



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 18 December 2018**

**Session 5**



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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**38<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Gillian Martin (Aberdeenshire East) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)

\*Finlay Carson (Galloway and West Dumfries) (Con)

\*Angus MacDonald (Falkirk East) (SNP)

\*Mark Ruskell (Mid Scotland and Fife) (Green)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Mairi Gougeon (Minister for Rural Affairs and the Natural Environment)

Don McGillivray (Scottish Government)

Lorraine Walkinshaw (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Environment, Climate Change and Land Reform Committee

*Tuesday 18 December 2018*

*[The Convener opened the meeting at 09:00]*

### European Union (Withdrawal) Act 2018

#### REACH (Amendment) (EU Exit) Regulations 2019

**The Convener (Gillian Martin):** Welcome to the 38th and final meeting in 2018 of the Environment, Climate Change and Land Reform Committee. I remind everyone to switch off mobile phones as they may affect the broadcasting system.

Agenda item 1 is for the committee to take further evidence on the REACH (Amendment) (EU Exit) Regulations 2019. I am delighted to welcome from the Scottish Government Mairi Gougeon, Minister for Rural Affairs and the Natural Environment; Don McGillivray, deputy director, environmental quality and circular economy; and Lorraine Walkinshaw, solicitor. Good morning to you all.

Last week, we took evidence on the consent notification in relation to the registration, evaluation, authorisation and restriction of chemicals—REACH. Why is the Scottish Government satisfied to consent to the regulations?

**The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon):** Generally, there is a complex mix of devolved and reserved powers in this statutory instrument. That is why we agree with the SI as it stands and give our consent to it. Obviously, this is not an ideal situation for us. However, we believe that the SI is the best way to deal with a no-deal scenario, if we find ourselves in that position.

If we attempted to deal with the issue in a Scotland-only capacity, that would not benefit industry. This is such a complex area that I do not think that we would have the capacity to do that in any case. We do not want to be in this position. Ideally—this is my hope—we will end up with a deal and will be able to work through this. We believe that the SI is the best way forward and the most realistic and pragmatic approach that we can take to deal with REACH.

**The Convener:** It is really about continuity and giving businesses and the sector some clarity, should a no-deal situation arise.

**Mairi Gougeon:** Absolutely. The regulations are, essentially, a mirror image of the current European Union REACH regulations that would operate on a United Kingdom basis. Our concern is what UK REACH regulations would mean for industry, given that they will have a big impact. We want to make sure that the process is as straightforward as possible. It will be complex and the timescales are obviously challenging, but the REACH (Amendment) (EU Exit) Regulations are the best approach, which will allow us to work together on a UK basis to enable that to happen.

**The Convener:** Obviously, things might change in the future. At the moment, there is a shared framework with the UK. Is there scope for the Scottish Government to diverge in its approach to the regulations? Would it have the power to do that if there was a difference of views about how to proceed?

**Mairi Gougeon:** We currently have that power, and that would not change in the proposed UK system. If there was a substance of concern to us in Scotland and we wanted to take action on it, we would still be able to do that under the new system.

Having looked at the committee's evidence from last week, I know that there was concern among the different stakeholders that you spoke to about what would happen if there were policy divergence. Given how it works at the moment, I cannot see that being too much of an issue. As far as I am aware, under the current EU REACH system, there has not been an issue with other member states taking a different approach. Certainly, in the UK, we cannot envisage that being an issue, but we will monitor it closely.

If there was a substance of concern, we would still have the power to initiate and take action. However, it is not in our best interests for there to be any policy divergence. If anything—and I made the same commitment to the committee last week—we want to uphold the highest environmental standards possible. We want to keep pace with what is happening in the EU as well, and this is one sector in particular where industry would like us to keep pace with what is going on in the EU and where there will be close engagement as a result.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Last week, Chemical Sciences Scotland pointed out the risk to export and import industries if we diverge, and I note that Switzerland and Turkey, although not members of REACH, legislate to keep pace with REACH. Is that an appropriate approach for the UK to take?

Given that Switzerland and Turkey have done it, we know that it is a possible approach for a state to take.

**Mairi Gougeon:** I absolutely agree. We do not want to be in this position. I hope that we are not left in a no-deal scenario, but that is what the SI is here to deal with. If it is at all possible and if we are able to get some kind of deal, we would advocate first for us to remain a member of REACH, but if not, we will definitely try to keep pace. Industry wants us to do that and the Scottish Government wants to maintain our high environmental standards and to keep pace with what is happening in the EU, so we will definitely be encouraging that and working towards it.

