



---

# POST-BREXIT OPTIONS FOR UK CHEMICALS LAW

**WILLIAM WILSON**  
BARRISTER – DIRECTOR

WYESIDE CONSULTING LTD

---

Chemical Watch, CHEM Trust, Tech UK  
London, 29 September 2017

---

## INTRODUCTION

---

- † Remarks mainly about REACH, but chemicals law also covers CLP Regulation, Biocidal Products Regulation etc.
- † Commentaries on REACH and Brexit risk being out of date as soon as they are written.
- † There is no point in underestimating the legal difficulties of transposing EU to UK law.
- † “Cacophony” effect of Brexit issues on Ministers (and EU negotiators) – industry contributions need comprehensive re-thinking to have any effect at all on negotiations (as when REACH was negotiated)

# EU ENVIRONMENTAL LAW AND EUROPEAN UNION (WITHDRAWAL) BILL

- † PM Theresa May letter to President Tusk triggering A. 50 TFEU 29 March 2017 – “This legislation will, wherever practical and appropriate, in effect convert the body of existing European Union Law (“the acquis”) into UK law”.
- † White Paper 15 May 2017 made the same commitment – and it was repeated on introduction of the European Union (Withdrawal) Bill.
- † No specific environmental law in the Queen’s Speech.
- † Assumption therefore that environmental laws to be covered by general provisions of European Union (Withdrawal) Bill or, more likely, Statutory Instruments.

## WHETHER THIS MODEL WORKS FOR REACH

- † European Union (Withdrawal) Bill *as introduced* – Clause 3 – incorporation of direct EU legislation.
- † Clause 7 – regulation-making powers for “Dealing with deficiencies arising from withdrawal”.
- † Clause 9 – regulation-making powers for “Implementing the withdrawal agreement”: and in Clause 17 for “Consequential and transitional provisions”.
- † Assume Cl. 7 (or *in extremis* Cl. 9 or Cl. 17) must apply to REACH as significant adaptation required, e.g. Registrations, ECHA
- † Implies large, complex, politically contentious (*see* Second Reading debate) Statutory Instrument?

# SOME KEY ISSUES FOR BREXIT NEGOTIATIONS ON REACH

- † Overall context of UK trading relationship with EU – highly significant to REACH, as to everything else.
- † Discussion of “Swiss model”, “regulatory equivalence” etc to be seen in that context.
- † Role of ECHA, UK relationship with ECHA or establishment of UK equivalent to ECHA is at heart of issues.

## SOME KEY QUESTIONS OF REGULATORY AND LEGAL IMPORTANCE AS REACH BECOMES UK LAW

- † Transposition of EU environmental laws without effective enforcement, and without key principles such as precautionary principle and polluter pays, would not transpose existing 'acquis', as promised.
- † Reflecting whatever is negotiated.
- † Workability of REACH Statutory Instrument.
- † Duplication.
- † Devolution.
- † Divergence from ongoing EU developments with REACH (and other chemicals law).

# SOME PRACTICAL AND COMMERCIAL CONSIDERATIONS FOR THOSE AFFECTED

- † UK Only Representatives
- † UK Distributors
- † UK Registrations of chemical substances
- † UK Authorisations
- † Imports/Exports and complex supply chains, e.g. aerospace, automotive: multinationals vs SMEs: wider trade impacts of UK's choices on transposition
- † Exports to EU or sales to larger companies, and REACH as worldwide model – imply commercial advantages of REACH compatibility

## ARE WE NEARLY THERE?

- † Government “planning multiple scenarios”?
- † As at 10 August 2017, official line from HSE was –  
  
“The status of registrations made by UK companies will be considered as part of the EU Exit process. As noted above, the details of what chemicals legislation will look like in the UK after EU-exit are still being discussed. Without knowing what the system will look like, we cannot comment further.”
- † If HSE is scheduled to be taking on responsibilities of ECHA in the UK, it is worth noting that its taxpayer funded income is currently going down.  
(£140.5m 2016/17, £128.4m 2019/20 - HSE Business Plan 2017/18)

## CONCLUSIONS

- † It took four and a half years to negotiate REACH – longer to implement it fully - 18 months left before UK leaves the EU.
- † Any Statutory Instrument may need to be replaced by substantive legislation, on this and many other environmental laws, not long after Brexit.
- † Companies need much better information on the likely framework and impacts – but to influence the process at all, need to be better organised. Contingency planning needs to be well advanced, not waiting for government.



# Thank You!

**WILLIAM WILSON  
BARRISTER - DIRECTOR**



**EMAIL: [INFO@WYESIDECONSULTING.COM](mailto:INFO@WYESIDECONSULTING.COM)  
TELEPHONE: +44 (0) 1225 730 407**