



Department
of Energy &
Climate Change

A consultation on the repeal of legislation prescribing the maximum temperature to which particular premises may be heated

***Fuel and Electricity (Heating) (Control) Order 1974 &
Fuel and Electricity (Heating) (Control) (Amendment)
Order 1980***

October 2013

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The consultation can be found on DECC's website.

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Introduction

This consultation seeks views on the relevance and usefulness of legislation which specifies a maximum temperature to which certain premises may be heated, in order to inform Government's decision on whether to remove the legislation.

***The Fuel and Electricity (Heating) (Control) Order 1974* (“the 1974 Order”) prohibits the heating of premises above a temperature of 68°F, equivalent to 20°C. *The Fuel and Electricity (Heating) (Control) (Amendment) Order 1980* amended the 1974 Order and substituted this limit with 66.2°F, or 19°C. See Annexes A & B for the text of the Orders. Certain kinds of premises are exempt from this limit and these are detailed in the background section of this consultation.**

The Orders were introduced as an energy-saving measure at a time of severe disruption to the UK's energy supplies. It is considered that the conditions affecting energy security, resilience and efficiency which gave rise to the introduction of these measures have generally dissipated, and these areas of energy policy are now addressed by means which do not depend upon limiting the heating of premises in the way set out in the Orders.

The legislation has come under review through the Energy and Climate Change theme of the Red Tape Challenge, the Government's flagship programme to scrap unnecessary and outdated regulation. This consultation seeks views on removing both Orders and welcomes comments in response to consultation questions found on page 10.

General information

This consultation exercise is designed to inform the Government's decision on removing the Fuel and Electricity (Heating) (Control) Order 1974 and the Fuel and Electricity (Heating) (Control) (Amendment) Order 1980.

Issued: 28 October 2013

Respond by: 20 December 2013

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Consultation reference: 13D/265 – A consultation on the repeal of legislation prescribing the maximum temperature to which particular premises may be heated

Territorial extent:

This consultation is for England, Wales and Scotland.

How to respond:

Your response will most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Please send your response, preferably in an electronic format, by the 20 December 2013 to:

Department of Energy and Climate Change

3 Whitehall Place

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Telephone: 0300 068 5736

Email: FuelAndElectricityOrder@decc.gsi.gov.uk

Additional copies:

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Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at www.decc.gov.uk/en/content/cms/consultations/. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.bis.gov.uk/files/file47158.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

1. Background

- 1.1 The two Orders are under consideration for removal as part of the Department of Energy and Climate Change's (DECC) response to the Red Tape Challenge (RTC), the Government's programme to scrap or improve unnecessary regulation.
- 1.2 As part of the RTC process the Energy Theme was published online for people to suggest how regulations could be 'scrapped' or 'improved'. The Energy Theme was live from 25 November 2011 to 6 January 2012, and received a good response with over one hundred people and organisations making suggestions. Measures were also identified by way of internal review within DECC.
- 1.3 Under this process, *The Fuel and Electricity (Heating) (Control) Order 1974* and *The Fuel and Electricity (Heating) (Control) (Amendment) Order 1980* have been identified as possible measures for removal.

Description of the legislation:

