

EXPLANATORY MEMORANDUM TO
THE FERTILISING PRODUCTS REGULATIONS 2020

2020 No. 887

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument implements Articles 20 to 36 of 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 (“Regulation 2019/1009”), in Great Britain. It appoints the Secretary of State as the authority responsible in Great Britain 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. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Fertilisers are 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 Great Britain, this has meant that fertilisers could 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.

- 6.2 Regulation (EU) 2019/1009, entered into force in July 2019 and provides for a new conformity assessment regime to regulate a broader range of fertilising products than the traditional mineral fertilisers regulated under Regulation (EU) 2003/2003. This includes materials such as biostimulants and soil improvers as well as those derived from materials previously categorised as waste. Regulation (EU) 2019/1009 has a staggered application 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.
- 6.3 This instrument is being made to implement Articles 20 to 36 of Regulation (EU) 2019/1009 which have applied from 16 April 2020. It designates the Secretary of State as the notifying authority for Great Britain and sets out the notification process for conformity assessment bodies. This instrument also sets out the notifying authority’s obligations to monitor notified bodies and provides for an appeal procedure against decisions of notified bodies. This instrument also provides that UKAS may be authorised to carry out assessment and monitoring activities on behalf of the notifying authority.

7. Policy background

What is being done and why?

- 7.1 The UK and EU Member States were involved in negotiating Regulation (EU) 2019/1009 from 2016, with a view to modernising the outdated EU regulatory regime for fertilisers that had been in place since 2003. 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.
- 7.2 Implementation of Articles 20 to 36 of Regulation (EU) 2019/1009, which have applied since April 2020, initiates the creation of the conformity assessment framework to regulate fertilisers. This will enable the improvements in the regulation of fertilisers made by Regulation (EU) 2019/1009 to be harnessed in developing a conformity assessment regime which reflects the best interests of the GB farming and fertilisers sector.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 This instrument was not subject to consultation. However, there have been discussions with key stakeholders - the fertiliser manufacturers' representative body (the Agricultural Industries Confederation) and the farmers' representative body (the National Farmers' Union) - 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.

11. Guidance

- 11.1 A Technical Notice will be published on the gov.uk website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector, except for Defra becoming the notifying authority in Great Britain.
- 12.3 An Impact Assessment has not been prepared for this instrument because it is transposing part of an EU regulation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts are expected to affect small and microbusinesses. Therefore no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra and its agencies, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

- 15.1 William Brown at the Department for Environment, Food and Rural Affairs
Telephone: 020 822 56586 or email: william.brown@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Karen Lepper, Deputy Director for the Fertiliser Policy area, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.