

2020 No. 1577

EXITING THE EUROPEAN UNION

CONSUMER PROTECTION

ENVIRONMENTAL PROTECTION

HEALTH AND SAFETY

The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020

Made - - - - 17th December 2020

Coming into force in accordance with regulation 1

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

In accordance with paragraph 8F of Schedule 7 to that Act(b), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020 and come into force as follows—

- (a) this Part and Part 3, on the day after the day on which these Regulations are made;
 - (b) Part 2, immediately before IP completion day;
 - (c) Part 4, on IP completion day.
- (2) Part 4 extends to Northern Ireland only.

PART 2

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

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

2. The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019(c) are amended in accordance with this Part.

The regulations

3.—(1) In regulation 1—

- (a) in the heading, for “and interpretation” substitute “, interpretation and extent”,
- (b) after paragraph (2), insert—
 - “(3) Regulation 12 and Schedule 10 extend to England and Wales and Scotland.
- (4) In Schedule 11—

(a) 2018 c. 16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(b) Paragraph 8F was inserted by section 41(4) of, and paragraph 51 of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(c) S.I. 2019/758, as amended by S.I. 2019/858 and 1144.

- (a) paragraph 2 extends to England and Wales and Scotland;
 - (b) paragraph 2A extends to Northern Ireland.”.
- (2) After regulation 4, insert—

“Imports from Northern Ireland

4A. The provision in Schedule 2A in respect of imports from Northern Ireland has effect.”.

Schedule 1

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

(2) In paragraph 2(4), for the inserted paragraphs 2A to 2C substitute—

“2A. For the purposes of this Regulation, “Directive 2008/98/EC” means that Directive as last amended by Directive (EU) 2018/851(a), and read in accordance with paragraphs 2B and 2C.

2B. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.

2C. Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
 - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
 - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—

(a) OJ No L 150, 14.6. 2018, p. 109.

- (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
 - (bb) the second sentence were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate agency”;
 - (bb) “by competent authorities” were omitted.
- 2D. In paragraphs 2B and 2C, “appropriate agency” means—
- (a) the Environment Agency, in relation to England;
 - (b) the Natural Resources Body for Wales, in relation to Wales;
 - (c) the Scottish Environment Protection Agency, in relation to Scotland.”.
- (3) In paragraph 2(9)(a) and (b), for “the United Kingdom” substitute “Great Britain”.
- (4) In paragraph 2(10)—
- (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (5) In paragraph 3, in inserted Article 2B(5), omit subparagraph (c) of the definition of “other environmental regulator”.
- (6) In paragraph 4(2), in inserted paragraph A2, omit—
- (a) subparagraph (d);
 - (b) the text after subparagraph (d).
- (7) In paragraph 4(3)—
- (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (8) In paragraph 4(4)—
- (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (9) In paragraph 4(5)—
- (a) for “customs” substitute “the customs”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (10) After paragraph 4(5), insert—
- “(5A) After paragraph 10, insert—
- “10A. protected NI import: has the meaning given by Article 139A(2);
- 10B. qualifying Northern Ireland good: has the meaning given to it from time to time in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018.”;”.
- (11) In paragraph 4(6)—
- (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (12) In paragraph 5, in inserted Article 4A—
- (a) in paragraphs 2 and 3, for “the United Kingdom” substitute “Great Britain”;
 - (b) omit paragraphs 4 to 8.
- (13) In paragraph 6(b)—
- (a) for “Community” substitute “the Community”;

- (b) for “United Kingdom” substitute “Great Britain”.
- (14) In paragraph 8(2), for “non-United Kingdom” substitute “non-Great British”.
- (15) In paragraph 8(3)—
 - (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (16) In paragraph 8(4), for “non-United Kingdom” substitute “non-Great British”.
- (17) In paragraph 9(2)(b)—
 - (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (18) In paragraph 11—
 - (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (19) In paragraph 16—
 - (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
- (20) In paragraph 27(2), for “the United Kingdom” substitute “Great Britain”.
- (21) In paragraph 39(b), in the first inserted subparagraph, for “the United Kingdom” substitute “Great Britain”.
- (22) In paragraph 43, for “the United Kingdom” substitute “Great Britain”.
- (23) In paragraph 48(8), in inserted paragraph 7, omit subparagraphs (b) and (d)(v).
- (24) In paragraph 89(1), in the substitute Article 129, omit paragraphs 5(d), 8 and 9.

