

Written evidence submitted by the Chemical Industries Association (EB37)

Written evidence on the Environment Bill

The UK Chemical Industries Association (CIA) welcomes the opportunity to provide input to the Environment Bill Committee. CIA is the trade association representing and advising chemical and pharmaceutical businesses across the UK. As a significant contributor to the UK economy¹ (£19.2billion of Gross Value Added on a turnover of £55.5billion), the chemical industry is at the heart of UK manufacturing, underpinning key sectors such as food and drink, medicines, aerospace, automotive and water treatment.

Executive summary

CIA believes the Bill should promote sustainable growth, investment and prosperity alongside holistic environmental considerations.

The concept of ‘net costs’ should be included in the Bill for producer responsibility, alongside provisions that ensure cost efficiency, effectiveness and savings as common themes throughout the Bill. Further, the potential for economic opportunity whilst also delivering on environmental objectives should have greater emphasis. Examples of these opportunities are resource efficiency, productivity and industrial symbiosis.

CIA considers the current protection measures in the Bill would maintain the high levels of environmental protection in regulating chemicals as foreseen under the REACH regulations. However, we urge the committee to consider additional scenarios which may justify possible amendments to the UK REACH Statutory Instrument. Such amendments may result in the implementation and workability challenges as well as the outcomes of the ongoing negotiations between the UK and European Union (EU).

In minimising the disruption and challenges posed by the current UK REACH approach we advocate remaining closely connected with the European Chemicals Agency (ECHA) through a cooperation agreement and a shared database. This can be achieved in a UK/EU trade agreement and the UK Governments approach provides an opportunity for this to happen. By doing so this would protect industry’s existing compliance commitments, enable the UK to build on the progress made to date in regulating chemicals and support future environmental ambitions.

Proposals for the Environment Bill:

- i) Objectives of the Bill and OEP should incorporate aspects of growth, investment and prosperity alongside environmental considerations. This could be achieved through complimenting amendment NC1 as outlined below, or by adding to the amendment NC6. The Climate Change Act includes consideration of competitiveness, as well as requiring such knowledge in the Climate Change Committee. To achieve sustainable outcomes, the environment and the economy, alongside our society, should be addressed together.

(PAGE 44 of amendments as at 20 March)

“Jessica Morden Alex Sobel

NC1

To move the following Clause—

“The environmental objective

- (1) The environmental objective is to achieve and maintain a healthy natural

environment.

(2) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures arising from this Act must be enforced, allowed and followed for the purpose of contributing to achievement of the environmental objective, **whilst considering overall environmental impacts and business competitiveness.**”

Member’s explanatory statement

This new clause is intended to aid coherence in the Bill by tying together separate parts under a unifying aim. It strengthens links between the target setting framework and the delivery mechanisms to focus delivery on targets.”

CIA proposal 1: add the above text in red to the overarching objective of the Bill to ensure that growth and costs, including environmental costs, are properly considered. The Climate Change Act supports precedent for direct consideration of business competitiveness: Provision 10, paragraph 2(c); Schedule 1, paragraph 3(a); and Schedule 8, paragraph 3(5).

ii) Disclosures on resource efficiency information are often commercially sensitive and so protections should be in place to avoid this. Provisions of the Bill need to acknowledge this point.

(PAGE 30 of tracked change Bill 6 March):

“Resource efficiency

50 Resource efficiency information

(1) In Schedule 76—

(a) Part 1 confers power on the relevant national authority to make regulations about the provision of resource efficiency information;

(b) Part 2 confers power on the relevant national authority to make regulations about the enforcement of regulations made under Part 1.”

CIA proposal 2: after paragraph (5) in provision 50, add in a new paragraph: “(6) Requesting information from organisations that is commercially sensitive or confidential for other reasons should be avoided as far as possible. Should requesting such information be unavoidable, appropriate protections on disclosure must be in place.

iii) On resource efficiency, the potential for also producing economic benefits do not seem addressed – the emphasis of the current Bill appears to be on costs, including the avoidance of disproportionate costs. For example, resource efficiency and industrial symbiosis can bring about both economic and environmental benefits. These ‘win-wins’ for the economy and the environment should be included in the Bill.