- 1.4 The Fuel and Electricity (Heating) (Control) Order 1974 ("the 1974 Order"), reproduced in full at **Annex A**, prohibits the use, cause or permission of the use of electricity or fuel for the purpose of heating premises so as to cause the temperature of those premises to exceed 68°F, or 20°C. By "electricity", the Order means all electricity, whether or not supplied commercially, and by "fuel" it means any solid, liquid or gaseous substance used as a fuel.
- 1.5 Excluded from this prohibition is the use of electricity or fuel in respect of heating any premises or part of premises which other legislation requires must be kept at or above a specific temperature exceeding that set by the 1974 Order.
- 1.6 The prohibition does not apply to heating any part of premises used as living accommodation, unless its heating cannot be separately controlled, or to heating sauna, turkish or swimming baths, or premises in respect of which a licence has been granted by the Secretary of State.
- 1.7 Heating to a temperature which exceeds that stated in the 1974 Order is also permitted to the extent necessary for certain specified purposes set out in Article 3(2) of the 1974 Order, including the maintenance of the health of certain persons specified in Article 3(2)(a) (for example persons who are ill or under 5 or over 60 years old) and of animals and birds, industrial, research and agricultural purposes, the preparation of food, and the prevention of damage to food, goods, material and growing crops.
- 1.8 The Fuel and Electricity (Heating) (Control) (Amendment) Order 1980, attached in full at **Annex B**, amends Article 3(1) of the 1974 Order by substituting 19°C (66.2°F) for 20°C (68°F) as the temperature above which, subject to the provisions of the amended Order, premises must not be heated by the use of electricity or fuel.
- 1.9 It is DECC's understanding that this legislation was not introduced as a health and safety measure. The 1974 Order (as amended) prohibits a building from being heated, by the specified means, to beyond the specified temperature (19° Celsius). If the temperature happens to rise above that limit, but not by way of heating using the specified methods, (for example, through the action of the sun), there is no obligation to bring the

temperature down to 19° Celsius, nor is there an obligation to raise the temperature if a building's temperature is below that temperature. Thus the 1974 Order is not concerned with the control, or maintenance, of any specific temperature for the purposes of health and/or safety.

2. Rationale for removal

- 2.1 From initial inquiries DECC has identified a low level of awareness of the requirements and we would welcome evidence on the extent to which they are known of and observed by affected organisations.
- 2.2 Despite what we understand to be the low level of awareness of the 1974 Order and its enforcement, it is a criminal offence to breach the requirements. Under the *Energy Act 1976*, the Secretary of State has the power to obtain information, call for documents, and access and enter premises with a warrant¹. If a person (including officers of a body corporate) contravenes or fails to comply with the 1974 Order without reasonable excuse or wilfully obstructs any person exercising a power conferred by the Energy Act 1976, they are subject to a penalty of a fine of not more than £5,000².
- 2.3 These offences and penalties appear disproportionate in light of the low level of awareness of the Orders, and the Government's wider energy strategy.

3. Residual energy security issues

- 3.1 Energy security is about making sure consumers can access the energy they need at prices that are not excessively volatile. The legislation was introduced in 1974 and amended in 1980 respectively in order to manage and maintain energy security at a time of serious disruption to energy supplies, due to the oil shocks of the decade.
- 3.2 The UK has experienced strong energy security in recent years from a combination of liberalised energy markets, robust regulation and extensive North Sea resources. The Government's current energy security strategy is based on competitive energy markets combined with effective regulation to deliver diversity of supply and robust infrastructure for consumers. It is not thought that the Orders remain relevant under the current energy security strategy.

¹ Energy Act 1976, Schedule 2.

² Energy Act 1976, section 19(1); Criminal Justice Act 1982, section 37(2).

3.3 The Energy Security Strategy can be found online at:

<https://www.gov.uk/government/publications/energy-security-strategy>

4. Residual energy resilience issues

- 4.1 Resilience is defined as the ability of assets, networks and systems to anticipate, absorb, adapt to and rapidly recover from a disruptive event. Government aims to strengthen the UK's capability to respond in the event of actual or threatened disruptions to energy supplies; reduce the likelihood of disruption or emergencies happening in the first place; and to work in partnership with industry, regulators, consumers and the rest of Government to enable secure, affordable and resilient energy supplies.
- 4.2 It is considered that the conditions affecting energy resilience which gave rise to the introduction of these measures have generally dissipated, and that energy resilience is now maintained by means which do not depend upon limiting the heating of premises in the way set out in the 1974 Order.
- 4.3 DECC would welcome views and evidence on any impact on energy resilience that the removal of this legislation may have on your organisation.

5. Current energy efficiency issues

- 5.1 The Government does not consider that the removal of these Orders will impact on the UK's aspirations in improving energy efficiency.
- 5.2 This section sets out the Government's approach to energy efficiency, considers the relationship between this approach and the legislation in question and seeks views and evidence on any enduring impact of regulation in this area.

