EXPLANATORY MEMORANDUM TO

THE AIR QUALITY (DOMESTIC SOLID FUELS STANDARDS) (ENGLAND) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 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 introduces, in relation to England, restrictions on the sale of wet wood for domestic burning, limits on the emission of sulphur and smoke from manufactured solid fuels and phases out the sale of bituminous coal (traditional house coal). The requirements in this instrument are backed by criminal sanctions and are to be enforced by local authorities. Such action is necessary since domestic burning through wood burning stoves and open fires is a major contributor to national emissions of fine particulate matter ($PM_{2.5}$).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 In the view of Defra, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject matter of this instrument would be within the devolved legislative competence of:

- the Northern Ireland Assembly, if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter;
- the Scottish Parliament, if an equivalent provision in related to Scotland were included in an Act of the Scottish Parliament; and
- the Welsh Parliament, if equivalent provision in relation to Wales were included in an Act of the Welsh Parliament.

3.4 Defra has reached this view because this instrument concerns environmental policy, which is devolved, and it only applies in relation to the supply of fuels intended for domestic use in England.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in section 3 of this explanatory memorandum, under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made under section 87 of the Environment Act 1995 (c. 25) and gives partial effect to the Government's Clean Air Strategy published in in 2019 by phasing out the sale of the most polluting fuels used for domestic burning. This instrument also goes towards meeting obligations placed upon the UK by the EU Treaties and international agreements relating to air quality. These include Directive 2016/2284/EU of the European Parliament and the Council relating to national emission ceilings for certain atmospheric pollutants (OJ No L 344, 17.12.2016, p 1) and the United Nations Economic Commission for Europe 1979 Convention on Long-Range Transboundary Air Pollution and its 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone, which was revised in 2012.

7. Policy background

What is being done and why?

7.1 The policies enacted by this instrument are intended to improve air quality and are focused on $PM_{2.5}$ emissions. $PM_{2.5}$ has been identified by the World Health Organisation as the most damaging air pollutant. The tiny particles in smoke can enter the bloodstream and internal organs causing long term health issues, as well as having more immediate impacts on some, such as breathing problems or asthma attacks.

7.2 Domestic burning is a major contributor to our national emissions of $PM_{2.5}$. Based on the National Atmospheric Emissions Inventory (NAEI) data for 2016 it accounted for approximately 38% of the UK's $PM_{2.5}$ emissions, more than industrial combustion (16%) and road transport (12%) combined (as stated in the Impact Assessment related to these proposals). The National Statistics on Emissions of air pollutants in the UK 1970 to 2018 (published in February) indicated that 41% of the UK's $PM_{2.5}$ emissions came from the domestic burning of wood and coal in 2018. We know there is uncertainty about this data, given the difficulties in accurately estimating the extent and nature of domestic burning and the emissions that this causes, and we are constantly reviewing our data. However, we are confident that this is a major source of $PM_{2.5}$ emissions. Given the impact of $PM_{2.5}$ on human health, it is important to take action to reduce the impact of domestic burning on the health of householders and their neighbours.

7.3 The principle change is that we will be phasing out the supply of traditional house coal, wet wood sold in units up to $2m^3$, and introducing sulphur and smoke emission limits for manufactured solid fuels.

7.4 The phased approach for restricting the sale of the three fuels listed in this SI will be as follows:

- Traditional house coal (Bituminous coal) will be phased out from sale for use in domestic combustion as follows;
  - from 1 May 2021 it will be unlawful to sell bituminous coal in bags, it will only be lawful to sell bituminous coal loose via an approved coal merchant.
  - from 1 May 2023 it will be unlawful to sell bituminous coal for combustion in a domestic setting.
- Wet wood sales for domestic combustion:
  - from 1 May 2021 it will be unlawful to sell wood that is not certified as having a moisture content of 20% or below in volumes of less than $2m^3$
  - from 1 May 2021 it will be unlawful to sell wood in volumes of $2m^3$ or more that has moisture content above 20% that can be dried at home by the consumer. It will be a requirement that suppliers provide guidance to consumers on how to dry wood at home to ensure it is not burnt until it is sufficiently dried.
- Sulphur and smoke limits for Manufactured Solid Fuels (MSFs);
  - from 1 May 2021 it will be unlawful sell MSFs that exceed a sulphur content of 2% and have smoke emissions of 5g or more per hour.

