



**LANCASTER
CITY COUNCIL**

Promoting City, Coast & Countryside

INDIVIDUAL CABINET MEMBER AND OFFICER DELEGATED DECISIONS

FRIDAY, 8 SEPTEMBER 2023

Please find enclosed Decision Notice in connection with the following:

ICMD5 Adoption of Policy On Civil Penalties for Smoke Emissions within Smoke Control Areas under the Clean Air Act 1993, as amended by the Environment Act 2021 (Pages 2 - 11)

Please note that this is subject to call-in.

Queries regarding these documents

Please contact Liz Bateson, Democratic Services - email ebateson@lancaster.gov.uk.

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Published on FRIDAY, 8 SEPTEMBER 2023



Promoting City, Coast & Countryside

**EXECUTIVE DECISIONS TAKEN BY CABINET PORTFOLIO HOLDER OR DELEGATED OFFICER
NOTICE OF DECISION**

TITLE OF DECISION:			
Adoption of Policy On Civil Penalties for Smoke Emissions within Smoke Control Areas under the Clean Air Act 1993, as amended by the Environment Act 2021			
NAME OF DECISION TAKER:	CLLR JOANNE AINSCOUGH		
POSITION AND RESPONSIBILITY HELD:	CABINET MEMBER WITH RESPONSIBILITY FOR ENVIRONMENTAL SERVICES		
CONTACT OFFICER:	PAUL CARTMELL		
TELEPHONE:	01524 582728		
E-MAIL:	pcartmell@lancaster.gov.uk		
Details of Decision			
<p>That the Policy on Civil Penalties for Smoke Emissions within Smoke Control Areas under the Clean Air Act 1993, as amended by the Environment Act 2021 (Option 1 to the report) be adopted.</p>			
<p>Reasons for the decision: To adopt a local policy that sets the approach and associated fines for new powers introduced under the Environment Act 2021 relating to local enforcement of smoke emissions from chimneys in Lancaster’s Smoke Control Areas.</p> <p>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).</p>			
IS THE DECISION URGENT			
No			
<p>I confirm that I have taken account of the options proposed by officers, the various implications set out in the report and the comments of the Monitoring and Section 151 Officers and am authorising the decision as set out above.</p>			
SIGNATURE OF DECISION TAKER:	Cllr Joanne Ainscough		
DATE:	8.9.23		
<i>THIS SECTION TO BE COMPLETED BY DEMOCRATIC SERVICES</i>			
		REF NO.	ICMD5
DATE DECISION TAKEN:	8.9.23	DATE RECEIVED BY DEMOCRATIC SERVICES:	8.9.23
DATE DECISION PUBLISHED:	8.9.23	IMPLEMENTATION DATE (publication day + 5 working days):	18.9.23

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	N	Non-Key Decision	Y	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_{2.5} 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)

	Option 1: Adoption of proposed policy	Option 2: Adoption of policy with alternative penalty within range of £175 -£300 e.g. maximum penalty applicable at first offence	Option 3: 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"> • how serious the offence is • if it is a repeat offence 	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

Contact Officer: Paul Cartmell

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Ref:

Lancaster City Council Policy/Protocol On Civil Penalties for Smoke Emissions within Smoke Control Areas under the Clean Air Act 1993, as amended by the Environment Act 2021 - 22 August 2023

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_{2.5} 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 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.

People who emit smoke from their chimney could also be committing a 'statutory nuisance' under Part 3 of the Environmental Protection Act 1990 if the smoke emissions are prejudicial to health or a nuisance. This previously applied to everywhere in England except within a SCA. The amendment of the 1990 Act by the EA 2021 removes this exemption in England so that a local authority can pursue somebody who emits smoke from private dwellings within an SCA. Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, they must serve an abatement notice. Anyone who breaches this notice would be committing a criminal offence. This legislation will therefore be used additionally where appropriate, for example in the case of repeat offenders where the penalty process does not address continued breaches of the CAA.

Legislation under the Anti-social Behaviour, Crime and Policing Act 2014 also provides an enforcement option for local authorities where impacts have a detrimental effect on the quality of life of persons in the locality of a smoke emitting chimney, is a persistent issue and as such considered to be unreasonable. In this case if smoke emission issues persist after the issue of a warning notice, the local authority can issue a Community Protection Notice requiring the detrimental impact to stop.

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.

The [statutory guidance](#) issued with the legislation further clarifies operational matters. The power to impose a civil penalty for this offence was introduced by section 73 of the EA 2021 by the addition of section 19A of the CAA 1993.

In determining the civil penalty amount, the local authority will have regard to the Statutory Guidance issued under Section 28A of the CAA 1993 (as amended).

Although it is possible for the Council to proactively respond to issues of smoke emissions, the Council's policy at this time will be to consider the utilisation of Fixed Penalty Notice powers under the amended Clean Air Act 1993 only in response to complaints received from members of the public regarding smoke emissions from chimneys within Lancaster's Smoke Control Areas.

Burden of proof

Where a local authority is satisfied, on the balance of probabilities, that on a particular occasion smoke has been emitted from a relevant chimney¹ within an SCA declared by that authority, a civil penalty can be issued by the local authority.

A civil penalty should be issued to the person liable, who can be the occupier of the building in which the chimney is located.

