Post-Brexit Trade

Great Britain, Northern Ireland and the European Union

May 2021

The 'CTPA Guide on Post-Brexit Trade: Great Britain, Northern Ireland & the European Union' has been developed by CTPA in close cooperation with the UK Government Department Office for Product Safety and Standards (OPSS) and other Government departments including Northern Ireland Office (NIO), HM Revenue and Customs (HMRC) and the Department for the Environment, Food and Rural Affairs (Defra), who have helpfully provided advice and constructive feedback. CTPA would like to acknowledge and thank the mentioned UK Government departments.

The 'CTPA Guide on Post-Brexit Trade: Great Britain, Northern Ireland & the European Union' remains the responsibility of CTPA.

Why join the CTPA?

CTPA membership gives companies access to experienced regulatory, scientific and technical staff to help them market safe, effective products that provide a wide range of consumer choice both in the UK and overseas.

Membership provides companies with peace of mind with easy access to:

- up-to-date legislative references;
- guidance on compliance;
- confidential one-to-one advice;
- advice on best practice;
- advance knowledge of upcoming changes;
- global updates on key issues;
- media and consumer information; and
- 24/7 online resources accessible worldwide.

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1. Introduction

From 1 January 2021, the United Kingdom (UK) is no longer part of the European Union (EU), and as a consequence, no longer participates in the EU Single Market and Customs Union. In practice, this means that the EU free movement of goods and rules ceased to apply in the UK, with new domestic legislation coming into force from 1 January 2021. However, special provisions apply in Northern Ireland (NI) under the NI Protocol to the Withdrawal Agreement (WA), that allows NI to take advantage of a number of EU Single Market provisions as well as its position in the UK internal market.

The purpose of this guide is to set out the information on what is necessary to continue to trade effectively between GB/NI and EU, helping businesses navigate any obstacles to trade, and identify potential opportunities. It seeks to help companies gain a thorough and practical understanding of the changes that occurred as a consequence of the UK leaving the EU, from both a regulatory and trade perspective. Indeed, to further highlight the different scenarios applicable, case studies have also been included. These case studies will enable companies to understand what is needed to continue to trade cosmetic products between GB, NI & EU in line with the relevant regulatory requirements and as smoothly as possible.

This document is intended as a complementary practical approach to the already existing general guidance among CTPA resources.

CTPA welcomes feedback from companies to maintain the guidance up-to-date according to the relevant issues faced by businesses. To submit your feedback, please email CTPA at info@ctpa.org.uk, or email CTPA relevant staff if you are a member of the association.

Examples of the issues addressed in this guidance are:

- distributors becoming importers;
- the mandate under the EU Cosmetics Regulation;
- trading with Northern Ireland;
- EU Member States Customs entry requirements;
- online selling;
- rules of origin;
- and more.

2. Summary of UK and EU Regulations for Cosmetics

All cosmetic products placed on the market of the United Kingdom (England, Wales, Scotland and Northern Ireland) intended for sale or to be given away for free in the course of a commercial activity must comply with:

- **Schedule 34** of the **Product Safety and Metrology Statutory Instrument** (hereafter 'the UK Regulation) for cosmetics marketed in Great Britain (England, Wales and Scotland);
- **Regulation EC 1223/2009** of the European Parliament and of the Council of 30 November 2009 on cosmetic products for cosmetics marketed in Northern Ireland. This is in accordance with the terms of the **Northern Ireland Protocol** to the **UK/EU Withdrawal Agreement**.

The Office for Product Safety and Standards (OPSS), within the Department for Business, Energy and Industrial Strategy (BEIS), is the competent authority for cosmetic products in the UK and have issued guidance on cosmetic compliance for the **GB** and **NI** markets.

In the European Union (EU), the manufacture, import and sale of cosmetics is governed by the EU Cosmetics Regulation 1223/2009.

CTPA has made public guidance available on what companies need to know to comply with the requirements for cosmetic products in GB, NI or EU markets.

IMPORTANT

What has changed:

- cosmetic products solely placed on the GB market must comply with the UK Regulation only;
- cosmetic products solely placed on the NI market must comply with the EU Regulation only;
- cosmetic products placed on the GB and NI markets must comply with both the UK and EU Regulations;
- cosmetic products placed on the EU market must continue to comply with the EU Regulation.

The EU and UK Cosmetics Regulations have many common principles, as highlighted in the below table. If you have been familiar with the EU Cosmetics Regulation, it may come easy to apply the same requirements for the UK Cosmetics Regulation.

EU Cosmetics Regulation	UK Cosmetics Regulation
• Responsible Person • Product Information File • Safety Assessment • Labelling • Cosmetic product definition • Claims self-regulation • Notification Portal (CPNP) • Cosmetovigilance • Ingredients monitoring and restrictions	• Responsible Person • Product Information File • Safety Assessment • Labelling • Cosmetic product definition • Claims self-regulation • Notification Portal (SCPN) • Cosmetovigilance • Ingredients monitoring and restrictions

3. Roles and Responsibilities under the UK and EU Cosmetics Regulations

Under both the UK and EU Cosmetics Regulations it is possible to identify three main roles:

- the Responsible Person (RP);
- the distributor;
- and the importer.

Each one of these roles can apply to the same company in different scenarios and has different responsibilities.

3.1 Responsible Person and Case Studies

The RP is defined under Article 4 of both the UK and EU Cosmetics Regulations as a natural person or legal entity who is responsible for full compliance of a cosmetic product's legal requirements. In most cases, the RP is generally a company rather than an actual person.

For compliance with the UK Cosmetics Regulation, the RP must be located in the UK (Great Britain or Northern Ireland – please check the NI section of this guide, page 12).

For compliance with the EU Cosmetics Regulation, the RP must be located in the EU or Northern Ireland (please check the NI section of this guide, page 12).

For both the UK and the EU, the RP is generally the manufacturer of the cosmetic product, the brand owner of the cosmetic product, or the importer of the cosmetic product. The RP name and address must be added to the product's label, on both primary and secondary packaging.

With regards to the indication of the RP name and address, it should also be noted:

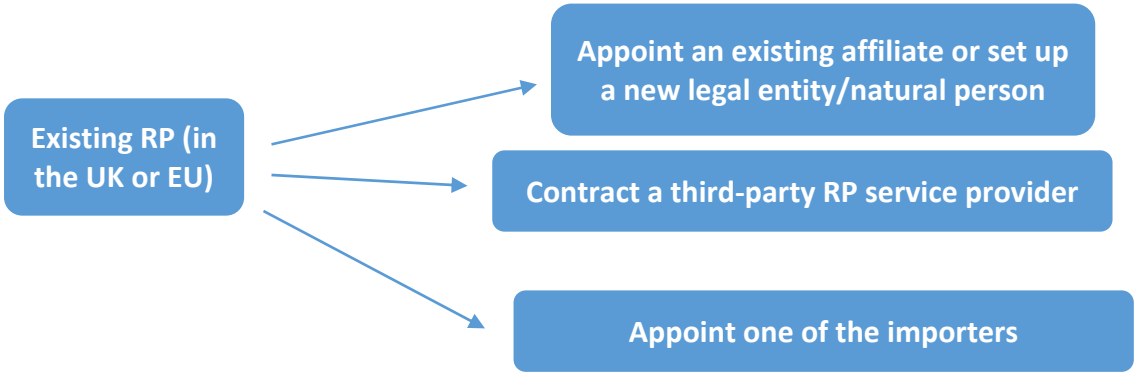
- For the UK, the RP address must be highlighted (it is best practice to underline) when there is more than one UK address on pack.
- For the EU, the RP address must be highlighted (it is best practice to underline) when there is more than one EU address on pack.
- It is possible to have one UK address and one EU address on the same pack; the underline would not be needed as the two addresses fall under two separate regulatory frameworks.
- It is possible to have a single NI address on the label, as NI counts as both a UK address and an EU address, respectively, under the two separate regulatory frameworks.

The RP responsibilities are outlined in Article 5 of both the UK and EU Cosmetics Regulations; ultimately the RP is responsible for full compliance of the cosmetic product with the relevant regulation.

