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HEALTH AND SAFETY EXECUTIVE

Senior Management Team

**REACH Enforcement:
multi-agency Memorandum of Understanding**

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Cleared by Jane Willis on 14 June 2010

Issue

1. Finalising multi-agency Memorandum of Understanding (hereafter 'the Memorandum') between REACH enforcers.

Timing

2. Routine. Other parties to the Memorandum have indicated their readiness to sign this final draft during a staged circulation of paper copies throughout Q1 and Q2 2010-11.

Recommendation

3. The SMT is invited to agree to final sign-off of the Memorandum as at paragraph 9 and the appendix.

Background

4. In Summer 2008, during early development of the REACH enforcement regime, the SMT and HSE Board had early sight of a draft Memorandum being developed between the several parties who were to have a role in REACH enforcement (papers SMT/08/38 and HSE/08/33).
5. The enforcement regime is now maturing and the REACH Enforcement Liaison Group – established to ensure practical co-operation between parties to the Memorandum – continues to develop a common approach to REACH enforcement. The full set of appropriate parties to the Memorandum has now been identified and all have agreed the final text at Appendix 1.
6. This final text is substantially similar to the version previously seen by SMT and the HSE Board. Some minor changes have been made. In particular:
 - a. addition of additional signatories (the Home Office, who have an interest in aspects of REACH relating to testing of chemicals, and the UK Borders Agency, who have been formed from part of HM Revenue and Customs);

- b. changes requested by other enforcers to ensure that their enforcement policy statements are explicitly referenced; to permit the necessary flexibility in the way different enforcers approach REACH enforcement and allocate resources; and to ensure liaison between REACH enforcers is decided on a case-by-case basis and is not unintentionally restricted by the Memorandum;
 - c. some grammatical changes.
- 7. The draft has been agreed with a view to ensuring openness and flexibility between parties, taking into account the need to ensure the Memorandum is acceptable to the large number of signatories.
- 8. Officials are content that the agreed final draft establishes a constructive relationship between REACH enforcers, and that the role for HSE as REACH Competent Authority is appropriate and achievable in the context of wider REACH enforcement activity.
- 9. SMT is asked to agree this final version and that it should be signed for HSE by Kevin Myers as Deputy Chief Executive.

Consultation

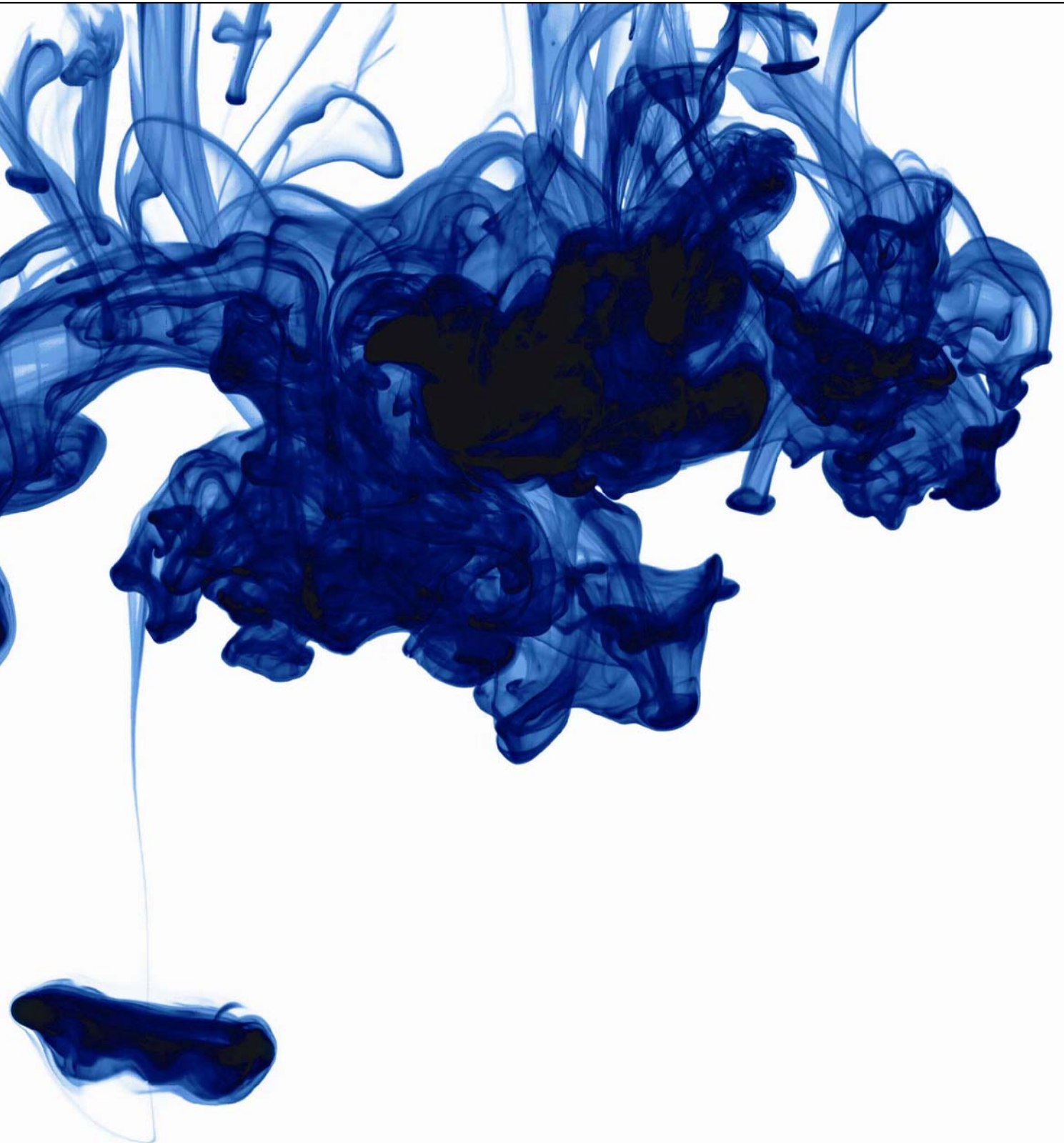
- 10. Within HSE, the Chemicals Regulation Directorate, CCID, and Legal Advisers have been consulted. Externally to HSE, the UK REACH Enforcement Liaison Group (including all parties to the Memorandum, and Defra) has been consulted.

