

2019 No. 000

EXITING THE EUROPEAN UNION

CONSUMER PROTECTION

ENVIRONMENTAL PROTECTION

HEALTH AND SAFETY

**The REACH etc. (Amendment etc.) (EU Exit) (No. 2)
Regulations 2019**

Sift requirements satisfied ***

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

Citation and commencement

1. These Regulations may be cited as the REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and come into force immediately before exit day.

Amendment of the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019

2. The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019^(b) are amended in accordance with regulations 3 to 5.

Amendment of regulation 12

3. In regulation 12, for “(Enforcement)”, in both places it occurs (including the heading), substitute “Enforcement”.

^(a) 2018 c. 16.
^(b) S.I. 2019/758.

Amendment of Schedule 2

4.—(1) Schedule 2 (transitional provision) is amended in accordance with this regulation.

(2) For the inserted Article 127E substitute—

“Article 127E

Pre-exit downstream users and distributors that are to continue to be regarded as downstream users

1. This Article applies in a case where—
 - (a) a person is—
 - (i) an existing UK downstream user under EU REACH, or
 - (ii) an existing UK distributor under EU REACH, in relation to a substance (the “UK user or distributor”), and
 - (b) there is a protected transitional import of the substance by the UK user or distributor.
2. There is a protected transitional import of the substance by the UK user or distributor if—
 - (a) the substance is imported to the United Kingdom on its own, in a mixture or in an article,
 - (b) the UK user or distributor is the importer in relation to the import,
 - (c) the import occurs during the 2 year post-exit period, and
 - (d) either—
 - (i) the person who supplies the substance, mixture or article to the UK user or distributor for the import is a registrant or a downstream user under EU REACH as respects the substance as it is imported (the “relevant supplier”), or
 - (ii) an only representative appointed under Article 8(1) of EU REACH by the manufacturer, formulator or producer of the substance, mixture or article is a registrant under EU REACH as respects the substance as it is imported.
3. The UK user or distributor is to be treated for the purposes of this Regulation—
 - (a) as a downstream user as respects any protected transitional imports of the substance by them (if they are an existing UK downstream user under EU REACH), or
 - (b) as a distributor as respects any protected transitional imports of the substance by them (if they are an existing UK distributor under EU REACH).
4. For the purposes of deciding whether the requirement in paragraph 2(d)(i) is met in relation to a particular import, it does not matter whether the relevant supplier is—
 - (a) the person from which the UK user or distributor obtained supplies of the substance, mixture or article before exit day (and therefore the person in relation to which the UK user was a downstream user or distributor under EU REACH), or
 - (b) a different person.
5. For the purposes of deciding whether the requirement in paragraph 2(d)(ii) is met in relation to a particular import, it does not matter whether the manufacturer, formulator or producer who has appointed the only representative is—
 - (a) the person who was the manufacturer, formulator or producer of supplies of the substance, mixture or article which the UK user or distributor obtained before exit day, or
 - (b) a different person.
6. The provisions of this Regulation that apply to importers do not apply to the UK user or distributor in relation to the protected transitional import of the substance by the UK user or distributor.

7. If the UK user or distributor imports the substance into the United Kingdom in quantities of 1 to 10 tonnes per year, they must within the 180 day post-exit period—

- (a) supply the Agency with the information referred to in point (a)(i) of Article 10;
- (b) supply the Agency with the information referred to in points (a)(ii) and (iv) of Article 10 to the extent that information is available to the UK user or distributor;
- (c) supply the Agency with the information referred to in points (a) to (d) of Article 32(1) and otherwise comply with Article 32;
- (d) supply the Agency with the relevant registration number for the substance under EU REACH to the extent that information is available to the UK user or distributor;
- (e) supply the Agency with such other evidence as the Agency may require demonstrating that the information supplied in accordance with subparagraph (c) complies with the requirements of Articles 10, 12 and 14 (as they apply to the tonnage of the substance which the UK user or distributor imports into the United Kingdom by protected transitional imports).

8. If the UK user or distributor imports the substance into the United Kingdom in quantities of 10 tonnes or more per year, they must within the 180 day post-exit period—

- (a) supply the Agency with the information referred to in point (a)(i) of Article 10;
- (b) supply the Agency with the information referred to in points (a)(ii) and (iv) of Article 10 to the extent that information is available to the UK user or distributor;
- (c) supply the Agency with the information referred to in—
 - (i) Article 14(6) to the extent that information is available to the UK user or distributor,
 - (ii) Article 31, and
 - (iii) Article 32(1)(a) to (d);
- (d) otherwise comply with Articles 14(6), 31 and 32;
- (e) supply the Agency with the relevant registration number for the substance under EU REACH to the extent that information is available to the UK user or distributor;
- (f) supply the Agency with such other evidence as the Agency may require demonstrating that the information supplied in accordance with subparagraph (c) complies with the requirements of Articles 10, 12 and 14 (as they apply to the tonnage of the substance which the UK user or distributor imports into the United Kingdom by protected transitional imports).

