

Smoke Control Area and Solid Fuel Enforcement Policy

September 2023



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Table of contents

1. INTRODUCTION	3
Decision making	3
Principles of good enforcement	4
2. SMOKE NUISANCE	4
Complaints about smoke	5
What we cannot investigate	5
What we are unlikely to investigate	5
What we will investigate	5
3. SMOKE IN SMOKE CONTROL AREAS	6
What you can burn in smoke control areas	6
The Environment Act 2021 and Schedule 1A to the Clean Air Act 1993	7
Improvement notice (written warning)	7
Issuing a notice of intent	7
Issuing written warning	7
Serving notices	8
Financial penalty amount	8
Objections to a notice of intent to issue a financial penalty	9
Issuing a final notice	9
Withdrawing or amending notices	10
Appeals process	10
Recovery of financial penalties	10
Recording financial penalties	11
4. SOLID FUEL SALES	12
Regulation of solid fuels	12
Offences	12
Enforcement of offences	13
Challenging a fixed penalty	14
Recovery of fixed penalties	15
Recording enforcement actions	15
Appendix 1. IMPROVEMENT NOTICE (EXAMPLE)	
Appendix 2. NOTICE OF INTENT TO SERVE A FINANCIAL PENALTY (EXAMPLE)	
Appendix 3. FINAL NOTICE - FINANCIAL PENALTY (EXAMPLE)	

1. INTRODUCTION

Controls on the burning of solid fuels and the emission of smoke were originally introduced by the Clean Air Act 1956, following episodes of serious smogs. This has been replaced by the Clean Air Act 1993 under which smoke control orders are made and enforced. The 1993 Act has now been amended by the Environment Act 2021 changing the way some enforcement takes place.

Open fires and wood-burning stoves have risen in popularity over recent years. However, wood and coal burning contribute to pollutant emissions, climate change and impact on air quality. Evidence suggests that emissions of very fine particles (known as PM₁₀ and PM_{2.5}) from soot and smoke have detrimental effects on human health, by getting into the lungs and blood.

The aim of this Policy is to provide guidance for those who wish to burn solid fuel in their home or industrial premises. The Policy also explains what might happen in terms of enforcement and prosecution should a breach of the legislation surrounding the sale, acquisition or burning of solid fuel be found.

The whole of the district of Newcastle upon Tyne is a Smoke Control Area (SCA) declared under the Clean Air Act 1993. This means you can't emit smoke from a chimney except in specific circumstances. If smoke is emitted from a chimney, the person responsible can face a financial penalty of up to £300. Further financial penalties can be issued for each incident of smoke emissions.

Smoke from domestic chimneys may also cause a statutory nuisance under the Environmental Protection Act 1990. If a nuisance is confirmed by an authorised officer, an abatement notice would be served on the person responsible.

Since 2021, the sales of domestic solid fuel in all of England are regulated. This includes traditional house coal (also known as bituminous coal) wood and manufactured solid fuels.

Decision making

Enforcement action will be based on risk, and we must also have full regard to any statutory duty. Assessment of risk will be based on legislation and specific guidance.

Enforcement officers are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering this Policy and the relevant procedures. A senior officer will give prior approval to all formal action falling outside the scope of this policy.

Where the investigating enforcement officer believes that legal action may be required, evidence will be collected, and the case will be reviewed by senior officers.

Any person subject to potential prosecution action will be invited to a formal interview or asked to send written representations to the Council for consideration prior to any final decision being made.

Principles of good enforcement

When discharging duties in relation to smoke control and solid fuel regulation, the Council and its officers will follow the principles and procedures set out in the:

- Regulatory Enforcement and Sanctions Act 2008
- Regulators' Code
- Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

The Public Safety and Regulation Division's enforcement activity will be:

- **Proportionate**, reflecting the nature, scale and seriousness of any breach or non-compliance, with decisions based on the individual circumstances of the case, taking all available facts into account.
- **Consistent**, so that the same approach in the interpretation and enforcement of legislation is undertaken by trained investigators. We will work with other regulatory agencies and share and develop good practice.
- **Transparent**, with communications that will be easy to understand, with clear reasons being given for any enforcement action taken.
- **Accountable**, undertaken in a responsible manner that has a clear purpose.
- **Targeted** at properties and people that pose the greatest risk of pollution, nuisance or to people's health and safety.

