

EXPLANATORY MEMORANDUM TO
THE SMOKE CONTROL AREAS (AUTHORISED FUELS) (WALES)
(AMENDMENT) REGULATIONS 2011

This explanatory memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011. I am satisfied that the benefits outweigh any costs.

John Griffiths

Minister for Environment and Sustainable Development, one of the Welsh Ministers

2 December 2011

(i) Description

These Regulations amend the Smoke Control Areas (Authorised Fuels)(Wales) Regulations 2008 (SI 2008/3100) (W.274) by adding five new fuels to, and amending the specification of one other fuel, in the list of fuels declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993. The fuels have been tested and meet British Standard 3841.

(ii) Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

(iii) Legislative Background

The power enabling this Instrument to be made is contained in Sections 20(6) and 63 of the Clean Air Act 1993.

The SI follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The Clean Air Act 1993 (a consolidation of 1956 and 1968 legislation) aims to safeguard public health from emissions of smoke. In particular it empowers local authorities to declare smoke control areas in which it is an offence to emit smoke from chimneys. Households in those areas must use an “authorised” smokeless fuel – electricity, gas, or a solid smokeless fuel – or install an “exempt” appliance capable of burning certain non-authorised smoky fuels (wood, for example) without emitting smoke.

Since 1956 many local authorities have introduced smoke control areas in the major cities and urban areas. The controls which apply in smoke control areas have helped to significantly reduce concentrations of smoke and sulphur dioxide in those parts of the country.

The Act provides the Welsh Ministers with the power to authorise fuels for use in smoke control areas. These are fuels which have been tested against British Standard 3841 for solid smokeless fuels for domestic use.

Following the specified tests by the Welsh Government’s preferred testing centre, AEA Energy & Environment; it is proposed to add five more fuels to those which are already authorised. They are:

Big K Restaurant Grade Charcoal.

Contact: Big K Products UK Limited, Whittington Hill, Stoke Ferry, Norfolk, PE33 9TE.

Manufactured by Big K Products UK Limited at Parque Industrial Alvear, 2126 Alvear, Provincia de Santa Fe, Argentina ; which :

- (a) Comprise pyrolised white quebracho wood;
- (b) were manufactured using a kiln pyrolysis process at approximately 450°C;
- (c) are unmarked charcoal pieces of between 30mm to 150mm; and
- (d) have a sulphur content not exceeding 2 per cent of the total weight.

Newflame Plus briquettes.

Manufactured by Maxibrite Limited at Mwyndy Industrial Estate, Llantrisant, Mid Glamorgan, which—

- (a) comprise 10 to 15% bituminous coal, 10 to 15% petroleum coke, and anthracite duff and starch binder (as to the remaining weight);
- (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 260°C;
- (c) are unmarked pillow-shaped briquettes with approximate maximum dimensions 68mm, 63mm and 38mm;
- (d) have an average weight of 110 grams per briquette; and

(e) have a sulphur content not exceeding 1.9% sulphur on a dry basis.

Homefire Fire Logs

Manufactured by De Lange B.V., Rustenbugerweg 3, 1646 WJ Ursem, the Netherlands, which -

- (a) comprise slackwax (as to approximately 50% of the total weight) and sawdust (as to approximately 50% of the total weight) ;
- (b) were manufactured from those constituents by a process of heat treatment and extrusion;
- (c) are firelogs approximately 280mm in length and 75mm x 75mm with a single groove running along each of the four 280mm length faces ;
- (d) have an average weight of 1.1 kilograms per firelog ; and
- (e) have a sulphur content not exceeding 0.2% of the total weight.

Briteheat Plus briquettes.

Manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which -

- (a) comprise anthracite duff (as to approximately 75% to 95% of the total weight), petroleum coke (up to approximately 20% of the total weight) and an organic binder (as to the remaining weight);
- (b) were manufactured from those constituents by a process involving roll-pressing;
- (c) are unmarked pillow-shaped briquettes;
- (d) have an average weight of 80 grammes per briquette; and
- (e) have a sulphur content not exceeding 2 per cent of the total weight.

EDF Fuel Briquettes.

Contact: EDF-Energy, 49 Southwark Bridge Road, 4th Floor, London, SE1 9HH.

