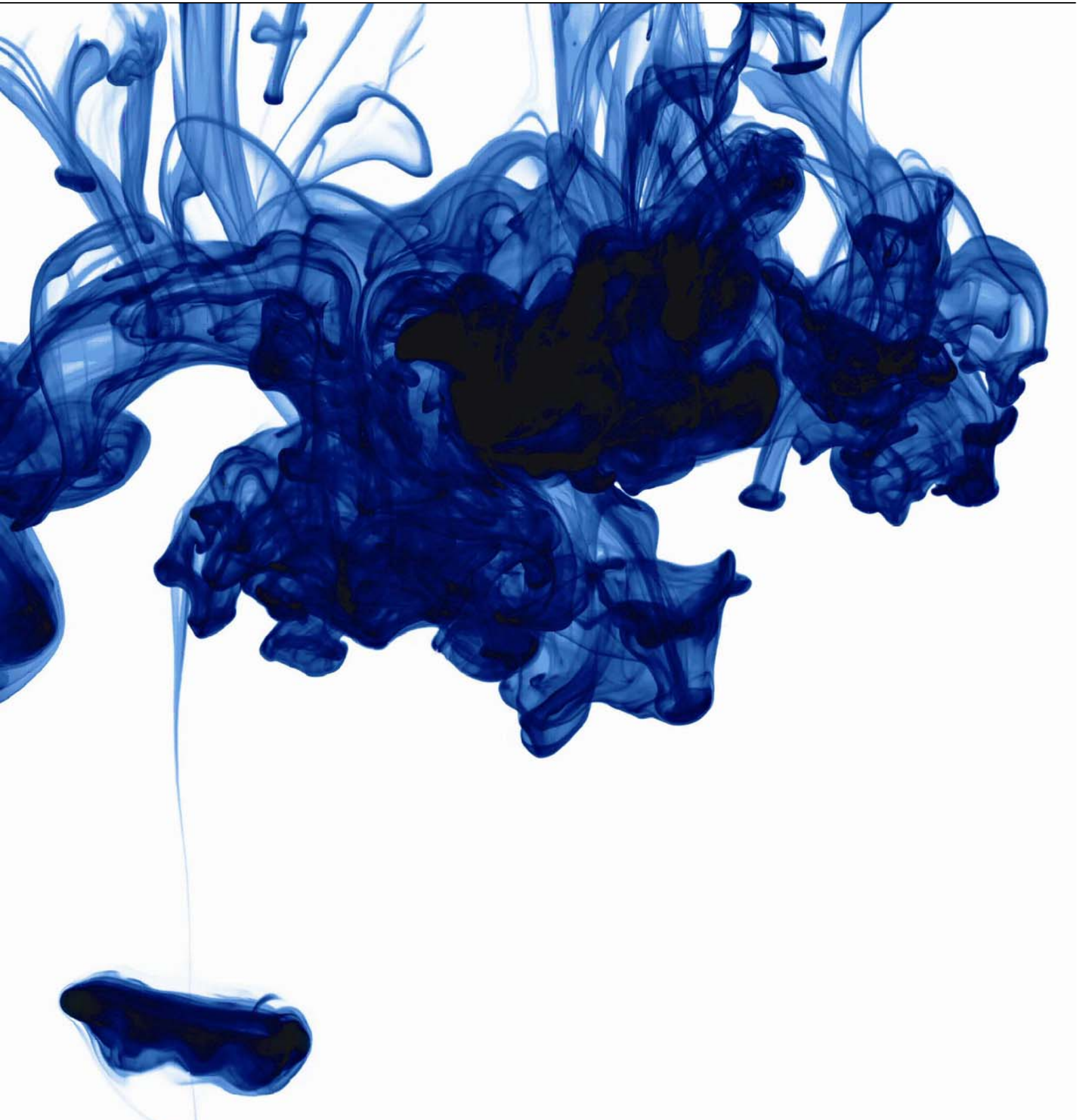



Memorandum of understanding for the enforcement of REACH


**The Registration, Evaluation, Authorisation and Restriction of Chemicals
Regulation 2006**


[Date]





Enforcing parties to the Memorandum:


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|  | <i>[signature]</i> | [Name] Health and Safety Executive |
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|  | <i>[signature]</i> | [Name] Health and Safety Executive for Northern Ireland |
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|  | <i>[signature]</i> | [Name] Environment Agency |
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|  | <i>[signature]</i> | [Name] Scottish Environment Protection Agency |
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|  | <i>[signature]</i> | [Name] Environment and Heritage Service Northern Ireland |
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|  | <i>[signature]</i> | [Name] Department for Business, Enterprise and Regulatory Reform |
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Supporting parties to the Memorandum:

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|  | <i>[signature]</i> | [Name] Local Authorities Coordinators of Regulatory Services |
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Definitions and roles

In this Memorandum:

“REACH” means Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

“the Enforcement Regulations” means the REACH Enforcement Regulations 2008 (statutory instrument no. NNNN/2008).