Schedule 2

- 5.—(1) Schedule 2 is amended in accordance with this regulation.
- (2) For “the United Kingdom” substitute “Great Britain”, wherever it occurs.
- (3) For “UK” substitute “GB”, wherever it occurs.
- (4) In inserted Article 127B, in paragraph 4(b), for “2 year” substitute “relevant”.
- (5) In inserted Article 127E(a)—
 - (a) in paragraph 2(c), for “2 year” substitute “relevant”;
 - (b) in paragraph 6, after “importers” insert “, including in respect of protected NI imports.”;
 - (c) in paragraph 7—
 - (i) for “180” substitute “300”;
 - (ii) in subparagraph (e), for “imports).” substitute “imports);”;
 - (iii) after subparagraph (e), insert—
 - “(f) if any part of the import is a protected NI import, notify the Agency of the quantity of the import that is a protected NI import.”;
 - (d) in paragraph 8—
 - (i) for “180” substitute “300”;
 - (ii) in subparagraph (f), for “imports).” substitute “imports);”;
 - (iii) after subparagraph (f), insert—
 - “(g) if any part of the import is a protected NI import, notify the Agency of the quantity of the import that is a protected NI import.”;

(a) The inserted Article 127E is substituted by regulation 4(2) of S.I. 2019/858.

- (e) in paragraph 10, after “this Regulation” insert “, or a notification is made under Article 139A,”;
- (f) in paragraph 11, after “Article 127EA” insert “and paragraph 6 of Article 127EB”.
- (6) In inserted Article 127EA(a)—
 - (a) in paragraph 1, after “Article 127E)” insert “that is not a protected NI import”;
 - (b) in paragraph 2—
 - (i) after substitute paragraph 1, insert
“1A. Article 36 applies to the representative.”;
 - (ii) in substitute paragraph 3, for “non-United Kingdom” substitute “non-Great British”.
- (7) After inserted Article 127EA, insert—

“Article 127EB

Import from Northern Ireland where Article 127E applies

1. This Article applies in relation to a protected transitional import of a substance by a GB user or distributor (within the meaning of Article 127E) that is also a protected NI import.
 2. A person established in Northern Ireland who manufactures a substance on its own, in mixtures or in articles, formulates a mixture, or produces an article that is imported into Great Britain may fulfil the obligations on the GB user or distributor under Article 127E (the “NI notifier”).
 3. Article 36 applies to the NI notifier.
 4. The NI notifier must, without prejudice to Article 36, 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.
 5. A person who intends to act in accordance with paragraph 2 must inform the GB user or distributor that they intend to do so.
 6. If the GB user or distributor is informed of the intention in accordance with paragraph 5, paragraphs 7 to 9 of Article 127E apply to the NI notifier instead of the GB user or distributor as respects any protected transitional import from the NI notifier.”.
- (8) In inserted Article 127L, in paragraph 3(b), for “2 year” substitute “relevant”.
 - (9) In inserted Article 127M, in paragraph 3(b), for “2 year” substitute “relevant”.
 - (10) In inserted Article 127P—
 - (a) after paragraph (4), insert—
 - “(4A) “300 day post-IP completion period” means the period of 300 days beginning with the day after that on which IP completion day falls;
 - (4B) “relevant post-IP completion period” means the period beginning with the day after that on which IP completion day falls and ending—
 - (a) two years after the end of the 300 day post-IP completion period in respect of—
 - (i) substances included on the candidate list by virtue of Article 59(1A),
 - (ii) substances classified as carcinogenic, mutagenic or toxic to reproduction, category 1A or 1B, in accordance with Regulation (EC) No 1272/2008 and manufactured in Great Britain or imported, in quantities reaching one tonne or more per year per manufacturer or importer, at least once after IP completion day,

(a) Article 127EA is inserted by regulation 4(3) of S.I. 2019/858.

