

## POLICY NOTE

### THE FERTILISERS AND PESTICIDES (EU EXIT) (SCOTLAND) (MISCELLANEOUS AMENDMENTS ETC.) REGULATIONS 2019

#### SSI 2019/25

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7, of the European Union (Withdrawal) Act 2018 (“the 2018 Act”). The instrument is subject to negative procedure.

#### **Purpose of the Instrument**

To amend the EC Fertilisers (Scotland) Regulations 2006 and the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 to ensure that they continue to operate effectively following the UK’s Exit from the EU in a no deal scenario.

#### **Policy Objectives**

Where practical and appropriate, European legislation is being retained in UK law on the UK’s exit from the EU. In the fields of fertilisers and pesticides, the Scottish Government, together with the UK Government and other devolved administrations, plan to retain the current standards set out in EU legislation and EU-derived domestic legislation to ensure, following a ‘no deal’ exit from the EU, the continued and proper regulation of fertilisers and pesticides within Scotland.

Upon exit day a number of technical corrections are required. The objective of the instrument is to ensure the operability of Scotland’s fertilisers and pesticides framework, to protect human health and the environment and provide continuity for businesses and consumers.

#### **Explanation of the law being amended by the regulations**

The EC Fertilisers (Scotland) Regulations 2006 (SSI 2006/543 - “the 2006 Regulations”) contains provision to enforce, in Scotland Regulation, (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (“Regulation 2003/2003”) which will become retained EU law on the UK’s exit from the EU.

Regulation 2003/2003 lays down rules of the definition, composition, identification and packaging of fertilisers. The 2006 Regulations make provision for enforcement of Regulation 2003/2003. That includes provision for offences and penalties, for example the 2006 Regulations provide that it an offence to place any non-EC fertiliser on the market. The 2006 Regulations also give powers to Local Authorities to enter, inspect buildings, equipment and records and to obtain samples. In addition powers are given to the Scottish Ministers to issue compliance notices to manufacturers that do not comply with these provisions.

The Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 (SSI 2008/342 – “the 2008 Regulations”) enforce the provisions of Regulation (EC) No. 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/41/EEC (“Regulation 396/2005”) including making provision for offences and penalties.

For example the 2008 Regulations provide that it is an offence to place, cause or permit to be placed on the market as food or feed, or, to feed, cause or permit to be fed to any animal, any product with a pesticide residue above the maximum limit. The maximum limit for products is as matters stand defined by Annex I to Regulation 396/2005. These maximum limits reflect the highest amount of residues expected in food or feed when plant protection products are applied correctly and in accordance with conditions of use. Maximum residue levels (MRLs) are not safety limits and are always set below, often far below, levels that would present a risk to consumers. The 2008 Regulations also detail the powers given to inspectors to ensure compliance with requirements set out in them and the action which they may take where the 2008 Regulations are contravened.

### **Reasons for and effect of the proposed change**

The instrument updates the 2006 Regulations and the 2008 Regulations to reflect changes to directly applicable EU instruments becoming retained EU law, including Regulation 2003/2003 and Regulation 396/2005, made by UK Statutory Instruments, in particular:

- The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019; and
- The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019.

Neither the UK Statutory Instruments (which are being taken forward by the UK Government with the agreement of the Scottish Government and the Scottish Parliament) nor this instrument reflect a change in policy. The UK Statutory Instruments and this instrument have been brought forward in exercise of powers in the 2018 Act in order to address failures of retained EU law to operate effectively after the UK's exit from the EU.

The instrument makes amendments to ensure correct functioning of the 2006 Regulations and 2008 Regulations in response to the UK Statutory Instruments noted above.

- Amendments to the 2006 Regulations include:
  - Updating to reflect the changes to Regulation 2003/2003 made by UK SIs that replace the EC fertiliser designation with the new UK fertiliser designation.
  - Removing provisions which allow representatives of the European Commission to act for the purpose of enforcement of the 2006 Regulations.
  - Omitting Regulation 16 in relation to approved laboratories, as corrections made by the UK SI provides for a common UK approach by placing responsibility with the Secretary of State to publish the list of approved authorities with the consent of the devolved administrations.
- Amendments to the 2008 Regulations include:
  - Removing references to functions of a 'Member State' as they will not be applicable after EU exit day.
  - Replacing references to the MRLs published in Annex 1 of Regulation (EC) No. 396/2005 with references to the new UK MRLs register. The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 amends Regulation 396/2005 to establish a new statutory register of MRLs to give effect to UK national decisions in an efficient and timely way.

## **Statements required by European Union (Withdrawal) Act 2018**

### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a ‘no deal’ United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended and do not introduce policy change.”.

### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective regulation of fertilisers and pesticides within Scotland in order to protect human health and the environment and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

### **Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 do 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.”.

### **Statement that Scottish Ministers have, in preparing the regulations, 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**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 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.”.

## **Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

### **Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

### **Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence). The instrument is made to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective regulation of fertilisers and pesticides within Scotland in order to protect human health and the environment and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

### **An indication of how the regulations should be categorised in relation to the significance of the change proposed.**

Low – The amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

### **Statement setting out the Scottish Ministers’ reasons for their choice of procedure**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view, negative procedure is considered appropriate as these minor and technical amendments do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU. The regulations do not include provisions which fall within paragraph 1 (2) of schedule 7 of the European Union (Withdrawal) Act 2018.”.

## **Further information**

### **Consultation**

This instrument does not amount to a change in policy and is being made to avoid deficiencies arising as a result of the UK's withdrawal from the EU. There has been no formal public consultation regarding this instrument. The instrument is linked to changes to directly applicable EU instruments becoming retained EU law, including Regulation 2003/2003 and Regulation 396/2005, made by UK Statutory Instruments, in particular the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 and the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 which are being taken forward by the UK Government with the agreement of the Scottish Government and the Scottish Parliament. We have engaged with DEFRA and other UK administrations on the content of both the UK Statutory Instruments and this instrument. Other UK administrations are making similar amendments to equivalent domestic legislation. Changes are essential to ensure legislative operability on day one of the UK's exit from the EU.

### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because it is aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact of the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

### **Financial Effects**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Agriculture and Rural Economy Directorate

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