Financial / resource implications

- 11. None – sufficient resources in HSE both in CCID and CRD (the UK REACH Competent Authority team) are already allocated to activities covered in the Memorandum.

Memorandum of understanding for the enforcement of REACH

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



Enforcing parties to the Memorandum:



[signature]

[Name]
Health and Safety
Executive



[signature]

[Name]
Health and Safety
Executive for Northern
Ireland



[signature]

[Name]
Environment Agency



[signature]

[Name]
Scottish Environment
Protection Agency



[signature]

[Name]
Northern Ireland
Environment Agency



[signature]

[Name]
Department of Energy and
Climate Change

Supporting parties to the Memorandum:



[signature]

[Name]
Local Authorities
Coordinators of
Regulatory Services



[signature]

[Name]
Her Majesty's Revenue
and Customs



[signature]

[Name]
UK Border Agency



[signature]

[Name]
Home Office

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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. 2852/2008).

“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, where more than one enforcing authority is responsible for enforcement of a particular aspect of REACH, will be responsible for establishing the necessary enforcement action in consultation with relevant other enforcing authorities, and will undertake this action 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); Northern Ireland Environment Agency (NIEA) acting on behalf of the Northern Ireland Department of the Environment; and the Department of Energy and Climate Change (DECC).

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.

The UK Border Agency (UKBA) is responsible for delivering risk based anti-smuggling controls at UK points of entry to detect illegal imports of prohibited and restricted goods. UKBA may provide assistance to the enforcing authorities by detaining goods at import for a maximum of 2 working days as set out in the Regulation, either when requested to do so or in the event that UKBA have reasonable grounds to suspect that goods may be being imported which are in breach of REACH.

HM Revenue & Customs (HMRC) is responsible for delivering the customs clearance function for imports from non EU countries and for operating the import customs declaration system. HMRC may disclose information obtained or held in the exercise of its functions relating to imports, to facilitate the exercise of a duty of an enforcing authority under the Enforcement Regulations.

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

General Agreement

1. The parties undertake to use all reasonable endeavours to effectively co-operate and assist each other to carry out their responsibilities and functions in relation to REACH enforcement and to maintain effective working arrangements for that purpose. Such co-operation is intended to improve the effectiveness of REACH enforcement and allow them to:
 - a. identify and collaborate on areas of mutual interest; and
 - b. 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 of cooperation relating solely to the parties' enforcement duties under the Enforcement Regulations.
3. Recitals 1-8 of REACH describe some of its aims. These include:
 - a. the protection of human health,
 - b. the environment and consumers;
 - c. the promotion of alternative methods for the assessment of hazards of substances;
 - d. the efficient functioning of the internal market; and
 - e. 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 REACH, 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.

