

Environmental Audit Committee inquiry into the Future of Chemicals Regulation after the EU Referendum

October 2017

1. Wildlife and Countryside Link

1.1. Wildlife and Countryside Link brings together 46 environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment. Taken together our members have the support of over 8 million people.

2. Executive Summary

- 2.1. Increasing evidence has shown that wildlife is negatively affected by chemicals, with a suggested 27% of total ecosystem losses due to chemical pollution. In this submission, we build upon the information we provided to the last inquiry and welcome the EAC's additional inquiry.
- 2.2. Through the REACH regulation, tens of thousands of chemicals are managed, in order to prevent adverse effects on the health of humans and wildlife. There are significant issues with the current proposal to transpose the REACH regulation entirely into UK legislation and jurisdiction through the Withdrawal Bill. As concluded in the previous inquiry creating equivalent processes and procedures within the UK would likely require significant time and Government investment. There is considerable risk that going down such a route could result in a weaker system and a more onerous approach for industry. This is especially the case for chemicals which would have to pass through both the EU and UK system. In leaving the European Union, the UK should not experience any weakening of regulation which protects people and the environment from potentially harmful chemicals. The only way to be sure of achieving this objective is for the UK to stay in REACH.
- 2.3. We reiterate that the REACH regulation is not the only important EU legislation governing the safe production, use and disposal of chemicals. For example, the Water Framework Directive (WFD) is an essential piece of legislation for improving water quality. The WFD must be retained and enhanced to ensure better monitoring and detection of chemicals and other pollutants within our water systems to improve ecosystem resilience. Furthermore, as a signatory to the Sustainable Development Goals (SDGs), the UK has committed to ensure that chemicals are used and produced without causing adverse effects on human health and the environment. Without a robust approach to chemicals regulation, this goal and others within the SDGs, may not be met.
- 2.4. **Wildlife and Countryside Link recommends the following:**
- **Government ensures that REACH and the European Chemicals Agency (ECHA) remains an integral part of UK chemicals legislation once we leave the European Union. This will be the most cost beneficial way of ensuring effective control of chemicals.**



Wildlife and Countryside Link
89 Albert Embankment
London
SE1 7TP

T: 020 7820 8600
F: 020 7820 8620
E: enquiry@wcl.org.uk
W: www.wcl.org.uk

'Wildlife and Countryside Link is a unique coalition of voluntary organisations concerned with the conservation and protection of wildlife and the countryside.'

Chair: Dr Hazel Norman Director: Dr Elaine King
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- **Other EU legislation is transposed into UK law through the Withdrawal Bill with no subsequent reduction in standards or enforcement to ensure effective control of chemicals, including the Water Framework Directive.**
- **The EAC considers how to best ensure the safe production, use and disposal of pharmaceuticals (both human and veterinary).**
- **Additional monitoring of chemicals is required which will put the UK on the forward foot and ensure the health of our environment and ourselves.**

