

Dr Thérèse Coffey  
Department for Environment, Food and Rural Affairs  
Nobel House,  
17 Smith Square,  
Westminster  
London,  
SW1P 3JR

2<sup>nd</sup> April 2019

Dear Minister,

**RE: The Reach etc. (Amendment ETC.) (EU Exit) Regulations 2019**

As Chief Executive of Breast Cancer UK, I am writing to raise concerns about the Government's arrangements to copy the EU's REACH chemicals regulation into domestic law and create a new UK Chemicals agency in the event of a no-deal Brexit. Breast Cancer UK is dedicated to the prevention of breast cancer, by tackling the environmental and behavioural risk factors associated with the disease, including exposures to carcinogenic, hormone disruptors and other hazardous chemicals.

Following the passage of The REACH etc. (Amendment ETC) (EU Exit) Regulations 2019<sup>1</sup> through Parliament, we believe that the Statutory Instrument (SI) is missing several important dimensions. We are especially concerned by the array of regulatory and governance gaps contained within the SI and we are seeking reassurances that the Government will address these concerns as soon as possible. The remainder of my letter briefly touches upon each of these concerns in more detail.

**1) Post-Brexit Regulation**

Over the years, REACH and associated regulations on chemicals, food contact materials, biocides, pesticides and cosmetics have successfully reduced consumer exposure to chemical pollutants linked to Breast Cancer. We, alongside multiple industry, health and environmental NGOs, regard REACH as the 'gold standard' for chemicals regulation. Accordingly, Breast Cancer UK believes that the UK must stay aligned with REACH, post-Brexit. We very much welcome, therefore, the government's commitment to seek associate membership of the European Chemicals Agency (ECHA)<sup>2</sup>.

We fully support the Government's objective of maintaining a robust regulatory regime post-Brexit and recognise the necessity of DEFRA's preparations for the possibility of the UK not being part of the ECHA. However, we believe the REACH SI contains a number of crucial omissions that need to be addressed. We are extremely concerned the SI does not contain any provision to maintain regulatory alignment with the EU and notes, in fact, that the UK is planning to adopt a simplified version of REACH decision making procedures. Despite Government commitments to uphold environmental standards<sup>3</sup>, we fear these omissions will lead to dilution of existing chemical standards with the UK failing to restrict or ban certain chemicals in line with the EU.

To ensure the UK maintains a robust regulatory system, we would encourage the government to take immediate steps to first mirror and then keep pace with EU Chemicals Regulation. We see this as the only way that UK manufacturers, "only representatives" and importers will be able to copy regulatory measures across from the EU and make the UK regulatory process simpler, less bureaucratic and less costly, whilst protecting UK public health and the environment. We also call for any new UK REACH system to enshrine the EU's "Precautionary principle" within domestic law. We further seek reassurances that the Government's Better Regulation initiative<sup>4</sup> will not unintentionally relax key regulations transferred from EU to UK law, which have ensured that our citizens are exposed to fewer carcinogens and endocrine disrupting chemicals linked to breast cancer.

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<sup>1</sup> The REACH etc. (Amendment etc.) (EU Exit) Regulations (2019), available at: <http://www.legislation.gov.uk/ukdsi/2019/9780111178034> (Accessed: 2nd April 2019)

<sup>2</sup> HM Government (2018) 'The Future Relationship Between The United Kingdom And The European Union', available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/725288/The\\_future\\_relationship\\_between\\_the\\_United\\_Kingdom\\_and\\_the\\_European\\_Union.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf) (Accessed: 2nd April 2019)

<sup>3</sup> DEFRA (2018) 'Upholding environmental standards if there's no Brexit deal', available at: <https://www.gov.uk/government/publications/upholding-environmental-standards-if-theres-no-brexit-deal/upholding-environmental-standards-if-theres-no-brexit-deal> (Accessed: 2nd April 2019)

<sup>4</sup> Parliament.uk (2018) 'Business Impact Target: Written Statement- HCWS776', available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-06-20/HCWS776/> (Accessed 2nd April 2019)

## 2) The Health & Safety Executive

We welcomed the Government's confirmation, in its no-deal technical notice<sup>5</sup>, that the Health & Safety Executive (HSE) would become the UK's regulatory authority for chemicals. However, we are worried that the agency lacks the capacity, resources, experience and expertise necessary to adopt the functions of the ECHA effectively. Accordingly, we seek clarification that DEFRA has plans to set aside sufficient funding for HSE to address these issues. In addition, the proposals for setting up the HSE lack crucial governance features and credible arrangements for stakeholder engagement which are further issues of concern.

To date, the ECHA has a robust governance structure consisting of a management board and a range of technical committees where member states can vote, and stakeholders can participate. However, the SI appears to remove these crucial layers of scrutiny and oversight, providing the HSE with just a simple obligation to seek external expertise. These plans risk reduced public participation and the creation of a closed and opaque system which we believe will negatively impact the quality of decision making, from the HSE and the Secretary of State, on crucial matters such as substances of very high concern. Such an approach risks politicised decision making and may pile pressure on the HSE to bow to vested interests, resulting in narrow, biased and unbalanced decisions.

Most importantly, these arrangements risk opening the door to regulatory divergence as it remains unclear whether the HSE will align or diverge from ECHA decisions. We recommend that the HSE replicates the approach of the ECHA's management board, inviting representation from a broad range of experts, agencies, stakeholders and representatives from devolved administrations.

## 3) Replacing the REACH Database

We note the Government's intention to "grandfather" existing EU chemical registrations into the UK system, as a no-deal outcome would see the UK lose access to the EU REACH database. We also welcome the clarity DEFRA has provided on the steps businesses need to take to maintain their market access and the data timelines provided to support the creation of a UK chemicals database.

We believe, however, that the proposed two-year grace period for companies to provide full data packages remains unrealistic, and is not consistent with REACH's 'no data, no market' principle. Given that REACH registrations can be jointly-held between companies, individual companies may not have the intellectual property rights to access the data required to support their existing REACH registrations. If the UK Chemicals database loses access to this data, it would make it harder to keep pace with global action on noxious chemicals.

We believe that questions remain over the Government's ability to access the necessary data to populate the UK database. This would severely impact the UK's ability to assess whether a chemical is a contributor to increased breast cancer risk and will result in the new regime operating a weaker chemicals database. We welcome your reassurances that these timelines remain under review and we call on DEFRA to extend the timetable for companies to submit full data packages into the UK chemicals regime.

In summary, as currently proposed, we believe the SI risks unintentionally weakening the regulation of chemicals, including those with links to cancer and hormone disruption. We ask for a response on how DEFRA intends to remedy these concerns through future Government policy, as maintaining existing protections from harmful chemicals must be a post-Brexit priority. We stand ready to support DEFRA in any way possible, and we would very much welcome an opportunity to meet with you, or your designated officials, to discuss our views and proposals further.

I look forward to hearing from you.

Yours sincerely,



Lynn Ladbrook  
Chief Executive

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<sup>5</sup> DEFRA (2019) 'Regulating chemicals (REACH) if there's no Brexit deal' available at: <https://www.gov.uk/government/publications/regulating-chemicals-reach-if-theres-no-brexit-deal/regulating-chemicals-reach-if-theres-no-brexit-deal> (Accessed 2nd April 2019)