

EXPLANATORY MEMORANDUM TO THE SMOKE CONTROL AREAS (EXEMPTED CLASSES OF FIREPLACE) (WALES) ORDER 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 (Exempted Classes of Fireplace) (Wales) Order 2019.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
16 January 2019

1. Description

The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2019 ('the 2019 Order') revokes and replaces with amendments The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2017 (S.I. 2017/423) (W.90).

The 2019 Order updates the current legislation with newly authorised fireplaces for the purposes of Part III of The Clean Air Act 1993 ('the 1993 Act').

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

There are no matters of special interest to the Committee.

3. Legislative Background

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

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" 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 designated 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 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 2019 Order, alongside fireplaces previously authorised. The 2019 Order revokes and replaces The Smoke Control Areas (Exempted Classes of Fireplaces) (Wales) Order 2017, providing a consolidated, up-to-date list of authorised fireplaces.

5. Consultation

It was not considered appropriate or necessary to publicly consult on the 2019 Order as it leaves the nature of the smoke control regime in Wales unchanged. The 2019 Order simply updates the list of fireplaces which have been authorised for use within the designated Smoke Control Areas.

6. Implementation

Updating the lists of authorised fireplaces in the 2019 Order will ensure the legislation keeps pace with the development of new smokeless fireplaces, making them available to households in Smoke Control Areas. It will also enable manufacturers to sell their products in the 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 fireplaces 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.

7. Regulatory Impact Assessment (RIA)

The 2019 Order does not impose costs on the public, private or voluntary sector. For this reason, an RIA is not deemed necessary.