

Brexit and the implications for REACH and PIC

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REACH

- Most elements of REACH will be impacted by Brexit
- Key areas for Irish companies will be **registration** and **authorisation**
- Non- EU companies and UK-based Only Representatives (ORs) also affected

REACH Registration

- Requirement that substance manufactured in EU, or imported into EU at greater than 1 tonne per annum, must be registered
- UK registration statistics :
 - 8,995 registrations
 - 4,895 substances
 - 1,260 companies

 - 40% importers
 - 26% manufacturers
 - 26% Only Representatives (ORs)
 - 8% manufacturers and importers
- Many Irish companies may be relying on these UK-based registrations for their own supply (or covered by the UK-based OR)

REACH Registrations after Brexit

- All implications will come into effect at the end of the transition period
- UK REACH registrations will become non-existent
- UK authorities will no longer:
 - Have access to ECHA databases
 - Be part of, or send experts to, ECHA or Commission committees

Impacts on IE companies - registration

- Currently, if IE company buys chemicals from UK supplier, role under REACH is as a downstream user -> **no registration obligations**
- If IE company continues to buy chemicals from that UK supplier after Brexit, role under REACH changes to importer -> **registration obligations**
- Consideration also needs to be given to IE distributors that may supply IE companies – their source could be UK-based

Impacts on registration for IE companies (1)

Scenario: IE company purchasing registered substance from UK registrant

- Currently, IE company is downstream user; no registration obligation
- After Brexit, IE company can't rely on the UK registration

Options:

UK supplier:

- move operations related to registered substance to legal entity within EU-27/EEA; complete a legal entity change, or
- if manufacturer (but not importer), appoint EU-27/EEA based OR and transfer the registration

IE company:

- sources another EU-27/EEA based supplier, or
- continues to source from UK-based supplier, becomes an importer; registers

If you are in this position, consider your options and talk to your UK supplier now about his intentions post-Brexit

Impacts on registration for IE companies (2)

Scenario: IE company registrant in joint submission with UK lead registrant

- Following Brexit, UK registration will cease to exist

Options to ensure functioning joint submission:

- Lead registrant moves to EU-27/EEA, or
- New lead registrant appointed and LR role transferred before Brexit

If you are in such a position, talk to your UK lead registrant now to determine his intentions post-Brexit

Impacts on registration for ORs

Scenario: UK-based Only Representative who has submitted registrations

- After Brexit, OR will no longer be *'legally established in the EU'*

Options :

- OR moves to EU-27/EEA, or
- Non-EU manufacturer appoints new OR based in EU-27/EEA , or
- EU-27 company becomes an importer and registers

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

UK companies transferring registrations to EU-27/EEA (1)

- Company cannot be set up 'on paper' only
- Must be result of a legal entity change:
- ✓ UK company goes through acquisition/relocation to the EU-27/EEA, or
- ✓ An intra-group transfer of the activity to the EU-27/EEA (e.g. transfer of manufacturing from UK-based mother company to EU-27/EEA-based daughter company)
- Responsible staff and relevant documentation must be available for inspection by the IE enforcement authority at premises of registrant
- Also applies to ORs

UK companies transferring registrations to EU-27/EEA (2)

- Changes must be notified in REACH IT before end of transition period
- ECHA has guidance on how to transfer registrations
- Following the legal entity change, UK legal entity must cease manufacturing/importing until after the transition period

IE downstream user/distributor sourcing mixtures from UK supplier

Before Brexit:

- UK formulator has no registration duties for substances he uses in the formulation (downstream user)
- IE downstream user/distributor has no registration duties for the substances in the mixture he sources from the UK formulator

After Brexit:

- UK company becomes a non-EU formulator
- IE downstream user/distributor becomes an importer (from outside the EU) of the substances in the mixture
- IE company potentially has registration duties for the substances in the mixture

IE downstream user/distributor sourcing mixtures from UK supplier

Post-Brexit options :