Government's commitment to energy efficiency

- 5.3 Energy efficiency has become an increasingly important resource and policy lever in today's economic climate and the Government has made it one of its key strategic energy priorities. By reducing overall energy demand through wide-scale take-up of energy efficiency measures we can stimulate growth, save households and businesses money and reduce carbon emissions.
- 5.4 In November 2012 the Government published its Energy Efficiency Strategy. This sets out its mission to realise the energy efficiency opportunity in the UK. The Strategy identified the barriers to energy efficiency take-up, and the policy initiatives Government is introducing to ensure these barriers are overcome and the UK economy becomes more energy efficient.³

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65602/6927-energy-efficiency-strategy--the-energy-efficiency.pdf

5.5 The EU Energy Efficiency Directive was published in the Official Journal of the European Union on 14 November 2012. The Directive represents a major step forward, establishing a common framework of measures to promote energy efficiency across different sectors of the economy throughout the EU. It will also help put the EU back on track to meet its target to reduce primary energy consumption by 20% by 2020. The Government is fully committed to the implementation of the Energy Efficiency Directive.

5.6 The Government's energy efficiency policies are designed to support the realisation of the energy efficiency opportunity in the UK. Existing policies – like the Green Deal, Renewable Heat Incentive, CRC Energy Efficiency Scheme and Smart Meters - provide targeted solutions, whether for households or business, depending on their need.

Impact of removal on energy efficiency

5.7 It is DECC's view that, regarded as an energy efficiency measure, the prescriptive approach set out in the 1974 Order is impractical to enforce and provides little incentive to organisations to improve their overall energy efficiency.

5.8 Furthermore, the 1974 Order's reference to the temperature of premises, rather than to the efficiency with which energy is used in order to maintain a given temperature, means that it does not genuinely engage with energy efficiency objectives. For example, an energy inefficient building being heated by an inefficient source, even if maintained at 19° Celsius, may consume more energy than an energy efficient building maintained at 22° Celsius being heated by an energy efficient source.

5.9 We would welcome views on any enduring impact that it is thought this legislation may have upon energy efficiency issues.

5. Consultation Questions

Consultation Question	
1.	Does your organisation have knowledge of the legislation and take it into account within its organisational policies/processes?
2.	Would removal of the legislation undermine improvements to energy resilience at your organisation? If so, how?
3.	Would removal of the legislation undermine improvements to energy efficiency at your organisation? If so, how?
4.	If your organisation provides energy efficiency products or services to others, do you expect the removal of the legislation to affect your business? If so, how?
5.	Do you have any further comments or concerns about the issues set out in this consultation?

Annex A

Fuel and Electricity (Heating) (Control) Order 1974

STATUTORY INSTRUMENTS

1974 No. 2160

CONTROL OF FUEL AND ELECTRICITY

The Fuel and Electricity (Heating) (Control) Order 1974

Made

19th December 1974

Laid before Parliament

20th December 1974

Coming into Operation

13th January 1975

The Secretary of State, in exercise of his powers under section 2(1) of the Fuel and Electricity (Control) Act 1973 (as continued in force by the Fuel and Electricity (Control) Act 1973 (Continuation) Order 1974⁽¹⁾) and section 7 of the Emergency Laws (Re-enactments and Repeals) Act 1964 as having effect by virtue of section 5(1) of the Fuel and Electricity (Control) Act 1973, hereby makes the following Order:—

1. This Order may be cited as the Fuel and Electricity (Heating) (Control) Order 1974 and shall come into operation on 13th January 1975.

2.—(1) In this Order—

“electricity” means electricity whether or not supplied by an Electricity Board within the meaning of section 1 of the Electricity Act 1947; and

“fuel” means any substance, whether solid, liquid or gaseous, used as a fuel.

(2) Any reference in this Order to any enactment shall be construed as a reference thereto as amended or extended and as a reference to any regulation or Order made under any enactment.