If a UK-based company wants to sell cosmetics in the EU or NI, they must either set up an RP in NI (unless they are already based in NI) or in one of the EU Member States. This can be done in three ways:

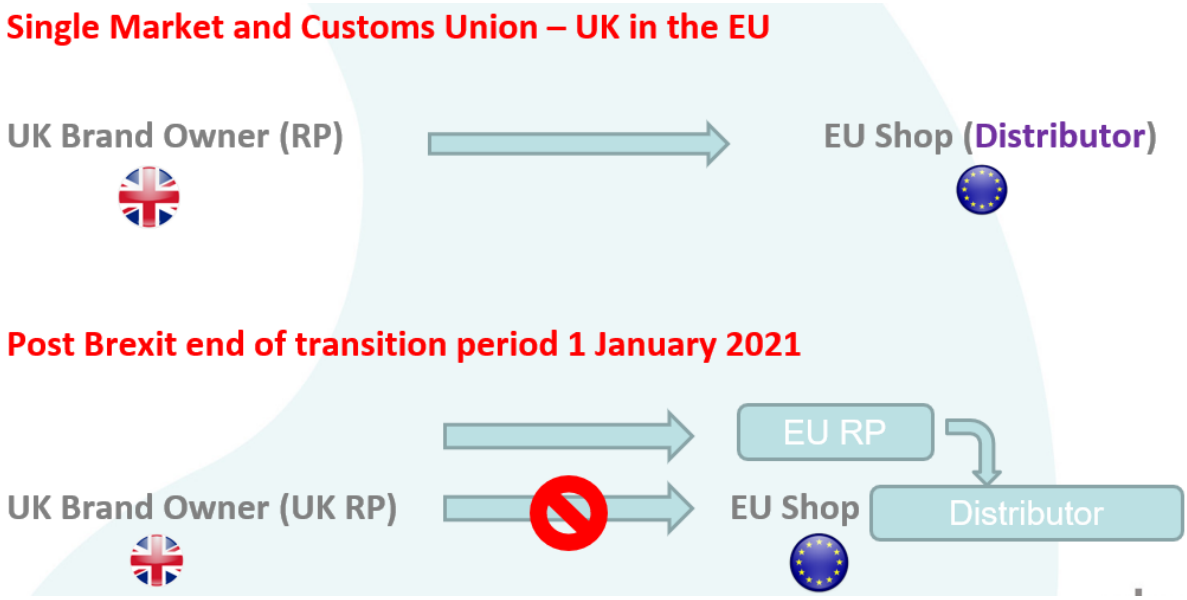
- the UK-based company opens an office in NI or the EU, or may already have an NI or EU-based affiliate;
- the UK-based company contracts the services of an NI or EU-based third-party RP provider;
- the UK-based company contracts their NI or EU-based importer.

The same applies in reverse when an EU-based company wants to sell cosmetics in GB. The right choice will entirely depend on the company, based on its supply chain and business plans.



When the UK belonged to the EU, a UK RP would have been accepted as an EU RP. Therefore, UK based companies were free to supply goods to EU retailers, shops and customers, who would be classed as distributors.

As of the end of the Brexit transition period, on 1 January 2021, a GB RP is no longer accepted as an EU RP. This is why it is important for UK brand owners wishing to continue to sell to the EU and NI markets to appoint an NI or EU-based RP. This will ensure compliance with the EU Cosmetics Regulation. The same is applicable for EU brand owners who wish to continue selling to the GB market.



FAQ

Q. I am an EU-based brand owner and I want to continue to sell cosmetics in the GB market, what do I need to do?
A. You must have a UK RP and ensure you comply with the requirements of the UK Cosmetics Regulation. You would find helpful consulting the CTPA booklet on supplying cosmetics to the GB market, and the OPSS guidance.

Q. I am a GB-based brand owner and I want to continue to sell cosmetics in the EU market, what do I need to do?
A. You must have an EU or NI-based RP and ensure you comply with the requirements of the EU Cosmetics Regulation. You would find helpful consulting the CTPA booklet on supplying cosmetics to the EU market, and the EU Commission technical notice on cosmetics.

3.2 Distributor and Case Studies

Under both the EU and UK Cosmetics Regulation, a distributor is defined as any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a cosmetic product available on the markets of EU/NI or GB respectively. It is important to highlight that by 'making available', a distributor supplies cosmetic products sourced in the respective internal market and is not involved in the import of products. Examples of distributors are retailers, shops, salons selling beauty products.

An EU or NI-based distributor supplies cosmetic products from another EU or NI-based entity (e.g. the EU/NI RP, or EU/NI importer, or another EU/NI distributor).

In the same way, a GB-based distributor supplies cosmetic products from another GB-based entity (e.g. the UK RP, or UK importer, or another GB distributor).

The obligations of a distributor are outlined in Article 6 of both the EU and UK Cosmetics Regulations. In practice, a distributor is not responsible for compliance of the cosmetic product; this is the responsibility of the RP. Distributors do have a duty to act with due care to avoid supplying a non-compliant product:

- the distributor may verify that there is an RP address on pack, or that there is an ingredients list, but is not responsible to check the ingredient list is correct;
- the distributor may verify that the product hasn't passed the BBE date;
- distributors do not have to check if the product was notified, or if the product has a safety assessment, or if the product has a Product Information File (PIF), as examples.

Should a distributor find non-compliance within its remit, the distributor shall liaise with the RP and/or notify the competent authority.

FAQ

Q. I am an EU-based distributor buying cosmetics from an EU or NI-based brand owner; is my role changing?
A. No, because you source from the same market and regulatory framework you are located in. Your role remains that of a distributor.

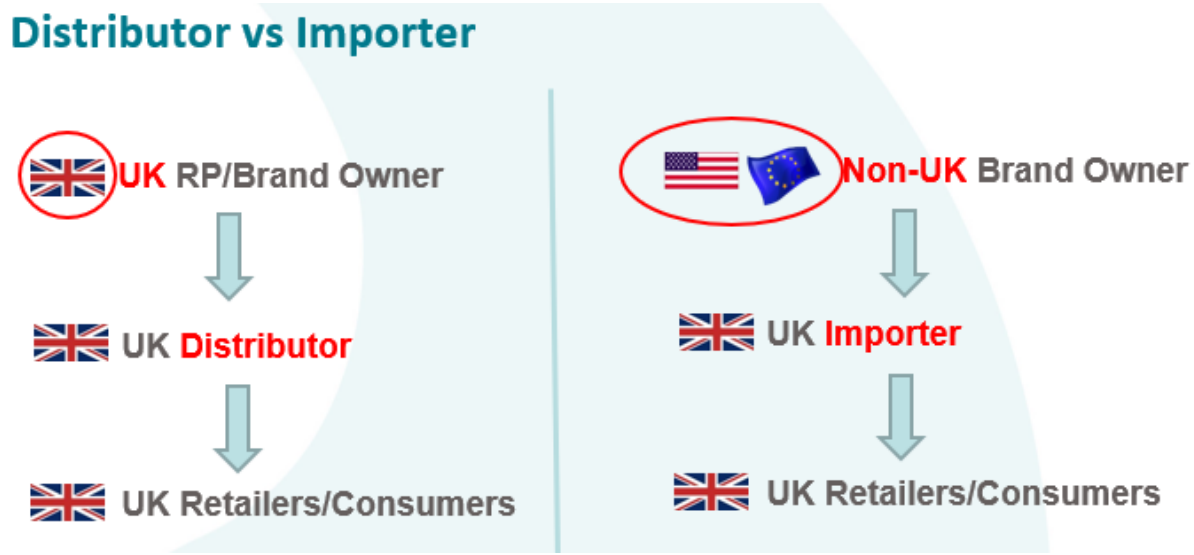
Q. I am an EU-based distributor buying cosmetics from a GB-based brand owner; is my role changing?
A. Yes, because you source from a different market and regulatory framework you are located in. Your role changes from distributor to importer. The same applies to UK-based distributors sourcing from an EU-based brand owner.

3.3 Importer and Case Studies

Under both the EU and UK Cosmetics Regulation, an importer is defined as any natural or legal person who places on the market a cosmetic product from a third country.

