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Protecting humans and wildlife
from harmful chemicals

Post-Brexit UK chemicals law: **The only way is REACH**

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Chemical Watch conference
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About CHEM Trust

- A UK registered charity working at EU, UK & Global levels to protect humans & wildlife from harmful chemicals
- Working with scientists, technical processes and decision makers, in partnership with other civil society groups
- Focus on identification of, and action on, hormone disrupting chemicals
- See our blog & twitter for more: www.chemtrust.org

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Laws regulating chemicals in food packaging are not good enough, European Parliament says

by MICHAEL WARHURST on OCTOBER 6, 2016 EDIT

The European Parliament has today overwhelmingly backed a [report](#) calling for substantial improvements in the laws covering the chemicals that are used in food packaging and processes, and which can leach into the food we eat. They also called for a ban on the use of the hormone disrupting chemical [Bisphenol A](#) in all food contact materials. [\[read more\]](#)

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Dust: Not only a nuisance, but also a source of hazardous chemicals

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"Home is where the toxins are – the hidden poisons we live with" in *The Guardian*

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- Medicines in the Environment: A Growing Threat to Wildlife and Drinking Water
- Commission proposal on EDC criteria means human harm almost certainly needed before action
- Laws regulating chemicals in food packaging are not good enough, European Parliament says
- Chemical pollution and microplastics: a present danger to marine life
- Chemicals in food contact materials: notes from a workshop on regulatory gaps



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Brexit and REACH

- **REACH is the most sophisticated chemicals regulatory system in the world**
- **The UK played an important role in negotiating REACH**
- **REACH is not perfect, but after 10 years it is making a real difference [1]**
- **Brexit threatens to remove REACH from the UK**
- **ECHA has spelled out what no deal on REACH will mean as of 30th March 2019 (*in 18 months*):**



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ECHA guidance on Brexit

- <https://echa.europa.eu/uk-withdrawal-from-the-eu>
 - *(Assuming no UK-EU deal on this issue)*

Article 3(7) of the REACH Regulation establishes that a registrant must be a manufacturer or importer of a substance or a producer or importer of an article. Article 3 (4), (9) and (11) stipulates that registrants must be established in the EU. After 30 March 2019, the UK will no longer be a Member State of the EU. Hence, any UK-based registrant can no longer be a registrant. For the purpose of the EU's REACH Regulation, any registration by such a registrant will therefore be regarded as non-existent, as your company will, after the UK withdrawal, be based in a "third country" outside the EU/EEA. Consequently, your EU-EEA customers will need to register the respective substance themselves. Alternatively, in order to continue supplying your EU-27(or EEA)-based customers on the basis of your own registration, as a manufacturer you will need to either relocate to the EU-27/EEA or to appoint an Only Representative within the EU-27/EEA. As a UK-based importer from a non-EU/EEA country, you will have the option to legally establish yourself as an importer based within the EU-27.

Ever since the REACH Regulation came into force in June 2007, data submitted by companies located within the EU/EEA has contributed to our Agency holding the largest database on the properties of chemical substances, worldwide. A major impact of the UK withdrawal will be the UK authorities' loss of access to this database as well as to the topical databases and IT tools that we provide for regulatory purposes. The UK authorities will also no longer be involved in using this data as only Member States are required to cooperate with us as partners in applying our regulatory processes. Solely to the same degree as the general public, UK authorities will continue to benefit from the wide range of substance-centred information that we make publicly available on the ECHA webpages. In summary, without prejudice to a potential future agreement between the European Union and the United Kingdom, as from the date of UK withdrawal, we will provide the UK authorities with access to data on a far lesser scale than to EU Member State authorities that continue to interact directly with us.



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Brexit scenarios?

NO REACH

1) Dirty/No Deal/Cliff Edge Brexit

- Exit with nothing resolved, nothing agreed – a mess

2) A normal Free Trade Agreement (FTA) like CETA

- Some text on not undercutting EU environmental policy

3) Extensive FTA with REACH and some/all other environmental policies

- Something similar to EEA, but not the same

4) EEA-type arrangement with REACH and some/all other environmental policies

5) No Brexit

NB: A 'status quo' temporary transition is likely



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In or out of REACH?

- **A country is either in or out of REACH**
 - **IN:** EU member states, EEA
 - **OUT:** Everyone else, including Switzerland
- **If you are in, you participate in decisions and access the full database, if you aren't, you don't**
- **To stay in, UK must *[based on Swiss experience]***
 - Accept a court – ECJ, EFTA or something similar
 - Accept EU decisions in REACH – UK should be in the room, but no vote (like Norway)
 - Retain EU chemical-related laws (Health and Safety, pollution etc)



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But, but...

