

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



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1. 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 and carbon emissions. It is estimated to be the largest single primary emission source of fine particulate matter.

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. More information on health impacts of air pollution can be found on [City of York Council's website](#).

In York, it is estimated that 31% of PM_{2.5} emissions are due to wood burning, compared to only 0.2% from smokeless solid fuels and 4.5% from other boiler technologies¹. National emissions mapping estimates that domestic combustion of wood accounts for over double the PM_{2.5} emissions of that produced by road traffic across CYC's wider area.

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

¹ Source apportionment study undertaken for CYC's Fourth Air Quality Action Plan (AQAP4)

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.

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.

[Statutory guidance](#) issued with the legislation outlines the process that local authorities must follow in enforcing smoke control area contraventions. Officer professional judgement is required and will consider factors such as the nature of the smoke and the duration over which it is emitted.

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 Council 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 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 City of York Council's [Smoke Control Areas](#). This could be expanded in the future to include proactive patrols of specific areas, subject to demand and staff resource.

2. Burden of proof

Where the Council is satisfied, on the balance of probabilities, that on a particular occasion smoke has been emitted from a relevant chimney² within an SCA declared by the Council, a civil penalty can be issued by the Council.

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

3. Factors in determining the level of civil penalty

The Council 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](#).

Schedule [1A of the CAA 1993](#) 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:

² 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;

- 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 one-off or a repeat incident

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 sets out the approach to civil penalties.

Table 1: 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)

^aWithin 12 months of 1st offence.

^bWithin 12 months of 2nd or last offence

^cWhere appropriate (for example for repeated offences), the use of statutory nuisance under section 79 of the Environmental Protection Act 1990 may follow the serving of a civil penalty.

4. 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:

4.1. Issue a written warning

The written warning will include:

- the SCA restrictions
- specific details about when the smoke was seen
- an explanation of how the person has broken SCA rules
- information about the negative impact on local air quality and health
- information about how the person can burn solid fuels without emitting smoke, including appropriate fuel to burn and which appliances to use
- details of next steps if they do not follow the rules (proposal to impose a financial penalty including the proposed amount)

Additional information in the form of leaflets (either CYC produced or DEFRA produced) may accompany the written warning, where these offer practical advice to a householder about minimising smoke emissions.

If smoke emissions are witnessed following the written warning, a notice of intent may be issued.

4.2. Issue a notice of intent

The notice of intent will include:

- confirmation 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, on specified grounds, to the proposed financial penalty within 28 days from the day after the notice was given – they should write to the Council and include supporting evidence

If further 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.

4.3. Issue a final notice

The Council 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 dismiss the reasons for objection.

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

If they object unsuccessfully, the financial penalty must 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)
- 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 financial penalty or remit it back to the Council to withdraw/confirm/reduce the amount of the financial penalty).

4.4. Grounds for appeal / objection to notice of intent

The Council can consider appeals submitted on the following specified grounds:

- 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

Upon consideration of the appeal grounds and supporting evidence, City of York Council can decide to impose a financial penalty, withdraw the notice of intent or reduce the financial penalty to be paid (subject to the minimum amount of £175).

Decision making and the authorisation process within the Council to consider appeals to still to be determined.

4.5. Decision regarding a final notice

If the Council decides not to impose a financial penalty, or does not decide to impose a financial penalty within 56 days of the date of the notice of intent or date of the appeal, then the Council must inform the person that a financial penalty will not be imposed.

4.6. 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 at any time.

4.7. Final notice appeals process

Following the serving of the final notice, the person on whom the notice was served must appeal (*within the period of 28 days beginning with the day after that on which the notice was given*) to the First-tier Tribunal 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.

4.8. Consequences of non-payment of penalty charge

If, after the time limit to appeal has expired and no appeal has been lodged, or if after any appeal has been finally determined, a person receiving a financial penalty does not pay all or part of the penalty charge within 28 days, where appropriate, the Council will seek to recover the penalty charge through its debt recovery process.

4.9. 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