2. SMOKE NUISANCE

Smoke can prevent people enjoying their gardens, opening windows, or hanging washing out, and reduces visibility in the neighbourhood and on roads. It is also a form of pollution, can also have an adverse effect on people's health, especially those who have breathing problems, and can contribute to background local and global pollution levels. Smoke and soot from bonfires, chimneys and commercial practices have always been a source of a significant number of complaints.

There are laws against smoke from open burning of domestic waste that causes, or is likely to cause, pollution or harm to human health, and on the burning of any waste from a business (these are dealt with in Part II of the Environmental Protection Act 1990). There are also laws on smoke from any fire causing what is termed a statutory nuisance on or over someone else's land (dealt with in Part III of the Environmental Protection Act 1990).

For the issue to count as a statutory nuisance it must do one of the following:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises;
- injure health or be likely to injure health.

This means that any fuel burning would need to be regular and/or long lasting, and the smoke having a recognisable impact, e.g. getting into a house.

The fine for a breach of an abatement notice in a magistrates' court is unlimited. The fine for burning waste is unlimited, and in some circumstances the courts have the option of a prison sentence of up to five years. Where a breach of a notice is found,

or a direct offence of open burning waste, a decision on the course of action would be made in accordance with the:

- Division's [Enforcement and Prosecution Policy](#)
- and the [Code for Crown Prosecutors](#)

Complaints about smoke

In most cases, with heating fires and bonfires at domestic premises, we advise that the informal approach is the best course of action in the first instance. This gives the person responsible for the smoke time to fix the problem, especially if they are not aware that a problem exists or to what extent it affects people nearby. We recommend you:

- talk to the person responsible for causing the problem - they may not be aware that they are causing a problem. Do not do this if you feel threatened.
- write to them - you may prefer to explain what the problem is in a letter as this can feel less confrontational.

If this does not work, we may be able to investigate your complaint under the statutory nuisance regime. Taking these steps can help establish that the problem is ongoing and potentially unreasonable.

We are unable to investigate anonymous complaints as a statutory nuisance. We may be able to investigate complaints about open burning of waste without a person giving evidence of how they are affected.

What we cannot investigate

- smoke from a railway locomotive
- road steam vehicles, for example traction engines, steam-rollers, steam-powered cars and lorries.

What we are unlikely to investigate

- smoke from intermittent bonfires (unless they are from non-plant waste and/or dark smoke was produced)
- smoke from barbecues
- cigarette smoke
- cannabis smoke: possession of cannabis is illegal. If you are experiencing problems with cannabis odour or smoke, you should report it to the police.

What we will investigate

- smoke from frequent domestic bonfires
- smoke from commercial premises
- smoke from a domestic chimney
- dark smoke from a chimney: the emission of dark smoke from any chimney or furnace is an offence if it continues for a period more than 10 minutes (this allows for starting the furnaces)
- dark smoke from a bonfire: the darker the smoke, the more polluting it tends to be; and from cable burning.

3. SMOKE IN SMOKE CONTROL AREAS

Rules cover smoke emissions in a Smoke Control Area (SCA) from:

- a) a chimney of any building
- b) a chimney for the furnace of any fixed boiler or industrial plant.

A summary of the rules covering properties in a SCA can be found at:

<https://uk-air.defra.gov.uk/sca/>

This means that anyone responsible for premises within a SCA:

- must not emit a substantial amount of smoke from a chimney (once the fire is established)
- must only obtain and burn certain fuels, unless they are using a special type of appliance (see below)

If a substantial amount of smoke is emitted from a chimney or illegal fuel is sold or bought, then enforcement action may be taken.

These rules also cover smoke from moored vessels, for example canal boats, if these are included in the scope of the relevant SCA. The SCA rules apply to historic houses, but the local authority may exempt some or all of them.

You can use outdoor barbecues, chimineas, fireplaces or pizza ovens, but if any of these appliances release smoke through a chimney of a building - for example, a summerhouse, they can only burn authorised fuel or must be exempt.

