

## **REGULATORY APPRAISAL**

### **CLEAN AIR, WALES**

#### **THE SMOKE CONTROL AREAS (EXEMPTED FIREPLACES) (WALES) ORDER 2006**

##### **Background**

1. Section 18 of the Clean Air Act 1993 allows a local authority to declare the whole or part of its area a smoke control area by making a "Smoke Control Order". In Wales there are currently four partial areas in Flintshire, Newport, Swansea and Wrexham.
2. Within these areas a range of controls apply, including the prohibition of smoke emissions from chimneys. 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 provisions of section 20 (prohibition of emissions of smoke in smoke control areas), which are capable of burning fuels without producing any smoke or substantial quantities of smoke. It follows that a person using an exempted fireplace can be confident (so long as they comply with any conditions of use imposed by the Order, such as the type of fuel burnt in the fireplace) that they will not contravene the Clean Air Act. 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 Assembly.

##### **Purpose and intended effect of the measure**

3. This Order will add ten further classes of fireplace to those which are exempted. These classes of fireplaces have been tested by the UK Governments' preferred testing centre, the National Environmental Centre. They are:
  - The Binder Wood Fired Boiler models RRK 22-49 manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;
  - The Binder Wood Fired Boiler models RRK 80-175 with cyclone models ZA 80-175 manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;
  - The Binder Wood Fired Boiler models RRK 130 – 250 with cyclone models ZA manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;
  - The Binder Wood Fired Boiler models RRK 200 - 350 with cyclone models ZA manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;
  - The Binder Wood Fired Boiler models RRK 400 – 600 with cyclone models ZA manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;

- The Binder Wood Fired Boiler models RRK 640 – 850 with cyclone models ZA manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;
- The Binder Wood Fired Boiler models RRK 1000 with multi-cyclone models MZA manufactured by Binder gesellschaft mit beschränkter Haftung (GmbH) of Austria;
- The Dunsley Yorkshire Woodburning Stove and Boiler manufactured by Dunsley Heat Limited
- The Type USV wood pellet and wood chip fired boilers, model numbers USV 15, 25, 30, 40, 50, 60, 80 and 100 manufactured by Kraft und Wärme aus Biomasse gesellschaft mit beschränkter Haftung (GmbH) of Austria; and
- The Type USP wood pellet fired boilers, model numbers USP – 10, 15, 20, 25 and 30 manufactured by Kraft und Wärme aus Biomasse gesellschaft mit beschränkter Haftung (GmbH) of Austria;

### **Risk Assessment**

4. Control of smoke emissions helps reduce emission of a wide range of pollutants such as fine particles and sulphur dioxide. Therefore, failure to implement this Order would not contribute to the improvement of air quality on both the local and national level as intended.
5. In addition, if a manufacturer had successfully complied with all the requirements of the application procedure, including the payment of any fees, and the Assembly decided not to add them to the list of exempted appliance within a reasonable time, the Assembly could be criticised for failing to exercise its discretion to exempt the appliance without good reason. However it should be noted that the impact on manufacturers could only be quantified at disproportionate cost and is considered to be insignificant given the small number and area of smoke control areas in Wales.

### **Options**

#### Option 1: Do Nothing

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

#### Option 2: Make the Legislation

7. This would entail making an Order exempting specified classes of fireplaces from the provisions of section 20 of the Clean Air Act 1993. Therefore, ensuring that the smoke control regime in Wales responds appropriately to new appliances developed by the manufacturers.

### **Benefits**

8. 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.

### Costs

9. There are no additional financial implications for the Assembly arising from the making of the Order.

10. 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, which is a one off cost to the manufacturer, to ensure their product, is approved for use throughout the UK.

11. The attached table provides details of the cost of the application and testing process incurred by the manufacturers. Charges do not include any costs applicants incurred in testing carried out outside of the application process.

Manufacturer	Appliance	Model	Cost
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 22 - 49 (49 kW output)	£1,100
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 80 - 175 (75 - 149 kW output) with cyclone models ZA 80 - 175	£1,100
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 130 – 250 (185 – 230kW output) with cyclone (model type ZA)	£1,100
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 200 – 350 (250 - 300kW output) with cyclone (model type ZA)	£1,100
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 400 – 600 (350 - 500kW output) with cyclone (model type ZA)	£1,100
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 640 - 850 (650 - 840kW output) with cyclone (model type ZA)	£1,100
Binder Gesellschaft mit beschränkter Haftung (GmbH)	The Binder Wood Fired Boiler	RRK 1000 (1200kW output) with multi-cyclone (model type MZA)	£1,100
Dunsley Heat Limited	The Dunsley Yorkshire Woodburning Stove and Boiler		No record of costs received.
KWB. Kraft und Wärme aus Biomasse Gesellschaft mit beschränkter Haftung (GmbH) Austria	Type USV wood pellet- and wood chip-fired boilers	USV-15, 25, 30, 40, 50, 60, 80 and 100	£1,910
KWB. Kraft und Wärme aus Biomasse Gesellschaft mit	Type USP wood pellet-fired boilers	USP-10, 15, 20, 25 and 30	£1,910

beschrnkter Haftung (GmbH), Austria			
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### **Competition Assessment**

12. 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 Assembly would be preventing a business from effectively marketing their product uniformly throughout the UK.

### **Consultation**

#### With Stakeholders

13. It was not deemed necessary to consult with stakeholders as the Order will not amend the smoke control regime within Wales, but will update the application of the regime to reflect the development of new products by adding a further ten 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. However, manufacturers have been notified, by letter, that their product has been recommended for inclusion in Regulations across the UK.

#### With Subject Committee

14. The Order was notified to the Environment Planning and Countryside Committee, via the list of forthcoming legislation on 24 May 2006 (EPC(2)-08-06, (p.3) (Annex 2), item 112, 82 PE) and has remained on the list ever since. However, at that time the title of the legislation was The Smoke Control Area Exempted Fireplaces Amendment Regulations 2006. The Order was not identified for detailed scrutiny.

### **Review**

15. No review of the Order will be necessary as appliances have been tested and approved, therefore, 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.

16. The smoke control areas are one aspect of the Welsh Assembly Government's commitment to improving Air Quality. As part of the UK's Air Quality Strategy local authorities undertake regular reviews and assessments of local air quality. These reviews and assessments will determine the need for smoke control areas. Once a local authority has declared a smoke control area it will be their responsibility to ensure the legislation is complied with. This will be done as a regular feature of the pollution control role. Any breaches of the prohibition on the emission of smoke, e.g. through the use of a non-exempted appliance, will result in a fine up to £1,000.

**Summary**

17. 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.