“enforcement activity” includes warnings, enforcement notices, inspections, investigations and the provision of advice, in addition to enforcement proceedings.

“lead enforcer” means the enforcing authority which will be responsible for establishing the appropriate enforcement action, and will undertake this action as appropriate with the support and involvement of other enforcers as appropriate.

“Compliance Code” means the Statutory Code of Practice for Regulators.¹

“the enforcing authorities” are those parties to this Memorandum with an enforcement role established in the Enforcement Regulations, namely: the Health and Safety Executive (HSE); the Environment Agency (EA); the Scottish Environment Protection Agency (SEPA); the Health and Safety Executive for Northern Ireland (HSENI); the Environment and Heritage Service for Northern Ireland (EHSNI); and the Department for Business, Enterprise and Regulatory Reform (BERR).

LACORS, the local government central body responsible for overseeing local authority regulatory and related services, is not an enforcing authority. LACORS support of this Memorandum ensures that the interests of local authorities can be represented in the national arrangements for REACH enforcement. Reference in this Memorandum to enforcing authorities should not be read as a reference to either LACORS or individual local authorities, whose autonomy is not affected in any way by this agreement.

HM Revenue and Customs (HMRC) will provide assistance to the enforcing authorities by detaining goods at import, either when requested to do so or in the event that HMRC suspect that goods may be being imported which are in breach of REACH. Memoranda of understanding will be introduced to allow HMRC to assist criminal investigations by the enforcers.

General Agreement

1. The parties undertake to use their best endeavours to co-operate effectively to enable and assist each other to carry out their responsibilities and functions, and to maintain effective working

¹ ISBN 978-0-85605-712-0. Available at <http://bre.berr.gov.uk/regulation>

arrangements for that purpose. Such co-operation is intended to improve the effectiveness of the enforcing authorities, allowing them to collaborate on areas of mutual interest, avoid unnecessary duplication of activity and other difficulties which might arise from uncoordinated approaches by the enforcing authorities.

Background

2. This Memorandum records the principles for liaison in respect of the parties' duties as enforcing authorities under the Enforcement Regulations, which provide for the enforcement of REACH..
3. REACH sets out its aims in recitals 1-8. These include the protection of human health, the environment and consumers; the promotion of alternative methods for the assessment of hazards of substances; the efficient functioning of the internal market, and enhancing competitiveness and innovation. Many aspects of REACH are relevant to more than one enforcing authority, by virtue of the Enforcement Regulations. They will therefore have common interests. The working arrangements established in this Memorandum are intended to reflect this.
4. In addition to the enforcement duties set out in regulation 3 of the Enforcement Regulations, HSE will perform the function of UK Competent Authority ("CA") on behalf of the bodies formally designated in the REACH (Appointment of Competent Authorities) Regulations 2007 (SI 2007/1742), the functions of which are referred to in Appendix 1. In addition to the functions of CA required by the Regulation, HSE as CA will also carry out enforcement of the registration related duties of REACH, as referred to below and as set out more specifically in the Enforcement Regulations.
5. This Memorandum relates solely to the enforcement responsibilities under the Enforcement Regulations.

Objectives

6. The objectives of the Memorandum are to:
 - a. ensure effective and efficient enforcement of REACH by a co-ordinated approach to decision making between enforcers;
 - b. agree minimum standards of co-operation between the enforcing authorities;
 - c. set out clear and effective liaison arrangements between the enforcing authorities;
 - d. ensure effective co-ordination between the enforcing authorities where there are joint enforcement responsibilities, including prior agreement where practicable on undertaking enforcement activity including issuance of notices;

- e. avoid, so far as is possible, duplication of inspection, investigation and enforcement, in line with the Compliance Code;
- f. set the framework for enforcement activity to ensure it is consistent, transparent, targeted, proportionate and accountable.
- g. ensure reporting requirements under Article 117 are met. Article 117 requires Member States to submit to the European Commission every five years a report on the operation of REACH in their respective territories, including a section on enforcement.

