

EXPLANATORY MEMORANDUM TO
THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (ENGLAND)
ORDER 2015

2015 No. 307

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.

2. **Purpose of the instrument**

2.1 This instrument allows the use (subject to strict conditions) of a number of solid fuel burning 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 by Defra and are considered to be capable of meeting, or have met, emission limits which are based upon thresholds in British Standard (BS PD 6434:1969) or in the Clean Air Act (Emission of Grit and Dust from Furnaces) Regulations (SI 1971/162) depending on the appliance size.

2.2 This instrument revokes and replaces with amendments the Orders listed in paragraph 2.3. A number of additional fireplaces have been added to the list of “exempted” fireplaces and amendments have been made to the details of some of the fireplaces already on the list. For example some conditions of exemption for older entries have been changed to remove references to fuels which are no longer available or which cannot be used without contravening the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675). This new Order also removes duplicate entries for the same appliances.

2.3 The Orders consolidated by this instrument are as follows:

- The Smoke Control Areas (Exempted Fireplaces) Order 1970
- The Smoke Control Areas (Exempted Fireplaces) (No. 2) Order 1970
- The Smoke Control Areas (Exempted Fireplaces) Order 1971
- The Smoke Control Areas (Exempted Fireplaces) Order 1972
- The Smoke Control Areas (Exempted Fireplaces) (No. 2) Order 1972
- The Smoke Control Areas (Exempted Fireplaces) Order 1973
- The Smoke Control (Exempted Fireplaces) (Variation) Order 1974
- The Smoke Control Areas (Exempted Fireplaces) (Variation) (No. 2) Order 1974
- The Smoke Control Areas (Exempted Fireplaces) (No. 2) Order 1975
- The Smoke Control Areas (Exempted Fireplaces) (No. 3) Order 1975
- The Smoke Control Areas (Exempted Fireplaces) Order 1978
- The Smoke Control Areas (Exempted Fireplaces) Order 1982

- The Smoke Control Areas (Exempted Fireplaces) Order 1983
- The Smoke Control Areas (Exempted Fireplaces) (No. 2) Order 1983
- The Smoke Control Areas (Exempted Fireplaces) (No. 3) Order 1983
- The Smoke Control Areas (Exempted Fireplaces) Order 1984
- The Smoke Control Areas (Exempted Fireplaces) (Amendment) Order 1985
- The Smoke Control Areas (Exempted Fireplaces) Order 1986
- The Smoke Control Areas (Exempted Fireplaces) Order 1988
- The Smoke Control Areas (Exempted Fireplaces) Order 1989
- The Smoke Control Areas (Exempted Fireplaces) Order 1990
- The Smoke Control Areas (Exempted Fireplaces) (No. 2) Order 1990
- The Smoke Control Areas (Exempted Fireplaces) Order 1991
- The Smoke Control Areas (Exempted Fireplaces) Order 1992
- The Smoke Control Areas (Exempted Fireplaces) Order 1993
- The Smoke Control Areas (Exempted Fireplaces) Order 1996
- The Smoke Control Areas (Exempted Fireplaces) Order 1997
- The Smoke Control Areas (Exempted Fireplaces) Order 1999
- The Smoke Control Areas (Exempted Fireplaces) (England) Order 2001
- The Smoke Control Areas (Exempted Fireplaces) (England) Order 2003
- Smoke Control Areas (Exempted Fireplaces) (England) (No. 2) Order 2014

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select 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, section 21 of the 1993 Act provides that the Secretary of State may, by order, exempt specified classes of fireplace from the provisions of section 20 if satisfied that they can be used for burning fuel other than authorised fuels without producing any, or a substantial quantity of, smoke. This instrument is made in exercise of those powers.

5. Territorial Extent and Application

5.1 This instrument applies to 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. In particular 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 – electricity, gas or a solid smokeless fuel – or install an “exempt” appliance which has been assessed as capable of burning “unauthorised” smoky fuels (house coal or wood, for example) without producing any, or a substantial quantity of, smoke.

7.2 Since 1956 many local authorities have introduced smoke control areas in the major cities and urban areas. The controls which apply in smoke control areas have helped to significantly reduce concentrations of smoke and sulphur dioxide in those parts of the country.

