Industry and Regulators Committee Inquiry into UK Regulators

1 December 2023

This briefing is on behalf of nature and animal welfare coalition Wildlife and Countryside Link (Link) and covers the role of the Health and Safety Executive (HSE) as the primary chemicals regulator in Great Britain.

Introduction

Wildlife and Countryside Link welcomes the opportunity to respond to this call for evidence from the Industry and Regulators Committee on UK Regulators. Our Blueprint for Water group has also submitted a detailed response to this Inquiry.

As a coalition of 80 organisations working for the protection of nature in England, and engaging on chemicals policy via our Chemicals Taskforce group, this response provides evidence on the regulatory work undertaken by HSE in regard to its responsibilities and obligations towards human health and the environment.

This response does not aim to repeat the general points or Ofwat-specific answers contained in Blueprint's response but rather outlines thoughts on the role, remit and success of HSE as the primary chemicals and pesticides regulator in Great Britain. To this effect, Link has kept the remainder of this response specific to the questions most relevant to the role of HSE and any environmental impacts.

Summary

In order for UK regulators to successfully regulate for the protection of the environment, and therefore deliver good environmental and health outcomes in alignment with their regulatory obligations, the following will be required:

- Regulators must be sufficiently funded and resourced to fulfil their regulatory function, including to deliver a comprehensive and robust advisory, monitoring, and enforcement regime.
- Regulators must have clear, strategic steer and backing from Government to uphold regulation. A strategic regulatory framework should set out the long-term vision for regulated sectors, and how this will contribute towards the achievement of environmental targets and outcomes.

- Regulators should have a clear 'green duty', to further provide this strategic steer, direction and mandate towards positive environmental outcomes.
- Regulators should undertake broad, fair stakeholder engagement and be fully transparent about their decision-making processes.
- As of 1 November, regulators, including HSE, have a legal duty under the Environment Act to consider the environmental impact of new policies. In relation to chemical protections, inactivity or decisions NOT to take regulatory action to prevent harm are of the greatest significance – the regulatory system needs to be proactive in taking action to rectify environmental damage at source.

1. Are UK regulators being given a clear job to do?

Please see the Link Blueprint response for a more comprehensive answer and evidence of regulatory duties. For the purposes of this response, our general view is that HSE as a regulator has a responsibility under UK REACH, Regulation 1107/2009 (relating to the authorisation/placing on the market of plant protection products), Regulation 396/2005 (relating to maximum residue levels in food) and related legislation to provide a high level of protection of human health and the environment from the use of chemicals. This is a clear responsibility to regulate to protect human health and the environment.

2. Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?

The right balance is not always struck. For example, the relationship between Defra and HSE is not always clear, particularly where HSE makes policy decisions (see example outlined in the response to Q3). It is a responsibility of the Government to ensure that regulators have appropriate strategic steer and are well-resourced alongside other regulators such as the Environment Agency to deliver robust and comprehensive monitoring and enforcement regimes.

In the chemicals industry, regulators should focus their actions on whether such chemicals are safe and do not present threats to human health or the environment. The UK should regulate in line with this principle and should not revert to a risk-based regulatory system.

3. **Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?**

The right balance has not yet been found between strategic and political input from Government and the stakeholders it engages and the operational independence of HSE as a regulator.

For example, there was a decision not to match new EU classifications to better identify endocrine disrupters unless and until they are agreed at international level. HSE did not consult on this decision (independently or via Defra) nor was it announced publicly – it was uncovered in an answer to Parliamentary Questions.

4. **Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?**

HSE has introduced new layers of evidence gathering and analysis before taking regulatory action, which in our view is not required under the EU REACH legislation. For example, it's undertaking lengthy Regulatory Management Options Analysis on substances that have already been banned and restricted in the EU (on which there is ample evidence of the risks they pose and that the UK was subject to prior to exiting EU REACH). The result is delays to regulatory action, which is prolonging exposure and obstructing HSE from meeting its primary regulatory obligation under UK REACH.

It's unclear if HSE is assembling information that it considers is needed later on in Impact Assessments which must accompany secondary legislation bringing forward new regulation (requirements which have been introduced under the Better Regulation Framework Guidance).

The effect, however, is that HSE is unable to act swiftly and with urgency to meet short and long term priorities or mitigate threats to human health and environmental outcomes.

5. **Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?**

See response to Q6 which answers this question.

6. **How effectively do regulators co-operate with one another, and how could this be improved?**

There needs to be improved coordination between the different agencies and parts of government responsible for minimising the harmful effects of hazardous chemicals. For example, there needs to be more emphasis on health impacts from hazardous chemicals than there is currently and better coordination with the UK Health Security Agency which is responsible for public health risk assessment advice to HSE. As a first step, there needs to be proper join-up between the Major Conditions Strategy and the Chemicals Strategy once they're published.

