

THE BREXIT EFFECT

Elaine Campling looks at how the UK's departure from the European Union will affect the chemical products trade and highlights key registration deadlines for importers



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Following the departure of the United Kingdom from the European Union, the transition period came to an end at 2400 hours CET on 31 December 2020. The United Kingdom (UK) is no longer a Member State of European Union (EU). However, after many months of wrangling, the European Union Trade and Cooperation Agreement was finally agreed on 24 December 2020.

During the transition period, the chemical industry was proactive in arguing for regulatory alignment on chemicals. It is worth noting that EU legislation that applied directly or indirectly to the UK before the end of the transition period has been retained in UK law, including the REACH [Registration, Evaluation, Authorisation and Restriction of Chemicals] Regulation.

REACH REGULATIONS

The EU REACH Regulation has been replicated in the UK, as Statutory Instrument No. 758 'The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019', otherwise known as UK-REACH. However, UK-REACH is only applicable in England Scotland and Wales, as Northern Ireland continues to follow EU legislation, under the Northern Ireland Protocol.

One of the most demanding aspects of the REACH Regulation is the requirement to

register substances introduced to market in quantities of 1 tonne or more per annum. REACH also applies to substances in mixtures (and certain articles), making it necessary to calculate volumes of substances imported from third countries to understand whether registration of constituent substances is required. Import is considered 'placing on the market', defined as:

"Supplying or making available, whether in return for payment or free of charge, to a

"GB-based companies must ensure that a valid GB REACH registration is in place, due to their new importer status"

third party. Import shall be deemed to be placing on the market." – Article 3 (12) REACH Regulation

Non-EU/EEA companies are not permitted to undertake REACH registration but can use the services of an 'agent' in the EU/EEA to undertake registration on their behalf, termed an Only Representative (OR). If there is no OR in place, it is the importer's responsibility to conduct registration.

UK/GB-BASED COMPANIES

This also applied to UK importers of chemicals from outside of the EU/EEA when the UK was a Member State of the European Union, and now to GB importers when there is no GB-based OR in place under the independent UK-REACH Regulation. This is further complicated by GB and the EU becoming third countries to one another, meaning that importers on either side will gain REACH registration duties unless an OR can be put in place.

However, UK-REACH has been introduced with transitional arrangements. Historic EU

REACH registrations legally held by UK-based companies will be 'grandfathered' directly into the GB REACH system, though 'basic' information on the substance must be submitted to the UK Competent Authority, the Health & Safety Executive (HSE) within 120 days of the end of the transition period. The process of full registration must be completed within phased time periods (2, 4 or 6 years) from 28 October 2021, depending on tonnage/hazard.

GB-based companies that were previously considered downstream users or distributors under EU REACH that import substances from the EU above threshold, or qualifying substances in mixtures (and certain articles) must ensure that a valid GB REACH registration is in place, due to their new importer status.

However, if a Downstream User Import Notification (DUIN) is submitted to HSE within the first 300 days of the end of the transition period, full registration may also be completed within the phased time periods, set out in the table below.

The deadlines are set to ensure that high tonnage, high hazard chemicals are registered first.

It is important to note that a non-GB based manufacturer, importer or article producer can appoint a GB-based OR to submit a DUIN on behalf of their GB importer. Furthermore:

"GB-based importers that were regarded as downstream users due to the appointment of an EU-based OR (under EU

Deadline post 28 October 2021	Tonnage	Hazardous property
2 years from 28 October 2021	1000 tonnes or more per year	<ul style="list-style-type: none"> Carcinogenic, mutagenic or toxic for reproduction (CMRs) – 1 tonne or more per year Very toxic to aquatic organisms (acute or chronic) – 100 tonnes or more per year Candidate list substances (as at 31 December 2020)
4 years from 28 October 2021	100 tonnes or more per year	<ul style="list-style-type: none"> Candidate list substances (as at 27 October 2023)
6 years from 28 October 2021	1 tonne or more/year	

The process of full REACH registration must be completed within phased time periods from 28 October 2021, depending on tonnage/hazard

REACH) are also able to notify under Article 127E. A newly appointed GB-based OR can also make this notification on their behalf."

There is no obligation to conduct a full GB-REACH registration after the transition periods specified unless import is continued.

EU/EEA IMPORTERS

From the EU side, no such transitional arrangements have been put in place for imports of chemicals from GB. EU/EEA importers will now be responsible for immediate EU-REACH registration of qualifying substances, including substances in mixtures, unless an OR is in place, or the substances are re-imports. Re-imported substances including those in product compositions may be exempt from registration, providing supply chain requirements are met for REACH registered substances.

CLP REGULATION (EC) NO.1272/2008

The CLP Regulation (EC) No.1272/2008 pertains to the classification, labelling and packaging of substances and mixtures.

GB importers will also be impacted by other duties in relation to the CLP Regulation, which has been introduced into GB as the GB CLP Regulation:

- Notification of the classification and labelling of substances to the GB classification and labelling notification database
- Ensure that substances and mixtures are classified, labelled and packaged in accordance with GB CLP before placing them on the GB market
- Comply with GB mandatory classification and labelling, equivalent to 'harmonised' classification and labelling under EU CLP

The EU/EEA importer will also be responsible for compliance on classification, labelling and packaging of chemicals imported from GB, according to EU-CLP.

"EU/EEA importers will now be responsible for immediate EU-REACH registration of qualifying substances unless an OR is in place, or the substances are re-imports"

The GB CLP Regulation will be updated in accordance with the United Nations Globally Harmonised System of classification and labelling of chemicals (UN GHS) in a similar way to the EU CLP Regulation.

However, regulatory divergence between EU and GB regulation is possible going forward. The UK HSE has indicated the possibility by reference to classification and labelling:

"... GB will be able to make its own decisions on mandatory hazard classification and labelling, including whether or not to align with decisions made in the EU or other countries."

FURTHER READING:

- REACH: (Amendment etc.) (EU Exit) Regulations 2019 (www.legislation.gov.uk)
- The Northern Ireland Protocol (www.gov.uk)
- UK REACH: Notification of status as a GB-based downstream user or distributor under EU REACH (www.hse.gov.uk)
- The EU-UK Trade and Cooperation Agreement | European Commission (<https://ec.europa.eu>) ■

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