

How will UK REACH affect my ability to make, distribute or use chemicals in the UK?

With four months to go before the implementation of UK REACH, knoell UK's Graeme Towell says it is vital to understand the different roles that can be played by British importers and EU or non-EU suppliers, as many long-established relationships will no longer work

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After ten years of EU REACH, the overwhelming view from industry is that the regulation has been a significant step in the global movement towards better protection of human health and the environment – despite early misgivings and the huge effort and cost involved. Consequently it is with some dismay that chemical manufacturers and suppliers have watched the difficult negotiations between the UK and EU unfold, as the end of the transition period which followed the withdrawal of the UK from the EU approaches.

It is almost certain that there will be no future collaboration on chemicals regulation and that the UK will implement parallel legislation from 1 January next year. The proposed legislation is known as UK REACH and a direct copy of EU REACH aside from minor changes needed to frame it for a single state. But while UK REACH and EU REACH have almost identical wording, their impact on actors in the chemicals supply chain (both inside and outside the UK) will be different.

Registration obligations

UK REACH places an obligation on manufacturers or importers of substances that are located in the UK to submit registration dossiers to the UK Health and Safety Executive (HSE) in the same way as they did previously under EU REACH. Whereas manufacturers are likely to

have prior experience with EU REACH, there will be a great many newly defined importers whose source substances have been registered under EU REACH by others further up the supply chain, and will now face registration obligations themselves.

This significant cohort of potential registrants is likely to have little experience with EU REACH and very limited resources to undertake the early tasks to ensure compliance.

In an attempt to ease the burden on downstream customers that find themselves newly defined as importers, many non-UK suppliers will wish to support the registration obligations by appointing an only representative (OR). However, this is not always simple to achieve, since it is only non-UK manufacturers (or formulators) which can appoint an OR. Those suppliers that use a centralised distribution chain across the EU, where a single EU (but not UK-based) affiliate holds many registrations, will face a new level of complexity in trying to help their downstream customers in the UK. With this complexity in mind, it is essential that all potential actors under UK REACH carefully analyse their critical supply chains to understand the different roles that can be played by UK importers and EU or non-EU suppliers and manufacturers. Many long-established relationships will

no longer work; not least because a non-UK distributor can neither register under UK REACH nor appoint an OR.

Once UK REACH is implemented, there will be a two-, four- or six-year transition period (depending upon tonnage and classification) before registrants are required to finally submit full registration dossiers to the HSE. Until this happens, the UK will not have a fully populated chemicals database. Since registration information is linked to volume – and it is likely the volumes of substances manufactured in, or imported into, the UK will be lower than in the EU – it remains to be seen whether the final information provided will be as complete and detailed as that submitted to Echa on the same substances.

First compliance steps

The first steps towards compliance with UK REACH will be to submit a notification to the HSE. UK-based manufacturers or importers that have previously held registrations under EU REACH will be considered as “already registered”. However, they will have to confirm their registrations by the submission of a notification to the HSE by 30 April next year. They will then need to submit a full registration dossier within the next two, four, or six years (depending upon classification or tonnage band) starting from 28 October 2021. This group of registrants will not have to pay registration fees because their registrations will be grandfathered into UK REACH. Grandfathered registrations will be placed into substance groups, linking potential registrants for a given substance.

Former downstream users that, under UK REACH, now have importer obligations, will be required to submit a downstream user import notification (DUIN) before 27 October 2021 and a registration dossier within two, four or six years of 28 October 2021, depending on classification or tonnage band. The same is true of new UK-based ORs appointed by non-UK suppliers. The DUIN provides basic details such as substance identity and relevant EU REACH registration number.

These initial notifications should be straightforward and are expected to involve the upload of a Microsoft Excel spreadsheet prepared from a standard template. However, before potential registrants who have submitted a DUIN are linked with others in a substance group (to facilitate discussions on, for example, who should be the lead registrant or data sharing), they will need to submit an inquiry dossier to the HSE. Only after that will they be placed in a substance group. The inquiry dossier will need to be prepared in Iuclid and the effort involved in preparing this for every substance should not be underestimated, especially for those companies who have no prior experience with REACH and the Iuclid tool.

Challenges ahead

The greatest challenge facing potential registrants is likely to be gaining legitimate access to the studies and other information that will be required for the submission of the registration dossiers. Without this, UK REACH will fail. In many cases, potential registrants will not be the owners of the studies and it seems that most EU REACH consortia are still adopting a ‘wait and see approach’ before finally agreeing on a way forward for data sharing for the UK.

In the most optimistic scenarios, existing registrants of substances under EU REACH may be able to obtain access to the data to use for the UK without significant additional expenditure. But since an extension of the current EU data-sharing rules will require the cooperation of all of the study owners, the potential for complication is high and the costs of negotiating this could be huge. Faced with such challenges, the UK chemicals industry has consistently urged the government to seek an agreement with the EU on data sharing.

With four months to go before the implementation of UK REACH, the most important task for manufacturers and traders of chemicals in the UK is to establish an inventory of substances manufactured in, or imported into, the UK and the detailed supply chain attached to each. Once this has been done the status of the actors involved, according to UK REACH, can be determined – and different options evaluated. Non-UK manufacturers or formulators that intend to support their UK customers may want to prepare to appoint an OR in the UK. Although the deadlines for the submission of registrations under UK REACH will be staggered over six years, the scale of the task is still likely to prove very challenging and companies need to decide now how best to allocate resources and ensure an appropriate budget is available.

Those companies which find themselves as newly defined importers under UK REACH and subject to notification and registration for the first time, need to decide how much of the process they wish to undertake in-house and how much to outsource to external specialists. External help can add value to tasks carried out relatively infrequently such as the preparation of Iuclid dossiers.

Twelve years of EU REACH has enabled Echa to establish a substantial database of information on the hazards associated with the chemicals manufactured in and imported into the EU, including the UK. The regulation has driven progress in risk assessment and the communication of risk management measures throughout the supply chain. Implementation of EU REACH has not been easy and continues to require a significant investment by the European chemicals

industry. Nevertheless, EU REACH has been established as a benchmark for the protection of human health and the environment. Even though UK REACH aims to mirror its European parent it is difficult to see any benefits being derived from it, given the financial burden on the UK chemicals sector that this will entail. The UK and the rest of the world will not be a safer place because of it.

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

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