- (iii) substances classified as aquatic chronic category 1 (very toxic to aquatic life with long lasting effects) or aquatic acute category 1 (very toxic to aquatic life) in accordance with Regulation (EC) No 1272/2008 and manufactured in Great Britain or imported, in quantities reaching 100 tonnes or more per year per manufacturer or importer, at least once after IP completion day,
 - (iv) substances manufactured in Great Britain or imported, in quantities reaching 1,000 tonnes or more per year per manufacturer or importer, at least once after IP completion day,
- (b) four years after the end of the 300 day post-IP completion period in respect of—
- (i) substances added to the candidate list referred to in Article 59(1), other than by virtue of Article 59(1A), before the end of the period referred to in subparagraph (a),
 - (ii) substances manufactured in Great Britain or imported, in quantities reaching 100 tonnes or more per year per manufacturer or importer, at least once after IP completion day,
- (c) six years after the end of the 300 day post-IP completion period in respect of substances manufactured in Great Britain or imported, in quantities reaching 1 tonne or more per year per manufacturer or importer, at least once after IP completion day.”;
- (b) omit paragraph (6).

New Schedule 2A

6. After Schedule 2, insert—

“SCHEDULE 2A

Regulation 4A

Provision in respect of imports from Northern Ireland

1. After Article 139, insert—

“Title 15A

Imports from Northern Ireland

Article 139A

Protected NI imports

1. This Article applies in a case where there is a protected NI import of a substance.
2. There is a protected NI import of a substance if—
 - (a) a substance—
 - (i) has a relevant connection to Northern Ireland, and
 - (ii) is imported on its own, in a mixture or in an article,
 - (b) the substance, mixture or article is a qualifying Northern Ireland good, and
 - (c) the person who supplies the substance, mixture or article for the import is a registrant or a downstream user under EU REACH as respects the substance as it is imported.
3. A substance has a relevant connection to Northern Ireland if—
 - (a) it is—
 - (i) manufactured in Northern Ireland,

- (ii) in a mixture that is manufactured or formulated in Northern Ireland, or
 - (iii) in an article that is manufactured or produced in Northern Ireland, and
- (b) it is imported from a supplier established in Northern Ireland.

4. The importer of the substance (the “GB importer”) is to be treated for the purposes of this Regulation as a downstream user as respects any protected NI imports of the substance by them.

5. The provisions of this Regulation that apply to importers do not apply to the GB importer in relation to the protected NI import of the substance by the GB importer.

6. If the GB importer imports the substance in quantities of 1 to 10 tonnes per year they must, before they make a protected NI import—

- (a) notify the Agency of their intention to make the protected NI import,
- (b) supply the Agency with the information referred to in point (a)(i) of Article 10,
- (c) 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 GB importer,
- (d) supply the Agency with the information referred to in points (a) to (d) of Article 32(1) and otherwise comply with Article 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 GB importer,
- (f) supply the Agency with such other evidence as the Agency may require demonstrating that the information supplied in accordance with subparagraph (d) complies with the requirements of Articles 10, 12 and 14 (as they apply to the tonnage of the substance which the GB importer imports into Great Britain by protected NI imports).

7. If the GB importer imports the substance in quantities of 10 tonnes or more per year they must, before they make a protected NI import—

- (a) notify the Agency of their intention to make the protected NI import,
- (b) supply the Agency with the information referred to in point (a)(i) of Article 10,
- (c) 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 GB importer,
- (d) supply the Agency with the information referred to in—
 - (i) Article 14(6) to the extent that information is available to the GB importer,
 - (ii) Article 31, and
 - (iii) Article 32(1)(a) to (d),
- (e) otherwise comply with Articles 14(6), 31 and 32,
- (f) supply the Agency with the relevant registration number for the substance under EU REACH to the extent that information is available to the GB importer,
- (g) supply the Agency with such other evidence as the Agency may require demonstrating that the information supplied in accordance with subparagraph (d) complies with the requirements of Articles 10, 12 and 14 (as they apply to the tonnage of the substance which the GB importer imports into Great Britain by protected NI imports).

8. The GB importer must update the information provided to the Agency under paragraph 6 or 7 with any relevant new information and submit it to the Agency.

1. 9. Paragraphs 6, 7 and 8 are subject to paragraph 6 of Article 139B.