With regards to pesticides, the current regulatory system is too fragmented. The chain of command and the responsibility for pesticides is opaque, confusing and ill-defined. Split between the HSE/Department of Works and Pensions and Defra, with the Chemical Regulation Directorate in the middle, makes for a confusing approach to regulating, monitoring and enforcing pesticide regulations. In addition, the Department for Health and Social Care (DHSC) and other health bodies are entirely absent from the regulatory system since pesticides are viewed as an agricultural or environmental issue, with the health aspect very much neglected. Regulators – including the DHSC and other health bodies – urgently need to coordinate with each other in order to more effectively reduce the impacts of pesticides on both human health and the environment.

7. **Do the UK's regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?**

UK environmental regulators are undermined by insufficient budgets, resources and capacity to effectively monitor and enforce regulation. Reviews by the National Audit Office and Public Accounts Committee found that a lack of operational capacity and loss of data is having a negative impact on HSE's ability to assess risks and carry out its work. The NAO found that HSE was facing challenges in recruiting experienced toxicologists and losing a quarter of staff time on training staff in-house, concluding that these capacity constraints 'may delay regulatory decisions'.

The lack of capacity in the UK system to match the scale and pace of EU REACH is resulting in the UK prioritising fewer, as well as weaker protections from harmful chemicals, and at a slower pace. This may be exacerbated by an ideological interest in less or more 'light touch' regulation. So far, UK REACH has initiated just two

restrictions (which are not yet in force) on hazardous substances since the UK exited the EU**,** compared to 8 that have been adopted in the EU and another 17 that have been initiated. This is creating a protective gap with the EU that's set to become a chasm over the coming years. The EU Restrictions Roadmap, which targets groups of widely used chemicals of key concern such as bisphenols and flame retardants, would, if fully implemented, lead to an estimated 5,000 to 7,000 chemicals being banned by 2030.

Overall, regulators need better access to independent scientific research. HSE staff need the resources to be able to access these papers (i.e., through journal subscriptions and other databases). Without this access, there is a risk that industry data is used to fill the gaps, creating a conflict of interest as the primary regulated group.

8. **Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?**

The Government and Parliament should both hold HSE and other environmental regulators working on chemicals (and in the case of pesticides, the various regulators responsible for pesticides regulations) accountable for their performance against their statutory objectives and against progress towards mitigating the risk to human health and the environment posed by chemicals. As public bodies, HSE and other regulators are accountable for delivering outcomes against the 25 Year Environment Plan, Environment Act 2021, Climate Change Act 2008 and the Environmental Improvement Plan 2023 targets.

Both Government and Parliament need to consult with a wider range of stakeholders working on chemicals, and in a responsive way to develop a sufficient accountability framework for chemicals regulation.

For pesticides, the capacity of the Expert Committee on Pesticides must be expanded to hold regulators accountable. It should also be allowed to set its own agenda and work streams in addition to its scrutiny of pesticide approvals.

Civil society and relevant stakeholders are also responsible for ensuring HSE is acting accountably. However, there have been very few opportunities to undertake stakeholder engagement and much of this has been done through Defra (see response to Q9 for more detail) despite HSE at times making policy.

The OEP will have a role to play in accountability in the long term by scrutinising chemicals and through its assessment of Government's progress with the

Environmental Improvement Plan (specifically, the assessment of chemicals through the ten goals of the 25 Year Environment Plan).

9. **How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?**

Ahead of leaving EU REACH, many warned that the UK system lacked an equivalent level of transparency compared to the European Chemical Agency's open committee structure, which could result in a system that was more susceptible to industry and backdoor lobbying. The then Chair of the Environmental Audit Committee warned about the loss of these "important democratic oversight mechanisms".

We are particularly concerned about 4 key areas of HSE decision-making that lack transparency:

A. Making public policy .
B. Decisions to reject or de-prioritise EU controls
C. Regulatory processes for priority substances
D. Opportunities for stakeholder participation

More transparency on the following would help to ensure that HSE is meeting its health and environmental objectives as well as allowing for appropriate scrutiny from stakeholders.

