

BOHS response to Consultation Document on the Enforcement of REACH in the UK (March 2007)

The British Occupational Hygiene Society (BOHS) is the voice for occupational hygiene in the UK. BOHS is a multi-disciplinary learned and professional society, founded in 1953 and with over 1200 members. Our members work in a wide variety of settings and come from over 30 countries worldwide. BOHS is a founding member of the International Occupational Hygiene Association (IOHA) and an integral member of the UK Professional Organisations in Occupational Safety and Health (POOSH). It is the only society in the UK which represents occupational hygiene as a distinct discipline.

BOHS has been active in considering the impact of REACH and the potential value of occupational hygiene and hygienists in the effective implementation of the Regulations for a number of years (see <http://www.bohs.org/standardTemplate.aspx/Home/HotTopics/REACH>). We have consulted with our membership on this Consultation Document through our dedicated REACH online forum and this document summarises our considered responses. Our response is divided into general remarks and responses to specific questions highlighted in the text. We are happy for our response to be made publicly available.

General comments

We have previously expressed our concern over the impact that REACH will have on the occupational health system in the UK. A significant level of resources will be needed to monitor and advise on implementation and to enforce the Regulations (submission to HSC, November 2005). We remain concerned that the resources available to HSE will not be sufficient to ensure effective enforcement of REACH. If 20% of large companies (estimated 3500) and 5% of others (estimated 329,000) are contacted per annum, this would result in 17,000 visits from an enforcing officer per year. This has considerable implications on inspector time and available resources which are not clearly addressed in the consultation document. No mention is made of extra training needs for inspectors. We would see it as a retrograde step if REACH enforcement duties are simply added to the existing inspectorate workload without any additional resources, resulting in a dilution of workplace inspection activities across the board.

The proposals contained in the consultation document largely continue the existing complex arrangements on enforcement. While it is appropriate to build on existing arrangements, it should be recognised that many people already do not understand the interfaces between different enforcement authorities. Industry often organises and manages health, safety and environment aspects of its business as a single function and would prefer a seamless approach from the regulators. BOHS would want to see maximum co-operation between the UK enforcing authorities.

REACH is a complex piece of legislation, having overlaps with existing worker protection legislation (such as COSHH) that are not yet fully understood in operational terms and which may prove very difficult for industry to implement, especially in SMEs. A realistic and enlightened approach to enforcement will be needed relying on the professional judgement of inspectors. There is a tension between the need for "enlightened enforcement" and the need for consistency of enforcement throughout EU member states. It is important that the enforcing authorities across Europe communicate to ensure a common approach. We would like to see the European Chemicals Agency take a lead role in this communication.

The use of Improvement Notices under REACH is a sensible approach but we question the practicality of how they may be used. We would be interested to learn how many Improvement Notices have been issued arising from infringements of the CHIP or NONS Regulations. The Consultation Document states that fines in Crown Court are unlimited, but we would similarly question the past record of fines for CHIP and NONS infringements.

There is no indication in the consultation of how the progress of REACH implementation or the performance of the enforcement process will be measured and reported. We believe that such measures are essential for transparency and recommend that a system of metrics be established with the involvement of key stakeholders.

It is also proposed by the European Commission that the Globally Harmonised System for the classification and labelling of chemicals (GHS) will be implemented in parallel with REACH. The adoption of GHS will necessitate changes to Safety Data Sheets, to labelling on products and to warning signs in the workplace. This will complicate the introduction of REACH as employers try to make both sets of changes. There is a risk that the resulting confusion could actually reduce the effectiveness of hazard communication in the short term, thereby putting workers at risk. It is important that the UK enforcing authorities are prepared to help communicate and support the implementation of GHS.

Specific questions

Q1. do you agree with the proposed approach to enforcement?

Q1a. any additional items to consider?

We support the proposed approach to enforcement but feel that the issue of additional resources has not been adequately covered. Co-ordination between the different enforcement authorities is essential and HSE's proposed role in monitoring the level of consistency will be important. There is no mention of how enforcement will apply to non-EU entities which use an "Only Representative". We would like to see clarification over whether the Only Representative would be liable for any fines or imprisonment for non-compliance.

Q2. do you agree with the allocation of responsibilities?

Q2a. any issues you would like to be considered further?

Q2b. do you wish to suggest an alternative arrangement? Please detail your rationale:

See our general comments above.

Q3. should there be a single penalties regime?

We agree with the proposed single penalties regime, but recognise that a "light touch" approach to enforcement will be needed, particularly in the early days as industry and regulators get more familiar with the Regulations.

Q4. do you consider the levels of penalty sufficient to meet the requirement of "effective, proportionate and dissuasive" and remove any economic benefit of non-compliance?

We consider the level of penalties sufficient.

Q5. do you agree with each enforcing authority applying its current procedures for enforcement notices for REACH?

We agree with the proposal for each enforcing authority applying its current procedures for enforcement notices rather than developing REACH-specific arrangements.

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British Occupational Hygiene Society (BOHS)
International Occupational Hygiene
5/6 Melbourne Business Court
Millennium Way
Pride Park
Derby DE24 8LZ