General Principles

- 7. The enforcing authorities will co-operate with each other to enforce the provisions of REACH and to fulfil their duties under the Enforcement Regulations.
- 8. The parties to the Memorandum will provide sufficient resources to ensure the working arrangements set out here can operate effectively.
- 9. Other memoranda, concordats, partnership agreements and similar agreements exist between the parties to this Memorandum. The working arrangements and commitments set out herein are agreed to by the parties without prejudice to those existing arrangements.
- 10. The Memorandum promotes flexible and practical working level contacts and procedures, and clear lines of communication between the enforcing authorities.
- 11. The parties shall consult on matters of mutual interest at an early stage.

Co-ordination and responsibilities

- 12. Further to the duties of the enforcing authorities as set out in the Enforcement Regulations, the CA has been asked to co-ordinate enforcement activity. To affect this, an 'Enforcement Liaison Group' shall be established as a sub-group of the Steering Committee for the UK REACH delegated Competent Authority ('the Steering Committee') to carry out the functions set out below.

Enforcement Liaison Group ('the Group')

- 13. The Group will be comprised of representatives of all parties to this Memorandum.
- 14. The Group will:
 - a. discuss and formulate the appropriate enforcement policy within the ambits of the Compliance Code;

- b. discuss and decide, where appropriate, the substances and/or issues that are a priority for enforcement, in line with the Compliance Code;
 - c. co-ordinate any appropriate programme of interventions in relation to a substance or issue, e.g. inspection campaigns for a specific substance or industry sector;
 - d. discuss enforcement issues, for example: practical issues that emerge from enforcement activity; areas of uncertainty, and the interpretation of a particular REACH provision;
 - e. in light of any issues that may be raised in relation to (d) above, propose amendments to UK guidance on REACH;
 - f. advise Defra and the Competent Authority on the appropriate arrangements for informing industry of REACH related developments, as well as other relevant government parties where appropriate;
 - g. assist the UK representative at the Forum (referred to below) by providing appropriate information, and generally;
 - h. contribute to UK participation in enforcement of REACH outside of the UK;
 - i. ensure best endeavours are made by enforcing authorities to collect the appropriate information to be included in Appendix 5; and
 - j. have ownership (including procedures for review) and responsibility for promotion of this Memorandum.
15. The UK representative at the European Chemical Agency Forum for Exchange of Information on Enforcement (“the Forum”) shall also be a member of the Group (Appendix 2 contains more information on the Forum, as well as other relevant European networks). The representative will keep the Group informed of the Forum’s work and programmes, and shall raise issues discussed by the Group at the Forum where these are also relevant to other Member States.

Allocation of responsibilities

16. Regulation 3 of the Enforcement Regulations sets out which enforcing authority is responsible for enforcing which provision of REACH and the limitations on that duty. Key aspects of the division of enforcement duties are:
- a. HSE, in performing the role of CA, will enforce the *registration related duties* of REACH across the UK (as set out in Appendix 3, and subject to paragraph 20 below); it will do this with the support of HM Revenue and Customs in matters related to the prohibition of importation, and from the EA, SEPA, EHSNI, and BERR in matters relating to the environment;

b. HSE in Great Britain and HSENI in Northern Ireland will enforce the *supply chain related duties* in REACH, up to the point of the supply of a preparation, substance or article from a retail outlet, with the support of EA, SEPA, EHSNI, and BERR in matters relating to the environment. Thereafter, the local trading standards officers (TSOs) will be responsible for enforcement, except in Northern Ireland, where District Councils enforce consumer safety issues;

c. HSE, HSENI, EA, SEPA, EHSNI, BERR and local authorities will enforce the *use related duties* in REACH (with specialist support from the CA where necessary – see paragraph 27 below) as per existing arrangements for enforcing work related health and safety, environmental and consumer protection legislation.

17. The Enforcement Regulations also provide that, for a number of use-related duties in REACH, more than one enforcing authority has an enforcement duty. For instance, where the use of a substance presents risks to workers' health, safety and welfare and also to the environment, both the relevant health and safety regulator and the environmental regulator have enforcement responsibilities.

