

How can businesses get ahead of their UK REACH compliance obligations?

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REACHLaw principal consultant Amy Fearon says submitting an inquiry dossier is the necessary first step of any new registration under UK REACH, and doing it as early as possible will avoid potential problems ahead



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From the 1 January 2021, UK REACH entered into force. Any company importing, manufacturing or formulating chemicals in Great Britain needs to comply with its requirements. Most of the legal text is identical to EU REACH, from where it was copied across, with amendments made to make it applicable to the UK and GB markets, and to allow transitional arrangements to be put in place.

The Health and Safety Executive (HSE) acts as the UK REACH agency, working as appropriate alongside other government departments such as the Environment Agency and devolved administrations. UK REACH dossiers are submitted via the Comply with UK REACH IT system, which is the UK replacement for Echa's REACH-IT system.

The main requirements of UK REACH are identical to EU REACH. Registration, authorisation and restriction follow the same process, and tonnage band data requirements are the same as those of EU REACH (as of 31 December 2020).

However, as expected under UK REACH, there are changes to legal roles for some companies compared with their position under EU REACH. If you were a GB chemical manufacturer under EU REACH, then you continue as a GB chemical manufacturer under UK REACH. Likewise, a GB importer from outside of the EU continues as a GB importer under UK REACH. However, companies that were

downstream users under EU REACH, and continue to source chemicals from the EU, are now GB importers and therefore have a duty to register under UK REACH.

Transition measures

The key transition measures that centre around registration were designed to protect the GB market and its supply chains, and to enable companies to provide limited information now, followed by a full registration at a later date (depending on hazard classification and volumes of the substance supplied).

Up until the end of April 2021, grandfathering allowed for any EU REACH registration held by a GB-based entity, including importers and GB-based only representatives (ORs), to be transferred and recognised by the HSE as UK REACH registrations, without payment of a UK REACH registration fee.

Another transitional measure is the downstream user import notification (DUIN). This applies where a company established in GB was an existing downstream user or distributor of a substance (on its own, in a mixture, or in an article) under EU REACH during 2019 or 2020 but is now a GB importer under UK REACH. Companies that were sourcing substances from EU REACH-compliant supply chains, and have now become importers under UK REACH, can continue to do so provided they meet certain criteria – including the submission of a DUIN. By submitting a DUIN,

they can take advantage of the transitional provisions and extended registration timelines for importing from EU REACH-compliant supply chains. They can continue to import the substances, and register in the future, at the relevant deadline (determined according to tonnage volumes and hazardous properties).

Non-GB based substance manufacturers and formulators are able to appoint a GB-based OR who can submit the DUIN on their behalf, which means the existing GB downstream user or distributor does not have to.

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All other cases of supply must first submit an inquiry dossier (setting out information about the company and the specific substance it intends to manufacture and/or import into GB) followed by registration, prior to placing substances above 1 tonne on the GB market.

Companies that cannot benefit from transitional measures for existing GB distributors or existing GB downstream users must first ensure a UK REACH registration is in place before they can place the substance on the GB market at 1 tonne or more per annum. However, if the substance has been EU REACH registered by anyone, hence an existing substance, the company may, as part of a new registration of existing substance (NRES) process, be able to defer submission of the full information requirement so it can join the joint registration work, and share data with other transitional and grandfathered registrants.

Whether this NRES process applies to a particular case will be communicated to the company by the HSE when the inquiry dossier has been successful.

In the autumn of 2022, the Department for Environment Food and Rural Affairs (Defra) announced that, in line with the feedback received from the public consultation, the deadlines for registering under UK REACH would be extended by three years. This means that the new deadlines will be October 2026, October 2028 and October 2030. NB: At the time of publication, the legal deadlines have yet to be changed. This time period should be used wisely. Businesses should be working towards becoming UK REACH compliant, if they are not already.

Preparing the inquiry dossier

Submitting a UK REACH Article 26 inquiry dossier is the necessary first step of any new registration. In order to submit your inquiry, you first need to obtain the relevant analytical data, performed on your substance. You may have this data readily available from your EU REACH registration, or you may need to contract a suitable laboratory that can prepare the reports on your behalf.

Once you have your analytical reports, the inquiry dossier should be prepared using *luclid* – the key software application for both regulatory bodies and the chemical industry. The following sections of the dossier must be completed:

- Section 1.1 – Identification;
- Section 1.2 – Composition;
- Section 1.4 – Analytical data reports; and
- Section 14 – Information requirements.

Once the information has been populated, companies are advised to use the validation assistant checking tool within *luclid* to check for any potential errors within the dossier.

Once any errors have been amended, the inquiry dossier is ready to be exported for submission to the HSE via the *Comply with UK REACH* system.

The inquiry is then reviewed by the HSE to ensure sufficient analytical and manufacturing process information (where required) has been submitted to confirm the substance identity.

Once the inquiry has been processed, applicants will receive an email from the HSE to inform them of their inquiry dossier status.

The email from the HSE prompts the applicant to check their *Comply with UK REACH* account. If it has been successful, they will see an inquiry number and will be able to access the substance group. Here, they will be able to see who else has inquired and registered.

If the inquiry has not been successful, the HSE will provide the reasons why and a new inquiry dossier that fulfils the requirements will have to be prepared and submitted.

Why join a substance group now?

Submitting a successful inquiry dossier gives applicants access to the substance group, where they will have access to potential co-registrants' contact details and can take part in discussions such as lead registrant nominations, data sharing negotiations and any relevant updates regarding their substance.

Within the substance group, they can see all the other inquirers, companies that have grandfathered EU registrations, and companies that have submitted deferred registrations under the NRES procedure for the same substance.

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The UK authorities recommend inquiring early, so companies can follow what is taking place within the substance groups and can participate in the data sharing negotiations as well as any other regulatory concerns.

Even though Defra's intention to delay the deadlines has been published, the importance of submitting an inquiry well in advance cannot be stressed enough. If you need to obtain analytical data, laboratories have capacity now. The closer to the registration deadlines we get, the busier they will be.

Submitting an inquiry as early as possible will enable companies to gain greater control of their UK REACH compliance and avoid potential issues in the future.

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