9. The UK user or distributor must provide the Agency with updated information of the kind required by paragraph 7 or 8, in particular where the UK user or distributor begins to import the substance—

- (a) from a different relevant supplier, or
- (b) from a different manufacturer, formulator or producer who (as described in paragraph 2(d)(ii)) has appointed an only representative that is a registrant under EU REACH.

10. This Article ceases to apply to the UK user or distributor as respects a protected transitional import of the substance by them if they become a registrant or downstream user under this Regulation in relation to the substance as so imported by them.

For that purpose, a person is not to be treated as having become a downstream user because they are treated as one in accordance with paragraph 3(a).

11. Paragraphs 7, 8 and 9 are subject to paragraph 3 of Article 127EA.

12. In this Article—

“existing UK distributor under EU REACH” means a person who was, at any time in the 2 year period before exit day, a distributor under EU REACH established in the United Kingdom in relation to a substance on its own, in a mixture or in an article;

“existing UK downstream user under EU REACH” means a person who was, at any time in the 2 year period before exit day, a downstream user under EU REACH established in the United Kingdom in relation to a substance on its own, in a mixture or in an article;

“relevant supplier” has the meaning given in paragraph 2(d)(i);

“UK user or distributor” has the meaning given in paragraph 1(a).”.

(3) After the inserted Article 127E insert—

“Article 127EA

Appointment of only representative where Article 127E applies

1. This Article applies in relation to a protected transitional import of a substance by a UK user or distributor (within the meaning of Article 127E).

2. If, or to the extent that, the appointment of an only representative by the manufacturer, formulator or producer relates to the substance as imported, Article 8 has effect as if the following provision were substituted for paragraphs 1 to 3 of that Article—

“1. A person established outside the United Kingdom who manufactures a substance on its own, in mixtures or in articles, formulates a mixture or produces an article that is imported into the United Kingdom may by mutual agreement appoint a person established in the United Kingdom to fulfil, as his only representative, the obligations on the UK user or distributor under Article 127E.

2. The representative must have a sufficient background in the practical handling of substances and the information related to them and, without prejudice to Article 36, must keep available and up-to-date information on quantities imported and customers sold to, as well as information on the supply of the latest update of the safety data sheet referred to in Article 31.

3. If a representative is appointed in accordance with paragraphs 1 and 2, the non-United Kingdom manufacturer shall inform the UK user or distributor of the appointment.”.

3. If the UK user or distributor is informed of the appointment of the only representative in accordance with paragraph 3 of Article 8 (as set out above), paragraphs 7, 8 and 9 of Article 127E cease to apply to the UK user or distributor as respects any protected transitional import where the manufacturer, formulator or producer is the person who appointed the representative.”.

Amendment of Schedule 10

5.—(1) Schedule 10 (amendment of the REACH Enforcement Regulations 2008) is amended in accordance with this regulation.

(2) In the heading, for “(Enforcement)” substitute “Enforcement”.

(3) In the table inserted by paragraph 1(5), in the first column, in the entry for Article 127E, for “(6), (7) and (8)” substitute “(7), (8) and (9)”.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (d) and (g)) arising from the withdrawal of the United Kingdom (“UK”) from the European Union.

These Regulations amend the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/758) (the “Exit Regulations”). The Exit Regulations amend Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency.

Regulation 3 makes a minor amendment to regulation 12 of the Exit Regulations.

Regulation 4 amends Schedule 2 to the Exit Regulations, which inserts a number of transitional provisions into Regulation (EC) No 1907/2006. Regulation 4 substitutes the inserted Article 127E and inserts new Article 127EA. The substituted Article 127E applies to substances imported into the UK from anywhere in the world rather than just the European Economic Area. New Article 127EA provides for an only representative (see Article 8 of Regulation (EC) No 1907/2006) to be able to submit notifications instead of the UK user or distributor.

Regulation 5 makes minor amendments to Schedule 10 to the Exit Regulations. That Schedule amends the REACH Enforcement Regulations 2008 (S.I. 2008/2852).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.