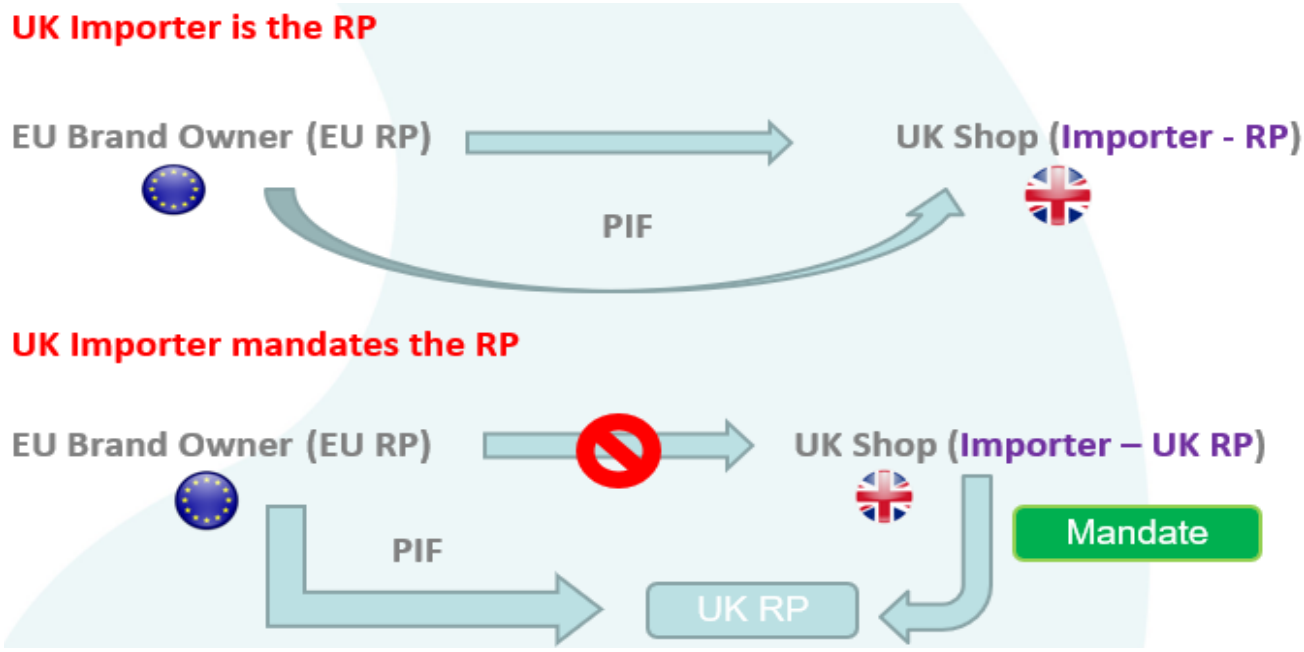
An importer under the EU Cosmetics Regulation is therefore an EU or NI-based company placing on the EU or NI markets a cosmetic from a third country (e.g. US, Australia, China, Great Britain).

An importer under the UK Cosmetics Regulation is therefore a UK-based importer (including NI) placing on the GB market a cosmetic from a third country (e.g. US, Australia, China, EU).



Under Article 4 of both the EU and UK Cosmetics Regulations, the importer is considered the RP by default. This may be acceptable if the importer has access to the PIF and can ensure compliance with the requirements of the relevant import market, in agreement with the overseas brand owner. If the importer cannot be the RP, they must mandate a third party or the designated RP by the overseas brand owner.

In the below example we can see both scenarios applied to an EU-based brand owner wanting to sell cosmetics into the GB market. The same applies when a UK-based brand owner wants to sell cosmetics into the EU and NI markets.



A mandate is provided for under Article 4 of both the EU and UK Cosmetics Regulation: "*An importer or a manufacturer established in the United Kingdom (or EU, if looking at the EU Cosmetics Regulation) may by written mandate designate a person established in the United Kingdom (or EU and NI, if looking at the EU Cosmetics Regulation) as the responsible person*."

Therefore, the mandate is a document agreeing the move of responsibility from a company who would become the RP by default but cannot or does not want to take on the obligation, to another company who is able and willing to be the RP. The mandate must be a written document from the original RP to the mandated RP, who needs to accept in writing. There is no prescribed template for the mandate: it can be a simple exchange of letters.

It is important to highlight that the shift of responsibility can only happen between legal entities under the same regulatory framework: a UK-based importer can only mandate a UK company to act as the RP under the UK Cosmetics Regulation; an EU or NI-based importer can only mandate an EU or NI-based company to act as the RP under the EU Cosmetics Regulation. Arrangements between companies falling under different regulatory frameworks and markets are generally contractual agreements for exchange of services, which differ from the mandate.

FAQ

Q. I am a UK-based brand owner supplying cosmetics to the EU and NI markets via EU and NI-based importers. Can one of those importers be my EU or NI-based RP?
A. If that is your business decision, you can appoint one of your EU or NI importers to act as the RP. However, this means that the appointed importer becomes responsible for full compliance of your products with the EU Cosmetics Regulation, including making the Product Information File available to authorities and notifying products on the Cosmetic Products Notification Portal (CPNP).

The other EU or NI-based importers would still be considered the RP by default under the EU Cosmetics Regulation; they therefore all have to mandate the single importer you have designated as you EU RP.

This last step is required even if you don't use one of your importers as your designated RP, but use an EU or NI-based affiliate or third party company.

3.4 Distributors Becoming Importers

As a result of the UK leaving the EU, the UK is no longer part of the EU Single Market and Customs Union. This means that the EU free movement of goods and rules has ceased to apply. However, there are special provisions that apply in Northern Ireland under the NI Protocol that allow NI to take advantage of a number of EU Single Market provisions as well as its position in the UK internal market.

As the UK is no longer part of the EU, the UK has also created its own domestic laws that apply in Great Britain (England, Wales and Scotland), independent and completely separated from those of the EU. Under various EU Regulations, GB is effectively a third country to the EU, and vice versa.

The practical implications of the above for the cosmetic supply chain is that many companies who were previously distributors (moving goods within the EU Single Market) found themselves becoming importers (bringing products from third countries – EU/NI to GB or GB to EU/NI) as of 1 January 2021.

As seen in section 2.3, importers are considered the RP by default under both the UK and EU Cosmetics Regulations. Unless the importers can or want to take on full responsibility for compliance of the products they import into either the EU or GB, it will be relevant to apply the concept of the mandate here.

Those UK importers bringing products from the EU (or any other third countries) into the GB market, may mandate another company to act as the RP for those imported products. The mandated RP can be a third-party RP service provider, or the designated RP by the EU-based brand owner.

Those EU or NI-based importers bringing products from GB (or any other third countries) into the EU market, may mandate another company to act as the RP for those imported products. The mandated RP can be a third-party RP service provider, or the designated RP by the GB-based brand owner.

FAQ

Q. I am an EU or NI-based company supplying cosmetics to the EU and NI markets from a GB-based brand owner. Am I now becoming an importer?
A. Yes, your role has now changed from distributor to importer. Check section 2.3 of this guide for more information. The same applies to a UK-based company supplying cosmetics to the GB market from an EU-based brand owner.

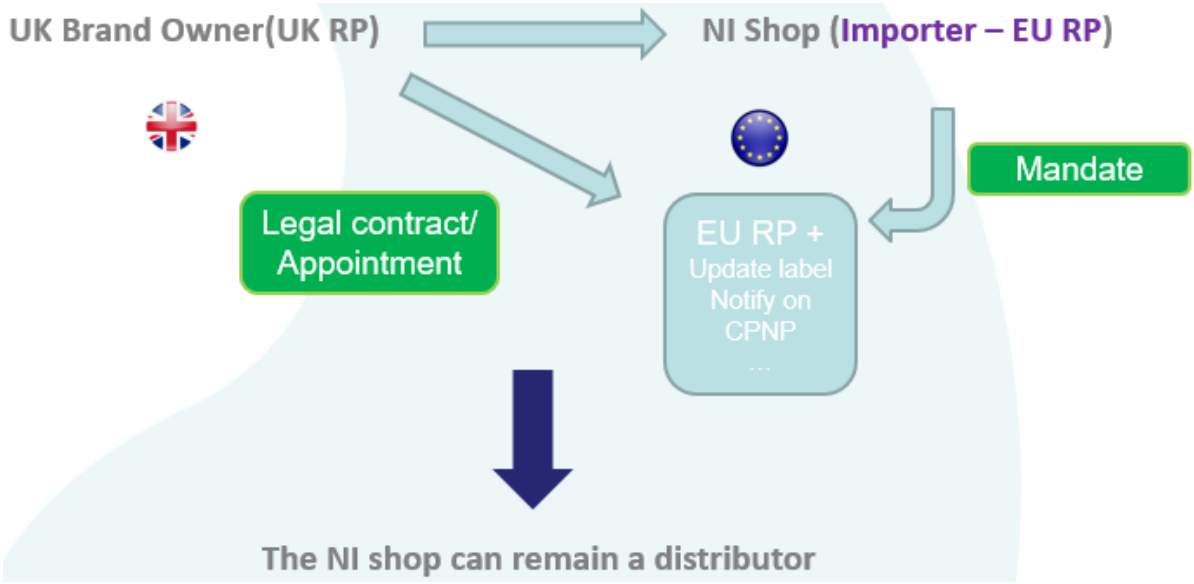
3.5 Northern Ireland

As explained in section 1 of this guidance, Northern Ireland continues to follow the EU Cosmetics Regulation as agreed in the Northern Ireland Protocol to the UK/EU Withdrawal Agreement.