**Stewart Stevenson:** That is the passive side of the REACH provisions. Are you concerned about the potential loss of active influence over how REACH develops that might follow our departure?

**Mairi Gougeon:** Absolutely, because that is one of the key risks that we face if we are in a no-deal situation. That is unavoidable, and that is why we do not want to find ourselves in a no-deal situation and why we do not want to be in this position. The position that we have taken with the SI is making the best of a bad situation, because we will lose the influence that we currently have in the REACH system.

**John Scott (Ayr) (Con):** My questions are about building the UK REACH database and the implications of the transitional period. What are the implications of not having access to the EU REACH database following EU exit, given that it will be up to two years before the new UK database will be populated with full data about chemicals that are used in Scotland?

**Mairi Gougeon:** That will be a big issue for industry. Undeniably, it will have a significant impact on businesses and industry right across the UK, and particularly on small and medium-sized enterprises, as you heard in evidence last week. That is why we are working with the UK Government to ensure that we have a system in place that minimises the disruption to businesses and industry as much as possible, but there is no getting away from the fact that there will be a significant impact and that there will be additional costs for many businesses and industries going through the process. We are trying to minimise that disruption as much as possible by working with the UK Government and the Health and Safety Executive to ensure that the system, when it is established, is as streamlined as possible and that there is as smooth a transition as possible for businesses and industries across the UK.

**John Scott:** Fair enough. Are there implications for rights of access to environmental information by consumers and the public during the

transitional period? Will the public still have the same access to information that they currently enjoy?

**Mairi Gougeon:** I believe that they will still have that access, but I will hand over to my officials to answer that.

**Don McGillivray (Scottish Government):** What you are touching on, Mr Scott, is the fact that, in a no-deal scenario, access to the underlying commercial data in the EU Chemicals Agency database would fall away, so the UK and Scotland would no longer have access to that information. Then there would be a two-year transition before that information could be built up fully in a domestic UK context. There is a balance between the speed of the transition in trying to get to a fully regulated, fully informed position as quickly as possible, and making that transition in such a way that business and industry can cope with the timescale and with the demands that it places on them to submit data. The six-week and two-year periods are a bit of a compromise, but there would definitely be a transitional period during which we would lose something by exiting ECHA in a no-deal scenario.

**John Scott:** In a practical sense, what will be the day-to-day impact on consumers, or will the impact be particularly or only on businesses?

**Mairi Gougeon:** If there is an impact on businesses and industries that are currently part of the system, there will be a knock-on impact further down the line. Some businesses that have not had to register with the current system will have to register with the new UK system, so there will be a bigger knock-on impact on them.

**Don McGillivray:** It is difficult to judge the impact on consumers. The substances are already registered on the EU system, so they already have an authorisation at EU level. There will be a period when that underlying data is not available to industry or consumers if it needs to be accessed. We are trying to make the transition period as short as realistically possible for industry to cope with.

**John Scott:** If I have understood the issue correctly, there will not necessarily be a risk to consumers or businesses, because the substances are already registered, but there may be a lack of information—it may not be as easily accessible as it once was.

**Mairi Gougeon:** Yes.

**John Scott:** That is my understanding.

**Mark Ruskell (Mid Scotland and Fife) (Green):** Do you have more details on the common framework that is described in the notification? How is the development of that framework progressing?

**Mairi Gougeon:** The work on establishing a framework is coming along well, but we do not have further detail of that at the moment. We are engaging as closely as possible to ensure that a framework is established, but we do not have the final outcome of that yet.

**Mark Ruskell:** What is the process for that? What is the timescale for getting more certainty on how the framework will operate? When should the committee expect to see that?

**Don McGillivray:** At present, the process is a four-nation discussion among officials. A series of meetings and workshops are taking place, the most recent of which was in Edinburgh a few weeks ago. In essence, we are trying to work through the main areas that the statutory framework should cover and what governance and internal decision-making processes will help to support that framework. Ideally, we want the framework to be as advanced as possible for the end of March or the start of April.

