December 2020

CTPA BREXIT WEBINAR 3 DECEMBER Q&A

The below Q&A addresses the questions asked by attendees of the CTPA Brexit webinar on 3 December 2020. Please note that all questions are answered on the CTPA website, where detailed advice on Brexit preparedness for cosmetic products is found on the CTPA Brexit public advice. CTPA members can access even more detailed information on the CTPA Brexit advice for members.

CTPA Brexit public advice	CTPA Brexit advice for members
Tariffs and Rules of Origin	Tariffs and Rules of Origin
Moving Goods between the UK and the EU	Moving Goods between the UK and the EU
Goods on the Market	Goods on the Market
UK Preparedness Actions	UK Preparedness Actions
EU Preparedness Actions	EU Preparedness Actions
	Labelling EU and UK RP
Regulations in Northern Ireland	Regulations in Northern Ireland
Denatured Alcohol	Denatured Alcohol
CITES	CITES
New Immigration Schemes	New Immigration Schemes
UKCA Mark for Aerosols	UKCA Mark for Aerosols
UK Cosmetics Regulation	UK Cosmetics Regulation
UK REACH	UK REACH

While the advice given is extensive and comprehensive, it remains important for companies to read through the CTPA advice and the documents linked throughout the page, in order to fully understand the topics and actions needed.

Question (Q). Will the UK Cosmetics Regulation going to be applicable from 1 January 2021?
Answer (A). Yes, the UK Cosmetics Regulation, which is found within Schedule 34 of the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 will come into force on 1 January 2021.
For more information, visit the CTPA Brexit public advice (Sell in the UK section); or the CTPA Brexit advice for members (UK preparedness actions section), where the CTPA unofficial consolidated version of the legal text can be downloaded.

Q. Do the requirements also apply to products sold online or through marketplace platforms?
A. Yes, the regulations apply also to products sold online whether it is the brand's own website or an independent retailer platform.

Q. What if an EU company sells cosmetics to the UK online, direct to consumers?
A. The EU company must have a UK based Responsible Person (RP) and comply with all the requirements of the UK Cosmetics Regulation to be able to sell the cosmetic products on the UK market.
The same applies to UK companies selling to EU consumers, as they must comply with he EU Cosmetics Regulation.

Cosmetics Regulation

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Q. Is an EU-based Responsible Person (RP) required to sell products in the EU?
A. Yes, as is currently the case. CTPA advises to set up an EU-based RP and add its name and address on pack before 31 December 2020. All other obligations under the EU Cosmetics Regulation must also be met ahead of this date. This is needed to continue to sell products in the EU market, both in shops and online.

Q. How can an RP be set up in the EU? Which EU Member State should be chosen?
A. An RP in the EU can be set up by:

- opening an office in an EU Member State (check local legal requirements for this);
- appointing one of the EU importers as the RP;
- appointing a third-party company to act as the RP.

The label on both the primary and secondary packs must have the name and address of the RP. There is no specific EU Member State that is recommended for setting up the RP. Companies should consider language barriers, local requirements (e.g. Product Information File -PIF- language, acceptance of safety assessor qualification) and the approach to enforcement from the local authorities. Furthermore, if a UK company chooses to open a company in the EU to act as its RP there are broader considerations to be made linked to company set up rules which could be different in Member States. CTPA advises companies wishing to open a new EU company to seek local legal advice.

Q. Is a UK-based Responsible Person (RP) required to sell products in the UK?
A. Yes. In order to be able to place cosmetic products in the UK, an RP in the UK will be legally required from 1 January 2021; however, with regards to labelling, there are 2 years to add the UK RP name and address on pack (please see labelling section for more information). All other obligations under the UK Cosmetics Regulation must also be met ahead of this date. This is needed to continue to sell products in the EU market, both in shops and online.

Q. Will a single RP in Northern Ireland satisfy both EU and UK requirements? Is a registered address in NI sufficient to satisfy the RP requirements?
A. Yes, a company based in NI can act as both the EU and UK RP, to comply with both sets of regulations if the product is sold in both the EU and UK markets. There are specific terms under which an NI-based RP can act as the UK RP, these are in Article 5A of the 7th amendment to the UK Cosmetics Regulation.

