
STATUTORY INSTRUMENTS

2019 No. 858

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

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.”.