7.5 We are not banning stoves or open fireplaces. We are looking to shift people from more polluting to less polluting fuels. We are looking for people to move from wet wood to dry wood, and from traditional house coal to smokeless coal and low sulphur manufactured solid fuels.

7.6 We estimate that restrictions on the sale of wet wood will abate 87.9 kilo tonnes (kt) of $PM_{2.5}$ emissions between 2020 and 2030. Restrictions on the sale of traditional house (bituminous) coal are estimated to abate 3.7 kt of $PM_{2.5.}$ This instrument will contribute to the Government meeting its 2030 emission reduction commitments through the abatement of approximately 9.37kt of $PM_{2.5}$ in the year 2030.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not amend another instrument, and there is no need for legislation to be consolidated.

10. Consultation outcome

10.1 Defra undertook an eight-week consultation on the cleaner domestic burning of solid fuels and wood, which ran from 17 August to 12 October 2018. The proposals in this consultation included restrictions on the sale of wet wood for domestic burning, phasing out the sale of traditional house coal, and applying sulphur standards and smoke emission limits to all manufactured solid fuels.

10.2 This consultation was available on Citizen Space (an online survey platform). Key stakeholders were emailed to announce the consultation. The consultation was also promoted by a press release.

10.3 500 responses were received to the consultation. 276 organisations and 224 individuals responded. The organisations included fuel suppliers, distributors, industry bodies, local authorities and non-governmental organisations.

10.4 There was a range of views on our proposals to restrict the sale of wet wood so that only dry wood can be bought in smaller volumes (as wood sold in smaller quantities is more likely to be used immediately). The Government response to the consultation said that we intend to take forward our proposal for a mandatory certification scheme demonstrating that wood sold in volumes under 2m³ is dry.

10.5 This legislation will allow the Secretary of State for Defra to appoint at least one person to be an approved wood certification body. The appointed certification body or bodies will test wood supplied by those suppliers wishing to sell wood in volumes of under $2m^3$. If when tested the wood has a moisture content of 20% or below the supplier will be issued with a certificate allowing the supplier to market the wood with the relevant logo and information to show it complies with the legislation. In line with the views of most respondents, the introduction of a mandatory certification scheme be delayed for one year from the publication of the Government response to allow existing stocks to be used up, the mandatory certification scheme will come into force from 1 May 2021.

10.6 Feedback from smaller wood producers, defined in these Regulations as those that have supplied less that $600m^3$ between 1 May 2020 and 30 April 2021, was that they may struggle to meet the requirement straight away. Given this, smaller suppliers will have an extra year to comply, requiring them to be compliant by 1 May 2022.

10.7 We received a wide range of comments on our proposals to phase out the sale of traditional house coal. Some members of the coal industry argued that the proposals would damage this industry, and some argued that it is disproportionate. Some respondents referred to the health benefits of phasing out traditional house coal, stating that these benefits outweighed any justification for delay, and that bituminous coal is highly toxic. The World Health Organisation recommends against the residential use of unprocessed, i.e. not smokeless coal.

10.8 As stated in the Government's response, we intend to introduce a ban on the sale of bagged traditional house coal one year after the response is published. We are not looking to ban the sale of all coal. We want to see a move away from traditional house coal to less polluting fuels such as smokeless coal (anthracite) and low sulphur manufactured solid fuel.

10.9 Some respondents were concerned about the impact the measures could have on those on low incomes in rural areas who rely on coal as a cheap form of heating. Government considers that people in fuel poverty should be protected from the effects of more polluting fuels as much as everyone else. We considered the financial impact on those in fuel poverty and commissioned research which shows that manufactured solid fuels (MSFs) are actually cheaper to burn than coal when energy efficiency is taken into account, all tests were completed on an open fire as traditional house coal is not recommended to burn on stoves. The full version of the report is accessible here. This report shows that the cheapest MSFs which are available in all areas of England, are in general less expensive on a heat output basis than coal.

