

EXPLANATORY MEMORANDUM TO
THE REACH (AMENDMENT) REGULATIONS 2023
2023 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to extend the current legislative deadlines for registrants to submit information to the Health and Safety Executive (“HSE”) under UK REACH. It also extends the period in which downstream users and distributors who were importing before the end of the EU Exit Implementation Period (“pre-IP completion”) can continue to import chemicals from the EU without submitting a full registration. Extending these timelines will provide sufficient time for the government to develop and introduce a new transitional registration model.
- 2.2 This instrument also amends the dates by which the HSE are required to carry out their compliance checks so that these dates now align with the extended submission deadlines.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is England, Wales, and Scotland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow, has made the following statement regarding Human Rights:

“In my view, the provisions of the REACH (Amendment) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being made pursuant to powers in the Environment Act 2021. It amends UK REACH which is the retained version of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (“EU REACH”). UK REACH regulates the use of chemicals in Great Britain as EU REACH continues to apply in Northern Ireland under the Northern Ireland Protocol.
- 6.2 It amends the definition of “relevant post-IP completion period” in Article 127P(4B) by extending the time required to submit information by a further 3 years, from 27

October 2023, 27 October 2025 and 27 October 2027 to 27 October 2026, 27 October 2028, and 27 October 2030 respectively.

- 6.3 This instrument extends the period of time in which a “protected transitional import” can be made by pre-IP completion downstream users and distributors under Article 127E(2).
- 6.4 This instrument also extends the timelines during which the HSE is required to carry out compliance checks under Article 41(5) of the REACH Regulation to ensure they align with the extended data submission deadlines under Article 127P(4B) of UK REACH.

7. Policy background

What is being done and why?

- 7.1 The changes being made by this instrument are needed in order to extend the current information submission deadlines. It also extends the period in which a protected transitional import can continue to be made by pre-IP downstream users and distributors. The changes provide sufficient time for the government to develop and introduce a new registration model that will cater for EU registrations transferred to Great Britain under Title 14A of UK REACH. Extending the deadlines will also give industry the time needed to prepare and comply with any different information requirements under the new model.
- 7.2 The statutory timelines for HSE to carry out their compliance checks on the information submitted by industry are also being extended to align with the data submission deadlines. The current deadlines for compliance checking, as set down in Article 41(5), are 31 December 2023 and 31 December 2027 which will fall before the amended dates for submitting the relevant information.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 Under EU REACH, manufacturers and importers must demonstrate, in a registration dossier, that they understand the hazards and potential risks of their chemicals and that they can be used safely. They must register this information, in a central database under the management of the European Chemicals Agency (“ECHA”). Under the “no data, no market” principle, the EU market for a substance is denied to manufacturers and other actors unless they have assessed and registered the substance.
- 7.4 UK REACH includes transitional provisions to help industry with the move from the European Union to the domestic regime. Registrations made under the EU regime were transferred into the domestic regime, with a requirement for registrants to provide HSE with an initial notification, followed by the rest of the technical dossier referred to in Article 10, and a chemical safety report where required. The submission deadlines for this second phase of information are:
- 27 October 2023 for substances included on the EU REACH candidate list before UK REACH came into effect on 31 December 2020; substances that are carcinogenic, mutagenic or toxic for reproduction and manufactured or imported in quantities of 1 tonne a year or more; substances that are very toxic to aquatic life and manufactured or imported in quantities of 100 tonnes or more a year;

and all substances manufactured or imported in quantities of 1,000 tonnes or more a year;

- 27 October 2025 for substances added to the UK REACH candidate list before the above submission deadline; and all substances manufactured or imported in quantities of 100 tonnes or more a year;
- 27 October 2027 for all substances manufactured or imported in quantities of 1 tonne or more a year.

7.5 UK REACH places a new registration duty on importers of chemicals from the EU (previously classed as downstream users and distributors under EU REACH). To help with the move into the domestic regime, transitional provisions are also in place for these operators so that they can follow the same submission deadlines as UK registrants at the end of which they cease to be regarded as downstream users and distributors.

7.6 Article 41(5) of UK REACH also requires the HSE to select, until 31 December 2023, no lower than 20 % of registrations received in tonnage bands of 100 tonnes or more per year and, until 31 December 2027, no lower than 20 % of the total received for registrations in tonnage bands of less than 100 tonnes per year.

Why is it being changed?

7.7 In response to concerns by industry about the costs of obtaining the information needed to comply with these transitional provisions, Defra, working with HSE and the Environment Agency, is exploring an alternative model for transitional registrations. The model aims to reduce the need for replicating EU REACH hazard information by placing a greater emphasis on improving our understanding of the uses and exposures of chemicals in the context of Great Britain.

7.8 The government needs sufficient time to develop, and then legislate for this model. It will take until late 2024 to develop, legislate and implement an alternative traditional registration model including changes to the IT system. Therefore, it is necessary to amend the legislation to extend the current submission deadlines.

