

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 000

EXITING THE EUROPEAN UNION

AGRICULTURE

HEALTH AND SAFETY

**The Fertilisers and Ammonium Nitrate Material (Amendment)
(EU Exit) Regulations 2019**

Made - - - - *****

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by—

- (a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);
- (b) in relation to Part 2, section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(a);
- (c) in relation to Parts 3 and 4, section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to—

- (a) materials providing or intended to provide nutrients for plants(c);
- (b) regulation and control of classification, packaging and labelling of dangerous substances and preparations(d).

(a) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.

(b) 2018 c. 16.

(c) S.I. 2001/3919, to which there is an amendment not relevant to these Regulations.

(d) S.I. 1976/897, to which there is an amendment not relevant to these Regulations.

In accordance with paragraph 2(2) of Schedule 2 to the 1972 Act and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019.

(2) They come into force as follows—

- (a) as regards this Part and Part 2, on the day after the day on which they are made;
- (b) as regards the remainder, on exit day.

PART 2

Amendment of out of date references

The Fertilisers Regulations 1991

2.—(1) The Fertilisers Regulations 1991(a) are amended as follows.

(2) Omit regulations 1A and 2.

(3) Before regulation 3 insert—

“Scope: “EC fertilisers”

2A. These Regulations do not apply to fertilisers designated as “EC fertilisers”.

(4) In regulation 3—

- (a) in the heading omit “not designated as EEC fertilisers or EC fertilisers”;
- (b) renumber the existing regulation as paragraph (1) of regulation 3;
- (c) omit the words from “, not being designated” to “EC fertiliser,”.

(5) In regulation 3A—

- (a) renumber the existing regulation as paragraph (2) of regulation 3;
- (b) omit the words from “, not being designated” to “EC fertiliser,”.

(6) In regulation 4(4) and (5) omit the words from “, not being designated” to “EC fertilisers,”.

(7) In the following regulations omit the words from “, not being designated” to “EC fertiliser,”—

- (a) regulation 7(b) and (c);
- (b) regulation 9(b) and (c).

(8) In regulation 10(1), in the words before paragraph (a), for the words from the beginning to “as respects” substitute “As respects”.

(9) Omit regulation 11.

(10) Schedule 1 is amended in accordance with paragraphs (11) to (13).

(a) S.I. 1991/2197, amended by S.I. 1995/16, 1998/2024, 2011/1043; there is another amending instrument but it is not relevant.

(11) In the following paragraphs omit the words from “, not being designated” to “EC fertilisers,”—

- (a) paragraph 6;
- (b) paragraph 7(a)(i) and (b).

(12) In Section B of the table, in column (4), in the table relating to nitrogen, in each place it occurs—

- (a) omit the column headed “EC fertiliser”;
- (b) in the second column, for “Other than EEC fertilisers or EC fertiliser” substitute “Fertiliser”.

(13) In Section C of the table, in group 2, in column (4), in each place they occur, omit—

- (a) “EC fertiliser”;
- (b) “Other than EEC fertilisers or EC fertiliser”.

(14) Schedule 2 is amended in accordance with paragraphs (15) and (16).

(15) In Part 1, in paragraph 1—

- (a) omit sub-paragraph (a);
- (b) in sub-paragraph (i) omit the words from the beginning to “EC fertilisers,”;
- (c) in sub-paragraph (k), in the second sentence omit the words from “, sold” to “EC fertiliser,”.

(16) In Part 2, in paragraph 2 omit the words from the beginning to “EC fertiliser,”.

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

3. In Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003(a), in paragraph 12, in notes 1 and 2, for the words from “Annex II” to “87/94/EEC” substitute “Annex 3 to Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers(b)”.

The EC Fertilisers (England and Wales) Regulations 2006

4.—(1) The EC Fertilisers (England and Wales) Regulations 2006(c) are amended as follows.

(2) In the following regulations, for “National Assembly for Wales”, in each place it occurs, substitute “Welsh Ministers”—

- (a) regulation 10;
- (b) regulation 14;
- (c) regulation 19.

