

2006 No. 503

AGRICULTURE

EC Fertilisers Regulations (Northern Ireland) 2006

Made - - - - - *6th December 2006*

Coming into operation - - - - - *1st February 2007*

CONTENTS

PART 1

General

1. Title and commencement
2. Interpretation

PART 2

Composition, labelling, records and compliance notices

3. Types of fertiliser for which designation “EC fertiliser” can be used
4. Tolerances
5. General provisions relating to identification, marking, labelling and packaging of EC fertilisers
6. Additional provisions relating to the marking and identification of inorganic primary nutrient fertilisers
7. Additional provisions relating to the marking and identification of inorganic secondary nutrient fertilisers
8. Additional provisions relating to the identification and packaging of inorganic micro-nutrient fertilisers
9. Records
10. Compliance notices

PART 3

Enforcement

11. Enforcement authorities
12. Powers of entry
13. Powers of inspectors
14. Obstruction

PART 4

Competent laboratories, treatment of samples and further controls

15. Competent laboratories
16. Treatment of samples
17. Remedial action and seizure
18. Safeguard measures

PART 5
Penalties

19. Penalties

PART 6
Disapplication of legislation

20. Disapplication of offence provisions
21. Disapplication of sampling and analysis provisions

The Department of Agriculture and Rural Development, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b), in relation to the common agricultural policy of the European Community, in exercise of the powers conferred upon it by the said section 2(2), makes the following Regulations:

PART 1
General

Title and commencement

1. These Regulations may be cited as the EC Fertilisers Regulations (Northern Ireland) 2006 and shall come into operation on 1st February 2007.

Interpretation

2.—(1) In these Regulations—

“the Community Regulation” means Regulation (EC) 2003/2003 of the European Parliament and the Council relating to fertilisers(c);

“the Department” means the Department of Agriculture and Rural Development;

“fertiliser” means material, the main function of which is to provide nutrients for plants;

“premises” includes any place, any vehicle or trailer, any container, any stall or moveable structure, and any ship or aircraft.

(2) In these Regulations—

(a) a reference to a numbered Article or Annex is a reference to the Article in, or the Annex to the Community Regulation so numbered; and

(b) expressions that are used in the Community Regulation and these Regulations have the same meaning in these Regulations as in the Community Regulation.

(3) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(a) S.I. 2000/2812
(b) 1972 c. 68
(c) O.J. No. L304, 21.11.2003, p. 1
(d) 1954 c. 33 (NI)

PART 2

Composition, labelling and records

Types of fertiliser for which designation “EC fertiliser” can be used

3.—(1) A manufacturer shall not place on the market a fertiliser designated as an “EC fertiliser” unless—

- (a) it is of a type listed in Annex I; and
- (b) he is established in accordance with Article 4.

(2) Any person who contravenes paragraph (1) shall be guilty of an offence.

Tolerances

4. Any manufacturer who—

- (a) places on the market a fertiliser designated as an “EC fertiliser” the content of which does not comply with the tolerances specified in Article 13(1) and (3); or
- (b) fails to comply with Article 13(2),

shall be guilty of an offence.

General provisions relating to identification, marking, labelling and packaging of EC fertilisers

5.—(1) Any manufacturer who places on the market a fertiliser designated as an EC fertiliser shall be guilty of an offence unless the identification markings relating to it—

- (a) are borne as specified in Article 9(1);
- (b) comply with Article 9(2);
- (c) include a declaration of contents as specified in Article 6(1)(a) and (d), (4), (5) and (6);
- (d) include the additional instructions called for by Article 9(3) if it is a fluid fertiliser; and
- (e) have been provided as specified in Article 7(1).

(2) Any manufacturer who places on the market a packaged fertiliser designated as an EC fertiliser shall be guilty of an offence unless—

- (a) the identification markings appear as specified in the first sentence of Article 7(2);
- (b) the packaging and labelling of the fertiliser complies with Article 10(1) and (2);
- (c) the packaging complies with Article 12; and
- (d) the language in which the identification markings appear complies with Article 11.

