

MINUTES OF THE FIRST MEETING OF THE REACH ENFORCEMENT LIAISON GROUP (ELG)

HSE, REDGRAVE COURT, BOOTLE
THURSDAY 13 NOVEMBER 2008

Organisations represented

UK REACH Competent Authority (CA)
Health and Safety Executive (HSE)
Environment Agency (EA)
Health and Safety Executive Northern Ireland (HSENI)
Scottish Environment Protection Agency (SEPA)
Department of Energy and Climate Change (DECC)
Northern Ireland Environment Agency (NIEA)
Her Majesty's Revenue and Customs (HMRC)
Department of the Environment, Food and Rural Affairs (Defra)

Apologies were received from the Local Authorities Coordinators of Regulatory Services (LACORS)

The Provisional Chair and Secretariat functions were provided by the UK REACH CA

1. Welcome and introductions

The Chair welcomed all members and thanked them for attending. Each member introduced themselves to the Group.

2. Background of the Enforcement Liaison Group (ELG)

The Chair explained to the meeting that the ELG is the principle means of liaison between the different enforcing authorities with a role in REACH enforcement. Under regulation 4 of the REACH Enforcement Regulations 2008, enforcing authorities are required to co-operate and exchange information with each other where this will assist compliance with REACH. The duties under regulation 4 are further supported by a Memorandum of Understanding (MoU) on REACH enforcement, which lays down administrative and practical arrangements for co-operation and information exchange. The MoU establishes the ELG and allocates it a number of functions.

The ELG is a sub-group of the Steering Committee for the UK REACH Delegated Competent Authority ('the Steering Committee'). An outline of the purpose and function of the Steering Committee was given. The Committee is attended by representatives of the devolved administrations and other government departments with a significant interest in the implementation of REACH. It provides the mechanism by which they will seek to agree the policies to be put forward in EU REACH-related business by the UK representatives and by which they will advise, support and hold to account HSE in the discharge of the CA function.

3. Administrative issues

The draft Rules of Procedure for the ELG were introduced and comments were invited from ELG members by the end of January 2009 so that the rules could be

agreed. This would allow time for changes to be made and discussed at the next meeting. **Action: All members.** The members discussed building provision into those Rules so that observers could be invited. In a similar approach to that adopted by ECHA, documents - including the Terms of Reference, agendas & minutes of meetings - will eventually be published on HSE's website.

One member suggested that the agenda should be arranged in two parts – part 1 containing information which will be made available to the public, part 2 for private business. **Action: Secretariat & Chair** (for future meetings)

Members were asked to consider how frequently they wanted to meet. It was suggested that at least twice each year was appropriate, though the next meeting should take place in early 2009 due to the need to take stock of REACH enforcement early into the new enforcement regime. One member said that this initial meeting should be used to establish relationships between enforcers. Future meetings could take place when things were due to happen. The members agreed this approach.

In order to facilitate the MoU requirements on exchange of information, there is a need to collect and circulate the contact details of the ELG members. Members agreed to provide the ELG Secretariat with their office addresses, telephone and mobile numbers. **Action: All members.** Further, all members were invited to become members of the Government Intranet Community for REACH (assuming they are not already); Invitations to join this community will be e-mailed to relevant members. **Action: Secretariat of the Steering Committee**

One member asked, in cases where disagreements arise in the ELG, should this be a matter for ECHA to resolve? The Chair referred members to the draft REACH MoU (consultation version) at paragraph 30 which refers disagreements to the Steering Committee.

It was noted that, in offshore matters, BERR's responsibilities had been transferred to the new the Department of Energy and Climate Change (DECC).

4. REACH enforcement – update on progress and responses to Summer 2008 consultation

An update was given as to the progress on REACH enforcement issues, and the responses to the Summer 2008 public consultation run by Defra. Members were told that the REACH Enforcement Regulations 2008 ('the Enforcement Regulations') had now been laid before Parliament and will enter into force on 1st December 2008, which will provide for enforcement of all relevant REACH duties from that date, apart from Article 67 (restrictions) which will enter into force in June 2009.

The Summer 2008 consultation had attracted twenty-three responses, though only a few significant issues were highlighted. Defra will publish a document imminently that summarises consultation responses; this will be available on their website. The principal concern raised by respondents was over the role of HMRC in REACH enforcement, although since the summer, HMRC had agreed to be a supporting party to the MoU, and had also agreed to extra provisions in the Enforcement Regulations providing for the sharing of information between REACH enforcing authorities and HMRC. This has required the inclusion of an extra offence (improper disclosure of HMRC data) which enforcers need to be aware of.