Article 139B

Notification by Northern Irish supplier where Article 139A applies

1. This Article applies in relation to a protected NI import of a substance.
2. A person established in Northern Ireland who manufactures a substance on its own, in mixtures or in articles, formulates a mixture or produces an article that is imported into Great Britain may fulfil the obligations on the GB importer under Article 139A (the “NI notifier”).
3. Article 36 applies to the NI notifier.
4. The NI notifier must, without prejudice to Article 36, 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.
5. A person who intends to act in accordance with paragraph 2 must inform the GB importer that they intend to do so.
6. If the GB importer is informed of the intention in accordance with paragraph 5, then paragraphs 6 to 8 of Article 139A apply to the NI notifier instead of the GB importer as respects any protected NI import from the NI notifier.

Article 139C

Authorisations and imports from Northern Ireland

Subject to Articles 139D and 139E, Title 7 applies to and in respect of substances imported from Northern Ireland as it applies to and in respect of other substances.

Article 139D

Authorisations and qualifying Northern Ireland goods

1. This Article applies to a person (“P”) that is established in Northern Ireland that is a manufacturer, importer or downstream user of a substance under EU REACH.
2. P may apply for an authorisation in respect of that substance under Article 62 if the substance is a qualifying Northern Ireland good (“QNIG”).
3. A substance is a QNIG if it is a QNIG on its own, or contained in a mixture or article that is a QNIG.
4. This Regulation applies to P in respect of the application, and to the authorisation if it is granted, as if P was an only representative of P appointed in accordance with Article 8.

Article 139E

Application of Article 127G to qualifying Northern Ireland goods

1. This Article applies to a person established in Northern Ireland that made an existing application for an EU authorisation within the meaning of Article 127G(6) (the “existing NI applicant”) that satisfies the condition in paragraph 2.
2. The condition is that the substance in respect of which the application was made is a qualifying Northern Ireland good (“QNIG”).
3. The condition in paragraph (2) is satisfied if the application was in respect of a substance that is a QNIG on its own, or a substance contained in a mixture or article that is a QNIG.
4. Paragraphs 1 to 4 and 6 of Article 127G apply to the existing NI applicant as if the references to “Great Britain” were to “the United Kingdom”.

5. If the authorisation is granted—
- (a) it has no effect in Northern Ireland,
 - (b) this Regulation applies to the existing NI applicant in respect of the authorisation as if the existing NI applicant was an only representative of the existing NI applicant appointed in accordance with Article 8.”.”.

Schedule 3

- 7.—(1) Schedule 3 is amended in accordance with this regulation.
- (2) In paragraph 1(2), for “United Kingdom” substitute “domestic”.
 - (3) In paragraph 1(5)—
 - (a) for “Community” substitute “the Community”;
 - (b) for “United Kingdom” substitute “Great Britain”.
 - (4) In paragraph 2(4)(b), for “non-United Kingdom” substitute “non-Great British”.
 - (5) In paragraph 2(12), for inserted points 8.1.1.1. and 8.1.1.2. substitute—
 - “8.1.1.1. the workplace exposure limit within the meaning of the Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677);
 - 8.1.1.2. the occupational exposure limit within the meaning of the Control of Lead at Work Regulations 2002 (S.I. 2002/2676).”.
 - (6) In paragraph 13, omit—
 - (a) in inserted paragraph 1, points (a)(iv) and (d);
 - (b) inserted paragraph 2.
 - (7) In paragraph 32(3)(a)(ii), for “the United Kingdom” substitute “Great Britain”.

Schedule 4

- 8.—(1) Schedule 4 is amended in accordance with this regulation.
- (2) In paragraph 4(2)—
 - (a) for “European Union” substitute “The European Union”;
 - (b) for “United Kingdom” substitute “Great Britain”.

Schedule 6

- 9.—(1) Schedule 6 is amended in accordance with this regulation.
- (2) In paragraph 8, for “non-United Kingdom” substitute “non-Great British”.