- IE company sources the mixture from a different EU-27/EEA based supplier, or
- IE company continues to source the mixture from the UK supplier and takes on registration duties for the substance, as the importer, or
- UK company, as non-EU formulator, appoints an EU-27/EEA based OR
- In this scenario, IE company would be a DU, covered by the OR arrangement
- 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 the EU, exported by an actor in the supply chain and re-imported back into the EU by the same actor, or a different actor, in the same supply chain

Conditions:

- Substance exported and re-imported must be the same
- Re-importer must be provided with information on the substance
- May be option for IE companies sourcing UK-formulated mixtures
- IE company may be seen as a re-importer of substances in the mixture

Exemption for re-imported substances (2)

Scenario: UK formulator sources the substances for his mixtures in the EU and then supplies the mixture to an IE company

- Substances are registered by the UK formulator's EU supplier
- After Brexit, substances exported out of the EU to the UK formulator
- UK formulator prepares the mixture (without chemically modifying the substances) and sells the mixture to IE company
- IE company re-imports the substances (in the mixture) back into the EU
- In this case, the exemption from registration could apply to the IE company, providing conditions of the exemption are met

You may be in this situation; talk to your UK supplier and determine if he sources EU-registered substances for his mixtures

UK Land Bridge

- IE companies may source substances in the EU which are then driven across the UK and delivered to Ireland from the UK
- ECHA has provided clarification: the fact that an EU-registered substance is transported through a third country is immaterial
- No registration duties for IE companies using this route

REACH Authorisation

- A manufacturer, importer or downstream user may not place a substance on the market for a use, or use it himself, after a certain date (sunset date) if the substance is included in Annex XIV of REACH
- A company who applies for an authorisation can do so for his own use and the uses of his downstream users

UK-based companies are authorisation holders for a number of substances and IE companies may be using substances under those UK authorisations

REACH Authorisations after Brexit

- After Brexit, authorisations held by UK-based companies will not be valid

Options for UK manufacturers and formulators (but not importers)

- transfer authorisation/pending application to EU-27/EEA OR (can only happen after UK withdrawal)
- transfer authorisation/pending application to EU-27/EEA manufacturer/importer/downstream user of the substance, with uses covered by the application through a legal entity change. (must happen before UK withdrawal and change of legal entity cannot extend the scope of original application)

Options for UK-based ORs:

- transfer authorisation/pending application to EU-27/EEA OR (must happen before UK withdrawal)

REACH Authorisations after Brexit

Options for IE company relying on UK authorisation:

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

If you are an IE DU covered by an authorisation of your UK supplier, speak to your UK supplier now to determine his intentions post-Brexit

Preparing for Brexit - REACH

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

Export/Import Regulation (PIC)

- Exporters of certain hazardous chemicals to non-EU countries have particular obligations under Export/Import Regulation
- This allows countries to monitor and control the export and import of these chemicals
- Also allows countries to refuse export/import, or to place certain conditions on import
- Following the transitional period, exporters of chemicals listed in annexes to the Regulation from Ireland to the UK will have obligations under the Regulation (e.g. notification requirements)

Export/Import Regulation (PIC)

Scenario: IE company needs to notify export of substance subject to PIC to the UK after end of transition period

- According to Regulation, notification should happen 35 days before expected date of export - how to proceed?
- To cover exports taking place in the first 35 days of 2021, procedure will be reactivated by ECHA to allow EU-27 based exporters to notify planned export in advance of end of transition period
- These notifications will take effect if the end of the transition period is confirmed
- Instructions on how to proceed are available on ECHA website
- FAQs on PIC on ECHA website <https://echa.europa.eu/advice-to-companies-q-as/pic>

Support

- HSA chemicals helpdesk: chemicals@hsa.ie
- HSA webpages www.hsa.ie/brexit
- ECHA webpages on UK withdrawal www.echa.europa.eu
- IE Government Departments and Agencies
- Trade organisations

Thank you