(3) Any manufacturer who places on the market a bulk fertiliser designated as an EC fertiliser shall be guilty of an offence unless—

- (a) the identification markings appear as specified in the second sentence of Article 7(2);
- (b) a copy of the documents containing them meets the requirements of Article 10(3); and
- (c) the language in which the identification markings appear complies with Article 11.

Additional provisions relating to the marking and identification of inorganic primary nutrient fertilisers

6. Any manufacturer who places on the market a fertiliser—

- (a) that is designated as an EC fertiliser;
- (b) that is a fertiliser of the type described in Article 16; and

- (c) for which a declaration of calcium, magnesium, sodium and sulphur content is made other than—
 - (i) in accordance with Articles 17, 18 and 19; and
 - (ii) as specified in Article 6(2)(c),

shall be guilty of an offence.

Additional provisions relating to the marking and identification of inorganic secondary nutrient fertilisers

7. Any manufacturer who places on the market a fertiliser—
- (a) that is designated as an EC fertiliser;
 - (b) that is a fertiliser of the type described in Article 20;
 - (c) that is not marked in accordance with Article 21; and
 - (d) for which a declaration of calcium, magnesium, sodium and sulphur content is made otherwise than as specified in Article 6(2)(c),

shall be guilty of an offence.

Additional provisions relating to the identification and packaging of inorganic micro-nutrient fertilisers

8. Any manufacturer who places on the market a fertiliser that is—
- (a) designated as an EC fertiliser;
 - (b) a fertiliser of the type described in Article 22;
 - (c) not marked in accordance with Article 23; and
 - (d) not packaged in accordance with Article 24,

shall be guilty of an offence.

Records

9. Any manufacturer who fails to comply with the requirements of Article 8 shall be guilty of an offence.

Compliance notices

10.—(1) This regulation applies where the Department is of the opinion, that a person is a manufacturer placing on the market fertiliser that does not comply with the Community Regulation, but that person has not committed an offence under regulations 3 to 9.

(2) The Department may serve a notice in writing on the person in question giving reasons why it is of that opinion and requiring him to take such steps as are specified in the notice within such period (being not less than 14 days except in an emergency) as is so specified.

(3) The steps to be so specified are steps that the Department regards as appropriate to cause it, no longer to be of the opinion in paragraph (1).

(4) Failure to comply with such a notice is an offence unless the notice has been withdrawn.

PART 3

Enforcement

Enforcement authorities

11.—(1) These Regulations and the Community Regulation shall be enforced by the Department.

(2) The Department shall appoint inspectors for the purposes of these Regulations.

Powers of entry

12.—(1) An inspector shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ensuring that the provisions of these Regulations are being complied with.

(2) He may take with him—

- (a) such other persons as he considers necessary; and
- (b) any representative of the European Commission acting for the purpose of the enforcement of the Community Regulation.

(3) Admission to any premises used only as a private dwelling house shall not be demanded as of right unless 24 hours notice of the intended entry has been given to the occupier, or the entry is in accordance with a warrant granted under this regulation.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes of the enforcement of these Regulations, and either—

- (a) admission has been refused, or a refusal is expected, and (in either case) that notice of intention to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant signed by him authorise the inspector to enter the premises, if need be by reasonable force and to take with him such persons as appears to be necessary.

(5) A warrant under this section shall continue in force for one month.

(6) If an inspector enters any unoccupied premises he shall leave them as effectively secured against unauthorised entry as he found them.

