

EXPLANATORY MEMORANDUM TO THE SMOKE CONTROL AREAS (AUTHORISED FUELS) (WALES) (AMENDMENT) REGULATIONS 2019

This Explanatory Memorandum has been prepared by the Department for Environment, Energy 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 (Authorised Fuels) (Wales) (Amendment) Regulations 2019.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

14 May 2019

1. Description

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2019 correct the typographical error made in The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019 (“the 2019 Regulations”).

The 2019 Regulations revoke and replace The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2017 (SI 2017 No.421 (W.89)). The 2019 Regulations update the current legislation with newly authorised fuels for the purposes of Part III of The Clean Air Act 1993 (“the 1993 Act”).

An amending Statutory Instrument is required to rectify an error within the 2019 Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

At its meeting on 28 January 2019, the Constitutional and Legislative Affairs Committee identified a Technical Point within the 2019 Regulations under Standing Order 21.2.

On 31 January 2019, the Welsh Government undertook to make an amending Statutory Instrument to rectify the error.

The English version was identified as including the correct text which specifically refers to the authorised fuel and its length in millimetres: “*charcoal pieces between approximately 30 millimetres and 130 millimetres in length*” (Schedule, Regulation 2, section 9).

The corresponding Welsh text refers to charcoal pieces between approximately 30 millimetres and 150 millimetres in length. The discrepancy amounts to a difference of 20 millimetres.

The amending Statutory Instrument will correct this typographical error.

3. Legislative Background

The enabling power is contained in section 20(6) of the 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.

Section 63 of the 1993 Act provides for the procedure to be followed for statutory instruments. Accordingly, this Statutory Instrument is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

The 1993 Act (a consolidation of The Clean Air Act 1956 and The Clean Air Act 1968) aims to safeguard public health from emissions of smoke. 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 or use an “exempt” appliance capable of operating without emitting smoke, regardless of the fuel used.

The 1993 Act provides the Welsh Ministers with the power to authorise fuels and appliances for use in Wales’ designated Smoke Control Areas. Authorised fuels are prescribed in regulations.

The fuels listed in the Schedule to the 2019 Regulations have been recently approved as suitable for inclusion on the list of fuels authorised for use in designated Smoke Control Areas. They are included in the Schedule to the 2019 Regulations, alongside fuels previously authorised. The 2019 Regulations revoke and replace The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2017 and provide a consolidated, up-to-date list of authorised fuels.

The amending Statutory Instrument corrects the typographical error identified in the 2019 Regulations.

5. Implementation

Updating the lists of authorised fuels in the 2019 Regulations ensured the legislation keeps pace with the development of new smokeless fuels, making them available to households in designated Smoke Control Areas.

Air quality can have fundamental impacts on human health, affecting both the quality and duration of people’s lives. A more effective air quality regime will have an important contributory impact in terms of the goals of “A healthier Wales” under the Well-being of Future Generations (Wales) Act 2015.

Updating the lists of authorised fuels also contributes to the achievement of the Healthy and Active strategy within Prosperity for All, the Welsh Government’s national strategy as improving air quality improves the health and wellbeing of individuals, families and communities.

The amendment to correct the identified error in the 2019 Regulations will correct the error made and ensure consistency in both Welsh and English texts.

6. Consultation

It was considered neither necessary nor appropriate to publicly consult on the amendment of the 2019 Regulations as they leave the nature of the smoke control regime in Wales unchanged. The 2019 Regulations simply update the list of fuels authorised for use within Wales' designated Smoke Control Areas. Similarly, the amending Statutory Instrument was not subject to public consultation as it simply corrects a typographical error identified in the 2019 Regulations.

7. Regulatory Impact Assessment (RIA)

The amendment to correct the identified error in the 2019 Regulations does not impose costs on the public, private, or voluntary sectors. An RIA is not therefore deemed necessary.