**Mark Ruskell:** Will you keep the committee informed of the workshops and what comes out of them?

**Mairi Gougeon:** Absolutely. The priority has been to try to ensure that we can function as of 29 March if we find ourselves in a no-deal scenario. That has been uppermost in our minds. However, we want to be as open and transparent as possible throughout the process, so we will definitely keep the committee informed and engaged with what is happening.

**Mark Ruskell:** One thing that might have been discussed at the workshops is stakeholder engagement. We know that ECHA has an architecture within its committees through which stakeholders can be involved and represented, perhaps as non-voting members. We are hearing a concern from stakeholders about whether their views will be represented and articulated in some way in the new structure. How will the new system deal with that?

**Mairi Gougeon:** Discussions on how that engagement would happen are at an early stage. I envisage that there will be a place for it, but again I cannot give a categorical answer about how that will operate in practice.

**Mark Ruskell:** Are you putting that on the table?

**Don McGillivray:** It has certainly been a topic of conversation and one of the headings. Officials have discussed how to engage more widely in the process.

**Mark Ruskell:** Do you think that stakeholders should be more involved?

09:15

**Don McGillivray:** There is certainly a role for stakeholders in ensuring that there is good communication between any Government structure and stakeholders. That will be an important part of the process.

**Mairi Gougeon:** Absolutely. Due especially to the kind of concerns that you heard from industry and other stakeholders last week, we want to ensure that we are trying to make the process as streamlined as possible for industry. We have got to keep people engaged, and I am keen to develop ways of ensuring that that happens. I will keep the committee updated on that.

**John Scott:** There is potential for the framework not to be established by 29 March. What are the implications of that in a no-deal scenario?

**Mairi Gougeon:** The statutory framework will still be there, but we are working so that we do not end up in a situation in which we do not have any frameworks in place. That is the priority. We know that we have that tight deadline. We do not want to be in that position, but we are working to ensure that the framework is established by 29 March and that we have in place the basic legislation so that we have a system that will function after that time, if we find ourselves in a no-deal situation.

It is hard to say for definite what the potential risk in such a situation might be, but that is what we are working towards and that is a position that, hopefully, we will be in by 29 March.

**John Scott:** I do not mean to tease you, and I hear what your aspiration is, but what is the default position?

**Don McGillivray:** The default situation will be that the Governments do what they need to do to make things work, and there will simply be less of a template or a governance structure around that.

**John Scott:** So the Governments will still talk to each other and the solution will be found.

**Don McGillivray:** That would be my take on it.

**Mairi Gougeon:** Absolutely. There is constant engagement between officials of the different Governments anyway, and that will definitely continue. Again, however, we want to have those frameworks in place, because that is important in terms of the relations between the different Governments and in terms of how we work with the parliamentary process and engage with the committees in the interests of further scrutiny.

**Finlay Carson (Galloway and West Dumfries) (Con):** I want to go back to the issue of continued access to imported chemicals and safety around that. We are told that there will be an interim

notification system and on 4 December, the cabinet secretary said that she wants

“to avoid barriers to trade and ensure that we have an effective regulatory system.”—[*Official Report, Environment, Climate Change and Land Reform Committee*, 4 December 2012; c 31.]

However, if there is no deal, there are real issues about unsafe materials entering Scotland. Do the proposed regulations address the Scottish Government’s concern in that regard?

**Mairi Gougeon:** Again, we do not want to end up in a situation in which we become a kind of dumping ground for materials that we previously would not have permitted to enter Scotland. At present, if there is material that is of concern to Scotland, we can take action, and that will not change under the current proposals.

I do not envisage the issue that you raise being a particularly big one, especially as we could still take action. Again, we would be aiming to keep pace with the rest of the EU and we would work on a UK basis to do that. That is in the best interests of businesses and industry, and we do not want to see any dilution of our standards in Scotland.

**Finlay Carson:** There was a specific suggestion that there was a risk in relation to the chemicals that are used to purify water. Is that still an issue? Do you have any concrete examples of other industries or services that might be at risk of suffering a disruption in chemical supplies?

**Mairi Gougeon:** There is a contingency plan in place in case there is any disruption in that regard.

**Don McGillivray:** I understand that Scottish Water has been working with the other water companies across the UK to put in place a significant contingency plan to ensure that there are sufficient supplies of the chemicals that are needed for water treatment and to ensure that there is no disruption to water supplies. My understanding is that there is a high degree of confidence in that contingency plan. That is the situation for the water industry.

