



## **BREXIT AND REACH: WHAT BUSINESSES NEED TO KNOW**

The end of the Brexit transition period on 31 December 2020 is fast approaching. A 'no-deal' scenario – that is, no agreement between the UK and EU on trade and other matters – looks increasingly possible. What does this mean for chemicals regulation in the UK and EEA and what should businesses be doing now to protect themselves?



### What has happened?

If no deal is reached, market participants will have to comply with two parallel regimes. Chemicals and manufacturing industry stakeholders have been clear that in such circumstances, they want the UK and EU frameworks to remain as closely aligned as possible. On 22 May 2020, it was formally announced the UK will not be seeking associate membership of the European Chemicals Agency (ECHA) or participation in the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (EU REACH) framework.<sup>1</sup>

Instead, the UK will launch its own, independent chemicals regulatory framework, to be called "UK REACH". This regime will be based on EU REACH. The Health and Safety Executive (HSE), working in partnership with the Department for Environment, Food and Rural Affairs (Defra), will take an equivalent role to that of the ECHA and a new database of registered substances will be created, reliant on a new UK REACH IT system, currently under development.

### How will this affect you?

UK REACH aims to replicate EU REACH to the extent possible, at least for the time being. Market participants will need to be aware of the following consequences of its introduction:

#### 1. Increased costs.

Unfortunately, no matter how similar UK REACH is to EU REACH, a duplication of regulatory regimes will inevitably result in increased compliance costs for businesses. Two registrations instead of one will have to be made to import the same chemical into the UK and the EEA. The immediate cost of two regulatory systems has been estimated by some industry groups to be approximately £1bn.<sup>2</sup> Any divergence in standards will increase compliance costs further.

#### 2. UK companies' REACH registrations and authorisations will become invalid.

On 1 January 2021, the UK will become a "third country" with respect to the EU REACH regime. To continue to import products into the EEA, UK companies (and non-EEA companies with UK-based "only representatives") will need to transfer their registrations to an EEA entity. Failing this, the obligation for EU REACH compliance falls on the EEA receivers, as they will become importers under EU REACH.

#### 3. EEA companies looking to import chemicals into the UK will have new registration obligations under UK REACH.

Currently, no registration is required for EEA companies to import into the UK. However, from 1 January 2021, UK

REACH will require the registration of chemicals to be imported into the UK regardless of their provenance. Therefore, either EEA companies will need to appoint a UK-based "only representative" or their UK receivers will need to obtain their own registrations under UK REACH.

#### 4. Grandfathering of EU registrations by UK companies.

EU REACH registrations held by UK companies will be 'grandfathered' into UK REACH so long as the process is completed by certain phased deadlines. Basic information must be provided to the HSE by 30 April 2021, with the full supporting 'data package' to be provided on a staggered timescale (2, 4 or 6 years) depending on the tonnage band and the hazard profile of the substance.

In order to complete full registration with UK REACH, UK companies may need to pay for access to the data relied upon in EU REACH applications. This is typically done via letters of access (LOAs).

This will likely be the largest single cost faced by businesses as a result of the establishment of UK REACH. Some estimates have the costs of registering a single chemical with the new UK REACH database running into hundreds of thousands of pounds if a new LOA is required.

<sup>1</sup> Letter dated 22 May 2020 from Rebecca Pow MP to Philip Dunne MP, Chair of the Environmental Audit Committee.

<sup>2</sup> CEFIC and CIA paper, REACH related issues in the future relationship between the EU-27 and the United Kingdom, February 2020.

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If access to the relevant data cannot be obtained, UK companies may have to resort to further, duplicative testing. Defra has indicated that it intends to clarify whether it will vary the data required within September 2020.

It is still possible that the UK and the ECHA will reach a suitable data sharing arrangement, which could reduce costs by up to 80%. However, at the time of writing this looks increasingly unlikely.

## What should you do now?

Chemicals businesses impacted by these issues should consider the following steps:

1. UK businesses with existing EU REACH registrations which are intending to import into the UK after 1 January 2021 should:
  - take steps to ensure they effectively ‘grandfather’ their registrations into the UK REACH regime; and
  - review their existing LOAs to ascertain if and how they will be able to obtain access to the supporting data for the purpose of their UK REACH registration requirements.
2. EEA businesses with EU REACH registrations that supply registrable substances into the UK will need to ensure that their

UK receivers (who will become UK REACH importers) are able to receive the imported substances. UK receivers may need to obtain new UK REACH registrations, which would incur potentially significant registration fees.

3. UK businesses seeking to trade with the EEA should seek to transfer their existing registrations to an EEA entity before 31 December 2020. Such transfers are only available in limited circumstances. If a transfer is not possible, other solutions could include:

- establishing a new EEA entity and acquiring new registrations (which will involve incurring costs);
- using an EEA “only representative”; and/or
- changing business arrangements such that an EEA receiver is responsible for import.



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