

**Brexit: New UK REACH Framework
continues to take shape**

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From our EU Regulatory — Chemicals / Brexit team

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While Brexit negotiators try to progress the Terms of Reference for the future UK-EU relationship through COVID-induced cyberspace, there has been a slow but steady development in how chemicals will be regulated in the UK once the transition period expires on 31 December 2020. Since the UK left the EU in January, a number of key documents has been published and high level conferences held which shed light on what we can expect in terms of the UK's own 'lifted and shifted' version of the REACH Regulation.

From 1 January 2021, EU REACH will no longer apply in England, Wales and Scotland, and simultaneously, UK REACH and its own version of the EU's REACH-IT system are due to become operational. The UK and EU REACH regulatory systems will not be linked in any way, and UK companies sourcing chemicals directly from EU/EEA suppliers would change from downstream users to importers under UK REACH, therefore having to meet different regulatory obligations.

This switch will not apply to the entire UK: Northern Ireland will remain under EU legislation by virtue of the Ireland/Northern Ireland Protocol, subject to the periodic consent of the Northern Ireland Legislative Assembly. This means that Northern Ireland will continue to have a relationship with ECHA after the transition period ends, while the rest of the UK's future relationship with the agency is still to be clarified.

Different models for cooperation between ECHA and the UK have been suggested based on, for example Articles 106 REACH (enabling third country participation in ECHA's Forum and Committees) and 120 REACH (which grants access to ECHA's IT database). However, the UK

made it clear in its policy paper of 27 February 2020 on its approach to negotiations on the UK's future relationship with the EU that it wants a Comprehensive Free Trade Agreement ("CFTA") with the EU based on liberalized market access for trade in goods. It seeks no tariffs or quantitative restrictions on trade in manufactured or agricultural goods between the UK and the EU on a rules of origin basis.

The UK's Proposed CFTA

In the proposed CFTA's chemicals annex, cooperation would be required between the UK and the EU on the implementation of the Global Harmonised System of Classification and Labelling of Chemicals ("GHS") to facilitate trade in products and chemical substances. In order to support businesses trying to meet the separate sets of regulatory requirements in the two markets post-transition period, data and information sharing mechanisms in line with current EU and UK regulation would be agreed. These data and information sharing ambitions would mean that the UK may not find itself with an "empty" UK REACH-IT database post transition period as had been expected. While only UK-held REACH registrations will be grandfathered into new UK REACH, the UK's new REACH-IT system would be able to facilitate both new registrations as well as the transitional measures.

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However, new data and information sharing between the EU and the UK is a stretch in terms of the EU's position on the negotiations. The draft text of the Agreement on the New Partnership with the EU published by the European Commission on 18 March 2020 contains provisions on regulatory cooperation with no specific reference to chemicals or to information sharing.

As it is, the UK has already enacted three national Statutory Instruments allowing a REACH derived regulatory framework to function outside the EU's authority. From 1 January 2021, existing UK-held EU REACH registrants will have 120 days to provide UK authorities with initial information supporting their registrations. All importers of substances from EU-based registrants will have 180 days to provide UK authorities with initial data. These companies would then have 2 years after the end of the transition period for their full registrations to be completed with the submission of full data packages. Joint registrations would be encouraged to minimise data duplication, but UK REACH does not provide for SIEFs to support registrations, instead more ad hoc substance groups are discussed.

On this apparently industry-friendly position, Simon Johnson of the EU Exit Team at the UK Department of Environment, Food and Rural Affairs ("DEFRA") stated during his presentation at Chemical Watch's virtual post-Brexit chemicals law conference on 21 April that the UK is keeping the 180 days and 2 year submission dates under review, notwithstanding any impact COVID-19 may also have on the implementation of the deadlines. He also indicated that the UK would be avoiding change for

change's sake in its new REACH regulatory framework, giving the example of the UK's REACH-IT system having the same format as ECHA's REACH-IT system in an effort to make it as user friendly as possible. However, good IT will not remedy any deficiencies in companies' data rights to studies supporting their EU dossiers when they submit their substance information to the UK. The UK will not accept Letters of Access ("LoA") referencing data in support of new dossiers: hard copy studies will be required, which places the burden back on industry to provide full data sets for substances already registered under EU REACH.

The new UK REACH framework is coming into effect once the transition period expires whether a Free Trade Agreement is agreed between the UK and EU or the UK exits the transition period as a third country without the security of an Agreement, but with the potential to become a regulatory competitor. Either way, regulatory change is inevitable in the UK chemicals market.

Looking ahead, companies are encouraged to identify the chemicals they market in the UK, and clarify their rights to the data supporting their current EU registrations.

There are now just over two months left to extend the transition period by up to two years before the cut-off date of 1 July under the terms of Article 132(1) of the Withdrawal Agreement. So far, the UK government has not given any indication of an intention to seek an extension beyond 2020. You have been warned.

If you would like to understand more, please do not hesitate to contact our team.



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