EXPLANATORY MEMORANDUM TO

THE SMOKE CONTROL AREAS (AUTHORISED FUELS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 2105

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 amends the Smoke Control Areas (Authorised Fuels) (England) Regulations (S.I. 2008/514 as amended by S.I. 2008/2342, S.I. 2009/2191 and The Smoke Control Areas (Authorised Fuels) (England) (Amendment) Regulations 2010 and 2011). Two new fuels (Big K Restaurant Grade Charcoal and Newflame Plus Briquettes) are being added to the list of authorised fuels.

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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", it is a defence to a charge of emitting smoke if you can show you used an authorised fuel, which are declared as such by the Secretary of State for the purposes of Part III of the 1993 Act and are set out in S.I. 2008/514, as amended.

4.2 Section 20(6) of the 1993 Act provides that the Secretary of State may authorise fuels for use in smoke control areas by regulations and these regulations are made in exercise of those powers.

4.3 These regulations add two new fuels to the list of authorised fuels as follows:

- Big K Restaurant Grade Charcoal
- Newflame Plus Briquettes

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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 capable of burning "unauthorised" smoky fuels (house coal or wood, for example) without emitting 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 power to authorise fuels for use in smoke control areas. These are fuels which have been tested by the Department against the British Standard test for solid smokeless fuels for domestic use. There are presently 53 authorised solid smokeless fuels (including the two added by this instrument).

- ***Consolidation***

7.4 This instrument amends the Smoke Control Areas (Authorised Fuels) (England) Regulations (S.I. 2008/514 as amended by S.I. 2008/2342 as amended by S.I. 2009/2191 as amended by The Smoke Control Areas (Authorised Fuels) (England) (Amendment) Regulations 2010 and 2011).

8. Consultation outcome

8.1 No consultation is necessary as this does not impose any burdens but is merely the result of technical analysis of the fuel on behalf of the manufacturer. This instrument does not amend the Clean Air Act 1993 but simply amends the Smoke Control Areas (Authorised Fuels) (England) Regulations (S.I. 2008/514 as amended by 2008/2342 as amended by S.I. 2009/2191 and as amended.

9. Guidance

9.1 Guidance on smoke control and fuel which are authorised can be found on the Defra website at:

http://smokecontrol.defra.gov.uk/fuels.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 This instrument regulates the authorisation of fuels for use in Smoke Control Areas. It does not regulate small businesses.

12. Monitoring and review

12.1 The order containing the schedule of authorised fuels is usually amended twice a year to include new authorised fuels and amendments to fuels already authorised.

13. Contact

Graham Lott at the Department for Environment, Food and Rural Affairs. Tel: 020 7238 5380 or e-mail: graham.lott@defra.gsi.gov.uk can answer any queries regarding this instrument.