Objectives

5. The objectives of the Memorandum are to:
 - a. promote effective and efficient enforcement of REACH by co-ordinating action between enforcers;
 - b. agree minimum standards of co-operation between the enforcing authorities;
 - c. set out clear and effective arrangements for co-operation and information sharing between the enforcing authorities;

- d. ensure effective co-ordination between the enforcing authorities where there are joint enforcement responsibilities, including discussion and agreement, where practicable, about the most appropriate enforcement activity;
- e. avoid, so far as is possible, duplication of inspection, investigation and enforcement, in line with the Compliance Code;
- f. 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

- 6. The enforcing authorities will co-operate with each other to enforce the provisions of REACH and to fulfil their duties under the Enforcement Regulations.
- 7. The parties to the Memorandum will provide appropriate resources to ensure the working arrangements set out here can operate effectively.
- 8. Other memoranda, concordats, partnership agreements and similar agreements exist between some or all of 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.
- 9. All 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.
- 10. The parties shall consult on matters of mutual interest at an early stage.

Co-ordination and responsibilities

- 11. 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. As a result, an 'Enforcement Liaison Group' ("the 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

- 12. The Group will be comprised of representatives of all parties to this Memorandum.
- 13. The Group will:
 - a. develop an appropriate enforcement strategy in accordance with 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. advise on, and co-ordinate the results of, any programmes of intervention in relation to a substance or issue, e.g. inspection campaigns for a specific substance or industry sector;

- d. discuss and advise on 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 all reasonable 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.

14. 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 as necessary raise issues discussed by the Group at the Forum.

Allocation of general enforcement responsibilities

15. Regulation 3 in conjunction with Schedule 1 to the Enforcement Regulations sets out which enforcing authority is responsible for enforcing different provisions within 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 27 below); it will do this with the support of the UK Border Agency (UKBA) and HM Revenue and Customs in matters related to the prohibition of importation, and from the EA, SEPA, NIEA, and DECC 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, NIEA, and DECC in matters relating to the environment. Thereafter, the local trading standards officers (TSOs) (referred to in the Enforcement Regulations as local (consumer safety) authorities) will be responsible for enforcement, except in Northern Ireland, where District Councils enforce consumer safety issues;
 - c. HSE, HSENI, EA, SEPA, NIEA, DECC, and local (health and safety) authorities will enforce the *use related duties* in REACH (with specialist support from the CA where necessary – see paragraph 38

below) as per existing arrangements² for enforcing work related health and safety, environmental and consumer protection legislation.

16. In relation to a number of use-related duties, Schedule 1 to the Enforcement Regulations provides that 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.
17. In such situations:
 - a. HSE, 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; and
 - b. EA, SEPA, NIEA or DECC (as appropriate) will be the lead enforcing authority where the subject matter of that enforcement primarily concerns the protection of the environment.
18. When determining whether a matter primarily concerns the health and safety of workers or the environment, enforcing authorities will:
 - a. take into account the availability and suitability of enforcement powers and the nature of offences;
 - b. so far as is possible, avoid the duplication of activity where their duties overlap, by facilitating co-operation in all aspects of enforcement;
 - c. avoid so far as is possible conflicting requirements being put on dutyholders, thus minimising the burden on industry, particularly where there are overlapping duties;
 - d. 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;
19. When the primary matter for enforcement is established, the enforcement authority with responsibility for it shall be the lead authority for the enforcement activity.
20. Decisions on which enforcing authority shall take the lead for any given provision of REACH requiring enforcement under the Enforcement Regulations shall be made by the enforcement officers involved in the case.
21. In order that decisions can be taken by enforcing authorities as to which of them shall take the 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 28.

² See for example, the Health and Safety (Enforcing Authority) Regulations 1998.

22. 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 42 below.
23. Where an enforcing authority does not have the lead for enforcement of a particular REACH provision requiring 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 may be appropriate.
24. Any enforcing authority may, where appropriate, call upon the expertise of another enforcing authority when conducting an investigation or enforcement proceedings.
25. Enforcing authorities may co-operate with each other for training and familiarisation purposes by arranging joint visits.

Allocation of enforcement responsibilities where supply and use provisions are combined

26. 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.
27. 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

General principles

28. Subject to the Data Protection Act 1998 and the Human Rights Act 1998, and in accordance with the Cabinet Office Security Policy Framework, the following working arrangements shall apply for enforcing authorities:
 - a. A 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 own organisation, as required.
 - b. The operational contact between enforcing authorities will, in the first instance, normally be between enforcement officers involved in the case, supported by their representatives in the Group. The Group will

monitor this approach and assess it as part of the review into operation of this Memorandum, with a view to ensuring efficient operational communication between the signatory parties.

c. Where an enforcement officer identifies any matters of concern that appear to be outside the enforcement responsibility of his or her organisation, this information must be passed to the relevant enforcing authority as soon as practicable and, if the situation calls for it, promptly, via either direct communication or the Group, as appropriate.

d. Enforcement officers will inform their counterparts in other enforcing authorities about enforcement activity, incidents or emergencies where this information is considered to 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 promptly where there is an obvious risk of serious or imminent danger).

g. HSE/HSENI must keep the relevant environmental enforcing authority informed about supply-chain related enforcement that concerns environmental protection and seek necessary advice where appropriate.

