

## Individual Cabinet Member Decision

### Policy On Civil Penalties for Smoke Emissions within Smoke Control Areas under the Clean Air Act 1993, as amended by the Environment Act 2021

#### Report of Chief Officer Environment and Place

PURPOSE OF REPORT				
Adoption of enforcement policy relating to new civil penalty offence relating to smoke emissions from chimneys within designated smoke control areas				
Key Decision	<b>N</b>	Non-Key Decision	<b>Y</b>	Referral from Cabinet Member
Date of notice of forthcoming key decision	n/a			
This report is public				

#### OFFICER RECOMMENDATION

- (1) Adoption of proposed policy

##### 1.0 Introduction

The burning of solid fuels such as wood and coal, usually at home, contributes to particulate matter (PM) and other pollutant emissions (such as nitrogen dioxide) that have a negative impact on local air quality. It is estimated to be the largest single primary emission source of fine particulate matter.

Evidence suggests that emissions of very fine particles (PM<sub>2.5</sub> and smaller) present in smoke are particularly harmful to health, as their size means they can get deep into the lungs and enter the bloodstream to be transported around the body.

Everybody is at risk. Air pollution harms our health at every stage of life. The most vulnerable people in society are hit hardest – children, older people and those already in poor health. In Lancashire, the overall mortality rate from particulate air pollution in Lancashire-12 is 4.6%. More information on health impacts of air pollution can be found at the [Lancashire air quality health impacts](#) and [Lancaster air quality](#) websites.

The [Environment Act 2021](#) (EA 2021) amended Part 3 of the [Clean Air Act 1993](#) (CAA), which is the UK's main legislative framework for the control of pollution from domestic solid fuel burning. The CAA gives local authorities the

power to make an order designating parts of their area as Smoke Control Areas (SCAs), in which it is an offence to emit substantial smoke from chimneys of buildings, or chimneys that serve the furnace of any fixed boiler or industrial plant. The amendments in the EA 2021 replace a criminal prosecution enforcement regime with a civil penalty procedure, with the aim of making enforcement quicker, simpler and more proportionate. It removes previously available statutory defences to smoke emissions, particularly the use of an exempt appliance or an authorised fuel.

- 1.1 The EA 2021 introduced in England civil penalties of between £175 to £300 from 1st May 2022 to be used instead of former criminal prosecution for an offence under Section 20 of the CAA 1993. This is under requirements introduced by Schedule 12 of the EA 2021 which amends the Clean Air Act 1993.

## 2.0 Proposal Details

- 2.1 To adopt policy as proposed on supporting background paper dated 22 August 2023.

## 3.0 Details of Consultation

- 3.1 Consultation on proposed policy has taken place with other Lancashire authorities (through Lancashire Air Quality Group) and is based on similar policy proposed for Greater Manchester authorities.

## 4.0 Options and Options Analysis (including risk assessment)

	<b>Option 1:</b> Adoption of proposed policy	<b>Option 2:</b> Adoption of policy with alternative penalty within range of £175 -£300 e.g. maximum penalty applicable at first offence	<b>Option 3:</b> Adoption of optional 'warning' letter approach following evidenced/observed smoke emissions from chimney
Advantages	Approach considered proportionate. Advisory (rather than 'warning' letter to source following complaint minimises officer observation time but allows source to respond appropriately to issue and advice given. Minimum level fine for first offence responds to direction in statutory guidance.	More significant penalty for first offence may drive compliance.	-
Disadvantages		Statutory guidance indicates level if penalty should be set considering	Likely significant officer time involved in determining smoke emissions at warning letter stage

		<ul style="list-style-type: none"> <li>• how serious the offence is</li> <li>• if it is a repeat offence</li> </ul>	which would then again be needed to be repeated before service of intent notice.
Risks	-	Challenge to policy/issued penalty based on level of penalty set	-

## 5.0 Officer Preferred Option (and comments)

5.1 Option 1 proposed policy approach. This is considered the best approach considering guidance requirements and resources involved in investigating and administering this new legislation.

## 6.0 Conclusion

6.1 Adoption of proposed Option 1 policy (as attached background document) is recommended.

### RELATIONSHIP TO POLICY FRAMEWORK

The proposed policy will sit under the Council's general enforcement policy and will also potentially contribute to the Council's Local Air Quality Management responsibilities under the Environment Act 1995 (as amended by the Environment Act 2021).

### CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)

An Equalities Impact Assessment (EIA) is not considered required as the maximum and minimum statutory levels of financial penalty are set within Schedule 12 of the EA 2021 and as the issue of a penalty will follow the policy set below (and thus considers inequalities within any decision to issue a civil penalty).

In order to ensure that the civil penalty is set at an appropriate level, the statutory guidance states that the following factors must be considered:

- how serious the offence is
- if it is a repeat offence

In addition, the local authority will only take enforcement action when it is proportionate and in the public interest to do so, in accordance with the Council's enforcement policy.

### LEGAL IMPLICATIONS

Legal have been consulted during the drafting of the policy to ensure compliance with the legislation. Future implications include appeals, recovery of unpaid civil penalty charge and involvement in associated action under nuisance or anti-social behaviour legislation. (These issues are covered within the enforcement policy)

**FINANCIAL IMPLICATIONS**

Any income generated from the issuing of penalty charges will be retained by the Council.

It is likely that costs related to officer resources to investigate and administer process for all cases resulting in the issue of a fixed penalty notice will exceed any penalty charges applied (even if penalty is set in all cases at the maximum level). However, it is expected to be manageable from within existing budgets.

**OTHER RESOURCE IMPLICATIONS**

**Human Resources: NA**

**Information Services: NA**

**Property: NA**

**Open Spaces: NA**

**SECTION 151 OFFICER'S COMMENTS**

The deputy Section 151 Officer has been consulted and has no further comments to add to those already outlined in the financial implications above.

**MONITORING OFFICER'S COMMENTS**

The Chief Officer Environment and Place has delegated authority under the Constitution to discharge any function relating to the control of pollution or the management of air quality (including the enforcement of the provisions of the Clean Air Act 1993) and, under the cascade principle, can further delegate this power to suitably qualified and experienced officers

**BACKGROUND PAPERS**

Proposed Policy Document dated 22 August 2023

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