

Meeting:	Decision Session - Executive Member for Environment and Climate Emergency
Meeting date:	19 November 2024
Report of:	James Gilchrist, Director of Transport, Environment and Planning
Portfolio of:	Councillor Jenny Kent, Executive Member for Environment and Climate Emergency

Decision Report: Enforcement Policy for Smoke Emissions within Smoke Control Areas (SCAs)

Subject of Report

1. The report outlines a proposed CYC enforcement policy for a new civil penalty regime for smoke emissions from chimneys within designated Smoke Control Areas (SCAs). SCAs are areas where people and businesses must not emit substantial amounts of smoke from a chimney. In addition, only authorised fuels can be burned in a SCA unless an 'exempt appliance' is being used.
2. The [Environment Act 2021](#) (EA 2021) introduced new air quality targets and amended Part 3 of the [Clean Air Act 1993](#) (CAA 1993), the UK's main legislative framework for the control of pollution / smoke emissions from domestic solid fuel burning. These amendments replaced a criminal prosecution enforcement regime with a civil penalty procedure, with the aim of making enforcement quicker, simpler and more proportionate. They remove the previously available statutory defences to smoke emissions, including the use of an exempt appliance or an authorised fuel.
3. The burning of solid fuels such as wood, usually in homes, emits particulate matter (PM), nitrogen dioxide (NO₂) and other pollution that damages local air quality. Domestic combustion of wood is one of the largest single primary emission sources of fine particulate matter (PM_{2.5}). All local authorities are required to support the delivery of national PM_{2.5} targets by taking action to

reduce emissions from sources within their control¹. Reductions in particulate matter will improve public health.

4. The proposed policy will sit under the Council's general enforcement policy and will also contribute to the Council's Local Air Quality Management responsibilities under the Environment Act 1995 (as amended by the Environment Act 2021). The policy directly contributes to delivery of measures in CYC's [Fourth Air Quality Action Plan](#) (AQAP4) which states that CYC will prioritise 'regulation and control of domestic emissions' and will investigate complaints of non-compliance with SCA regulations, taking enforcement action where necessary in line with the Clean Air Act 1993. AQAP4 specifically highlights the need for a new CYC policy covering civil penalties for smoke emissions within SCAs.
5. The outlined policy and penalty regime is in line with [statutory guidance](#) from DEFRA that covers the enforcement action local authorities can take in smoke control areas. The policy applies to residents and businesses located in smoke control areas and that burn solid fuels. It does not ban the burning of solid fuels, but ensures that they are smokeless, 'ready to burn' or used in appliances that minimise smoke.

Benefits and Challenges

6. The policy would enable a consistent approach with other local authority areas and would act as a deterrent to burning non-authorized fuels (or using non-exempt appliances) in smoke control areas, which contribute to air pollution and especially fine particulate concentrations which impact human health.
7. CYC would be unable to enforce smoke control contraventions in line with the new penalty regime without an adopted policy and agreed local penalties. DEFRA may consider that CYC would not be using best endeavours to implement local measures to reduce particulate emission in line with revised PM_{2.5} targets introduced through the Environment Act 2021. Although responsibility for meeting national PM_{2.5} targets lies with central government, local authorities are expected to contribute to achieving the targets through local action to tackle sources under their influence.

¹ Air quality strategy: framework for local authority delivery (updated August 2023). Available online at <https://www.gov.uk/government/publications/the-air-quality-strategy-for-england/air-quality-strategy-framework-for-local-authority-delivery>

8. CYC could face challenges to the policy and any penalty issued but these proposals are considered the best approach based on guidance and resources required to deliver the new legislation. CYC's approach to improving air quality is evidence based, proportionate and targeted. Measures in AQAP4 to reduce emissions from domestic combustion were supported by over two thirds (68.3%) of people during a recent public consultation².