What you can burn in smoke control areas

In a SCA you can only burn fuel on the [list of authorised fuels](#), or any of the following 'smokeless' fuels, unless you use an appliance approved by the Secretary of State for the Department for Environment, Food and Rural Affairs (DEFRA), (such appliances are also known as an 'exempt appliance' or 'DEFRA-approved appliance'):

- anthracite
- semi-anthracite
- gas
- low volatile steam coal

Unauthorised fuels, such as wood, can only be burned in [exempt appliances such as some boilers, cookers and stoves](#). You must only use the types of fuel that the manufacturer says can be used in the appliance

If you are installing a DEFRA-approved appliance in your premises you will require building regulations approval, unless the work is carried out by a member of a Competent Person Scheme e.g. [HETAS](#), which is the official body recognised by Government to approve biomass and solid fuel domestic heating appliances. You should check where the flue will exit. If it is near, below, or could blow towards a neighbour's window, then this may become a statutory nuisance (see above).

The Environment Act 2021 and Schedule 1A to the Clean Air Act 1993

The Environment Act 2021 introduced amendments to the Clean Air Act 1993. These changes gave local authorities the power to issue civil penalty notices for the emission of smoke in a SCA. The relevant powers are now contained in section 19A and Schedule 1A to the Clean Air Act 1993.

The changes to the law mean there is now a simpler, decriminalised, regime for smoke control enforcement. A penalty notice may be issued by a local authority enforcement officer where they witness, or otherwise have good reason to believe there was, the emission of a 'significant quantity of smoke from a chimney', regardless of the appliance being used or the type of fuel burned. There is no necessity to prosecute for offences of emitting smoke in a SCA. This Policy explains how we will apply the law and the procedure for applying penalties under the Clean Air Act 1993.

Improvement notice (written warning)

We will not normally take enforcement action if persons responsible for premises within a SCA are using authorised fuel, smokeless fuel, or an appliance that has been approved by DEFRA correctly.

If an enforcement officer detects smoke from a chimney in the SCA, or we have sufficient, verifiable, evidence of an identifiable emission of smoke within a SCA, then we will issue a written warning to the person responsible. This is known as an '**improvement notice**'.

The person issued with an improvement notice then has the opportunity to take steps and act to avoid any further emissions of significant quantities of smoke from their chimney.

If they continue to emit smoke from their chimney, we may take the following steps:

1. Issue a notice of intent to the person responsible
2. Issue a final notice with a financial penalty.

If we issue a written warning, it should include:

- the date and time when the smoke was seen
- an explanation of how the person has broken smoke control area rules
- information about the negative impact on local air quality
- information about how the person can burn solid fuels without emitting smoke, including appropriate fuel to burn and which appliances to use
- details of what will happen if they do not follow the rules.

Issuing a notice of intent

We will give a notice of intent to the person responsible for smoke emissions from a chimney in a SCA if they have already been given an improvement notice and evidence of a further incident is available.

The legislation says we can issue a notice of intent where we are 'satisfied, on the balance of probabilities', that on a particular occasion smoke has been emitted from a relevant chimney within a SCA.

The notice will tell them:

- that there is enough evidence to prove that smoke was emitted from their chimney in a SCA
- when smoke was emitted from a chimney in a SCA
- that we intend to issue them with a financial penalty under Schedule 1A of the Clean Air Act 1993 (as inserted by the Environment Act 2021)
- the proposed amount of the penalty, which can be an amount between £175 and £300 (see below)
- 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 send details of the objection, along with supporting evidence, to the following address:

**The Head of Public Safety and Regulation
Newcastle City Council
Civic Centre
Barras Bridge
Newcastle upon Tyne
NE1 8QH**

Email: psr@newcastle.gov.uk

If there are further smoke emissions from a chimney identified after we send a notice of intent, we may issue additional notice of intent for each separate incident.

Serving notices

Any notice may be served by:

- handing it to the person responsible
- leaving it at the person's address
- sending it by post to the person at their address
- emailing it to the person (if we have their consent)

Financial penalty amount

The minimum amount of a financial penalty that may be imposed under Schedule 1A is £175. The maximum amount of a financial penalty that may be imposed is £300.

Newcastle City Council has adopted a scale of financial penalties, from the minimum allowed to the maximum allowed, for those responsible for smoke emissions from a chimney.