The Chair asked if disclosing information under the Freedom of Information Act will remain a defence and was told that it would. One member wanted to know what kind

of information could not be disclosed, and was told that any data provided should not be forwarded without HMRC agreement unless this was done to meet legal requirements to which the enforcing authorities were subject.

Discussions were held on some of the specific functions allocated to the ELG by the MoU, as reflected in the draft Terms of Reference:

- Co-ordinate any appropriate programme of interventions in relation to a substance or issue: The Chair encouraged the ELG to identify target substances for enforcement. One member pointed out that it has already identified some substances as part of its existing enforcement activities.
- Contributing to UK participation in enforcement of REACH outside of the UK & assisting the UK representative at the Forum: The UK Forum representative will contribute to the UK's participation in the enforcement of REACH outside its own borders. This is important as there is a need to pass on information to other Member States. To this end, ECHA is considering the development of an electronic information exchange system. The Chair said that this matter had immediate relevance in Northern Ireland due to its border with the Republic of Ireland. There is a need to bring the existence of the ELG to the attention of the Health and Safety Authority and a representative could be invited to the next ELG meeting. **Action: Chair**

One member pointed out that, in the gas and oil industries, DECC (formerly BERR) are already involved in European partnerships. Another member commented that it may turn out that the UK is enforcing REACH more efficiently than other countries, and that the ELG must take measures to ensure that REACH enforcement is being undertaken fully in other countries.

- Collecting information for the article 117 report to the Commission: One member asked if there was any need for the level of detail currently required by the report. The Chair replied that it was a task of the Forum to determine the level of detail needed, but as UK representative to the Forum and Chair of the Forum Working Group on the MS Report to the Commission, the Chair would be able to look into any pressing problems. The Chair added that the members of this Working Group were happy with the level of detail in the report as it currently stood. The draft documents of the Working Group would be forwarded for comment (**Action: Chair**) though ELG members should respond with any comments as soon as possible as these documents will be put to the Forum at its December meeting for adoption. **Action: All**

One member asked if the ELG was going to be responsible for collecting and collating this information. The Chair replied that that wouldn't be the case. The ELG would be responsible for ensuring that the information is available for collection when Defra request it.

One member asked what would happen to the Report, and was told that it will form part of an overall Report which will be produced by the Commission by June 2012. However, apart from enforcement we do not yet know what else the Commission hopes to cover in the Report. The member then asked if the ELG will see the reports from other Member States to ascertain how enforcement in the UK compares with that in other countries, and was told that the ELG will be able to see the Commission's summary report when it was made available to all interested parties.

Another member said that the Welsh Assembly is very keen to understand what is happening about REACH enforcement in Wales, and that it would be interesting to see enforcement across different regions in the United Kingdom. It was noted that Local Authorities are not obliged to provide any information as this requirement is not written into the Enforcement Regulations. The Chair said that Local Authorities already provide limited information to HSE (e.g. Notices, prosecutions) but are unlikely to provide anything more specific to REACH.

5. Progress of the Memorandum of Understanding (MoU) and next steps

The current position with the draft MoU was explained. The latest version (circulated prior to the meeting) contained a number of comments and suggestions from Defra with the intention of aligning it more closely with the text and approach of the Enforcement Regulations. Members were invited to submit their comments and reactions on this version by the end of December 2009. **Action: All.** Members were also encouraged to think about who in their organisations would sign the final version of the document. It was hoped that the ELG would 'own' the MoU and that its contents could be agreed early in 2009.

The members were informed about plans to produce a supporting document between SEPA and Local Authorities in Scotland.

One member wanted to know what the latest position was on Appendix 4 of the MoU (on specialist input), and was informed that while Appendix 4 is still blank, it will just set up an administrative mechanism whereby specialist resource can be made available. It was noted that Appendix 5 (on recording enforcement information) may need to be updated in the light of the Forum Working Group documents.

