Draft Regulations laid before Parliament under paragraph 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.0000

EXITING THE EUROPEAN UNION

AGRICULTURE

HEALTH AND SAFETY

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021

Made - - - -	***
Coming into force - -	***

The Secretary of State makes these Regulations, in exercise of the powers conferred by section 8C(1) of the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 8F(1) of Schedule 7 to that Act(**b**), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021 and come into force on the day after the day on which they are made.

(2) Regulation 3 extends to Northern Ireland only.

Amendment of the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019

2.—(1) The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019(**c**) are amended as follows.

(2) In regulation 5—

(a) for paragraph (3)(b)(iv) substitute—

"(iv) after point (x) insert—

(**a**) 2018 c.16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**b**) Paragraph 8F was inserted by paragraph 51 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**c**) S.I. 2019/601, amended by S.I. 2020/998.

"(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.

(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(**a**);

(ii) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**b**).

(zl) "Relevant authority" means:

(i) in relation to Wales, the Welsh Ministers;

(ii) in relation to Scotland, the Scottish Ministers.";";

(b) in paragraph (3)(c), for the inserted text substitute—

"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 not be within the legislative competence of:

(i) in relation to Wales, Senedd Cymru if it were contained in an Act of Senedd Cymru (assuming, in the case of provision that could only be made with the consent of a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975, that such consent were given);

(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);

(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 Senedd Cymru conferring the function (or conferring it so as to be exercisable in that way) would not be within the legislative competence of Senedd Cymru if it were contained in an Act of Senedd Cymru (assuming, in the case of provision that could only be made with the consent of a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975, that such consent were given);

(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.";

(c) in paragraph (16), in the substituted Article 32, in paragraph 2 for "the whole of the United Kingdom" substitute "Great Britain".

(**a**) S.I. 2006/2486, amended by S.I. 2011/1043.
(**b**) 1994 c. 39.

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

3.—(1) The provisions of Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers(**a**), as it applies in England and Wales and Scotland also apply in Northern Ireland, subject to the modifications listed in paragraph (3).

(2) Paragraph (1) is without prejudice to the application in Northern Ireland of Regulation (EC) No 2003/2003 as it applies by virtue of the Protocol on Ireland/Northern Ireland in the withdrawal agreement.

(3) The modifications are that—

(a) in Article 2(1)—

(i) the definition of "appropriate authority" is to be read as if in point (ii), after the third indent there were inserted—

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

(ii) the definition of "enforcement authority" is to be read as if after point (ii) there were inserted—

"(iii) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.";

(iii) the definition of "relevant authority" is to be read as if after point (ii) there were inserted—

"(iii) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.";

(b) in Article 2(2)—

(i) paragraph (a) is to be read as if after point (ii) there were inserted—

"(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);";

(ii) paragraph (b) is to be read as if after point (ii) there were inserted—

"(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.";

(c) Article 32 is to be read as if—

(i) for paragraph 2 there were substituted—

"2. The Secretary of State may not make regulations under this Regulation in relation to Northern Ireland, unless the Secretary of State also makes the same regulations, or regulations containing the same or substantially the same provision, in relation to Great Britain.";

(ii) in paragraph 3, for "each person who is a relevant authority" there were substituted "the Department of Agriculture, Environment and Rural Affairs";

(iii) in paragraph 4, for "any of the relevant authorities" there were substituted "the Department of Agriculture, Environment and Rural Affairs".

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

Date

(**a**) EUR 2003/2003, amended by S.I. 2019/601.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations") which were made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) ("the Withdrawal Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are made in exercise of the powers conferred by section 8C(1) of the Withdrawal Act. Regulation 2 amends the 2019 Regulations to take account of the Northern Ireland Protocol ("the Protocol") to the EU Withdrawal Agreement by providing for the retained EU law version of Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers ("Regulation (EC) No 2003/2003") to apply in respect of Great Britain rather than the United Kingdom. Regulation 3, which extends to Northern Ireland only, applies the provisions of the retained EU law version of Regulation (EC) No 2003/2003 to Northern Ireland, subject to modifications. Regulation 2003/2003 as it has effect in EU law will continue to apply in Northern Ireland by virtue of the Protocol.

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

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