

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT FERTILISERS AND AMMONIUM NITRATE  
MATERIAL (AMENDMENT) (EU EXIT)  
REGULATIONS 2021

*Thursday 11 February 2021*

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**Monday 15 February 2021**

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**The Committee consisted of the following Members:**

*Chair:* MR LAURENCE ROBERTSON

Ali, Tahir (*Birmingham, Hall Green*) (Lab)  
 Andrew, Stuart (*Treasurer of Her Majesty's Household*)  
 Bradshaw, Mr Ben (*Exeter*) (Lab)  
 Docherty, Leo (*Aldershot*) (Con)  
 Evans, Chris (*Islwyn*) (Lab/Co-op)  
 Freer, Mike (*Comptroller of Her Majesty's Household*)  
 Harris, Rebecca (*Lord Commissioner of Her Majesty's Treasury*)  
 Jones, Fay (*Brecon and Radnorshire*) (Con)  
 † Prentis, Victoria (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)

† Pursglove, Tom (*Corby*) (Con)  
 Richards, Nicola (*West Bromwich East*) (Con)  
 Sultana, Zarah (*Coventry South*) (Lab)  
 † Tami, Mark (*Alyn and Deeside*) (Lab)  
 Thompson, Owen (*Midlothian*) (SNP)  
 Throup, Maggie (*Lord Commissioner of Her Majesty's Treasury*)  
 † Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)  
 † Zeichner, Daniel (*Cambridge*) (Lab)  
 Chloe Freeman, *Committee Clerk*  
 † **attended the Committee**

# Sixth Delegated Legislation Committee

Thursday 11 February 2021

[MR LAURENCE ROBERTSON *in the Chair*]

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

11.30 am

**The Chair:** Before we begin, I remind Members to observe social distancing and to sit only in places that are clearly marked. Mr Speaker has stated that masks should be worn in Committee, except when Members are speaking. *Hansard* colleagues would be most grateful if Members will send their speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

**The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Victoria Prentis):** I beg to move,

That the Committee has considered the draft Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021.

It is a pleasure to serve once again under your chairmanship, Mr Robertson.

The draft statutory instrument, which was laid before the House on 9 December 2020, has two main purposes. First, it will make technical amendments to the Fertilisers and Ammonium Nitrate Material (EU Exit) Regulations 2019, to correct certain inconsistencies that have arisen in the light of the Northern Ireland protocol. Secondly, it will apply the provisions of the retained EU law version of regulation 2003/2003 to Northern Ireland, subject to modifications. That will enable the marketing of UK fertilisers in Northern Ireland, which was the intention of the original exit SI before the Northern Ireland protocol was agreed.

The previous SI was made in 2019. It replaced the “EC fertiliser” label with a new “UK fertiliser” label, which was to function in the same way. That “UK fertiliser” regime would have operated across the whole of the UK from the end of the transition period. However, we agreed the Northern Ireland Protocol and, as a consequence, the SI needs to be updated. This draft instrument will apply the provisions of the retained EU law version of regulation 2003/2003 in Great Britain to Northern Ireland, subject to modifications, in order to enable UK fertilisers to continue to be marketed in Northern Ireland.

By way of context, the regulatory framework for the manufacture and sale of fertilisers is unusual compared with that of other agricultural products, as fertilisers are partially harmonised at EU level. That means that member states may operate their own domestic regulatory regimes alongside the European regulation of the EC fertiliser regime, which is provided for in EU regulation. Accordingly, alongside the EC fertiliser regime, Great Britain and Northern Ireland have historically operated separate domestic regulatory regimes under the Fertilisers Regulations 1991 and the Fertilisers Regulations (Northern Ireland) 1992, respectively.

Manufacturers in both GB and NI, therefore, have several routes to market and are free to choose which framework to use, although they must of course comply with the requirements of whichever regime is chosen. For example, they would need to be established within the EU or NI to sell EC fertilisers in Northern Ireland. The key provision of the draft instrument is to ensure the retained GB version of EU regulation 2003/2003, which allows products to be marketed as a UK fertiliser, applies in Northern Ireland, as was originally intended in the 2019 exit SI.

Given the partial harmonisation of fertiliser legislation, making the UK fertiliser regime applicable in Northern Ireland does not affect the continued application of the EU version of regulation 2003/2003, which will continue to apply in Northern Ireland by virtue of the protocol.

The draft SI is important, as a common route to market across the UK for fertilisers is required, so that a manufacturer in Great Britain who only trades in the UK may market products across Great Britain and Northern Ireland and use one label to do so. Although there are several routes to market for UK producers, there are particular concerns that, without this SI, the supply of certain products that are regulated under this regime—for example DMPSA, a nitrification inhibitor—would be reduced and that in turn could impact on the sustainability of UK food production.