6. UK REACH enforcement strategy

The Chair introduced the draft UK REACH Enforcement Strategy that the CA had developed with the help of the Environment Agency. As with the MoU, the Chair hoped the ELG could 'own' this document and agree on its contents early in 2009, after which it could be published on the UK REACH CA website. There was general discussion over aspects of the draft Strategy during the meeting, though members were invited to submit their comments and reactions on the document by the end of January 2009. **Action: All.**

The CA's plans on REACH enforcement, both in terms of reactive and proactive work, were outlined. The CA is setting up a dedicated telephone line and email account for enforcement related issues, in particular complaints, though it is hard to predict how many complaints the CA will receive. The CA is also running four training events for HSE Inspectors in January and February 2009. The Chair invited a representative from each enforcing authority to attend; although these events are aimed primarily at HSE staff, the information is likely to be of relevance to all enforcing authorities. The CA will share the presentations, training material and enforcement guidance. The dates and locations are:

- 13 January - The Auditorium, Redgrave Court, Bootle, Liverpool
- 22 January - The Rose Room, Rose Court, London
- 28 January - The George Suite, George Hotel, Edinburgh
- 2 February - The Edgbaston Suite, Birmingham Area Office

7. Existing approaches to enforcement – introduction to the Environment Agency Chemical Restriction Compliance Team and overview of its enforcement activities.

The member from the EA gave a presentation on the operation and work of its Chemical Restriction Compliance Team, which enforces the Controls of Dangerous Substances & Preparations Regulations 2006 (their work will be carried out under REACH Article 67 and Annex XVII from June 2009). **Action – Chair to circulate the presentation to all ELG members.**

8. Update on the activity of the ECHA Enforcement Forum

The Chair gave an update on the ECHA Forum. The first meeting took place in December 2007, the second in May 2008 (the third is planned for December 2008). It has already been a very active group; it has established its work programme and, as a result, it has set up a number of Working Groups. One of the Working Groups is tasked with setting up enforcer access to REACH IT, to allow enforcing authorities to search the ECHA database without needing to go through the MS CA each time. There are also Working Groups on co-ordinated EU-wide enforcement projects, the provision of advice on the enforceability of the proposed revision of Annex XVII, and on the MS Report to the Commission.

The Chair agreed to e-mail the work programme to the ELG to ensure members are aware of its activities. In addition, prior to Forum meetings the Agenda and any relevant papers will be forwarded to the REACH Steering Committee Secretariat for inclusion on the REACH Government Internet Community website. As there are often a number of papers, one member asked whether the Chair would identify the specific parts / issues relevant to ELG members. This was agreed, although it was noted that ECHA sometimes will only send papers out to Forum members a few days before the meeting is due to take place. Another member suggested that the ELG could comment on the minutes of the Forum meetings. **Action: Chair, and Secretariat of the Steering Committee**

9. Update on Helpdesk enforcement issues and REACH FAQs

The Chair said that, earlier in 2008, the UK REACH CA Helpdesk held a number of roadshows across the United Kingdom, focussed on pre-registration though also using the opportunity to incorporate a presentation on REACH enforcement. As this involved different speakers at different events, the CA had put together a 'Frequently Asked Questions' sheet. Feedback from speakers suggested this was a useful document, and the CA is considering putting this onto its website. Comments were requested from the ELG members by the end of 2008. **Action: All.**

As these FAQs were produced for CA-run events, it was noted that this could mean some of the text encroached into areas where other enforcers might prefer to give their own answers. The text is to be reviewed to try to avoid any instances of this.

Action: Chair

10. Any other business

The Chair noted that ECHA is inviting industry representatives to Forum meetings in Helsinki. Members were asked for their opinion as to whether the ELG should consider a similar approach, or if they would rather explore alternative means of keeping industry informed (for example, a REACH enforcement event that industry could attend). This would give industry the chance to speak to the regulators. One

member said that all of the ELG members could offer to attend any such event so that their expertise would be available to industry.

One member wanted to know if the ELG could keep a central resource of policy decisions, to ensure consistency of responses. The Chair said that, in terms of all of the ELG members being enforcers with overlapping duties, a central resource would be useful. Another member wondered whether there was a facility on the Government Intranet Community site for a blog or similar tool. The Secretariat of the Steering Committee replied that such a discussion facility could be made available in the future. **Action Chair and Steering Committee Secretariat - this item to be on the agenda of the next ELG meeting.**

11. Date of next meeting and issues for future discussion

The next meeting will be held early in 2009. The Chair asked for members to consider agenda items for the next meeting. **Action: all members to inform Secretariat of agenda items for the next ELG meeting.**