and complex registration model called, the 'Alternative Transitional Registration Model' (ARTm).<sup>5</sup> In short, the proposal reduces the amount of hazard data a manufacturer has to submit whilst at the same time requiring more data on uses and exposure in GB. This extra use and exposure data may be helpful in managing chemicals during their lifecycle (which could be spelt out more clearly in the promised UK chemicals strategy) but it may lead to objections from the European Commission. EU manufacturers selling their chemicals in the UK will also have to submit more information on uses and exposures to HSE than they have to ECHA. The powerful European chemicals industry will surely object, as may also, the European Commission who could regard ARTm as a contravention of the UK/EU Trade and Cooperation Agreement.

The Government is also proposing to give itself extra powers to obtain more information from industry, if needed, which would increase the burden on already hard-pressed regulators.

<sup>4</sup> <https://www.hse.gov.uk/reach/duin.htm>

<sup>5</sup> <https://consult.defra.gov.uk/reach-policy/atrm-consultation/>



While the new Government considers whether it intends to confirm these complicated changes (the above is the briefest of summaries), it could consider instead moving closer to EU REACH along the lines of the arrangement adopted by Switzerland. This more efficient and far less costly solution is being advocated by CHEM Trust.<sup>6</sup> Switzerland adopts a default position of staying aligned with the requirements of EU REACH, and the restrictions made under it, unless there are good reasons for diverging. It does not require the submission of data where this has already been submitted to ECHA. For the UK manufacturers this means that instead of two registrations (with ECHA and HSE) the ECHA registration will suffice. EU manufacturers will also benefit as they will be spared having to register with HSE, a point that may persuade the European Commission that the UK is not just freeriding on EU legislation.

## International developments

The United Nations is developing a proposal, originally suggested by the UK, to establish a science/policy panel on chemicals, waste and pollution.<sup>7</sup> This would be similar to the well-known International Panel on Climate Change (IPCC) and the similar one on biodiversity. One driver for such a panel is the concern of least developed countries that are receiving waste and materials for recycling that contain hazardous chemicals. Such a panel would give much greater visibility to the need to eliminate harmful chemicals. The UK would be greatly strengthened in its ability to contribute to the panel if it had a Chemicals Agency able to feed ideas into it.

Meanwhile, Ursula von der Leyen has just announced that the EU intends to come forward with a revision to REACH that is simpler than the one previously proposed and then delayed.

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6 <https://chemtrust.org/is-the-swiss-system-for-regulating-chemicals-a-useful-model-for-the-uk/>

7 <https://www.unep.org/oewg-spp-chemicals-waste-pollution>

## Disclaimer

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