

EXPLANATORY MEMORANDUM TO
THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (WALES)
ORDER 2009

This explanatory memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Smoke Control Areas (Exempted Fireplaces)(Wales) Order 2009. I am satisfied that the benefits outweigh any costs.

Jane Davidson

4 December 2009

(i) Description

This Order revokes and replaces with amendments the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2008 (S.I. 2008/3101) (W.275). This Order 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 and are considered to be capable of meeting, or have met, the requirements of BS PD 6434.

(ii) Matters of special interest to the Subordinate Legislation Committee

In January 2009 the Subordinate Legislation Committee reported on errors in the Smoke Control (Exempted Fireplaces)(Wales) Order 2008. These errors concerned discrepancies in translation. The Government's response stated that "the Government keeps the list of exempted fireplaces under constant review and produces Orders under the Clean Air Act 1993 annually to update the list further to recommendations by the National Environment technology Centre".

Considering the reporting points related to discrepancies of terminology between the English and Welsh versions of the Order, it was considered beneficial to wait until instructions were received for the new Order to be made to address those reporting points.

(iii) Legislative Background

The power enabling this Instrument to be made is contained in Section 21 and Section 62 of the Clean Air Act 1993.

The SI follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

Section 18 of the Clean Air Act 1993 enables local authorities to declare the whole or part of their area as a smoke control area by making a "smoke control order". In Wales there are currently four partial smoke control areas in Flintshire, Newport, Swansea and Wrexham. Section 20 of the Act places a general prohibition on the emission of smoke in smoke control areas. However, anyone burning fuel in a smoke control area can avoid contravention of the Act by either using an authorised fuel (not relevant here), or by using an "exempted fireplace". "Fireplace" is defined by the Clean Air Act 1993 as including any open or closed stoves or furnaces as well as grates. Section 21 of the Act enables exemptions to be made, by order, of classes of fireplaces from the prohibition of smoke emissions if they are capable of burning fuels without producing any smoke or substantial quantities of smoke.

It follows from this that a person using an exempted fireplace can be confident (so long as they comply with any conditions of use imposed by the order) that they will not contravene the Clean Air Act 1993. It is not automatically unlawful to use a non-exempted fireplace in a smoke control area, but anyone doing so is at risk of prosecution if it emits any smoke. This means that, in practice, coal, oil and wood cannot be used as fuel in a smoke control area unless burnt on an exempted fireplace. The power to exempt is devolved to the Welsh Ministers.

Following the specified tests by the Welsh Assembly Government's preferred testing centre, AEA Energy & Environment; it is proposed to add the following classes of fireplaces to those which are already exempted :

<i>Classes of Fireplace</i>	<i>Conditions</i>
The Binder Wood Fired Boiler model RRK 1200-1650 with Binder model MZA multicyclone and automatic ignition manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.	<ol style="list-style-type: none">1. The fireplace must be installed, maintained and operated in accordance with the manufacturers' and Wood Energy Ltd. Operating instructions for Binder appliances referenced; 2009 July Binder O&M revision 8.doc Operation and Maintenance Manual, revision 8, dated 15 July 2009.2. No fuel is to be used other than wood pellets or wood chips, but excluding any such pellets or chips which contain halogenated organic compounds or heavy metals as a result of treatment with wood-preservedatives or coatings.

