

**EXPLANATORY MEMORANDUM TO
THE SMOKE CONTROL AREAS (EXEMPTED CLASSES OF
FIREPLACES) (WALES) ORDER 2017**

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 Fireplaces) (Wales) Order 2017.

Carwyn Jones
First Minister of Wales
17 March 2017

(i) Description

The Smoke Control Areas (Exempted Classes of Fireplaces) (Wales) Order 2017 (2017 Order) revokes and replaces with amendments the Smoke Control Areas (Exempted Classes of Fireplaces) (Wales) Order 2016 (S.I. 2016/811) (W.201).

This 2017 Order updates the legislative regime with those fireplaces newly authorised for the purposes of Part III of the Clean Air Act 1993 (“the 1993 Act”).

(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

The 1993 Act (a consolidation of 1956 and 1968 legislation) 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” fireplace capable of operating without emitting smoke, regardless of the fuel used. There are currently parts of four areas in Wales – Swansea, Newport, Wrexham and Flintshire - that are prescribed as Smoke Control Areas. Section 20(1) of the 1993 Act places a general prohibition on the emission of smoke in smoke control areas.

The 1993 Act provides the Welsh Ministers with the power to authorise fireplaces for use in smoke control areas. Authorised appliances are prescribed by Statutory Instrument.

The fireplaces newly approved as suitable for inclusion on the list of fireplaces authorised for use in Smoke Control Areas are included in the schedule to the 2017 Order, alongside fireplaces previously authorised. The 2017 Order revokes and replaces The Smoke Control Areas (Exempted Classes of Fireplaces) (Wales) Order 2016, providing a consolidated, up-to-date list of authorised fireplaces.

(v) Consultation

It was not considered appropriate to publicly consult on the 2017 Order as it leaves the nature of the smoke control regime in Wales unchanged. The 2017 Order merely updates the list of fireplaces authorised for use within Smoke Control Areas.

(vi) Implementation

Updating the lists of authorised fireplaces in the Order will ensure the legislation keeps pace with the development of new smokeless fireplaces, making them available to households in Smoke Control Areas.

Air quality can have fundamental impacts on human health, affecting both the quality and duration of peoples' 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.

(vii) Regulatory Impact Assessment

The 2017 Order imposes no costs on the public, private, charities or voluntary sector, therefore no RIA is deemed necessary.