EXPLANATORY MEMORANDUM TO

THE CERTIFICATION OF FUELS AND FIREPLACES (CHARGES) (ENGLAND) REGULATIONS 2025

2025 No. 287

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Emma Hardy, Minister for Water and Flooding at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Bill Parish, Deputy Director for Air Quality, Industrial Emissions, Noise and Nuisance at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Karen Smith, Head of Domestic Burning Policy at the Department for Environment, Food and Rural Affairs can be contacted with any queries regarding this instrument via email AQIE.Correspondence@defra.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations impose charges in relation to the certification of fuels and fireplaces (solid fuel appliances) for sale in England.

4.2 Certification is required to ensure that fuels and fireplaces (solid fuel appliances) comply with smoke control measures in Part 3 of the Clean Air Act 1993 (as it applies to England) and the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 (S.I. 2020/1095) ("the DSFS Regulations"). Those measures support implementation of the United Kingdom's obligations (so far as they affect England) to reduce harmful emissions under the United Nations Economic Commission for Europe Convention on Long-range Transboundary Air Pollution 1979 and the 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (often referred to as the Gothenburg Protocol).

4.3 The assessment of fuels and fireplaces is conducted by not-for-profit organisations appointed by the Secretary of State to carry out certification or assessment services (referred to in the Regulations as "the assessment organisation"). The charges imposed by these regulations must be paid to the assessment organisation by appliance manufacturers, fuel manufacturers and suppliers to ensure that emissions

standards are met. VAT is not included in the charges set out on the face of the regulations but would be charged if the assessment organisation appointed by the Secretary of State is VAT registered, depending on the applicant VAT may also be recoverable.

4.4 The charges enable the assessment organisation appointed to carry out certification, assessments and related compliance audits and checks to recover the costs incurred by them in providing fuel and fireplace (solid fuel appliances) certification services.

Where does the legislation extend to, and apply?

4.5 These regulations form part of the law of England and Wales. These regulations affect fuels and fireplaces sold in England only.

5. Policy Context

What is being done and why?

5.1 These fees are being introduced in regulations following a review in late 2024 of existing certification arrangements, in preparation for an open re-procurement exercise for the assessment organisation. The review identified that it is a legal requirement for fees for assessment services to be stipulated in legislation for them to be charged lawfully, but that no such legislative provision was currently in force.

5.2 The provisions within both the Clean Air Act 1993 (as it applies to England) and the DSFS Regulations are about ensuring that only those fuels and stoves that meet appropriate standards, and do not emit excess pollution, are certified for sale in England. The DSFS Regulations set fuel and wood standards that apply across England, whereas the Clean Air Act 1993 sets standards for fuel and stoves which apply in areas where a smoke control order is in place under Part 3 of that Act. This is in support of our commitments under the Gothenburg Protocol to reduce emissions of certain air pollutants.

5.3 To pay for the cost of assessment, the assessment organisation charges a fee: for each application for certification or assessment of fuels and fireplaces; for any costs incurred by the assessment organisation in processing any application and conducting an assessment; for applications to renew existing certifications or assessments; and to undertake compliance audits and checks of certified fuels. The fees relating to the certification of wood fuel and manufactured solid fuel under the DSFS Regulations have been charged to suppliers since the relevant provisions of those Regulations came into force in May 2021. The Department believes that fees have been charged for assessments of fuels and appliances which meet the necessary standard to be used in smoke control areas under the Clean Air Act 1993 since that legislation was introduced, i.e. for around 32 years. It is not clear why the need for legislation was not identified much earlier.

5.4 The Department acknowledges that these fees should have had a statutory basis, but did not, and that as a result reimbursement may be sought by suppliers of fuels and fireplaces who have paid application or compliance fees. Those fees have continued to be charged since this issue was identified, on the basis that the Department has actively sought to correct this and regularise the position by bringing these regulations into effect as soon as possible. This has enabled the scheme to continue to operate effectively for suppliers who need the service. We are also considering options for addressing the historic position, in particular we are giving active consideration to the introduction of retrospective primary legislation to correct this. The Department is

clear about the need to rectify this situation quickly but is not yet in a position to set out the timeframes for this next step.

