

Report to Environment and Licensing Committee

Subject: Introduction of financial penalties for contraventions of the Clean Air Act 1993 Section 19A relating to emissions of smoke in a smoke control area.

Date: 13 June 2023

Author: Head of Environment

Wards Affected

All wards

Purpose

To seek approval for the use of financial penalties for offences under section 19A of the Clean Air Act 1993 (as inserted by Section 73 of the Environment Act 2021) and to set the monetary level for financial penalties which may be issued for offences under Section 19A of the Clean Air Act 1993 relating to emissions of smoke in a smoke control area.

Key Decision

Not a key decision

Recommendation(s)

THAT Members:

- 1) Approve the use of financial penalties for smoke control offences in a smoke control area, under Section 19A of the Clean Air Act 1993.
- 2) Sets the level of the financial penalties under Section 19A of the Clean Air Act at £175.
- 3) Approves the increase of the financial penalties to £300 (the maximum value) for persistent/repeat offenders.
- 4) Delegate authority to the Corporate Director to authorise relevant officers or persons to issue financial penalties in respect of offences, and to determine objections in accordance with Section 19A of the Clean Air Act 1993

1 Background

- 1.1 The Clean Air Act 1993 (CAA) is the primary regulatory legislation for smaller burning plant that fall outside the Environmental Permitting system. This legislation relates to smoke from chimneys (open fires/solid fuel burners).
- 1.2 Complaints of smoke from other domestic sources i.e. bonfires, fire pits etc are dealt with under nuisance legislation (EPA 1990) and are not under consideration here.
- 1.3 Local authorities are the regulating body for the conditions of the Act. The most commonly known parts of the Act are those that allow LAs to set up Smoke Control Areas (Section 18), where domestic premises are committing an offence if they emit smoke unless using an approved smokeless fuel, or an exempt (approved) appliance; in other words:

Open fires in Smoke Control Areas

Any fuel burned on an open fire in a Smoke Control Area must be an “authorised fuel”. This is because you are only allowed to burn smokeless coals or anthracite.

Woodburning stoves in Smoke Control Areas

Any stove installed in a Smoke Control Area must legally be an “exempted appliance”, often referred to as Defra EXEMPT.

- 1.4 Gedling Borough has 41 Smoke Control Areas (SCA) designated by Orders dating back to between 1962 and 1994.
- 1.5 The Public Protection Team receives complaints from time to time regarding smoke from residential chimneys, both in and outside the borough’s SCAs.
- 1.6 Enforcement of the CAA has always been hampered by the need for a criminal standard of proof coupled with no powers of entry. In effect Officers needed to be able to witness the act of putting the fuel on the fire in order to have the necessary evidence to prosecute.
- 1.7 The Environment Act 2021 amends the CAA and the current SCA framework, replacing the criminal offence with a civil penalty regime. This means LAs have powers to issue financial penalties for smoke emissions under the civil regime but also have an alternative option to pursue persistent offenders under a criminal regime through nuisance legislation (which has not been possible prior to the amendments made by the 2021 Act).
- 1.8 The Act enables Local Authorities in England to issue fines (£175 minimum, up to £300) for smoke emissions in Smoke Control Areas. DEFRA expect LAs to use fines at the higher end of the scale for repeat offenders.

- 1.9 In order to help educate residents within the borough the Council will look to give a warning to households in the first instance. If further offending is identified the process for issuing a financial penalty is to issue a notice of intent. This notice provides details of the offence, informs the recipient of the Council's intention to issue a financial penalty and provides details about that person's right to object to the imposition of the penalty.

A person to whom a notice of intent is given then has a period of 28 days to object to the notice and provide supporting any evidence. The Clean Air Act sets out four grounds for making an objection which are;

- a) that there was no emission of smoke from the chimney on the occasion specified in the notice of intent;
- b) that the chimney was not a chimney to which a smoke control order applied on the occasion specified in the notice of intent;
- c) that the person to whom the notice of intent was given was not a person liable in relation to the chimney on the occasion specified in the notice of intent;
- d) that there are other compelling reasons why the financial penalty should not be imposed.

- 1.10 Objections will be made to the Community Protection Manager for consideration.