Policy Basis for Decision

9. The proposed policy will contribute to the Council's Local Air Quality Management (LAQM) responsibilities under the Environment Act 1995 (as amended by the Environment Act 2021) and will allow officers to take proportionate action to smoke emissions within designed smoke control areas³. The policy is in direct response to revisions to the Clean Air Act 1993 made through the Environment Act 2021; proposals to develop a policy of this nature are outlined in CYC's Fourth Air Quality Action Plan (AQAP4), approved by CYC's [Executive on 18 July 2024](#). AQAP4 is fully aligned to the [Council Plan](#) and reflects ambitions contained within our 10-year strategies covering climate, health and wellbeing and the economy.
10. The proposed policy will complement CYC's other air quality improvement measures and emission reduction policies (including the council's carbon reduction programme) to ensure a robust response to fine particulate (PM_{2.5}) pollution.
11. Good air quality reduces absence from work and education due to air pollution related illnesses. A healthy York population is critical to achieving the economic aspirations of the city. Improving air quality will help to protect the city's many historic buildings and create a cleaner environment for visitors to York.

Financial Strategy Implications

12. Enforcement of smoke emissions within designated SCAs is undertaken by staff in Environmental Protection. The policy will simplify existing procedures; investigation and enforcement can be

² Public consultation on CYC's Fourth Air Quality Action Plan – see report to [CYC Executive, July 2024](#). 86 out of 126 respondents 'supported' or 'strongly supported' this area.

³ Other areas of York, including areas earmarked for development, may be subject to the requirements of the policy, should these areas be included within CYC's Smoke Control Area in the future.

delivered using existing staff resource and budgets, including DEFRA funding provided to all local authorities with SCAs.

Recommendation and Reasons

13. The Executive Member is asked to:

- (i) **Adopt the ‘Civil Penalties for Smoke Emissions within Smoke Control Areas Policy’ in accordance with Option A set out below.**

Reason: The outlined policy and penalty regime is in line with DEFRA guidance and the revised Clean Air Act, introduced in response to new national air quality targets introduced through the Environment Act 2021. The policy would enable consistency in approach with other UK authority areas and would act as a deterrent to burning non-authorised fuels (or using non-exempt appliances) in smoke control areas which contribute to air pollution and especially fine particulate concentrations across the city which impact human health.

Background

14. The burning of solid fuels such as wood and coal contribute to particulate matter (PM) and other pollutant emissions that harm local air quality. It is estimated that domestic and commercial combustion are responsible for 44% of PM₁₀ emissions and 68% of PM_{2.5} emissions across York. Domestic combustion is estimated to be responsible for around 37% of PM_{2.5} emissions, with the majority (about 31%) from wood burning. National emissions mapping estimates that domestic combustion of wood accounts for over twice the PM_{2.5} emissions of that produced by road traffic across York⁴.
15. 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. Whilst the most vulnerable people in society are hit hardest – children, older people and those already in poor health, everybody is at risk.

⁴ Source apportionment work undertaken by CYC as part of the development of the draft Air Quality Action Plan (AQAP4). Emissions data obtained from National Atmospheric Emissions Inventory (NAEI).