The penalty imposed will be based on:

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

Figure 3.1. below identifies the penalty amounts to be imposed.

Figure 3.1: Financial penalty matrix:

	First Offence	Second Offence	Third Offence
A	£175	£225	£300
B	£200	£250	£300
C	£225	£275	£300

A= Low or no culpability: offence committed with little or no fault, for example by genuine accident despite the presence of proper preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events

B = Reckless: actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

C = Deliberate: where the rules were intentionally breached, or flagrantly disregarded

Objections to a notice of intent to issue a financial penalty

We may agree to an objection and cancel the proposed financial penalty if any of the following apply:

- there was no smoke emitted from the chimney on the occasion specified in the notice of intent
- a smoke control order did not apply to the chimney on the occasion specified in the notice of intent
- the person sent the notice of intent 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 moored vessels) the smoke emission was from the engine and was used to move it or provide it with electric power

When we uphold an objection and decide not to impose a financial penalty, we will inform the responsible person in writing.

Issuing a final notice

We would normally issue a final notice with a financial penalty if the person responsible:

- does not object to the notice of intent within 28 days
- objects within 28 days but we reject the reasons for their objection.

If no objection is received, we will issue the financial penalty within 56 days from the end of the 28-day objection period.

If the received objection is unsuccessful, we will issue the financial penalty 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 (being within 28 days beginning with the day after the final notice was given)
- information about their right to appeal.

Withdrawing or amending notices

We may withdraw a notice of intent or a final notice at any time. We may also reduce the amount of the financial penalty.

If we decide not to impose a financial penalty, we will tell the person responsible in writing within 14 days of the decision.

Appeals process

In the final notice, we will tell the person that they have the right to appeal against the decision, and to do so within the 28-day period, starting on the day after the final notice was given. They will need to appeal to the [first-tier tribunal](#).

General Regulatory Chamber
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Email: grc@justice.gov.uk

We will inform the responsible person that they can appeal the financial penalty if it was:

- based on an error of fact
- wrong in law. or
- unreasonable.

If a person appeals against the penalty, we will suspend the final notice until the appellant receives the result of their appeal or the appeal is withdrawn.

The first-tier tribunal may:

- quash the final notice
- confirm the final notice
- change the final notice by reducing the amount of the financial penalty
- ask Newcastle City Council to decide whether to withdraw or confirm the final notice or reduce the amount of the financial penalty.

Recovery of financial penalties

An unpaid financial penalty is recoverable as a civil debt through the county court.

Recording financial penalties

We will keep a record of financial penalties collected. The information will include the:

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

Any notice may be served by:

- handing it to the person responsible
- leaving it at the person's address
- sending it by post to the person at their address
- emailing it to the person (if we have their consent)

4. SOLID FUEL SALES

Under the Clean Air Act 1993, it is illegal to sell or to buy unauthorised fuel for use in SCA, unless it's for use in a DEFRA-approved appliance. Unauthorised fuels are also known as 'controlled fuels'.

The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 were made under section 87 of the Environment Act 1995, to implement the national air quality strategy, comply with statutory air quality limit values and meet national emission reduction commitments. These Regulations aim to phase out the sale of the most polluting fuels used for domestic heating by setting restrictions for the sale of wood, manufactured solid fuels and coal sold for combustion in domestic premises. They apply to all parts of England and not just in SCAs.

See [domestic solid fuels: rules for local authorities in England](#) for more information on the restrictions on the sale of domestic solid fuels.

Regulation of solid fuels

Offences

Under section 19B of the Clean Air Act 1993, it is an offence:

- for a person to acquire a controlled fuel for use in a building, fixed boiler, industrial plant or fireplace within a SCA
- to offer controlled solid fuel for sale by retail where the fuel is to be taken away by a purchaser, and the seller fails to take reasonable steps to notify potential purchasers that it is an offence to acquire that fuel for any of the use in a SCA
- to sell any controlled solid fuel by retail for delivery by that person, or on that person's behalf, to a building within a SCA, or to premises in which there is any fixed boiler or industrial plant within a SCA.

There are some exemptions and statutory defences and the [legislation](#) should be consulted.

