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STATUTORY INSTRUMENTS

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**2019 No. 601**

**The Fertilisers and Ammonium Nitrate Material  
(Amendment) (EU Exit) Regulations 2019**

**PART 3**

Amendment of retained direct EU legislation

**Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers**

5.—(1) Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers is amended as follows.

(2) In the Regulation—

- (a) for “EC fertiliser”, in each place it occurs, substitute “UK fertiliser”;
- (b) for “EC fertilisers”, in each place it occurs, substitute “UK fertilisers”;
- (c) for “European standard” or “European Standard”, in each place it occurs, substitute “recognised standard”;
- (d) for “European Standards”, in each place it occurs, substitute “recognised standards”.

(3) In Article 2—

- (a) the existing text becomes paragraph 1;
- (b) in that paragraph—
  - (i) in point (r), for “Community legislation” substitute “retained EU law”;
  - (ii) for point (t) substitute—
    - “(t) ‘Recognised standard’ means either of the following standards:
      - (i) CEN (European Committee for Standardisation);
      - (ii) BSI (the British Standards Institution).”;
    - (iii) in point (w), for “customs territory of the European Community” substitute “United Kingdom”;
    - (iv) after point (x) insert—
      - “(y) ‘Appropriate authority’ means:
        - (i) in relation to a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, the Secretary of State;
        - (ii) in relation to a decision in respect of other fertilisers:
          - in relation to England, the Secretary of State;
          - in relation to Wales, the Welsh Ministers;
          - in relation to Scotland, the Scottish Ministers;

— in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(z) “Enforcement authority” means:

- (i) in England and Wales, an enforcement authority specified in regulation 11 of the EC Fertilisers (England and Wales) Regulations 2006;
- (ii) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(1);
- (iii) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(z1) “Relevant authority” means:

- (i) in relation to Wales, the Welsh Ministers;
- (ii) in relation to Scotland, the Scottish Ministers;
- (iii) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”;

(c) after that paragraph insert—

“2. References in this Regulation to devolved competence are to be read in accordance with the following provisions:

- (a) it is outside devolved competence to make any provision by subordinate legislation which would be outside the legislative competence of:
  - (i) in relation to Wales, the National Assembly for Wales if it were included in an Act of the Assembly (see section 108A of the Government of Wales Act 2006(2));
  - (ii) in relation to Scotland, the Scottish Parliament if it were included in an Act of the Parliament (see section 29 of the Scotland Act 1998(3));
  - (iii) in relation to Northern Ireland, the Northern Ireland Assembly if it were included in an Act of the Assembly (see section 6 of the Northern Ireland Act 1998(4));
- (b) in the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or to exercise it in a particular way) if or to the extent that:
  - (i) in relation to Wales, a provision of an Act of the National Assembly for Wales conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly;
  - (ii) in relation to Scotland, a provision of an Act of the Scottish Parliament conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Parliament;
  - (iii) in relation to Northern Ireland, a provision of an Act of the Northern Ireland Assembly conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.”.

(1) 1994 c. 39.

(2) Section 108A was substituted, for section 108 as originally enacted, by the Wales Act 2017 (c. 4), section 3(1) and amended, from a date to be appointed, by the European Union (Withdrawal) Act 2018, section 12(3).

(3) Section 29 was amended by the Scotland Act 2012 (c. 11), section 9(2) and S.I. 2011/1043.

(4) 1998 c. 47. Section 6 was amended, from a date to be appointed, by the European Union (Withdrawal) Act 2018, section 12(5) and was amended by S.I. 2011/1043.

- (4) In Article 4, for “Community” (including in the heading) substitute “United Kingdom”.
- (5) Omit Article 5.
- (6) In Article 6—
  - (a) in paragraph (1), in the first subparagraph, in the words before point (a)—
    - (i) for the words from the beginning to “may” substitute “Nothing in this Regulation prevents the appropriate authority, in order to satisfy the requirements of Article 9, from using any power the appropriate authority has to”;
    - (ii) for “their market” substitute “the market”;
  - (b) in paragraph (2), in the first subparagraph, in the words before point (a)—
    - (i) for “Member States may” substitute “Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;
    - (ii) for “their markets” substitute “the market”;
  - (c) in paragraph (3), for “Member States” substitute “The appropriate authority”.
- (7) In Article 8, in the second sentence, for “Member States” substitute “the enforcement authority”.
- (8) In Article 9—
  - (a) in paragraph 1, in the first subparagraph, in the words before point (a) omit “Without prejudice to other Community rules,”;
  - (b) for paragraph 4 substitute—

“**4.** The Secretary of State may make regulations in relation to the application of this Article.”.
- (9) In Article 11, for the words from “at least” to the end substitute “English and may also appear in other languages”.
- (10) In Article 15—
  - (a) in paragraph 1—
    - (i) in the first sentence—
      - (aa) for “a Member State” substitute “the appropriate authority”;
      - (bb) for “it may” substitute “nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;
    - (ii) for the second sentence substitute—

“Except in the case of a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, the appropriate authority shall immediately inform the other appropriate authorities, giving the reasons for the decision.”;
  - (b) for paragraph 2 substitute—

“**2.** The Secretary of State may, by regulations, in relation to a fertiliser which has been temporarily prohibited from the market under paragraph 1:

    - (a) amend Annex 1 to impose special conditions in relation to the fertiliser, or
    - (b) remove the fertiliser from Annex 1.

