

What do companies think of UK REACH so far?

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UK REACH is operational, and dossiers and downstream user import notifications are being submitted – but more IT functionality and better guidance is needed, especially in relation to DUINs, says the UK director of consultancy knoell, Dr Iain MacKinnon



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On 1 January 2021, the Brexit transition period came to an end and life for the UK as a third country outside the EU began. In terms of chemicals regulation, EU REACH no longer applies and a stand-alone regulatory regime, UK REACH, is now in force. As a consequence of the Northern Ireland Protocol, EU REACH is still in force in Northern Ireland. UK REACH applies to Great Britain (GB), ie England, Scotland, and Wales.

After five months, what is our initial impression?

The new IT system, 'Comply with UK REACH', is simple to access – uploading a dossier is easy – but functionality is basic, with many operational requirements clearly still in development or not yet accessible. The HSE helpdesk has been great, though lately the response time has been long. Better guidance on the agency's website would have meant fewer questions. Perhaps the UK's Health and Safety Executive (HSE) now has a detailed set of common questions and issues that can be used to post FAQs?

The legislation itself is tortuous to read. There is no consolidated version, which means readers must have the EU REACH legislation open alongside the UK REACH statutory instrument, and refer to several amendments introduced to fix deficiencies in the original document. That being said, the most important parts of the legislation – for now at least – are arguably the new Articles 127A, 127B, etc which have no direct equivalent in EU REACH, and which cover the transitional provisions needed to avoid any disruption to existing trade in chemical substances. Articles 127A, 127B, etc are written from the perspective

of a company based in GB. If you are a company manufacturing outside GB, read the legislation and then interpret what it means for you as a non GB-based supplier.

The transitional provisions of UK REACH categorise GB-based companies in one of two ways:

- manufacturers, importers, or only representatives (ORs) who held their own registrations under EU REACH; or
- downstream users who have not held their own EU REACH registration and, during 2019 and 2020, were buying chemical substances from EEA suppliers (or non-EEA suppliers covered by an EEA-based OR).

UK authorities appear to have focused on the first group to the detriment of the second. This might be because they view the first group as more important to the economy. Their EU REACH registrations are **grandfathered** into UK REACH without payment of any registration fees, which seems reasonable as they will have lost their own registrations under EU REACH and, in order to continue to ship to EEA, customers will need:

- an OR in the EEA; and
- to pay to re-register.

Information provided by Defra just before the end of **April deadline** was that some 3,000 plus substances had been grandfathered by almost 800 companies.

For the second group of companies, the revised legislation allows trade to continue until registration deadlines – which are largely tonnage-dependent and may be as far

in the future as October 2027 – so long as a downstream user import notification (DUIN) is submitted by 27 October 2021. Submission is done by emailing a spreadsheet to the HSE – a simple, if clunky, process at first sight. However, many issues have surfaced.

Long before UK REACH came into force, it was clear that the UK authorities had failed to properly consider the role of ORs, and, especially, their role in the transition to UK REACH – so much so that an amendment to the statutory instrument covering ORs was required. There is still nothing in the 'Comply with UK REACH' IT system to show that anyone is an OR, and nowhere to give details of the non-GB appointing company. This could have been useful both for ORs to keep track, and for the HSE/Defra to collect information such as the number of GB-based importers (former downstream users) versus representatives of non-GB companies.

The information to be included in a DUIN is given in UK REACH Article 127E. At first sight, this looks like the same information already contained in EU REACH registration or inquiry dossiers, but extracted and re-entered into a spreadsheet. There is some lack of consistency between the legislation and information provided on the HSE website. Thus, the HSE's DUIN template indicates that information on restriction or authorisation under EU REACH need be provided only "to the extent that information is available". However, the relevant section of Article 127E does not carry this rider, so this information should be provided. Similarly, a safety data sheet where required (for example, the substance is classified) should be submitted.

After a DUIN is submitted, only a cursory acknowledgment by email is provided by the HSE. We are regularly approached by clients for whom a DUIN has been submitted and who want some evidence to share with their clients that a particular substance has been included in a submission. This is not possible and it has to be taken on trust.

After submission of the DUIN, an Article 26 inquiry dossier must be submitted before a potential registrant will be placed in a substance group (and given contact details of potential co-registrants), and before a registration dossier may be submitted.

The need for an inquiry dossier came as an unwelcome shock to many of our clients. For a long time it was only included on the HSE website page referring to grandfathered substances – and not on the page referring to DUINS where it belonged (and now belatedly appears). All registrations which follow a DUIN submission are treated as 'new registrations' and the need for an inquiry

dossier should have been made more explicit.

Reasons given by the HSE for not including the need for an inquiry dossier on its website include that it was not part of the transitional provisions, and that registrants had more than 1,000 days to submit a registration dossier after UK REACH came into force. However, when it comes to the nomination of lead registrants, submission of an inquiry dossier is a key step. UK REACH has adopted the 'one substance, one registration' approach, with a lead registrant submitting a full dossier and other registrants joining the registration (as yet, no details on how this will be done in practice are available).

Substance groups were supposed to be able to nominate a lead registrant from 1 May 2021, the day after the grandfathering deadline. But what about companies who are based in the EEA, who are perhaps lead registrants under EU REACH and who will register for UK REACH using an OR? They can only participate in the lead registrant nomination and related discussions by joining the substance group, after submitting an inquiry dossier (and this only after submitting a DUIN).

It appears that for now there is still no way to nominate a lead registrant officially in the IT system. However, we are aware of emails already circulating from companies putting themselves forward as lead registrant when it is probable that many potential registrants, including data owners, are still missing from the substance group. It is easy to criticise with hindsight but this disconnect was foreseeable. It is perhaps a consequence of those who designed the system and wrote the legislation placing a greater focus on grandfathering than on the DUIN route.

Finally, much has been written by Chemical Watch and elsewhere about data access for UK REACH registration. However, one detail requires further attention. For the most part, any changes Defra made to the REACH legislation were in order to make it function in a UK – latterly GB – context. However, Article 25 was amended to allow potential registrants under UK REACH to use any studies already used for registration under EU REACH (not just UK REACH) at least 12 years previously. This includes much of the original data included in the highest tonnage REACH dossiers, submitted before 2010. Use of these studies for the UK REACH deadline of 27 October 2023 is free for UK REACH registrants. It is not clear what this means if an EEA-based REACH data owner does not appoint an OR to register under UK REACH. They cannot charge for a Letter of Access, but there is no legal obligation to share data as they are outside the UK. If the non-EEA company appointed an OR and gave them the required studies, can the HSE take these studies and hand them over for free to other

co-registrants? Free access to studies may, however, be viewed with some satisfaction by smaller companies who do not want to pay (again) to use the data.

In summary, UK REACH is operational, dossiers and DUINS are being submitted. The IT system is straightforward but could be improved, and we await much greater functionality. Guidance could be improved, especially relating to the DUIN route for those who could not grandfather. It is early days with much still to do. 'A good start, must try harder'.

The views expressed in this article are those of the author and are not necessarily shared by Chemical Watch.