

EXPLANATORY MEMORANDUM TO
THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES)
(WALES) ORDER 2012

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 (Exempted Fireplaces) (Wales) Order 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths

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

1 February 2012

(i) Description

This Order revokes and replaces with amendments the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2011 (S.I. 2011/38) (W.13). This Order allows the use (subject to strict conditions) of a number 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 power enabling this Instrument to be made is contained in Section 21 of the Clean Air Act 1993.

The SI follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

Section 18 of the Clean Air Act 1993 enables local authorities to declare the whole or part of their area as 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 of the 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 Act by either using an authorised fuel (not relevant here), or by using an "exempted fireplace". "Fireplace" is defined in section 64 of the Clean Air Act 1993 as including any open or closed stoves or furnaces as well as grates. Section 21 of the 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 Clean Air Act 1993. It is not automatically unlawful to use a non-exempted fireplace in a smoke control area, but anyone doing so is at risk of prosecution if it emits any smoke. This means that non authorised fuel types cannot be used as fuel in a smoke control area unless burnt on an exempted fireplace. The power to exempt is devolved to the Welsh Ministers.

Following the specified tests by the Welsh Government's preferred testing centre, AEA Energy & Environment; it is proposed to add the fireplaces listed at annex 1 to those which are already exempted.

(v) Consultation

It was not deemed necessary to consult as the Order will not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further classes of appliance to those which are already exempted, for use in smoke control areas. In addition, the 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

It is intended that the proposed instrument will come into force on 27 February 2012. If the Welsh Ministers were not to exempt approved appliances from the provisions of Section 20 of the Clean Air Act 1993 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

a) Options

Do nothing

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

Make Legislation

This would entail making an Order exempting specified classes of fireplaces from the provisions of Section 20 of the Clean Air Act 1993. The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2012 does not affect the nature of the regime of control imposed by the 1993 Act: it merely ensures that the regime as effected in Wales responds appropriately to new appliances developed by the manufacturers.

b) Costs and Benefits

Do nothing

If the Welsh Ministers were not to exempt approved fireplaces from the provisions of Section 20 of the Clean Air Act 1993 then there is a risk that manufacturers will in practice be unable to market and sell their product effectively in smoke control areas in Wales.

There are no benefits implicit in this option.

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 Order being made. The only cost linked to this Order results from the testing and approval process.

The benefits of this option are as follows:

- Increasing the variety of approved appliances 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) Competition Assessment

The competition filter has been applied to the proposed Order and it is clear that the Order will not have a detrimental affect on competition. The intended Order will merely add tested and approved appliance to the list of exempt appliances. 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.

d) Post implementation review

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

e) Summary

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