

REACH: EAC INQUIRY REGARDING TRANSPOSITION INTO UK LAW

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Legal Briefings

In our [recent blog post](#) on the Great Repeal Bill and environmental legislation, we considered the difficulty of disentangling and converting certain EU-derived law. The DEFRA Secretary of State, Andrea Leadsom, has since stated that roughly a third of EU environmental law cannot be simply "copy-pasted" into UK law. One particularly tricky area of law is the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regime.

REACH aims to protect human health and the environment, and harmonises chemical trade regulations across the EU. It acts as assurance that the safety of substances on their own, in mixtures, or that may be released by articles in which they are included, have been subject to rigorous chemical analysis and risk assessment for the uses for which those items are known to be used, and that information about the hazards of using a substance must accompany the products. However, the regime also serves the wider purpose of taking out of circulation chemical substances judged to have unacceptable levels of risk for human health. Given the abundance of chemicals placed into circulation before the regime took effect in June 2007, this is a task of immense scale, which arguably no one Member State would have the capacity to solve alone.

In brief, the main challenges of transposing the regulation onto the UK statute book stem from the fact that:

- currently, only provisions for the UK enforcement of REACH by the Health & Safety Executive are part of domestic legislation, the rest automatically has effect in UK law by virtue of the European Communities Act 1972, until that is repealed;

- REACH is constantly changing – it has been amended 38 times since 2006 – the regime is still being phased in and is highly complex and evolving;

-registration of substances and the administration of the regime is carried out by the European Chemicals Agency ("ECHA") and technical bodies, and relies on bespoke online systems;

-applicants registering substances currently benefit from the evaluation already done by others holding a registration who are required to share information through a substance information exchange forum, thus reducing the overall cost and effort; and

-the ECHA and relevant national authorities together share the burden of evaluating and testing substances that are potentially harmful and being considered for restriction or prohibition.

On 21 December 2016, the Environmental Audit Committee ("EAC") announced an inquiry into the future of how the UK will regulate chemicals following Brexit. The EAC is seeking views on:

-Transposition – what challenges will there be when transposing REACH into UK law, how will it work with devolution, and does effective transposition depend on negotiations with EU Member States?

-Administrative, policy and regulatory implications – how will the industry be affected, how will the administration and enforcement be carried out, and does the Government have the necessary expertise and resources for this?

-The future – can there be a UK-only chemicals regulatory regime, what are the implications, and what principles should it follow?

The last of these questions would appear to be the most difficult to answer in the Brexit vacuum where we do not yet know the basis for the UK's future trading relationship with the EU. REACH is based on mutual recognition across Member States of substance registrations and is intimately connected to the core EU principal of free movement of goods. If the UK develops a parallel system of UK registrations, will this be given mutual recognition by other EU Member States for export of UK products? Or will UK-based manufacturers exporting to the EU market need to appoint representatives within an EU country to hold REACH registrations on which their EU based customers can rely for compliance purposes? Will substance registrations already made pre-Brexit continue to be recognised by the EU?

The uncertainty is particularly unfortunate as UK-based manufacturers are in the process of preparing for the final 2018 phase-in deadline for registration of chemicals produced in annual volumes of 1-100 tonnes.

The deadline for submissions is **6pm on 20 January 2017**. Visit the EAC webpage for further information [here](#). Businesses may want to consider the relevance of the current REACH regime on their operations and whether they can use this opportunity to input into the future UK chemicals regime.

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