- **Brexit is causing UK businesses lots of problems, shouldn't the EU27 help them?**
- **Where is the responsibility?**



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Responsibility in Brexit and REACH

- **Producer responsibility: article 3 of REACH**
 - *“This Regulation is based on the principle that it is for manufacturers, importers and downstream users to ensure that they manufacture, place on the market or use such substances that do not adversely affect human health or the environment.”*
- **Leaver responsibility: UK is leaving, it needs to solve problems**
 - E.g. *“The onus to propose solutions which overcome the challenges created on the island of Ireland by the United Kingdom's withdrawal from the European Union and its decision to leave the customs union and the internal market remains on the United Kingdom” [2]*
 - ***i.e. You are leaving, you fix it!***



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UK Government on REACH

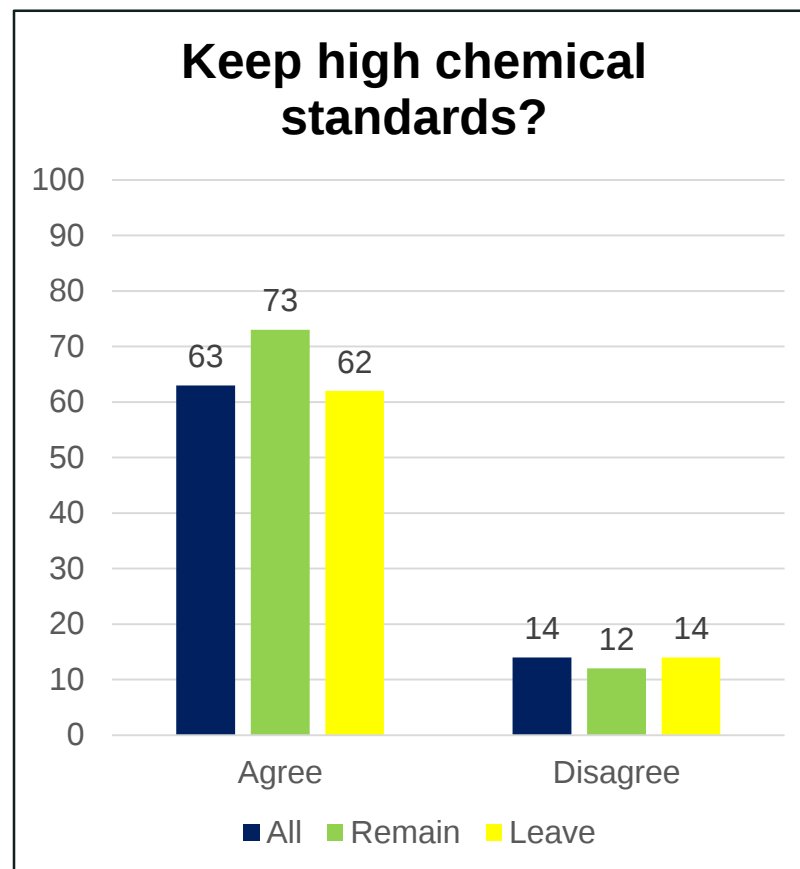
- **Dr Thérèse Coffey, Parliamentary Under Secretary of State for the Environment at the UK Chemicals Stakeholder Forum, 18th July 2017**
 - *“The minister said that the Prime Minister’s Lancaster House speech made clear that UK Parliament should be sovereign, and this would not be compatible with full participation in REACH. She did not agree that a UK regime would have less access to data.” [from draft minutes]*
- **Numerous other statements from Ministers talk of the UK not following EU decisions**
 - Many pro-Brexit voices also calling for deregulation



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The will of the people?

- Many claims are made about the will of the people & Brexit
- We got together with SumOfUs & GQR research to find out what the public wants on chemicals [3]
- Question:
 - “There should be no reduction in regulatory standards that protect people and the environment from potentially harmful chemicals when the UK leaves the EU”