Factors in determining the level of civil penalty

An Equalities Impact Assessment (EqIA) 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.

Determining the civil penalty amount

As stated above, Schedule 12 of the EA 2021 states the range of financial penalties that may be imposed is a minimum of £175 and a maximum of £300.

In assessing the offence in order to determine the level of penalty, in accordance with the statutory guidance, there is a need to consider the following factors:

- Seriousness (such as, but not limited to, duration and darkness of smoke emissions, any demonstrable response to advice and warnings issued by the Council)
- Whether the offence is a repeated incident.

¹ The [Clean Air Act 1993](#) provides the following definition: "chimney" includes structures and openings of any kind from or through which smoke, grit, dust or fumes may be emitted, and, in particular, includes flues, and references to a chimney of a building include references to a chimney which serves the whole or a part of a building but is structurally separate from the building;

For a first offence the statutory minimum financial penalty will be issued. For any repeat case a maximum penalty will be issued. The table below set out the approach to civil penalties.

The table below sets out the proposed civil penalty bandings:

Offence	Penalty Amount
1 st offence	£175 (statutory minimum amount)
2 nd offence ^a	£300 (statutory maximum amount)
3 rd and further offences ^{b,c}	£300 (statutory maximum amount)

^a Within 12 months of 1st offence.

^b Within 12 months of 2nd or last offence

^c Where appropriate (for example for repeated offences), the use of statutory nuisance and/or anti-social behaviour powers under section 79 of the Environmental Protection Act 1990 and/or Section 43 of the Anti-social Behaviour Crime and Policing Act 2014 may follow the serving of a civil penalty.

Process for imposing penalty charges

Where it has been determined that a financial penalty may be appropriate to impose, the Council will follow the following process:

1. Following receipt of complaint provide an advice letter to source advising of smoke complaint(s) and general advice on what measures may be taken to minimise smoke emissions including: -
 - the smoke control area’s restrictions
 - specific details about the complaint
 - information about the negative impact on local air quality
 - information about how the person can burn solid fuels without emitting a substantial amount of smoke, including appropriate fuel to burn and which appliances to use
 - details of next steps if there is evidence of substantial smoke emitted from their chimney.

2. Issue a notice of intent including:
 - that there is enough evidence to prove that smoke was emitted from their chimney in an SCA
 - when smoke was emitted from a chimney in an SCA
 - that the Council intend to issue the person liable with a financial penalty under Schedule 1A of the CAA (as amended by the EA 2021)
 - the proposed amount of the penalty, between £175 and £300
 - that they have the right to object in writing to the proposed financial penalty within 28 days from the day after the notice was given – they should write to the local authority and include supporting evidence

If further substantial smoke emissions are witnessed from a chimney after the notice of intent is issued, additional financial penalty notices may be issued for each separate incident.

3. Issue a final notice:

The local authority may issue a final notice with a financial penalty if the person liable:

- does not object to the notice of intent within 28 days from the day after it was issued; or

- objects within 28 days from the day after it was issued, but the Council reject the reasons for objection.

If they do not object, the financial penalty should be issued within 56 days from the end of the 28-day objection period.

If they object unsuccessfully, the financial penalty should be issued within 56 days from the date they objected.

The final notice must include:

- the name of the person responsible
- the amount of the financial penalty
- the reasons for imposing the penalty
- information about how to pay the penalty
- the amount of time they have to pay the penalty (within 28 days beginning the day after the notice was given)
- information about their right to appeal to a first-tier tribunal if they feel that the financial penalty was based on a factual or legal error, or unreasonable (the tribunal may decide to cancel/confirm/reduce the notice or penalty).

Grounds for objecting to intent notice

The local authority can agree internally (authorisation level to be determined) to an objection after a notice of intent is issued, and cancel or reduce the fine if any of the following apply:

- there was no smoke emitted from the chimney at the time given in the notice of intent
- a smoke control order did not apply to the chimney at the time given in the notice of intent
- the person on whom the notice was served was not responsible for the chimney at the time given in the notice of intent – in this case, they must provide the name and address of the person who was liable at the time (if they know)
- there are other compelling reasons why the financial penalty should not be imposed (for example, hardship if proven) – these will be considered on a case by case basis

Withdrawing or amending notices

A notice of intent or a final notice may be withdrawn at any time. The amount of the financial penalty may also be reduced.

Final notice appeals process

Following the serving of the final notice, the person on whom the notice was served must appeal to the First-tier Tribunal within 28 days (beginning on the first day after the notice is given) if they feel that the decision to impose the financial penalty was:

- based on a factual error
- based on a legal error
- unreasonable

If a person appeals against the penalty, the final notice must be suspended until the result of the appeal is received or the appeal is withdrawn.

Consequences of non-payment of penalty charge

If payment has not been received after the time limit to appeal has expired (where no appeal has been lodged) or payment has not been received within 28 days after any appeal has been finally determined in support the issued notice, where appropriate, the Council will seek to recover the penalty charge from the person(s) served with financial penalty through its debt recovery process.

Keeping and recording financial penalties

The Council can keep any income received from the financial penalties and will keep a record of the following information:

- number of financial penalties issued
- number of financial penalties collected
- amount collected