

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
NORTHERN IRELAND PROTOCOL**

C(2022)1437

7575/22+ ADD 1, C(2022) 1422 final + ANNEXES 1 to 3

8838/22 +ADD 1, C(2022) 2882 final + ANNEXES 1 to 4

**COMMISSION DELEGATED REGULATION (EU) .../... OF 14.3.2022
SUPPLEMENTING REGULATION (EU) 2019/1009 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL BY LAYING DOWN CRITERIA ON
AGRONOMIC EFFICIENCY AND SAFETY FOR THE USE OF BYPRODUCTS IN EU
FERTILISING**

**COMMISSION DELEGATED REGULATION (EU) .../... OF 22.3.2022 AMENDING
ANNEXES II, III AND IV TO REGULATION (EU) 2019/1009 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL FOR THE PURPOSE OF ADDING
RECOVERED HIGH PURITY MATERIALS AS A COMPONENT MATERIAL
CATEGORY IN EU FERTILISING PRODUCTS**

**COMMISSION DELEGATED REGULATION (EU) .../... OF 5.5.2022 AMENDING
REGULATION (EU) 2019/1009 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL AS REGARDS THE REQUIREMENTS APPLICABLE TO EU
FERTILISING PRODUCTS CONTAINING INHIBITING COMPOUNDS AND THE
POST PROCESSING OF DIGESTATE**

Submitted by the Department for Environment, Food and Rural Affairs

20 June 2022

SUBJECT MATTER

1. Regulation (EU) 2019/1009 (defined in this EM as ‘The Regulation’) laid down rules on the making available on the market of EU fertilising products. It will repeal Regulation (EC) No 2003/2003 of the European Parliament and of the Council. The regulation will apply in Northern Ireland from the 16 July 2022 when it comes into effect in the EU. In view of the Northern Ireland Protocol, this regulation is directly applicable in Northern Ireland, and these amendments as set out in this Explanatory Memorandum are also therefore directly applicable. This legislation can be found in Annex 2. This legislation makes amendments to the regulation following consultation that member states had between December 2021 and March 2022.
2. The Regulation paves the way for new fertiliser types, promotes the ‘circular economy’ and harmonises the requirements for fertilisers produced from minerals and from organic and waste materials in the European Union (EU). It also sets harmonised limits for a range of contaminants. It aims to update and improve

Regulation (EC) No 2003/2003 (the Fertilisers Regulation), and amends Regulations (EC) No 1069/2009 and No 1107/2009.

3. Delegated regulation C(2022) 1437 lays out the efficiency and safety restrictions for by-product materials within Component Material Category (CMC) 11, as set out in Part II of Annex II to The Regulation, informed by scientific advice from the Joint Research Centre (JRC). It sets out two different types of by-products within CMC 11 and lays down different limits for contaminants such as heavy metals, and amounts of certain chemicals or products allowed in the final fertilising product, for each type of by-product these are used in. It also sets out which types of by-products in CMC 11 should be exempted from these efficiency and safety restrictions.
4. Delegated regulation C(2022) 1422 adds high-purity materials recovered from wastes as a new component material category to the Annexes of the Regulation (covering ammonium salt, sulphate salt, phosphate salt, elemental sulphur, calcium carbonate or calcium oxide, or mixtures of these, of a purity of at least 95% dry matter of the material). This change creates opportunities for the use of recovered waste contributing to circular economy ambitions. It sets out the processes from which the materials are able to be recovered, and safety restrictions such as contaminant limits. Recovered high-purity materials will become a new Component Material Category 15. EU fertilising products may contain one or more materials listed in the Component Material Categories. The delegated regulation sets out: amendments to Annex II of The Regulation adding in CMC 15 specifications and amending some other CMCs; amendments to Annex III adding in specific new labelling requirements for recovered high-purity materials; and amendments to Annex IV setting up the legal framework for the relevant conformity assessment for EU fertilising products containing such materials.
5. Delegated regulation C(2022) 2882 further develops the definitions and safety, efficiency and processing requirements for digestate products and inhibiting compounds. These adaptations help ensure all relevant digestate and inhibitor-containing fertilising products comply with harmonisation rules and therefore can be placed on the internal EU market as CE marked fertilising products. Digestate materials are broadened to include a range of post processing products, complying with certain safety and efficiency specifications. Any additives required for any of the post digestion processes expressly mentioned must also comply with specific conditions regarding REACH registration and concentration. Distinction is made between inhibitors and inhibiting compounds; inhibitors may be mixtures containing other substances like stabilisers, in addition to inhibiting compounds. Amendments have been made to clarify the efficiency and safety coherence required for both inhibiting compounds as well as inhibitors. Amendments to Annexes of The Regulation have been made in accordance with these developments. Additional

small changes are made such as registration no longer being required for magnesia in EU fertilising products.

SCRUTINY HISTORY

6. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

MINISTERIAL RESPONSIBILITY

7. Responsibility for fertiliser regulation lies with the Secretary of State for Environment Food and Rural affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. The devolved administrations have been consulted in the preparation of this EM.
9. The Scottish Government, Welsh Government and Northern Ireland all have an interest as fertiliser regulation is a devolved matter in Scotland and Wales and a transferred matter in Northern Ireland.
10. Fertiliser production and sale is subject to a common framework arrangement between the four nations of the United Kingdom.
11. The Delegated Regulations are not applicable in Great Britain as they did not come into force before the end of the transition period.
12. Regulation (EU) 2019/1009 will, from July 2022, replace Regulation (EC) 2003/2003 which is included in Annex 2 of the Northern Ireland Protocol. Regulation (EU) 2019/1009 and these Delegated Regulations will therefore apply in Northern Ireland from July 2022.

