

EXPLANATORY MEMORANDUM TO

THE SMOKE CONTROL AREAS (EXEMPTED CLASSES OF FIREPLACE) (WALES) ORDER 2016

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs 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 (Exempted Classes of Fireplace) (Wales) Order 2016.

Lesley Griffiths AM
Cabinet Secretary for Environment and Rural Affairs
29 July 2016

(i) Description

The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2016 (2016 Order) revokes and replaces with amendments the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2015 (S.I. 2015/1513) (W.175).

This 2016 Order allows the use (subject to strict conditions) of a number of boilers and stoves capable of smokeless operation within smoke control areas. These fireplaces do not burn the fuels generally authorised for use in such areas, and consequently have been assessed and are considered to be capable of meeting, or have met, the requirements of BS PD 6434.

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

None.

(iii) Legislative Background

The enabling power is contained in section 21(5) of the Clean Air Act 1993 (1993 Act).

This power was originally conferred on the Secretary of State but was, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999/672. This power is now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

This Statutory Instrument is subject to the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

Section 18(1) of the 1993 Act enables local authorities to declare the whole or part of their area a smoke control area by making a "smoke control order". In Wales there are currently four partial smoke control areas in Flintshire, Newport, Swansea and Wrexham. Section 20(1) of the 1993 Act places a general prohibition on the emission of smoke in smoke control areas.

However, anyone burning fuel in a smoke control area can avoid contravention of the 1993 Act by either using an authorised fuel (not relevant here), or by using an "exempted fireplace". "Fireplace" is defined in section 64(1) of the 1993 Act as including any open or closed stoves or furnaces as well as grates. Section 21(5) of the 1993 Act enables exemptions to be made, by order, of classes of fireplaces from the prohibition of smoke emissions if they are capable of burning fuels without producing any smoke or substantial quantities of smoke.

It follows from this that a person using an exempted fireplace can be confident (so long as they comply with any conditions imposed by the order) that they

will not contravene the 1993 Act. Following the specified tests by the Welsh Government's preferred testing centre, Ricardo-AEA, it is proposed to add the fireplaces to those exempted at article 2 of the Schedule to the 2016 Order.

(v) Consultation

It was not deemed necessary to consult as the Order will not amend the regime of smoke control within Wales, but will ensure the regime is brought up to date by adding further classes of appliances to those which are already exempted for use in smoke control areas. In addition, the 2016 Order will not affect policy relating to air quality control. Those appliances proposed for exemption in this order have been subject to a detailed and quantitative emissions testing protocol.

(vi) Implementation

If the Welsh Ministers were not to exempt approved appliances from the provisions of section 20 of the 1993 Act within a reasonable time, then there is a risk that manufacturers will in practice be unable to market and sell their products effectively within smoke control areas in Wales.

(vii) Regulatory Impact Assessment

The proposed legislation imposes no costs on the public, private, charities or voluntary sector, therefore no RIA is deemed necessary.