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>The Binder Wood Fired Boiler model RRK 1800-2300 with Binder model MZA multicyclone and automatic ignition manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturers' and Wood Energy Ltd. Operating instructions for Binder appliances referenced; 2009 July Binder O&M revision 8.doc Operation and Maintenance Manual, revision 8, dated 15 July 2009.</p> <p>2. No fuel is to be used other than wood pellets or wood chips, but excluding any such pellets or chips which contain halogenated organic compounds or heavy metals as a result of treatment with wood-preservedatives or coatings.</p>
<p>The Binder Wood Fired Boiler model RRK 2500-3000 with Binder model MZA multicyclone and automatic ignition manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturers' and Wood Energy Ltd. Operating instructions for Binder appliances referenced; 2009 July Binder O&M revision 8.doc Operation and Maintenance Manual, revision 8, dated 15 July 2009.</p> <p>2. No fuel is to be used other than wood pellets or wood chips, but excluding any such pellets or chips which contain halogenated organic compounds or heavy metals as a result of treatment with wood-preservedatives or coatings.</p>
<p>Carron Stove manufactured by Jig UK Limited, Hurlingham Business Park, Fulbeck Heath, Grantham, Lincolnshire, NG32 3HL</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references '91-62351' dated July 2009.</p> <p>2.No fuel is to be used other than dry and split wood logs of a maximum length of 23 cm but excluding any such dry and split wood logs which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservedatives or coatings.</p>
<p>Contura 510, 520T, 550, 550A, 550W, 560T,560K, 570, 580, 585, 590, Contura T, all manufactured by NIBE AB Box 134, 285 23 Markaryd, Sweden.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's installation instructions IAV SE/EX 0726-6 611821 Lighting instruction BAV SA/EX 0717-2 611820</p> <p>A permanent stop must be in place on the air inlet to prevent closure beyond a minimum air open position.</p> <p>2. No fuel is to be used other than untreated dry wood with less than 20% moisture, but excluding any such dry wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservedatives or coatings.</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>Contura 580W manufactured by NIBE AB Box 134, 285 23 Markaryd, Sweden.</p>	<p>1. The fireplace must be installed, maintained and operated in accordance with the manufacturer's installation instructions IAV SE/EX 0740-1 511911</p> <p>A permanent stop must be in place on the air inlet to prevent closure beyond a minimum air open position.</p> <p>2. No fuel is to be used other than untreated dry wood with less than 20% moisture, but excluding any such dry wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Cove 2 SR manufactured by A J Wells and Son Ltd. Of Bishops Way, Newport, Isle of Wight, PO30 5WS</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'Cove2SR 07.09 IssB' dated July 2009</p> <p>A permanent stop must be in place on air control to prevent closure beyond 14mm from the fully closed position.</p> <p>2. No fuel is to be used other than dry and split wood logs of a maximum length of 23cm, but excluding any such dry and spilt wood logs which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Franco Belge Model 134 08 11 Savoy EA 8kW output wood burning stove manufactured by Franco Belge, Staub Fonderie SARL, Rue Orphee Variscotte, 59660, Merville, France.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the Savoy EA Technical Manual, document reference 1290-1, reviewed 9July 2009.</p> <p>2.No fuel is to be used other than wood logs, but excluding any such wood logs which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Froling P4 8, 15, 20, 25, 32, 38, 48 and 60 Pellet Boilers manufactured by Froling Heizkessel und Behalterbau Ges. M.b.H., Industriestraße 12, A-4710 Grieskirchen, Austria.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual reference 'BO430408_en' dated July 2009.</p> <p>2. No fuel is to be used other than wood pellets with a diameter of 6mm, but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>Guntamatic Biocom and Powercorn 50 and 75 manufactured by GUNTAMATIC Heiztechnik GmbH A-4722 PEUERBACH Bruck 7</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'GUN/BIO/OP/VI/0709' dated 29/7/09.</p> <p>2. No fuel is to be used other than wood pellets with a diameter of 6mm and a length of between 10 and 30 mm., but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Guntamatic Powerchip 50 and 75 manufactured by GUNTAMATIC Heiztechnik GmbH A-4722 PEUERBACH Bruck 7</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'GUN/POW/OP/VI/0709' dated 29/7/09.</p> <p>2.No fuel is to be used other than wood pellets with a diameter of 6mm and a length of between 10 and 30 mm., but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Guntamatic Biocom and Powercorn 100 manufactured by GUNTAMATIC Heiztechnik GmbH A-4722 PEUERBACH Bruck 7</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'GUN/BIO/OP/VI/0709' dated 29/7/09.