16. The Environment Act 2021 (EA 2021) introduced a requirement for new national air quality targets, including an annual target for fine particulate PM_{2.5} of 10µg/m³ (to address hotspot areas) and a population exposure reduction target (to ensure ongoing improvement in pollution across the UK). Whilst monitoring of particulate matter in York has shown that concentrations of particulates are within the current UK health-based air quality objectives, DEFRA acknowledge that there is no firm evidence of a threshold of effect below which there is no harm to health. The Committee on the Medical Effects of Air Pollutants (COMEAP) maintain that based on the available evidence, PM_{2.5} pollution can have harmful effects on people's health at lower concentrations than previously thought and that reducing annual mean concentrations beyond objective levels to 5µg/m³ (in line with the World Health Organisation's updated Air Quality Guideline, Sept 2021) would have public health benefits.
17. For York, like most of the UK, particulate concentrations are above (but, in York's case, not much above) aspirational World Health Organisation (WHO) guidelines of 15µg/m³ (PM₁₀) and 5µg/m³ (PM_{2.5}). The WHO guidelines are significantly more stringent than current UK Air Quality Objectives and do not currently apply in UK law. The new guidelines reflect the large body of evidence produced in recent years of the harm caused by much lower levels of pollution than previously thought. WHO recognise these are challenging public health recommendations and achieving the guideline levels would be the ultimate goal.
18. Responsibility for meeting national PM_{2.5} targets lies with central government, but local authorities have a key role in implementing measures locally to meet air quality targets and ensuring ongoing reductions in fine particulate matter, for which there are no safe limits. The proposed policy in this report will complement wider air quality improvement measures being implemented by CYC as outlined in our Fourth Air Quality Action Plan, adopted July 2024.

Amendments to the Clean Air Act 1993

19. In addition to setting new air quality targets, the EA 2021 also amended Part 3 of the Clean Air Act 1993 (CAA 1993), 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 majority of areas

within the York outer ring road, as well as all of Haxby and Wigginton, are already covered by SCAs. A map showing the SCA boundary in York is available on the [CYC website](#).

20. 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. They remove previously available statutory defences to smoke emissions, particularly the use of an exempt appliance or an authorised fuel. These amendments have been made in conjunction with new regulations controlling the types of fuels that can be legally sold for domestic burning ([Air Quality \(Domestic Solid Fuels Standards\) \(England\) 2020](#))
21. The EA 2021 introduced civil penalties in England of between £175 to £300 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 CAA 1993.
22. To respond to these changes, DEFRA guidance requires a local policy to be developed to outline how much to charge those responsible for smoke emissions within a smoke control area (see Annex A for CYC's proposed local policy). In line with the proposed policy, enforcement action would be taken when it is proportionate and in the public interest to do so, and in accordance with the Council's enforcement policy. A penalty of £175 for the first offence (statutory minimum), increasing to £300 (statutory maximum) for subsequent offences is proposed. Statutory minimum and maximum levels of financial penalty are set within Schedule 1A of the CAA 1993, and any enforcement action taken will be determined on a case-by-case basis.
23. A procedural flowchart for officers dealing with smoke control contraventions (mainly in relation to the use of appropriate standard letter templates) is included at Annex B. It should be noted that burning solid fuels, even in exempt appliances, is unlikely to be completely 'smoke free' from the outset and most appliances will have a period of "start-up" where there may be emissions of smoke for approximately 15 minutes (as an appliance reaches operational temperature). Following complaints of smoke in a designated smoke control area (and following a warning letter to an alleged perpetrator), this timeframe will be used as a guide

for officers in the field witnessing any smoke emission, prior to the issue of a 'Notice of Intent'⁵.

Consultation Analysis

24. Consultation has been undertaken with other local authorities as part of officer working groups and regional forum. The proposed policy is aligned to statutory national DEFRA guidance and reflects similar policies across other local authority areas. Environmental Protection staff have attended DEFRA workshops on smoke control and enforcement.
25. CYC's Fourth Air Quality Action Plan (AQAP4) was subject to a period of widespread public consultation between November 2023 and February 2024, alongside CYC's Local Transport Strategy. Measures in AQAP4 aimed at reducing emissions from domestic and industrial combustion / heating received 68% public support. AQAP4 includes specific measures relating to civil penalties for smoke emissions and a commitment to review CYC's current smoke control area boundary.
26. CYC has previously undertaken a DEFRA funded campaign called 'Fuel for Thought'. The campaign had specific emphasis on PM emissions from domestic solid fuel burning and links to health and generated a range of new resources for dissemination across York. Baseline public awareness was established via online pre-campaign survey work and in-person focus groups held across different areas of York. These activities helped to shape the messaging and creative route for the campaign. Further surveys were undertaken post-campaign as part of the evaluation work. The campaign improved public engagement on the topic of domestic solid fuel burning, was well received, easily understood and sparked interest and conversations.