18. In such situations:

a. HSE or HSENI or local authorities (as appropriate, and with their consent in the case of local authorities) will be the lead enforcing authority where the subject matter of that enforcement primarily concerns the protection of workers' health, safety and welfare, or the protection of the health and safety of other persons who may be affected by work activities;

b. Environment Agency or Scottish Environment Protection Agency or EHSNI or BERR (as appropriate) will be the lead enforcing authority where the subject matter of that enforcement primarily concerns the protection of the environment;

c. enforcing authorities will take into account the availability and suitability of enforcement powers and the nature of offences in making their decision regarding lead enforcement;

d. the enforcing authorities shall, as far as is possible, avoid the duplication of activity where their duties overlap, by facilitating co-operation in all aspects of enforcement;

e. the enforcing authorities shall avoid so far as is possible conflicting requirements being put on dutyholders, thus minimising the burden on industry, particularly where there are overlapping duties;

f. where it is not possible to establish whether the subject matter of the enforcement primarily concerns workers' health, safety and welfare or environmental protection, the relevant enforcing authorities shall pursue their enforcement activities in co-operation with each other until such time as this can be

established, whilst ensuring that there is the same level of protection for each;

g. once the primary matter for enforcement is established, the enforcement authority with responsibility for it shall be the operational lead authority for the enforcement activity;

h. decisions on which enforcing authority shall take the operational lead for any given enforcement activity shall be made on the advice of the relevant enforcement officers, and on a case-by-case basis. (In the event of disagreements as to which party should take the lead for enforcement, or whether there should, for the time being be joint enforcement, the steps which are to be taken are outlined in paragraph 30 below);

i. in order that decisions can be taken by enforcing authorities as to which of them shall take the operational lead, they shall consult with each other on the subject matter for enforcement at an early stage and engage in information sharing in a timely manner in accordance with paragraph 21;

j. where an enforcing authority does not have the lead for enforcement, it shall continue to provide input and support to the lead enforcer until the resolution of any matters of concern for which they have enforcement responsibility. In certain circumstances, joint inspections or investigations might be appropriate;

k. any enforcing authority may, where appropriate, call upon the expertise of another when conducting an investigation or enforcement proceedings;

l. enforcing authorities may co-operate with each other for training and familiarisation purposes by arranging joint visits;

m. the enforcing authorities will co-operate during the decision making process;

n. the enforcing authorities shall promote flexible and practical working level contacts and procedures, and clear lines of communication, thus providing mutual support for all parties concerned to carry out their respective responsibilities.

19. A number of provisions of REACH impose both supply-chain related duties and use related duties within the same provision (namely articles 9(6), 14(6), 37(5), 37(6), 56(1) and 67(1)). Typically, these provisions require that a dutyholder 'identify and apply' appropriate measures to control risks, and 'recommend' others follow such measures in any information they put into the supply chain. As these provisions regulate (in part) the use of substances, the Enforcement Regulations allocate enforcement responsibility to multiple enforcing authorities. However, to remain consistent with the enforcement position for other supply-chain related requirements in the Enforcement Regulations, the enforcing authorities for the supply-chain aspects of these provisions shall be HSE for Great Britain and HSENI for Northern Ireland only.

20. Though it is intended that HSE, in performing the role of the CA, will enforce the registration related duties of REACH across the UK, in Northern Ireland HSENI will be formally responsible for enforcing these provisions. However, HSENI have agreed to transfer enforcement activity to HSE enforcement officers from the REACH CA, who will be authorised under article 21 of the Health and Safety at Work (Northern Ireland) Order 1978.

Information Exchange

21. The following working arrangements shall apply for enforcing authorities:
- a. the representative of each enforcing authority in the Group will be responsible for receiving systemic communications (e.g. planned reporting) from other enforcement authorities, and for the dissemination of information to responsible parties within their organisation, as required.
 - b. operational contact between enforcing authorities will be between local enforcement officers in the first instance, supported by their representatives in the Group;
 - c. where an enforcement officer identifies any matters of evident concern that are outside the enforcement responsibility of his or her organisation, this information shall be passed to local enforcement officers of the relevant enforcing authority as soon as practicable, via either direct communication or the Group, as appropriate. Where an enforcement officer is able to recognise that immediate action may be required, the enforcement officer(s) will be expected to notify the contact point immediately;
 - d. enforcement officers will inform their counterparts in other enforcing authorities about enforcement activity, incidents or emergencies where this information would be relevant and useful to them, for instance, where it would inform any on-going programme of interventions with that dutyholder. In particular, enforcement officers should advise their counterparts of any enforcement notices served or prosecutions taken;
 - e. information that will assist with planning and implementing interventions, for instance, inspection campaigns, investigations etc. should be exchanged wherever appropriate;
 - f. where a relevant complaint has been received by an enforcing authority but it appears to it that another enforcing authority has the responsibility for its investigation, details of the complaint shall be passed to the relevant enforcing authority as soon as practicable, normally within one working day (or immediately where there is an obvious risk of serious or imminent danger);