Schedule 10

- 10.—(1) Schedule 10 is amended in accordance with this regulation.
- (2) In paragraph 1(1)(b), in the inserted definition of “a REACH table”—
 - (a) in subparagraph (a), omit “or”,
 - (b) in subparagraph (b), for “Regulations;” substitute “Regulations, or”,
 - (c) after subparagraph (b) insert—
 - “(c) the table in Schedule 1B to these Regulations;”.
 - (3) For paragraph 1(2), substitute—
 - “(2) In regulation 3—
 - (a) for “REACH table”, in each place it occurs, substitute “relevant REACH table”.
 - (c) in paragraph 5—

- (i) in subparagraph (a), for “adjacent to Northern Ireland” substitute “within the seaward limits of the territorial sea adjacent to Northern Ireland”;
 - (ii) omit subparagraph (b).”.
- (4) In paragraph 1(5), in the inserted table—
- (a) omit the fifth column;
 - (b) in the sixth column, omit “The Health and Safety Executive for Northern Ireland.” wherever it occurs;
 - (c) in the entry relating to Article 127B(4) and (6), in the second column, for “UK” substitute “GB”;
 - (d) in the entry relating to Article 127F(1), in the second column, for “UK” substitute “GB”.
- (5) After paragraph 1(5), insert—
- “(6) After Schedule 1A insert—

“SCHEDULE 1B

Regulation 2(1)

Table of REACH provisions relating to protected NI imports

<i>Provision REACH</i>	<i>of Subject matter</i>	<i>Enforcing authority</i>		
		<i>England Wales</i>	<i>and Scotland</i>	<i>Offshore installations</i>
Article 139A(6), (7) and (8).	Requirement to supply information to the Agency in respect of a protected NI import.	The Health and Safety Executive.	The Health and Safety Executive.	The Health and Safety Executive. ”.”.

(6) In Part 2, before paragraph 2 insert—

“**1A.** After regulation 1 insert—

“Application

1A. These Regulations apply to—

- (a) England and Wales and Scotland; and
 - (b) offshore installations in relevant waters, other than such waters within the seaward limits of the territorial sea adjacent to Northern Ireland.”.
- (7) **2.**—(1) In paragraph 6—
- (a) after subparagraph (2) insert—
 - “(2A) Omit the fifth column.
 - (2B) In the sixth column, omit “The Health and Safety Executive for Northern Ireland.” wherever it occurs.”;
 - (b) in subparagraph (3), for “UK” substitute “GB”.

Schedule 11

- 11.**—(1) Schedule 11 is amended in accordance with this regulation.
- (2) In the heading to paragraph 2, at the end insert “: Great Britain”;
- (3) After paragraph 2, insert—

“The REACH (Appointment of Competent Authorities) Regulations 2007: Northern Ireland

2A.—(1) The REACH (Appointment of Competent Authorities) Regulations 2007(a) are amended in accordance with this regulation.

(2) In regulation 2 omit—

- (a) the definition of “devolved administration”;
- (b) the definition of “Welsh Ministers”.

(3) In regulation 3(1)—

- (a) omit sub-paragraphs (a) and (b);
- (b) in paragraph (c)—
 - (i) for “Department of Enterprise, Trade and Investment” substitute “Department for the Economy”;
 - (ii) for “Department of the Environment” substitute “Department of Agriculture, Environment and Rural Affairs”.

(4) In regulation 3(2), for “a devolved administration” substitute “the Northern Ireland Assembly”.

(5) Omit paragraph 4.”.

PART 3

Amendment of the REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and the REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019

Amendment of the REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

12.—(1) The REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019(b) are amended in accordance with this regulation.

(2) In regulation 1, for “exit day” substitute “Part 2 of the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020 comes into force”.

Amendment of the REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019

13.—(1) The REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019(c) are amended in accordance with this regulation.

(2) In regulation 1, for “exit day” substitute “Part 2 of the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020 comes into force”.

(3) In regulation 3, omit paragraphs (4) and (5).

(4) In regulation 5—

- (a) in paragraph (2), in inserted paragraph 28A(3), omit “Parts II to IV of”;
- (b) omit paragraph (3);
- (c) in paragraph (4), in inserted paragraph 37A(2), omit “Part VIII of”;
- (d) in paragraph 5, in inserted paragraph 40(2), for “UK” substitute “GB”.

(a) S.I. 2007/1742.
(b) S.I. 2019/858.
(c) S.I. 2019/1144.

