

MINUTES OF THE TWELFTH MEETING OF THE UK REACH ENFORCEMENT LIAISON GROUP (ELG)

HSE HQ, Redgrave Court, Bootle, Merseyside
Thursday 26th November 2015

Organisations represented

Department of Energy and Climate Change (DECC) (by teleconference)
Department of the Environment, Food and Rural Affairs (DEFRA) (by teleconference)
Environment Agency (EA)
Health and Safety Executive (HSE), Chemicals Regulation Directorate (CRD)
Health and Safety Executive for Northern Ireland (HSENI)
Home Office (HO) ASPU
HSE, Field Operations Directorate (FOD)
HSE, International Chemicals Unit (ICU)
Natural Resources Wales (by teleconference)
Telford Trading Standards

Representatives from the Irish Health and Safety Authority (HSA) attended as observers

Apologies received from:

Department of the Environment, Food and Rural Affairs (DEFRA)
HO UK Border Force
Northern Ireland Environment Agency (NIEA)
Office of Rail Regulation (ORR)
Scottish Environment Protection Agency (SEPA)

Chair and Secretariat functions were provided by HSE's CRD.

1. Welcome and introductions

The Chair of the ELG welcomed all members and thanked them for their attendance. Participants introduced themselves for the benefit of teleconference participants. The Chair requested items for AOB.

2. Administrative issues

(i) Approval of minutes from the last meeting:
The minutes of the last meeting were agreed.

Action: Secretariat to add to website.

(ii) Outstanding issues from last meeting:

Action on HSE CRD to provide training material to DECC and offer training. This has been completed, but DECC requested this be resent.

Action on HSE ICU to establish appropriate UK representative for CLP working group.

Action on HSE CRD and HSE ICU to provide members with information on wording of enforcement notice has been superseded by an upcoming clarification on the wording of the REACH Enforcement Regulations 2008, therefore no longer an issue.

Action on SEPA to provide link to consultation on civil sanctions. SEPA not attending to check progress. **Action for next meeting.**

Remaining actions to be dealt with within Agenda

(iii) Terms of Reference

The Terms of Reference document is now agreed by all members and is therefore adopted.

Action: Secretariat to publish on website.

3. Feedback on recent operational activities including enforcement action

(i) Local Authority REACH Champion

The LA REACH Champion introduced himself to the group, including an explanation of the different groups he is a member of and his role in REACH enforcement. He explained that Trading Standards Officers are local government officers and not civil servants and as such are currently subject to reorganisation.

(ii) HSE CRD activities and future plans:

A member of HSE CRD gave a presentation of recent and on-going enforcement activities. The presentation has been distributed to members and additional comments are as follows:

Reactive work

To date there have been 680 interventions, resulting in 75 notices and 1 prosecution. The prosecution is the first 'pure' REACH prosecution, and related to the supply of a second hand boiler containing asbestos.

Whilst the number of confessions appear to be decreasing, these seem to mainly relate to use of authorisable substances after the sunset date. However, complaints and referrals are both increasing in number, with the main topics being e-commerce, restrictions (particularly supply of CMR's to the public) and SDS's. There are also increasing numbers of SONCs received from ECHA following dossier evaluation.

On the prosecution: This is the first 'pure' REACH prosecution, and related to the supply of a second hand boiler containing asbestos. The company confessed to the supply of the boiler, as well as to the presence of asbestos, but the case was due to go to trial as they argued that REACH did not apply as it was not the first placing on the market of the boiler and referred to this in the 'Blue Book'. This does not apply in REACH, and REACH specifically states that it applies at every step in the supply chain. After seeing the statements where

this was explained, the company pleaded guilty prior to the hearing and received a fine as well as paying costs. **Action: HSE CRD to provide specifics of contravention in terms of boiler prosecution.**

Proactive work

There are no topic specific campaigns being run this year, or anticipated in the near future. The UK does input into EU wide enforcement projects, including:

- REF IV on Restrictions - Operational in 2016 and lead by EA, although the substances may mean potential for input by other regulators. **Action: Secretariat to put TS REACH Champion in touch with EA to discuss input to REFIV.**
- Second Authorisations pilot - Wider choice of substances than last time and led by HSE FOD.

Additional Enforcement Liaison at EU level

UK will contribute to REF V to cover eSDSs / RMM / ES – contributions will be based on cases already being handled which may fit, there will be no inspections specifically for this project.

There is also a CLP project, and one on child resistant closures, which the UK won't be participating in.