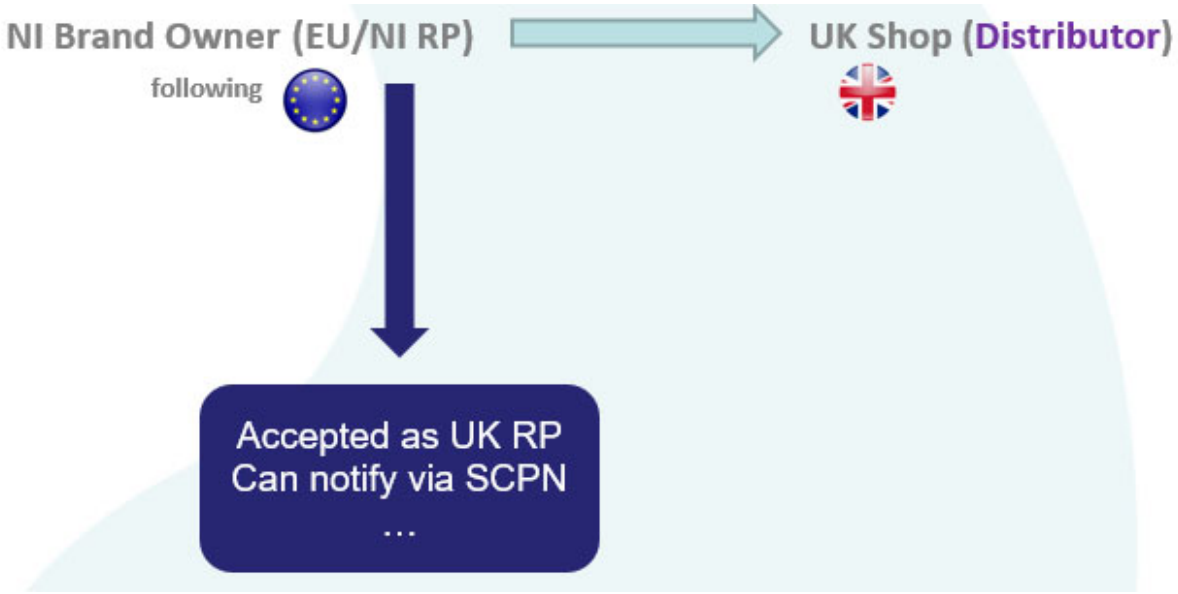
The UK Government has also introduced legislation to provide Northern Ireland-based businesses 'unfettered access' to the UK internal market. Further guidance on this topic is available here. Goods benefitting from the unfettered access arrangements do not need any new regulatory approvals in order to place those qualifying goods on the market in GB, so products meeting the EU Cosmetics Regulation can be sold in GB.

This combination of factors provides Northern Ireland to benefit access to both the EU and UK markets and there are some practical implications:

- an RP in NI is considered an EU RP under the EU Cosmetics Regulation. In this case, the NI RP is also considered a UK RP under the UK Cosmetics Regulation because most obligations are already fulfilled by being an EU RP (Article 5A). The only additional duty of the NI RP under UK Cosmetics Regulations is to carry out the notification under the Submit Cosmetic Products Notifications (SCPN) portal; this is because UK authorities do not have access to the EU Cosmetic product Notification Portal (CPNP).
- GB-based companies wanting to sell cosmetics in NI must ensure that the products comply with the EU Cosmetics Regulation, including the need for an EU or NI-based RP, and CPNP notifications;
- NI-based distributors of GB goods effectively become importers under the EU Cosmetics Regulation, and therefore become the RP under the EU Cosmetics Regulation: NI distributors shall therefore mandate the designated EU or NI-based RP appointed by the GB brand owner;
- NI-based distributors of EU goods effectively become importers for the purposes of the GB market, taking up the role of the UK RP under the UK Cosmetics Regulation. GB-based distributors importing into the GB market from NI therefore do not become importers, unless separate arrangements are in place within the supply chain.



Regarding the latter point, a business based in NI can be a UK RP if it already acts as an EU RP (therefore already fulfilling most obligations under the UK Cosmetics Regulation, with the exception of notification which has to be met additionally) and if the cosmetic products imported into GB qualify as NI goods. There is guidance on the definition of qualifying NI goods here. At present any goods in free circulation (e.g. not under a particular form of customs supervision, restriction or control) in Northern Ireland moving directly to Great Britain is a qualifying good qualify to be sold in GB under 'unfettered access'. This definition is likely to change later in 2021, so that this arrangement only allows businesses established in Northern Ireland to benefit from these conditions. The UK Government will be bringing forward further guidance on this in due course.



FAQ

Q. I am an NI-based RP and I want to supply cosmetics to the GB market. Can I be the UK RP?
A. Yes, as an NI-based RP you are also accepted as UK RP under the UK Cosmetics Regulation. However, you do need to ensure compliance with the UK Cosmetics Regulation, which is separate from the duties you carried out to comply with the EU Cosmetics Regulation.

Q. I am a GB-based RP and I want to supply cosmetics to the NI market. Can I be the RP?
A. No, NI follows the EU Cosmetics Regulation. Therefore, you must have an EU or NI-based RP to be able to sell cosmetics in NI, as well as ensuring compliance with the EU Cosmetics Regulation.

3.6 E-Commerce

In the EU, the EU E-Commerce Directive has an internal market clause, which ensures that providers of online services are subject to the law of the Member State in which they are established and not the law of the Member States where the service is accessible. Therefore, an EU company selling in another EU MS online, does not need to comply with the MS local requirements. However, this only applies within the EU internal market.

Therefore, a UK company (no longer located in the EU internal market) selling online to EU consumers must comply with the EU sectorial regulations of the products sold.

Furthermore, the EU Cosmetics Regulation states that "**This Regulation establishes rules to be complied with by any cosmetic product made available on the market**".

Further information supporting the applicability of EU rules to products sold online from companies based outside of the UK is available on the EU Blue Guide, in particular under sections 2.1 and 2.4.

From the UK point of view, the same position applies. In order to sell cosmetic products online (via own website or online retail platform) to UK consumers, a UK RP must be appointed to ensure compliance of the products with the UK Cosmetics Regulation.

4. Roles and Responsibilities under UK and EU REACH

The Registration, Evaluation and Authorisation of Chemicals (REACH) Regulation is the framework applicable to chemicals. The obligations under the REACH framework are still common to both the UK and the EU, and they are covered under 4 strands:

1. **Registration**, covering the obligation of companies to collect information on the properties and uses of the substances which they manufacture or import above 1 tonne a year, per legal entity. The obligation of registration applies to substances on their own, substances within mixtures (or formulated products) and substances released from articles. There are two principles that apply for the purposes of registration, the first one is "no data, no market", which means that if the substance, which is in scope of REACH, is placed in the market there must be a corresponding completed registration with the relevant information submitted. The other principle of registration is the "one substance, one registration", which then mandates the need for joint registrations for given substances where multiple companies have the same registration obligation.
2. Some chemicals may be used only subject to a specific **authorisation**. Different stages of the authorisation process might carry different obligations from the point of view of a company.
3. With regards to **restrictions**, the substances listed under the corresponding annex of the REACH regulation will establish limits or conditions to the use of these whether it is in a mixture or on its own. Companies intending to use those substances will have the obligation to comply with said restrictions, including if the substance is subject of a ban.
4. Under REACH, there is the need to establish effective **communication** between the different actors of the supply chain, to relay relevant information both further down and above in the supply chain. This aims to ensure that downstream users are aware of the conditions of use of the substance and the extent of the registration, and registrants can use this information to conduct appropriate chemical safety assessments.

For the purposes of this guidance, the document will cover the roles and responsibilities with regards to registration and communication, as these are a priority for the changes in supply chain that are into effect as a consequence of the UK being a separate market to the EU, with its own regulatory framework.