PART 4

Amendment of the REACH Enforcement Regulations 2008

Amendment of the REACH Enforcement Regulations 2008 in Northern Ireland

14. The REACH Enforcement Regulations 2008(a) are amended in accordance with this Part.

The regulations

15.—(1) After regulation 1 insert—

“Application

1A. These Regulations apply to Northern Ireland, including offshore installations in relevant waters within the seaward limits of the territorial sea adjacent to Northern Ireland.”

(2) In regulation 2(1)—

(a) in the definition of “a listed REACH provision”, for “the REACH table” substitute “a REACH table”;

(b) for the definition of “REACH” substitute—

““REACH” means—

(a) in respect of the listed REACH provisions in Schedule 1, Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals(b) as it has effect in EU law as amended from time to time (“EU REACH”),

(b) in respect of the listed REACH provisions in Schedule 1A, Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals as it forms part of retained EU law as amended from time to time (“retained REACH”);

(c) for the definition of “the REACH table” substitute—

““a REACH table” means—

(a) the table in Schedule 1 to these Regulations, or

(b) the table in Schedule 1A to these Regulations;

“the relevant REACH table” means—

(a) in relation to a listed REACH provision, the REACH table in which that REACH provision is listed;

(b) in relation to an enforcement duty, the REACH table under which that enforcement duty arises.”.

(3) In regulation 2(2)—

(a) in the definition of “competent authority”, in paragraph (d)—

(i) for “Department of Enterprise, Trade and Investment” substitute “Department for the Economy”;

(ii) for “Department of the Environment” substitute “Department of Agriculture, Environment and Rural Affairs”;

(b) after the definition of “devolved administration or the Assembly”, insert—

(a) S.I. 2008/2852 as amended by S.I. 2009/716, 2010/1513, 2011/3058, 2012/632, S.S.I. 2013/119, S.I. 2013/755, 1948, 2919, 2014/469, 1638, 2882, 3248, 2015/21, 51, 1682, 2017/1075, 2018/390.

(b) OJ No L 396, 30.12.2006, p. 1, as last amended by Regulation (EU) 2020/507 (OJ No. L110, 8.4.2000, p. 1).

- ““district council” has the meaning given by section 44 of the Interpretation Act (Northern Ireland) 1954(a);”;
- (c) in the definition of “enforcing authority”—
- (i) in paragraph (a), for “Department of the Environment” substitute “Department of Agriculture, Environment and Rural Affairs”;
 - (ii) after paragraph (i), insert—
“(j) a district council;”;
- (d) after the definition of “relevant waters”, insert—
““retained REACH Agency” means the Agency as defined in Article 2A of retained REACH;”.
- (4) In regulation 2(3), for “REACH” substitute “EU REACH” on both occasions.
- (5) In regulation 3—
- (a) for “REACH table”, in each place it occurs, substitute “relevant REACH table”;
 - (b) in paragraph (5)—
 - (i) omit subparagraph (a);
 - (ii) in subparagraph (b), for “in relevant waters” substitute “within the seaward limits of the territorial sea”;
 - (iii) omit subparagraph (c)
- (6) Omit regulation 3A.
- (7) In regulation 4—
- (a) in paragraph (1)(c), for “another member State” substitute “a member State”;
 - (b) in the words after paragraph (1)(d), for “REACH in the European Union” substitute “EU REACH in Northern Ireland or the European Union”;
 - (c) after paragraph (1), insert—
“(1A) An enforcing authority must co-operate with—
 - (a) the retained REACH Agency;
 - (b) the appropriate authorities; and
 - (c) other enforcing authorities,
 where this will facilitate compliance with, or the effective enforcement of, retained REACH.”;
 - (d) in paragraph (2)—
 - (i) in the words before subparagraph (a), for “paragraph (1)” substitute “paragraph (1) or (1A)”;
 - (ii) in subparagraph (b), after “REACH in” insert “Northern Ireland or”.
- (8) In regulation 7—
- (a) in paragraph (1), after “listed REACH provision” insert “in Schedule 1”.
 - (b) in paragraph (1)(b), for “another” substitute “a”;
 - (c) after paragraph (1), insert—
“(1A) A person is exempt from compliance with a listed REACH provision in Schedule 1A if that person has the benefit of a defence exemption certificate made by the Secretary of State in respect of that provision.”.
- (9) Omit regulation 24.

(a) 1954 c.33 (N.I.). The definition of “district council” was inserted by the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.)).

