

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 05 September 2023

TITLE	Introduction of Penalty for emission of smoke in smoke control area		
Ward(s)	City Wide		
Author: Christopher Swinscoe/Andrew Edwards/Kurt James	Job title: Neighbourhood Enforcement Team Leader/ Project Manager Sustainability/Neighbourhood Enforcement and Street Scene Manager		
Cabinet lead: Cllr Dudd, Cabinet Member for Climate, Ecology, Energy and Waste	Executive Director lead: John Smith, Interim Director Growth and Regeneration		
Proposal origin: BCC Staff			
Decision maker: Cabinet Member Decision forum: Cabinet			
Purpose of Report: 1. This report seeks approval to adopt the powers given by the government for regulation of smoke in a smoke control area under the Environment Act 2021.			
Introduction 1. Bristol City Council recognises the fundamental right of every resident to breathe clean air. As we continuously strive for a greener, more sustainable city, regulating the emission of smoke from chimneys in the Bristol smoke control area is a part of what we need to do. Ensuring the health and well-being of our community is paramount, and we are dedicated to implementing measures that reduce air pollution.			
Evidence Base: 2. The government updated its <u>Clean Air Strategy</u> in 2019. The strategy outlines how the government will deal with all sources of air pollution. Options outlined in the strategy to reduce the impact of domestic solid fuel burning included new powers for local authorities to raise awareness of Smoke Control Areas and enforce these areas. 3. Amendments to the Clean Air Act 1993 made under Schedule 12 of the Environment Act 2021 came into force from 1 May 2022 by adding Section 19A and Schedule 1A, introducing civil financial penalties. Enforcement in Smoke Control Areas through the Clean Air Act amendments is a key element of the Government’s plan to reduce particulate pollution levels and the populations exposure to it. 4. Under the Clean Air Act of 1993, all of Bristol is covered by a smoke control order . This means that it is illegal to emit smoke from a chimney of a building or a chimney which serves the furnace of any fixed boiler or industrial plant. If you are burning a ‘controlled’/‘unauthorised’ fuel (e.g., wood), an appropriate Defra approved appliance must be used. If using other appliances that are not Defra approved then ‘smokeless’ fuels such as anthracite, semi anthracite, gas, or low volatile steam; or approved manufactured solid fuels can be used. Defra publishes the list of authorised fuels and the list of exempt appliances. 5. Under the Environment Act 2021 Bristol City Council has been given a statutory duty to develop a Clean Air Strategy, which will be done by the Sustainable City and Public Health teams. This strategy will take a holistic approach to tackling air pollution and will identify the pollution sources in the city that BCC can influence. 6. Air pollution can impact health when there is exposure over a lengthy period such as years, increasing the risk of those being exposed to it of developing health conditions. Air pollution can also trigger health effects because of elevated pollution levels over a shorter period (hours/days). At particular risk are vulnerable people with existing			

- health conditions who may see asthma, strokes and heart problems being triggered because of short-term increases in air pollution. The young and the elderly are also more vulnerable to short term peaks in air pollution.
7. One of the main pollutants of concern is particulate matter (PM), with the smaller particles, referred to as PM_{2.5}, identified by the World Health Organization as the most damaging to human health. It is accepted that there is no safe level of PM_{2.5} pollution so any reductions of emissions of this pollutant, especially in locations close to where people live and are exposed to it, will be beneficial to health.
 8. Domestic burning accounted for 27.3% of total PM_{2.5} emissions in 2021. The use of wood alone in domestic indoor burning activities accounted for 20.5% of PM_{2.5} emissions in the same year. The level of exposure to pollution from this source is potentially much greater than the emissions from industry and manufacturing because people live much closer to home chimneys than they do from most industrial sources, so there is less opportunity for the pollution to disperse before people are exposed to it. Pollution is also released directly into the home when open fires and stoves are used.
 9. As domestic burning of solid fuel is a significant local source of PM_{2.5}, the introduction of penalties to tackle polluters using solid fuel will align with the aspirations and principles that the council proposes to set out in Bristol's Clean Air Strategy when it is developed.
 10. The emissions from a small number of solid fuel appliances, especially if they are operated in a manner that does not comply with the regulations, could raise short term pollution levels enough to directly impact the health of vulnerable individuals.
 11. A 2020 study commissioned by BCC estimated that as a minimum, half of all PM_{2.5} emissions in Bristol come from solid fuel use. A second calculation methodology in the same study stated solid fuel PM_{2.5} emissions could be much higher than this estimate. The study identified policy options to reduce PM emissions, and enforcement of smoke in a Smoke Control Area was one of the report recommendations.