3. Transposing REACH

- 3.1. We welcome the EAC's recommendations to government following the inquiry into the future of chemicals regulation after the EU Referendum. Yet, the Government's response does little to allay concerns. We urge the EAC to seek more detail of government's plans to transpose REACH.
- 3.2. We welcome the Government's intention to achieve a satisfactory outcome for the UK and the EU sector on registration, regulation and trade. However, if we seek an alternative to being a signatory of REACH, it is not simply the transposition into UK legislation which will be difficult but how it will actually work in reality. The Withdrawal Bill is only the first step and if the plan is to establish an equivalent process to ECHA in the UK, this appears to be in many instances a duplication of effort, whilst being expensive and requiring significant expertise and resources. The Government has made no indication for how they propose to do this.
- 3.3. The easiest and most realistic approach to incorporating REACH into UK legislation is for the UK to sign up to REACH within any trade agreement with the EU. This option should be negotiated so that the UK maintains a say in the decision making process and allows full access to the data. In addition, this will not result in any weakening of legislation. This option seems to be the most pragmatic and least burdensome approach. To achieve this, the Withdrawal Bill must enable REACH to continue to apply as domestic law upon repeal of the European Communities Act. All detail would remain within REACH, updated by EU processes as appropriate.
- 3.4. In her speech to Parliament on 9 October, Theresa May stated that, "there will be areas where we want to achieve the same goals in the same ways, because it makes sense for our economies". We argue that REACH and chemicals legislation should be one of these areas.
- 3.5. UK exporters of chemicals to the EU will still have to register those chemicals with ECHA and in doing so will be bound by REACH and other relevant EU legislation. A stand-alone system could see UK companies having to put products through parallel assessment processes; a burden likely to limit markets or stifle innovation in UK Industry.
- 3.6. Due to the centralised nature of REACH, it is unlikely that an amended version of REACH can simply be created to work in the UK. In addition, the UK Government would struggle to establish the expertise and resources to enable a successful equivalent, or better system, than REACH be developed in the UK. [ECHA have confirmed that if the UK leaves REACH](#), it would no longer have access to safety information about chemicals in the main REACH database, or have any say in future

registration of chemicals. In practice, this means that UK regulators will have to make decisions on chemical controls with very limited information as much of this data is confidential and owned by companies, therefore not free to use. This is likely to cause a reduction in the protection of human health and the environment.

- 3.7. REACH manages tens of thousands of chemicals. To do the equivalent job in the UK should not be underestimated. For example, there are over 140,000 chemicals in the EU market and the UK generates over 6,000,000 tonnes of hazardous waste (data early 2000s). New chemicals are being produced all the time which will have to be assessed for safety. In addition, REACH provides incentives to find safer alternatives and a level playing field across Europe.
- 3.8. REACH is not perfect, but it is the best regulatory system in the world. Losing access to the database of chemical properties and uses should not be underestimated – REACH has made more progress on problematic chemicals than any other regulatory system in the world. A recent review of REACH estimated the benefit at €150-500 million in 2017, which over the next 25 years adds up to €2,800 - €9,000 million. Given the budgetary cuts experienced by DEFRA over the last few years, establishing a system such as that in the USA, which puts the burden on the regulator rather than on industry, would not be pragmatic unless long-term funding was made available to ensure such a system could be run effectively. Whether the regulator be DEFRA or a separate new body, a funding mechanism would be required, which does not result in environment or health budgets being cut, as these are already overstretched. In addition, any new chemicals agency must have additional support and resources from both the HSE and DEFRA.
- 3.9. Any equivalent system will take a substantial amount of time to develop and embed into business as usual, whilst in the meantime leaving significant uncertainty for industry.
- 3.10. If the UK remains signatory to REACH after leaving the European Union, as other countries from the European Economic Area are, it can retain its voice in the control of hazardous chemicals throughout the EU rather than any attempt to copy and maintain equivalence with no voice in decision making.
- 3.11. Any weaker equivalent process to REACH will lead to uncertainty and will have negative environmental and human health impacts. The UK does not want to revert to being the dirty man of Europe once again - evidence highlights that the British public do not want weaker environmental regulation. A recent survey carried out for SumofUs and CHEM Trust shows that the public – whether Remain or Leave voters – do not want any reduction in the regulations that protect people and the environment from potentially harmful chemicals after Brexit.
- 3.12. In addition, if chemicals regulations were to be weakened, a financial burden would be placed on other industries. For example, whilst the current system regulates the release of these harmful chemicals in the first place, without a system equivalent to REACH, the cost of providing drinking water would increase as water companies would use more energy and chemicals removing pollutants, in order to maintain current high standards of drinking water. Estimates indicate that £300 – £400 million in capital expenditure was made by UK water companies to reduce nitrate levels in ground and surface water from 2004 - 2009. Without REACH, a further 15% of sewerage treatment plant capacity would, in principle, be taken up in treating the

chemicals contained in industrial wastewater, assuming that they did not inhibit nitrification. A weaker equivalent would mean that the UK becomes the place where those chemicals recently banned in Europe get sold.