Q. Once an EU RP has been established, can this new EU RP be the first importer of products made in the UK, so that EU-based customers can be identified as distributors and not importers?
A. It depends on supply chain arrangements. If the newly set up EU RP is the first importer in the supply chain, then it will be automatically identified as the RP and any other actors further down in the supply chain will be identified as distributors. However, if the first importers of the products are the customers further down in the supply chain (all import from outside of the EU in parallel), then they will automatically each be an RP; in this case, each importer will have to mandate the newly set up EU RP to officially act as the RP.

Q. Distributors bringing product from outside of the EU will become importers, so each one of them will automatically be considered the RP. However, there can be only one RP per product; what is the solution to this?
A. As explained under Article 4 of the EU Cosmetics Regulation, the mandate is a solution to this matter. A mandate is not a commercial agreement: commercial agreements can happen between

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entities operating under different markets; a mandate is a handover of responsibility that can only happen between two EU entities. The EU importers bringing products into the EU market from the UK will need to mandate the EU RP chosen by that brand. If importers do not do this, then they will be automatically recognised as the RP as stated under the EU Cosmetics Regulation. The same will apply to the UK market.

Q. Can the UK and the EU RPs share the Product Information Files (PIF) to make them available to authorities?
A. Cooperation between the UK and EU RPs can happen under internal companies' terms. The PIF has to be made available at both the UK and EU RPs in case of inspection from the respective authorities. The PIF can be electronic, however it has to be presented in English to the UK authorities and in the local language of the EU Member State where the EU RP is located (some EU authorities accept English and only the safety assessment has to be translated in local language).

Q. When does the mandate have to be used?
A. It will depend on supply chain arrangements. If the EU or UK RPs are the first importer in the supply chain for the EU or UK markets respectively, then they will be automatically identified as the RP and any other actors further down in the supply chain will be identified as distributors. However, if the first importers of the products are the customers or retailers further down in the supply chain, then they will automatically each be an RP for the EU and UK markets respectively; in this case, each importer in the EU or UK will have to mandate the EU or UK RPs respectively to officially act as the RP for the imported products. Please also refer to this CTPA public news item.

Q. Distributors bringing products from outside of the EU or the UK will become importers, so each one of them will automatically be considered the RP. However, there can be only one RP per product; what is the solution to this?
A. As explained, under Article 4 of the EU Cosmetics Regulation, the mandate is a solution to this matter. The difference between a commercial agreement and a mandate is that commercial agreements can happen between entities operating under different markets; a mandate is a handover of legal responsibility that can only happen between two entities under the scope of the same legislation (both in the UK or EU). The EU or UK importers bringing products into the EU or UK markets respectively will need to mandate the EU or UK RP chosen by that brand. If importers do not do this, then they will be automatically recognised as the RP.

Q. Does the RP address have to be a physical address, or can this be represented by an email address or a postal box?
A. Yes, the RP has to be a physical address, whether that is of a legal entity or a natural person (Article 4 of the Cosmetics Regulation, both in the EU and UK). An email address or a postal box would not be accepted.

Q. If having appointed a UK RP, can the regulatory/technical side of compliance be managed by an external team in the EU or other area?
A. Yes. The RP has to be located in the UK, its name and address has to be labelled on pack and has to be contactable in case of inspections from authorities; also, the UK notification database account has to be under the RP name and address. However, the regulatory/technical compliance can be managed by staff operating outside of the UK.

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Labelling

Q. Will the RP address be needed on the primary and secondary packaging?
A. Yes, as is currently required under Article 19 of the EU Cosmetics Regulations and as it will be required under Article 19 of the UK Cosmetics Regulation. The primary packaging is generally the main container of the product (e.g. jar, tube, bottle); the secondary pack is not always present and it's a second layer of packaging to the primary one (e.g. carton box).