**Finlay Carson:** Are there other industries that might be in the same situation as Scottish Water?

**Mairi Gougeon:** As far as we are aware, no other industry faces those particular issues. Don McGillivray may have further information to add.

**Don McGillivray:** Industries that use a wide variety of chemicals in significant volumes, such as process and manufacturing industries, including cleaning product manufacturers, are most likely to be affected. However, within that wide scope, and given that supply chains for chemicals are so complex, it is very difficult to pin down exactly where pinchpoints might come.

**Finlay Carson:** There are no specific concerns about any particular industry having issues. There is no contingency; nothing is coming up on the radar.

**Mairi Gougeon:** There is contingency for Scottish Water, but we do not have that information for other industries.

**Claudia Beamish (South Scotland) (Lab):** I want to explore further Government and agency preparedness, particularly in terms of the chemical industry’s capacity and staffing. I highlight that the House of Lords Energy and Environment Sub-Committee of the European Union Committee has expressed concerns. Its report says:

“We are not convinced that the Government’s preparations are progressing quickly enough, and in some respects the Government appears to lack a credible plan of action.”

Obviously, “the Government” is the UK Government.

I understand that the ECHA has more than 500 staff. Last week, there was reassurance about the capacity of the Scottish Environment Protection Agency. Minister, could you expand on those issues, in view of the comments that have been highlighted to me?

**Mairi Gougeon:** We do not anticipate there being too much of an additional burden on SEPA. I believe that the committee heard that in its evidence from SEPA last week. It might have an increased role in the proposed new system, if we find ourselves with no deal, compared with its role at the moment. We liaise closely with SEPA, so we will monitor whether it needs additional resources and look to deal with any problems that there prove to be.

I cannot answer for HSE preparedness. I hope that the UK Government is considering the workload that the HSE will need to deal with. I have some of the registration statistics with me. There are 91,536 registrations with the ECHA and, of those, the UK has 12,449. There are 5,749 substances that are registered from the UK, which represents 1,773 companies. The HSE will be taking on a big additional role and responsibility.

**Claudia Beamish:** I understand that the EU REACH regime includes a board of appeal. The committee wants to highlight to you that things should not, I hope, be held up if a chemical company needs to appeal a decision. I take it that there will be a UK rather than a Scottish arrangement.

**Mairi Gougeon:** Yes. The appeals would go to the first-tier tribunal. As far as I am aware—I am sure that I will be corrected if I am wrong—since the EU REACH regulations came into place, there have been only 148 appeals, so we do not



anticipate that being too much of an issue. I think that that number is correct.

**Lorraine Walkinshaw (Scottish Government):** It is correct.

**Mairi Gougeon:** Phew! I did my homework well.

**Angus MacDonald (Falkirk East) (SNP):** We have already covered the implications for the Scottish chemical industry. You mentioned that you are trying to keep the system as streamlined as possible for the industry. Could you expand on what assessment the Scottish Government has made of the potential impacts on Scottish businesses of transferring to the UK REACH system? Are there any particular considerations regarding impacts on small and medium-sized businesses?

**Mairi Gougeon:** The Scottish Government has been engaging with the Federation of Small Businesses. It will be difficult, because there will be a significant impact on SMEs, purely because of the additional administrative burden and costs that a lot of them will have to deal with. That is an issue for small businesses, because they may not have the capacity to deal with that. We have been engaging with the Federation of Small Businesses to try to make those businesses aware of the information that they are being asked to provide during the initial registration period and the additional information that they would need for that two-year period leading up to exit. It has been the role of mainly the UK Government and the HSE to engage with industry and the sectors. That has been led by the UK Government, rather than the Scottish Government engaging at different levels, but we have been engaging with stakeholders to make sure that they are aware of what is coming and that they are as engaged with the process as possible.

**Angus MacDonald:** Do you know whether the HSE will be able to give practical help with the administrative burden?

**Mairi Gougeon:** I cannot answer for the help that the HSE might be able to provide. I know that there have been a number of stakeholder engagement workshops, especially when it comes to the proposed new REACH information technology system. To make sure that we are as ready as we can be, businesses and some in the industry have tested that system to ensure that it is as easy to operate as possible. I think that the HSE probably would not be able to ease that administrative burden, given the number of businesses and companies that are involved and the scale of that task. It is about trying to ensure, as much as possible, that everyone is aware of what they will be required to do and giving them the information that they need to make the transition as easy as possible. However, it is a big

ask and it will be a significant burden, particularly on small businesses.

