

Brexit - What you need to do if you source chemical products from the UK

Part 1

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REACH

- EU Regulation No 1907/2006; entered into force June 2007
- **Registration, Evaluation, Authorisation and Restriction of Chemicals**
- Most elements of REACH will be impacted by Brexit
- Main impact for Irish companies regarding registration; some impacts on authorisation

Timelines:

- Transition period ends 31st December 2020
- Implications apply to substances placed on the market from the UK as of **January 1st 2021**

Roles under REACH...a reminder

- **EU Manufacturer**; manufactures a substance *
- **EU Importer**; responsible for import *
- **EU Only Representative**; appointed by non-EU company to fulfil obligations of importers*
- **EU Downstream user**; uses a substance during industrial/professional activities
- **EU Distributor**; stores and places a substance on the market

Remember – roles will change as of 1st January 2021

- You are a downstream user/distributor now if you source chemicals in the UK, but will become an importer in January 2021
- With that change, will come new obligations

* Registration obligations

Ireland/Northern Ireland Protocol

- The IE/NI Protocol makes certain provisions of EU law, including REACH, applicable also to and in the UK in respect of Northern Ireland
- Substances manufactured in NI/imported into NI from outside EU at greater than 1 tonne per annum must be registered by NI company (includes substance sourced in England, Scotland or Wales (GB))
- Substances shipped to EU from NI are not subject to REACH registration requirements on entry into EU
- IE company sourcing substances from NI supplier is not deemed to be importing from outside EU
- For remainder of presentation; responsibilities on IE companies from 1st January 2021 refer to substances sourced in GB

Import and Placing on the Market

- Will become more of an issue for IE companies post-Brexit
- Import means the physical introduction into the customs territory of the EU
- Who is the importer and the responsibility for import depends on many factors incl. who orders, who pays, who is dealing with customs formalities

Example of sales agency established in IE (or any EU 27/EEA) acting as intermediary between IE company buying chemical products in GB and the GB supplier:

- Sales agency transmits order from IE buyer to GB supplier
- Does not necessarily choose the GB supplier from whom to order the goods
- Takes no responsibility for products or payment
- Not considered as EU importer under REACH
- Not responsible for the physical introduction of the products into the EU
- IE buyer is the EU importer in this case

REACH Registration

- Substance (on its own, in a mixture or in an article) manufactured in EU, or imported into EU, at greater than 1 tonne/annum, must be registered
 - Currently 8,893* UK REACH registrations in place;
 - 40% importers
 - 30% manufacturers
 - 25% Only Representatives (ORs)
 - 5% manufacturers and importers
 - Many Irish companies may be relying on GB registrations for their own supply (including those by GB OR)
 - As of 1st January 2021, GB registrations will be void and IE companies can no longer rely on them
- * Includes registrations in NI; exact figure not obvious

Impacts on IE companies - registration

Currently:

- IE company buys chemicals from GB supplier for own use/distribution
- Role under REACH is downstream user/distributor
- No registration obligations

After 1st January 2021:

- IE company buys chemicals from GB supplier
- Role under REACH changes to importer
- Registration obligations

Impacts on IE companies - registration

Scenario: IE company buys registered substance from GB registrant

- Currently: IE company has no registration obligations (DU)
- After 1st January 2021; IE company can't rely on GB registration as regards the legal placing of substance on EU market

Options:

GB supplier:

- Move operations to EU-27/EEA legal entity; complete a legal entity change, or
- Appoint EU-27/EEA OR and transfer registration to OR (if manufacturer, but not importer)
- (Note: in these 2 scenarios, IE company still has no registration obligation)

IE company:

- Use another EU-27/EEA supplier, or
- Continue to buy from GB supplier (they have not availed of either option above) and register as importer

**If you are in this position, consider your options now
Talk to your GB supplier about their intentions post-Brexit**

Only Representatives (ORs)

Scenario: IE company purchases substance in China; relies on registration of GB OR

Currently:

- Chinese manufacturer has appointed OR in GB
- IE company covered by OR registration -> a downstream user

1st January 2021:

- GB OR will not be '*legally established in EU*'
- Their registration(s) will become void
- IE company can no longer rely on the registration of the GB OR

Options:

- OR moves to EU-27/EEA, or
- Chinese manufacturer appoints new OR based in EU-27/EEA
- (Note: in these 2 scenarios, IE company still has no registration obligation), or
- IE company imports from China and registers

If you are dependent on a GB OR, speak to the OR and/or your non-EU supplier to determine their intentions post-Brexit

GB companies/ORs transferring registrations to EU

- Company cannot be set up 'on paper' only
- Must be result of a legal entity change:
 - ✓ GB company goes through acquisition/relocation to EU-27/EEA, or
 - ✓ Intra-group transfer of the activity to EU-27/EEA (e.g. transfer of manufacturing from GB mother company to EU-27/EEA daughter company)
 - ✓ GB company must cease manufacture/import until after transition period
- Changes must be notified in REACH IT before end of transition period
- Responsible staff and relevant documentation must be available to EU enforcement authority at premises of registrant