Q. Do products manufactured outside of the UK have to state the country of origin on the label? Can it be 'Made in EU', or does it have to be a country like 'Made in France'?
A. Yes, the country of origin is defined as the country where the most substantial change occurred. Manufacturing the bulk is a substantial change, however filling is not.

Under the EU Cosmetics Regulation, the country of origin must be labelled if the product is imported from outside of the EU; therefore, a product made in the UK will be imported from outside of the EU post-Brexit and the label must therefore feature 'Made in the UK' when marketed in the EU27.

Under the post-Brexit UK Cosmetics Regulation, we will have the same requirements as the EU. A product imported to the UK must be labelled with the country of origin. Therefore, a product made in an EU27 Member State must be labelled 'Made in XXX'. Companies are reminded that the EU is not a country, meaning that 'Made in the EU' will not be compliant.

Q. When does the UK RP address have to be added to sell compliant products on the UK market?
A. Article 19 of the UK Cosmetics Regulation provides a 2-year grace period for labelling the UK RP name and address and country of origin (for imported products) on pack. The 2-year grace period starts from 1 January 2021. This applies to products placed on the market from 1 January 2021.

Article 41 of the Withdrawal Act allows for goods that are already placed on the market before 31 December 2020 to continue to circulate freely throughout the supply chain, including final supply to consumer. This will apply both in the UK and EU. For the legal definition of 'placing on the market', please see page 4.

Q. Can two RP addresses be displayed on one label?
A. There can only be one RP address on the label as there can be only one RP in either the EU or the UK. In practice, companies that are selling to both markets can label both the UK and the EU27 RP addresses on the same label, as it will be 2 RP addresses for compliance with 2 different Regulations (the EU and UK separately). If the label is updated prior the end of the Brexit transition period, companies choosing to label both the UK and the EU27 RP addresses have to highlight (underline) the current RP address.

CTPA is suggesting that companies implement a labelling solution that ensures products are compliant in both scenarios. During the transition period, products will have two EU addresses on pack (UK and the EU27 MS of choice). In the presence of more than one EU address on pack, Article 19 of the EU Cosmetics Regulation requires to highlight (underline) the address where the RP is based. Until 31 December 2020, companies should underline the address where the PIF is currently held. As of 1 January 2021, the UK would ignore an address in the EU27, whether or not underlined, and similarly the EU authorities would ignore a UK address, again whether or not underlined.

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For example, if a company currently has the RP based in the UK and it adds the EU27 RP address to the label, the underline should be as below:

UK RP address

EU27 RP address

Whereas, if a company currently has the RP based in the EU27 and it adds the UK RP address to the label, the underline will have to be as below:

UK RP address

EU27 RP address

Q. When does the EU RP address have to be added to the label to sell compliant products on the EU market?
A. According to the EU Commission Technical Notice on cosmetics, products placed on the market as of 1 January 2021 must have the EU RP name and address on pack.

Q. Can I use a sticker or an overlabel to add the UK RP name and address? Does the sticker have to be on both primary and secondary pack?
A. Yes, but the sticker must be placed in a way that does not cover any other mandatory labelling information listed in Article 19 of the UK Cosmetics Regulation.

Cosmetic Product Notification Portal

Q. Do companies have to notify products no longer available on the market?
A. Products that are no longer placed on the market don't need to be re-notified under the UK notification database. However, there may still be some stock available on the market for consumers to buy and companies have to assess if the product has to be re-notified under the UK notification database, depending on the amount of stock left.

Q. When is the UK notification portal (UK SCPN) made available?
A. The UK notification portal Submit Cosmetic Products Notifications (SCPN) will be released on the entry into force of the UK Cosmetics Regulation, on 1 January 2021. Accounts can be created and products can be notified from 1 January 2021.

Q. Is guidance on the UK SCPN going to be published?
A. Yes, the UK Government is working on guidance for the use of the UK SCPN and will be made available shortly.

Q. Do companies selling in the EU27 Member States still have to notify on EU CPNP?
A. The EU CPNP remains a requirement under the EU Cosmetics Regulation and so products placed on the EU market will need to fully comply. Companies who previously notified on the EU CPNP using a UK RP, and who will continue to supply to businesses or consumers in the EU27 Member States, must renotify their products under an EU27 RP.

