

The implications of Brexit and advice for Irish Companies sourcing chemicals in the UK

The UK left the EU on 31st January 2020. There is a transitional period in place until 31st December 2020. After that date, the UK will be classed as a third country. This means that if an Irish company sources chemicals in the UK after 31st December 2020 then they will be importing substances from outside the EU, and will be considered an importer from the point of view of REACH and CLP.

This means that the Irish company will be responsible for all of the duties of an EU importer under REACH and CLP. This would include duties such as the registration of any substance they import at greater than one tonne per annum (on its own, in a mixture or in an article with intended release), the classification and labelling of the products placed on the market, the provision of the SDS, etc.

There are a number of options available both to the Irish company and their UK supplier that would reduce the regulatory burden post-Brexit, and avoid registration duties under REACH in particular.

Irish company

Option 1 - change supplier

If the Irish company changes his supplier from one based in the UK to one within the EU-27/EEA, then this would mean that he is not importing from outside the EU and he would not have importer responsibilities.

Option 2- rely on the exemption from registration under article 2(7)(c) of REACH for re-imported substances

This would apply in the scenario whereby the UK supplier is sourcing a REACH-registered substance(s) in the EU e.g. he is a formulator and he sources the substance for the mixture in the EU, formulates the mixture and then supplies that mixture, with the registered substance(s) in it, to an Irish company. At the end of the transitional period the scenario would then be such that the substance is registered in the EU by the EU substance manufacturer or importer, exported out of the EU to the UK supplier to be blended into a mixture and then re-imported again back into the EU by the Irish company. Such substance would be exempt from registration on re-import by the Irish company, provided that the Irish company can prove that the substance has been registered in the EU (by means of the registration number for example), that the supply chain is the same and that the substance that is re-imported is the same as the one that was originally registered (i.e. that it has not been chemically modified at any stage before it arrives to the Irish company). In this scenario, the Irish company would still be the EU importer, but would be exempt from REACH registration duties. The Irish company would need to be able to prove that they meet the conditions of the exemption, if required to do so. They would still have other EU importer duties such as responsibility for the classification and labelling, the SDS, etc.

UK supplier

There are also a number of scenarios and options available to the UK supplier. These options will depend on what role he currently has regarding REACH, whether he is a substance manufacturer and/or importer with REACH registrations in place, or if he is a formulator sourcing substances for his blends in Europe, etc. Irish companies are strongly advised to speak to their UK supplier and ask him about his plans post-Brexit and if he already has/intends to put any of the options outlined below in place, depending on which scenario he falls under.

UK companies will not have REACH registration obligations after the transitional period as only EU/EEA-based manufacturers and importers are required to register their substances under REACH. Any UK-based REACH registrations will become void after the transitional period.

Scenario 1- UK supplier is a REACH registrant as an importer

If the UK supplier has a REACH registration for the substance(s) that he supplies to an Irish company and he is an importer (i.e. sourcing the substance from outside the EU), then he may transfer his REACH registration(s) to an EU-27/EEA legal entity, if this transfer is the result of a legal entity change, i.e. the importing business is transferred to a legal entity in the EU-27/EEA. This must be done before the end of the transitional period and must be notified to ECHA through the 'legal entity change' functionality in REACH-IT. Supply could continue to the Irish company from that EU legal entity post-Brexit and they would not be seen as an EU importer. (note: unlike what is outlined below in scenario 2 for a UK manufacturer, a UK importer cannot appoint an Only Representative (OR), as only non-EU manufacturers or formulators can appoint an OR under REACH).

Scenario 2- UK supplier is a REACH registrant as a manufacturer

If the UK supplier has a REACH registration for the substance that he supplies to the Irish company and he is a manufacturer of the substance, he may transfer the registration to an EU-27/EEA legal entity, which maintains the manufacturing role. The transfer must be the result of a legal entity change, i.e. it must fall into one of the following scenarios:

- The UK-based manufacturer goes through an acquisition or relocation to the EU-27/EEA
- Intragroup transfer of the whole operations/manufacturing activity (e.g. transfer of the activity from a UK-based mother company to an EU-27/EEA-based daughter company).

Again, such a transfer would need to be done before the end of the transitional period. Supply could continue to the Irish company from that EU legal entity post-Brexit and they would not be seen as an importer.

Alternatively, as a substance manufacturer (who will be located outside the EU post-Brexit), the UK company can appoint an Only Representative (OR) in the EU-27/EEA to complete the REACH registrations on his behalf. In such a scenario, the supply would come to the Irish company under the OR's registration and the Irish company would not be considered as an importer.

Scenario 3 - UK supplier is a formulator but not a REACH registrant

If the UK supplier formulates a mixture and supplies that mixture to the Irish company, he also has the option of appointing an OR to complete the registration(s) for the substance(s) in the mixture(s) that he will be supplying into Europe post-Brexit. As with scenario 2 above, the Irish company sourcing such mixtures from the UK would work under the OR arrangement.

Further information

- ECHA, the European Chemicals Agency, has information in relation to the impacts of Brexit for UK and EU-27 based companies, including a detailed set of questions and answers, on its website at this <https://www.echa.europa.eu/web/guest/uk-withdrawal-from-the-eu>
- HSA website www.hsa.ie/brexit
- Any company with specific queries in relation to chemicals being sourced in the UK should contact our chemicals helpdesk, chemicals@hsa.ie. For other Brexit queries, please contact our Workplace Contact Unit, wcu@hsa.ie or call 1890 289 389.