

SL(5)084 – The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2017

Background and Purpose

This Order revokes and replaces with amendments the Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2016 (“the 2016 Order”).

Section 20 of the Clean Air Act 1993 (“the 1993 Act”) places a general prohibition on the emission of smoke in smoke control areas.

The Welsh Ministers may, by order made under section 21(5) of the 1993 Act, exempt, in relation to Wales, specified classes of fireplace from the provisions of section 20, if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

Article 2 of this Order exempts the classes of fireplace listed in the first column of the Schedule to this Order from the provisions of section 20 of the 1993 Act, subject to the conditions in the second and third columns of that Schedule in relation to that class of fireplace.

Procedure

Negative

Technical Scrutiny

The following point was identified for reporting under Standing Order 21.2 in respect of this instrument (Standing Order 21.2 (vi): that its drafting appears to be defective or it fails to fulfil statutory requirements).

Article 3 of this Order seeks to revoke the 2016 Order. However, the revoked Order is referred to in the article as the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2016. This title is incorrect.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Government response

This Order revokes and replaces (with changes) The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) (Order) 2016 (SI 2016/811 (W.201))

There is, as the draft report states, an error in the drafting of Article 3 of the Regulations. Both English and Welsh texts incorrectly reference the title of the SI being revoked – SI 2016/811 (W.201):

- a. The English text of Article 3 refers to “The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2016”. It should read “The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2016”.
- b. The same error occurs in the Welsh text. Article 3 refers to “Gorchymyn Ardaloedd Rheoli Mwg (Lleoedd Tân Esempt) (Cymru) 2016”. It should read “Gorchymyn Ardaloedd Rheoli Mwg (Dosbarthau Esempt ar Leoedd Tân) (Cymru) 2016”.

The same incorrect title reference also occurs in the English and Welsh texts of the Explanatory Note to this Order.

This is a clear drafting error that is typographical in nature. The title of the SI used in article 3 does not match any 2016 WSI titles. This is an annual Order whereby each Order revokes and replaces (with amendments) its predecessor. All predecessor Orders with similar titles have been revoked and therefore no longer exist. The purpose of article 3 of this Order is clear: to explicitly revoke the 2016 predecessor. That SI 2016/811 (W.201) is the predecessor Order is beyond question. Both Explanatory Note and the footnote to Article 3 (in both English and Welsh texts) of this Order refer to SI 2016/811 (W.201) as the SI being revoked by article 3.

The substance of the provision is clear as to which statutory instrument is being revoked by article 3 of this Order. In any event, notwithstanding the explicit revocation made by article 3, the effect of the coming into force of article 2 of (and the Schedule to) this Order is to impliedly revoke SI 2016/811 (W.201). The legal effectiveness of this Order in replacing and revoking SI 2016/811 (W.201) is not compromised by this drafting error.

The Welsh Government is considering the options for handling this error.



Committee consideration

The Committee considered the instrument at its meeting on 3 April 2017. The Committee notes the Government response, and reports to the Assembly in line with the technical reporting point above.