The Schedules

- 16.—(1) In the title of Schedule 1, after “Table of” insert “EU”.
- (2) In the table in Schedule 1—
- (a) omit the third and fourth columns;
 - (b) in the fifth column—
 - (i) for “Department of the Environment” substitute “Department of Agriculture, Environment and Rural Affairs” wherever it occurs;
 - (ii) for “Local (health and safety) authorities” substitute “District councils” wherever it occurs;
 - (iii) omit “Local (consumer safety) authorities.” wherever it occurs;
 - (iv) in the entry for Article 33(2), after “Northern Ireland.” insert “District councils.”.
 - (c) in the sixth column, omit “The Health and Safety Executive.” wherever it occurs.
- (3) After Schedule 1 insert—

“SCHEDULE 1A

Regulation 2(1)

Table of retained REACH provisions

<i>Provision of retained REACH</i>	<i>Subject matter</i>	<i>Enforcing authority</i>	
		<i>Northern Ireland</i>	<i>Offshore installations</i>
Article 14(6).	Requirement on a registrant to identify and apply the appropriate measures adequately to control the risks identified in the chemical safety assessment and where suitable to recommend them in a safety data sheet that is supplied.	The Health and Safety Executive for Northern Ireland. The Department of Agriculture, Environment and Rural Affairs. District councils.	The Health and Safety Executive for Northern Ireland. Secretary of State.
Article 31(1).	Requirement on a supplier of a substance or a mixture to provide the recipient of that substance or mixture with a safety data sheet compiled in accordance with Annex 2 (guide to the compilation of safety data sheets).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
Article 31(2)-(9).	Requirement on an actor in the supply chain who has been requested to perform a chemical safety assessment to ensure that information in the safety data sheet is	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.

	consistent with the information in the assessment.		
	Requirement on a supplier to provide a safety data sheet when requested for a mixture which falls within Article 31(3).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement on a supplier to provide a downstream user or a distributor with a safety data sheet when requested for a mixture or dangerous substance which is offered or sold to the general public.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement on a supplier to provide to the recipient of a substance or a mixture a safety data sheet in English.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement that the safety data sheet contains the information listed in Article 31(6).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement on an actor in the supply chain to place the relevant exposure scenarios in an annex to the safety data sheet in accordance with section 3 of Annex 11 (general rules for adaptation of the standard testing regime set out in Annexes 7 to 10).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement on a downstream user to include the relevant exposure scenarios and use other relevant information from the safety data sheet in its own safety data sheet for identified uses.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement on a distributor to pass on relevant exposure scenarios and use	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.

	other relevant information from the safety data sheet when compiling its own data sheet for identified uses.		
	Requirement to provide a safety data sheet free of charge either electronically or on paper, and by no later than the date on which the substance or mixture is first supplied.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Requirement on a supplier to update a safety data sheet.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
Article 32.	Duty on a supplier to provide to all recipients to whom supplies have been made within the preceding twelve months an updated safety data sheet.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Duty on a supplier who does not have to supply a safety data sheet to provide the recipient with the information in Article 32(1).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
Article 32(2), (3).	Duty on a supplier to provide information free of charge no later than the time of first delivery of a substance or a mixture.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Duty on a supplier to update the information when required by Article 32(1).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
	Duty on a supplier to provide to all recipients to whom they have supplied within the preceding twelve months updated information.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
Article 36(1).	Requirement on a manufacturer, importer, downstream user or distributor to keep available for at	The Health and Safety Executive for Northern Ireland. The Department of Agriculture,	The Health and Safety Executive for Northern Ireland.

	least ten years after it last manufactured, imported, supplied or used the substance or mixture, all the information it requires to carry out its duties under REACH.	Environment and Rural Affairs. District councils.	
	Requirement on a manufacturer, importer, downstream user or distributor to submit or make available information to an appropriate authority or the Agency when requested to do so.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
Article 36(2).	Requirement on a party responsible for liquidating the registrant's, downstream user's or distributor's undertaking or assuming responsibility for the placing on the market of the substance or mixture concerned, to comply with Article 36(1).	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.
Article 60(10).	Requirement on a holder of an authorisation to ensure that the exposure is reduced to as low a level as is technically and practically possible.	The Health and Safety Executive for Northern Ireland. The Department of Agriculture, Environment and Rural Affairs. District councils.	The Health and Safety Executive for Northern Ireland. Secretary of State.
Article 65.	Requirement on a holder of an authorisation or a downstream user to include the authorisation number on the label before placing the substance or mixture on the market for an authorised use.	The Health and Safety Executive for Northern Ireland. District councils.	The Health and Safety Executive for Northern Ireland.
Article 127E(7), (8) and (9).	Requirement to supply information to the Agency where importer continues to be regarded as	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.

