

15-minute talk on Brexit – the future for HS

1



The Safer Choice

3 questions

1. Will UK HS law change after Brexit?
2. What impact will leaving (has the threat of leaving) had on EU impact initiatives like REACH?
3. What will be the impact of a reduced EU workforce?

Intro and scope [2 mins]

Hello. My name is Bridget Leathley, and if you have read HSW magazine since 1997 or IOSH Magazine since its inception, I hope you will have read something I've written about. I also have day job HS responsibilities, working as a freelance HS consultant.

I started writing about OHS implications of BREXIT the day after the referendum. Before that day, the subject had seemed hypothetical.

My initial response was not "what will we lose by leaving the EU" but "[what will the EU lose by our leaving.](#)" I'll expand on that shortly, as I address "[Will the question of whether UK HS law will change after Brexit?](#)"

I'd like to encourage everyone to think beyond that rather narrow aspect of HS and consider a couple of other aspects. The first is in relation to [initiatives like REACH](#), and I will suggest a few questions for discussion on that topic.

I'm sure you might have many other issues, but the final question I'd like to suggest you discuss is the [impact of a reduced EU workforce](#). As I'll explain, many industries are dependent on non-UK EU workers, and as with any change in staffing levels, the impact of this should be risk assessed by all employers as soon as possible.

2

 1. Will UK HS law change after Brexit?



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- **Health and Morals of Apprentices Act 1802**
- **Health and Safety at Work Act 1974**

Not directly...



UK Law after BREXIT [4]

David Davis has promised us that post-BREXIT Britain won't be "plunged into a Mad Max style dystopian world". That should reassure us then?

The scare mongering that HS laws will be dropped after BREXIT has perhaps side-tracked people from the things we should be concerned about, so here's my view. The promises of those advocating BREXIT was that leaving the EU would mean "less red tape" for British businesses. I think those promises are unlikely to be met. Britain has led the way in HS, from the first HS laws in the 19th century – **this is the earliest one I could find** – through the **HSW Act 1974**, which has spanned the period of EU membership, and I believe will survive it. The evidence for this is that often, when the UK had taken EU directives into British law the directive was what the best of British organisations were already doing. I don't know if anyone here was on the TV visit to the Diamond Light facility, at about the time the EC Directive on Artificial Optical Radiation was to be implemented in UK law – when I asked experts using lasers if they were concerned about extra rules, they said there would be no impact, as they had been following (or exceeding) the standard for years. With other directives we gold plate them when implementing into UK law -Tired people make more mistakes, cause accidents and become unwell, and the EU Working Time Directive requires each worker to have a minimum of 20 days of annual leave per year. The UK Working Time Regulations require 28 days leave per year. If the UK gov had wanted to save 8 days a year, they could have done so without leaving the EU. No, the real impact I think will be the UK influence on them. UK participants in EU Safety policy are respects for their expertise, and for their sensible approach to risk. Our chance to influence EU countries, and in turn the rest of the world I believe will be reduced,. But I do not expect to see HSW Act or MHSW regs undermined. **Not directly, at least.**

3



2. Impact on REACH etc

- UK registrations no longer valid
- Substances might become unavailable
- Missing 31 May '18 deadline
- Duplicated testing including animal tests



REACH [6]

HS protection will be undermined less directly, one example of this is REACH - Registration, Evaluation, Authorisation and Restriction of Chemicals

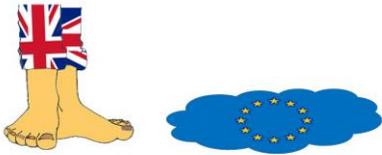
I'm sure most of you know about REACH, but in case anyone doesn't it's the regulation that enabled pan-European co-operation to place the onus on every manufacturer or importer into the EU to demonstrate that a substance is safe, rather than wait until enough people suffered harm before they could prove a substance is unsafe. Applies not just to things obviously labelled as "chemical" but also to products containing chemicals, such as phthalates in toys. ECHA is the European Chemicals Agency which manages the programme, with inputs from member countries include HSE experts.

Sharing such information cannot simply be cloned into UK law. I've written extensively on this, aside from the commercial problems – 60% of chemical exports from the UK go to EU countries and 75% of substance imports come from them.

Here are just a few of the possible problems if we leave ECHA and REACH:

- Existing Registrations paid for by UK based companies will no longer be valid.
- Substances currently available in the UK may become unavailable, requiring substitute substances.
- This could be happening any time now, since some companies may already have decided that since there is no guarantee that their registration will be valid after March 2019, why go to the time and expense of registering? May 31 deadline looms, supplies might start to dry up.
- Duplicated testing including animal tests

2. REACH and ECHA



4.

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5.