(3) In regulation 10—

- (a) in paragraph (2), for “it” substitute “they”;
- (b) in paragraph (3), for “it” substitute “them”.

(4) Omit regulation 16.

(5) In regulation 17(c), for “33” substitute “30”.

(a) S.I. 2003/1082, to which there are amendments not relevant to these Regulations.

(b) OJ No L 304 21.11.2003, p 1, as last amended by Commission Regulation (EU) 2016/1618 (OJ No L 242, 9.9.2016, p 24).

(c) S.I. 2006/2486, amended by S.I. 2011/1043.

PART 3

Amendment of retained direct EU legislation

Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers

5.—(1) Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers is amended as follows.

(2) In the Regulation—

- (a) for “EC fertiliser”, in each place it occurs, substitute “UK fertiliser”;
- (b) for “EC fertilisers”, in each place it occurs, substitute “UK fertilisers”;
- (c) for “European standard” or “European Standard”, in each place it occurs, substitute “recognised standard”;
- (d) for “European Standards”, in each place it occurs, substitute “recognised standards”.

(3) In Article 2—

- (a) the existing text becomes paragraph 1;
- (b) in that paragraph—
 - (i) in point (r), for “Community legislation” substitute “retained EU law”;
 - (ii) for point (t) substitute—

“(t) ‘Recognised standard’ means either of the following standards:

- (i) CEN (European Committee for Standardisation);
- (ii) BSI (the British Standards Institution).”;
- (iii) in point (w), for “customs territory of the European Community” substitute “United Kingdom”;
- (iv) after point (x) insert—

“(y) “Appropriate authority” means:

- (i) in relation to a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, the Secretary of State;
- (ii) in relation to a decision in respect of other fertilisers:
 - in relation to England, the Secretary of State;
 - in relation to Wales, the Welsh Ministers;
 - in relation to Scotland, the Scottish Ministers;
 - in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(z) “Enforcement authority” means:

- (i) in England and Wales, an enforcement authority specified in regulation 11 of the EC Fertilisers (England and Wales) Regulations 2006;
- (ii) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(a);
- (iii) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(z1) “Relevant authority” means:

- (i) in relation to Wales, the Welsh Ministers;
- (ii) in relation to Scotland, the Scottish Ministers;

(a) 1994 c. 39.

- (iii) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”;
- (c) after that paragraph insert—
 - “2. References in this Regulation to devolved competence are to be read in accordance with the following provisions:
 - (a) it is outside devolved competence to make any provision by subordinate legislation which would be outside the legislative competence of:
 - (i) in relation to Wales, the National Assembly for Wales if it were included in an Act of the Assembly (see section 108A of the Government of Wales Act 2006(a));
 - (ii) in relation to Scotland, the Scottish Parliament if it were included in an Act of the Parliament (see section 29 of the Scotland Act 1998(b));
 - (iii) in relation to Northern Ireland, the Northern Ireland Assembly if it were included in an Act of the Assembly (see section 6 of the Northern Ireland Act 1998(c));
 - (b) in the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or to exercise it in a particular way) if or to the extent that:
 - (i) in relation to Wales, a provision of an Act of the National Assembly for Wales conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly;
 - (ii) in relation to Scotland, a provision of an Act of the Scottish Parliament conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Parliament;
 - (iii) in relation to Northern Ireland, a provision of an Act of the Northern Ireland Assembly conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.”.
- (4) In Article 4, for “Community” (including in the heading) substitute “United Kingdom”.
- (5) Omit Article 5.
- (6) In Article 6—
 - (a) in paragraph (1), in the first subparagraph, in the words before point (a)—
 - (i) for the words from the beginning to “may” substitute “Nothing in this Regulation prevents the appropriate authority, in order to satisfy the requirements of Article 9, from using any power the appropriate authority has to”;
 - (ii) for “their market” substitute “the market”;
 - (b) in paragraph (2), in the first subparagraph, in the words before point (a)—
 - (i) for “Member States may” substitute “Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;
 - (ii) for “their markets” substitute “the market”;
 - (c) in paragraph (3), for “Member States” substitute “The appropriate authority”.
- (7) In Article 8, in the second sentence, for “Member States” substitute “the enforcement authority”.
- (8) In Article 9—
 - (a) in paragraph 1, in the first subparagraph, in the words before point (a) omit “Without prejudice to other Community rules,”;

(a) Section 108A was substituted, for section 108 as originally enacted, by the Wales Act 2017 (c. 4), section 3(1) and amended, from a date to be appointed, by the European Union (Withdrawal) Act 2018, section 12(3).