From 1 May 2021 it became an offence to sell an unauthorised fuel for domestic use under the [Air Quality \(Domestic Solid Fuels Standards\) \(England\) Regulations 2020](#).

Under the Regulations it is an offence to:

- supply wood in amounts of under two cubic metres unless it has been certified by the manufactured solid fuel certification body as having a moisture content of less than 20%
- supply wood in amounts of under two cubic metres without the required information being displayed alongside it or on the packaging
- supply of wood in amounts of two cubic metres or more unless it is accompanied by the specified information on how to dry, store and check the moisture of the wood before it is used
- supply a manufactured solid fuel that is not an authorised fuel or supply a manufactured solid fuel that is not on the list maintained by DEFRA

- supply manufactured solid fuel without the required information being displayed alongside it or on the packaging
- supply pre-bagged and loose bituminous coal.

All suppliers, distributors and retailers can continue to sell these 'smokeless' fuels (see above) or exempted manufactured solid fuels (these are coffee logs, olive logs, wine logs, and fuel made mostly of wheat husks, straw, miscanthus, bamboo or compressed food waste).

Enforcement of offences

We will check that:

- retailers are informing customers of the rules. i.e. information is attached to the packaging, signage next to tills or a message when paying online
- wood and manufactured solid fuel sold have the Ready to Burn logo, certification number and supplier or manufacturer details displayed correctly
- the certification details match the certification list
- sales records (including sales to third-party retailers) are maintained
- correct information on drying is provided to customers for wood fuel volumes of two cubic metres or more
- wood is stored correctly so that it is not sold to customers damaged or wet.

We may prosecute a retailer or customer if they break these rules. We may prosecute a person who acquires illegal fuel.

Decisions on the taking a prosecution would be made in accordance with the:

- Division's [Enforcement and Prosecution Policy](#)
- and the [Code for Crown Prosecutors](#)

You can be fined up to £1,000 if you buy unauthorised fuel to use in an appliance that is not approved by DEFRA.

You could be fined an unlimited amount if you sell unauthorised fuel to customers using appliances not approved by DEFRA and within a SCA.

The magistrates' court would decide on the amount of any fine.

Any appeal against a conviction or a fine or other sentence may be made to The Crown Court.

Decisions on prosecution will depend on whether they are first offenders or repeat offenders and the severity of the offence.

If a fuel manufacturer, supplier, distributor or retailer appears to have breached the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020, and it is a first offence, a fixed penalty notice (FPN) may be issued in lieu of prosecution.

We would not issue a FPN if prosecution through the courts is more appropriate in the circumstances, for example (as shown in Figure 4.1) if:

- the trader is a repeat offender
- the £300 FPN would not suitably cover or reflect the extent of the offence.

Figure 4.1: Decision matrix:

	First Offence	Second or subsequent offence
A	FPN[#]	Prosecution*
B	FPN	Prosecution*
C	Prosecution*	Prosecution*

A = Low or no culpability: offence committed with little or no fault, for example by genuine oversight despite the presence of proper preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events, but not if

B = Reckless: actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

C = Deliberate: where the rules were intentionally breached, or flagrantly disregarded. Or the offence is serious and organised offence, and/or offence was committed on a large scale.

[#] We would not issue an FPN when it is not proportionate and not in the public interest to do so.

*Prosecution would only take place when the case passes the two-stage evidential and public interest test in the Code for Crown Prosecutors.

The amount of the fixed penalty is set nationally in the Regulations at £300.

The period for payment, and suspension of prosecution, is 28 days beginning with the day on which the notice is issued.

Challenging a fixed penalty

These are criminal FPNs (unlike those described in Part 3 of this Policy) so there is no obligation to pay, and the allegation can be challenged at a criminal court, or dealt with in court without recourse to a FPN. A FPN is issued by the enforcement officer in accordance with this Policy, and offers a person the opportunity to discharge any liability to conviction for the offence alleged by paying a penalty.

If the person does not agree that they have committed the offence for which they have received a FPN, and do not make payment, then the matter will be dealt with through prosecution in a magistrates' court. It will then be up to the court, on receiving evidence, to determine whether or not an offence was committed and therefore whether or not any penalty (fine or other sentence) should be imposed.