	downstream user.		
Article 139A(6), (7) and (8).	Requirement to supply information to the Agency in respect of a protected NI import.	The Health and Safety Executive for Northern Ireland.	The Health and Safety Executive for Northern Ireland.”.

(4) In Schedule 4—

- (a) in paragraph 6, after “paragraph 7” insert “or 7A”;
- (b) in paragraph 7, after “paragraph 6” insert “in respect of EU REACH”;
- (c) in paragraph 7(c), for “another” substitute “a”;
- (d) after paragraph 7, insert—

“7A. The persons referred to in paragraph 6 in respect of retained REACH are—

- (a) the retained REACH Agency;
- (b) the appropriate authorities;
- (c) an enforcing authority.”.

17th December 2020

Rebecca Pow
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 section 8(1) of 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. They are also made in exercise of the powers conferred by section 8C of that Act to implement, and deal with matters arising out of or related to, the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (the “NI Protocol”).

Part 2 amends 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) (the “REACH Regulation”).

Part 2 amends the Exit Regulations to take account of the NI Protocol. It provides for the domestic REACH regime to apply in respect of Great Britain rather than the United Kingdom. The REACH Regulation as it has effect in EU law will continue to apply in Northern Ireland by virtue of the NI Protocol.

Part 2 also makes special provision in respect of substances entering Great Britain from Northern Ireland. Under new Article 127EB of the REACH Regulation, a Northern Irish supplier will be able to notify the Agency directly of existing supplies of substances to Great Britain that they wish to continue making after the end of the transition period.

Part 2 inserts new Schedule 2A into the Exit Regulations, which inserts Title 15A into the REACH Regulation. This new Title makes provision in respect of substances imported from Northern Ireland. New Articles 139A and 139B set out a new notification procedure for substances imported from Northern Ireland. This notification can be made by the importer or the Northern Irish supplier.

New Article 139C provides for Title 7 of the REACH Regulation (authorisations) to apply to imports from Northern Ireland. New Articles 139D and 139E provide for Northern Irish entities to be able to apply for and hold authorisations in respect of qualifying Northern Ireland goods.

Schedule 2 to the Exit Regulations contains a number of transitional provisions. Part 2 amends that Schedule so existing registrants or downstream users have longer to provide the full registration information to the Agency. The deadlines are phased by reference to the hazards posed by a substance and the quantities in which it is manufactured or imported.

Schedule 10 to the Exit Regulations amends the REACH Enforcement Regulations 2008 (S.I. 2008/2852). These Regulations amend that Schedule so that it will only extend to Great Britain.

Part 3 of these Regulations amends the commencement provisions of the REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/858) and the REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1144) (the “Exit No. 3 Regulations”), which amend the Exit Regulations. It also amends the Exit No. 3 Regulations to reflect a change to the way that medical devices are regulated in the EU that came into effect after the UK left the EU, but during the transition period. This means that a number of amendments made by the Exit No. 3 Regulations no longer need to be made.

Part 4 of these Regulations only extends to Northern Ireland. It amends the REACH Enforcement Regulations 2008 as they have effect in Northern Ireland. There will now be two versions of the REACH Enforcement Regulations 2008. One will apply in Great Britain and one will apply in Northern Ireland (the “NI enforcement Regulations”). Some offences under the retained EU law version of the REACH Regulation will apply to people established in Northern Ireland if they choose to directly notify the Agency of substances imported into Great Britain or apply for authorisations. Part 4 inserts new Schedule 1A into the NI enforcement Regulations which lists those offences, and makes related amendments.

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.

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£6.90

UK202012171024 12/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/1577>

ISBN 978-0-34-821785-8



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