(b) Section 29 was amended by the Scotland Act 2012 (c. 11), section 9(2) and S.I. 2011/1043.

(c) 1998 c. 47. Section 6 was amended, from a date to be appointed, by the European Union (Withdrawal) Act 2018, section 12(5) and was amended by S.I. 2011/1043.

(b) for paragraph 4 substitute—

“4. The Secretary of State may make regulations in relation to the application of this Article.”.

(9) In Article 11, for the words from “at least” to the end substitute “English and may also appear in other languages”.

(10) In Article 15—

(a) in paragraph 1—

(i) in the first sentence—

(aa) for “a Member State” substitute “the appropriate authority”;

(bb) for “it may” substitute “nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;

(ii) for the second sentence substitute—

“Except in the case of a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, the appropriate authority shall immediately inform the other appropriate authorities, giving the reasons for the decision.”;

(b) for paragraph 2 substitute—

“2. The Secretary of State may, by regulations, in relation to a fertiliser which has been temporarily prohibited from the market under paragraph 1:

(a) amend Annex 1 to impose special conditions in relation to the fertiliser, or

(b) remove the fertiliser from Annex 1.

2A. Regulations under paragraph 2 must be made as soon as reasonably practicable—

(a) after the date of receipt of the information referred to in paragraph 1, or

(b) where there is no such information, after the date on which the temporary prohibition begins or special conditions are imposed, as the case may be.

2B. Except in the case of a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, if a decision is made not to make regulations under paragraph 2, the Secretary of State must immediately inform the other appropriate authorities. After the date of a decision not to make regulations under paragraph 2, the prohibition or special conditions imposed under paragraph 1 no longer have effect.”;

(c) in paragraph 3, for “Commission or by a Member State” substitute “appropriate authority”.

(11) In Article 26(3), in the second sentence, for “Member States” substitute “the enforcement authority”.

(12) In Article 27—

(a) in the first sentence, for “EC” substitute “UK”;

(b) in the second sentence omit “or 33(1)”;

(c) in the third sentence—

(i) for “competent authority of the Member State concerned” substitute “appropriate authority”;

(ii) for “European Community” substitute “United Kingdom”.

(13) In Article 29—

(a) in paragraph 1—

(i) in the first subparagraph, for “Member States may” substitute “Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;

- (ii) in the second subparagraph, for “Member States may” substitute “Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;
- (b) in paragraph 2, for “Member States” substitute “The enforcement authority”;
- (c) in paragraph 4—
 - (i) in the first sentence, for “Commission shall” substitute “Secretary of State may, by regulations,”;
 - (ii) omit the second sentence;
 - (iii) in the third sentence, for the words from “same procedure” to “needed to” substitute “Secretary of State may, by regulations,”;
 - (iv) in the fourth sentence, for “Such rules” substitute “Regulations”.
- (14) In Article 30—
 - (a) in paragraph 1—
 - (i) in the first sentence, for the words from “Member States” to “territories” substitute “The Secretary of State must publish a list of approved laboratories”;
 - (ii) omit the third sentence;
 - (b) omit paragraph 2;
 - (c) in paragraph 3—
 - (i) in the first sentence—
 - (aa) for “a Member State” substitute “the Secretary of State”;
 - (bb) for the words from “it shall raise” to the end substitute “the Secretary of State must remove the name from the list referred to in that paragraph”;
 - (ii) omit the second sentence;
 - (d) after paragraph 3 insert—

“3A. The Secretary of State may only act under this Article with the consent of each person who is a relevant authority.”;
 - (e) omit paragraphs 4 and 5.

