SIA GUIDANCE NOTE No. 66

SUMMARY DOCUMENT – UK REACH REQUIREMENTS FOLLOWING THE UK'S EXIT FROM THE EUROPEAN UNION - 2021

1. Introduction

The post-Brexit transition period ended on 31 December 2020. From 1 January 2021, the provisions of 'UK REACH' apply to those dealing with substances in Great Britain (GB).

UK REACH is a 'cut and paste' of Regulation (EC) No. 1907/2006 (EU REACH) with several key differences to allow the regulation to work in GB. The provisions of UK REACH are set out under the following Statutory Instruments:

The REACH etc. (EU Exit) Regulations 2019 (SI No. 758/2019) – This sets out the ground rules for UK REACH, which transfers the existing EU REACH into UK Law. This Regulation introduces **Article 127**, outlining the transitional provisions that are in place for the transition from EU to UK REACH – this is the most important part of the SI for UK businesses.

The REACH etc. (EU Exit) (No. 2) Regulations 2019 (SI No. 858/2019) – This provides an amendment to **Article 127E**, regarding current downstream users / distributors under EU REACH, and outlines some changes to the Downstream User Import Notification (DUIN) Process.

The REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019 (SI No. 1144/2019) – This amends **Article 127G**, regarding how Substances of Very High Concern (SVHCs) (Article 33 of EU REACH) and substances subject to Authorisation (Annex XIV of EU REACH) will be dealt with under UK REACH.

2. Transitional Provisions – Existing EU REACH Registrations

Article 127A, 127B, 127C and 127D of SI No 758/2019 set out provisions for existing registrations under EU REACH. In order to facilitate the transition from EU to UK REACH, the UK government are allowing UK-held EU REACH registrations transferred to an EU-based legal entity prior to 1st January 2021, to be recognised under UK REACH. Registration transfer will have been done through **REACH-IT** (legal entity change) and is no longer possible. The transfer of EU REACH registrations allows the registration to be **'grandfathered'** into UK REACH, allowing it to be recognised under the Regulation and ensuring that companies who have grandfathered the registrations do not have to re-register.

EU REACH registrations can be grandfathered into UK REACH using the **'Comply with UK REACH'** IT system. Some initial information must be provided as well as a copy of the EU registration dossier.

The **deadline** for grandfathering an EU REACH registration into UK REACH is 120 days from the end of the transition period (i.e. **30 April 2021**).

If the above grandfathering process does not apply and (in the case of importers) the Downstream User Import Notification (DUIN) process is not applicable, then a **new UK REACH registration** will have to be completed (using the Comply with UK-REACH it system) prior to manufacture or import in / into the UK.

The official guidance on grandfathering, from the Health and Safety Executive (HSE), can be found here.

3. Transitional Provisions – Downstream User Import Notifications (DUINs)

Article 127E of SI No. 858/2019 sets out transitional provisions relating to pre-exit downstream users and distributors that are to be continued to be regarded as Downstream Users. This Article allows existing UK Downstream Users and distributors under EU REACH to benefit from **delayed registration deadlines** (see Annex I to this document) **as long as they meet the transitional import requirements** set out under **Article 127E(2)**, these are:

a) The substance is imported into the UK on its own, in a mixture or in an Article;
b) **The UK user or distributor is the importer** in relation to the import;
c) **The import occurs during the 2-year post-exit period;**
d) i) **The supplier of the imported substance is a registrant or downstream user under EU REACH** (there must be a valid EU REACH registration in place for the substance); or ii) The supplier (**non-EU manufacturer, formulator or producer**) of the imported substance **has appointed an Only Representative (OR)** under Article 8(1) of EU REACH to fulfil EU REACH registration obligations for the substance, mixture or article

If the EU-manufacturer appoints a GB-based Only Representative (OR) to fulfil the UK REACH duties for the GB-based importers, the importers do not need to register/submit a Downstream User Import Notification (DUIN). It is now the responsibility of the OR to make the registration on behalf of the GB-based importers.