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 promptly in the case of a substance of very high concern).

Information exchange and ECHA

29. 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 such information with the enforcing authorities as appropriate.

30. 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. Other methods to access data held by ECHA may be developed and will be taken into account in any subsequent revisions of this Memorandum.

Provision of information by HMRC and UKBA

HMRC

31. All information held by HMRC is covered by a statutory duty of confidentiality set out at section 18(1) of the Commissioners for Revenue & Customs Act 2005 (CRCA). HMRC cannot disclose information held in connection with its functions unless there is lawful authority under s18(2) CRCA or another enactment permitting disclosure.

UKBA

32. A statutory duty of confidentiality set out at section 15(1) of the Borders, Citizenship and Immigration Act 2009 (BCIA) applies to customs information acquired or capable of being acquired by UKBA as a result of the exercise of a customs function. UKBA cannot disclose customs information unless there is lawful authority under s16 BCIA or another enactment permitting disclosure.

HMRC & UKBA

33. HMRC and UKBA are not named REACH enforcing authorities but regulation 4(3) of the Enforcement Regulations enables them to lawfully disclose information held or obtained in the exercise of relevant functions relating to imports to the named enforcing authorities where it will facilitate the exercise of the named enforcing authorities' duties under the Enforcement Regulations. Information may be disclosed proactively or on request.

34. Information provided by HMRC may only be onwardly disclosed by an enforcing authority either with the prior consent of the Commissioners of HMRC or under a legal obligation such as an enactment permitting disclosure. Enforcing authorities may only onwardly disclose UKBA customs information with the prior consent of a relevant official (as defined at s15(3) BCIA) or under a legal obligation such as an enactment permitting disclosure. Enforcing authorities will not enter into a contract which would require them to pass on information received from HMRC or UKBA.

35. Any other onward disclosure of HMRC or UKBA information that either identifies an individual or enables their identity to be deduced may constitute a criminal offence under regulation 13(5) of the Enforcement Regulations.

36. Requests for information on importers from HMRC or UKBA will be made by the enforcing authorities on a case-by-case basis using a process to be developed and documented by the Group separately to this Memorandum.

37. Each of the parties to this agreement is responsible for ensuring that they have necessary and appropriate security arrangements in place and that information is accessed, stored and transmitted in accordance with appropriate security arrangements.

Interventions

38. Enforcing authorities will undertake a range of interventions, both proactive and reactive, to ensure dutyholders comply with REACH. The exact scope and nature of interventions will depend on the enforcing authority's organisational priorities and resources. Compliance with REACH may be considered at visits to any premises where substances, preparations or articles are manufactured, imported, supplied or used.

International co-operation

39. 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 and data protection.

Provision of specialist advice/ expertise

40. 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.

41. The arrangements for commissioning the specialist support referred to in the preceding paragraph are set out in Appendix 4.

Recording enforcement information

42. Full and accurate recording of the enforcement of REACH is required in order to fulfil the UK's obligations under REACH. The UK must produce and submit a report to the European Commission on the operation of REACH, including details about enforcement. 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 assistance of the CA or the Group as necessary.

43. As information requirements for enforcers are established by the European Commission and passed to the Competent Authority by the UK Department for the Environment, Food and Rural Affairs, the Competent Authority will notify enforcing authorities of the information requirements as appropriate, providing sufficient and reasonable notice wherever possible, and not less than one calendar month unless under exceptional circumstances.

44. Enforcing authorities should therefore use all reasonable endeavours to collect and collate the relevant information listed in Appendix 5.

Resolving disagreements

45. If enforcing authorities are not able to resolve disagreements at the lowest practical level of management seniority, the matter must 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

46. Each organisation may nominate a single contact who will be responsible for monitoring the practical implementation and effective working of the Memorandum.

47. This Memorandum shall be subject to review one year after it comes into effect³, taking into account the views of the enforcing authorities and the members of the Enforcement Liaison Group, and thereafter every five years. This does not preclude the consideration of urgent matters for review as they arise, through the network of contact points.

³ That is, the date of the last signature.