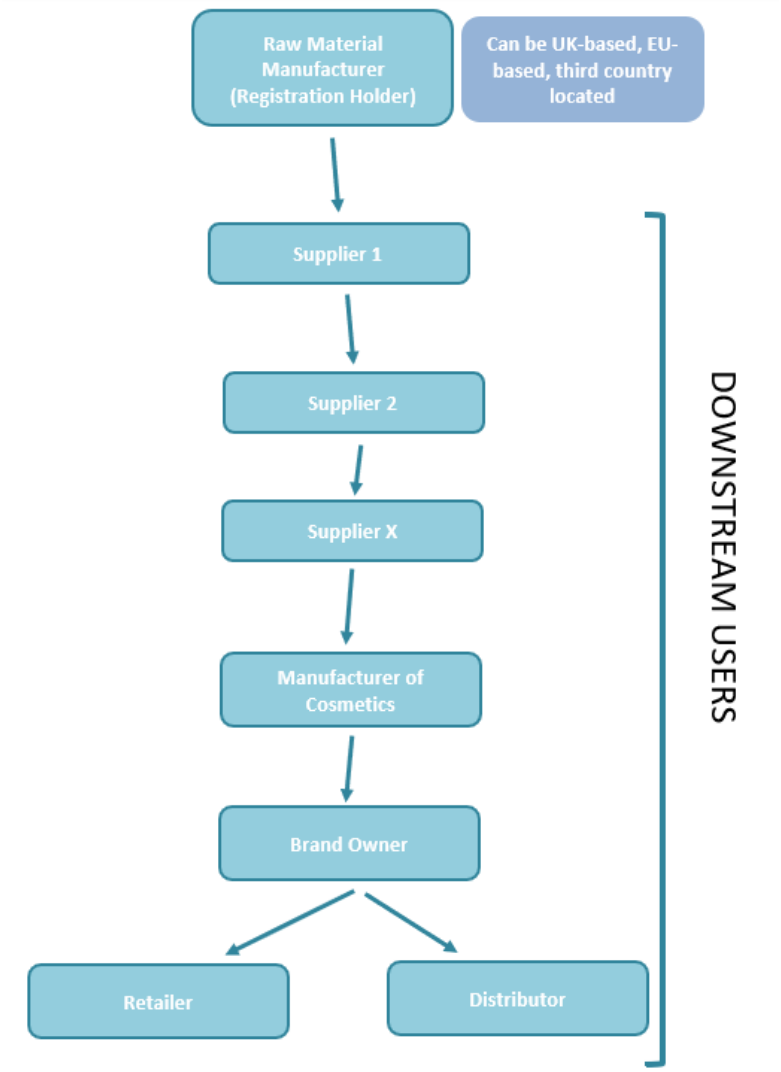
Before proceeding into more detail, it is important for companies to understand how the above responsibilities apply to the various actors within the cosmetic supply chain. This is because the obligations under the REACH system are determined by the company's role with regards to each individual ingredient.

The different actors in the supply chain are then defined as:

- **manufacturer,** where an individual or a company produces or extracts a chemical or substance, be it for use by themselves or to supply other companies or individuals within the UK or abroad. The manufacturer must be located in the EU or NI to fall under the remit of EU REACH; the manufacturer must be located in the UK to fall under the remit of UK REACH. A company or person who only combines chemicals to produce mixtures or articles is not considered a manufacturer.
- An **importer** is a company or individual that buys a chemical product directly from a supplier that is based outside of the country or region where REACH applies. For example, an EU-based company sourcing from GB or any other third country is considered an importer under EU REACH; vice versa, a UK-based company sourcing from the EU or any other third country is considered an importer under UK REACH. In combination with the role of importer, we have the role of an **Only Representative (OR)**, where a company can take over the responsibility of an importer under the UK REACH or EU REACH (depending on the market of interest) framework for a company outside of the UK or EU respectively.

- **Downstream Users (DUs)** are companies or individual workers that use chemicals, which include companies who manufacture goods or offer services, which might not always be linked directly with chemicals and might include the use of chemicals in professional applications. Companies that engage in the production of mixtures or articles are not considered manufacturers because they are downstream users, being involved not in the production of the substance, but in the use and application. The DU must be located in the EU or NI to fall under the remit of EU REACH; the DU must be located in the UK to fall under the remit of UK REACH.
- **Distributors** are companies that source the substance or mixture within the internal market, store it and then place it directly into the market for themselves (under their own brand) or for someone else. Importantly, distributors cannot alter the chemical composition of the substance or mixture, since if they do they become involved in the use of the substance and therefore a downstream user. Also, to remain a distributor companies must source the substances from within the internal market (e.g. a UK company sourcing within the UK, or an EU company sourcing within the EU), since bringing them from outside would the class the company or individual as an importer.

The below is an example of the various actors within a cosmetic supply chain.



The below table gives an overview of the REACH roles based on the actors within the cosmetic supply chain, under UK REACH.

Role	Entities	Where
Registration holder	• Manufacturer of chemicals • Importer of chemicals • Importer of finished cosmetics	• In GB • In GB from EU, third countries • In GB from EU, third countries
Downstream User	• Chemical Supplier • Manufacturer of cosmetics • Brand owner • Distributor of cosmetics • Retailer	• In GB from GB entity • In GB, sourcing from GB entities • In GB • In GB • In GB

The below table gives an overview of the REACH roles based on the actors within the cosmetic supply chain, under EU REACH.

Role	Entities	Where
Registration holder	• Manufacturer of chemicals • Importer of chemicals • Importer of finished cosmetics	• In EU • In EU from GB, third countries • In EU from GB, third countries
Downstream User	• Chemical Supplier • Manufacturer of cosmetics • Brand owner • Distributor of cosmetics • Retailer	• In EU from EU entity • In EU, sourcing from EU entities • In EU • In EU • In EU

It is important for Downstream Users to know their supply chain, such as where the chemical they are using is coming from and if it is already registered by another entity up in the supply chain.

Finally, the below table highlights the obligations relevant for the actors of a cosmetic supply chain.

Examples	**Entities**	**Obligations**
Manufacturer of ingredients	Manufacturer	Registration Restrictions Authorisation Communication
Importer of ingredients	Importer	Registration Restrictions Authorisation Communication
Importer of finished cosmetics	Importer	Registration Restrictions Authorisation Communication
Cosmetic manufacturer	DU	Restrictions Authorisation Communication
Shop	Distributor	Communication

4.1 Registrants

Manufacturers of ingredients and importers of ingredients or finished cosmetic products could have obligations under UK REACH or EU REACH depending on the market of interest (or both if applicable to both markets). It is important to note that REACH applies to substances manufactured or imported above 1 tonne per year, per legal entity.

Companies need to register their substances, to demonstrate to the chemical agency (the Health and Safety Executive for UK REACH, the European Chemicals Agency for EU REACH) that the chemicals used are safe and any risks can be managed and/or mitigated. All registrants of the same substance must collaborate to obtain a single registration dossier which can then be presented to the HSE and/or ECHA, depending on the market of interest. The creation of joint groups and how these are organised is up to the individual companies, but best practices are encouraged.

Companies will be able to negotiate access to the data required for the registration or might even be involved in obtaining it. If a substance is already registered, then the new company will have to join and negotiate with the existing group to be able to contribute to the work and benefit from the registration.

The registration dossiers are reviewed by the agencies to assess the risks of substances and how this risk can be managed to limit exposure if at all necessary, to give the hazard profile of the chemical in question.

Based on the registration process, several outcomes can occur: if the risks are unmanageable, then the hazardous substance will be subject to a ban; while if there are ways in which the risk can be managed then the substance might be restricted for use in certain conditions or a requirement to obtain the authorisation to use it might be put in place.

The aim of this process is to replace the most hazardous substances with others that have a different hazard profile, where the risks might be easier to manage or non-existing.

EU REACH has been in place since 2006, therefore compliance is expected without any transition or grace period. Companies may find useful consulting the EU Commission technical notice on REACH.

UK REACH entered into force on 1 January 2021. Existing registration holders have to grandfather their EU REACH registration by submitting initial information via the UK REACH IT system within 120 days from 1 January 2021; full registration must be submitted within 2, 4 or 6 years based on tonnage band and chemical hazard.

4.2 Downstream Users and Distributors

Downstream Users obligations are on the restriction, authorisation, and communication.

Firstly, when using the substance, companies must ensure that they are in compliance with the criteria established for the restriction and authorisation. This means that companies must use the chemical or substance within the conditions provided by REACH and, if needed, apply for an authorisation for the intended use of the substance prior to introducing it into the market.

Secondly, companies must implement safe use of the substance or chemical within their own company and all sites applicable. The information on this is contained within the SDS and where relevant, the exposure scenarios. This must be identified and the appropriate measures for the handling of the substance applied.

Lastly, the communication of relevant information must be maintained further up and down of the supply chain. As a downstream user, companies must report their use of the substance to the supplier and provide the necessary information to the actors further down in the supply chain where relevant.

As a downstream user, if the use of the chemical is not covered under the exposure scenarios provided by the supplier or manufacturer, companies can still demonstrate the safe use of a chemical by preparing a Downstream User Chemical Safety Report (DUCSR).

