

EXPLANATORY MEMORANDUM TO
THE EC FERTILISER (ENGLAND AND WALES) REGULATIONS 2006
2006 No. 2486

1. This explanatory memorandum has been prepared by Department of Environment, Foods and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

Implements Regulation (EC) 2003/2003 of the European Parliament and the Council of 13th October 2003 relating to fertilisers.

Member States are required to have in place the necessary implementing measures to give effect to the Regulation.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This instrument is being made to implement Community Regulation (EC) 2003/2003 of the European Parliament and the Council. This Regulation came into force on 11 December 2003, replacing four Council Directives, 76/116/EEC, 80/876/EEC, 87/94/EEC and 77/535/EEC. It is the definitive EC Regulation concerning EC designated fertilisers.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Honourable David Miliband has made the following statement regarding Human Rights:

In my view the provisions of the EC Fertiliser (England and Wales) Regulations 2006 are compatible with the Convention rights .

7. Policy background

7.1. The Community Regulation lays down rules on the designation, definition, composition, identification and packaging of EC fertilisers which can be freely traded throughout the EU. Member States were required to have in place the necessary implementing measures to give effect to the Regulation by 11 June 2005.

7.2. There are three areas for national discretion implementation by Member States:-

Article 6 – ‘Compulsory statements to define the prescribed format for the definition of the nutrient content of fertilisers.’ The Community Regulation permits choice between different labelling formats. The option chosen closely resembles existing practises and these are implemented at regulations 5 (1) (c), 6 (c) 2 and 7 (d).

Article 29 – ‘Control measures to allow verification that EC fertilisers comply with the Regulation’. Details for Local Authorities who act as the Enforcement authority to carry out their duties. These powers have been provided in regulations 12 and 14.

Article 36 – Penalties. Powers to impose a penalty in situations where an offence is judged to have occurred (regulation 19).

7.3 Articles 25 – 28 of the Community Regulation sets out requirements for dealing with Ammonium Nitrate fertilisers of high nitrogen content. This caused us to consider its’ relationship to the ‘Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003, S.I. No. 1082’ (“SI 2003/1082”). Consequently, SI 2003/1082 are ultra vires to the extent they apply to EC Fertilisers. However, SI 2003/1082 will remain in force albeit with little legal standing in the event of a challenge.

7.4 The Fertiliser Regulations 1991, (‘SI 1991/2197’) and The Fertilisers (Sampling and Analysis) Regulations 1996 (‘SI 1996/1342’) cover both EEC designated and non EEC designated fertilisers. The Community Regulation now sets out requirements for EC Designated fertilisers, so this instrument disapplies the EEC designated part of SI 1991/2197 and SI 1996/1342.

7.5 Over 41 organisations covering all aspects of fertiliser analysis, users (farm to garden), supply, enforcement, environmental protection agencies, agricultural colleges, water companies throughout England and Wales were consulted. A few comments were received and considered and a good number incorporated into the policy. There is not a great public interest in this subject as the instrument replaces existing requirements which the industry are familiar with and work to.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal as this instrument sets out enforcement procedures as requested by Local Authorities which are similar to those already operated within the Feeding Stuffs Regulations 2004.

9. Contact

David Brown at the Department of Environment, Food and Rural Affairs, Tel: 0207 238 6756 or e-mail: David.brown@defra.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note

REGULATION (EC) No. 2003/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL relating to fertilisers.

These regulations do what is necessary to implement the Community Regulation, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objective	Implementation	Responsibility
6	Requires member states to determine compulsory statements which define the prescribed format for the definition of nutrient content of fertilisers.	Regulations 5 (1) (c), 6 (a) (ii) and 7 (d) make it an offence to place on the market a fertiliser designated as an EC fertiliser unless the identification markings include expressions of contents as specified in Article 6.	Secretary of State National Assembly of Wales
29	Requires member states to put into place control measures to allow verification that 'EC Fertilisers' comply with the Regulation.	Regulation 10 is the provision for a compliance notice dealing with a failure to place on the market a fertiliser which does not comply with the Community Regulation. This regulation gives a legal basis for dealing with AN material which has become a safety matter to be handled in accordance with HSE COMAH Regulations; regulation 11 defines the enforcement authority; regulation 12 gives powers of entry; regulation 13 determines the powers of the inspectors; regulation 14 sets out special provisions relating to regulation 10; regulation 15 deals with people who obstruct inspectors.	Secretary of State through Local Authorities National Assembly of Wales
36	Requires member states to provide powers to impose a penalty in situations where an offence is judged to have occurred	Penalties are set out in regulation 20.	Secretary of State National Assembly of Wales