5.5 The Department does not currently have enough information to confidently say how long these charges have been made (in particular under the Clean Air Act 1993 arrangements) or how many suppliers may have been affected by it. We are investigating this to try to obtain an accurate picture of what has happened. However, as the fees were charged by outsourced providers over many years, in some cases under contracts which have since come to an end, it is unlikely that we will be able to identify all of those affected, or how much they were charged. The department is confident that applicants received the testing services they paid fees for.

5.6 This instrument therefore provides a statutory basis for charges for certification of appliances and fuels and sets out the fees payable in line with existing practice, which are currently provided under contract on behalf of the Secretary of State. This will enable us to proceed with retendering activities as planned on the correct and appropriate legal basis. This Instrument does not change fee charges or structures which are set on a cost recovery basis.

5.7 Parts 2 and 3 of the Regulations set fees for certification and recertification applications and regulatory checks for wood and manufactured solid fuels under the DSFS Regulations. The fees for certification and recertification of wood suppliers under Part 2 vary between £215.00 and £455.00, depending on the type of wood supplier. The fee for compliance checks under Part 2 also varies (between £125 and £6000) depending on the size of supplier and whether they only supply end users or whether some or all of their supplies are made to wholesalers. Under Part 3 of the Regulations, manufacturers of manufactured solid fuel are charged £950 for a certificate for a new manufactured solid fuel. Applications for recertification or to sell a fuel under a particular brand cost £475. The body which certifies manufactured solid fuels carries out audits to ensure that manufactured solid fuels continue to meet legal standards. The charge for this audit is £750, but the body may not charge a manufacturer this fee more than once in any 36-month period, unless a further audit is required because the body has reason to suspect that the manufacturer is supplying fuel that has prohibited characteristics.

5.8 Part 4 and 5 of the Regulations set out the fees for assessment of solid fuels and fireplaces to be added to the list of approved fuels or list of approved fireplaces (as applicable) which are published by the Secretary of State under the Clean Air Act 1993. Fuels and fireplaces included on these lists can lawfully be used in areas in England where a smoke control order is in force. Under Part 4, a manufacturer or other supplier of solid fuel is charged £950 for an application for a new fuel. A person applying for recertification or to sell a fuel under a particular brand is charged £475. Under Part 5, a person applying for certification of a fireplace is charged £1,610, unless the fireplace is part of a range of fireplaces with the same basic design and core characteristics where one or more other fireplaces in the range has already been approved, in which case the fee is £470.

What was the previous policy, how is this different?

5.9 The policy for certification and charges has not changed. These regulations place future charging for certification on a statutory footing but do not make any changes to the certification regimes in terms of either the provision of assessment services or the level of costs to be recovered through statutory charges.

6. Legislative and Legal Context

How has the law changed?

6.1 These regulations provide a clear legal basis for charging for these services.

Why was this approach taken to change the law?

6.2 To ensure that a legal basis for charging is established to support the continuation of the certification schemes under the Clean Air Act 1993 (as it applies to England) and the DSFS Regulations as they currently operate.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation has been undertaken as there is no practical impact on users of the certification scheme.

8. Applicable Guidance

8.1 No guidance is required for these regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for these regulations because charging provisions do not comprise "regulatory provision" within the meaning of the Better Regulation Framework. The regulations therefore fall beyond the scope of the Framework.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these regulations do not modify the practical mechanics of the current certification system, however it is recognised that these regulations provide a clear legal basis for charges that was previously lacking.

9.3 There is no, or no significant, impact on the public sector because this Instrument does not introduce or modify requirements for the public sector, and it does not affect how public sector bodies operate.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Environment, Food and Rural Affairs will keep these Regulations under review to ensure that charges continue to accurately reflect the cost of providing certification services.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Hardy has made the following statement "It is not appropriate in these circumstances to include provision for review; however, Defra will keep the regulations under review to ensure there is no unexpected impact on small businesses in the future".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As this Instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").