

EXPLANATORY MEMORANDUM TO
THE AMMONIUM NITRATE MATERIALS (HIGH NITROGEN CONTENT)
SAFETY (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 1182

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 (“S.I. 2003/1082”).

2.2 Imports of relevant ammonium nitrate (“AN”) into Great Britain must be accompanied by a detonation resistance certificate (“DRC”) issued by a listed, competent laboratory which has an accreditation under standard ISO 17025. At present, for imports coming to Great Britain, the competent laboratory must be based in the United Kingdom or in the EU.

2.3 There is usually a 60-day limit on the validity of a detonation resistance test (“DRT”) (result confirmed by a DRC) for imported AN following the date of the test. Imports coming from within the EU are currently exempted from the 60-day limit following a DRT, while AN from non-EU countries has 60 days to reach Great Britain.

2.4 This statutory instrument makes amendments to S.I. 2003/1082 to continue to allow detonation resistance tests (“DRTs”) for AN imported from any country to be carried out at listed ISO accredited laboratories based in the UK and the EU, extending this provision until December 31st 2027. This statutory instrument also makes amendments to the same regulation to extend the exemption of imports of AN from EU countries from the 60-day limit on the validity of a DRT until the same date. Section 7.3 and 7.4 below set out potential implications of this S.I. not being laid.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 S.I. 2003/1082 sets out the requirements which must be met before relevant AN can be imported into GB. This includes a requirement for imports of relevant AN to be accompanied by a DRC issued by a competent laboratory and limits the validity of a DRT to 60 days following the date of the test. The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 (“S.I. 2019/601”) amended S.I. 2003/1082 to provide that the DRC must be issued by a laboratory which has an accreditation under standard ISO 17025 and is based in the UK. Prior to EU exit, the DRC could be issued by a listed ISO accredited laboratory based in the EU.
- 6.2 S.I. 2019/601 made transitional provision to provide for the continued acceptance of DRCs issued by EU based competent laboratories for the purposes of importing relevant AN into GB from within the EU. This transitional provision did not extend to relevant AN imported from outside of the EU which must be accompanied by a DRC issued by a competent laboratory based in the UK. The SI also made transitional provision to allow exemption of imports of AN from EU countries from the 60-day validity period of a DRT. The transitional period was for two years.
- 6.3 The Ammonium Nitrate Materials (High Nitrogen Content) Safety (Amendment) Regulations 2022 (S.I. 2022/29) amended S.I. 2003/1082 so that AN imported from countries outside of the EU could have the required DRC issued by a competent laboratory based either in the UK or EU. It also amended S.I. 2003/1082 to apply the exemption from the 60-day validity period of a DRT to AN imported from EU countries. This will end on 1st January 2023.

7. Policy background

What is being done and why?

- 7.1 An extension of the current domestic regulations overseeing the importation of AN into GB is required due to the current turbulence in the global fertiliser market.
- 7.2 Increased gas prices have driven up the cost of AN and all fertiliser types globally. This has significantly reduced AN production in the EU and UK with producers limiting the supply of AN available for export. As the UK is a net importer of fertiliser from the EU (c.70% for all fertiliser product and c.95% of AN imported to GB between 2017 and 2021), we need to ensure fertiliser importers and suppliers have access to sources of AN for the GB market and increase the resilience of the supply chain.
- 7.3 Transitional provision was made to accept DRCs issued by EU based laboratories for two years after IP completion day in S.I. 2019/601 (from 01/01/21 – 31/12/2022) for imports coming from within the EU; this did not extend to AN imported from outside of the EU. S.I. 2022/29 extended the provision for all AN imports to be tested in EU accredited laboratories. Therefore, when the current transitional provision stops applying on 31st December 2022, all imports will have to be tested in a UK laboratory unless this instrument is laid. The requirement to use a UK laboratory would be a barrier to the sourcing of AN by suppliers to GB at this time of global reduced AN production. Action is needed now because the key period for AN supply is between January and April for spring spreading.
- 7.4 Transitional provision was also made in S.I. 2019/601 to exempt imports of AN from EU countries from the 60-day validity period of DRTs for two years after IP completion day. S.I. 2022/29 extended the provision, and when it ends on 31st

December 2022, imports from EU countries will have to comply with the 60-day validity period following a DRT. This requirement will also be a barrier to the sourcing of AN by suppliers to GB at a time when global production is reduced. Action is needed now because the key period for AN supply is between January and April for spring spreading.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 In 2019, S.I. 2019/601 modified S.I. 2003/1082 to provide that DRTs should be carried out in an ISO accredited laboratory based in the UK, and all imports should comply with a 60-day validity period following a DRT.
- 7.6 Transitional provision was made to allow DRTs to be carried out by EU based laboratories for two years after IP completion day (from 01/01/21 – 31/12/2022) for imports coming from within the EU; this did not extend to AN imported from outside of the EU which must be tested in a UK laboratory. Transitional provision was also made to allow imports from EU countries to not have to comply with the 60-day validity period following a DRT.
- 7.7 S.I. 2022/29 extended the provision for all AN imports to be tested in EU accredited laboratories as well as UK accredited laboratories, and for imports of AN from EU countries to not have to comply with the 60-day validity period following a DRT.

Why is it being changed?

- 7.8 Amendments are needed to extend the period during which AN imports can undergo DRTs in an appropriate EU or UK laboratory, and to extend the period during which AN imports from EU countries are exempt from the 60-day validity period of a DRT. This is in order to maintain GB access to AN imports without potential barriers to trade, while maintaining low safety risks with regards to AN imports.

What will it now do?

- 7.9 This instrument will extend the transitional provision in S.I 2003/1082, so all AN imports may be tested in either EU or UK accredited laboratories, and so that imports of AN from EU countries do not have to comply with the 60-day validity period following a DRT.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 As required by the Health and Safety at Work etc. Act 1974, the Department consulted the Health and Safety Executive and the Office for Nuclear Regulation on the changes.
- 10.2 The Department also undertook engagement with key industry bodies about the proposed changes.

11. Guidance

- 11.1 Revised guidance for manufacturers and importers of fertilisers 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.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is a low level of impact on businesses, and the SI relates to maintenance of existing regulation. It does not expand the existing import market for AN as any country can currently import into GB provided they follow the requirements of the current regulations.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 As set out in Section 12.3 above and elsewhere in this Explanatory Memorandum, this instrument amends legislation already made and does not place any new obligations on business. It will not therefore have any disproportionate impact on small businesses.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 A statutory review clause is not appropriate as there is not expected to be a significant annualised net impact on business.

15. Contact

- 15.1 Elizabeth Downes at the Department for Environment, Food and Rural Affairs Telephone: 02080264850 or email: elizabeth.downes@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Kevin Kitching, 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 Mark Spencer MP, Minister of State for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.