EXPLANATORY MEMORANDUM TO

THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (ENGLAND) (No 2) (AMENDMENT) ORDER 2013

2013 No. 3026

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 conditions) of the Sirius 790 Sigma MF multifuel or woodburning stove ("the product") which has passed tests showing it is capable of smokeless operation within smoke control areas.

2.2 This instrument amends the Smoke Control Areas (Exempted Fireplaces) (England) (No. 2) Order 2013 (S.I. 2013/2112) ("the principal Order") and provides for the addition of the product to the list of 'exempted fireplaces' which appear in the Schedule of the principal Order.

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

3.1 As this instrument is being made to correct a defect in the principal Order which arose due to an error of the Department, it is being offered free of charge to those who purchased the principle Order and carries the appropriate free issue banner.

4. Legislative Context

4.1 Part 3 of the Clean Air Act 1993 provides for the creation and regulation of smoke control areas in order to safeguard public health from emissions of smoke.

4.2 Section 18 of the Clean Air Act 1993 gives local authorities the power to designate the whole or parts of their districts as a smoke control area**.**

4.3 In areas that have been designated as smoke control areas, section 20 of the Clean Air Act 1993 prohibits the emission of smoke from chimneys, save from certain "authorised fuels". "Authorised fuels" are fuels which are declared by regulations made by the Secretary of State under section 20(6) of the Clean Air Act 1993.

4.4 Certain fireplaces can be exempted from the prohibition in section 20. 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.

4.5 The principal Order was made in exercise of this power and lists the fireplaces which may be used in smoke control areas.

4.6 This instrument also exercises the powers under Section 21 and exempts an additional fireplace erroneously omitted from the list in the principle Order.

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 exempt fireplaces for use in smoke control areas. These are fireplaces which have been tested by the Department and show that they can be used for burning fuel other than authorised fuels without producing any, or a substantial quantity of, smoke.

7.4 The Secretary of State makes an Order containing a consolidated list of "exempted fireplaces" in exercise of this power every six months to coincide with the common commencement dates (1st October and 6th April). The consolidated schedule lists both previously "exempted" fireplaces and new fireplaces that have been recommended for exemption by the Department's technical experts. The principal Order which entered into force on 1st October 2013 contains the most recent consolidated schedule. It is intended that the next consolidated schedule will be prepared in time to enter into force on 6th April 2014.

7.5 When the principal Order was being prepared the Department accidentally omitted from the schedule a product which it had intended to include in the list of exempted fireplaces as the product had been recommended for exemption by the Department's technical experts. The manufacturer brought the omission to the Departments attention and this instrument therefore corrects this error and adds the product to the current list of exempted fireplaces.

8. Consultation outcome

8.1 No consultation is necessary as this instrument does not impose any additional burdens but is of benefit to the manufacturer and consumers by amending the principle Order to include an additional appliance in the list of exempted fireplaces. The manufacturer of this appliance has been notified of the Department's intention to amend the principle Order. Defra's Smoke Control webpages include a note explaining that the product was accidentally omitted from the schedule to the principal order and stating that it is the Department's intention to amend the principal Order. As these webpages contain a list of the fireplaces exempted under section 21 of the Clean Air Act 1993 it is therefore considered to be an appropriate platform to use to bring these matters to the attention of local authorities and the wider public.

9. Guidance

9.1 Guidance on smoke control and fireplaces which are exempted and a notification regarding the omitted fireplace can be found on Defra's Smoke Control webpages at:

http://smokecontrol.defra.gov.uk/appliances.php

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no cost implications for business, charities or voluntary bodies. The manufacturer will benefit financially from the rightful opportunity to market this exempt appliance in Smoke Control Areas and consumers will benefit from an increase in choice.

10.2 10.2 There is no impact on the public sector. Local authorities will continue to fulfil their responsibilities for local air quality management and may benefit from access to complete list of exempt appliances.

11. Regulating small business

11.1 This instrument adds a single fireplace to the list of exempted appliances. It does not regulate small businesses. The manufacturer of the appliance will benefit from the error correction and in the inclusion of the product in the exempted list.

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. It is intended that the next consolidated schedule will be prepared in time to enter into force on 6th April 2014.

13. Contact

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.