Appendix 1 – Roles and responsibilities of some authorities 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): 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 the Enforcement Regulations.

www.defra.gov.uk

The UK Competent Authority (CA): REACH required Member States to appoint Competent Authorities to manage the domestic aspects of the legislation, and to liaise with the Agency. In the UK, the role of the CA is being carried out by the Health and Safety Executive, working with the Environment Agency and other government departments on behalf of the formally appointed UK 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): 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): 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): 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): SEPA's main role is to protect and improve the environment. SEPA does this by being an excellent environmental regulator, helping business and industry to understand their environmental responsibilities, enabling customers to comply with legislation and good practice and to realise the many economic benefits of good environmental practice. SEPA protects communities by regulating activities that can cause harmful pollution and by monitoring the quality of Scotland's air, land and water.

www.sepa.org.uk

The Northern Ireland Environment Agency (NIEA): NIEA is the lead body responsible for protecting and improving the natural and built environment in Northern Ireland. NIEA's environmental protection 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). In Northern Ireland, the Rivers Agency has primary responsibility for flood protection.

www.ni-environment.gov.uk

The Department of Energy and Climate Change (DECC): DECC was created in October 2008, bringing together energy policy (previously with BERR - the Department for Business, Enterprise and Regulatory Reform) with climate change mitigation policy (previously with Defra). DECC'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.decc.gov.uk

Local authorities (LAs): 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, NIEA and DECC. 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): HMRC is responsible for processing all customs declarations for 3rd country imports and exports of goods into and from the UK. HMRC also owns the Customs Handling of Import and Export Freight (CHIEF) system which processes all customs declarations and thus owns all data held in this system. Although HMRC is not an enforcing authority under the Enforcement Regulations, they may provide assistance to the named enforcing authorities by sharing information with and by monitoring (setting profiles) imports of chemicals on a risk basis that are of interest to the enforcement authorities. Any requests for import monitoring activities will be required to undergo impact assessments prior to being set to ensure they are proportionate and do not have an adverse impact on legitimate trade flows.

UK Border Agency (UKBA): UKBA responsibilities include securing the United Kingdom borders by enforcing customs regulations and supporting other enforcement authorities. They may provide assistance to the named enforcing authorities by using the statutory powers set out in the Regulation to detain goods at import for a maximum of 2 working days either when requested to do so or in the event that they have reasonable grounds to suspect that goods may be being imported which are in breach of REACH. UKBA can also share information with, and assist criminal investigations by, the named enforcing authorities.

UKBA also has enforcement policy responsibility for all customs activities arising from import prohibitions or restrictions in relation to REACH. This includes providing policy and operational guidance to UKBA and HMRC staff to implement minimum legal requirements and to support the enforcement strategy agreed with the lead Government Department and lead enforcing authorities for this regime. Therefore, the UKBA should be the first point of contact for notifying changes to REACH rules and for submitting any requests for national risk based profiles to monitor REACH compliance.

Home Office: The Home Office is responsible for the assessment of all proposals to use animals in scientific projects, including work in support of REACH undertaken in Great Britain. Animal use is only permitted when there is no suitable non animal method reasonably and practically available; the generation of new test data is justified; the protocols proposed cannot be further refined; and the protocols will be likely to produce data which will meet the specified objective.

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 15(a) 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	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 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)(a)	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)	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).
	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.
Article 37(3)	Requirements stating when a manufacturer, importer or downstream user must comply with Article 14 for registered substances
	Requirements stating when a manufacturer, importer or downstream user must comply with Article 14 for a phase-in substance.
	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
	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 41(4)	Requirement on a registrant to submit information required to the European Chemicals Agency
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(1)	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

From time to time it may be necessary for REACH enforcing authorities to secure specialist support in order to effectively fulfil their REACH-related duties.

Where the support of another enforcing authority is necessary in order that technical aspects of the Regulation regarding safe use of substances can be effectively enforced, and depending on the extent and burden of such support, it may be appropriate for Enforcing Authorities to either:

- approach one another through the Enforcement Liaison Group for *ad hoc* support;
- seek support on issues of UK-wide relevance in terms of work conducted as part of the overall CA function; or
- commission specialist support from one another.

Instances of the latter form of arrangement would necessarily follow the usual procedures employed by each body for procurement or provision of technical support, as relevant.

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(1), 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 assist each enforcing authority in understanding reporting requirements of the European Commission. Enforcing authorities will need to ensure that they complete and maintain sufficient records of enforcement activity in support of UK duties to report to the European Commission. Such records can also be used as a mechanism to identify and discuss enforcement activity within the Enforcement Liaison Group.