</p> <p>2. No fuel is to be used other than wood pellets with a diameter of 6mm and a length of between 10 and 30 mm., or wood chip less than 35% moisture content and meeting ONORM M 7133:1998 size class G30, but excluding any such wood pellets or wood chip which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Guntamatic Powerchip 100 manufactured by GUNTAMATIC Heiztechnik GmbH A-4722 PEUERBACH Bruck 7</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'GUN/POW/OP/VI/0709' dated 29/7/09.</p> <p>2.No fuel is to be used other than wood pellets with a diameter of 6mm and a length of between 10 and 30 mm., or wood chip less than 35% moisture content and meeting ONORM M 7133:1998 size class G30, but excluding any such wood pellets or wood chip which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>Hamont CATfire 350 USZI pellet boiler fitted with CATfirte 300 cyclone, manufactured by Hamont Contracting and Trading, spol. s.r.o., Sedlište 227, postal code 739 36, district Frýdek-Místek Czech Republic.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's operating instruction reference 'Operating Manual for Boilers CATfire 150-500Wk' effective from 1/1/2008.</p> <p>2. No fuel is to be used other than wood pellets with a diameter of 6mm and a maximum length of 30 mm., but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives</p>
<p>Handöl 31, Handöl 31A, Handöl 32, Handöl 32A, Handöl 33T, Handöl 34T, Handöl 35T, Varde Ovne Look 1, Varde Ovne Look 2, Varde Ovne Look 2 , all manufactured by NIBE AB Box 134, 285 23 Markaryd, Sweden</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's installation instructions IAV SE/EX 0811-4 511941 Lighting instructions BAV SE/EX H30 511942</p> <p>A permanent stop must be in place on the air inlet to prevent closure beyond a minimum air open position.</p> <p>2. No fuel is to be used other than untreated dry wood with less than 20% moisture, but excluding any such dry wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives</p>
<p>Handöl 50, Handöl 51, Handöl 52, Handöl 52T, Handöl 53, Handöl 54, Handöl 54T, Handöl 51L, Varde Ovne S1, Varde Ovne S2, Varde Ovne S3 , all manufactured by NIBE AB Box 134, 285 23 Markaryd, Sweden</p>	<p>1. The fireplace must be installed, maintained and operated in accordance with the manufacturer's installation instructions IAV SE/EX 0737-4 511866 Lighting instructions BAV SE/EX 0717-1 511865</p> <p>2. A permanent stop must be in place on the air inlet to prevent closure beyond a minimum air open position.</p> <p>No fuel is to be used other than untreated dry wood with less than 20% moisture, but excluding any such dry wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>Highlander 5 Clean Burn manufactured by Dunsley Heat Limited, Bridge Mills, Huddersfield, Holmfirth, West Yorkshire, HD9 3TW</p>	<p>1. The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'Highlander. The Dunsley-Enviroburn-5. Clean Burn Stove Installation and operating instructions, D12-01-09, D060-01-09, D13-01-09, D12-12-08.'</p> <p>2. No fuel is to be used other than wood logs conforming to BS EN 13240:2001, but excluding any such wood logs which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives</p>
<p>Little Wenlock Classic Wood Fuel Stove manufactured by Aga, Staiton Road, Ketley, Telford, Shropshire, TF1 5AQ.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's operating instructions dated 19 December 2008, reference N00471AXX Rev 001 DP 081219.</p> <p>2.No fuel is to be used other than dry and split wood logs of a maximum length of 25cm and a maximum diameter of 10cm.,but excluding any such dry and split wood logs which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives</p>
<p>The Lovenholm, Lovenholm Traditional, European, and Pedestal Stoves manufactured by Hunter Stoves Ltd., Unit 6, Old Mill Industrial Estate, Stoke Canon, Exeter, Devon EX5 4RJ</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instructions Lovenholm Multifuel stove installation and operating manual version 06/09.</p> <p>2.No fuel is to be used other than untreated wood with less than 20 per cent moisture content but excluding any such wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>The Mescoli PB50, PB35, PB28, manufactured by MESCOLI CALDAIE S.r.l. Caldaie-Termocucine, Via del Commercio, 285 4 1058 Vignola, (MO) Italy.</p>	<p>1. The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction and installation manual reference 'SY315EVO P,C,B-COMBIFIRE 2 PB28/35/50 BOILERS' Edition 1.7 DATED 1/2006.</p> <p>2. No fuel is to be used other than wood pellets following ONORM M7 135 or DIN plus (DFIN 51731) but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>Pelletstar 10,20,30,45 and 60 manufactured by HERZ Armaturen Ges.m.b.H, Geschäftsbereich HERZ Feuerungstechnik, A-8272 Sebersdorf 138, Austria</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's operating instructions dated November 2007, reference V2.2</p> <p>2. No fuel is to be used other than wood pellets corresponding to ONORM M7135 of 6mm diameter, but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Redfyre Kensal 20 Flat top (product code RF-EN20M), 33 Flat top (product code RF-KEN33M and RF-KEN33W) manufactured by Redfyre Cookers, Osprey Road, Sowton Industrial Estate, Exeter, Devon, EX2 7JG</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual dated July 2008, reference PM247 issue 1, and instruction manual dated January 2009, reference PM280 issue 1.