

SICM(5)18 – The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019

Background

These affirmative Regulations are proposed to be made by the UK Government under:

- section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018, and
- section 2(2) of the European Communities Act 1972.

Summary

After exit, without amendment the relevant EU law would not operate properly and it would disrupt the trade in fertilisers currently authorised under EU law. Changes are being made to maintain fertiliser standards in UK law and provide continuity to the sector and security of supply for farmers.

This instrument replaces the ‘EC fertiliser’ regime in EU law with a new domestic regime, providing for a ‘UK fertiliser’ label which will function in the same way. It also allows a two-year transitional period during which ‘EC fertilisers’ can still be sold in the UK without a requirement to be relabelled, to ensure continued supply and reduce burdens on businesses as a result of exit. The instrument also amends the rules on the import of ammonium nitrate fertilisers to uphold current safety standards at the same time as ensuring consistency.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated **2 November 2018** regarding the Regulations.

The Regulations were originally proposed to follow the negative resolution procedure in the UK Parliament in **November 2018**. When the original draft Regulations were laid before the UK Parliament to be sifted, the Welsh Ministers laid before the Assembly a statement summarising the effect of the draft Regulations, in accordance with Standing Order 30C.

It appears that the draft Regulations were never formally made. Instead, these new Regulations have been laid which will follow the affirmative resolution procedure. This affirmative version of these Regulations is **different** to the proposed negative version of the Regulations. The most important difference for the Committee’s purposes is that the new affirmative Regulations



amend the Agriculture Act 1970 and therefore require a Statutory Consent Memorandum (SICM) to be laid.

A SICM has been laid, but the Welsh Government has not laid an updated written statement to reflect the change made to the Regulations. The Committee considers that the new affirmative Regulations are a different set of regulations, and therefore a new written statement should have been made by the Welsh Government in accordance with Standing Order 30C.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Regarding the amendment to the Agriculture Act 1970, we recognise this is a minor drafting change that is inevitable as a result of exiting the European Union.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Legal Advisers

Constitutional and Legislative Affairs Committee

29 January 2019