The UK continue to input into the Forum meetings, and are currently contributing in a number of Forum groups, including

- Interlinks WG
- Train the trainers - when expertise allows
 - 2015 on CLP – two HSE inspectors attended and found it useful
 - 2016 will mirror REF V (trainers / attendees??)
- Prioritisation of REF Projects WG

Also, thanks to those who provided numbers for the Article 117 report to COM on UK enforcement activity. Please continue to capture cases for next report due in 2020. **Action: Secretariat to provide blank spreadsheet for capture of cases to new members.**

(iii) Environment Agency activities and future plans

Verbal feedback was given, the key points are as follows:

- An enforcement campaign on lead paint, including working closely with English Heritage, has found lots of restricted products for sale and English Heritage has amended their notification process for lead paints used in restoration processes. Agreement for EA to audit English Heritage on fulfilling this duty.
- Work undertaken on mercury measuring devices – several cases of non-compliance detected, dealt with via advice.
- Dossier to identify D4/D5 in personal care products as a chemical of concern for restriction has been completed and has passed conformity checks at ECHA.

- Some scoping work is being carried out on hexavalent chromium compounds. EA may engage in some awareness raising relating to the authorisability of these substances.
- In terms of restrictions, EA is representing the UK on the restrictions pilot project, as well as on the working group aiming to ensure restrictions are enforceable.

EA also offered their assistance on future REACH based activity, if any members had projects that require additional resource.

Other work being carried out by EA:

Chemical Source control project as part of the Waste Water Framework, which could feed into REACH and POPS in future.

Work being done in relation to new greenhouse gas legislation, PCB registration and notification of stockpiles in relation to POPs (probably due to electronic waste). EA will also be attending CLEEN and have proposed a project on ozone depleters.

Help was also offered to other ELG members if assistance was needed on any REACH projects in the future. **Action: All members to consider and get in touch with EA if needed.**

4. Developments at European Level

(i) Feedback from Forums 20, 21 and 22.

Presentation given by HSE CRD - The presentation has been distributed and the ELG discussed points of interest.

Updates provided on interlinks project, restrictions issues, REF III and REF IV projects, as well as contribution to Forum pilot projects. REF V is being scoped but will cover eSDSs in some way. A train the trainer's event will be held for this and the UK are participating as a trainer. Members are welcome to nominate colleagues for attendance at this (or any other ECHA events).

Very few practical issues are submitted for discussion. Breakout groups are now used to develop pilot projects and set Task Plans to update Forum Documents (MAWP and Lessons Learnt).

To note, there seems to be an increase in legal challenges, via both ECJ and BoA.

RIPE is being replaced with Portal Dashboard (PD-NEA) and CRD will be in touch with members soon to discuss re-authorising users.

An open meeting was also held as part of Forum 22. The Forum updated on activities and enforcement action in some MSs. ASO presentations were given on various topics, including Liquid Laundry Detergent Capsules, enforceability of SONCs and Intermediates.

The next Forum meeting will be held in the week commencing 14th March 2016.

Action: Secretariat to provide agenda in advance.

Action: Members to offer comments for discussion by the end of the previous week.

5. Update from Defra/HSE

(i) Enforcement Strategy

In response to changes in caseload and case types Compliance Branch is going to review the targeting of its resources across the chemicals regimes that we have a role in regulating - with the aspiration to maximise our impact using the current resources available and to make better use of our intervention – strategy –planning cycle.

We wish to ensure that we are supporting the regulator's code by being transparent about what we expect of our duty holders and what they should expect of us, and accountable for what we target, in particular that we undertake the right mix of reactive and proactive work.

We are going to develop and publish a strategy which will detail the common principles by which we will act across all the regimes but which also articulates the issues of non-compliance most important to us for each regime – as it is hoped that this will help address the tension between taking forward risk based issues vs. the need for a level playing field.

The work will include reviewing the strategy and guidance document for the enforcement of REACH which was produced in April 2010 and is due for review in any case.

CRD will be sharing the detail of this work with everyone around the table and in particular consulting explicitly with Defra as the policy lead for REACH to establish and include Defra's priorities.

(ii) Defra feedback

Last minute apologies mean this item was not given.

(iii) Application of REACH to Members of the Public (MoP)

HSE provided feedback on the application of REACH to members of the public. It has now been agreed that this does apply, and a draft paper will be presented at the next ELG meeting outlining the reasoning and providing a policy statement. This was discussed again due concerns amongst the CRD Compliance Team to the reduction in regulation resulting in not covering the public.

6. AOB

None

8. Date of the next meeting:

The ELG will continue to take place twice annually at this time. The next meeting will provisionally be scheduled for June 2016.

Action: Secretariat to obtain availabilities of members nearer the time.

The Chair brought the meeting to a close, thanking all members for their attendance and contributions.

Action: Secretariat to circulate Minutes of meeting