- g. HSE/HSENI should keep the relevant environmental enforcing authority informed about supply-chain related enforcement that concerns environmental protection and seek necessary advice where appropriate; and
 - h. all enforcing authorities should notify the CA as soon as practicable if they become aware of a substance, preparation or article being manufactured or placed on the market without registration or notification as required by Title II of REACH (or immediately in the case of a substance of very high concern).
22. Many articles of REACH give powers to the European Chemicals Agency (“ECHA”) and to Member States’ competent authorities. These are, typically, powers to require further information to be provided, or to impose conditions on the manner in which a substance is used, or to make decisions regarding substances etc. Where ECHA or the CA have imposed requirements, conditions or restrictions on the way in which a substance on its own or in a preparation or article is used, the CA shall share these with the enforcing authorities as appropriate.
23. Only the CA has full access to ECHA’s database and therefore it is the only UK body that will be able to view all the information on substances, preparations and articles submitted by dutyholders to the ECHA. However, it is likely that much of the information on the ECHA’s databases will be required by enforcing authorities for the purposes of enforcement. Requests for such information should be sent to the CA, who will respond within a reasonable timescale (normally five working days), or as soon as practicable if the information is needed urgently to protect against risks to human health and safety or the environment.

Interventions

24. Compliance with REACH should be considered as appropriate at visits to any premises where substances, preparations or articles (as defined) are manufactured, imported, supplied or used.

International co-operation

25. REACH applies across the European Community, and influences activity outside the EC in relation to the trade in substances, preparations and articles. Further, many dutyholders will operate transnationally. UK enforcing authorities will share information and co-operate fully with each other and with non-UK enforcement agencies to ensure REACH is properly enforced throughout the Community as far as is possible, within the confines of the domestic law relating to the disclosure of information.

Provision of specialist advice/ expertise

26. In addition to advice and assistance in relation to formal enforcement action under REACH, the CA will provide specialist input for enforcing authorities in a number of other areas, such as toxicology and occupational hygiene (see Appendix 4). For the provision of specialist advice and assistance in environmental science, the Environment Agency's Chemical Assessment Unit shall provide the necessary expertise.
27. The arrangements for commissioning the specialist support referred to in the preceding paragraph are set out in Appendix 4.

Recording enforcement information

28. Full and accurate recording of the enforcement of REACH is required in order to fulfil the UK's obligations. The UK will produce and submit the aforementioned report. However, enforcing authorities will need to develop their own procedures to ensure enforcement information is appropriately recorded in order that it can be retrieved when required with the guidance of the CA or the Group.
29. Enforcing authorities should therefore ensure that their systems and procedures are such that the relevant information listed in Appendix 5 can be recorded and retrieved.

Resolving disagreements

30. If enforcing authorities are not able to resolve disagreements at the lowest practical level of management seniority, the matter will be referred to the next level of management within each organisation. Where this is unsuccessful, the matter shall be referred to the Enforcement Liaison Group. If resolution is still not possible, the matter shall be referred to the Steering Committee. Where, exceptionally, an issue cannot be resolved by these means, it shall be referred to Ministers.

Review

31. Each organisation may nominate a single contact who will be responsible for monitoring the practical implementation and effective working of the Memorandum.
32. This Memorandum shall be reviewed after its first year, taking into account the views of the enforcing authorities and the members of the Enforcement Liaison Group, and thereafter five years. This does not preclude the consideration of urgent matters for review as they arise, through the network of contact points.

Appendix 1 – Roles and responsibilities of the parties involved in REACH

The European Chemicals Agency ('ECHA'): REACH establishes a new Community body, the European Chemicals Agency. Its tasks include ensuring effective management of the technical, scientific and administrative aspects of the REACH Regulation at Community level. Among other things, the Agency will perform completeness checks of registrations and assign a registration number to complete registrations, or where necessary reject registrations. Furthermore, the Agency will carry out two evaluation tasks – compliance checks of registrations and examination of test proposals. It also provides a secretariat for the Forum for enforcement, and will have access to the enforcement reports from Member States.

www.echa.europa.eu/home_en.html

Department for Environment, Food and Rural Affairs (Defra): is a UK Government department. One of its strategic aims is to enable everyone to live within our environmental means. This is most clearly exemplified by the need to tackle climate change internationally and through domestic action to reduce greenhouse gas emissions, and to secure a healthy, resilient, productive and diverse natural environment.