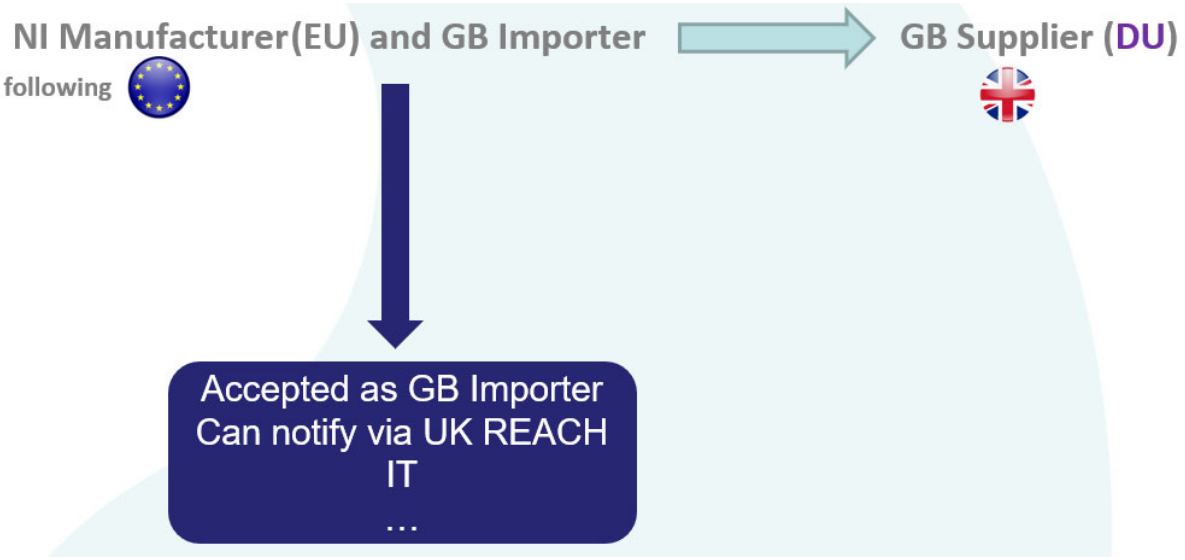
EU REACH has been in place since 2006, therefore compliance is expected without any transition or grace period. Companies may find useful consulting the EU Commission technical notice on REACH. Many companies who were downstream users or distributors before Brexit may find themselves becoming importers. However, communication within the supply chain is vital:

- either the UK supplier has already transferred their registration to an EU entity; or
- the UK brand owner of finished product sources its raw materials from an EU chemical supplier, meaning that the chemicals may already be registered and the import tonnage is covered;
- the UK brand owner of finished product sources its raw materials from an EU chemical supplier, meaning that a re-import exemption may apply.

UK REACH entered into force on 1 January 2021. Existing downstream users who become importers must submit a Downstream User Import Notification (DUIN) via the UK REACH IT system within 300 days from 1 January 2021; full registration must be submitted within 2, 4 or 6 years based on tonnage band and chemical hazard. However, as previous downstream users, companies may also choose to shift their supply of the substance or chemical to a source within GB that has already been registered under UK REACH.

4.3 Northern Ireland

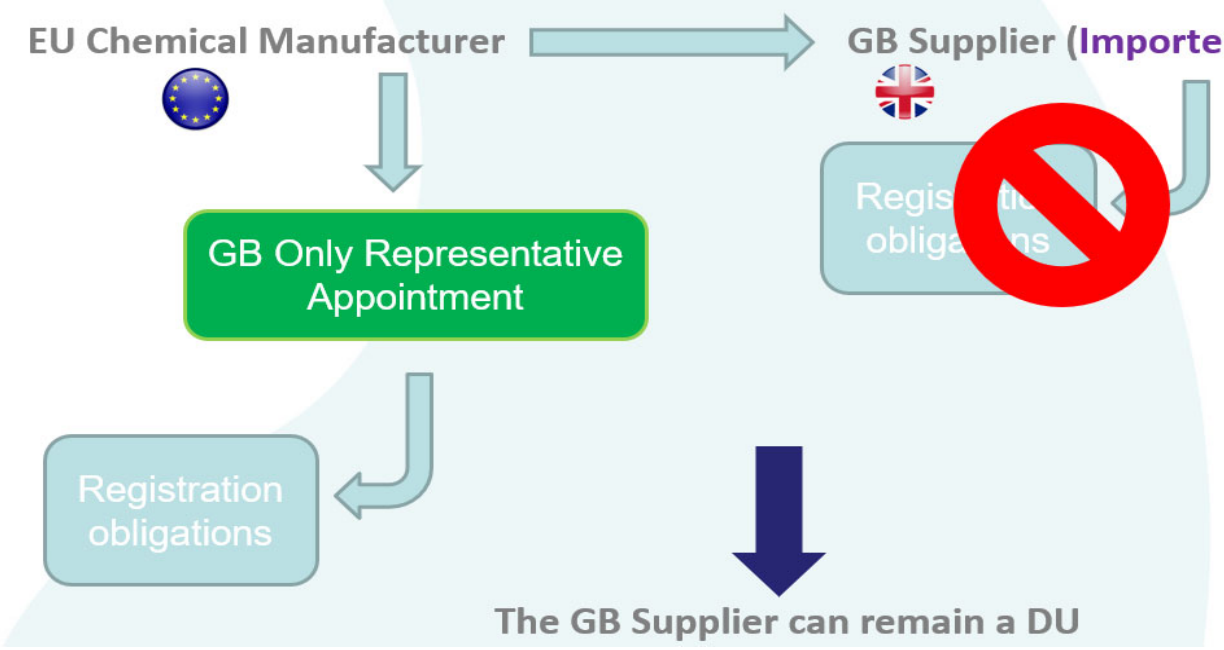
A business based in NI (a manufacturer or importer of a chemical), who is a registrant or downstream user of a chemical registered under EU and where the chemical is a qualified NI good, can submit a Northern Ireland Notification directly to the HSE, without the need to appoint a UK-based Only Representative. In this scenario, the GB business importing that chemical into the GB market, would be regarded as a downstream user and not as an importer. More details are available on the HSE guidance both for the NI business and the GB downstream user of a NI qualified good.



4.4 Case studies

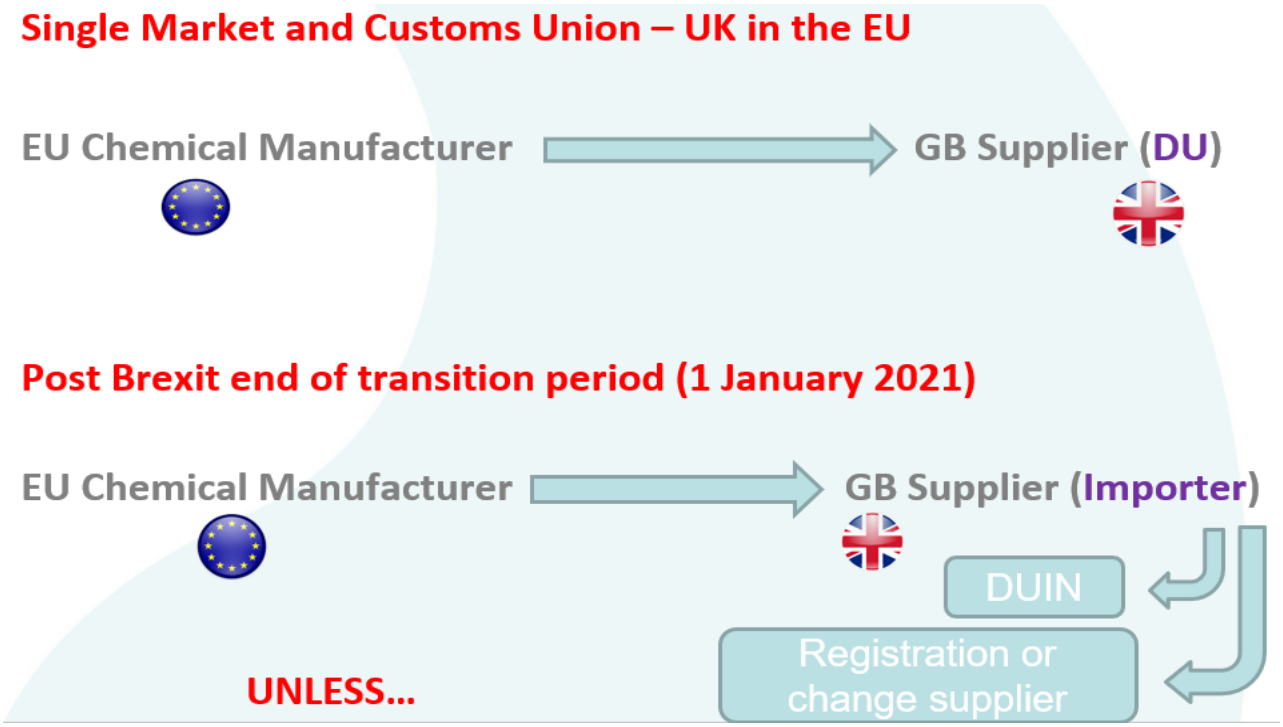
In the first case study, a GB supplier is sourcing a substance from an EU chemical manufacturer. Before Brexit, the GB company would have been a distributor under EU REACH, but under UK REACH this GB supplier becomes an importer, and therefore will have the corresponding registration obligations when placing the substance in the GB market.