(PAGE 160 of the tracked changes Bill)

“(d) those benefits are significant as against the likely costs resulting from

the imposition of the producer responsibility obligations;

(e) the burdens imposed on businesses by the regulations are the

minimum necessary to secure those benefits;”

CIA proposal: the above considerations should be implemented in all relevant aspects of the Bill, not just those provisions related to producer responsibility. Further, powers under the Bill should also seek to unlock economic opportunities e.g. arising from increased resource efficiency.

iv) The concept of ‘net costs’ as outlined in the 2019 “Consultation on reforming the UK packaging producer responsibility system” should be included in the Environment Bill, alongside provisions that ensure cost efficiency, effectiveness and savings.

(PAGE 30 of the tracked changes Bill)

49 Producer responsibility for disposal costs

(1) Schedule 6 confers power on the relevant national authority to make regulations

*requiring the payment of sums in respect of the **net** costs of disposing of products and materials.*

(2) In this section and that Schedule “relevant national authority” means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers or the Secretary of State;

(c) in relation to Scotland, the Scottish Ministers or the Secretary of State;

(d) in relation to Northern Ireland, the Department of Agriculture,

Environment and Rural Affairs in Northern Ireland or the Secretary of

State.

CIA proposal: the disposal costs of products and materials should ‘net off’ any income gained e.g. through local authorities and other organisations selling on recovered or recycled materials. This concept is included in the 2019 consultation on reforming the UK packaging producer responsibility system. Additionally, where provisions create costs for businesses, secondary legislation should seek to minimise the costs, increase the costs effectiveness and efficiency. This is particularly relevant for the costs created under producer responsibility schemes as outlined in Schedule 6.

Comments on the Bill relating to the regulating chemicals – the REACH regulations (Clause 125 and Schedule 19).

Background

The rules for supplying chemicals in the EU are set by Registration, Evaluation, Authorisation and Restriction of chemicals (REACH) and Classification, Labelling and Packaging (CLP) Regulations. Both are aimed at ensuring there is a high level of protection of human health and the environment with industry responsible for demonstrating that chemicals placed on the EU market can be used safely throughout the supply chain. Both regulations directly apply in the Member States of the European Union to which UK industry and regulators have made a significant contribution to. REACH is the key regulation that the chemical sector must comply with in order to manufacture, import and trade chemicals within the European Union. Known to be one of the largest and most complex regulations produced by the European Union companies have been continuing to work hard and invest in its implementation since it entered into force in 2007. Considering the close integration of UK supply chains with the EU¹ (50% of chemical industry exports destined for the EU and 76% of imports coming from the EU), there are significant implications for the regulatory framework in which the UK chemical sector will operate within as the current transition period comes to an end and the UK looks to implement its own UK REACH regime.

REACH related provisions in the Environment Bill

The Bill gives the Secretary of State for Environment powers to amend UK REACH and the REACH Enforcement Regulations 2008. Such amendments can only be made through further regulations and Schedule 19 of the Bill in particular states amendments can only be made if they are consistent with Article 1 of the REACH regulations. In addition, the Secretary of State for Environment also needs to before beginning consultation on any amending regulations, publish an explanation outlining justifications in line with Article 1 of the REACH regulations. Article 1 of REACH itself outlines the primary objectives of the legislation which are to ensure a high level of protection of human health and the environment, promotion of alternative methods for assessment of hazards of substances, as well as while enhancing competitiveness and innovation. Therefore, CIA consider that the current protection measures in the Bill would maintain the high levels of environmental protection in regulating chemicals as foreseen under the REACH regulations. Furthermore, we believe the committee may also want to consider scenarios whereby UK REACH may need amending in the future and therefore we would urge the committee to consider these in scrutinising the Bill. These include but are not limited to:

1. **Changes to UK REACH to support implementation and to reflect future policy decision** - A number of changes have already been made to EU REACH regulations since its implementation. Similarly, as UK REACH is implemented and progress is reviewed, future measures, for example to improve workability may be necessary.
2. **Correct deficiencies to UK REACH.** Changes have already been made to the UK REACH Statutory Instrument in order to correct deficiencies to the legal text. To date the REACH Statutory Instrument has already been amended twice and certain provisions are to be kept under review by Defra.
3. **Changes to reflect outcomes of ongoing trade negotiations with the EU.** Whilst recognising that the UK REACH Statutory Instrument provides immediate provisions to regulate chemicals in the UK, significant issues remain outstanding (see below). Such issues will require further consideration and addressing based on the outcomes of the ongoing negotiations. For example, further changes may be needed relating to workability, implementation or governance purposes.

¹<https://www.cia.org.uk/Portals/0/Documents/Publications/CIA%20Fact%20Sheet%20Jan%202020.pdf?ver=2020-02-07-141038-477>

²<https://cefic.org/app/uploads/2020/02/2020-02-Cefic-CIA-views-on-REACH-in-Future-Trade-Agreement-2.pdf>

Challenges in implementing a standalone UK REACH regime

A standalone UK REACH regime poses major challenges to businesses not just in the chemicals sector but to entire manufacturing supply chains, impacting any businesses who is manufacturing or importing chemicals to the UK, from aerospace, medicines to water treatment. The major challenges to the current UK REACH approach include:

1. Duplicating a decade worth of compliance work with costs expected to exceed £1 billion on top of the half billion already spent by the UK chemicals industry. The proposed UK REACH regime will require every chemical manufactured and imported in the UK to be registered again within a significant short timeframe (two years) – a costly and complex process that took ten years to complete under EU REACH.
2. Furthermore, the data collected in duplicating the registration process under UK REACH will result in the UK regulating chemicals from a smaller subset of data on chemicals. The chemicals database administered by ECHA according to the United Nations is known to be the largest and most comprehensive database on chemicals. Over 10,000 of the chemical registrations and underlying data has been submitted by the UK, accounting for over 5,000 substances making UK companies the second highest contributor to the database. This collective effort should not be dismissed in retaining high levels of protection in the UK.
3. Adding to the data challenge, under the current UK REACH approach businesses will need permission to use and submit existing data on chemicals subject to commercial negotiations. Whilst companies may be able to gain permission to use these study summaries in resubmitting data under UK REACH, this will in many cases be at a significant cost and, in some cases, a commercial advantage – for EU-based companies not to share data with UK firms. This could force businesses to duplicate testing, including animal studies where data already exists or accepting incomplete datasets, severely compromising the validity of the entire data collection exercise and undermining one of the fundamental principles of REACH.
4. Finally, in implementing certain aspects of UK REACH (e.g. evaluation, authorisation) processes are yet to be established. With the possibility of the statutory instrument coming into force by the end of 2020 businesses require legal certainty in order to operate and place products on the UK market.

Approach to regulating chemicals in the UK whilst maintaining high levels of environmental protection, minimising disruption and cost to business

The current approach to regulate chemicals following UK's exit from the EU has raised significant concerns for the chemicals industry across Europe². Whilst the UK's REACH Statutory Instrument and its subsequent amendments address to some extent the inoperability's in transposing the EU regulation into UK law, major concerns remain regarding the implementation of the future UK legislation. CIA believes a UK REACH that requires duplicating submission of costly data must be avoided. Instead we advocate remaining closely connected with the European Chemicals Agency (ECHA) through a cooperation agreement and a shared database can be achieved in a UK/EU trade agreement which would protect industry's existing compliance commitments enabling the UK to build on the progress made to date in regulating chemicals and support UK's future environmental ambitions.

7 April 2020

¹<https://www.cia.org.uk/Portals/0/Documents/Publications/CIA%20Fact%20Sheet%20Jan%202020.pdf?ver=2020-02-07-141038-477>

²<https://cefic.org/app/uploads/2020/02/2020-02-Cefic-CIA-views-on-REACH-in-Future-Trade-Agreement-2.pdf>