Defra is the lead UK government department for REACH, and acts in consultation with the devolved administrations and other Government Departments and Agencies. This role is distinct from that of the CA; Defra is responsible for the implementation of REACH in the UK, and is responsible for drafting and the Enforcement Regulations.

www.defra.gov.uk

The UK Competent Authority (CA): REACH requires Member States to appoint Competent Authorities to manage the domestic aspects of the legislation, and to liaise with the Agency. In the UK, operationally the CA is the Health and Safety Executive, working with the Environment Agency and other government departments on behalf of the formal competent authorities. The CA's responsibilities in the UK are to:

- provide advice to manufacturers, importers, downstream users and other interested parties on their respective responsibilities under REACH through a 'helpdesk';
- enforce compliance with certain aspects of the legislation;
- conduct in depth evaluation of selected prioritised substances and prepare draft decisions;
- propose harmonised classification and labelling;
- identify substances of very high concern for authorisation;
- propose restrictions;

- nominate candidates to membership of Agency committees on risk assessment and socio-economic analysis, and appoint members for the Member State committee and the Forum; and
- liaise as appropriate with relevant UK enforcing authorities.

www.hse.gov.uk/reach/index.htm

The Health and Safety Executive (HSE): is the lead body responsible for the promotion and enforcement of occupational health and safety legislation in Great Britain. HSE enforces health and safety law in nuclear installations and mines, factories, farms, hospitals and schools, offshore gas and oil installations, and many other workplaces. It also regulates the safety of the gas grid and the movement of dangerous goods and substances, and a number of other aspects of the protection both of workers and the public. Prior to its role within REACH, HSE has been appointed as the Competent Authority (or similar) for other EU chemicals legislation, such as that regarding the notification of new substances, classification and labelling, and biocides. Local authorities are responsible for health and safety enforcement in workplaces not covered by HSE (see 'Local authorities' below)

www.hse.gov.uk

The Health and Safety Executive for Northern Ireland (HSENI): is the lead body responsible for the promotion and enforcement of occupational health and safety legislation in Northern Ireland. HSENI enforces health and safety law in workplaces similar to those covered by HSE, with the 26 District Councils of Northern Ireland responsible for other workplaces (see 'Local authorities' below).

www.hseni.gov.uk

The Environment Agency (EA): is the lead body responsible for protecting and improving the environment in England and Wales. Its work includes flood protection, the regulation of the release of pollutants into the atmosphere from large and complex industrial processes, maintaining or improving the quality of fresh, marine, surface and underground water, the regulation of waste, and many other environmental functions, including controlling, with HSE, the risk of major accidents at industrial sites. Responsibility for enforcing some environmental legislation is shared with local authorities (see 'Local authorities' below).

www.environment-agency.gov.uk

The Scottish Environment Protection Agency (SEPA): is the lead body responsible for pollution control as well working with other to protect and improve the environment in Scotland. In broad terms, SEPA's work is similar to the EA's, though in terms of regulating the release of pollutants into the atmosphere from industrial processes, it deals with more installations than the

EA. Again, responsibility for enforcing some environmental legislation is shared with local authorities (see 'Local authorities' below).

www.sepa.org.uk

The Environment & Heritage Service Northern Ireland (EHSNI): is the lead body responsible for protecting and improving the environment in Northern Ireland. EHSNI's responsibilities are similar to that of SEPA and EA, and again the enforcement of some environmental legislation is shared with the District Councils of Northern Ireland (see 'Local authorities' below). EHSNI currently have no duties related to flood protection.

www.ehsni.gov.uk

The Department for Business Enterprise and Regulatory Reform (BERR): is a government department which leads work to create the conditions for economic success through competitive and flexible markets that create value for businesses, consumers and employees. BERR drives regulatory reform, and works across government and with the regions to raise productivity levels. To this end, BERR's energy policy responsibilities include: (a) maximising the benefits to the UK of its oil / gas resources; and (b) regulating the environmental aspects of offshore exploration and production e.g. controlling the use and discharge of chemicals and responding to environmental incidents.

www.berr.gov.uk

Local Authorities (LAs): have a number of enforcement responsibilities relevant to the application of REACH:

- They are responsible for enforcing *health and safety legislation* in premises that are not enforced by HSE or HSENI. The division of responsibilities can be complex but in general local authorities deal with retail premises, warehousing, hotels, residential care, leisure complexes, animal boarding / breeding establishments, offices, sports grounds, and much of the services sector.
- They are responsible for enforcing *environmental legislation* outside the areas covered by the EA, SEPA, EHSNI and BERR. Although the range of activities local authorities deal with varies between England, Wales, Scotland and Northern Ireland, typically they will deal with air pollution from smaller industries/businesses, contaminated land, pest control, drainage, coastal protection, water quality from private water supplies, dog fouling, noise pollution, flooding from drains, sewers, streams or ditches, litter, nature conservation, and a number of other matters. A role for local authorities enforcing environmental use-related duties under REACH is not envisaged.
- Many local authorities are responsible for enforcing *consumer protection legislation* through Weights and Measures Authorities in Great Britain, and District Councils in Northern Ireland, which work with

consumers and businesses to maintain fair trading practices and safety of consumer goods. There are approximately 200 local authority enforcers of consumer protection in the UK.

