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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

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

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<sup>(1)</sup> 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) 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\(2\)](#), 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—

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(1) [S.I. 2019/758](#), as amended by [S.I. 2019/858](#) and [1144](#).

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

“**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—

- (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(3)—
    - (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.”;
    - (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(4)—
    - (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.”;

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

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

- (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,
  - (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</i>	<i>Subject matter</i>	<i>Enforcing authority</i>		
			<i>England and Wales</i>	<i>Scotland</i>	<i>Offshore installations</i>
Article 139A(6), (7) and (8).	(7)	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(5) 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.”.