

Consultation response

**on the enforcement of
REACH in the UK**

EEF, the manufacturers' organisation, has a membership of 6,000 manufacturing, engineering and technology-based businesses and represents the interests of manufacturing at all levels of government. Also comprising Engineering Construction Industries Association (ECIA) and UK Steel, EEF is a leading provider of business services in employment relations and employment law, health, safety and environment, manufacturing performance, and education and skills.

Our response to the specific questions put forward in the consultation is provided below.

Q. Do you have any comments relating to the proposed enforcement authorities?

We agree that, in line with recommendations put forward in Philip Hampton's 2005 report, the government should aim to enforce REACH in ways that minimise the administrative burden of compliance for both businesses and public authorities. We broadly support the government's decision therefore to extend responsibility for REACH enforcement to existing regulators within the range of their current functions. We also share a common goal that the seven factors outlined on page 14 of the consultation, which were recognised as key in the design if the enforcement approach, are realised.

We do share concern over the limited role of HM Revenue and Customs (HMRC) as a REACH enforcing body. The importation of substances is a critical aspect of REACH, and it is important if REACH is to be applied fairly and equitably that this aspect of the regulations is afforded equal resources to ensure compliance. The current proposal does not direct enough attention to the aspect of enforcement.

We also have reservations about how consistent the enforcement of REACH will be achieved within, and between, regulatory bodies. Experience has shown that regional inspectors can take differing approaches to enforcement. It is possible that this factor could be further exaggerated amongst enforcement authorities. It is critical to the success of REACH that the operational aspects of enforcement are communicated and delivered consistently. A recommendation on how these problems may be overcome is outlined later in this response.

Q. Do you believe that all appropriate REACH provisions have been included for enforcement in the UK?

We agree with the government's proposal to focus enforcement actions on registration, supply chain and use related provisions.

Q. Do you agree that the proposed enforcement authorities acting within their existing functions can adequately enforce REACH?

As indicated in our response to the first consultation on REACH enforcement, we support the government's decision to allocate REACH responsibilities to existing enforcement authorities, where experience of chemical regulation is already commonplace. With this approach business will continue to see inspectors from

the authorities with whom they normally deal with as part of their work – at least in the first instance. However, the establishment of arrangements between regulators, whereby information they gather can be shared, and that the most appropriate regulator takes forward a possible breach of a REACH requirement, needs to be constantly reviewed to ensure effective and efficient enforcement. As indicated earlier a recommendation on how this problem may be overcome is outlined later in this response.

Q. Do you have any comments on the scope of the enforcement duties?

We support the government's allocation of enforcement duties and do not wish to suggest an alternative arrangement.

Q. Do you believe that this approach on the transferring of enforcement responsibility and the co-operation and sharing of information between the enforcing authorities provides enough or too much flexibility? Do you believe that 60 days is sufficient time for the cancelling of an enforcement transfer?

We have no specific comments in relation to this question.

Q. Do you agree with the proposed powers and appeal routes against notices?

We are supportive of the proposal as it adopts an existing approach which benefits both the enforcement authorities and businesses.

Q. Should the penalties for offences under regulation 11 (a provision of REACH) and 13 (supplementary offences) be the same?

It is right that the courts (under regulation 11) decide the level of penalty to apply to REACH non-compliance within the limits set out in the legislation. The penalties for similar offences currently provided in the consultation appear sufficient to meet the requirement of "effective, proportionate and dissuasive" and to remove any economic benefit of non-compliance.

We are encouraged that the government has recognised that a key aim of REACH enforcement will be to provide advice and encourage businesses to fulfil their obligations under REACH so that further punitive action is not required. Despite the best efforts of government, regulatory authorities and trade bodies, there will be sections of business (e.g. SMEs) that have yet to fully understand obligations under REACH. It is important that these operators are not heavily penalised in the first instance.

To help our members prepare for REACH, EEF has worked together with the UK Competent Authority (UKCA) to deliver a series of events directly for manufacturers. These events, hosted at our regional offices, have proved very successful and we are grateful to the UKCA for their input. We also value the UKCA helpdesk, which is a key mechanism in delivering advice to industry, and we will continue to promote this important service to our members.

Q. Do you agree with the proposed penalties?

We have reservations about the use of administrative financial penalties by enforcement bodies. EEF is particularly concerned with the Environment Agency's decision to adopt the provision for monetary penalties outlined in the Regulatory Enforcement and Sanctions Bill. We would request that these 'opt-in' powers not be included in the REACH enforcement Regulations.

Q. Are there any other comments that you would like to be considered in respect of the Regulations?

We have no further comments to provide.

Q. Do you agree with the administrative arrangements as set out in the Memorandum of Understanding? Do you think there should be additional operation issues included?

The administrative arrangements set out in the Memorandum of Understanding provide a sound basis for establishing appropriate and effective dialogue between enforcing authorities. However, to further improve this process, we would recommend that a stakeholder committee between enforcing authority representatives and key industry associations be established. This would provide an opportunity to cite, firsthand, any inconsistencies in approach between enforcing authorities, as well as good practices, and opportunities for improvement going forward. This committee should feed into the 'Enforcement Liaison Group'. EEF would welcome being a keen participant in this important committee.

Q. Could the assessment of the enforcement costs to business and the enforcement authorities be further improved? If so, how?

We have no specific comments in relation to this question.

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