IE downstream users/distributors buying mixtures from GB formulator

Currently:

- GB formulator: no registration duties for substances they use in formulation (if they buy them in the EU)
- IE downstream user/distributor: no registration duties for substances in mixture bought from GB formulator

1st January 2021:

- GB company: becomes non-EU formulator
- IE downstream user/distributor: becomes importer and potentially has registration duties (substances in mixture)

IE downstream users/distributors buying mixtures from GB supplier

Options :

GB Formulator:

- Appoints EU-27/EEA Only Representative to complete registrations
- (Note: in this scenario, IE company still has no registration obligation)

IE company:

- Buys mixture from EU-27/EEA supplier, or
- Buys mixture from GB and registers substance(s)

**If you are in this position, consider your options now
Talk to your GB supplier about their intentions post-Brexit**

- Note: Exemption for re-import under article 2(7)(c) of REACH may apply

Exemption for re-imported substances (1)

- Exemption from registration for re-imported substances (article 2(7)(c))
- Applies to substances registered in EU, exported out of EU, and re-imported back into EU, chemically unchanged, within the same supply chain

Conditions:

- ✓ Substance must be registered before export
 - ✓ Substance exported and re-imported must be the same
 - ✓ Substance must proceed from the same supply chain in which it was registered
 - ✓ Re-importer must be provided with certain information on the substance
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- May be option for IE companies sourcing GB-formulated mixtures
 - IE company may be seen as re-importer of substances in the mixture

Exemption for re-imported substances (2)

Scenario: GB formulator sources substances in DE; supplies mixture to IE company

Substances registered by DE supplier (M/I)



Substances exported from DE to GB



GB formulator prepares mixture (without chemically modifying substances)



IE company buys mixture from GB formulator; re-imports the substances into EU



Exemption from registration could apply to IE company

Talk to your GB supplier and determine if they source EU-registered substances for their mixtures

Substances already on the market

- Substances imported from GB to IE up until 31st December 2020 can be used and further supplied after this date, without the need for a registration by IE company
- The substances must be already physically on the market by that date (i.e. not in storage in the UK or on order)
- As and from 1st January 2021, any substance imported from GB to IE must be registered before it can be placed on the market

REACH Authorisation

- A manufacturer, importer or downstream user may not place a substance on the market for a use, or use it themselves, after a certain date if the substance is subject to authorisation
- A company who applies for an authorisation can do so for their own use and the uses of their downstream users

GB companies are authorisation holders and IE companies (DUs) may be using substances under those GB authorisations

REACH Authorisations after Brexit

1st January 2021: authorisations held by GB companies will not be valid

Options for GB companies;

- transfer authorisation/pending application to EU-27/EEA OR (can only happen after end of the transition period; does not apply to importers)
- transfer authorisation/pending application to EU-27/EEA M/I/DU of the substance, through a legal entity change (must happen before end of the transition period)

Option for GB ORs:

- transfer authorisation/pending application to EU-27/EEA OR (must happen before end of the transition period)

REACH Authorisations after Brexit

Options for IE company relying on GB authorisation:

- Find EU-27/EEA supplier with valid authorisation, or
- Apply for authorisation themselves

If you are IE DU covered by authorisation of GB supplier, speak to GB supplier now to determine their intentions post-Brexit

UK REACH

- At the end of the transition period EU REACH will be brought into UK law under the European Union (Withdrawal) Act 2018
- From 1 January 2021, UK REACH regulation and EU REACH regulation will operate independently from each other
- UK REACH registrations will exist in GB (as EU REACH registrations exist in EU)
- IE companies exporting substances to GB will need to ensure there is a UK REACH registration in place (different timelines for registrations)
- IE companies will be able to appoint an OR in GB (as non-EU companies can appoint an OR in the EU)
- Further information and guidance: <https://www.hse.gov.uk/brexit/reach-guidance.htm>

Preparing for Brexit - REACH

- Examine your current supply chain
- Do you source substances from GB supplier?
- Are you a downstream user, relying on GB Only Representative?
- Are you reliant on an IE distributor who in turn sources from GB?
- Are you reliant on GB company granted authorisation?
- Can you change your supplier to EU-27/EEA one?
- Are you in a position to take on the role of importer if you continue to source in GB after 1st January 2021?
- Speak to your GB suppliers/ORs to determine their plans

REACH Supports

- HSA chemicals helpdesk: chemicals@hsa.ie
- HSA webpages www.hsa.ie/brexit
- ECHA webpages <https://www.echa.europa.eu/support/qas-support/browse/-/qa/70Qx/view/topic/theukswithdrawalfromtheeu>
- European Commission Notice on chemicals under REACH https://ec.europa.eu/info/sites/info/files/notice-stakeholders-brexit-chemicals-reach_en.pdf
- IE Government Departments and Agencies

Thank you

Queries: chemicals@hsa.ie

