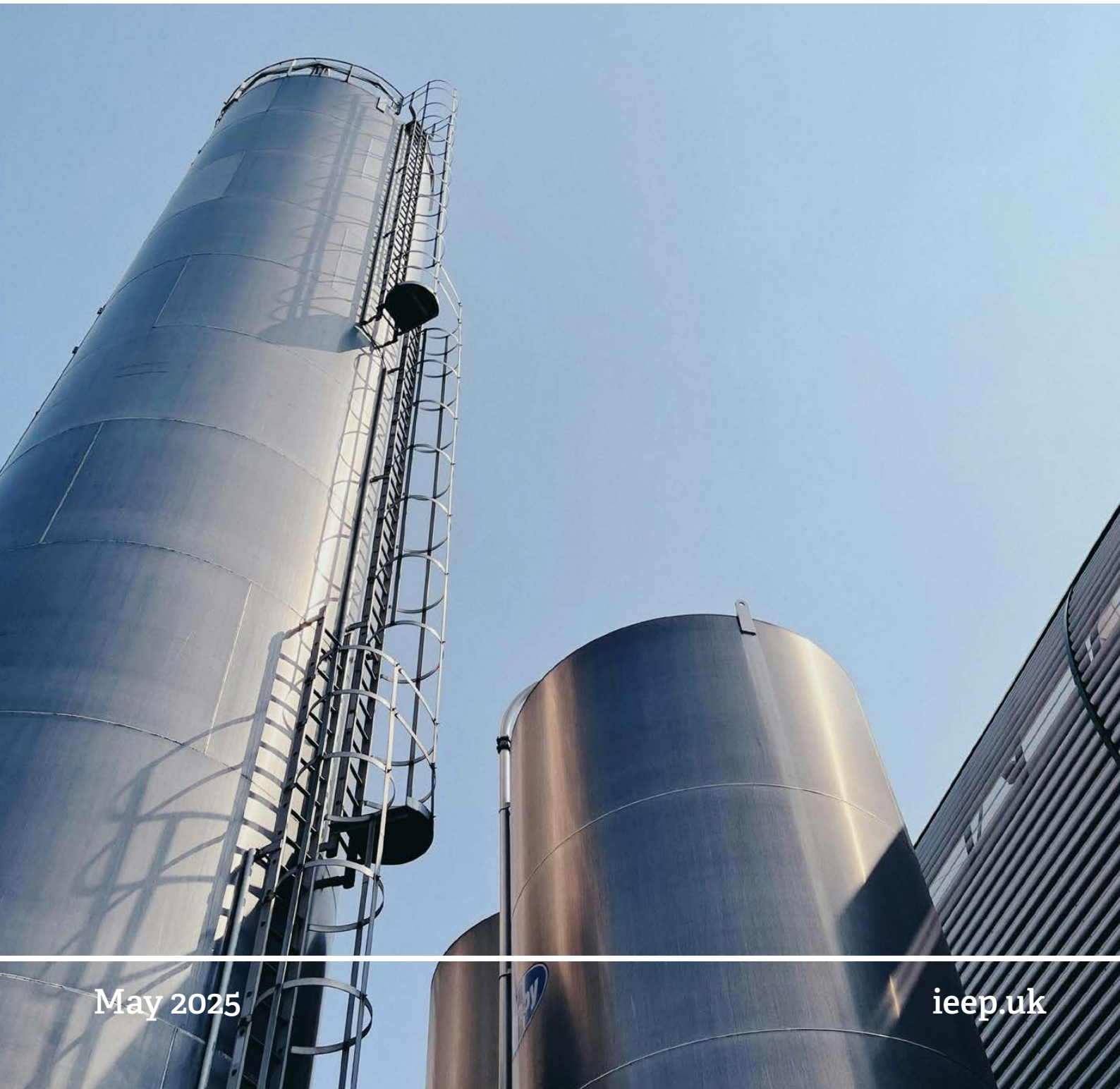
BRIEFING PAPER

Institute for European Environmental Policy UK

CHEMICALS POLICY AND THE UK-EU RESET

Nigel Haigh



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The **Institute for European Environmental Policy UK (IEEP UK)** is a sustainability think tank with over 40 years of experience. As part of the broader IEEP family, we are committed to advancing evidence-based research, analysis and policy insights in the UK and its interaction with policy in the EU and globally.

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Corresponding authors

Nigel Haigh

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IEEP UK
24 Old Bond Street (3rd Floor),
London, W1S 4AP
United Kingdom
Tel: +44 (0) 204 571 1200
www.ieep.uk

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Press rumours have suggested that closer alignment between the UK and EU on chemicals policy could form part of the 'reset' of relations between the UK and the EU on 19 May. No formal announcement has yet been made, and indeed there has been no announcement of any changes to UK policy on chemicals since the Labour Government came to power last July.

Our Briefing of last August **A Crossroads for Chemicals** posed a number of questions facing the new Government, all of which still lie on the table unanswered.