Enforcement

12. Enforcement of smoke control is one of the ways in which BCC could reduce emissions of particulate matter in the city. The Clean Air Zone introduced in Bristol 28 November 2022 is designed to ensure that Bristol meets legal limits for pollution set by the Government in the shortest time possible.
13. The Environment Act 2021 enables the local authority to issue a financial penalty of between £175 to £300 if smoke is emitted, and it is no longer a defence to say smoke emissions were caused by an authorised fuel.
14. When smoke is first observed by an officer or a complaint made from a member of the public about smoke coming from a chimney, we will send an **improvement notice** to the occupier of the building. This notice will contain information including the smoke control area restrictions, when smoke was seen, how the person can burn solid fuels in a smoke control area legally, and what happens next.
15. If smoke is again observed, then we will send a **notice of intent** to the building occupier. This notice will tell them that there is enough evidence to prove that smoke was emitted from their chimney in a smoke control area, when the smoke was observed, share our intent to issue a penalty under Schedule 1A of the Clean Air Act (as amended by the Environment Act 2021), and the proposed amount of the penalty, which can be any amount between £175 to £300. They have the right to object in writing to the proposed financial penalty within 28 days from the day after the notice was given and must do so with supporting evidence.
16. If the building occupier does not object to the **notice of intent** or if the objection is not accepted, then we will issue a **final notice**. This will include the name of the person responsible, the amount of the fixed penalty to be paid within 28 days, and information about their right to appeal.
17. Enforcement of smoke control through financial penalties will be supported by raising awareness of the Smoke Control Area:
 - a. In the Winter of 2020/21 BCC launched a Slow the Smoke Campaign using social media to raise awareness of the health effects associated with exposure to particulates from solid fuel use. Metrics show a positive effect with nearly 300,000 residents being reached by the campaign.
 - b. BCC supported a Defra funded citizen science Slow the Smoke project which took place in the Ashley Ward during 2021/22. As part of the project, a new real time PM_{2.5} monitoring station is being installed in the ward to monitor particulate pollution in a location with a high prevalence of solid fuel use. Information on solid fuel use is hosted on the Clean Air for Bristol Website [SLOW THE SMOKE - Clean Air for Bristol](#).
 - c. Bristol City Council will continue to raise awareness of the impact that solid fuel use can have on

public health and will publicise the introduction of financial penalties.

Proposal

18. The Environment Act 2021 did not set a default amount for the financial penalty. It is recommended that the financial penalty under Schedule 1A be set between £175 to £300, with £175 being for a first offence, and £300 for a second or more serious offence.
19. An educational campaign will be delivered to raise awareness of our intent to issue financial penalties for Smoke Control breaches before any financial penalties are imposed.

Cabinet Member / Officer Recommendations:

That Cabinet:

1. Approve the adoption of the powers given by the government for regulation of smoke in a smoke control area under the Environment Act 2021 including the introduction of a new financial penalty (civil).
2. Approve setting the rate of the financial penalty for breach between £175 to £300.
3. Authorise the Executive Director Growth and Regeneration in consultation with the Cabinet Member Climate, Ecology, Energy and Waste to take all steps required to adopt the powers and implement the penalty.

Corporate Strategy alignment:

1. Theme 3 Environment & Sustainability
 - a. People can enjoy clean air and fewer people suffer ill-health or die from conditions linked to air pollution.
2. Theme 4 Health, Care and Wellbeing
 - a. These proposals align with the 'Health in All Policies' approach by adopting the newly introduced Government mechanism to enforce regulations on emissions of smoke, which are harmful to health.

City Benefits:

1. Reducing air pollution and improving public health. Burning wood or coal pollutes the air inside and outside homes. The toxic particulate matter produced by burning is harmful to residents and visitors to the city.
2. Being able to resolve complaints related to releases of smoke will also contribute to improving the mental health and wellbeing of residents reducing demand for mental health services and increase emotional wellbeing.

Consultation Details:

1. Informal consultation has taken place with the following:
 - a. Mayor briefings – regular updates on the enforcement pilot and its impact. The mayor continues to show support for this approach to environmental enforcement.
 - b. Cabinet member briefings – regular updates on the enforcement pilot and its impact. The Cabinet Member with responsibility for Climate, Ecology, Waste and Energy, and the mayor continues to show support for environmental enforcement and its expansion into more areas of Bristol and other environmental crime types.
 - c. Officer briefings – Property, Assets, and Infrastructure Divisional Management Team, and regular updates on enforcement, its impact, and the future scope of enforcement.