Other agencies

<ul style="list-style-type: none"> • Eurotom – Nuclear • Food Standards (EFSA) • EU-OSHA • Environment Agency 	<ul style="list-style-type: none"> • Medicines Agency • Maritime (EMSA) • Aviation (EASA) • Railway (ERA)
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Options post BREXIT (10)

Whilst in January 2017 Theresa May ruled out a single market, elements of what looks like a single market are creeping back in. Later said:

“the Government will discuss with the EU and Member States our future status and arrangements with regard to these **agencies**.”

All out – British REACH or “BREACH”. Government has already invested money in a new sw system to duplicate the ECHA system. And we all know about Government SW projects.

All in – same costs as now, possible with reduced influence of decisions, but adopting the decisions

Half-way house – In the short-term, it looks like the plan is to mirror the results – in other words to be subject to the decisions, without an influence on the decision. Have your cake and eat it option that some in chemical industry want is to have registration process as part of ECHA – but decide on our own authorisation and restrictions. This would mean that we could use substances that have a health impact on our own workforce, provided the substances have been washed off by the time we export the final product.

www.ioshmagazine.com/article/reach-brexit-strategies

Other agencies (11)

Isn't time for me to go through the issues about all of these in detail, but if you're in an industry affected by them, you might want to discuss them in your groups.

Nuclear: "Leaving Euratom is a lose-lose for everyone. For nuclear proponents, the industry becomes less competitive – and for nuclear critics, safety regulation diminishes."

Dr Paul Dorfman of the Energy Institute at University College London

6.

Great Repeal/ Bre



It's very simple. At the moment we leave, Britain must be back in control. And that means EU law must cease to apply

it/ EU Withdrawal Bill



My starting position was that we would put them all into the law and take it from there, but it does not quite work like that

EU Withdrawal Bill [12]

The problem is, the promise of the Great Repeal bill, aka the Brexit bill, aka EU Withdrawal Bill can't be kept.

David Davis initially told us:

It's very simple. At the moment we leave, Britain must be back in control. And that means EU law must cease to apply

Once he started trying to do it, he found:

"it does not quite work like that"

You might not have had time to take in every detail of every amendment suggested in the House of Lords – news outlets tended to focus just on the fact that the government had 15 defeats as the Bill passed through the Lords. I will give you one example to show how complicated it is. This is not a party political example, or a BREXIT v REMAINER issue – however you voted in referendum or election, you're hear because you care about HS law, so the complexity should concern you.

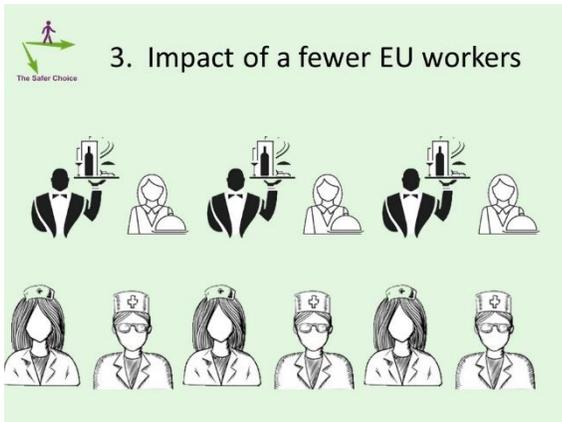
Amendment 11 have support from Labour, Lib Dem and Conservatives members, and their intention was to protect existing HS rights, along with equality, employment and consumer rights and environmental protection from the so-called Henry VIII powers – ie to prevent government changing law without having to get approval through a Statutory instrument.

The amendment was passed by 314 to 217. Horray!

However, if the amendment is **not reversed** in House of Commons this would mean is that if we choose to mirror ECHA decisions with our British REACH, every time ECHA ban or restrict substances of very high concern, there will be a delay whilst an SI is raised, and a piece of legislation passed to incorporate the new substances into BREACH!

If it is reversed, the protection they were seeking will not be enshrined in law. This is a lose- lose scenario, whatever your stance on BREXIT as a whole

7 and 8.



Impact of fewer EU workers (14 min)

13.2% of those working in hospitality – could lose 1 in 7

16 % of nurses are non-UK EU citizens – could lose 1 in 6 nurses?

Evidence is people are already leaving, and fewer people are arriving to take the place of the natural cycle of those who return after a few years.

If you don't employ anyone other than UK citizens, think about:

- Your supply chain
- Your clients

18.5 % in warehousing could lose 1 in 5.

24.3 % in food manufacturing – could lose 1 in 4

Smaller percentages, but still around 1 in 11 in agriculture, fisheries and food, not taking account of seasonal workers such as Adam's strawberry pickets (for Archers fans) and 1 in 12 construction workers.

All organisations must be considering impact on competence if more of these workers chose to leave the UK, whether because of the uncertainty in the short term, or because they have no choice in the long term.