Powers of inspectors

13.—(1) An inspector entering premises under regulation 12 may—

- (a) inspect the premises, and any plant, machinery or equipment;
- (b) search the premises;
- (c) inspect any material and take samples in the manner prescribed in Annex IV;
- (d) examine or seize any documents or records (including financial records);
- (e) seize any computers and associated equipment for the purpose of copying documents provided they are returned as soon as practicable;
- (f) carry out any inquiries, examinations and tests;
- (g) have access to, and inspect and copy any documents or records (in whatever form they are held) required to be kept by the Community Regulation, or remove such records to enable them to be copies; and

- (h) have access to, inspect and check the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records.
- (2) For the purposes of paragraph 1(h), an inspector—
 - (a) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require; and
 - (b) where a record is kept by means of a computer, may require the records to be produced in a form in which they can be taken away.

Obstruction

- 14.**—(1) Any person who—
- (a) intentionally obstructs any person acting in the execution of these Regulations;
 - (b) without reasonable cause, fails to give any person acting in the execution of these Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under these Regulations; or
 - (c) furnishes to any person acting in the execution of these Regulations any information which he knows to be false or misleading,

shall be guilty of an offence.

(2) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question if to do so might incriminate him.

PART 4

Competent laboratories, treatment of samples and further controls

Competent laboratories

15.—(1) The Department shall be responsible for granting or withdrawing authorisations for the purposes of Article 33 (competent laboratories).

(2) In deciding whether to grant or withdraw authorisation under this regulation, the Department shall take into account the actual and expected competence of the laboratory to check compliance of fertilisers designated as EC fertilisers with the requirements of the Community Regulation.

(3) A statement given by the Department to the operator of a laboratory in anticipation of the coming into force of this regulation that the laboratory is authorised for the purposes of Article 33 is deemed to be an authorisation under this regulation.

Treatment of samples

16. In any proceedings for an offence under these Regulations to which the content of a fertiliser is relevant—

- (a) a court shall not conclude that a sample is representative of the fertiliser unless—
 - (i) the sample has been taken in accordance with Annex IV, and
 - (ii) it has been subjected to analysis in accordance with Annex IV in a laboratory listed in accordance with Article 30(2) or (5);
- (b) a certificate given by a person that he is an inspector and took the sample in accordance with Annex IV shall, unless the contrary is proved, be taken as evidence of his being one and having done so;
- (c) a certificate given on behalf of a laboratory that it is authorised under Article 33 and that it analysed the sample in question in accordance with Annex IV shall, unless the contrary is proved, be evidence of it being so authorised and having done so; and

- (d) the combination of those certificates shall, unless the contrary is proved, be taken as evidence that the sample is representative of the fertiliser.

Remedial action and seizure

17.—(1) Where an inspector has reasonable grounds to believe that a fertiliser designated as an EC fertiliser is one in relation to which an offence under these Regulations has been committed he may—

- (a) give to the person whom he considers to be in charge of the fertiliser a notice requiring him to take such action as is specified in the notice; or
- (b) seize the fertiliser in order to have it dealt with by a justice of the peace.

(2) The action that may be so specified is action to ensure that the fertiliser is removed from the market and not placed on the market again until it can be so placed without an offence under these Regulations being committed.

(3) A notice given under paragraph (1)(a) shall also specify the grounds for the inspector's belief.

(4) Where an inspector has seized fertiliser under paragraph (1)(b)—

- (a) he shall inform the person whom he considers liable to prosecution of the grounds for his belief;
- (b) that person may attend before the justice of the peace who deals with the fertiliser; and
 - (i) shall be entitled to be heard; and
 - (ii) may call witnesses; and
- (c) if the justice of the peace finds that the fertiliser is one in relation to which an offence under these Regulations has been committed—
 - (i) he shall order that it be destroyed or disposed of in an appropriate manner; and
 - (ii) any expenses reasonably incurred in connection with the destruction or disposal shall be defrayed by the person in question.

(5) Any person who fails to comply with a notice given under paragraph (1)(a) shall be guilty of an offence.