A recipient of a FPN may either:

- pay the fixed penalty, or
- ask for the case to be heard by a magistrates' court.

Any request to be tried by a magistrates' court must be made by notice given to the local authority before the end of the 28-day period. This is the method of 'appeal'.

Recovery of fixed penalties

An unpaid fixed penalty may be enforced by a local authority either by:

- prosecution in the magistrates' court, whether or not the recipient of the FPN requests that, or
- recovering the penalty amount and costs as a civil debt filed in the county court.

We may withdraw a FPN where we consider that it ought not to have been given. Where we do so, we will give notice to the person issued with the FPN that they do not need to pay it or ask for a court hearing, and that no proceedings would be brought or continued against them for the offence in question. In any case where the penalty has been paid, we will refund it.

Recording enforcement actions

We will keep a record of the number of:

- FPNs issued, cancelled and paid
- prosecutions following non-payment of a FPN
- prosecutions for solid fuel offences where a FPN was not offered
- FPNs written off for other reasons (for example, procedural error, not in the public interest to pursue, alternative sanctions used).

Appendix 1. IMPROVEMENT NOTICE (EXAMPLE)

Improvement Notice template

[Council stamp mark]

[Date]

IMPROVEMENT NOTICE

Improvement Notice following emissions of smoke from a chimney in a Smoke Control Area

Dear....

I am writing to inform you that smoke was observed from a chimney at [insert address] on [date of incident]. As you live in a smoke control area, it is against the law to release smoke from your chimney.

The purpose of this letter is to make you aware of the smoke control area rules and inform you that you may be fined if smoke is observed from your chimney again.

Smoke control area rules are in place in certain parts of the country in order to reduce air pollution from burning solid fuels. Air pollution is the biggest environmental risk to public health. Burning solid fuels is a major contributor to a type of pollutant called fine particulate matter, which is present in smoke. These tiny particles can damage your lungs and other organs, and harm the health of you, your family and the wider community.

You can burn the following fuels in a smoke control area:

- 'smokeless' fuels: anthracite, semi-anthracite, gas and low volatile steam coal.
- Authorised/certified manufactured solid fuels, which you can find on the following website: <https://smokecontrol.defra.gov.uk/fuels.php?country=england>.
- Dry wood, but only if you use an appropriate exempt appliance. You cannot burn wood in an open fireplace. You can check if your appliance is exempt by searching on the following website: <https://smokecontrol.defra.gov.uk/appliances.php?country=england>. You must only use the types of fuel that the manufacturer says can be used in the appliance.

You should also ensure that your appliance is installed correctly, operated in accordance with the manufacturer's instructions, and properly maintained.

As long as you follow these rules, no further action will be taken. However, if you do not use the right fuel and/or appliance, resulting in smoke emissions from your chimney, you may receive a fine of up to £300. Further information on smoke control area rules can be found here: https://uk-air.defra.gov.uk/assets/documents/reports/cat07/1901291328_Smoke_Control_Web.pdf

Signature

Date

Appendix 2. NOTICE OF INTENT TO SERVE A FINANCIAL PENALTY NOTICE (EXAMPLE)

[Council stamp mark]

[Date]

NOTICE OF INTENT

Notice of Intent of Financial Penalty for Emission of Smoke in Smoke Control Area

Dear...

I am writing to inform you of our intent to issue you with a penalty notice of £xxx [enter an amount between £175-£300] following smoke emissions from the chimney of [address] on [enter date and time].

- Your address falls in a smoke control area (see the interactive map for information: <https://uk-air.defra.gov.uk/data/sca/> [only reference the map if you have provided your SCA data and it is accurately shown on the interactive map]),
- We attach the following evidence of smoke emissions at the address and date above [attach any evidence you have e.g., photograph of smoke emissions].
- This is following the warning letter we sent you on [date of warning letter].

As the occupier(s) of the building/ the person having possession of the boiler or plant, you are the person(s) liable for the emission of smoke within the smoke control area. Therefore, we intend to issue you with a financial penalty under [Schedule 1A of the Clean Air Act](#) (as amended by the Environment Act 2021) in prohibition of smoke being released from a chimney within a smoke control area.

