

EXPLANATORY MEMORANDUM TO
THE PESTICIDES (AMENDMENT) REGULATIONS 2019
2019 No. 1290

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 Her Majesty.

2. Purpose of the instrument

- 2.1 A number of existing instruments refer to Regulation (EC) No 1107/2009 which sets rules for the authorisation of plant protection products (often referred to as pesticides). The Pesticides (Amendment) Regulations 2019 will update these references to take account of the latest amendment to the EU Regulation, with the effect that products meeting the description of plant biostimulants will become subject to the rules for fertilisers rather than the rules for pesticides.
- 2.2 The instrument also updates one existing instrument to take account of recent changes in title of qualifications regulators in England and in Wales.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is: regulations 2 and 8 extend to England and Wales only; regulation 4 extends to Great Britain; and the remainder extends to the United Kingdom.
- 4.2 The territorial application of this instrument is: regulations 2 and 8 apply to England and Wales only; regulation 4 applies to England; and the remainder applies to the United Kingdom.

5. European Convention on Human Rights

- 5.1 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food has made the following statement regarding Human Rights:

“In my view the provisions of the Pesticides (Amendment) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being introduced to update references in UK legislation to Regulation (EC) No 1107/2009 on the placing of plant protection products on the market, following amendment of that Regulation by Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products. Regulation (EU) 2019/1009 states that products referred to as plant biostimulants should be excluded from the scope of Regulation (EC) No 1107/2009 and that the latter should be amended accordingly. Article 47 of Regulation (EU) 2019/1009 amends Regulation (EC) No 1107/2009.
- 6.2 The cross-references in domestic legislation amended by this instrument must be updated in time for exit day to ensure that domestic legislation properly cross-refers to Regulation (EC) No 1107/2009 as it forms part of retained EU law.
- 6.3 The instrument also amends the definition of “a regulator in the United Kingdom” in regulation 5(12) of the Plant Protection Products (Sustainable Use) Regulations 2012, to reflect the fact that bodies nominated to regulate the delivery of training in relation to England and Wales have changed their names.

7. Policy background

- 7.1 EU and UK pesticides policy is aimed at providing a high level of protection for people and the environment whilst recognising that pesticides are economically important. Under the current system of regulation there are three main instruments:
- Regulation (EC) No 1107/2009 on the placing of plant protection products on the market, which is aimed at ensuring that individual pesticides are only permitted for use if scientific risk assessments find no harmful effect on people and no unacceptable effects on the environment. It operates a 2-tier regulatory process for approval of pesticide active substances at EU level if they meet safety requirements with products containing approved active substances being authorised at national level.
 - Two further instruments set maximum residue levels for pesticides in food to facilitate trade in treated produce, and set a framework for action to ensure that pesticides are used responsibly and that alternatives are developed.
- 7.2 This instrument will update references in UK legislation to Regulation (EC) No 1107/2009 following amendment by Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products, which states that products referred to as plant biostimulants should be excluded from the scope of Regulation (EC) No 1107/2009. Plant biostimulants are substances, mixtures and micro-organisms that stimulate plants' natural nutrition processes without themselves being fertilisers or plant protection products.
- 7.3 Plant biostimulant products are aimed solely at improving plants' nutrient use efficiency and are more similar to fertilisers than to most categories of plant protection products. The requirements to register a plant protection product under Regulation (EC) No 1107/2009 are necessarily strict to ensure that people and the environment are protected. Consequently they carry costs and place a fairly high regulatory burden on businesses. The recognition that biostimulant products do not need to be authorised under the plant protection products regulations will be welcomed by stakeholders developing and seeking to market such products. It is

therefore necessary to ensure that all references to Regulation (EC) No 1107/2009 in primary and secondary legislation are updated.

- 7.4 This instrument applies to pesticides which are a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to the withdrawal of the United Kingdom from the European Union.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation that is amended by this instrument. The instrument is updating references in a number of loosely related legal texts so as to take account of the latest change to Regulation (EU) 1107/2009. The substance and purpose of the amended legislation is unchanged and it is not appropriate to consolidate them.

10. Consultation outcome

- 10.1 It has not been necessary to consult on this instrument because the impact on business has been assessed to be negligible or positive. Businesses are anticipated to welcome this change as it provides clarity and removes the risk that companies might see their plant biostimulant products regulated as plant protection products. It affects a number of small businesses. This instrument also reflects the fact that two bodies responsible for the quality of qualifications under the Plant Protection Products (Sustainable Use) Regulations 2012 in England and in Wales have changed their names, which will not impact on businesses.

11. Guidance

- 11.1 Guidance is not required.

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 the impact on businesses is assessed to be negligible or positive, as it is deregulatory.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is the fact that this instrument will have a negligible or positive impact on businesses since plant biostimulant products will no longer be classed as plant protection products and therefore will no longer be required to meet the stringent regulatory requirements established under that legislation.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause and there are no plans to monitor or review this instrument because it is simply updating references to a specific EU Regulation in UK law. There are no consequences of the instrument that would benefit from monitoring or review.

15. Contact

- 15.1 Sarah Hugo at the Department for Environment, Food and Rural Affairs. Telephone: 0208 026 9385 or email: sarah.hugo@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Holly Yates, Deputy Director for Chemicals, Pesticides and Hazardous Wastes, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.