10.10 The Government recognises that to support low income households a transition period is needed. For a transitional period, approved coal merchants will be able to sell loose traditional house coal direct to their customers. This transition period will allow coal merchants to work with their customers to help them identify alternative fuels which might meet their heating needs at comparable cost. This transition period means that bagged traditional house coal will be available for sale up to 30 April 2021, after which it will be unlawful to sell bagged traditional house coal but loose traditional house coal will remain lawfully available from approved coal merchants up until 30 April 2023.

10.11 This transition period will allow Government to work with coal merchants through the Approved Coal Merchants' Scheme to advise and educate direct delivery customers with a view to switching them from coal to manufactured solid fuels. We will develop a communications campaign targeted at domestic burners. This will encourage people to burn better and reduce harmful emissions. We will work with local authorities to help them provide advice to residents in their local areas.

10.12 We intend to grant an exemption to freeminers in the Forest of Dean, given the importance of this activity to local heritage and identity.

10.13 In line with the views of the majority of respondents, we intend that all manufactured solid fuels used for domestic burning should have a sulphur content below 2% and emit less than 5g smoke per hour. This will come into effect 1 May 2021.

10.14 The Government Response was published in February 2020 and can be found at https://www.gov.uk/government/consultations/air-quality-using-cleaner-fuels-for-domestic-burning/outcome/summary-of-responses-and-government-response

10.15 The announcement received very widespread and largely positive media coverage, including on the front pages of several newspapers, focusing on the impact the changes will have on air pollution, the impact that $PM_{2.5}$ from coal and wet wood has on human health, and the fact that cleaner alternatives such as dry wood and manufactured solid fuels will still be able for households to burn. Some coverage highlighted the endorsement of health professionals, including the Royal College of Physicians. Critical stakeholder reaction from the fuel industry led to some negative coverage, focusing on the claim that the measures would have a negative impact on poorer households, but this was limited, and mitigated by evidence that cleaner fuels have been shown to be more efficient and cheaper in the long run.

10.16 We have kept in touch with devolved administrations about this policy area throughout the policy development process.

11. Guidance

11.1 Guidance will be provided for manufacturers, distributors and suppliers of relevant fuels to ensure that they understand the legislation and the requirements around certification so that they are compliant when this legislation comes into force.

11.2 Separate guidance will also be made available for Local Authorities so that their Enforcement Officers have a clear understanding of the certification schemes and their ability to enforce the legislation.

11.3 It is our intent to supply this guidance to all relevant parties three months ahead of the first phase of the fuel restrictions coming into force.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that these Regulations are likely to result in additional costs to business. The total net estimated cost to the solid fuel sector in terms of profit lost is £14 million over the 11-year period in the central scenario used in the Impact Assessment. It mainly results from lower volumes of wood sold due to the higher energy efficiency of dry wood compared to wet wood. Also, some businesses selling wood will need to invest in drying equipment and incur an estimated operating cost estimated at £83 million in present value terms over the appraisal period. The monitoring and administrative costs to be covered by businesses are anticipated to be £27 million in present value terms over the 11-year period in the central scenario.

12.2 The impact on the public sector is that there will be costs arising from an information campaign to promote cleaner burning habits and local authority enforcement costs estimated at £1.2 million over the 11 years.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the explanatory memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses other than with regards to small foresters. Some small foresters expressed concern that our requirements on wet wood would be difficult for them. For example, they may need to invest in kilns or storage sheds. We intend to give small foresters an extra year to comply, requiring them to be compliant by 1 May 2022. This is to give them time to season their wood down to the required level or consider changes to their business model. A proportionate approach to enforce will be taken, with enforcement agencies working with small foresters to support them in meeting the new requirements. The legislation defines small foresters as those producing less than 600m³ a year.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Secretary of State must review its provisions from time to time, and publish a report setting out the conclusions of the review. The first report must be published before five years after the day after the day after the instrument is made. Further reports must be published at least once every five years. The report must set out the objectives of the legislation, the extent to which these objectives have been achieved, whether the objectives are appropriate, and whether they could be achieved in a less onerous way.

15. Contact

15.1 Andrew Baxter at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 2717 or email: Andrew.Baxter@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lee Davies, Deputy Director for Air Quality and Industrial Emissions at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 Rebecca Pow, the Parliamentary Under Secretary of State for the Environment and Rural Opportunities at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.