A. **Making public policy**

- Under UK REACH, HSE is responsible for policy on Classification, Labelling & Packaging (CLP) and Defra leads on the Registration, Evaluation, Authorisation and Restriction of chemicals (REACH).
- As mentioned above, this year the decision was made not to match new EU classifications to better identify endocrine disruptors, unless and until they are agreed at international level, a process which could take many years. In our view, measures to improve identification are vital if we are to reduce the impact of endocrine disruptors on our health and environment, with EDCs widely used in consumer products such as make up and linked to adverse health impacts including breast cancer.
- This decision was taken without any consultation and made without even an announcement. Link members and partners were only made aware of it from an Answer to a couple of Parliamentary Questions.
- As of 1 November, public authorities such as HSE have a legal duty under the Environment Act to consider the environmental impact of new policies. In relation to chemical protections, inactivity or decisions NOT to take regulatory action to prevent harm are of the greatest significance – the regulatory system

needs to be proactive in taking action to rectify environmental damage at source. Matching EU measures to improve protection from harmful Endocrine Disruptors would bring benefits for ecosystems and wildlife, as well to human health, resulting in savings to the public health and environmental clean-up costs.

- Decisions not to adopt EU risk management measures have other potential impacts including the dumping of products on the UK market that no longer meet higher EU standards and higher levels of chemical pollution in the UK than in the EU, as well as increased regulatory barriers between UK businesses and their largest trading partners. This is regrettably the direction of travel currently, with the UK prioritising fewer substances for control which is opening up a protective gap with the EU that's set to become very wide without intervention.

B. Decisions to reject or de-prioritise EU controls

- There is a lack of transparency around HSE decisions to de-prioritise or to not take action on substances targeted for regulatory action at EU level, despite the impact of these decisions described above. It's unclear what criteria HSE is using to make its decisions, who officials have received input from, and no strong justification is needed. HSE has not yet published the criteria it uses for deciding which substances to prioritise for regulatory action, what stakeholders or institutions it receives input from and the details of the input it receives.
- The listing of Substances of Very High Concern is a very effective regulatory mechanism for signalling to the market to invest in safer alternatives. Reasons given by HSE for prioritising 4 out of 10 substances added to the EU's List of Substances of Very High Concern in 2022 included: wanting more evidence a substance is harmful; unscrutinised claims by industry, for example that alternatives do not exist; wanting evidence of a substance's use as a 'regrettable substitute' or the existence of substances from the same family of chemicals that could be used as regrettable substitutes.
    - Regrettable substitution refers to the substitution by industry of one banned chemical with another unregulated one from the same group which may have similar properties and function, but can be just as harmful.
    - NB: the UK has still not published its assessments of the 4 substances it was considering adding to the UK SVHC list and has not added a single new substance to its list since exiting the EU, while 26 has been added to the EU list during that period.

C. Regulatory processes for priority substances

- Substances that pose risks to health and/or the environment can be "restricted", including through a total ban on a substance, bans on certain uses or concentrations, or requirements for technical measures or specific labelling. Under the REACH Regulation, once a restriction is initiated, it's subject to strict

timeframes to ensure regulatory conducts its assessments and makes a recommendation in a timely manner.

- Our third concern is about the introduction of new layers of evidence gathering and analysis before a restriction is initiated. For example, lengthy reviews have only been initiated this year for substances identified as priorities last year in the UK REACH work programme – such as intentionally added microplastics and formaldehyde, on which the EU has adopted restrictions. This is exacerbating a long-standing problem with chemicals regulation of 'paralysis by analysis', which has meant that regulation has been too slow in banning substances that are being used dangerously, resulting long-term impacts for our health and environment. It seems that evidence of UK use and exposure has become a prerequisite for taking regulatory action in the UK. In our view, a protective system that really cares about exposure from harmful chemicals should assume that use of chemicals in the 27 countries of the EU is broadly similar to that in GB.
- Transparency is needed about HSE processes and what information it considers is needed for a restriction, to allow for greater scrutiny and the ability to challenge whether this evidence gathering is needed.

D.1. Fair opportunities for stakeholder participation

- Currently, the overwhelming majority of stakeholder engagement takes place through Defra.
- It has been both concerning and disappointing that there have been limited opportunities for stakeholder engagement once a restriction has been initiated.
- The EU REACH system serves as a good template for stakeholder engagement. The committee structure within the European Chemicals Agency helps to ensure its decisions can be challenged and the best information is available for its discussions, helping to avoid mistakes and to ensure that decisions are made more independently and transparently. It also helps to resolve potential differences of opinions on draft decisions, as well as to ensure that the decision-making process and scientific basis underlying it have credibility with all stakeholders and the public. The oversight mechanism within UK REACH while welcome is more limited, of 'challenge panels' of members of the REACH Independent Scientific Expert Pool (RISEP) that review HSE opinion.
- It is disappointing that there has been limited opportunity for accredited stakeholders to ask questions about HSE opinions. Despite HSE guidance saying that "accredited stakeholders will be able to ask questions" at challenge panel discussions on restrictions, which took forward commitments made by the Government in 2019 not to "undermine the opportunities for public participation and stakeholder engagement in the REACH system in place after exit day." It's vital that stakeholders have the opportunity to respond and to challenge an opinion, which is distinct from inputting into a process, when opposing views can be ignored. In addition, it is important that agendas and minutes of challenge panel meetings are published on the HSE website, including all the comments received from public consultations and its response to them, in the same way as it is on the ECHA website.