One question was whether the UK would adopt the proposal of the Sunak Government to diverge even further from the EU, in preference to following the example of Switzerland which recognises restrictions and bans on chemicals agreed by the EU. A hint that the UK is thinking about that possibility is contained in this cryptic passage tucked away in the Treasury policy paper (of 31 March) entitled **New approach to ensure regulators and regulation support growth**):

"HSE and Defra consulting on how international approvals can be recognised to reduce the time and cost to bring chemical products, including biocides, to the GB market".

DEFRA and HSE (Health and Safety Executive) work together, because, while DEFRA is the government department responsible for much policy on chemicals (including the key item of legislation known as UK REACH), it is HSE that administers UK REACH by registering chemicals and, advised by the Environment Agency, by conducting assessments leading to bans and restrictions. It is well known that HSE's limited resources compared to those of the European Chemicals Agency (ECHA) in Helsinki mean that it is having difficulty dealing with its workload with the result that some chemicals restricted in the EU can be freely used in the UK.

Adopting the Swiss model would overcome that capacity problem and will be possible once the Product Safety and Metrology Bill becomes law. The Bill when enacted would enable the UK to recognise restrictions/bans made by bodies such as ECHA. As noted below HSE has limited access to sufficient data required to make decisions restricting/banning chemicals under current UK legislation. The UK does not need the EU's approval to follow the Swiss model, but it would be a friendly act on the part of the UK to tell the EU that it would be drawing on its work.

The UK could go further and ask to participate in the work of ECHA by contributing its skills while obviously having no voting powers in ECHA's committees. This is the implication of this frank admission in a **published letter** from HSE:

"HSE's experience is that it is becoming increasingly difficult, as a single country outside of the EU, to efficiently regulate these regimes. As a member of the EU, the UK had access to EU-wide resources, such as the European Chemicals Agency, and was part of a joint work programme by the EU Member States on biocidal active substances. HSE no longer has access to these technical resources. As a result, HSE is unable to regulate as effectively as it would like in the absence of complete packages of information and data".

PFAS – 'forever chemicals' - proposed EU and French bans

A major test of the UK's ability to control chemicals on its own is being provided by the group of widely used chemicals called PFAS which have been dubbed 'forever chemicals' as they hardly degrade in the environment. These harmful chemicals are now widely found in drinking water having been used in fire-fighting foams (so they soak into groundwater); in industry because of their ability to withstand high temperatures; and in consumer products as waterproofing agents. The EU has an action plan to phase out PFAS which is currently working its way through ECHA committees while being fiercely contested by industrial interests. Given that the German chemical industry is the largest in Europe and influences the German government the adoption in France of a law to ban PFAS in some consumer products from 2030 is significant. France and Germany often act together on important EU initiatives and this unilateral French ban can be regarded as a shot across the bows of both the EU and Germany which is so influential on chemical policy.

A unilateral French ban on PFAS in products would disrupt the EU single market and so is allowed temporarily only in exceptional circumstances. The European Commission has to respond by doing one of two things: a) it can require France to revoke its unilateral ban which would not be popular with the French public, or b) decide that the EU will adopt comparable measures. The French ban is therefore a political signal to the Commission that France has set a deadline by which the EU must have made comparable bans. Denmark has also introduced a ban which will come into effect next year, but the Danish market is much smaller than the French.

Under the Product Safety and Metrology Bill (once enacted), it should be possible for the UK to replicate any EU ban as soon as it is adopted. If it does not do so there is the risk that surplus PFAS, and PFAS containing products, for which there is no longer a market in the EU will be dumped on the UK market. It is therefore very much in the UK's interest to replicate EU bans and restrictions.

Inquiry into PFAS by the House of Commons Environmental Audit Committee (EAC)

The subject of PFAS and how they can be controlled is about to become politically more prominent in the UK as a result of the inquiry that has just been opened by the EAC - **Addressing the risks from Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)**. EAC is accepting evidence until 26 May.

The '**Call for Evidence**' poses 14 questions under four headings: 'Understanding the threats and benefits from using PFAS'; 'The current status of measures to address PFAS'; 'Is the current

regime for PFAS fit for purpose?'; and, 'What lessons can the UK learn from other countries on how they monitor and treat PFAS?'. Thus answers to the questions go well beyond technical ones and are bound to cover relations with the EU. Some answers will depend on what 'reset' arrangements the UK and EU come to. Even before its inquiry begins the EAC is putting the Government under more pressure to explain what it is doing to contribute to the worldwide problem of PFAS that cannot be solved by the UK on its own. The UK has greater freedom than France unilaterally to set a date for a ban on the use of PFAS in fire-fighting foam, without disrupting trade in consumer products..

International developments

An important international development initiated by the UK, mentioned in our previous Briefing, is the proposed UNEP science/policy panel on chemicals waste and pollution. This would provide a forum for such problems as PFAS to be discussed and disseminated globally. The working group planning the panel meets again in Uruguay on 15–18 June.

Meanwhile the EU Commission's proposals to simplify REACH, now nearly 20 years old, have begun to be made public.

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