However, if the EU Chemical Manufacturer decides to appoint a GB Only Representative, then the situation changes. If this is the case, the GB supplier would still be classed as an importer but would have the registration obligations fulfilled otherwise. Important to note that communication will be important in this scenario for the GB company, to be able to prove that the substance imported is covered under the OR registration. Therefore, the GB supplier can remain with the same responsibilities as a Downstream User.



Like in the previous scenario, in the next case study the GB supplier is obtaining a substance from an EU chemical manufacturer. The supplier might then be considered a distributor or downstream user, and therefore have no obligations under the registration side of REACH.

However, the UK exit from the EU and the introduction of the UK REACH framework mean that if the company would continue to obtain the substance from the EU supplier, then they would be changing their roles from Downstream user to Importer. As previous downstream users, companies have several options to ensure that they are fulfilling their legal responsibilities under the new importer role; these are outlined in Section 3.2 of this Guidance.



5. Trade

The UK/EU Trade and Cooperation Agreement (TCA) finalised the negotiations between the UK and the EU over the future relationship between the two parties, following the departure of the UK from the EU. The full agreement can be accessed here, and an official summary can be found here.

Companies might also find useful consulting the House of Commons Library report summarising the key points of the Agreement and how it is implemented in both the UK and the EU.

From the cosmetics sector point of view, the TCA's most relevant parts are those on trade in goods, rules of origin and technical barriers to trade. In particular for the latter, the TCA acknowledges each parties' freedom to regulate goods, with cooperation and sharing of information for dangerous and non-compliance goods.

Another important factor for trading with the EU is to consider that the UK left the EU Single Market and Customs Union. This means that free movement of goods ceases to apply, and EU/UK imports and exports must be dealt with as with any other third country. Please note however that special provisions apply in Northern Ireland under the NI Protocol, that allow NI to take advantage of a number of EU Single Market provisions as well as its position in the UK internal market.

The parts of this guidance concerning movement of goods, customs procedures, tariffs, rules of origin and any other relevant topics are outside of CTPA remit and expertise. The guidance links to public advice available from the UK Government, so that it can be more easily found; for any further help, CTPA advises companies to contact any other trade related stakeholders such as the Institute of Export and International Trade, or the UK Customs Academy.

5.1 Tariffs and Rules of Origin

The UK/EU TCA sets 0% tariffs for goods traded between the UK and the EU and originating from either party. This means that to benefit from the 0% tariffs, a product must be originating in either the EU or the UK, according to the rules of origin outlined in Annex ORIG-2 of the TCA. The below table lists the rules of origin applicable to cosmetic products; bilateral cumulation and accounting segregation are also in scope.

Chapter 33	**Essential oils and resinoids; perfumery, cosmetic or toilet preparations**
33.01	CTSH: A chemical reaction, purification, mixing and blending, production of standard materials, a change in particle size, isomer separation, or biotechnological processing is undergone; or MaxNOM 50% (EXW)
3302.10	CTH, however, non-originating materials of subheading 3302.10 may be used, provided that their total value does not exceed 20% of the EXW of the product
3202.90	CTSH: A chemical reaction, purification, mixing and blending, production of standard materials, a change in particle size, isomer separation, or biotechnological processing is undergone; or MaxNOM 50% (EXW)
33.03	Production from non-originating materials of any heading
33.04 - 33.07	CTSH: A chemical reaction, purification, mixing and blending, production of standard materials, a change in particle size, isomer separation, or biotechnological processing is undergone; or MaxNOM 50% (EXW)
Chapter 34	**Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster**
34.01-34.07	CTSH: A chemical reaction, purification, mixing and blending, production of standard materials, a change in particle size, isomer separation, or biotechnological processing is undergone; or MaxNOM 50% (EXW)

The TCA also provides a template that can be used by companies for their origin declaration. Further guidance on this topic is available here.

Tariffs will instead apply to products not originating from either the UK or the EU. The UK Global Tariff regime will apply to non-originating products imported into the UK; the EU tariffs under World Trade Organisation rules, the European Common Customs Tariff, will apply to non-originating products imported into the EU.

5.2 Customs Procedures

The UK Government set up specific step by step guidance for importing goods into the UK, and exporting goods from the UK when trading with the EU. Further guidance on the import and export procedures is available from Her Majesty's Revenue and Customs (HMRC) here.

5.3 GB/NI Trade

The Northern Ireland Protocol to the UK/EU Withdrawal Agreement doesn't only outline which EU regulations continue to apply in NI, but it also allows NI to take advantage of a number of EU Single Market provisions as well as its position in the UK internal market.

The NI Protocol facilitates trade between NI and the EU. In particular, there is no requirement for checks or customs processes, and tariffs for goods moving between NI and the EU.

As for movement of goods from NI into GB, unfettered access applies to qualifying goods in free circulation in NI:

- no import customs declarations or entry summary declarations as goods enter the rest of the UK from NI;
- no tariffs applied to NI goods entering the rest of the UK in any circumstances;
- no customs checks;
- however, cosmetic products entering the GB market from NI will have to comply with the requirements of the UK Cosmetics Regulation (please see section 3.5 of this guide); UK REACH may also apply.

The only limited exceptions when companies need to submit an export declaration for a movement of goods from NI to GB are if goods are:

- under a customs' special procedure in NI;
- in an authorised temporary storage facility;
- on a list of goods for which specific processes apply, based on specific international obligations binding on the UK and EU, that apply when you move goods from NI to GB.

Goods moving from GB into NI are instead subject to new processes, covering a new digital import declaration and a digital safety and security declaration. These processes, which will be administered by UK authorities in the form of HMRC and Border Force, are needed to make sure that:

- tariffs are not paid on trade within the UK;
- that NI can benefit from UK Free Trade Agreements with other third countries;
- traders moving goods destined for ROI and the EU (i.e.at a genuine and substantial risk of doing so) pay tariffs when they should.

The UK Government has established a new, free to use digital service. The Trader Support Service (TSS) helps UK businesses and traders of all sizes to navigate the changes to the way goods that came into effect on 1 January 2021.

TSS offers education and advice to help traders understand and prepare for the upcoming changes, provide support with declarations for goods moving from Great Britain to Northern Ireland and provide contact centre support.

The full HMRC guidance for trade between GB/NI/ROI is available here. It is extremely important for companies to familiarise with this information, to ensure as smooth as possible trade, but also benefit from simplified procedures and duty relief when applicable.

5.3.1 Regulatory Considerations

In order to sell cosmetic products to the NI market, products must comply with the EU Cosmetics Regulation and EU REACH; this is valid also for products sold online to NI consumers. For more information on compliance with the EU Cosmetics Regulation please check sections 1 and 2 of this document, as well as the CTPA Guide to Supplying Cosmetics to the EU and NI markets. For more information on compliance with the EU REACH Regulation please check sections 1 and 3 of this document.

5.4 GB/EU Trade

5.4.1 Regulatory Considerations

In order to sell cosmetic products to the EU market, products must comply with the EU Cosmetics Regulation and EU REACH; this is valid also for products sold online to EU consumers. For more information on compliance with the EU Cosmetics Regulation please check sections 1 and 2 of this document, as well as the CTPA Guide to Supplying Cosmetics to the EU and NI markets. For more information on compliance with the EU REACH Regulation please check sections 1 and 3 of this document.

Whilst the EU Cosmetics Regulation applies equally to all EU Member States and countries of the European Economic Area (EEA), additional local regulations might also apply in each Member States and EEA, which have to be considered before marketing a cosmetic product in a specific country.

Local requirements may cover aspects such as translation of labelling information, how non-pre-packaged products are sold, waste and recycling, customs clearance, advertising. To be able to navigate these specific requirements, it will be of importance to know who the competent government agencies, enforcement authorities, and local trade association are for that country. Local trade associations can help companies in these countries navigate the complexities of the EU framework as it applies.

Regarding the translation of labelling information, Article 19(5) of the EU Cosmetics Regulation gives a list of mandatory labelling information that has to be translated into the local language of the country where the product is sold, for both primary and secondary packs. These are:

- function of the product;
- warnings and precautions of use;
- directions of use;
- PAO or Best Before End date (as applicable).

