



Environment briefing note | February 2017

#10ThingsSH you need to know about product stewardship and REACH

In our [introductory article](#) to this series, Stephenson Harwood's environmental practice group provided certainty to the product market as to what laws would continue to apply in the UK despite Brexit. Rules relating to WEEE, ROHS, packaging, the reporting of non-financial information, batteries, and energy labelling will be largely unaffected by Brexit despite originating from EU Directives, as these have all been transposed into domestic legislation. Whether the Government will attempt to cut the green tape in the longer term remains to be seen. For what it's worth, we think that product stewardship laws will largely be left alone.

Unfortunately, we can't offer the same level of certainty in relation to REACH, the set of rules controlling the registration, evaluation, authorisation and restriction of the supply and use of chemicals. REACH is a European Regulation and therefore does not need to be transposed into UK domestic law for it to apply. However, once the UK has left the EU, all European Regulations (including REACH) will cease to apply. Therefore, the UK will need to adopt the same (if not very similar) rubric in relation to chemicals regulations, so that UK-made products can continue to be sold on the EU market, which is the UK's biggest export market.

This article addresses the current framework of the regulation of chemicals in the UK and the EU.

What types of businesses currently fall within the REACH framework?

1. Suppliers that import into the EU or manufacture more than one tonne per year of a chemical must register that chemical with the European Chemicals Agency (ECHA).
2. Chemicals that are used across the EU at an EU-wide rate of over 100 tonnes per year must be registered with the ECHA. Carcinogens, mutagens or reproductive toxicants used at an EU-wide rate of over 1 tonne per year must also be registered with the ECHA. The business importing or manufacturing those chemicals are primarily responsible for registering these chemicals.
3. However, from 1 June 2018, all chemicals (not just those at point 2) used at an EU-wide rate of over 1 tonne per year must be registered with the ECHA. For this reason, the ECHA has predicted an influx of registrations by small and medium-sized enterprises (SMEs) over the next year before the 2018 deadline. If your business uses volumes of chemicals in excess of one tonne per year, then get the registration process started now and get in touch with us.

Is it only those businesses that import or manufacture substances that are caught by REACH?

4. No. It is also the downstream users of substances in the course of their own industrial or professional activities. As part of standard practice under REACH, downstream users must provide information about the uses of the product that contain the controlled substance to the supplier, and comply with any safety and risk management procedures issued by the supplier, as well as passing on any safety and risk information to the consumer.
5. If a supplier of a substance fails to register the substance, the downstream user will consequently face restrictions on its operations in connection with the use of that substance. This could mean that if the manufacturer or importer of a substance does not register that substance, any downstream users may be restricted from using that substance.

What substances must be registered with the ECHA?

6. "One substance, one registration" – if multiple parties have registered the same substance, those parties are required to participate in a Substance Information Exchange Forum (SIEF), and collaborate with other companies also supplying or using the same substance. It is possible for businesses to opt out of the SIEF process if the business is concerned about sharing commercially-sensitive information with other businesses. This would be beneficial for a business developing new substances; however, from practical experience this is a high threshold to meet.
7. Some substances are exempt from REACH altogether (for example radioactive substances); other substances are exempt from the registration requirements of REACH (for example substances used in foodstuffs); and others again from supply chain information requirements (for example cosmetics). These substances are covered by other EU Directives - to find out whether a substance falls under REACH, or whether a substance falls under a different EU Directive, drop us a line.
8. Failure to register a substance means the substance cannot be supplied or used within the EU. The enforcement of REACH is up to individual Member States, and therefore penalties for non-compliance vary. However, by way of example, it is an offence to fail to register a substance in controlled volumes in the UK under the REACH Enforcement Regulations 2008.

Important considerations when registering substances:

9. Businesses are able to transfer registrations of substances by various means, including via merger, share sale or asset sale. Depending on the exact nature and structure of the transfer, the ECHA may need to be informed of the transfer and a fee may need to be paid.
10. The registration of a substance will usually incur a fee. Standard fees under Article 6 are €1714 for a substance under 10 tonnes/year and €4605 for a substance between 10-100 tonnes/year. However, significant discounts on the above fees apply for SMEs.

How can Stephenson Harwood help?

More than ever, environmental and climate change issues are at the heart of law and policy, impacting every business sector. Stephenson Harwood's environment group has experience advising domestic and international product manufacturers on the full range of EU-led, product-based regulations.

To keep track of our full Product Stewardship Series keep an eye on **Stephenson Harwood's news and insights page**, or follow us on Twitter **@SH_EnviroPlan** and look out for our hashtag **#10thingsSH**.

For further information please contact us.



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