- (15) In Article 31—
 - (a) at the end of the heading insert “and technical adaptations”;
 - (b) in paragraph 1, for “Commission shall” substitute “Secretary of State may, by regulations,”;
 - (c) in paragraph 2, for the words from “the technical documents” to the end substitute “any relevant guidance and the provisions of Regulation (EC) No 1907/2006”;
 - (d) in paragraph 3, for “Commission shall” substitute “Secretary of State may, by regulations,”;
 - (e) omit paragraph 4.
- (16) For Article 32 substitute—

“Article 32

Regulations

1. Regulations made under this Regulation are to be made by statutory instrument.
2. Any power to make regulations conferred by this Regulation is the power to make regulations in relation to the whole of the United Kingdom.
3. Except in relation to regulations in respect of ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, the Secretary of State may not make regulations under this Regulation without the consent of each person who is a relevant authority.

4. Except in relation to regulations in respect of ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, where any of the relevant authorities requests that the Secretary of State make regulations under this Regulation, the Secretary of State must have regard to that request.
 5. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
 6. Such regulations may—
 - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
 - (b) make different provision for different purposes.”.
- (17) Omit Chapter 2 of Title 4.
- (18) In Article 35—
- (a) omit paragraph 1;
 - (b) in paragraph 2—
 - (i) for “the Directives repealed” substitute “Directives 76/116/EEC, 77/535/EEC, 80/876/EEC and 87/94/EEC”;
 - (ii) omit the second and third sentences.
- (19) Omit Articles 36 to 38.
- (20) After Article 38 omit the words from “This Regulation” to “Member States.”.
- (21) In Annex 1—
- (a) in Section A.2, in the table, in item 1, in column 6, in the third paragraph, after “the Netherlands” insert “Iceland, Liechtenstein, Norway”;
 - (b) in Sections B.1, B.2 and B.4, for “for fertilisers based on Thomas slag: solubility (6a) (France, Italy, Spain, Portugal, Greece, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, Bulgaria, Romania), (6b) (Germany, Belgium, Denmark, Ireland, Luxembourg, Netherlands, United Kingdom and Austria)” substitute “for fertilisers based on Thomas slag: solubility (6b)”;
 - (c) in E.3, for “requirements of Council Directive 67/548/EEC” substitute “provisions of Regulation (EC) No 1272/2008”.
- (22) In Annex 3, in paragraph 1.6, in the first subparagraph, for “the Committee” substitute “this Regulation”.
- (23) In Annex 4, in Section A, in the following provisions, for “Member States” substitute “appropriate authority”—
- (a) paragraph 2;
 - (b) paragraph 4.1, the second sentence.
- (24) In Annex 5—
- (a) omit Section A;
 - (b) in section B, in paragraph 1 omit the second indent.

The EEA agreement

6. In Annex 2 to the EEA agreement, in Chapter 14 (fertilisers), in point 1 omit the words from “The provisions of the Regulation shall” to the end.

PART 4

Amendment of primary and secondary legislation

The Agriculture Act 1970

7. In section 74A(4) of the Agriculture Act 1970(a), for “implementing or supplementing any EU instrument” substitute “supplementing retained direct EU legislation”.

The Fertilisers Regulations 1991

8.—(1) The Fertilisers Regulations 1991 are amended as follows.

(2) In regulation 2A, in the heading and in the regulation, for “EC” substitute “UK”.

(3) After regulation 2A insert—

“Scope: “EC fertilisers”

2B. These Regulations do not apply to fertilisers designated as “EC fertilisers” which comply with the requirements set out in Regulation (EC) No 2003/2003(b) as it has effect in EU law as amended from time to time, where those fertilisers are placed on the market before the end of the period of two years beginning with exit day.”.

(4) In Schedule 2, in Part 1, in paragraph 1(j), for “European Union” substitute “United Kingdom”.

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

9.—(1) The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 are amended as follows.

(2) In regulation 2(2)—

(a) in the definition of “batch”—

(i) in paragraph (a), in the words before sub-paragraph (i), omit the words from “which is” to the end;

(ii) omit paragraph (b);

(b) in the definition of “competent laboratory”, in paragraph (a), for “European Union” substitute “United Kingdom”.