Manufactured by TheGreenFactory at the Laboratoire de Chimie Agro-industrielle - UMR 1010 INRA/INP-ENSIACET AGROMAT - Site de l'ENIT 47, avenue d'Azereix - BP 1629 65016 Tarbes Cedex, France, which -

- (a) comprise approximately 100g of unprocessed Miscanthus (as to approximately 45% of the total weight), approximately 95g of Copra ester (as

to approximately 43% of the total weight), and approximately 25g of a binder produced from Miscanthus (processed with calcium oxide as to approximately 0.5% of the total weight) as to the remaining weight;

(b) are manufactured from those constituents by a process involving Miscanthus processing, mixing, hot pressing and soaking in an ester bath;

(c) are unmarked cylinder-shaped briquettes of 120mm height and 60mm diameter with a star-shaped hole running centrally through longer length of the briquette;

(d) have an average weight of 220g per briquette; and

(e) have a sulphur content not exceeding 2% of the total weight.

The specific in relation to the following authorised fuel is amended to read;

Stoveheat Premium briquettes.

Manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which -

(a) comprise anthracite duff (as to approximately 65% to 85% of the total weight), petroleum coke (as to approximately 20% of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;

(c) are cushion shaped briquettes with an indented line running longitudinally around the briquette;

(d) have an average weight of 30g per briquette; and

(e) have a sulphur content not exceeding 2% of the total weight.

(v) Implementation

It is intended that the proposed instrument will come into force on 31 December 2011. If the Welsh Ministers were not to authorise Fuels under sections 20(6) and 63 of the Clean Air Act 1993 within a reasonable time, then there is a risk of criticism and possible representations from manufacturers, who will in practice be unable to market and sell their products effectively within smoke control areas in Wales.

(vi) Consultation

It was not deemed necessary to consult as the Regulations do not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further fuels to those which are already authorised, for use in smoke control areas. In addition, the Regulations do not affect policy relating to air quality control.

(vii) Regulatory Impact Assessment

a) Options

Do nothing

This would mean that the Welsh Government decides not to authorise any further tested and approved fuels for use in smoke control areas.

Make Legislation

This would entail making regulations authorising specified fuels from the provisions of Section 20 of the Clean Air Act 1993. The Smoke Control Areas (Authorised Fuels) (Amendment) (Wales) Regulations 2011 do not affect the nature of the regime of control imposed by the 1993 Act: they merely ensure that the regime as effected in Wales responds appropriately to new fuels developed by the manufacturers.

b) Benefits

Do nothing

There are no benefits implicit in this option.

Make the Legislation

The benefits of this option are as follows:

- Increasing the variety of authorised fuels will encourage compliance with restrictions in smoke control areas;
- Products will be available to consumers throughout Wales without inappropriate discouragement to those consumers in smoke-control areas;
- Manufacturers of authorised products will not have a restriction on marketing their products within smoke-controlled areas; and
- Cleaner air.

c) Costs

Do nothing

If the Welsh Ministers were not to authorise approved fuels from the provisions of Section 20 of the Clean Air Act 1993 then there is the risk of criticism and possible representations from manufacturers who will in practice be unable to market and sell their product effectively in a smoke control area in Wales.

Make the Legislation

The only interested parties are the manufacturer and potential customers. However, no compliance costs will be imposed on either of these groups as a result of the proposed Regulations being made. The only cost linked to these Regulations results from the testing and approval process.

d) Competition Assessment

The competition filter has been applied to the proposed Regulations and it is clear that they will not have a detrimental affect on competition. The intended Regulations will merely add tested and approved fuels to the list of authorised fuels. By not updating the legislation in this way the Welsh Ministers would be preventing a business from effectively marketing their product uniformly throughout the UK.

e) Consultation

It was not deemed necessary to consult as the Regulations will not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further fuels to those which are already authorised for use in smoke control areas. In addition, the Regulations will not affect policy relating to air quality control. Those fuels proposed for authorisation in these Regulations have been subject to a detailed and quantitative emissions testing protocol.

f) Post implementation review

No review of the Regulations will be necessary: when a fuel has been tested and approved it is appropriate to authorise it permanently. The descriptions of fuels and the conditions imposed on their use are detailed, so that if a manufacturer were to amend the specification of the fuel, it would no longer be authorised. The amended fuel would have to be resubmitted for approval and (if successful) new Regulations would have to be made. The structure of the Act's control regime therefore provides an automatic review process.

g) Summary

The costs and benefits of making the Regulations accrue to the manufacturer of the fuel. Once a fuel has been tested and approved, a manufacturer can, in effect, only market their product in a smoke control area once Regulations have been made adding their product to the list of authorised fuels. The Regulations will ensure that the application of the smoke control regime intended by the Act is updated to reflect the development of new fuels.