It is still an option for a GB-based importer to submit a DUIN and this would cover them in the eventuality that the OR failed to submit a registration by the relevant deadline (an OR would be responsible for the cumulative tonnage of all GB-based importers and this could mean an earlier deadline for full registration applied than for any individual importer).

The substances, tonnages and importers that are covered by an OR should be established by the contractual arrangements in place between the OR, the non-GB manufacturer/formulator and the GB-based importers.

If the above conditions are met, this allows the Downstream User / distributor (who will now be classed as **importer under UK REACH**) to submit a DUIN for each applicable substance to the HSE, using the spreadsheet that can be found here along with some further guidance. The information requirements for DUINs are stated under **Article 127E(7)** and **127E(8)** – information

other than substance name and a numerical identifier will only need to be provided to the extent that it is reasonably available. The **deadline** for submitting DUINs is **28 October 2021**.

It is expected that many importers in the UK may want to **change suppliers** post 1 January 2021 – this is accounted for under **Article 127E(9)** which states that a UK user or distributor will need to provide updated information to the HSE where the substance is imported from a different supplier (note that this different supplier must also hold a valid EU REACH registration or will need to have assigned an OR who holds one).

4. New Registrations

If the transitional provisions described under Sections **2.** and **3.** Of this document do not apply (i.e. a UK business wishes to import or manufacture a substance in quantities greater than 1 tonne per year for the first time), then a new substance registration will need to be submitted **prior to import or manufacture**. The first step in completing a new registration is to first submit an **Article 26 inquiry dossier** via the Comply with UK-REACH system. Once an inquiry dossier is submitted and accepted, the registrant will be put in a '**Substance Group'** for their particular substance – this will allow the registrant to begin the data sharing process with other registrants of the same substance. Further guidance on the new registrations process can be found here.

5. Authorisations

The UK REACH process for identifying SVHCs will be similar to the EU REACH process. Further information on this is due to be published soon. The process for applying for authorisation will also mirror the current process under EU REACH, aside from the fact that the Competent Authority (CA) will now be the HSE instead of the European Chemicals Agency (ECHA).

GB holders of existing EU REACH authorisations will have these authorisations grandfathered into UK REACH. Holders of existing authorisations were required to supply the HSE with technical information relating to the authorisation by **1 March 2020**.

'The existing EU Authorisation list (Annex XIV) has been retained under UK REACH. The same **latest application dates** (LADs) and **sunset dates** (SDs) apply, except for entries 44 to 54 whose LADs are amended to 18 months after the end of the transition period (Article 127GA (7)&(8)). Additionally, in certain situations where an application was made before the EU LAD but was not granted by the end of the transition period special transitional provisions apply giving those applicants an extended LAD to submit an application under UK REACH.'

Further information on authorisation can be found here.

6. Restrictions

Current restrictions under EU REACH (Annex XVII) will continue to apply in the UK – new restrictions may differentiate from those implemented in the EU. The Secretary of State makes decisions to restrict substances, based on the scientific opinion of the HSE.

7. Northern Ireland

GB importers or downstream users of goods from Northern Ireland registered under EU REACH by a business in Northern Ireland will be able to maintain market access by submitting a **'Northern Ireland notification'** through the Comply with UK REACH system. The notification must be submitted by GB-based importers who:

- Were importing substances in quantities greater than 1 tonne before 1 January 2021. They must do this within 300 days of the end of the transition period (i.e. before **28 October 2021**).
- For those who commenced import after 31 December 2020 - the required information must be submitted before continuing to import.

Further information on how to submit a Northern Ireland notification (and the information requirements of a notification) can be found here.

Annex I – Tonnage band deadlines applying to pre-exit downstream users and distributors that are to continue to be regarded as downstream users

Deadline post 28 October 2021	**Tonnage**	**Hazardous property**
2 years from 28 October 2021	1000 tonnes or more per year	• 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	Candidate list substances (as at 27 October 2023)
6 years from 28 October 2021	1 tonne or more per year	