LEGAL AND PROCEDURAL ISSUES

13.

i. Legal basis

The legal basis of this delegated act is Article 42(1) of Regulation (EU) 2019/1009.

ii. Voting procedure

In accordance with Article 44(5) of Regulation (EU) 2019/1009, as soon as the Commission adopts a delegated act, it must notify it simultaneously to the European Parliament and to the Council.

Article 44(6) of Regulation (EU) 2019/1009 provides that a delegated act adopted pursuant to Article 42 shall enter into force only if no objection has

been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

iii. Timetable for adoption and implementation

The delegated regulations shall apply from July 2022.

The Northern Ireland Protocol provides that limited areas of EU law will continue to apply to and in the UK in respect of Northern Ireland. The Delegated Regulations make amendments to Regulation 2019/1009 which, once it fully applies from July 2022, will repeal Regulation (EC) 2003/2003 which is included in Annex 2 of the Northern Ireland Protocol. On the basis of article 13(3) of the Northern Ireland Protocol, references to Regulation (EC) 2003/2003 in Annex 2 of the Protocol shall, from July 2022, be read as referring to Regulation (EU) 2019/1009 as amended by the Delegated Regulations.

POLICY IMPLICATIONS

14. C(2022)1437, C(2022)1422 and C(2022)2882 and the new fertilising products they relate to, may be adopted in the UK's future domestic fertiliser regulatory regime. The degree of divergence between standards set for different fertilisers under the future domestic regime and those set out in Regulation (EU) 2019/1009, and related issues, will also be considered as part of this work.
15. There are no significant or serious policy implications around national or economic security with these regulatory amendments, and they will not cause any difficulties in moving goods between GB and NI, or vice versa.
16. The domestic regulatory regime for fertilisers in GB and NI is outdated and in need of modernisation. Leaving the EU and the concurrent modernisation of regulation in the EU, provides the opportunity to carry out a full review of the domestic regulations and develop a new framework based on UK requirements. As the UK is in the process of reviewing fertiliser regulation, with consultation planned on the future of the domestic regulatory framework of fertilisers, the views of stakeholders in relation to the materials to be regulated under the new regime will be considered. The changes in the EU regulation this EM relates to will be considered within the planned consultation to inform whether they will be adopted and integrated in full or modified for the new UK fertiliser regulation. Devolved Administrations including Northern Ireland Executive will have the choice to adopt any new UK fertiliser regulation, which will be drafted to be applicable across the UK if needed.

17. Fertilisers can be placed on the market in GB either where they comply with any requirements under the Fertilisers Regulations 1991 or where they satisfy the requirements for “UK fertilisers” under retained Regulation (EC) 2003/2003. Defra is currently reviewing the domestic regulatory landscape relating to fertiliser. As Europe is looking to regulate a broader range of fertiliser types, Defra’s review will consider if and how these could be regulated within the domestic framework.

CONSULTATION

18. The UK was involved in the earlier development of the Regulation (EU) 2019/1009 and was broadly supportive of the introduction of a conformity assessment regime for fertilisers.

19. We are currently about to engage industry in consultation surrounding a new domestic regulatory regime.

FINANCIAL IMPLICATIONS

20. There will be no significant financial implications for HMG, industry, or consumers. There may be some, as yet unknown, possible costs to manufacturers in NI if they look to produce these products.

A handwritten signature in black ink, appearing to read 'Jo Churchill', written in a cursive style.

**JO CHURCHILL MP
PARLIAMENTARY UNDER SECRETARY OF STATE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) .../... OF 14.3.2022 SUPPLEMENTING REGULATION (EU) 2019/1009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL BY LAYING DOWN CRITERIA ON AGRONOMIC EFFICIENCY AND SAFETY FOR THE USE OF BYPRODUCTS IN EU FERTILISING

COMMISSION DELEGATED REGULATION (EU) .../... OF 22.3.2022 AMENDING ANNEXES II, III AND IV TO REGULATION (EU) 2019/1009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL FOR THE PURPOSE OF ADDING RECOVERED HIGH PURITY MATERIALS AS A COMPONENT MATERIAL CATEGORY IN EU FERTILISING PRODUCTS

COMMISSION DELEGATED REGULATION (EU) .../... OF 5.5.2022 AMENDING REGULATION (EU) 2019/1009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS THE REQUIREMENTS APPLICABLE TO EU FERTILISING PRODUCTS CONTAINING INHIBITING COMPOUNDS AND THE POST PROCESSING OF DIGESTATE

EM 7396/16, COM(16)157: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES ON THE MAKING AVAILABLE ON THE MARKET OF CE MARKED FERTILISING PRODUCTS AND AMENDING REGULATIONS (EC) NO 1069/2009 AND (EC) NO 1107/2009 (AND ADD 1-4)

DATE EM SIGNED: 13/04/2016

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
<p>THE COMMITTEE REPORTED ON 4 OCCASIONS THAT THE PROPOSAL RAISED ISSUES OF POLITICAL IMPORTANCE AND SCRUTINY WAS COMPLETED ON 13/6/2018 IN REPORT 31, 17/19</p>	<p>THE PROPOSAL WAS EXAMINED BY THE ENERGY AND ENVIRONMENT SUB-COMMITTEE AND SCRUTINY WAS COMPLETED ON 8/2/2017</p>