

**EXPLANATORY MEMORANDUM TO**  
**THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (ENGLAND) ORDER**

**2009 No. 449**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument allows the use (subject to strict conditions) of a number of wood burning boilers and stoves capable of smokeless operation within smoke control areas. These fireplaces do not burn the smokeless fuels generally authorised for use in such areas, and consequently have been assessed by Defra and are considered to be capable of meeting, or have met, the requirements of British Standard PD 6434 for smokeless operation of solid fuel appliance. .

- 2.2 This instrument revokes and replaces with amendments the Smoke Control Areas (Exempted Fireplaces) (England) (No.2) Order 2008. A number of additional fireplaces have been added to the list of “exempted” fireplaces.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 Section 20 of the Clean Air Act 1993 prohibits the emission of smoke from chimneys in smoke control areas, save from certain “authorised fuels”.

- 4.2 However, the Secretary of State may, by order under section 21 of the 1993 Act, exempt specified classes of fireplace from the provisions of section 20 if he is satisfied that they can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke. This instrument is made in exercise of this power.

5. **Territorial Extent and Application**

- 5.1 This instrument applies in England.

6. **European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The Clean Air Act 1993 (a consolidation of 1956 and 1968 legislation) aims to safeguard public health from emissions of smoke. UK air quality is much cleaner than when the acts were first introduced. This has been achieved by regulating emissions from industrial processes, road transport and the domestic sector. But air pollution still causes serious adverse effects on people's health and is currently estimated to reduce life expectancy of every person in the UK by an average of 7-8 months.

7.2 The Clean Air Act 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 – electricity, gas, or a solid smokeless fuel – or install an "exempt" appliance capable of burning "unauthorised" smoky fuels (house coal or wood, for example) without emitting smoke.

7.3 The current list of fireplaces that are "exempted" appliances needs to be updated, which this instrument effects.

- *Consolidation*

7.4 The instrument consolidates several new fireplaces with the those fireplaces currently exempt in the Smoke Control Areas (Exempted Fireplaces) (England) (No.2) Order 2008, which is to be revoked.

## **8. Consultation outcome**

8.1 General consultation is not normally undertaken for these instruments. The instruments do not make any substantive changes to the primary legislation (The Clean Air Act 1993) but simply add further makes of fireplaces to the existing schedule list of appliance already exempt in current statutory instrument.

8.2 Prior to the instrument coming into force, the only party likely to be concerned in a proposed exemption would be the manufacturer of the fireplace who had applied for the exemption and wished to see their product granted exemption as soon as possible. Applying standard consultation to a proposed exemption of a particular model of fireplace would be an unnecessary barrier and prevent the manufacturer concerned from marketing their products for a further 12 weeks after it had passed the relevant tests and been recommended for exemption.

## **9. Guidance**

9.1 Guidance on the clean air legislation, smoke control, the fireplace exemption controls, the exemption application procedure for manufacturers and those fireplaces which are exempt is available on the Department's sponsored website at [http://www.airquality.co.uk/archive/smoke\\_control/index.php](http://www.airquality.co.uk/archive/smoke_control/index.php)

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

11.1 The legislation does not apply to small businesses. Many of the exempt fireplaces are intended for use in domestic properties but some there are some small scale boilers intended for commercial use in smoke control areas.

## **12. Monitoring & review**

12.1 The intended outcome of the instrument is to enable the manufacturer of the exempt fireplace to market their product in smoke control areas in England and for the public and private sector in those areas to purchase, install and operate the fireplaces in compliance with the Clean Air Act 1993.

## **13. Contact**

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Tel: 020 7238 1673 or e-mail: [colin.mcmullen@defra.gsi.gov.uk](mailto:colin.mcmullen@defra.gsi.gov.uk) can answer any queries regarding the instrument.