- An HSE official also attends regular UK REACH stakeholder meetings, but establishing direct channels of communication with a wide range of stakeholders would support positive stakeholder engagement.

D.2. Protocols in place for managing risks and conflicts of interest in stakeholder engagement:

- HSE needs to explicitly confirm, and regularly review, their policies for managing (and scrutinising) industry stakeholder input and be transparent about the due diligence on the state of the market and impact of any restrictions. Appropriate measures need to be in place and transparently outlined to mitigate any risks of industry (as one of the primary the groups being regulated), conflicts of interest, being too close to regulators or treated as preferred stakeholders. Full transparency would ensure that decisions are correctly aligned with HSE's regulatory objectives and that all relevant information has been considered.

Pesticides: There is need for increased transparency in pesticides decision making processes. The derogation system is a key example of transparency gaps in practice. There have been repeated approvals of the banned neonicotinoid, thiamethoxam, for use on sugar beet crops despite advice from the UK Expert Committee on Pesticides and HSE that this chemical risks reduction in survival and impacts honing flight ability of honey bees – which has been repeatedly met with backlash from civil society and members of the public. These pesticides are found at unsafe levels in English rivers, meaning there are not sufficiently transparent processes for issuing derogations in light of this reality.

PAN UK has already set out a number of recommendations for the Government to improve transparency and stakeholder engagement, which Link supports:

- Instigate a transparent authorisation system for active substances and pesticide products that would allow third party scrutiny of toxicological data supplied by the manufacturer.
- Adopt a system whereby an active substance or product would be suspended from use, pending further investigation, should independent scientific studies indicate harm to either human health or the environment from its use.
- Publish all applications for emergency use derogations of active substances or pesticide products and allow comment and analysis from interested parties prior to any decision to grant an approval.
- Disband (or substantially reformulate its remit) the Pesticides Form – a body that is currently skewed towards the pesticide industry and other vested interests. A fully independent stakeholder body should be created that focuses on the reduction of pesticide usage and impacts, and which has a mandate to advise and scrutinise decisions made by Government and regulators.

10. What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?

The Government has promised to maintain high standards in chemicals regulation, but the accountability and transparency and capacity issues (outlined above) means that it is failing to align with the global gold standard. The Government needs to introduce measures to keep in step with this metric and maintain protections. For example, regulating groups of substances to avoid regrettable substitutions and speeding up regulatory action, as well as matching the EU restrictions roadmap of accelerated restrictions on widely used chemicals of high concern. Success would mean that harmful chemicals are restricted in a timely manner, preventing further bioaccumulation or environmental contamination.

For pesticides, there must be clearly defined criteria for what constitutes a hazardous pesticide and Endocrine Disrupting Chemicals. The precautionary principle must be integrated into all regulatory decision-making processes and regimes. Regulators should be assessed by the restriction of hazardous pesticides as well as their assessment of independent scientific studies at the approval stage and post-approval. Ultimately, a robust set of hazard criteria (aligned with the EU) should be used as a measurement benchmark for UK pesticides approvals.

Where HSE is making policy on behalf of ministers, there need to be appropriate safeguards enacted to ensure full transparency and accountability over decisions.

11. Do any of the UK's international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?

EU REACH is considered the de facto international gold standard system for chemicals regulation. UK divergence from the EU framework is the reality, but HSE needs to be able to justify how UK use and exposure is significantly different and how the impact of EU decisions would have a significantly different impact on the UK.

Ultimately, UK REACH needs to align with EU decisions to ensure appropriate fulfilment of the health and environmental regulatory objectives. However, at minimum a protective system should assume the applicability of EU risk management measures to the UK (and default to alignment), with divergence based on evidence that UK use and exposure is significantly different (higher, as well as lower).

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 80 organisations to use their joint voice for the protection of the natural world and animals.

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The following Link members have inputted into this briefing and support greater clarity on the mandate and role of UK chemicals and pesticides regulators:

Angling Trust
Buglife
CHEM Trust
Fidra
RSPB
Soil Association
The Rivers Trust
Wildlife Gardening Forum

The following Link partners support this briefing:

Pesticide Action Network (PAN) UK
Pesticide Collaboration
The Cancer Prevention and Education Society