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Other

Q. What is the role of UK poison centres in reference to the UK Cosmetics Regulation?
A. UK poison centres will still be responsible for providing advice in GB and NI once the transition period ends on how to handle medical situations for serious undesirable effects.

Q. What are the UKCA mark requirements for aerosols? Is there a grace period?
A. In September 2020 the Office for Product Safety and Standards (OPSS), a sub-department of the Department for Business, Energy and Industrial Strategy (BEIS), published updated guidance on the applicability of the UKCA mark, as substitute for the CE mark that will be in place after the end of the transition period, on the 1 January 2021. While the applicability of the UKCA mark had been established for products that currently have the CE mark, the guidance states that "The UKCA marking will apply to most goods currently subject to the CE marking. It will also apply to aerosol products.".

CTPA and the British Aerosol Manufacturers Association (BAMA) requested further clarification to OPSS and BEIS, with consideration regarding the CE mark currently not being applicable to all aerosols, but only to those aerosols that are classed as products for which the CE mark is mandatory. Furthermore, Schedule 13 of the Product Safety and Metrology (UK Aerosols Regulation) initially provided for the UKCA mark or the reversed epsilon symbol (currently required under the EU Aerosol Dispensers Directive) to be affixed on pack, as either of them would have been accepted as self-certification that the aerosol complies with the relevant regulatory standards. However, following the publication of the latest amendments to the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020, this alignment no longer exists.

Therefore, the new requirements which will come into force following the end of the transition period are as follows:

- after 31 December 2020 aerosols sold in GB can carry either the reverse epsilon (3) or the UKCA mark until 31st December 2021;
- after 31 December 2021 all aerosols sold in GB must carry the UKCA mark. This mark can be applied as a sticker until 31st December 2022, if this is easier for marketers;
- after 31 December 2020 aerosols sold in Northern Ireland (NI) must continue to carry the reverse epsilon (3) (as NI follows EU regulations), so after 31st December 2021 aerosols sold in both GB and NI must carry both the UKCA and reverse epsilon (3) mark to show conformity.

The conformity regime detailed in the GB Statutory Instrument is identical to the self-certification system currently required under the EU Aerosol Dispenser Directive (i.e. no third-party/conformity assessment verification is needed).

We understand that the reverse epsilon (3) will not be prohibited on aerosols sold in GB, however they will have no significance under the UK framework.

Q. Is the UK Cosmetics Regulation maintaining the animal testing ban as the EU?
A. Yes, Article 18 of the UK Cosmetics Regulation has replicated exactly the animal testing ban for both finished cosmetic products and cosmetic ingredients that applies in the EU.

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Trade between EU and UK

Q. What is the definition of 'placing on the market' for the UK and the EU?
A. The UK and EU apply the principles set down in the 'Blue Guide', which can be obtained from the Commission website. This is usually the point in the supply chain where ownership of the product moves from the RP to the next point in the supply. This may be a physical movement, a transaction or in some cases even when the product is assigned to someone else as part of an order. This definition applies to all manufactured goods, not just to newly launched products.

Q. Is it possible for imported products to be re-labelled after customs clearance? For example, in a bonded warehouse or in a regular warehouse if it is done before placing the product on the market.
A. In many cases it should be possible to use a bonded warehouse or newly set-up 'free ports' that allow for overlabelling/relabeling to take place prior to the product being released for circulation on the market. If companies wish to carry out such activities within their own warehouse after stock has arrived in the UK, they should seek advice from the border authorities and Trading Standards.

The UK is looking at increasing the number of free trade areas, which may increase the possibility for companies to overlabel or relabel products before they are officially placed on the UK market.

Q. Where can a company register for Trader Support Service?
A. More information on this and a link to register for TSS can be found on this CTPA news item.

