

**EXPLANATORY MEMORANDUM TO
THE EU FERTILISING PRODUCTS REGULATIONS
(NORTHERN IRELAND) 2020**

2020 SR No. 303

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule and is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred on it by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
- 1.3 The Statutory Rule is due to come into operation on XXXX.

2. Purpose of the instrument

- 2.1 The main purpose of this Statutory Rule is the implementation of Articles 20 to 36 of Regulation (EU) 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products (“Regulation (EU) 2019/1009”) in Northern Ireland. It designates the Secretary of State as the notifying authority for Northern Ireland, responsible for the appointment and oversight of the bodies that will assess the compliance of fertilisers with requirements under a new “conformity assessment” regulatory regime. It also sets out the process by which bodies will apply to take on this assessment role, for the authorisation of the United Kingdom Accreditation Service (“UKAS”) to evaluate their competence for the role, and provides for an appeal procedure from the decisions of these bodies.

3. Background

- 3.1 Fertiliser policy is partially harmonised in the EU, meaning that Member States are permitted to operate separate domestic regimes regulating fertilisers alongside the EU regulatory regime for fertilisers. In Northern Ireland, this has meant that fertilisers can be marketed under either domestic fertilisers legislation or Regulation (EC) 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (“Regulation (EU) 2003/2003”) which is currently in force in the EU.
- 3.2 Regulation (EU) 2019/1009, entered into force in July 2019 and regulates in respect of a broader range of fertilising products than the traditional mineral fertilisers provided for under Regulation (EU) 2003/2003. This includes materials

such as bio-stimulants and soil improvers as well as those derived from materials previously categorised as waste. Regulation (EU) 2019/1009 has a phased implementation, with some articles applying from July 2019, some from April 2020 and the remaining articles applying from July 2022. Regulation (EU) 2019/1009 will repeal Regulation (EU) 2003/2003 at EU level once it fully applies in July 2022.

- 3.3 Regulation (EU) 2019/1009 provides for a conformity assessment regulatory regime to apply to fertilisers. The conformity assessment framework is a system commonly used for manufactured goods, with the level of conformity assessment required for a particular product dependent on the level of risk presented by the product. For lower risk products manufacturers may be able to self-declare that their product meets the required standards. For higher risk products, checks by third party notified bodies may be required before goods can be placed on the market.
- 3.4 This Rule implements Articles 20 to 36 of Regulation (EU) 2019/1009, which have applied from 16 April 2020. It designates the Secretary of State for the environment, food and rural affairs as the notifying authority for Northern Ireland and provides for the notifying authority to appoint notified bodies for the purposes of Regulation (EU) 2019/1009. It sets out the processes around that appointment and the circumstances in which it can be restricted, suspended or withdrawn. It also sets out the notifying authority's obligations to monitor notified bodies and provides for an appeal procedure against decisions of notified bodies.
- 3.5 This Statutory Rule also provides that United Kingdom Accreditation Service may be authorised to assess conformity assessment bodies and monitor notified bodies on behalf of the notifying authority.

4. Consultation

- 4.1 No consultation has been undertaken as the Statutory Rule makes no significant impacts or changes. It supports the implementation of EU legislation that was consulted upon at EU level. However, there have been discussions between Defra and key stakeholders, including the fertiliser manufacturers' representative body the Agricultural Industries Confederation about implementation of Regulation (EU) 2019/1009. These outlined that there should be consistency across the UK to ensure farmers can access safe and effective fertilisers as well as making the marketing and labelling of products as streamlined as possible.

5. Equality Impact

- 5.1 In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations have been assessed. No adverse equality impacts have been identified under the Equality and Human Rights screening procedures. The Department considers the

Regulations will not result in any equality differentials amongst Section 75 groups.

6. Regulatory Impact

- 6.1 No impact is foreseen for business, charities or voluntary bodies and there is no impact on the public sector. Therefore, an Impact Assessment has not been prepared for these Regulations.

7. Financial Implications

- 7.1 The Statutory Rule is not expected to have any significant financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 This Statutory Rule will ensure the Department complies fully with its obligations under European law. The Regulations do not have any human rights implications, nor are they incompatible with EU law. It is therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 This Statutory Rule supports the implementation of Articles 20 to 36 of Regulation (EU) 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products to ensure that it has full effect in Northern Ireland.

10. Parity or Replicatory Measure

- 10.1 A Statutory Instrument has been laid to legislate for articles 20 to 36 of Regulation (EU) 2019/1009 to apply in Great Britain. Given that Regulation (EU) 2019/1009 will continue to apply in Northern Ireland, due to the application of the Northern Ireland Protocol, it is necessary to bring forward separate legislation to designate the Secretary of State for Defra as the notifying authority for Northern Ireland and ensure compliance with EU law after the end of the Transition Period.

11. Additional Information

- 11.1 Not applicable.