4. **Accountability**

- 4.1. If the UK leaves REACH, there will be no process for dispute resolution. We refer the EAC to Link's previous [statement](#) regarding access to justice. Given the focus on transposing legislation through the Withdrawal Bill, there has been little commitment from Government around how legislation previously overseen by the EU, such as that on chemicals, will be enforced and how the Government will be held to account. The UK is obliged to provide access to environmental justice as a result of binding commitments under the Aarhus Convention. Yet, the current Withdrawal Bill makes no commitment to this. Recently the [UK has been criticised](#) for law reforms which have resulted in a deterioration of citizen's rights to bring forward environmental cases.
- 4.2. The European Commission plays a key role in the current authorisation process as it determines the substances subject to authorisation and decides whether to grant authorisation. It also adopts EU wide restrictions. Assuming that the Government takes over this role, it is important that this process is transparent and evidence based.
- 4.3. Post-Brexit, the Government must ensure any institutions providing governance are adequately resourced, fully independent, have the relevant expertise and have sufficient legal powers to uphold and enforce the law.

5. **Other relevant chemicals regulation**

- 5.1. Although the focus of this inquiry is on REACH, it does suggest EU Chemicals Regulation more widely. As such it is important that other EU chemical regulatory mechanisms are not forgotten. The Water Framework Directive and Directive on Environmental Quality Standards are hugely important in improving our water quality. Other relevant EU legislation which should be brought into UK legislation include (but not limited to) the Sustainable use of Pesticides Directive and the Biocidal Products Regulation, Industrial Emissions Directive, Marine Strategy Framework Directive, Bathing Waters Directive, Drinking Water Directive and the Urban Waste Water Treatment Directive.
- 5.2. The Water Framework Directive, together with the Directive on Environmental Quality Standards, is vital to improving the quality of our water bodies. The WFD has resulted in a shift change in the way we manage our water environment; including significantly improved environmental monitoring, more aligned management and a large number of partnership projects to enhance our environment, to name just a few benefits.
- 5.3. Within any Brexit scenario, robust legislation for monitoring and addressing emerging chemicals of concern is necessary. This is currently addressed through control of substances on the priority substances list and a watch list. There are 33 substances on the priority substances list and a few on the watch list. Monitoring requirements are minimal and down to Member State discretion. Currently the minimum does not provide a representative sample across the UK, transitional waters in particular have limited chemical monitoring. Pharmaceuticals are included within the remit of this

legislation, whereas there is currently very limited alternative legislation. At present there are 275 different pharmaceuticals globally detected in the environment with limited control or monitoring. Three are being monitored under the watch list. There is increasing evidence of the negative impact of certain pharmaceuticals on wildlife. For example, 45% of UK rivers could have ibuprofen levels found to be harmful to fish¹ and the anti-depressant Prozac has been shown to lead to a reduction in starling foraging and breeding behaviour². These tend to alter behaviour rather than cause death, but impact populations through affecting reproductive success and reduced survival. **We recommend that the EAC considers how to best ensure the safe production, use and disposal of pharmaceuticals (both human and veterinary).**

- 5.4. The UK must ensure adequate monitoring of bioaccumulation and combination effects of chemicals in order to effectively understand the impact of chemicals on the environment. Monitoring of sub-lethal impacts, such as those affecting reproduction and reduced fecundity should also be taken into account, whereas currently only lethal doses are considered. Chemicals that accumulate in aquatic plants and animals can accumulate up the food chain via predation and ultimately into human food. These exposures can lead to a variety of problems in predatory species, including thinning of eggshells, disruption of parental behavior, reproductive disorders, and cancers, among other effects. Laboratory studies also suggest that the effect of some endocrine disrupting chemicals can be transgenerational affecting subsequent generations.

