

EXPLANATORY MEMORANDUM TO
THE SMOKE CONTROL AREAS (AUTHORISED
FUELS)(WALES)(AMENDMENT) REGULATIONS 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 (Authorised Fuels)(Wales)(Amendment) Regulations 2009. I am satisfied that the benefits outweigh any costs.

Jane Davidson

4 December 2009

(i) Description

These Regulations amend the Smoke Control Areas (Authorised Fuels)(Wales) Regulations 2008 (SI 2008/3100 – w 274) by adding three new fuels (Briteheat Briquettes, Therma Briquettes and Tiger Tim Firelogs) to the list of fuels declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993. The fuels have been tested and meet British Standard 3841.

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

None.

(iii) Legislative Background

The power enabling this Instrument to be made is contained in Sections 20(6) and 63(1) of the Clean Air Act 1993.

The SI follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

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.

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.

The Act provides the Welsh Ministers with the power to authorise fuels for use in smoke control areas. These are fuels which have been tested against the British Standard test for solid smokeless fuels for domestic use.

Following the specified tests by the Assembly Government’s preferred testing centre, AEA Energy & Environment; it is proposed to add 3 more fuels to those which are already authorised. They are:

Briteheat briquettes, manufactured by Coal Products Limited at Immingham Briquetting Works, North East Lincolnshire, which—

- (a) comprise anthracite (as to approximately 60 to 85% of the total weight), petroleum coke (up to approximately 30% of the total weight), bituminous coal (up to approximately 15% of the total weight), and a molasses and phosphoric acid binder (as to the remaining weight);
- (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300 degrees C;
- (c) are cushion-shaped briquettes with an indented line running longitudinally around the briquette and have an average weight of 30 grams per briquette; and
- (d) have a sulphur content not exceeding 2% of the total weight.”

Therma Briquettes, manufactured by Maxibrite Limited at Llantrisant, Rhondda Cynon Taff, which—

- (a) comprise anthracite fines (as to approximately 84% of the total weight) petroleum coke (as to approximately 12% of the total weight) and starch binder (as to the remaining weight);
- (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at 250 degrees C;
- (c) are oval/tear shaped briquettes with a line through the centre and have an average weight of 26 grams per briquette; and
- (d) have a sulphur content not exceeding 2% of the total weight.”

Tiger Tim Firelogs, manufactured by De Lange B V., Rustenburgerweg 3, 1646 WJ Ursem , the Netherlands, which—

- (a) comprise slackwax (as to approximately 50% of the total weight) and sawdust (as to approximately 50% of the total weight);
- (b) were manufactured from those constituents by a process of heat treatment and extrusion;
- (c) are firelogs approximately 280 millimetres in length and 75 millimetres x 75 millimetres x 75 millimeters with a single groove running along each of the four 280 millimetre length faces and have an average weight of 1.1 kilograms per firelog; and
- (d) have a sulphur content not exceeding 0.2% of the total weight.”.

(v) Implementation

It is intended that the proposed instrument will come into force on 31 December 2009. If the Welsh Ministers were not to authorise Fuels under sections 20(6) and 63(1) of the Clean Air Act 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 areas in Wales.

(vi) Consultation

It was not deemed necessary to consult as the Regulations do not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding a further 3 fuels to those which are already authorised, for use in smoke control areas. In addition, the Regulations do not affect policy relating to air quality control.

(vii) Regulatory Impact Assessment

a) Options

Do nothing

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

Make Legislation

This would entail making an Order authorising specified fuels from the provisions of Section 20 of the Clean Air Act 1993. The Smoke Control Areas (Authorised Fuels)(Amendment)(Wales) Regulations 2009 do not affect the nature of the regime of control imposed by the 1993 Act: they merely ensure that the regime as effected in Wales responds appropriately to new fuels developed by the manufacturers.

b) Benefits

Do nothing

There are no benefits implicit in this option.

Make the Legislation

The benefits of this option are as follows:

- Increasing the variety of authorised fuels 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) Costs

Do nothing

If the Welsh Ministers were not to authorise approved fuels from the provisions of Section 20 of the Clean Air Act 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.

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 Regulations being made. The only cost linked to these Regulations results from the testing and approval process.

d) Competition Assessment

The competition filter has been applied to the proposed Regulations and it is clear that they will not have a detrimental affect on competition. The intended Regulations will merely add tested and approved fuels to the list of authorised fuels. 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.

e) Consultation

It was not deemed necessary to consult as the Regulations will not amend the regime of smoke control within Wales, but will merely ensure the regime is brought up to date, by adding further fuels to those which are already authorised for use in smoke control areas. In addition, the Regulations will not affect policy relating to air quality control. Those fuels proposed for

authorisation in these Regulations have been subject to a detailed and quantitative emissions testing protocol.

f) Post implementation review

No review of the Regulations will be necessary: when a fuel has been tested and approved it is appropriate to authorise it permanently. The descriptions of fuels and the conditions imposed on their use are detailed, so that if a manufacturer were to amend the specification of the fuel, it would no longer be authorised. The amended fuel would have to be resubmitted for approval and (if successful) new Regulations would have to be made. The structure of the Act's control regime therefore provides an automatic review process.

g) Summary

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