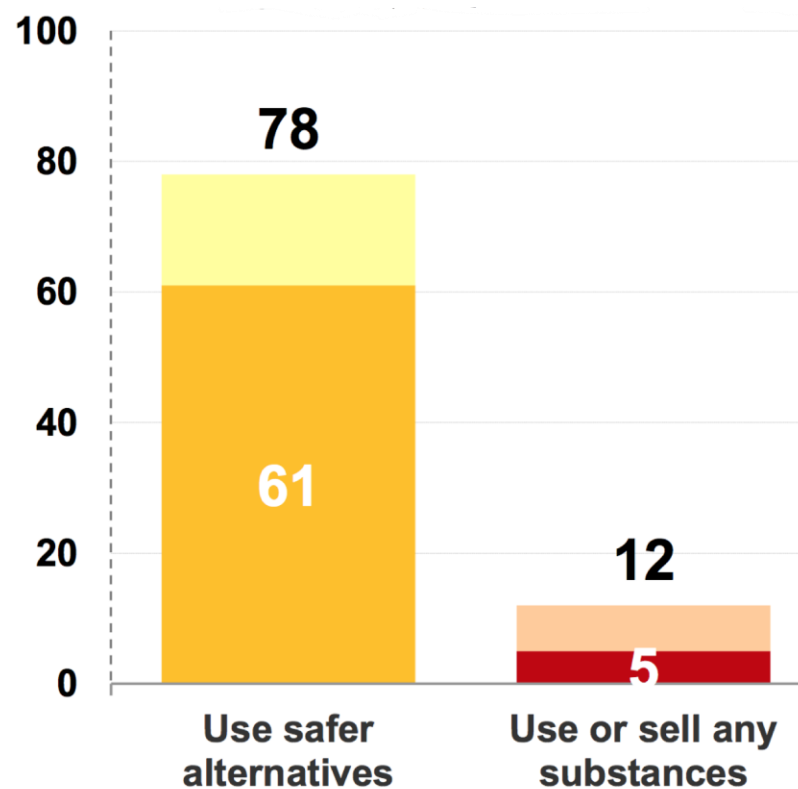




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Substitution also popular

- **Two options:**
 1. *Where there is evidence that a chemical has serious hazards, companies should have to use safer alternatives if they are available.*
 2. *Companies should be able to use or sell any substances as long as they believe the risk associated with them is low or manageable.*
- *“Please indicate whether the FIRST statement or the SECOND statement comes closer to your views, even if neither is exactly right.”*
- **Key:**
 - Orange/Red: ‘Much closer’
 - Yellow/Puce ‘Somewhat closer’





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Why is UK not backing REACH?

- **EU court?**
 - Compromise possible?
 - Joint committee backed by ECJ (as proposed by EU27)
 - Substitute EFTA court from ECJ?
- **Sovereignty?**
 - UK Government don't want to adopt EU decisions in REACH
 - But what is sovereignty?



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Which is more sovereign?

- 1. Copying out all REACH restrictions and authorisations, with no role in the decision or access to detailed evidence**
 - Sometimes called ‘mutual recognition’, but in Brexit context usually means ‘UK does what EU decides’
 - “any agreement must respect the regulatory autonomy of the EU, as well as the integrity of its legal order” – Barnier [4]
 - 2. Participating in REACH discussions in ECHA, submitting dossiers, having access to REACH data – but not voting in final decisions**
 - i.e. staying in REACH as a member of the EEA or similar arrangement in an FTA (presumably will also be situation in ‘full acquis’ transition)
- **UK policy appears to currently be something like option 1, but without a full commitment to ‘copy out’**



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Conclusions

- **CHEM Trust's analysis is that staying within REACH is the best option for UK wildlife and human health**
 - We now have a Brexit campaigner, Andrea Speranza (andrea.speranza@chemtrust.org)
 - We are working to build a wide coalition of stakeholders calling for the UK to stay in REACH – contact Andrea if you are interested
- **The public does not want deregulation**
- **Sovereignty is not an all or nothing concept**
 - it is better to be in the room, rather than outside copying
- **Brexit is the UK's problem ("Leaver Responsibility") – don't expect the EU27 to change their laws and procedures to help the UK leave.**
- **Chemicals & Brexit page: <http://www.chemtrust.org/brexit/>**



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References

- [1] **“A move to safer chemicals? Ten years of the EU’s REACH chemicals regulation”, CHEM Trust, June 29th 2017:**
<http://www.chemtrust.org/reach-10-years-on/>
- [2] **“Guiding Principles for the dialogue on Ireland/Northern Ireland”, Task Force on Article 50, 20th September 2017:**
https://ec.europa.eu/commission/sites/beta-political/files/dialogue_ie-ni.pdf
- [3] **“What is the will of the UK people on hazardous chemicals?”, CHEM Trust, 28th September 2017:**
<http://www.chemtrust.org/uk-poll/>
- [4] **“Speech by Michel Barnier in front of the Committees of Foreign Affairs and the Committees of European Affairs of the Italian Parliament”, 21st Sep 2017:**
[http://europa.eu/rapid/press-release SPEECH-17-3404 en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3404_en.htm)