We worked with the devolved Administrations on this SI, and they have given consent. The draft instrument is necessary, as I have explained, because it makes technical amendments in the light of the Northern Ireland protocol and will ensure that we can continue to operate a unified fertiliser regime across the UK. It will make life easier for manufacturers because they will be able to use one label. I commend the draft regulations to the House.

11.35 am

**Daniel Zeichner (Cambridge) (Lab):** It is a pleasure to continue our discussions once again, Mr Robertson; I am sure you enjoy them as much as we do. I thank the Minister for her introduction, although I am not sure I am quite as optimistic about this as she is. I will explain why.

We will not oppose the draft statutory instrument today. We consulted the Agricultural Industries Confederation, and I am grateful for its advice and reassurance. It tells me that it is in the interests of fertiliser suppliers and UK farmers for the SI to be approved as it will allow detonation resistance test, or DRT, certificates to be accepted if they originate in the EU for EU-sourced products, meaning that imported fertilisers will not have to be detained and re-tested in the UK, incurring additional costs to importers and suppliers. The AIC also points out that that is significant because there is currently only one laboratory in the UK that can undertake these tests—HSL Buxton, which it tells me has at times been subject to closure due to covid-19—and that this lack of UK capacity underlines the urgent need for the SI to be passed.

The AIC also says there has been concern in the industry that the Government were seeking to use only UK laboratories to pass ammonium nitrate DRTs. The SI changes that position, which the AIC welcomes, as being unable to use EU laboratories would represent a major impediment to importing ammonium nitrate

fertilisers, the predominant nitrogen fertiliser used in the UK, which would of course have a knock-on effect on farmers. The SI will extend the use of EU-sourced DRTs until the end of 2022.

The AIC also asks the Government to look at the entire regulatory strategy for fertilisers now that we are outside the EU, which it says would be welcome as it will allow a new look at DRTs and their position in primary legislation. It also asks that any new legislation should permit any International Organisation for Standardisation laboratory to conduct DRTs, rather than limit that to one UK lab or a limited selection of EU labs. It also wants to look at ways in which the industry can be less reliant on a handful of laboratories. I am interested in the Minister's views on that.

Effectively, the SI allows for the continued application in Northern Ireland of the European regulation on the EC fertiliser regime. Since under EU law there can be a dual regime for fertilisers, as the Minister explained, UK fertilisers, so labelled, are able to be marketed in Northern Ireland, which means that there will be a UK-wide regulatory regime for the marketing of UK fertilisers, and that manufacturers in Great Britain can market their products across the UK, both in Great Britain and Northern Ireland. EC fertilisers can still be marketed in Northern Ireland alongside them.

We are basically producing yet another tweak to the Northern Ireland protocol. I have to say that it seems to me increasingly obvious that, given that we seem to be having endless discussions on further amending legislation to meet the NI protocol, there are some fundamental problems with it. That was highlighted in the excellent discussion in the House of Lords two weeks ago. As ever, full answers were given by Lord Gardiner of Kimble, the Minister in the Lords, but only where possible; it seems to me that, given the fundamental and fatal internal contradictions, some answers were not forthcoming. I do not blame the Minister for that, because in some cases there are no answers to be given, but it is my duty to put the questions again, to expose some of these problems.

One example followed some probing questions from my colleague, the shadow Minister in the Lords, Baroness Jones of Whitchurch, on how we might deal with divergence in the future, given that EU rules will still apply in Northern Ireland. She said:

“We accept that it is important that UK manufacturers can trade products across GB and Northern Ireland using the same label. Can the Minister clarify that the existing regulatory standards will remain the same in GB and Northern Ireland?”—[*Official Report, House of Lords*, 26 January 2021; Vol. 809, c. 161GC.]

She also said:

“The Minister has explained that we are in a period of transition regarding controls over future fertiliser policy and that a consultation is being drawn up. Although it goes beyond the scope of this SI, we would welcome such a review and an opportunity to ensure that the regulations are fit for purpose. As the noble Baroness, Lady Bennett, and other noble Lords have said, there is clearly potential for modernisation, based on the best science available, together with a greater understanding of the need to protect and enhance our soils. Can the Minister reassure us that any new proposals will maintain our commitment to the precautionary principle and to our high environmental standards?”—[*Official Report, House of Lords*, Tuesday 26 January; Vol. 809, c. 161 GC-162GC.]

In the elegant reply given by the Minister in the Lords, he avoided dealing with the first conundrum. Of course, if EU standards change in future, we will not

automatically follow them. Or will we? Perhaps the Minister can explain. Baroness Jones also asked about the precautionary principle being applied. I am afraid there was no answer to that either. Again, there was an elegant answer outlining a move to a risk-based approach, which I see as being the laxer American approach, as opposed to the more cautious European approach. Can the Minister tell us which one we will be adopting in future?