We will issue you with a penalty of £xxx [enter an amount between £175-£300]. You have the right to object to this penalty within 28 days, starting from the day after this notice was given. You should write to the following address and include any supporting evidence: [include contact details] Reasonable grounds for objection include:

- there was no smoke emitted from the chimney at the time given in this notice of intent
- a smoke control order did not apply to the chimney at the time given in this notice of intent
- you were not responsible for the chimney at the time given in this notice of intent – in this case, you must provide the name and address of the person who was liable at the time (if you know)
- there are other compelling reasons why the financial penalty should not be imposed
- (for moored vessels) the smoke emission was from the engine and was used to move it or provide it with electric power

Smoke control area rules are in place in order to reduce air pollution from burning solid fuels. Air pollution is the biggest environmental risk to public health. Burning solid fuels is a major contributor to a type of pollutant called fine particulate matter, which is present in smoke. These tiny particles can damage your lungs and other organs, and harm the health of you and your family.

You can burn the following fuels in a smoke control area:

- 'smokeless' fuels: anthracite, semi-anthracite, gas and low volatile steam coal.

- Authorised/certified manufactured solid fuels, which you can find on the following website:<https://smokecontrol.defra.gov.uk/fuels.php?country=england>.
- Dry wood, but only if you use an appropriate exempt appliance. You cannot burn wood in an open fireplace. You can check if your appliance is exempt by searching on the following website: <https://smokecontrol.defra.gov.uk/appliances.php?country=england>. You must only use the types of fuel that the manufacturer says can be used in the appliance.

You should also ensure that your appliance is installed correctly, operated in accordance with the manufacturer’s instructions, and properly maintained.

Signature

Date

Penalty for emission of smoke in smoke control area in England

19A Clean Air Act: Schedule 1A makes provision for financial penalties in relation to the emission of smoke in smoke control areas in England.”

SCHEDULE 1A Environment Act 2021: PENALTY FOR EMISSION OF SMOKE IN SMOKE CONTROL AREA IN ENGLAND

In this Schedule—

- “relevant chimney” means—
 - a) a chimney of a building to which a smoke control order in England applies, or
 - b) a chimney which serves the furnace of any fixed boiler or industrial plant to which a smoke control order in England applies;
- “person liable”, in relation to a relevant chimney, means—
 - a) if the chimney is the chimney of a building, the occupier of the building, or
 - b) if the chimney serves the furnace of any fixed boiler or industrial plant, the person having possession of the boiler or plant.

[ADD evidence establishing the emission of smoke]

Appendix 3. FINAL NOTICE - FINANCIAL PENALTY (EXAMPLE)

[Council stamp mark]

[Date]

FINAL NOTICE

Final Notice - Financial Penalty for Emission of Smoke in Smoke Control Area

Dear...

Following the Notice of Intent of Financial Penalty for Emission of Smoke in Smoke Control Area, issued on [date issued] for [insert address], we are writing to inform you that you must pay a financial penalty of [amount] for releasing smoke from a chimney within a smoke control area.

We are imposing this penalty as you [choose one]:

- did not object to the notice of intent issued on [date issued] within 28 days
- objected within the relevant period but, as set out in our letter issued on [date of objection response letter], we did not accept the reasons for your objection.

You can pay this penalty by [insert information on how to pay]

You must pay this financial penalty within 28 days. Failure to do so may result in payment being enforced through the courts.

You have the right to appeal within the 28-day period, starting on the day after this notice was given. You can appeal the financial penalty if it was based on a factual error, wrong in law or unreasonable. You need to appeal to the First-tier tribunal.

Details of first tier tribunal and process can be found here:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>

Signature

Date

Appeal

A person served with a Final Notice may appeal to the First-tier Tribunal against the requirement to payment a fixed penalty within 28 days beginning on the day after the notice is given.

The grounds of appeal (schedule 1A, paragraph 8) are that the decision to impose the financial penalty was—

- (a) based on an error of fact,
- (b) wrong in law, or
- (c) unreasonable.

If such an appeal is made the First- tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty, reduce the amount or remit the decision back to the local authority. Pending the determination of the appeal the requirement to pay the fixed penalty shall be suspended.

In the event payment of the fixed penalty is confirmed, failure to pay may result in proceedings being issued in the County Court for summary recovery as a civil debt.