

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
NORTHERN IRELAND PROTOCOL**

C(2022) 2142 final+ ANNEX

**COMMISSION REGULATION (EU) .../... OF 8.4.2022 AMENDING ANNEX XIV TO
REGULATION (EC) NO 1907/2006 OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL CONCERNING THE REGISTRATION, EVALUATION,
AUTHORISATION AND RESTRICTION OF CHEMICALS (REACH)**

Submitted by the Department for Environment, Food and Rural Affairs

13 July 2022

SUBJECT MATTER

1. Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (EU REACH) is the main chemicals regulation in the EU. Authorisation is used to control the use of 'substances of very high concern (SVHCs)'. These are substances that fulfil one or more specific hazard criteria that relate to human health or environmental concerns.
2. Annex XIV of EU REACH (the EU REACH Authorisation List) contains the list of substances subject to authorisation under EU REACH. The substances on this list can still be used within the EU until a 'sunset date'. After the sunset date, placing on the market and use of that substance is prohibited unless an exemption applies, an authorisation is granted, or an application has been submitted for an authorisation by the 'latest application date' specified for that substance but a decision has not yet been made by the European Commission.
3. Commission Regulation (EU) 2022/586 (Annex A) amends the EU REACH Authorisation List by adding five additional substances (the five additional EU substances), each with a sunset date of 1 May 2025. This Regulation applies to Northern Ireland as EU REACH applies in Northern Ireland.
4. The Health and Safety Executive (HSE) is responsible for recommending substances for addition to the Authorisation List under UK REACH, the retained version of EU REACH which regulates the use of substances in Great Britain. HSE published its first recommendation in December 2021. For three of the five additional EU substances, HSE considered that further information was needed. For the other two, HSE considered that no action was needed under UK REACH at that time. None of the five additional EU substances are therefore currently being made subject to authorisation in UK REACH.

SCRUTINY HISTORY

5. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for Environment, Food and Rural Affairs makes decisions on adding substances to the UK REACH Authorisation List by Statutory Instrument. This requires consent from the Scottish and Welsh Ministers in respect of devolved matters.
7. HSE makes a recommendation on which substances are a priority to be added to the UK REACH Authorisation List at least every two years. The Secretary of State for Work and Pensions has ministerial responsibility for HSE, but HSE is a non-departmental public body.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. The Devolved Administrations have been consulted in preparation of this Explanatory Memorandum. Welsh officials had no comments to add. Scottish officials also had no concerns.
9. Officials from the Department of Agriculture, Environment and Rural Affairs and the Department of Economy in Northern Ireland have an interest in this proposal as it falls within the scope of the Protocol on Ireland/Northern Ireland. NI Officials do not envisage any detrimental impacts but are liaising with their UK Government policy counterparts to determine what action is required and what possible impacts this Regulation may have in NI.
10. The UK Government has introduced new legislation through the Northern Ireland Protocol Bill. Over the coming months we will work with stakeholders, including businesses in both Northern Ireland and Great Britain as well as regulators, to discuss how the Bill will impact their industries in practice.

LEGAL AND PROCEDURAL ISSUES

11.

i. **Legal Base**

Articles 58 and 131 of EU REACH.

ii. **Voting Procedure**

Voting Procedure: regulatory procedure with scrutiny under Article 5a of Council Decision 1999/468/EC.

iii. **Timetable for adoption and implementation**

Timetable for adoption and implementation: the amendment was adopted on 8 April 2022 and came into force twenty days after publication in the Official Journal of the European Union (it was published on 11 April). The sunset date for all five substances is 1 May 2025.

POLICY IMPLICATIONS

12. The Northern Ireland Protocol provides that limited areas of EU law will continue to apply within Northern Ireland, including EU REACH. This means that additions to the EU REACH Authorisation List apply within Northern Ireland. Therefore, there will be some implications on trade between NI and GB once the sunset date has passed (1 May 2025) as the five additional EU substances will require authorisation for use in NI, but not within GB. Companies manufacturing these substances in GB for use in NI will need to ensure that the use is authorised under EU REACH unless an exemption applies. ECHA only received a few responses from industry to the consultation on recommending the inclusion of the five additional EU substances in the EU REACH Authorisation List. None of them highlighted any concerns about trade between GB and NI.

13. Since the end of the transition period (31 December 2020), the UK has operated an independent chemicals regime – UK REACH. Decisions on adding substances to the Authorisation List under UK REACH are made independently of decisions under EU REACH. Therefore, there are no direct implications for UK REACH. UK REACH decisions do not apply in Northern Ireland.

