**EXPLANATORY MEMORANDUM TO**

# THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (ENGLAND) (NO. 3) ORDER 2009

**2009 No. 2302**

**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 the Smoke Control Areas (Exempted Fireplaces) (England) (No.2) Order 2009 (S.I 2009/2190) (the "No.2 Order").

## 3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 The No.2 Order was made on 12th August 2009, laid before Parliament on 17th August 2009 and comes into force on 1st October 2009. The No.2 Order revoked The Smoke Control Areas (Exempted Fireplaces) (England) Order 2009 (SI 2009/0449) (the "2009 Order") and replaced it with some amendments (adding further fireplaces to the exempted list contained in the schedule and amending the details of fireplaces already listed in that schedule).

3.2 An error was discovered in the No.2 Order before it came into force but after it had been laid. A fireplace manufacturer which appeared in the 2009 Order was omitted from the No.2 Order in error.

3.3 To avoid any commercial prejudice, the error has been corrected and this instrument (The Smoke Control Areas (Exempted Fireplaces) (England) (No.3) Order 2009 (the "No.3 Order")) will revoke and replace the No.2 Order, coming into force on 1st October 2009.

## 4. Legislative Context

4.1 Section 20 of the Clean Air Act 1993 (c. 11) prohibits the emission of smoke from chimneys in smoke control areas. It is a defence to show that the smoke emission was caused by the use of an authorised fuel (being a fuel declared as such by regulations by the Secretary of State).

4.2 Section 21 of the 1993 Act enables the Secretary of State, by order, to exempt any class 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 that power.

## 5. Territorial Extent and Application

5.1 This instrument applies in England.

## 6. European Convention on Human Rights

6.1 As this instrument is subject to the 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. 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 fuels (house coal or wood, for example) without emitting smoke.

7.2 The schedule of exempted fireplaces in this instrument needs to be updated (by including the omitted fireplace in the schedule). This instrument effects this amendment.

- ***Consolidation***

7.3 This instrument amends and revokes the previous Smoke Control Areas (Exempted Fireplaces) (England) (No.2) Order 2009 (S.I. 2009/2190), 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 the No. 2 Order and replaces it, with the error referred to above corrected.

8.2 Prior to the instrument coming into force, the only party likely to be concerned in a proposed exemption would be the manufacturer of the fireplace who had applied for the exemption and wished to see their product granted exemption as soon as possible. Applying standard consultation to a proposed exemption of a class of fireplace would be an unnecessary barrier to the manufacturer concerned, preventing it from marketing their products for a further 12 weeks after it had passed the relevant tests and been recommended for exemption.

## 9. Guidance

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

http://www.airquality.co.uk/smoke_control/index.php

## 10. Impact

9.1 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 exemption of fireplaces from the prohibition in section 20 of the 1993 Act referred to above. It does not regulate small businesses.

## 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.