**2A.** Regulations under paragraph 2 must be made as soon as reasonably practicable—

    - (a) after the date of receipt of the information referred to in paragraph 1, or

- (b) where there is no such information, after the date on which the temporary prohibition begins or special conditions are imposed, as the case may be.

**2B.** Except in the case of a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, if a decision is made not to make regulations under paragraph 2, the Secretary of State must immediately inform the other appropriate authorities. After the date of a decision not to make regulations under paragraph 2, the prohibition or special conditions imposed under paragraph 1 no longer have effect.”;

- (c) in paragraph 3, for “Commission or by a Member State” substitute “appropriate authority”.
- (11) In Article 26(3), in the second sentence, for “Member States” substitute “the enforcement authority”.
- (12) In Article 27—
- (a) in the first sentence, for “EC” substitute “UK”;
  - (b) in the second sentence omit “or 33(1)”;
  - (c) in the third sentence—
    - (i) for “competent authority of the Member State concerned” substitute “appropriate authority”;
    - (ii) for “European Community” substitute “United Kingdom”.
- (13) In Article 29—
- (a) in paragraph 1—
    - (i) in the first subparagraph, for “Member States may” substitute “Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;
    - (ii) in the second subparagraph, for “Member States may” substitute “Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to”;
  - (b) in paragraph 2, for “Member States” substitute “The enforcement authority”;
  - (c) in paragraph 4—
    - (i) in the first sentence, for “Commission shall” substitute “Secretary of State may, by regulations,”;
    - (ii) omit the second sentence;
    - (iii) in the third sentence, for the words from “same procedure” to “needed to” substitute “Secretary of State may, by regulations,”;
    - (iv) in the fourth sentence, for “Such rules” substitute “Regulations”.
- (14) In Article 30—
- (a) in paragraph 1—
    - (i) in the first sentence, for the words from “Member States” to “territories” substitute “The Secretary of State must publish a list of approved laboratories”;
    - (ii) omit the third sentence;
  - (b) omit paragraph 2;
  - (c) in paragraph 3—
    - (i) in the first sentence—
      - (aa) for “a Member State” substitute “the Secretary of State”;

- (bb) for the words from “it shall raise” to the end substitute “the Secretary of State must remove the name from the list referred to in that paragraph”;
  - (ii) omit the second sentence;
  - (d) after paragraph 3 insert—
    - “**3A.** The Secretary of State may only act under this Article with the consent of each person who is a relevant authority.”;
  - (e) omit paragraphs 4 and 5.
- (15) In Article 31—
- (a) at the end of the heading insert “and technical adaptations”;
  - (b) in paragraph 1, for “Commission shall” substitute “Secretary of State may, by regulations,”;
  - (c) in paragraph 2, for the words from “the technical documents” to the end substitute “any relevant guidance and the provisions of Regulation (EC) No 1907/2006”;
  - (d) in paragraph 3, for “Commission shall” substitute “Secretary of State may, by regulations,”;
  - (e) omit paragraph 4.
- (16) For Article 32 substitute—

*“Article 32*

*Regulations*

1. Regulations made under this Regulation are to be made by statutory instrument.
  2. Any power to make regulations conferred by this Regulation is the power to make regulations in relation to the whole of the United Kingdom.
  3. Except in relation to regulations in respect of ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, the Secretary of State may not make regulations under this Regulation without the consent of each person who is a relevant authority.
  4. Except in relation to regulations in respect of ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, where any of the relevant authorities requests that the Secretary of State make regulations under this Regulation, the Secretary of State must have regard to that request.
  5. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
  6. Such regulations may—
    - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
    - (b) make different provision for different purposes.”.
- (17) Omit Chapter 2 of Title 4.
- (18) In Article 35—
- (a) omit paragraph 1;
  - (b) in paragraph 2—

- (i) for “the Directives repealed” substitute “Directives [76/116/EEC](#), [77/535/EEC](#), [80/876/EEC](#) and [87/94/EEC](#)”;
  - (ii) omit the second and third sentences.
- (19) Omit Articles 36 to 38.
- (20) After Article 38 omit the words from “This Regulation” to “Member States.”.
- (21) In Annex 1—
  - (a) in Section A.2, in the table, in item 1, in column 6, in the third paragraph, after “the Netherlands” insert “Iceland, Liechtenstein, Norway”;
  - (b) in Sections B.1, B.2 and B.4, for “for fertilisers based on Thomas slag: solubility (6a) (France, Italy, Spain, Portugal, Greece, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, Bulgaria, Romania), (6b) (Germany, Belgium, Denmark, Ireland, Luxembourg, Netherlands, United Kingdom and Austria)” substitute “for fertilisers based on Thomas slag: solubility (6b)”;
  - (c) in E.3, for “requirements of Council [Directive 67/548/EEC](#)” substitute “provisions of Regulation [\(EC\) No 1272/2008](#)”.
- (22) In Annex 3, in paragraph 1.6, in the first subparagraph, for “the Committee” substitute “this Regulation”.
- (23) In Annex 4, in Section A, in the following provisions, for “Member States” substitute “appropriate authority”—
  - (a) paragraph 2;
  - (b) paragraph 4.1, the second sentence.
- (24) In Annex 5—
  - (a) omit Section A;
  - (b) in section B, in paragraph 1 omit the second indent.