The official translations for the obligatory warnings in Annex III of the EU Cosmetics Regulation, required when using certain restricted ingredients, are given in Annex III. The translation of these warnings can be taken from the national legislation or from the translated versions of the EU Cosmetics Regulation. Some EU Member States have more than one official languages; some EU Member States require more than the information listed above to be translated into their local language.

Furthermore, certain EU Member States have specific and strict import requirements when goods are imported from third countries. The UK, in respect of Great Britain, is now a third country to the EU, therefore this will apply to goods coming from GB. Notably, Spain, Italy and Portugal are among the countries with additional customs procedures for goods coming from third countries; therefore, for goods coming from GB (or any other third country) through EU customs in one of these Member States, these specific procedures will apply. These additional requirements are not related to product compliance, but measures set in place by the individual regulators with regards to in-market control activities. However, if goods clear customs in a different EU Member State, then the goods can move freely to all other EU Member States without any further checks (under free movement of goods within the EU Single Market).

CTPA members can find extensive details and advice on these matters in the CTPA Online Regulatory Resource, in the section of EU and EEA Countries Local Requirements.

5.4.2 Tariffs

Please refer to guidance in Section 5.1 of this document.

5.4.3 Customs Procedures

Please refer to guidance in Section 5.2 of this document.

6. Appendix

6.1 Useful Resources

Schedule 34 of the Product Safety and Metrology Statutory Instrument

OPSS Guide on Cosmetics

Northern Ireland Protocol to the UK/EU Withdrawal Agreement

EU Cosmetics Regulation 1223/2009

EU Commission technical notice on cosmetics

CTPA public guidance on supplying cosmetics to the GB and EU/NI markets

EU Blue Guide

EU REACH

EU Commission technical notice on REACH

UK REACH

HSE guidance on REACH

House of Commons Library report on the EU/UK Trade and Cooperation Agreement

Guidance on Rules of Origin

UK Global Tariff regime

European Common Customs Tariff

Guidance for importing goods into the UK

Guidance for exporting goods from the UK when trading with the EU

HMRC guidance for trade between GB/NI/ROI

6.2 Frequently Asked Questions

Q. Do cosmetic products made at home from a small company have to comply with the UK Cosmetics Regulation? And what about micro-businesses?
A. All products placed on the UK (or EU) market have to comply with the requirements of the Cosmetics Regulation, whether they are sold for a price or given out for free. Sole traders or micro-businesses making cosmetic products and selling them (or giving them away for free) under their own trademark or name must ensure that the products comply with the UK Cosmetics Regulation. Cosmetic products are used on our bodies and the strict safety rules are in place to ensure our consumers' safety. It is also good to remember that ignorance of the legislation is no defence in a court of law.

Q. If I am a company located in a third country, but I do not have a UK RP, what do I need to do to sell cosmetics in the UK (Great Britain)?
A. In order to legally sell cosmetic products to the UK market, in respect of Great Britain, full compliance with the UK Cosmetics Regulation is mandatory. A UK RP must be in place, with its name and address on the product's label, a notification in the Submit Cosmetic Products Notification Portal (SCPN), and all other mandatory requirements.

Q. Can a company outside of the UK appoint its own UK RP, despite having an importer?
A. Yes. The importer would automatically be considered the RP under the UK Cosmetics Regulation. However, the non-GB based brand owner can appoint or designated a preferred RP in the UK, which has to be mandated by the importer.

Q. Is the word 'mandate' a legal term? Is 'agreement' better suited?
A. Yes, the word 'mandate' is the legal term used in Article 4 of both the UK and EU Cosmetics Regulation. The mandate is a simple arrangement (e.g. letter exchange) shifting the RP role and responsibilities from one legal entity to another one (perhaps better suited). Also, the mandate can only be set in place between companies in the same area (GB to GB) and regulatory framework.

On the other side, an agreement can be any legal contract. It is generally used between a brand owner and a contract manufacturer, or an EU-based company and a UK-based third-party RP service provider, as examples.

Q. Is the concept of mandate also applicable in the EU?
A. Yes, the mandate concept is also found in Article 4 of the EU Cosmetics Regulation.

Q. What is the best practice if there is more than one importer into GB?
A. In this scenario, all 3 importers would be considered the RP by default under the UK Cosmetics Regulation. However, there can technically be only 1 RP. Therefore, the 3 importers will have to mandate the one designated RP (if possible).

Q. What are the differences in duties between a manufacturer and an importer?
A. A manufacturer is defined as a legal entity located in the UK and manufacturing cosmetic products which are then placed on the GB market under its own brand or trademark. An importer is defined as a legal entity located in the UK and placing products on the GB market from third countries (outside of the UK). Under the UKCR, both are automatically identified as the Responsible Person (RP) and therefore have the same obligations as per Article 5 of the UKCR. Only in the event where an importer cannot technically be the RP (because they don't have access to the Product Information File of the imported products), the importer shall mandate the RP role to another legal entity and therefore have different duties.

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. 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

Q. If an importer does not import directly from the brand owner, but another seller, how can the importer gain access to the Product Information File (PIF) to act as the Responsible Person (RP)?
A. Communication within the supply chain is extremely important. If an importer sources a product from another legal entity who is not the brand owner, the importer shall ensure to have access to the PIF via the brand owner further up in the supply chain; or ensure that the brand owner has already designated an RP in the market of import, so that the importer can mandate the designated RP to be responsible for compliance of the imported products.

Q. Does the RP need to have a specific qualification or technical background?
A. No, there is no specified qualification or skills requirements for the RP under the UK Cosmetics Regulation (nor the EU Cosmetics Regulation). The RP is generally a company, where technical expertise should be present. It is important to consider that, in the event of an inspection from Trading Standards, the RP will need to talk the authority through the Product Information File (PIF); it is therefore important for some regulatory and technical skilled staff to be present at the time of inspection.

Q. Can two RP addresses be displayed on one label?
A. Yes, two RP addresses of different markets can be on the label. There can only be one RP address per market 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).

Q. Is it still advised to underline an address if a label contains more than 1 address on pack?
A. Under Article 19 of the EU Cosmetics Regulation, it is required to underline the RP address only when there is more than one EU address on pack.

The same applies under the UK Cosmetics Regulation: Article 19 requires underlining the RP address only when there is more than one UK address on pack.

Therefore, if the pack has one UK address and one EU address, it is not mandatory to underline one or the other. The two addresses are for two completely separated RPs that fall under two completely separated regulatory frameworks. As the UK is no longer part of the EU, the EU would disregard any UK address; and vice versa, the UK would disregard any EU 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 products placed on the market before 1 January 2021 be sold through after the 2 years grace period for labelling ends? What about products placed on the market after 1 January 2021?
A. Products placed on the market before 1 January 2021 can continue to be sold through indefinitely, without the UK RP address. This is provided for under Article 41 of the UK/EU Withdrawal Agreement.

Products placed on the market after 1 January 2021, have a 2 years grace period to add the UK RP address and the country of origin (for imported products). Below is the extract of the legal text under the Article 19 of the UKCR:

"*for a period of two years beginning on the day after the day on which IP completion day falls, point (a)* – the RP name and address and country of origin for imported products - *is to be treated as satisfied where the requirements of Article 19(1)(a) of the EU Regulation (pre-exit) are complied with*;"

Q. Is the RP address needed on the primary and secondary packaging?
A. Yes, as is currently required under Article 19 of the EU Cosmetics Regulations and as it is 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. From an ingredients point of view, will the UK continue to follow the EU SCCS opinions and decisions?
A. The UK Cosmetics Regulation automatically adopts the Annexes of the EU Cosmetics Regulation, as implemented until 31 December 2020. From 1 January 2021, the UK follows its own ingredient management process, and any future implementation may differ from the EU.

Q. Does the person submitting notifications via the UK Submit Cosmetic Products Notifications (SCPN) portal have to be located in the UK?
A. No, the person submitting the notifications to the SCPN portal can be located in any country. However, the main RP account of the SCPN portal must be of a UK RP.

Q. Can you please clarify if only UK qualifications are recognised for a safety assessor?
A. No, also non-UK qualified safety assessors can carry out the safety assessment of a product placed on the GB market. However, their qualification has to be recognised as equivalent in the UK.

Q. How will non-UK safety assessors qualifications be recognised in the UK?
It is the responsibility of the Responsible Person to ensure that the safety assessment is carried out by a suitably qualified safety assessor that meets the criteria set out in Article 10 (2). There is not (and never has been) a formal recognition process or specific qualification awarded by the EU or UK regulators.