(3) In regulation 4—

(a) in paragraph (1) omit “from within the European Union”;

(b) in paragraph (2)—

(i) in the words before sub-paragraph (a) omit “from outside the European Union”;

(ii) omit sub-paragraphs (a) and (b);

(iii) in sub-paragraph (c), for “each such” substitute “a”;

(c) in paragraph (5)—

(i) in sub-paragraph (a) omit the words from the beginning to “Union,”;

(ii) omit sub-paragraph (b) (together with the preceding “and”).

(4) In regulation 5—

(a) omit paragraph (1)(b) (together with the preceding “and”);

(a) 1970 c. 40. Section 74A was inserted by the European Communities Act 1972, Schedule 4, paragraph 6; subsection (4) was amended by S.I. 2011/1043.

(b) OJ No L 304, 21.11.2003, p 1, as last amended by Commission Regulation (EU) 2016/1618 (OJ No L 242, 9.9.2016, p 24).

- (b) in paragraph (2) omit “from outside the European Union”;
- (c) in paragraph (3), in the words after paragraph (b) omit “, where the material has been imported from outside the European Union.”;
- (d) in paragraph (9)(c) omit “, if applicable,”, in the first place it occurs.
- (5) In regulation 9(5)(a), for “European Union” substitute “United Kingdom”.
- (6) After regulation 12 insert—

“Transitional provision

13.—(1) This regulation applies to relevant ammonium nitrate material imported into Great Britain from within the European Union, where that material is imported into Great Britain before the end of the period of two years beginning with exit day.

(2) In regulation 2(2)(a), the definition of “competent laboratory” applies as if the reference to the United Kingdom were a reference to the United Kingdom and the European Union.

(3) Regulation 4(2)(c) does not apply.”.

- (7) In Schedule 3, in the words before sub-paragraph (a) omit “outside the European Union”.

The EC Fertilisers (England and Wales) Regulations 2006

10.—(1) The EC Fertilisers (England and Wales) Regulations 2006 are amended as follows.

(2) In regulation 3—

(a) in the heading, for “EC” substitute “UK”;

(b) in paragraph (1)—

(i) in the words before sub-paragraph (a), for “an “EC” substitute “a “UK”;

(ii) in sub-paragraph (b), for “European Union” substitute “United Kingdom”.

(3) In regulation 4(a), for “an “EC fertiliser”” substitute “a UK fertiliser”.

(4) In regulation 5—

(a) in the heading, for “EC” substitute “UK”;

(b) in paragraphs (1), (2) and (3), in the words before sub-paragraph (a), for “an EC” substitute “a UK”.

(5) In regulations 6(a), 7(a) and 8(a), for “an EC” substitute “a UK”.

(6) Omit regulation 12(2)(b) (together with the preceding “and”).

(7) In regulation 17(a)(ii) omit “paragraphs (2) or (5) of”.

(8) In regulation 18(1), for “an EC” substitute “a UK”.

Name
Minister of State

Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in part in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union. They are also made in part to amend domestic legislation that is out of date.

Part 2 makes amendments to provisions in secondary legislation on fertilisers and ammonium nitrate material that are out of date. Regulation 2 amends the Fertilisers Regulations 1991 (S.I. 1991/2197) to remove references to EEC fertilisers and EC fertilisers, since the EU fertilisers regime is dealt with in other legislation. Regulation 3 amends the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 (S.I. 2003/1082) and regulation 4 amends the EC Fertilisers (England and Wales) Regulations 2006 (S.I. 2006/2486).

The remainder of the Regulations makes amendments arising from the withdrawal from the European Union to legislation regulating fertilisers and ammonium nitrate material. Part 3 amends retained direct EU legislation and Part 4 amends primary and secondary legislation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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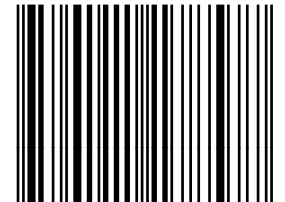
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