Options Analysis and Evidential Basis

27. The Executive Member is asked to note the background information provided in the report with respect to current particulate levels in the city, note amendments to the Clean Air Act 1993 made through the Environment Act 2021 and approve the adoption of a policy which would allow CYC to enforce a new civil

⁵ Upon serving a 'Notice of Intent', CYC would be satisfied that there is enough evidence to prove, on the balance of probabilities, that smoke has been emitted from a relevant chimney within the SCA.

penalty regime with respect to emissions of smoke within designated smoke control areas in line with DEFRA guidance.

Option A (recommended)

- **Adopt the ‘Civil Penalties for Smoke Emissions within Smoke Control Areas Policy’ at Annex A with statutory minimum penalty of £175 for first offence and statutory maximum penalty of £300 for any repeat offence.**
- **Delegate authority to the Director of Transport, Environment & Planning to issue warning letters, notices of intent, final notices and to consider objections received under Schedule 1A of the Clean Air Act in accordance with the Policy at Annex A and the procedural flowchart at Annex B.**
 - The approach is considered proportionate and in line with DEFRA guidance and would demonstrate that CYC is actively taking steps to reduce particulate emission within its area for the protection of public health.
 - Issue of a warning letter (‘improvement notice’) following a complaint enables the alleged perpetrator to respond to the complaint and advice provided by CYC. This is not a legal requirement but will allow the person responsible to take appropriate action to prevent further smoke emissions and avoid a penalty charge. This is in line with CYC’s ‘proportionate approach’ in our recently updated enforcement policy.
 - CYC can retain any income received from any penalty charges, although it is anticipated that cost of officer time for investigating complaints and serving FPNs would exceed any such penalties (even if the penalty is set in all cases at the maximum level).

Option B – Adopt policy with alternative penalty structure within the range of £175 (statutory minimum) - £300 (statutory maximum).

- Consideration could be given to a more significant penalty (in excess of statutory minimum level fine of £175) for first offence, which may drive compliance. In addition, consideration could be given to a less significant penalty for second and further offences (lower than statutory maximum fine of £300).

- The Executive Member may wish to consider an alternative penalty between £175 and £300 for second offences (within 12 months of first offence), rising to the statutory maximum of £300 for third and further offences.

Should the Executive Member be minded not to adopt policy covering civil penalties for smoke control area contraventions, the following issues are highlighted:

- With no adopted policy, CYC would not be able to enforce smoke control contraventions in line with new civil penalty regime as outlined in the Environment Act 2021 and as per statutory DEFRA guidance.
- CYC would not be using best endeavours to implement local measures to reduce particulate emission in line with revised PM_{2.5} targets as introduced through the Environment Act 2021.
- CYC would be reliant upon statutory nuisance legislation for serious and/or repeat offenders which can involve costly legal proceedings. DEFRA advise⁶ that where persistent smoke causes a nuisance, local authorities should issue an abatement notice under section 80 of the Environmental Protection Act 1990 to prevent further nuisance. Breaching an abatement notice is a criminal offence punishable with fines. Following changes made under the Environment Act 2021, these provisions now also apply to nuisance smoke from chimneys inside smoke control areas, in addition to smoke from chimneys outside smoke control areas and smoke from other sources such as bonfires, which were already covered.

Organisational Impact and Implications

28. The various implications of this report are summarised below.

Financial

29. Any penalty charges would be retained by the Council, although it is not anticipated that these would be significant based on

⁶ <https://www.gov.uk/government/publications/the-air-quality-strategy-for-england/air-quality-strategy-framework-for-local-authority-delivery>

historical complaints⁷. It is anticipated that staff costs to investigate and administer the 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).

