

**2020 No. 887**

**AGRICULTURE**

**The Fertilising Products Regulations 2020**

*Made* - - - - 21st August 2020

*Laid before Parliament* 24th August 2020

*Coming into force* - - 24th September 2020

The Secretary of State for Environment, Food and Rural Affairs makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(a).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to materials providing or intended to provide nutrients for plants(b) and in relation to the environment(c).

**Citation, extent and commencement**

**1.**—(1) These Regulations may be cited as the Fertilising Products Regulations 2020 and come into force on 24th September 2020.

(2) These Regulations extend to Great Britain.

**Interpretation**

**2.** In these Regulations—

“Regulation 2019/1009” means Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003(d);

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(a) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.

(b) S.I. 2001/3919, which is prospectively revoked by S.I. 2018/1011 from IP completion day (see section 20 of the European Union (Withdrawal) Act 2018).

(c) S.I. 2008/301, which is prospectively revoked by S.I. 2018/1011 from IP completion day (see section 20 of the European Union (Withdrawal) Act 2018).

(d) OJ No. L 170, 25.6.2019, p.1.

“approval decision” means an approval decision made in accordance with Module D1 as specified in Part II of Annex IV to Regulation 2019/1009;

“conformity assessment body” has the meaning given by Article 2(21) of Regulation 2019/1009;

“EU-type examination certificate” means an EU-type examination certificate issued by a notified body in accordance with Module B as specified in Part II of Annex IV to Regulation 2019/1009;

“notified body” means a conformity assessment body which has been notified by the notifying authority under Article 20 of Regulation 2019/1009.

### **Notifying authority**

**3.—**(1) The Secretary of State is designated as the notifying authority for Great Britain for the purposes of Article 21 of Regulation 2019/1009.

(2) The notifying authority may delegate the assessment, notification and monitoring functions described in Article 21 of Regulation 2019/1009 to a body that meets the requirements of Articles 21(3) and 22 of Regulation 2019/1009 but in the event of such a delegation the notifying authority remains responsible for the performance of those functions.

(3) The notifying authority may only act under paragraph (2) with the consent of the Scottish Ministers and the Welsh Ministers.

### **Notification of conformity assessment bodies**

**4.—**(1) For the purposes of Article 20 of Regulation 2019/1009, the notifying authority must notify to the European Commission and EU member States only those conformity assessment bodies that qualify for notification.

(2) To qualify for notification a conformity assessment body must submit an application for notification to the notifying authority in accordance with Article 27 of Regulation 2019/1009.

(3) For the purpose of deciding whether to notify a conformity assessment body the notifying authority may have regard to any other matter that appears to the notifying authority to be relevant.

(4) Where the notifying authority notifies a conformity assessment body, the notifying authority may set conditions that the conformity assessment body must meet including any conditions that are to apply upon or following the restriction, suspension or withdrawal of its status as a notified body.

(5) Subject to paragraph (6), if at any time it appears to the notifying authority —

- (a) that a notified body no longer meets the requirements laid down in Article 24 of Regulation 2019/1009; or
- (b) that it is failing to meet its obligations,

the notifying authority may by written notice to that body specify a date on which its status as a notified body will be restricted, suspended or withdrawn, as appropriate depending on the seriousness of the failure to meet those requirements or obligations.

(6) Before the notifying authority restricts, suspends or withdraws the status of a conformity assessment body as a notified body under paragraph (5) the notifying authority must—

- (a) give notice in writing to the notified body of the action which the notifying authority intends to take;
- (b) give the notified body the opportunity to make representations within a reasonable period from the date of that notice; and
- (c) consider any representation made within that period by the notified body before making a decision on whether to take such action.

(7) Where the notifying authority has taken action in respect of a notified body under paragraph (5), or where a notified body has ceased its activity as a conformity assessment body, the body must—

- (a) on the request of the notifying authority, transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the notifying authority;
- (b) in the absence of a request under sub-paragraph (a), ensure that any document it holds relating to the activities it has undertaken as a notified body is kept available for the notifying authority for a period of 10 years beginning on the day on which the relevant document was created.

### **Monitoring of notified bodies**

**5.** The notifying authority must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the requirements of Article 24 of Regulation 2019/1009;
- (b) complies with any condition set in accordance with regulation 4(4); and
- (c) carries out its functions in accordance with Regulation 2019/1009.

### **United Kingdom Accreditation Service**

**6.** The notifying authority may authorise the United Kingdom Accreditation Service<sup>(a)</sup> to carry out the following activities on behalf of the notifying authority—

- (a) assessing whether a conformity assessment body meets the requirements of Article 24 of Regulation 2019/1009; and
- (b) monitoring notified bodies in accordance with regulation 5.

### **Operational obligations of notified bodies**

**7.**—(1) Paragraph (2) applies where a notified body is minded to—

- (a) refuse to issue an EU-type examination certificate or approval decision; or
- (b) restrict, suspend or withdraw an EU-type examination certificate or approval decision.

(2) Where this paragraph applies, the notified body must—

- (a) give the person applying for the EU-type examination certificate or approval decision, or the person to whom the EU-type examination certificate or approval decision was given—
  - (i) a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect, and
  - (ii) an opportunity to make representations within a reasonable period from the date of the notice; and
- (b) take account of any representations made under sub-paragraph (a)(ii) before taking its decision.

### **Appeal against decisions of notified bodies**

**8.** A notified body must make provision in its contracts with its clients enabling such clients to appeal against a decision—

- (a) to refuse to issue an EU-type examination certificate or approval decision; or
- (b) to restrict, suspend or withdraw an EU-type examination certificate or approval decision.

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(a) A company limited by guarantee incorporated in England and Wales under number 03076190.

21st August 2020

Victoria Prentis  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Articles 20 to 36 of Regulation 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (“Regulation 2019/1009”) in Great Britain.

Regulation 3 designates the Secretary of State as the notifying authority for Great Britain. Regulation 4 provides for the notifying authority to appoint notified bodies for the purposes of Regulation 2019/1009 and sets out the processes around that appointment and the circumstances in which it can be restricted, suspended or withdrawn. Regulation 5 provides for the activities of notified bodies to be monitored. Regulation 6 provides that the notifying authority may authorise the United Kingdom Accreditation Service to assess conformity assessment bodies and monitor notified bodies. Regulation 7 provides for notified bodies to take into account representations made by a person seeking an EU-type examination certificate or approval decision before refusing to grant such a certificate or decision or before restricting, suspending or withdrawing such a certificate or decision. Regulation 8 provides for an appeal procedure against decisions of notified bodies.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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£4.90

UK202008211013 08/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/887>

ISBN 978-0-34-821108-5



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