www.lacors.gov.uk

HM Revenue & Customs (HMRC): was formed on the 18 April 2005, following the merger of the Inland Revenue and HM Customs and Excise, and it is the latter function that is relevant to the operation of REACH. HMRC's responsibilities include managing the import and export of goods into and from the UK. Although HM Revenue and Customs (HMRC) have not been given a day to day enforcement role for REACH, they nevertheless retain a role similar to that provided for in existing chemicals legislation. A further Memorandum of Understanding will be developed to cover enforcement arrangements with HM Revenue and Customs concerning the enforcement of the relevant REACH provisions on importation.

www.hmrc.gov.uk

Appendix 2 – Relevant European-level enforcement networks

The Forum for Exchange of Information on Enforcement ('the Forum'): will be the principle mechanism for ensuring co-operation and co-ordination across the European Union. The overarching aim of the Forum is to contribute to a more effective and stronger enforcement in Member States. The preamble to REACH states:

“(105) In the light of the increased responsibility of natural or legal persons for ensuring safe use of chemicals, enforcement needs to be strengthened. The Agency should therefore provide a Forum for Member States to exchange information on and to coordinate their activities related to the enforcement of chemicals legislation. The currently informal cooperation between Member States in this respect would benefit from a more formal framework.”

Article 76(1) indicates that the Forum shall coordinate the “network of Member State authorities responsible for enforcement” of REACH, and article 77(4) allocates to the Forum the following specific tasks:

- (a) spreading good practice and highlighting problems at Community level;
- (b) proposing, co-ordinating and evaluating harmonised enforcement projects and joint inspections;
- (c) co-ordinating exchange of inspectors;
- (d) identifying enforcement strategies, as well as best practice in enforcement;
- (e) developing working methods and tools of use to local inspectors;
- (f) developing an electronic information exchange procedure;
- (g) liaising with industry and other stakeholders, including relevant international organisations;
- (h) examine proposals for restrictions with a view to advising on enforceability.

The Senior Labour Inspectors' Committee (SLIC): provides a framework for monitoring the effective and consistent enforcement of EU occupational health and safety legislation, and for the analysis of the practical questions that arise from enforcement. This is on the basis of close co-operation between its members and the Commission. SLIC represents the Commission and each Member State, and assembles for a meeting every six months in the Member State holding the EU Presidency. SLIC has a subgroup called CHEMEX, which has a focus on REACH enforcement among EU occupational enforcing bodies.

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL): is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The Network's objective is to progress the effective application of environmental legislation. It promotes the exchange of information and experience, and the development of legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

The Chemicals Legislation European Enforcement Network (CLEEN): is a network that co-ordinates and improves the enforcement of EU chemicals legislation. It is essentially a forum for information exchange and it sets, in collaboration with the Member States, priorities for enforcement projects in the EU and the preparation of recommendations to the Commission. CLEEN is not an official organisation, but does have a role in preparing for REACH and for the tasks of the Forum.

Appendix 3 – Registration related duties

For the purposes of paragraph 16 above, the following articles of REACH, as set out in Schedule 1 of the Enforcement Regulations, are considered to be registration related:

| <i>Provision of REACH</i> | <i>Subject Matter</i> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Article 5, subject to articles 6 (threshold limits and requirements of polymer), 7(requirements of articles), 21(conditions where manufacture or marketing of substance permitted without formal registration) and 23 (transitional arrangements) | Prohibition on manufacture or placing on the market of substances on their own, in preparations or in articles without registration. |
| Article 7(2) | Requirement on producer or importer of an article to notify agency. |
| Article 7(3) | Requirement on producer or importer to supply appropriate instructions to the recipient of the article. |
| Article 9(2) | Requirement on manufacturers, importers or producer of articles to notify the European Chemicals Agency of relevant information where seeking to rely on exemption for product and process orientated research and development. |
| Article 12(2) | Requirement on manufacturer and importer to notify European Chemicals Agency with additional information where it reaches the next tonnage threshold. |
| Article 14(7) | Requirement to keep chemical safety report up to date. Requirement to keep chemical safety report available. |
| Article 22(1) | Requirement on registrant to update its registration |
| Article 22(2) | Requirement to submit to the agency an updated registration |
| Article 24(2) | Requirement to notify, in accordance with articles 10 and 12, where the quantity of a notified substance reaches the next |