30. Officer time and resources will be required to respond to any complaints, witness emissions, issue warning letters, serve notices, issue fines and deal with appeals. Statutory nuisance enforcement action may also be necessary that could involve legal proceedings being taken against an individual or business. Enforcement action would be taken when it is proportionate and in the public interest to do so, in accordance with CYC's enforcement policy.
31. No additional resources are required as a result of this report. CYC was allocated £11.7k funding from DEFRA in 2023 and 2024 for the new burdens associated with the enforcement and management of smoke control areas, as introduced by the Environment Act 2021. This funding was provided to every local authority with one or more confirmed smoke control areas.

Human Resources (HR)

32. There are no HR implications contained within this report. However, any impact on the Council's resources that arise from implementing the proposed changes will need to be identified and resourced in line with Council Policy

Legal

33. The Clean Air Act 1993 provides a local authority the power to make a smoke control order declaring a smoke control area.
34. Part 4 of the Environment Act 2021 amended the Clean Air Act 1993 by introducing new powers for local authorities to impose civil penalties for the emission of smoke in smoke control areas. The civil penalty regime is set out in Schedule 1A of the Clean Air Act.
35. Schedule 1A sets out the minimum and maximum penalty amounts and provides that the local authority may delegate any of the authorities functions under the schedule to a person. Government guidance provides that a local authority should develop and

⁷ CYC investigates approximately 30 complaints of smoke from residential dwellings per year. Over the last 5 years none of these investigations have resulted in a prosecution (i.e. the majority have been resolved via provision of a warning/advice letter).

document a policy on how to charge those responsible for smoke emissions.

36. There is a right to object to a notice of intent to the local authority within 28 days. There is a right to appeal a final notice to the First-tier Tribunal within 28 days.
37. Recovery of unpaid civil penalty charge may result in legal proceedings being taken against an individual. This would follow CYC's debt recovery process.
38. The decision to adopt the policy may be challenged by way of judicial review.

Procurement

39. There are no procurement implications.

Health and Wellbeing

40. Measures to reduce emissions and improve air quality support CYC's health and wellbeing priorities which aim to tackle health inequalities, promote healthy lifestyles and place specific emphasis on good health and wellbeing during the key formative early years of life. The proposed policy complements other CYC measures to reduce pollution / smoke from domestic solid fuel burning to improve public health outcomes.

Environment and Climate action

41. The proposed enforcement policy will complement CYC's other air quality actions and emission reduction policies to ensure a robust response to fine particulate (PM_{2.5}) pollution. Enforcement is considered a last resort, with emphasis on awareness raising around health impacts, correct stove maintenance procedures and appropriate fuel use in the first instance. Our "Fuel for Thought" DEFRA funded campaign to raise awareness of these issues was promoted in Autumn/Winter 2023. Such activities are aligned to the national Air Quality Strategy which aims to improve awareness of the environmental and public health impacts of burning. As transport emissions decrease over time, the relative proportions and importance of emissions from domestic combustion increases, especially PM_{2.5}, but also NO_x.
42. The council has a key role in creating an environment where people are able to make informed decisions about a sustainable approach to the way they live and work. The enforcement policy

and other actions to address solid fuel burning support CYC's carbon reduction programme.

Affordability

43. There is the potential that low-income households in smoke control areas may burn non-compliant solid fuels due to rising energy costs. However, in line with DEFRA guidance, CYC's proposed policy advocates a staged approach to serving fixed penalties and use of warning letters and provision of advice in the first instance. Higher penalties will only apply if repeat offending occurs within set timescales.
44. Environmental Protection will take a proportionate approach, on a case-by-case basis, to those who are burning non-compliant solid fuel for financial reasons and who are unable to afford an alternative means of heating.
45. Residents who are struggling with the cost of heating will be signposted to advice on accessing financial and practical help on heating their homes. Environmental Protection will continue to provide advice to residents on fuels suitable for use in SCAs.