</p> <p>A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50% open position.</p> <p>2. No fuel is to be used other than untreated dry wood but excluding any such dry wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Schmid UTSK 180, 240, 300, 360, 450, 550, 700, 900, 1200, 1600kw manufactured by Schmid AG Woodfiring Systems, PO Box 42, CH-8380 Eschikon.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's 'instruction manual UTSK-ABC.22-AME-S-PPU' dated 25.09.2008 where ABC is model number ie. 180, 240, 300, 360, 450, 550, 700, 900, 1200, 1600</p> <p>2. No fuel is to be used other than wood pellets or wood chips following CEN/TS 14961 but excluding any such wood pellets or chips which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
Schmid UTSL 30, 40, 50, 65, 80, 110, 150kw manufactured by Schmid AG Woodfiring Systems, PO Box 42, CH-8380 Eschikon.	<p>2.The fireplace must be installed, maintained and operated in accordance with the manufacturer's instruction manual references 'Operating Manual Wooden Chips and Pellets Plant. Lignumat UTSL ' dated 23.12.2004</p> <p>2. No fuel is to be used other than wood pellets or wood chips following CEN/TS 14961 but excluding any such wood pellets or chips which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
Schmid UTSP 180, 240, 300kw manufactured by Schmid AG Woodfiring Systems, PO Box 42, CH-8380 Eschikon	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's 'instruction manual UTSK – ABC22-AME-S-PPU' dated 25.09.2008 where ABC is model number ie. 180, 240, 300.</p> <p>2. No fuel is to be used other than wood pellets following CEN/TS 14961 but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
Schmid UTSR 150, 180, 240, 300, 360, 450, 550, 700, 900kw manufactured by Schmid AG Woodfiring Systems, PO Box 42, CH-8380 Eschikon	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer's 'instruction manual UTSR – ABC22-AME-S-PPV' dated 25.09.2008 where ABC is model number ie. 150, 180, 240, 300, 360, 450, 550, 700, 900.</p> <p>2. No fuel is to be used other than wood pellets or wood chips following CEN/TS 14961 but excluding any such wood pellets or chips which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
<p>The Stockton 3 flat top (product code 7118) Stockton 4 flat top (product code 7101 and 7102) and Stockton 5 flat top (product code 7127) Stockton 5 midline (product code 7130) Stockton 6 flat top (product codes 7100 and 7162) Stockton 6 Highline (product code 7117) and Stockton 7 flat top (product codes 7120 and 7163) manufactured by Stovax Ltd., Falcon Road, Sowton Industrial Estate, Exeter, Devon EX2 7LF</p>	<p>1. The fireplace must be installed, maintained and operated in accordance with the manufacturer’s ‘instruction manual dated July 2008, reference PM227 ENG Issue 2, and instruction manual dated January 2009, reference PM271 Issue 2. ‘</p> <p>A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</p> <p>2. No fuel is to be used other than untreated dry wood but excluding any such wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>Stockton 7 Inset Convector (product codes 7125F and 7125C) manufactured by Stovax Ltd., Falcon Road, Sowton Industrial Estate, Exeter, Devon EX2 7LF</p>	<p>1. The fireplace must be installed, maintained and operated in accordance with the manufacturer’s instruction manual dated May 2008, reference PM230 Issue 1, and instruction manual dated January 2009, reference PM281 Issue 1.</p> <p>A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</p> <p>2. No fuel is to be used other than untreated dry wood but excluding any such wood which contains halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>The Twin Heat CS 150i manufactured by TWIN HEAT A/S, Norrevangen 7, DK-9631 Gedsted, Denmark.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer’s operating instructions dated 17 December 2008, reference version 6.0.03.</p> <p>No fuel is to be used other than wood pellets of a maximum length of 30mm and diameter of 6mm and conforming to CEN/TS 14961:2005, but excluding any such wood pellets which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings.</p>
<p>The Wood Waste Technology Ltd. WT5, manufactured by Wood Waste Technology Units 1 and 2, Drummond Road, Astonfields Industrial Estate, Stafford, Staffs. ST16 3HJ.</p>	<p>1.The fireplace must be installed, maintained and operated in accordance with the manufacturer’s instructions dated 16 February 2009, reference WT5_v2.</p> <p>2. No fuel is to be used other than medium density fibreboard and untreated wood offcuts, but excluding any such fibreboard and offcuts which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings</p>