7.9 The first full registration deadlines fall in October 2023, and we need to avoid industry incurring costs of complying with registration requirements under the current policy when the information requirements may change under an alternative approach. We also need to build in sufficient time for companies to comply with a new model.

7.10 This instrument provides an extension for the period during which downstream users and distributors, who were already importing substances from the EU before IP completion day, can continue to do so without being subject to the registration duties of an importer under UK REACH. The extended periods follow the same submission deadlines for UK REACH registrants.

7.11 It is also necessary to make related amendments to Article 41(5) of UK REACH, which places a duty on HSE to carry out compliance checks until 31 December 2023 and 31 December 2027 on no less than 20% of the registration dossiers received, according to tonnage. These deadlines need to be changed to reflect the amended information submission deadlines to ensure that this regulatory process is applied in the most meaningful manner. This would not be possible under the current compliance checking deadlines, as they would fall before the relevant submission deadlines.

What will it now do?

- 7.12 This instrument amends the current UK REACH information submission deadlines described in paragraph 7.5 above by 3 years to:
- October 2026, for substances included on the EU REACH candidate list before UK REACH came into effect on 31 December 2020; substances that are carcinogenic, mutagenic or toxic for reproduction and manufactured or imported in quantities of 1 tonne a year or more; substances that are very toxic to aquatic life and manufactured or imported in quantities of 100 tonnes or more a year; and all substances manufactured or imported in quantities of 1,000 tonnes or more a year;
 - October 2028, for substances added to the UK REACH candidate list before the above submission deadline; and all substances manufactured or imported in quantities of 100 tonnes or more a year;
 - October 2030, for all substances manufactured or imported in quantities of 1 tonne or more a year.
- 7.13 The instrument also amends the dates by which HSE must carry out 20% of compliance checks to 27 October 2027, 27 October 2030 and 27 October 2035, to correspond to the three deadlines in paragraph 7.12.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no plans to consolidate UK REACH at this stage.

10. Consultation outcome

- 10.1 A public consultation entitled “Consultation on Extending the UK REACH Submission Deadlines” was held between 5th July 2022 and 1st September 2022. In total, the consultation received 289 responses from a wide range of stakeholders, including industry representatives, Small and Micro Businesses and Non-governmental organisations (NGOs).
- 10.2 Defra sought views on extending the first submission deadline by 3 years to 2026, with two further options. Option 1 would continue the 2-year intervals between submission dates which are currently part of UK REACH, giving submission dates of 27 October 2026, 27 October 2028, and 27 October 2030. Option 2 would reduce each of the intervals to 1 year, giving submission dates of 27 October 2026, 27 October 2027, and 27 October 2028.
- 10.3 Defra also sought views on moving the dates for compliance checking under Article 41(5) of UK REACH, in order to align the current compliance check timelines with the extended submission deadlines.
- 10.4 Amongst the 289 responses there was strong overall preference (82%) in the responses for Option 1 (from industry in particular as the NGOs preferred Option 2, or no change). Our analysis of the responses suggests that, on balance, Option 1 is more likely to reduce burdens on industry, especially Small and Micro Businesses and

downstream users, without compromising levels of protection of human health and the environment.

- 10.5 Overall, stakeholders who responded to the consultation supported the government's assessment that moving the submission deadlines, either under Option 1 or Option 2, would not amount to a discernible reduction in human health and environmental protections. They agreed that there were sufficient controls within UK REACH to provide the necessary safeguards within the extended three-year period.
- 10.6 There was widespread agreement with the government's assessment on the impacts of the proposed extension on human health and environmental protections, especially as outlined in the Impact Assessment. The consultation responses also showed general agreement with the government's proposal to move and align the current compliance check timelines with the proposed submission deadlines.
- 10.7 Details of the consultation and stakeholder responses are published on the GOV.UK website at: <https://www.gov.uk/government/consultations/uk-reach-extending-submission-deadlines-for-transitional-registrations>

11. Guidance

- 11.1 The guidance on UK REACH on the GOV.UK website will be updated at the time this instrument comes into effect.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts on SMEs are foreseen, in line with the broader assessment made above that the policy is not expected to have a negative effect on businesses of any size. This assessment is supported by the consultation response: of those Small and Micro Businesses who expressed a preference between the options, 87% preferred Option 1.
- 13.3 It is expected that savings, in discounted terms, would accrue to SMEs in at least a proportional way relative to larger businesses. Several respondents noted that small firms would struggle disproportionately with shorter timelines, and therefore preferred longer extensions to deadlines. This suggests that the benefits of extending timelines, as reflected in the government response to the consultation, could accrue in greater proportion to SMEs than to larger firms.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause.
- 14.2 The approach to monitoring this legislation is covered by the requirement on the Secretary of State in Article 117(4) of UK REACH to publish a report every five years based on the experience acquired of operating UK REACH.

15. Contact

- 15.1 Rusty Odihiri, at the Department for Environment, Food and Rural Affairs, Telephone: 020 8026 3477 or email: rusty.odihiri@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Gabrielle Edwards, Deputy Director for Chemicals, Pesticides and Hazardous Waste, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment Rebecca Pow MP, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.