Q. Under the UK Global Tariff the tariff rates reduced compared to current WTO EU tariffs. Why was this done by the UK Government when setting up its own tariff regime?
A. Firstly, the UK wanted to take this opportunity to simplify tariffs for imports to the UK, so has reduced the number of commodity codes, as well as rounding down most duty rates. Secondly, the UK Government wanted to take the opportunity to try and minimise the additional cost of Brexit to

UK businesses, whilst at the same time maintaining tariffs where necessary and within the constraints of the WTO.

Q. If a UK company is exporting to an EU Member State, does that mean the company needs to be VAT-registered in that country if it supplies DDP?
A. In most cases, DDP sales to EU customers will trigger a liability to register for VAT there. Our specialist VAT team can help to set up new VAT registrations where required. NB, using DDP terms, the UK company will be the importer in the destination country, so would also require an EU EORI number (a single EU EORI number is sufficient to cover all imports into the EU, but VAT obligations are country specific).

Q. Where can a company obtain an EORI number? Where can a company find more information about customs declarations?
A. UK VAT registered businesses should already have been issued with a UK EORI, otherwise they can apply to HMRC on the .gov website. Non-UK companies can also apply to HMRC for a UK EORI. EU EORI can be applied for on the website of any EU customs authority.

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Ingredients

Q. How will cosmetic ingredients be monitored in the UK, especially CMRs?
A. All Annexes to the EU Cosmetics Regulation, therefore all currently banned/restricted/allowed ingredients will be transposed under the UK Cosmetics Regulation as they currently are, until 31 December 2020. Any EU ingredient activity carried out from 1 January 2021 will not be automatically applied to the UK Cosmetics Regulation, but the UK will make its own decisions. CTPA is working with the UK Government to establish a UK-based process for monitoring and assessing cosmetic ingredients in the UK. CMR substances will be regulated in the UK according to the same principles of the EU Cosmetics Regulation. The UK Cosmetics Regulation regulates CMR substances under Article 15 and Article 31.

Q. Will ingredients that are in a current transition period no longer be able to be imported into the UK as the 'placing on the market' deadline has passed prior to Exit day?
A. Placing on the market commonly correlates with release from customs. However, if companies are able to demonstrate that a product is already placed on the market prior to passing customs (see 'Blue Guide') import may still be permitted. EU legislation already in force on 31 December 2020 will apply also to the UK within the EU retained law in place at the end of the transition period but the role of actors in the supply chain may vary, which could affect aspects such as placing on the market. Companies are advised to understand their supply chains.

UK REACH

Q. Will UK REACH have the 1 tonne/year threshold for obligations as EU REACH?
A. Yes, as is currently the case under EU REACH, UK REACH requirements will apply to chemicals manufactured or imported in the GB market above 1 tonne/year per legal entity.

Q. Are requirements for restricted substances and substances of very high concern (SVHC) replicated under UK REACH?
A. UK REACH will apply EU restrictions for substances and SVHCs that have been implemented into EU REACH until 31 December 2020. From 1 January 2021, the UK will have its own processes for assessing chemicals and placing restrictions for substances and SVHCs.

Q. How can companies comply with UK REACH?
A. Please visit the 'Sell in the UK' section of the CTPA Brexit advice for members or the CTPA Brexit public advice. Guidance from the health and Safety Executive (HSE) is also available.

Q. What are the requirements for registering substances not already registered under EU REACH?
A. Substances coming from outside of the EU/UK into the UK market, and not currently registered under EU REACH, must be registered using the general UK REACH process (which is replicated from EU REACH). The UK REACH SI has all provisions applicable to all substances manufactured or imported into the UK market above 1 tonne. Information to be submitted as part of the registration is highlighted in Regulation 10 of UK REACH SI (amending Article 10 of EU REACH); Article 12 of EU REACH doesn't have any amendments under UK REACH SI and gives the information to be submitted as part of the registration dossier, based on tonnage band of the chemical. Further details are also available on the HSE guidance.

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Q. What are the requirements for registering substances already registered under EU REACH?
A. The transitional provisions under UK REACH apply to substances already registered under EU REACH. Please visit the 'Sell in the UK' section of the CTPA Brexit advice for members. Guidance from the HSE is also available.

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