EXPLANATORY MEMORANDUM TO

THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (ENGLAND) ORDER 2011

2011 No. 2106

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 wood 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, the requirements of BS PD 6434 'Recommendations for the design and testing of smoke reducing solid fuel burning domestic appliances' published by BSI.

2.2 This instrument revokes and replaces with amendments the Smoke Control Areas (Exempted Fireplaces) (England) (No 714) Order 2011. A number of additional fireplaces and amendments to existing fireplaces have been added to the list of “exempted” fireplaces.

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 in 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 capable of burning "unauthorised" smoky fuels (house coal or wood, for example) without emitting smoke.

7.2 The list of fireplaces in this instrument that are "exempted" appliances and, amendments to existing fireplaces in the instrument, need to be updated, which this instrument effects.

- ***Consolidation***

7.3 This instrument amends and revokes the previous Smoke Control Areas (Exempted Fireplaces) (England) (No 714) Order 2011, consolidating all exemptions within it.

8. Consultation outcome

8.1 General consultation is not normally undertaken for instruments which do not make any substantive changes to the primary legislation. This instrument does not amend the Clean Air Act 1993 but simply revokes and replaces with amendments the Smoke Control Areas (Exempted Fireplaces) (England) (No 714) Order 2011.

9. Guidance

9.1 Guidance on smoke control and those fireplaces which are exempt can be found on a Defra funded website at:

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

10. Impact

10.1 There is no 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 impact on the public sector. Local authorities will continue to fulfil their responsibilities for local air quality management although a possible reduction in administrative burden as a result of local authorities being updated and better informed of the most recent exempt appliances.

10.3 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 The legislation does not apply to small businesses.

11.2 The impact on small firms employing up to 20 people is likely to be beneficial to business as set out in section 10.1

11.3 This instrument regulates the exemption of fireplaces from the prohibition in section 20 of the 1993 Act referred to above and consultation is not normally undertaken for instruments which do not make any substantive change to the primary legislation as set out in section 8.1

12. Monitoring and review

12.1 The order containing the schedule of exempted fireplaces is usually amended and revoked twice a year to include new fireplace exemptions and amendments to fireplaces already exempted.

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.