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Chemicals Post-Brexit

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The Chemicals Reg-scape

- Registration, Evaluation Authorisation and Restriction of Chemicals Regulation - **REACH**
 - Classification Labelling & Packaging Regulation - **CLP**
 - Biocidal Products Regulation – **BPR**
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- Industrial Emissions Directive - **IED**
 - European Union Emissions Trading Scheme - **ETS**

Deal or no deal – spot the difference

- **No deal:** UK establishes a standalone chemicals regime. On exit, new regime based on the existing one to provide continuity, with amendments to enable Health and Safety Executive (**HSE**) to fulfil European Chemicals Agency (**ECHA**) functions.
- **Deal:** now ruling out inclusion in EU systems to avoid oversight by ECJ. But again, establishing a parallel regime, with *perhaps* some greater alignment with EU bodies, data sharing, etc.
- Guidance is limited and what there's been now largely withdrawn or no longer accessible (e.g. HMG technical notices on the various regimes and HSE guidance on chemical regulation).



REACH

- Strong industry preference (Chemical Industry Association and CEFIC) for UK to stay in REACH and European Chemicals Agency (**ECHA**).
- Joint February paper by CIA & CEFIC:
 - On no-deal, UK would adopt a separate REACH-like regime. Risks “*triggering substantial disruption costs, complexity and burden for business on both sides*”.
 - Immediate cost expected to be over £1bn “*with no environmental benefit and potentially forcing duplicate testing including animal studies*”.
- Partial clarity on detailed outcomes, four years on



REACH - Latest

- Minister letter to Environmental Audit Committee, 22 May:
- UK will retain the fundamental approach of the EU REACH system.
- UK will not seek associate membership of the EU's system, to avoid ECJ oversight.
- An annex to the UK's proposed trade agreement states both sides should agree to develop a memorandum of understanding between the HSE and ECHA.
- Work on a new Chemicals Strategy has been temporarily paused due to the pandemic.

<https://committees.parliament.uk/publications/1277/documents/11202/default/>



REACH – Database Access is Key

- Article 120 of REACH permits ECHA to share information with a third country government, or national authority, providing its purpose is cooperation on chemicals management and the third party protects the confidential information.
- This *"could be used as one of the elements that form the basis of an agreement"* in the trade talks (CIA).
- The CIA is *"currently focusing on developing some ideas on how a data-sharing mechanism could work in practice in order to help inform negotiations"*.



Classification Labelling & Packaging Regulation - CLP

- Will have an independent regime, based on CLP, with HSE performing ECHA's functions.
- Most CLP requirements continuing:
 - Manufacturers, importers and downstream users to classify, label and package the substances and mixtures they place on the UK market.
 - Suppliers to identify, examine and evaluate available scientific and information on substances and mixtures to ensure all the requirements of classification are fulfilled.
 - Testing arrangements, including the prohibition of testing on humans or non-human primates for the purposes of CLP.
 - Manufacturers and importers to notify details of self-classifications for the substances they place on the market, to HSE.



Biocidal Products Regulation - BPR

- On no-deal, UK establishes BPR-like framework.

[UK Government Technical Notice \(withdrawn March 2020\)](#)

- HSE remains competent authority for the UK, but takes on ECHA's role for active substance approvals and product authorisations.
- Current approvals and authorisations to remain valid in the UK until the normal expiry. Authorisation holders would need to be established in the UK, with a phase-in period to give businesses time to make arrangements.
- Query, biocidal product applications still being processed by HSE or another EU country after transition.
- *HSE guidance no longer available.*



Industrial Emissions Directive - IED

- Continue with ‘**integrated pollution control**’ for industrial emissions:
 - integrated pollution prevention and control
 - large combustion plants
 - waste incineration
 - solvents emissions
 - titanium dioxide
- For now, existing EU law will continue to have effect, including the IED and BAT Conclusion Implementing Decision.
- But UK will no longer be part of the Seville process for setting BAT (best available techniques) Conclusions via BREF notes from 1 Jan 2021.



IED

- Secondary legislation to:
 - implement the IED - amend legislative references, transfer powers and meet international obligations
 - ensure the existing BAT Conclusions have effect in UK law
 - provide powers to adopt future BAT Conclusions in the UK and empower the devolved administrations to determine BAT
- [Clean Air Strategy for England](#) sets out actions for determining future UK BAT for industrial emissions.
- Aim to ensure that the future UK BAT regime adopts the collaborative approach between government, regulatory authorities and industry.
- Will also *consider* the effects of the EU approach.



EU ETS

- BEIS proposes a UK ETS to replace EU ETS (1 June).

<https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>

- UK ETS will apply to energy-intensive industries, power generation and aviation – involving combustion in installations with a total rated thermal input of 20MW plus.
- Proposals set the overall cap 5% below the UK’s notional share for Phase IV of the EU ETS.
- The government then intends to “*further amend the cap again in line with its net-zero target*”.



EU ETS

- Participants to surrender enough allowances (per tonne) to cover all emissions, with penalties up to £100 per allowance.
- A proportion of allowances will be allocated for free.
- Free allowances will also be made available for new entrants to the UK ETS as well as existing operators who increase their activity.
- UK *“would be open to considering a link between a UK ETS and the EU ETS, if it suits both sides’ interests..”*



Chemicals post-Brexit - Where are we going?

- [The Environment \(Amendment etc.\) \(EU Exit\) \(Amendment\) \(E&W\) Regs 2020](#), implements as UK law another 32 directives adding to last year's regs, to include industrial emissions, energy efficiency, urban waste water treatment, nitrate pollution, landfill and the waste and water framework directives.
- EU report on status of talks calls for the UK to remain “*dynamically aligned*” to chemicals safety legislation and to REACH, while emphasising that “*even with dynamic alignment, UK companies would be subject to the same obligations that apply to non-EU companies outside the [EEA]*”.
- Deal or no deal, UK government largely adopting EU standards by mirror systems.
- Parallel systems likely to be, at best, a significant administrative burden.
- But at least they avoid system divergence, for now



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