There are also questions about paragraph 7.3 in the explanatory memorandum. A number of noble Lords highlighted it, and I spotted it too. It says:

“Manufacturers who market EC fertilisers will need to be Manufacturers who currently market ‘EC fertilisers’ in Great Britain and in Northern Ireland will need to be established in the EU to continue to market ‘EC fertilisers’ in Northern Ireland after the end of the Transition Period.”

I studied closely the exchange between Baroness McIntosh and the Minister in the Lords, but I am not sure I am any the wiser afterwards. Again, it was a very skilful response, but it seems to me that there will inevitably be some duplication, which must lead to additional cost. To market EC fertilisers, a base will be needed in the EU to continue to market EC fertilisers in Northern Ireland. The “UK fertiliser” designation helps, but it still means there will be duplication. Ultimately, that must lead to extra cost. Again, I would be grateful if the Minister can provide clarification.

In conclusion, we do not oppose the regulations, but I echo many of the concerns raised in the other place, particularly around ongoing problems faced by importers into Northern Ireland in general. I can anticipate the Minister's response. I am sure she will tell us that the Government are doing all that they can, but I would point out that it is a mess entirely of the Government's own making. It did not have to be like this—there were other options—and the Government bear a heavy responsibility for the problems facing both Northern Ireland and the Union.

11.42 am

**Victoria Prentis:** I am pleased that the hon. Gentleman has been in touch with the Agricultural Industries Confederation, which is of course the body that is most involved in this area. We work with it very closely as a Department. I will deal first with the detonation resistance test issue. We have passed legislation that allows the DRTs to be accepted, if they originate in the EU, until December 2022. That should give us time to conduct our reviews, and I will briefly set out a bit about where we intend policy to go.

We feel that the existing domestic regulatory regime for fertilisers in both GB and NI is outdated and in need of some modernisation. Leaving the EU and the current modernisation of regulation that the EU is conducting at the moment, which I think is due to be published in July 2022, gives us an opportunity to undertake a full review of our domestic framework. I would enjoy talking further to the hon. Gentleman about that outside the Committee.

Although I do not speak with the elegance of the Minister in the Lords, I do not think we will necessarily be following the American model or the EU model. We will go for the UK model in future. As I said in my opening speech, fertiliser regulation is quite unusual, because there has always been both a domestic set of

[Victoria Prentis]

regulations and an EU set of regulations. In many ways, perhaps it can provide a model for other types of regulations that are open to us in the future, so I do not think there is any need to take either one path. What is important is that we work with the Agricultural Industries Confederation, farmers and growers, and that we make the best regime for us in the future.

New powers relating to fertilisers in the Agriculture Act 2020 mean that we are now well placed to take forward the new work. We are starting the process of engagement with growers at the moment. We will of course undertake a public consultation to inform our views of where the legislation should go.

We began the process of review by considering how to use the provisions of the fertilising products regulation that became retained EU law to put in place a conformity assessment framework for fertiliser manufacture in the UK going forward. New policy will be informed by the findings of the nutrient management expert group, which has been tasked with identifying evidence-based options for reducing diffuse pollution by fertilisers, for example. We aim to have done a full consultation on the options by the end of this year. The final framework should become fully operational in the next few years.

I was asked about divergence specifically. I have dealt with that partially, but I will say that we will work with growers and other stakeholders and then consult on our new regulations. That will take into account any potential risks and impacts of divergence from EU rules. Any potential divergence is likely to be connected to some of

the very detailed and technical requirements around fertiliser content and guidance on usage. As I said right at the beginning, there has always been a level of what I call divergence, for want of a better of word—a level of difference—in the regulatory regimes in this area.

**Daniel Zeichner:** I accept that point, but surely the difference will be that, should we end up with a different set of rules in future, that will create a different regime for Northern Ireland, inevitably. Will that not inevitably lead to additional cost—not immediately, but after 2022?

**Victoria Prentis:** I do not feel that our trade and future relationship with the EU should be affected by the extension of the “UK fertiliser” terminology to Northern Ireland. The EU fertilisers regulation will continue to apply directly to Northern Ireland by virtue of the NIP, so trade in EC fertilisers will continue in Northern Ireland. I think that is without prejudice to the EU’s fertilisers regime.

We will look at all such matters closely. Fertilisers are quite special in the way that they have been regulated in the past. It is important that we work with the industry to make our new regulatory framework, and I have no doubt that we will be able to do that in a perfectly satisfactory way.

With that, I commend the draft regulations to the Committee.

*Question put and agreed to.*

11.48 am

*Committee rose.*