Background Documents:

1. [Smoke control \(bristol.gov.uk\)](https://www.bristol.gov.uk/Smoke-control)
2. [Smoke Control Area Interactive Map \(defra.gov.uk\)](https://www.defra.gov.uk/Smoke-Control-Area-Interactive-Map)
3. [List of Authorised/Certified Fuels for England from DEFRA](https://www.defra.gov.uk/Authorised-Certified-Fuels-for-England)
4. [The list of exempt appliances from DEFRA](https://www.defra.gov.uk/Exempt-appliances)
5. [Air quality annual status report 2022 \(bristol.gov.uk\)](https://www.bristol.gov.uk/Air-quality-annual-status-report-2022)
6. [Clean Air Strategy 2019 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/clean-air-strategy-2019)
7. [Impacts of Solid Fuel Burning in Bristol: Policy Options for Reducing Emissions](https://www.bristol.gov.uk/Impacts-of-Solid-Fuel-Burning-in-Bristol-Policy-Options-for-Reducing-Emissions)
8. [Emissions of air pollutants in the UK – Particulate matter \(PM10 and PM2.5\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/emissions-air-pollutants-uk-particulate-matter-pm10-and-pm25)
9. [JSNA Air Pollution \(bristol.gov.uk\)](https://www.bristol.gov.uk/JSNA-Air-Pollution)

Revenue Cost	£	Source of Revenue Funding	
Capital Cost	£	Source of Capital Funding	e.
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice: This report seeks the approval of Cabinet to introduce a new financial penalty of up to £300 under the regulation of smoke in smoke control areas. The aim of this initiative is to deter offending by providing advice and information rather than to raise revenue.

As a result, the expected amount of additional income likely to result from this initiative has been assessed by the service as being very small. There will be no allowance for early payment and the amount to be paid if fine is issued will be £300.

Enforcing this fine will be undertaken by the existing team and within existing resources so the cost of this new initiative has been assessed as being very small although the Government has provided a one-off contribution of £11k to defray some of the costs of implementing this new measure.

Finance Business Partner: Kayode Olagundoye, Interim Finance Business Partner, Growth & Regeneration, 23 May 2023 and Sarah Chodkiewicz Head of Financial Management 25 August 2023

2. Legal Advice: Legal Advice: Where a Local Authority is satisfied, on a balance of probabilities, that smoke is emitted from a chimney within a smoke control area then a financial penalty may be issued to the person liable which may range from a minimum of £175 to a maximum of £300. First, there is a requirement to issue upon the person liable a notice of intent stating that the local authority intends to issue a financial penalty and which further states, among other things, the amount of the proposed penalty. The person liable then has a right to object within 28 days upon which the local authority might decide to take no further action or to issue a final notice in respect of which the person liable has a statutory right of appeal to the First Tier Tribunal (FTT).

The statutory guidance states that in respect of each notice of intent, local authorities should develop and document their own policy on how much to charge those responsible for smoke emissions, which may be based on:

- How serious the offence is
- If it's a repeat offence

A matter a FTT may consider on an appeal against a final notice is whether the amount of the penalty is reasonable and the FTT has the power to reduce the amount of the FP. It is therefore important that fixing the amount at the highest level of £300 can be justified and will be applied in respect of breaches at the more serious end of the scale, repeat offenders or in cases where previous warnings have been given but have been ignored.

The local authority does have the option of issuing a written warning (also known as an "improvement notice") to the person responsible but this is not a legal requirement.

Legal Team Leader: Kate Burnham-Davies, Team Leader (Acting) supported by Lynne Harvey, Specialist Lawyer 25 August 2023.

3. Implications on IT: I can see no implications on IT in regard to this activity.

IT Team Leader: Gavin Arbuckle – Head of IT Operations. 2 April 2023.

4. HR Advice: There are no HR implications evident.

HR Partner: Celia Williams, HR Business Partner – Growth and Regeneration 6 April 2023.

EDM Sign-off	John Smith, Interim Executive Director Growth and Regeneration	5 April 2023
Cabinet Member sign-off	Cllr Dudd, Cabinet Member for Climate, Ecology, Energy and Waste	17 April 2023

For Key Decisions - Mayor's Office sign-off	Mayor's Office	7 August 2023
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Appendix A – Further essential background / detail on the proposal	NO
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	NO
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO