

**EXPLANATORY MEMORANDUM TO**  
**THE FERTILISERS AND AMMONIUM NITRATE MATERIAL (AMENDMENT)**  
**(EU EXIT) REGULATIONS 2018**

**2018 No. XXXX**

**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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

**2. Purpose of the instrument**

- 2.1 This instrument amends legislation relating to fertilisers, addressing failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”). They also in part amend domestic legislation that is out of date.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 Regulation EC No 2003/2003 of the European Parliament and of the Council relating to fertilisers (“the EU Regulation”) laid 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?

- 2.3 After exit, without amendment the relevant EU law would not operate properly and it would disrupt the trade in fertilisers currently authorised under EU law. Changes must be made to maintain fertiliser standards in UK law and provide continuity to the sector and security of supply for farmers.

What will it now do?

- 2.4 This instrument will replace the ‘EC fertiliser’ regime in EU law with a new domestic regime, providing for a ‘UK fertiliser’ label which will function in the same way. It will also allow a two year transitional period during which ‘EC fertilisers’ can still be sold in the UK without a requirement to be relabelled, to ensure continued supply and reduce burdens on businesses.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees*

- 3.1 This instrument is being laid for sifting under the European Union (Withdrawal) Act 2018.

*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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the UK, though different provisions have different extent depending on the extent of the legislation that is the subject of amendment.
- 4.2 The territorial application of this instrument is the UK, though different provisions have different application depending on the application of the legislation that is the subject of amendment.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The EU Regulation sets out the rules which apply to fertilisers which are designated as ‘EC fertilisers’ and which can circulate freely in the EU. Fertilisers are partially harmonised in that it is permissible for Member States to have domestic regimes in addition to the EU rules. The domestic regime for the UK is set out in the Fertilisers Regulations 1991 (S.I. 1991/2197) (for Great Britain) and the Fertilisers Regulations (Northern Ireland) 1992 (S.R 1992/187). In addition, there are specific domestic rules concerning ammonium nitrate material.
- 6.2 As a result of exit, corrections are required to the EU Regulation to convert the EU regime into a UK one, with a new label of ‘UK fertiliser’. This also requires amendment to the related domestic regulations which currently enforce the EU Regulation (for England and Wales, the EC Fertilisers (England and Wales) Regulations 2006 (S.I. 2006/2486)). Finally, amendment to the domestic regime is also required to reflect these changes.
- 6.3 In addition, there are some changes to out of date references in the domestic legislation. These need to be amended to ensure clarity for users of the legislation.
- 6.4 Provisions concerning the exercise by UK bodies of functions currently exercised by EU entities (including making an instrument of a legislative character) will be set out in a separate instrument to follow the laying of this instrument, together with a provision relating to fees and an amendment to a power in primary legislation to legislate regarding fertilisers.

**7. Policy background**

*What is being done and why?*

- 7.1 Rules and requirements around the manufacturing and marketing of fertilisers in the UK are currently partially harmonised with the EU. This means there are two frameworks - a domestic framework and an EU framework - under which manufacturers can choose to market their products.

- 7.2 This instrument makes amendments to the relevant pieces of domestic and EU legislation to allow them to operate properly after exit. For example, references to Member States and the EU Commission are amended to refer instead to UK bodies; and a requirement as to the language to be used on labels is also amended. There are also amendments to the domestic regime, in particular to remove out of date references to ‘EEC fertilisers’ and ‘EC fertilisers’.
- 7.3 In addition, the instrument allows EC fertilisers to continue to be sold in the UK for a time-limited (2 year) transitional period, without the need for relabelling. This is to ensure business continuity and predictability for manufacturers and distributors, as well as for farmers.
- 7.4 The instrument also amends the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 (S.I. 2003/1082). These regulate fertilisers with high nitrogen content, since they can be adapted for use as an improvised explosive and are potentially fatal if mishandled in manufacture, transport or storage. The instrument ensures that all ammonium nitrate fertilisers are subject to these rules. In particular, all imports will require production run detonation resistance tests.
- 7.5 Fertilisers are a devolved matter in Scotland and Wales and a transferred matter in Northern Ireland. However, decisions regarding ammonium nitrate are reserved in Great Britain insofar as the subject matter of those decisions relates to health and safety and in Northern Ireland insofar as it relates to explosives. The corrections being made by this instrument to the fertilisers domestic and EU legislation provide for a common UK approach. This will ensure a consistent and clear policy, without the need for a different set of rules for each Devolved Administration. It has been agreed that the Secretary of State will be empowered to make regulations with regard to devolved/ transferred fertilisers for the United Kingdom with the consent of the Devolved Administrations.
- 7.6 This instrument applies to fertilisers which are (other than as set out in the previous paragraph) a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument is also made under paragraph 21(b) of Schedule 7 to that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 and section 15(1) and (2) of, and paragraph 2(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974. These relate to the amendments to out of date references in domestic legislation.

## **9. Consolidation**

9.1 This instrument is not consolidating any provisions.

## **10. Consultation outcome**

10.1 This instrument was not subject to formal consultation. However, there were discussions with key stakeholders (the fertiliser manufacturers' representative body (the Agricultural Industries Confederation) and the farmers' representative body (the National Farmers' Union) about their concerns regarding exit in relation to fertiliser policy. Their main concerns were that there should be uninterrupted fertiliser supply and no added cost burdens to manufacturers and importers. This has been addressed through allowing for a time-limited adjustment period for relabelling.

10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

## **11. Guidance**

11.1 A Technical Notice has been 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 instrument relates to the maintenance of existing regulatory standards and no significant impacts are expected. There will be a suitable time-limited period during which 'EC fertilisers' can be placed on the UK market as now, to ensure continued supply and minimise disruption.

12.4 In a scenario where an agreement with the EU is not reached, UK manufacturers of fertilisers would need to comply with the EU Regulation if they want to continue exporting to the EU after exit day, which means that they will need to send samples to EU laboratories for testing. This change is a result of EU exit, not because of changes made by this instrument. UK laboratories will still be recognised as competent testing bodies under UK law.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No disproportionate impacts are expected to affect small and micro businesses. No specific action is proposed to minimise regulatory burdens on small businesses.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is that Defra and its agencies, as well as the Devolved Administrations in relation to devolved matters, will monitor and review

the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

- 14.2 In respect of provisions in Part 2 of the instrument, the Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, George Eustice MP has made the following statement. The Minister considers that inserting a review provision is not appropriate, because there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). It would not be proportionate to undertake a review, given the costs of doing so and the limited scope for change, particularly in relation to out of date references.
- 14.3 In respect of provisions of this instrument which are made under the European Union (Withdrawal) Act 2018, no review clause is required.

## **15. Contact**

- 15.1 Henry Webber at Defra Telephone: 020 8026 9863 or email: [henry.webber@defra.gsi.gov.uk](mailto:henry.webber@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Caroline Crowther and Charlotte Spencer, Deputy Directors for the fertiliser policy area, at Defra can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP at Defra can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: the contents of the instrument are not of such significance that Parliament would expect to debate it. The amendments to retained direct EU legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

#### 2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because: the amendments to retained direct EU legislation and domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

#### 3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: the amendments to retained direct EU legislation and domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards and ensure the continued supply of EC fertilisers for a time-limited (2 year) transitional period, providing continuity to the sector and security of supply for farmers.

#### 4. Equalities

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”



4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, George Eustice MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

## **5. Explanations**

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.