Safeguard measures

18.—(1) Where a risk identified in Article 15 applies in relation to a fertiliser covered by that Article, the Department may direct any person whom it considers to be in charge of the fertiliser to take such action for mitigation or elimination of the risk as is specified in the direction.

(2) A direction shall be given by notice served on the person in question.

(3) If the Department considers that—

- (a) the direction should be given to a number of persons; and
- (b) the most efficient way of bringing it quickly to their attention would be publicising it by other means,

the direction shall be given to them by publicising it by those other means.

(4) Any person who fails to comply with a direction given under this regulation shall be guilty of an offence unless the direction has been withdrawn.

(5) In any proceedings for an offence under paragraph (4) it shall be a defence for the person accused to show that—

- (a) he was not in charge of the fertiliser; or
- (b) he was not aware of the direction.

PART 5

Penalties

Penalties

19. A person guilty of an offence under these Regulations shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

PART 6

Disapplication of legislation

Disapplication of offence provisions

20. Where an act or omission is an offence under these Regulations it shall not be an offence under Part IV of the Agriculture Act 1970(a) or the Fertilisers Regulations (Northern Ireland) 1992(b).

Disapplication of sampling and analysis provisions

21. The Fertilisers (Sampling and Analysis) Regulations (Northern Ireland) 1996(c) shall not apply to any sampling or analysis of fertilisers carried out pursuant to these Regulations.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 6th December 2006.



D. Small

A senior officer of the Department of Agriculture and Rural Development

(a) 1970 c.40
(b) S.R. 1992 No. 187 as amended by S.R. 1995 No. 49, S.R. 1997 No. 378 and S.R. 1998 No. 353
(c) S.R. 1996 No. 513

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which are made under section 2(2) of the European Communities Act 1972 implement in Northern Ireland Regulation (EC) No. 2003/2003 of the European Parliament and the Council relating to fertilisers (“the Community Regulation”).

The Regulations create offences for breaches by manufactures of the requirements of the Community Regulation regarding designation, compositional tolerances, identification, marking, labelling and packaging of fertilisers designated as EC fertilisers (regulations 3 to 8). The term “manufacturer” is defined in Article 2 of the Community Regulation.

Manufacturers are required to keep records described in Article 8 (regulation 9).

Regulation 10 provides the Department of Agriculture and Rural Development with the power to serve compliance notices.

The Department of Agriculture and Rural Development is responsible for enforcing the Regulations and appointing inspectors for that purpose (regulation 11) and powers of inspection and offences of obstruction of inspectors are contained in regulations 12, 13 and 14 respectively.

Regulation 15 makes provision for the authorisation of laboratories competent to analyse samples and regulation 16 relates to the taking and analysis of samples for the purpose of the Regulations.

Inspectors have powers to require remedial action to be taken regarding fertiliser designated as EC fertiliser in respect of which they think an offence under the Regulations is being committed, or to seize the fertiliser (regulation 17).

Regulation 18 provides the Department of Agriculture and Rural Development with a power to give directions for the mitigation or elimination of risk in circumstances where it has justifiable grounds for believing that an EC designated fertiliser, although complying with the requirements of the Community Regulation, constitutes a risk to safety or health of humans, animals or plants or a risk to the environment.

Penalties for offences under the Regulations are established by regulation 19.

Regulation 20 and 21 disapply the provisions of—

- (a) Part IV of the Agriculture Act 1970 (1970 c.40);
- (b) the Fertilisers Regulations (Northern Ireland) 1992 (S.R. 1992 No. 187 as amended); and
- (c) the Fertilisers (Sampling and Analysis) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 513).

No regulatory impact assessment has been prepared in respect of these Regulations as they have no impact on the cost of business. A transposition note has been prepared copies of which can be obtained from Defra – Nutrient Management Unit, Area 5C, 9 Millbank, C/O 17 Smith Square, London SW1P 3JR. Email: Gary.beckwith@defra.gsi.gov.uk. A copy has been placed in the library of each House of Parliament.