CONSULTATION

14. Commission Regulation (EU) 2022/586 adds substances to the EU REACH Authorisation List. As set out above, HSE did not consider that those substances should be added to the UK REACH Authorisation List at this time. Therefore, no consultation has been undertaken by the UK Government in response.


15. The European Commission does not produce an Impact Assessment for additions to the EU REACH Authorisation List.

FINANCIAL IMPLICATIONS

16. It is unclear what the financial implications of adding the additional EU substances to the EU Authorisation list will be for NI as NI-specific data is unavailable. However, NI-based companies will need to apply for authorisation to use the five additional EU substances after the sunset date, and pay the associated fees,

unless they are covered by an authorisation in their supply chain, or an exemption applies. The lack of responses to the EU consultation on the addition of these five substances suggests there is minimal concern over the impacts.

17. Decisions to add substances to the Authorisation List under UK REACH are made independently of changes under EU REACH so there are no direct financial implications for GB. However, where the five additional EU substances are sourced from GB, their use in NI will need to be authorised under EU REACH. A GB-based company (through an only representative), or a company based in NI, will need to apply to the European Chemicals Agency for authorisation (including payment of the associated fees) unless the use is covered by an existing EU REACH authorisation or an exemption applies.

A handwritten signature in black ink, reading "Steve Double". The signature is fluid and cursive, with a period at the end.

STEVE DOUBLE MP
PARLIAMENTARY UNDER SECRETARY OF STATE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION REGULATION (EU) .../... OF 8.4.2022 AMENDING ANNEX XIV TO REGULATION (EC) NO 1907/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS (REACH)

6916/18, COM(18)116: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE COMMISSION GENERAL REPORT ON THE OPERATION OF REACH AND REVIEW OF CERTAIN ELEMENTS CONCLUSIONS AND ACTIONS

DEFRA SUBMITTED AN EM DATED 18/02/2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
POLITICALLY IMPORTANT CLEARED (AGENDA FOR REPORT NO 32; 20/6/2018). POLITICALLY IMPORTANT NOT CLEARED, FURTHER INFORMATION REQUESTED (AGENDA FOR REPORT NO 25;25/4/2018)	CLEARED BY MINISTERIAL LETTER DATED 23/10/2018. NOT CLEARED, SIFTED FOR EXAMINATION TO ENERGY AND ENVIRONMENT (CHAIRMAN'S SIFT 1688 - 18/04/2018)

EM 5479/18,COM(2018) 32 FINAL: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ON THE IMPLEMENTATION OF THE CIRCULAR ECONOMY PACKAGE: OPTIONS TO ADDRESS THE INTERFACE BETWEEN CHEMICAL, PRODUCT AND WASTE LEGISLATION

EM 5479/18,SWD(2018) 20 FINAL ADD 1: COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF

THE REGIONS ON THE IMPLEMENTATION OF THE CIRCULAR ECONOMY PACKAGE: OPTIONS TO ADDRESS THE INTERFACE BETWEEN CHEMICAL, PRODUCT AND WASTE LEGISLATION

DATE EM SIGNED: 31/01/2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 21 ;21/3/2018)	CLEARED (BUT SENT FOR INFORMATION TO ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1682 - 23/02/2018

EM 5864/13,COM(2013) 49 FINAL: GENERAL REPORT ON REACH REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS IN ACCORDANCE WITH ARTICLE 117(4) OF REACH AND ARTICLE 46(2) OF CLP, AND A REVIEW OF CERTAIN ELEMENTS OF REACH IN LINE WITH ARTICLES 75(2), 138(2), 138(3) AND 138(6) OF REACH (TEXT WITH EEA RELEVANCE) {SWD(2013) 25 FINAL}

EM 5864/13,SWD(2013) 25 FINAL ADD 1: COMMISSION STAFF WORKING DOCUMENT GENERAL REPORT ON REACH ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS IN ACCORDANCE WITH ARTICLE 117(4) REACH AND ARTICLE 46(2) CLP, AND A REVIEW OF CERTAIN ELEMENTS OF REACH IN LINE WITH ARTICLES 75(2), 138(3) AND 138(6) OF REACH {COM(2013) 49 FINAL}

DATE EM SIGNED: 18/02/2013

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT - REPORT 33 - 27/02/2013	CLEARED AT CHAIRMAN'S SIFT 1497 - 26/02/2013