**The Convener:** Does anyone have any outstanding questions? Would the minister like to add anything that she has not already covered?

**Mairi Gougeon:** That covers most things, but if there are any questions that come up, then please write to me and I will be happy to respond.

**The Convener:** Thank you all for your time.

09:27

*Meeting suspended.*

09:28

*On resuming—*

### **Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018**

**The Convener:** The second item on our agenda this morning is to consider a number of requests from the Scottish Government to the committee to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018, in relation to a number of UK statutory instruments. The first of those is the Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018.

If no members have any points to raise, is the committee therefore content for the Scottish Government to give its consent for UK ministers to lay the regulations in the UK Parliament?

**Members indicated agreement.**

### **Import and Trade of Animals and Animal Products (Amendment etc) (EU Exit) Regulations 2018**

**The Convener:** Do members have any comments on the regulations?

**Stewart Stevenson:** In the annex that the Government has provided to the notification, there is a lengthy list of EU regulations that are affected. I have one or two questions about those, although they are not questions that cause me to suggest that we should not agree to consent.

09:30

My first question relates to point number 2 in the annex to the consent notification, which is in annex C of committee paper 3. The point is on Commission decision 93/352, on conditions of approval for border inspection posts located in ports where fish is landed. Clearly, I have a constituency interest, as others may have.

I think that I am confident that it makes no difference, but I would like to have it explicitly stated that the operation of UK and foreign vessels that land at Scottish fishing ports is unaffected. In particular, I would like it confirmed that EU nationals, who may be part of the crew of vessels and will have a new status, are not affected in a material way. The many Filipino nationals who work in the industry already have a status as foreign nationals that I imagine will be unaffected by the amendments that the regulations will make.

The second point relates to number 43 in the same annex, on Commission implementing decision 2013/519; number 45, on Commission implementing regulation (EU) No 577/2013; and perhaps also number 21, on Commission decision 2007/25/EC. All relate to the movement across borders of non-commercial animals, such as dogs, cats, ferrets and birds, presumably in the custody of their keeper. Implementing the amendments would cover the import of such animals by people coming to the UK, and I am reasonably satisfied with that. The related question is whether there are effects on people taking their pet animals out of the UK into the EU. It might be appropriate to draw the answer to our attention. It may be that the question is not currently capable of being answered, but it is important at least to post that it is a question.

**Claudia Beamish:** I will not reiterate what Stewart Stevenson has raised, but I was going to highlight the issue about non-commercial to and fro.

Although it would not prevent me from supporting consent, I want to ask whether there are any concerns about customs staff capacity. I appreciate that it is an EU issue, but Cairnryan is in my constituency.

**The Convener:** In all the discussion about passports, pet passports are also an issue.

**Claudia Beamish:** Yes, and more broadly there is the important fact that there are very serious animal diseases that we do not want to import into the UK. The capacity to check is fundamental.

**The Convener:** We will reflect those points in the response.

**John Scott:** I am utterly supportive of the instruments, but I would like clarification about the England-only instruments—the Bovine Semen (England) Regulations 2007 and the Trade in Animals and Related Products Regulations 2011. In committee paper 3, annex A, which is the notification for the Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018, states that those England-only instruments “do not apply in Scotland”. Do we have our own regulations in Scotland? I presume that we must. If we do, do they not need amended also? Does that

come under a separate piece of work, or have they already been amended? I am seeking clarity on that.

**The Convener:** In our letter, we can reflect those requests for clarification. Are there any other points?

**Stewart Stevenson:** This is merely an observation in relation to what John Scott said. The draft SI covers five Great Britain-wide instruments. In other words, it does not cover Northern Ireland, and the committee should note that. I understand that that is because Northern Ireland has its own regulations and, having a land border with another state, has some issues that would not apply to ourselves.

**John Scott:** Just to complicate matters further.

**The Convener:** If no one has a point that would stop the committee writing in support of the proposals, is everyone content that we do so?

**Members indicated agreement.**

**The Convener:** The committee will write to the Scottish Government in relation to the instruments considered today, taking all the points made into consideration.

09:35

*Meeting continued in private until 11:22.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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