6. Implications for the environment

- 6.1. If the UK had a reduced capacity to regulate and manage chemical production and release, the negative impact on the environment could be huge. Hundreds of chemicals are classified with regard to aquatic toxicity under the EU harmonized classifications - 1,045 chemicals are classified as “very toxic to aquatic life”; 933 are classified as “very toxic to aquatic life with long lasting effects”; 566 as “toxic with long lasting effects”; 406 as “harmful with long lasting effects”; and 252 as “may cause long lasting harmful effects to aquatic life”. It is suggested that at least 27% of total ecosystem losses are due to pollution by chemicals. The cost of inaction on chemicals for biodiversity is high³.
- 6.2. Adverse effects on aquatic animals include cancers, disrupted reproduction, immune dysfunction, damage to cellular structures and DNA, and gross deformities. Examples of adverse effects of water contaminants on aquatic vertebrates include feminisation of fish, amphibians, and reptiles; and developmental delays, acceleration, and malformations in amphibians exposed to agricultural chemicals.
- 6.3. One specific example within the marine environment is the impact of Polychlorinated Biphenyls (PCBs). For many years the UK has engaged in and funded high quality

¹ Exploiting monitoring data in environmental exposure modelling and risk assessment of pharmaceuticals (2014). A Boxhall, V Keller, J Straub, S. Monteiro, R Fussell, R. Williams. Environmental International [Volume 73](#), December 2014, pp 176–185

² Behavioural and physiological responses of birds to environmentally relevant concentrations of an antidepressant (2014). T. Bean, A. Boxall, J. Lane, K Herborn, S. Pietravalle and K. Arnold. Philosophical Transactions of the Royal Society B: Biological Sciences. November 2014, Vol 369, issue 1656.

³ http://www.unep.org/hazardoussubstances/Portals/9/Mainstreaming/GCO/The%20Global%20Chemical%20Outlook_Full%20report_15Feb2013.pdf

research into exposure trends in PCBs and while there has been a reduction in their release since the 1987 ban on production, adverse ecotoxicological effects continue to be seen on marine wildlife. Worrying population declines in several marine megafauna, particularly North Atlantic killer whales (the most ‘PCB-contaminated’ species) and bottlenose dolphins have been recently recognised⁴. Further information on PCBs - and persistent organic pollutants more widely - be found in a previous [Link response to a consultation by Defra](#).

- 6.4. It should also be noted that management of chemicals in production, consumption and disposal phases may have negative impacts on water resources.
- 6.5. Any future regime for the management of chemicals would be of most benefit if there are no divergences in policy or practice across the devolved administrations. The negative impacts upon industry described above if the UK were to adopt a different approach to that taken by the EU would equally apply across the UK if different approaches were taken by the devolved administrations. In addition, enforcement would become complicated where the chemicals released from one country’s industries impact species or ecosystems, which by their nature do not respect administrative boundaries. Key examples include the cross-border river systems contained within the Severn, Dee and Solway Tweed River Basin Districts.
- 6.6. The UK has signed up to a number of SDGs for 2020 and 2030, including by 2020 to use and produce chemicals in ways that do not lead to significant adverse effects on human health and the environment; by 2030 to substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water, and soil pollution and contamination; by 2030, to improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater, and increasing recycling and safe reuse. The UK approach to chemicals regulation should be robust and well supported to ensure these goals are met and arguably, this is not best done alone. The costs of not taking action towards the sound management of chemicals are often higher than the costs of implementing measures to manage chemicals in ways that minimize adverse effects to human health and the environment.

This response is supported by the following organisations:

- Angling Trust
- Buglife
- Environmental Investigations Agency
- Friends of the Earth England
- International Fund for Animal Welfare
- Rewilding Britain
- Rivers Trust
- RSPB
- Salmon & Trout Conservation
- Whale & Dolphin Conservation
- Wildfowl & Wetlands Trust
- Zoological Society London

⁴ Jepson, P. D. & Law, R. J. (2016). Persistent pollutants, persistent threats: Polychlorinated biphenyls remain a major threat to marine apex predators. *Science* **352** 1388-1389.