After the expiry of the 28 objection period the Council has 56 days to consider any objections and make a decision whether or not to impose the financial penalty. The Council must notify the individual of its decision and where the decision is to impose the penalty the Council must serve a final notice setting out the amount of the penalty, reasons for imposing the penalty, payment information and the individual's right to appeal. See process diagram at Appendix A.

Appeals against a final notice are made to the First-tier Tribunal. The First tier Tribunal has the power to quash the final notice, confirm the final notice vary the final notice by reducing the amount of the penalty or refer back to the Council for a further decision on the final notice.

Financial penalties are recoverable as a civil debt, if a financial penalty is not paid it will be referred to the Council's revenues department to commence debt recovery proceedings.

- 1.11 Residents whom receive solid fuel under the National Concessionary Fuel Scheme receive smokeless fuel, which is authorised to burn in a SCA.

2 Proposal

THAT Members:

- 2.1 Approves the use of financial penalties for smoke control offences in a smoke control area, under Section 19A of the Clean Air Act 1993.
- 2.2 Sets the level of the financial penalty under Section 19A of the Clean Air Act at £175.
- 2.3 Approves the increase of the financial penalty to £300 (the maximum value) for persistent/repeat offenders.
- 2.4 Delegated authority be given to the Corporate Director to authorise relevant officers or persons to issue financial penalties in respect of offences, and to determine objections in accordance with Section 19A of the Clean Air Act 1993.

3 Alternative Options

- 3.1 Not to approve the use of these powers and not to authorise officers or appropriate persons to issue financial penalties. However this will mean that the Council will not be able to use the new methods of enforcement and will make it difficult to identify and prosecute offenders with the borough.
- 3.2 Set fee of the financial penalty at different amount. It is felt that the minimum fine of £175 is a sufficient penalty to deter most households from infringing the provisions of the Clean Air Act. Any households who continually disregard the requirements will be fined at the maximum £300.
- 3.3 Not to delegate authority to the Corporate Director. However this will mean that Members will have to approve each individual officer to issue financial penalties in addition to this any objects to financial penalties will need to be referred back to committee. As there are statutory timeframes for considering objections it may be difficult to ensure that every case is dealt with within time if the timeframes do not coincide with the Committee rota.

4 Financial Implications

- 4.1 Some revenue may be received from payment of financial penalties at this stage it is anticipated that most complaints can be resolved without the need for financial penalties. It is thought that perhaps in the region of £500-£1000 may be received per annum.
- 4.2 Implementation will be met by existing staff resources in Public Protection.

5 Legal Implications

- 5.1 The process set out by Section 19A and Schedule 1A of the Clean Air Act 1993 is a civil remedy for enforcing smoke control. It does not create a criminal offence and there is no ability to prosecute individuals. Instead financial penalties are a debt owed to the Council. Unpaid debts are recovered by the Council's Revenues department who will commence debt recovery proceedings against those who do not pay.
- 5.2 The minimum and maximum penalty amount and the process for issuing financial penalties are set out in Schedule 1A of the Clean Air Act 1993 the Council do not have discretion to deviate from this process unless Regulations are made by the Secretary of State. At present no such regulations have been made.

6 Equalities Implications

- 6.1 This report is unlikely to affect any specific protected characteristic groups in the Equalities Act. However fuel poor households could be affected if using an open fire or burning cheap wood as a source of heating as opposed to more expensive electricity, gas or oil.

The Environmental Health and Technical Officers regulating this function have access to the information to refer residents for home energy efficiency and heating measures to mitigate any detrimental impacts on fuel poor households. It is considered that the environmental, air quality, and health benefits of implementing this function outweigh any detrimental effects for fuel poor households.

7 Carbon Reduction/Environmental Sustainability Implications

- 7.1 Implementation of the new powers supports measures in the Air Quality Action Plan, Nottinghamshire Air Quality Strategy and also supports the Council's Climate Change Net Zero work.

8 Appendices

- 8.1 Appendix A – Flow Diagram of Process

9 Background Papers

- 9.1 None

10 Reasons for Recommendations

- 10.1 Enabling these powers will assist in reducing pollution, and dealing with complaints from residents.

Statutory Officer approval

Approved by:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer

Appendix A – Flow Diagram of Process