3.—(1) Subject to paragraph (2) of this Article, no person shall use, cause or permit the use of electricity or fuel for the purpose of heating premises so as to cause the temperature of those premises to exceed 68 degrees Fahrenheit (which is equivalent to 20 degrees Centigrade):

Provided that if any enactment requires the heating of any premises or any part thereof to be maintained in certain circumstances at a specific temperature or at not less than a specific temperature, nothing in this Article shall require the heating of such premises or part thereof (as the case may be) in those circumstances to fall below the minimum temperature so specified even if in consequence thereof the temperature of any other part of such premises is thereby caused to exceed that specified in the last foregoing paragraph.

(2) Nothing in paragraph (1) of this Article shall apply to the use of electricity or fuel for the purpose of heating that part of any premises which is used for living accommodation, unless the heating of that part cannot be controlled separately from the heating of the parts of those premises which are not so used, or which is used as a sauna bath, turkish bath or swimming bath; or heating any part of any premises to the extent that such heating is necessary—

(a) for the maintenance of the health or well being of any person on those premises who is ill, disabled, infirm, pregnant, under the age of 5 years or over the age of 60 years;

(b) in the course of any industrial process, in the preparation of food, for purposes of research, or for agricultural purposes within the meaning of the Agriculture Act 1947;

(c) to prevent damage or deterioration to food, goods, material or growing crops or to prevent damage to or impairment of the functioning of any apparatus or equipment on the premises which is sensitive to changes of temperature or humidity; or

(d) for preserving the health of any animal or bird on the premises;

or heating any part of any premises in respect of which a licence has been granted by the Secretary of State under this Order.

4. Any licence granted under this Order may be subject to conditions and may be revoked without prior notice.

5. It shall be a defence for a person who contravenes or fails to comply with a provision of this Order to prove that he used all due diligence to secure compliance with that provision.

6. This Order shall not extend to Northern Ireland.

Eric Varley

Secretary of State for Energy

19th December 1974

EXPLANATORY NOTE

This Order prohibits the use of fuel or electricity to heat premises above a temperature of 68°F (20°C). This prohibition does not apply to premises used as living accommodation, unless their heating cannot be separately controlled, or to sauna, turkish or swimming baths, or to premises in respect of which a licence has been granted by the Secretary of State. The temperature of 68° may also be exceeded to the extent necessary for certain specified purposes set out in Article 3(2) of the Order, including the maintenance of the health of certain persons specified in Article 3(2)(a) (eg persons who are ill or under 5 or over 60 years old) and of animals and birds, industrial, research and agricultural purposes, the preparation of food, and the prevention of damage to food, goods, material and growing crops.

Annex B

Fuel and Electricity (Heating) (Control) (Amendment) Order 1980

STATUTORY INSTRUMENTS

1980 No. 1013

CONTROL OF FUEL AND ELECTRICITY

The Fuel and Electricity (Heating) (Control) (Amendment) Order 1980

Made

17th July 1980

Laid before Parliament

21st July 1980

Coming into Operation

1st October 1980

The Secretary of State, in exercise of the powers conferred on him by section 1(1) of the Energy Act 1976 and of all other powers enabling him in that behalf, it appearing to him desirable for the purpose of conserving energy and after consulting with organisations in the United Kingdom appearing to him to represent those who will be affected including both consumers and suppliers of energy, and such other organisations as he thought appropriate as required by section 1(2) and (3) of the Energy Act 1976, hereby orders as follows:—

1. This Order may be cited as the Fuel and Electricity (Heating) (Control) (Amendment) Order 1980 and shall come into operation on 1st October 1980.

2. Article 3(1) of the Fuel and Electricity (Heating) (Control) Order 1974 shall be amended by substituting, for the words “68 degrees Fahrenheit which is equivalent to 20 degrees Centigrade”, the words “19°C which is equivalent to 66.2°F”.

David Howell

Secretary of State

Department of Energy

17th July 1980

EXPLANATORY NOTE

This Order amends Article 3(1) of the Fuel and Electricity (Heating) (Control) Order 1974, made under section 2(1) of the Fuel and Electricity (Control) Act 1973 c. 67 and continued in force by Part III of Schedule 4 to the Energy Act 1976, by substituting 19°C (66.2°F.) for 68°F (20°C) as the temperature above which, subject to the provisions of the amended Order, premises must not be heated by the use of electricity or fuel.

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