Equalities and Human Rights

46. Vulnerable people, including older people, children, pregnant women and those with respiratory and other illnesses, are more likely to be adversely affected by poor air quality. However, enforcement of smoke control area regulations will improve general air quality across York and will therefore benefit everyone.
47. CYC's Executive approved an overarching 'Enforcement Policy' for the council on [12th September 2024](#). This policy sets out the general principles officers will apply when using formal enforcement action to achieve compliance with legislation and help to ensure a consistency of approach. The [Equalities Impact Assessment](#) carried out for this overarching policy is relevant to the current policy concerning smoke control legislation.

Data Protection and Privacy

48. The data protection impact assessment (DPIAs) screening questions were completed for the recommendations and options in this report and as there is no personal, special categories or criminal offence data being processed to set these out, there is no requirement to complete a DPIA at this time. However, this will be

reviewed following the approved recommendations and options from this report and a DPIA completed if required.

Communications

49. Environmental Protection will work with CYC Marketing and Communications to address any press or public interest in the new policy. As previously mentioned in this report, a DEFRA funded local campaign to raise awareness of the links between burning of solid fuels, air quality and health impacts has previously been carried out (Autumn/Winter 2023/24). Resources developed as part of this project will be used for ongoing seasonal campaign work to encourage continued behavioural change to reduce pollution. Information on CYC's website will inform residents and answer enquires about domestic smoke control / solid fuel burning.

Economy

50. Reducing emissions and improving air quality will reduce exposure to harmful air pollutants which can increase the symptoms of chronic and acute illnesses increase the risk of hospital admissions and in some case result in premature death. Good air quality reduces absence from work and education due to air pollution related illnesses. A healthy York population is critical to achieving the economic aspirations of the city.
51. Air pollution damages buildings as well as human health. Improving air quality will help to protect the city's many historic buildings and create a cleaner environment for visitors to York. York's built and natural environment underpins people's quality of life and attracts millions of visitors to the city each year. Protecting and enhancing these environments for existing and future generations is a key priority for the council and our residents.

Risks and Mitigations

52. CYC's approach to improving air quality is evidence based, proportionate and targeted. CYC may be faced with challenges to the policy and any penalty issued, but proposals are considered to be the best approach considering guidance and resources involved in administering the new legislation.

Wards Impacted

53. The majority of areas within York outer ring road as well as all of Haxby and Wigginton are covered by Smoke Control Areas. A map showing the Smoke Control Area in relation to CYC ward boundaries can be viewed on [YorkView](#).
54. AQAP4 also includes a commitment to review the boundary of CYC's existing smoke control area. Any expansion of the smoke control area would be subject to a further Executive Member report and decision.

Contact details

For further information please contact the author of this Decision Report.

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Background papers / legislation

- **Statutory DEFRA guidance - Smoke control area enforcement by local authorities in England.** Available online at <https://www.gov.uk/government/publications/smoke-control-area-enforcement-local-authorities-in-england/smoke-control-area-enforcement-by-local-authorities-in-england>
- **Environment Act 2021** – available online at: <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>
- **Environment Act 2021 (Explanatory Notes)** – available online at: https://www.legislation.gov.uk/ukpga/2021/30/pdfs/ukpgaen_20210030_en.pdf
- **Clean Air Act 1993** – available online at: <https://www.legislation.gov.uk/ukpga/1993/11/contents>

Annexes

- **Annex A** - Proposed Policy Document

- **Annex B** – Proposed Procedural Flowchart

List of abbreviations used in this report:

DEFRA	Department of Environment Food and Rural Affairs
CYC	City of York Council
$\mu\text{g}/\text{m}^3$	Micrograms per cubic metre
NO_2	Nitrogen dioxide
NO_x	Nitrogen oxides
$\text{PM}_{10}/\text{PM}_{2.5}$	Particulate Matter up to 10 microns / 2.5 microns in size