

EXPLANATORY MEMORANDUM TO
THE AMMONIUM NITRATE MATERIALS (HIGH NITROGEN CONTENT)
SAFETY (AMENDMENT) REGULATIONS 2022

2022 No. 29

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her 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”).

Imports of relevant ammonium nitrate (“AN”) into Great Britain must be accompanied by a detonation resistance (“DR”) certificate issued by a competent laboratory which has an accreditation under standard ISO 17025. At present, for imports coming from within the EU, the competent laboratory must be based in the United Kingdom or in the EU. For imports coming from outside the EU, the competent laboratory must be based in the UK. This statutory instrument makes amendments to S.I. 2003/1082 to allow detonation resistance tests (“DRTs”) for AN imported from countries outside of the EU to be carried out at ISO accredited laboratories based in the UK and the EU. This instrument also makes minor amendments to correct errors made in the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 (“S.I. 2019/601”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Regulation 2(2)(b) of this instrument corrects minor errors in provisions of S.I. 2003/1082 inserted by S.I. 2019/601 and will be issued free of charge to all known recipients of S.I. 2019/601. Defra confirms that it has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on the use of the free issue procedure in relation to this instrument.

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 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 Great Britain. This includes a requirement for imports of relevant

AN to be accompanied by a DR certificate issued by a competent laboratory. The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 (“S.I. 2019/601”) amended S.I. 2003/1082 to provide that the DR certificate 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 DR certificate could be issued by an ISO accredited laboratory based in the EU.

- 6.2 S.I. 2019/601 did however make transitional provision to provide for the continued acceptance of DR certificates 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 DR certificate issued by a competent laboratory based in the UK.
- 6.3 This instrument will amend S.I. 2003/1082 so that AN imported from countries outside of the EU can have the required DR certificate issued by a competent laboratory based either in the UK or EU.

7. Policy background

What is being done and why?

- 7.1 A change in 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 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 50% of all AN), we need to ensure fertiliser importers and suppliers have as smooth as possible access to other sources of AN for the GB market and increase the resilience of the supply chain.
- 7.3 Transitional provision was made to accept DR certificates issued 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. The requirement to use a UK laboratory is a barrier to the sourcing of AN from outside the EU by suppliers to GB at this time of reduced AN manufacture in the EU. 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?

- 7.4 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.
- 7.5 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.

Why is it being changed?

- 7.6 Amendments are needed to S.I. 2003/1082 to allow for AN manufacturers in countries outside of the EU to be able to have DRTs carried out at either an EU or UK based

laboratory until 31 December 2022 which will allow for easier access of AN product from these countries to GB.

What will it now do?

- 7.7 This instrument amends S.I. 2003/1082 (amended by S.I. 2019/601) to allow DRTs for AN from countries outside of the EU to be carried out at ISO accredited laboratories based in the UK and the EU.

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 An Impact Assessment has not been prepared for this instrument because 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. This instrument will simply extend existing recognition of DRTs from EU laboratories to AN imported from outside of the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 As set out in paragraph 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 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 about 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, Minister of State, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.