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|------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | tonnage threshold. |
| Article 26(1) | Requirement on potential registrant of non-phase in substance or phase in substance who has not pre-registered to inquire if the same substance has been registered. |
| Article 27(1) | Requirement on potential registrant to request information on vertebrate animals tests from a previous owner. |
| Article 30(6) | Subject to article 30(5) (appeals), failure by owner of relevant study to provide either proof of the cost of the study or the study itself. |
| Article 36(1) | Requirement to submit or make available information to a competent authority or the European Chemicals Agency when requested to do so. |
| Article 36(2) | <p>Requirement on the party responsible for liquidating the registrant, downstream user or distributor's undertaking or assuming responsibility for the placing on the market of the substance or preparation concerned, to comply with Article 36(1).</p> <p>Requirement on the party responsible for liquidating the registrant, downstream user or distributor's undertaking or assuming responsibility for the placing on the market of the substance or preparation concerned to submit or make available information to a competent authority or the European Chemicals Agency when requested to do so.</p> |
| Article 37(3) read in association with article 39(1) | <p>Requirements stating when a manufacturer, importer or downstream user must comply with Article 14 for registered substances</p> <p>Requirements stating when a manufacturer, importer or downstream user must comply with Article 14 for a phase-in substance.</p> <p>Duty on a manufacturer, importer or downstream user to provide the Agency and downstream users with reasons why a use identified by a downstream user cannot be included in the chemical safety report</p> |

| | |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Duty on a manufacturer, importer or downstream user not to supply a downstream user with a substance without including these reasons in the information referred to in Articles 31 or 32 |
| | Duty on a manufacturer or importer to include the use notified under Article 37(2) in the update of the registration under Article 22(1)(d) |
| Article 37(7) read in association with article 39(1) | Duty on downstream users to keep their chemical safety report up to date. |
| | Duty on downstream users to keep their chemical safety report available. |
| Article 46(2) | Requirement on a registrant to submit further information in accordance with a draft decision prepared by the competent authority. |
| Article 49(a) | Failure by a registrant to submit further information as requested by the competent authority in relation to the risk identified for on-site isolated intermediates. |
| Article 50(4) | Failure to provide, in accordance with Article 46, further information, required by the competent authority. |
| Article 66 | Requirement on downstream users using a substance in accordance with article 56(2) to notify the European chemicals agency within three months of the first supply. |

Appendix 4 – Commissioning specialist support

[Mechanism tbc]

Appendix 5 – Recording enforcement information

Full and accurate recording of REACH interventions is required in order to fulfil the UK's obligations under REACH. By article 117, every five years Member States must submit to the Commission a report on the operation of REACH in their respective territories, including a section on enforcement. By article 127, it is clear that 'enforcement' should be interpreted widely, as it is to include the results of inspections and monitoring.

The CA will develop and forward to each enforcement authority a common reporting spreadsheet incorporating all aspects required to be reported to the European Commission. Each enforcement authority is required to complete and maintain records of enforcement activity on the common spreadsheet format. The CA will, in accordance with time periods directed by the European Commission, request and collate information from each enforcement authority and forward this collated information Defra for consideration and subsequent submission to the European Commission.

The common enforcement recording spreadsheet will be also be used as a mechanism to identify and discuss enforcement activity within the Enforcement Liaison Group.

Enforcing authorities are likely to be asked to submit the following information on enforcement for the purposes of preparation of the report:

- the number of visits made in which REACH was discussed / enforced;
- details of the dutyholders visited (by industry type, using a SIC code if possible);
- their location;
- the duration of the visits made (in total);
- the type of visit, e.g. advice, inspection, investigation, enforcement, etc.;
- the outcome of the visit, e.g. verbal advice, letter, enforcement notice, prosecution directly or via the Procurator Fiscal in Scotland;
- where formal enforcement action is taken (i.e. enforcement notices or prosecution), which substance was the subject-matter of the enforcement, and under which Article of REACH enforcement action was taken;
- for enforcement notices, what kind of notice was served;
- the number of appeals against enforcement notices served, and the outcome of the appeal;
- the number of complaints received, and (in general terms) who made them, e.g. member of the public, employer, worker etc;
- the number of complaints investigated, and their outcome (justified, partially justified, not justified);
- the number of incidents investigated and their type, e.g. ill-health, dangerous occurrence, harm to the environment etc;

- the proportion of investigations (complaints and incidents) which led to formal enforcement action (notices or prosecution) being taken; and
- the number and type of educational events held.