

EXPLANATORY MEMORANDUM TO
THE FERTILISERS AND AMMONIUM NITRATE MATERIAL (AMENDMENT)
(EU EXIT) REGULATIONS 2021

2021 No. 207

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Fertilisers and Ammonium Nitrate Material (EU Exit) Regulations 2019 (“S.I. 2019/601”) in light of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the Protocol”) to reflect the continued application of the EU law version of Regulation (EC) No 2003/2003 on fertilisers (“Regulation (EC) No 2003/2003”) in Northern Ireland. S.I. 2019/601 replaces the “EC fertiliser” regime provided for in the EU law version of Regulation (EC) No 2003/2003 with a new UK-wide “UK fertiliser” regime which will function in the same way. The Protocol sets out that certain provisions of Union law listed in the Protocol shall apply under certain conditions in the United Kingdom in respect of Northern Ireland. Regulation (EC) No 2003/2003 is listed at Annex 2 of the Protocol.
- 2.2 This instrument also applies the provisions of the retained EU law version of Regulation (EC) No 2003/2003, as it applies in England and Wales and Scotland, to Northern Ireland subject to modifications. This will enable the marketing of “UK fertilisers” in Northern Ireland. Regulation (EC) No 2003/2003 as it has effect in EU law will continue to apply in Northern Ireland by virtue of the Protocol.

Explanations

What did any relevant EU law do before exit day?

- 2.3 Regulation (EC) No 2003/2003 lays down rules on the designation, definition, composition, identification and packaging of ‘EC fertilisers’ which can be freely traded throughout the EU.

Why is it being changed?

- 2.4 If S.I. 2019/601 were to remain unchanged, the retained EU law version of Regulation (EC) No 2003/2003 would appear to apply in Northern Ireland as it would include references to Northern Ireland bodies, but despite those references it would only apply in Great Britain by virtue of the combined effects of sections 3 and 7A of the European Union (Withdrawal) Act 2018 (“the 2018 Act”). This instrument is also required to enable the marketing in Northern Ireland of “UK fertilisers”.

What will it now do?

- 2.5 This instrument amends S.I. 2019/601 to reflect the continued application in Northern Ireland of the EU law version of Regulation (EC) No 2003/2003 and the “EC fertiliser” regime. The S.I. also enables the marketing of “UK fertilisers” in Northern Ireland by applying the provisions of the retained EU law version of Regulation (EC) No 2003/2003, as it applies in England and Wales and Scotland, to Northern Ireland subject to modifications. This is without prejudice to the application in Northern Ireland of the EU law version of Regulation (EC) No 2003/2003 which will continue to apply by virtue of the Protocol.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 As set out above, under the Protocol, the EU law version of Regulation (EC) No 2003/2003 and the “EC fertiliser” regime that it provides for will continue to apply in Northern Ireland after the end of the Transition Period. By virtue of the combined effect of sections 3 and 7A of the 2018 Act, the retained EU law version of Regulation (EC) No 2003/2003 will not apply to Northern Ireland. This is because section 7A of the 2018 Act has the effect that a provision of EU law which continues to have effect in Northern Ireland by virtue of the Protocol is “recognised and available in domestic law” and section 3 of the 2018 Act provides that EU legislation which has effect by virtue of section 7A is not retained EU law. This instrument is made under section 8C(1)(c) of the 2018 Act, which provides that regulations may make provision for “the purpose of dealing with matters arising out of, or related to, the Protocol”. To that end: (a) regulation 2 of this instrument amends the retained EU law version of Regulation (EC) No 2003/2003 to remove NI-specific references to reflect its GB application; and (b) regulation 3 applies the provisions of the retained EU law version of Regulation (EC) No 2003/2003 to Northern Ireland, subject to modifications, in order to enable “UK fertilisers” to be marketed in Northern Ireland.

This instrument will come into force on the day after the day on which it is made. As set out below, it amends legislation already made to ensure that it functions as intended and does not place any new obligations on business.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 The powers under which this instrument is made cover the entire UK (see in particular section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is set out in paragraph 4.2.

4. Extent and Territorial Application

- 4.1 The territorial extent of regulation 2 of this instrument is the United Kingdom. The territorial extent of regulation 3 of this instrument is Northern Ireland.
- 4.2 The territorial application of regulation 2 of this instrument is Great Britain. The territorial application of regulation 3 of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister Victoria Prentis has made the following statement regarding Human Rights:

“In my view the provisions of the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 S.I. 2019/601 was made to address failures of retained EU law to work effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. Under the Protocol, the EU law version of Regulation (EC) No 2003/2003 and the “EC fertiliser” regime that it provides for will continue to apply in Northern Ireland after the end of the Transition Period. By virtue of the combined effect of sections 3 and 7A of the 2018 Act, the retained EU law version of Regulation (EC) No 2003/2003 will not apply to Northern Ireland. Regulation 2 of this instrument reflects this by removing references to Northern Ireland which are no longer relevant from the retained EU law version of Regulation (EC) 2003/2003, such as in the definitions of “appropriate authority”, “enforcement authority” and “relevant authority”, each of which have various functions under the new “UK fertiliser” regime.
- 6.2 In order to enable “UK fertilisers” to also be placed on the market in Northern Ireland after the end of the Transition Period, regulation 3 applies the provisions of the retained EU law version of Regulation (EC) No 2003/2003 to Northern Ireland subject to modifications. It provides for Northern Ireland bodies to exercise various functions in respect of “UK fertilisers” in Northern Ireland. This is without prejudice to the application in Northern Ireland of the “EC fertiliser” regime under the EU law version of Regulation (EC) No 2003/2003 which will continue to apply by virtue of the Protocol.

7. Policy background

What is being done and why?

- 7.1 Fertilisers are partially harmonised at EU level, meaning that Member States can operate their own domestic regulatory regimes alongside the “EC fertiliser” regime provided for in the EU law version of Regulation (EC) No 2003/2003. Alongside the “EC fertiliser” regime, Great Britain and Northern Ireland have operated separate regulatory regimes under the Fertilisers Regulations 1991 and the Fertilisers Regulations (Northern Ireland) 1992 respectively.
- 7.2 The “UK fertiliser” regime provided for in S.I. 2019/601 would have replaced the “EC fertiliser” regime and would have operated across the whole of the UK from the end of the Transition Period. S.I. 2019/601 was made in February 2019 before the Protocol was agreed. As a consequence of the Protocol, the EU law version of Regulation (EC) No 2003/2003 and the “EC fertiliser” regime it provides for will continue to apply in Northern Ireland and the “UK fertiliser” regime provided for in the retained EU law version of Regulation (EC) No 2003/2003 will not apply there. This instrument applies the provisions of the retained EU law version of Regulation (EC) No 2003/2003 to Northern Ireland, subject to modifications, in order to enable “UK fertilisers” to be marketed in Northern Ireland.

- 7.3 Manufacturers who currently market “EC fertilisers” in Great Britain and in Northern Ireland will need to be established in the EU to continue to market “EC fertilisers” in Northern Ireland after the end of the Transition Period. A common route to market across the UK for fertilisers is required so that a manufacturer in Great Britain who only trades in the UK can market products across Great Britain and Northern Ireland and use one label to do this. Failure to provide for this may result in a reduction in the supply of fertiliser products to Northern Ireland from manufacturers who are established in Great Britain and who are unable to place “EC fertilisers” on the market after the end of the Transition Period. It is therefore necessary to ensure that “UK fertilisers” can be marketed in both Great Britain and in Northern Ireland. This instrument will enable “UK fertilisers” to be marketed in Northern Ireland, alongside “EC fertilisers” regulated under the EU law version of Regulation (EC) No 2003/2003 as it applies by virtue of the Protocol, and fertilisers marketed in Northern Ireland under the domestic regime provided for in the Fertiliser Regulations (Northern Ireland) 1992.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made under the power in section 8C of the European Union (Withdrawal) Act 2018 to deal with matters arising out of, or related to, the Protocol.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 The Devolved Administrations have been consulted and have consented to this instrument.

11. Guidance

- 11.1 Guidance for manufacturers and importers of fertilisers will be published on the gov.uk website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the regulations are intended to ensure that the instrument they amend functions as originally intended.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 As set out in Section 12.3 above and elsewhere in this Explanatory Memorandum, this instrument amends legislation already made to ensure that it functions as intended and does not place any new obligations on business. It will not therefore have any disproportionate impact on small businesses.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 William Brown at the Department for Environment, Food and Rural Affairs
Telephone: 020 822 56586 or email: william.brown@defra.gov.uk can be contacted with any queries about the instrument.
- 15.2 Karen Lepper, Deputy Director for the Fertiliser Policy area, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.