EXECUTIVE NOTE

The EC Fertilisers (Scotland) Regulations 2006 SSI/2006/543

Powers

1. The above instrument is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972.

Parliamentary Procedure

2. The instrument is subject to negative resolution procedure.

Policy Objectives

3. These Regulations implement Regulation (EC) No. 2003/2003 of the European Parliament and of the Council relating to fertilisers ("the Community Regulation"), which lays down rules on the definition, composition, identification and packaging of fertilisers designated as "EC fertilisers". The Regulations introduce offences and penalties for breaches of the Community Regulation by manufacturers. There is a defence of due diligence. "Manufacturer" is defined in the Community Regulation.

4. The Regulations also introduce various measures for monitoring compliance with and enforcing the Community Regulation.

5. Article 6 of the Community Regulation permits choice between different labelling formats. The option chosen closely resembles existing practices; these are implemented at regulations 5 to 8 of the Regulations.

6. The regulation of fertilisers is devolved. However, there tends to be a UK approach to their regulation, due to the technical nature of the subject matter. There have been detailed discussions on these matters with Defra (acting in relation to England and Wales). The EC Fertilisers (England and Wales) Regulations 2006 (S.I. 2006/2486) came into force on 11th October 2006.

Relationship with other legislation

7. The Fertilisers Regulations 1991 (S.I. 1991/2197) and the Fertilisers (Sampling and Analysis) Regulations 1996 (S.I. 1996/1342) cover both EC-designated and non-EC-designated fertilisers. As the Community Regulation now sets out requirements for EC-designated fertilisers, this instrument disapplies the offences and sampling provisions of S.I. 1991/2197 and S.I. 1996/1342 insofar as they are covered by these Regulations.

Enforcement

8. Enforcement of these Regulations and the Community Regulation is for local authorities who must appoint inspectors for that purpose. In practice, existing Trading Standards officers are likely to be appointed, as these officers are already responsible for enforcement activity under S.I. 1991/2197.

9. To enable a local authority to carry out its enforcement duties, it is necessary to make provision for-

(a) inspectors to have appropriate powers of entry to premises and of inspection, for enforcement purposes;
(b) an offence of obstructing enforcement activity; and
(c) inspectors to have powers to take samples of fertiliser for analysis.

10. There is also a power to seize fertiliser and make an application to a sheriff seeking its destruction.

Consultation

11. A formal 12-week consultation exercise was carried out on the measures contained in this instrument, which gave fertiliser companies, local authorities and other interested parties an opportunity to comment on the proposals. There were no significant comments received, which probably reflects the fact that this instrument largely re-enacts existing requirements, which the industry are familiar with and work to.

Financial effects

12. The instrument has no financial effects on the Scottish Executive, on local authorities or on Scottish business. The EC Regulation was a consolidation of 4 existing Directives, so there are no additional financial or economic implications.

Scottish Executive : Environment and Rural Affairs Department
November 2006