<i>Classes of Fireplace</i>	<i>Conditions</i>
Xeoos 5kW stove Versions - Natur, Style, Harmony, Pur, Classic, Elegance and Stone Xeoos 8kW stove Versions - Basic, Pur, Classic, Elegance Stone and Air Instruction manual references Manufactured by Specht Modulare Ofensysteme GmbH & Co, KG i.V. Dipl.-Ing. Frank Werner Projektmanagement Bahnhofstr. 2 D 35116 Hatzfeld	<ol style="list-style-type: none"> 1. The fireplace must be installed, maintained and operated in accordance with the manufacturer's 'operating and installation instructions Xeoos 5k W/8kW model 2008' reference; Revisions – Index 01/08 Fassung Januar 2008. 2. No fuel is to be used other than wood logs conforming to DIN 51731, but excluding any such wood logs which contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings

(v) Consultation

It was not deemed necessary to consult as the Order will not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further classes of appliance to those which are already exempted, for use in smoke control areas. In addition, the Order will not affect policy relating to air quality control. Those appliances proposed for exemption in this order have been subject to a detailed and quantitative emissions testing protocol.

(vi) Implementation

It is intended that the proposed instrument will come into force on 31 December 2009. If the Welsh Ministers were not to exempt approved appliances from the provisions of Section 20 of the Clean Air Act 1993 within a reasonable time, then there is a risk of criticism and possible representations from manufacturers, who will in practice be unable to market and sell their products effectively within smoke control area in Wales.

(vii) Regulatory Impact Assessment

a) Options

Do nothing

This would mean that the Welsh Assembly Government decides not to exempt tested and approved appliances for use in smoke control areas.

Make Legislation

This would entail making an Order exempting specified classes of fireplaces from the provisions of Section 20 of the Clean Air Act 1993. The Smoke Control Areas (Exempted Fireplaces)(Wales) Order 2009 does not affect the nature of the regime of control imposed by the 1993 Act: it merely ensures that the regime as effected in Wales responds appropriately to new appliances developed by the manufacturers.

b) Costs and Benefits

Do nothing

If the Welsh Ministers were not to exempt approved fireplaces from the provisions of Section 20 of the Clean Air Act 1993 then there is the risk of criticism and possible representations from manufacturers who will in practice be unable to market and sell their product effectively in a smoke control area in Wales.

There are no benefits implicit in this option.

Make the Legislation

The only interested parties are the manufacturer and potential customers. However, no compliance costs will be imposed on either of these groups as a result of the proposed Order being made. The only cost linked to these Regulations results from the testing and approval process.

The benefits of this option are as follows:

- Increasing the variety of approved appliances will encourage compliance with restrictions in smoke control areas;
- Products will be available to consumers throughout Wales without inappropriate discouragement to those consumers in smoke-control areas;
- Manufacturers of authorised products will not have a restriction on marketing their products within smoke-controlled areas; and
- Cleaner air.

c) Competition Assessment

The competition filter has been applied to the proposed Order and it is clear that the Order will not have a detrimental affect on competition. The intended Order will merely add tested and approved appliance to the list of exempt appliances. By not updating the legislation in this way the Welsh Ministers would be preventing a business from effectively marketing their product uniformly throughout the UK.

d) Post implementation review

No review of the Order will be necessary: when an appliance has been tested and approved it is appropriate to exempt it permanently. The descriptions of appliances and the conditions imposed on their use are detailed, so that if a manufacturer were to amend the specification of the appliance, it would no longer be exempted. The amended appliance would have to be resubmitted for approval and (if successful) a new Order would have to be made. The

structure of the Act's control regime therefore provides an automatic review process.

e) Summary

The costs and benefits of making the Order accrue to the manufacturer of the exempted appliance. Once an appliance has been tested and approved, a manufacturer can, in effect, only market their product in a smoke control area once an Order has been made adding their product to the list of exempted appliances. The Order will ensure that the application of the smoke control regime intended by the Act is updated to reflect the development of new appliances.