7.3 The Act provides the Secretary of State with the power to exempt fireplaces for use in smoke control areas. These are fireplaces which have been tested on behalf of the Department and shown that they can be used for burning fuel other than authorised fuels without producing any, or a substantial quantity of, smoke.

7.4 This instrument revokes and replaces with amendments the Smoke Control Orders listed at paragraph 2.3 above.

7.5 It updates the list of fireplaces that are “exempted” appliances by adding a number of additional fireplaces to the list and amending the details of some of the fireplaces already listed (for example updated trade names). Changes have also been made to the conditions of exemption for some older fireplaces to remove references to fuels which are either no longer available or which cannot be used without contravening the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675).

7.6 The new Order consolidates and harmonises duplicate entries for six products: the Dunsley Yorkshire Stove (which had entries in S.I. 1999/1515 and S.I. 2014/2404 which referred to slightly different instruction manuals), the Spacewarmer B200 and B500 (which had entries in S.I. 1984/1649 and S.I. 1990/2457, with only the later entry specifying permitted fuels and an afterburner) and the Talbott’s Heating models T75, T150 and T300 (which had entries in SI 1996/1108 and SI 2014/2404, with the later entry omitting some permitted fuels from the first entry which it would be unlawful to use under other legislation). The new Order uses the later conditions but protects people from inadvertently committing offences by allowing the older conditions to be relied upon for Dunsley Yorkshire Stoves and Spacewarmer appliances that were purchased before the later conditions were first adopted. These earlier conditions were based on testing that was carried out at the time to ensure that these products met the Clean Air Act requirements.

7.7 The consolidation of the historical Orders and the associated changes form part of the Government's Better Regulation Agenda and review of the Clean Air Act 1993 and aims to make this legislation easier to access and consistent with other legislation. The exemption of the new fireplaces for use in Smoke Control Areas forms part of the Department's business as usual.

8. Consultation outcome

8.1 No consultation is necessary on this specific Order as it does not impose any burdens but is merely the result of technical analysis of the fireplace on behalf of the manufacturer. This instrument does not amend the Clean Air Act 1993 but simply revokes and replaces with amendments the Orders listed in paragraph 2.3.

8.2 More generally, however, Defra issued a Call for Evidence in September 2013 as part of its Review of the Clean Air Act 1993. This highlighted stakeholder suggestions for improvements to the Clean Air Act 1993 from earlier evidence gathering including the consolidation of existing Smoke Control Area Orders to simplify legislation. There were 58 responses to the Call for Evidence and a summary of responses was published in July 2014 which did not contain any further comments regarding consolidation of the Smoke Control Area Orders.

9. Guidance

9.1 Guidance on smoke control can be found on the Gov.uk website at <https://www.gov.uk/smoke-control-area-rules>

9.2 A list of fireplaces which are exempted can be found on the Defra smoke control website at <http://smokecontrol.defra.gov.uk/appliances.php>

9.3 The Defra smoke control web site will be updated to make stakeholders aware of the changes to the smoke control orders and in particular the removal of those fuels that are not permissible due to contravening the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675).

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no adverse impact on business, charities or voluntary bodies. Businesses are likely to benefit financially as they would have the opportunity to market their exempt appliances in Smoke Control Areas

10.2 There is no adverse impact on the public sector. Local authorities will continue to fulfil their responsibilities for local air quality management although there is a possible reduction in administrative burden as a result of

local authorities being updated and better informed of the most recent exempt appliances.

11. Regulating small business

11.1 This instrument regulates the exemption of fireplaces for use in Smoke Control Areas. It does not regulate small businesses.

11.2 Small firms employing up to 20 people are likely to benefit from the legislation as set out in section 10.1.

12. Monitoring and review

12.1 The order containing the schedule of exempted fireplaces is usually amended twice a year to include new fireplace exemptions and amendments to fireplaces already exempted. However measures have been included in the Deregulation Bill which, if adopted, will remove the requirement for exempted products to be specified in Statutory Instruments and will enable the Secretary of State to specify products by publishing a list which will be maintained on the internet. This will enable the exempted product information to be updated on a monthly basis which will reduce delays for manufacturers in being able to market their products for use in smoke control areas.

13. Contact

13.1 Bridget Haughan at the Department for Environment, Food and Rural Affairs. Tel: 020 7238 3391 or e-mail: bridget.haughan@defra.gsi.gov.uk can answer any queries regarding this instrument.