

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

---

meeting date: THURSDAY 29 AUGUST 2024  
title: POLICY ON CIVIL PENALTIES FOR SMOKE EMISSIONS UNDER THE CLEAN AIR ACT 1993 AS AMENDED BY THE ENVIRONMENTAL HEALTH 2021.  
submitted by: MARSHAL SCOTT – CHIEF EXECUTIVE  
principal author: ANDREW DENT – HEAD OF ENVIRONMENTAL HEALTH

## 1 PURPOSE

- 1.1 To seek approval from committee on the proposed civil penalty amounts to be imposed for the offence of emitting smoke within a smoke control area within the Borough of Ribble Valley.
- 1.2 For committee to review and agree the new 'Policy On Civil Penalties For Smoke Emissions Under The Clean Air Act 1993, As Amended By The Environment Act 2021'.
- 1.3 Relevance to the Council's ambitions and priorities:
  - Community Objectives – To make people's lives safer and healthier.
  - Corporate Priorities – To protect and enhance the existing environmental quality of the area.

## 2 BACKGROUND

- 2.1 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. Under this Act, local authorities were allowed to introduce "smoke control areas" in towns and cities in which only smokeless fuels could be burned. This Act has since been replaced by the Clean Air Act 1993 under which new smoke control orders are made and enforced.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.
- 2.2 The amendments in the Environment Act 2021 replace a criminal prosecution enforcement regime with a civil penalty procedure, with the aim of making enforcement quicker, simpler and more proportionate.
- 2.3 Schedule 12 of the Environment Act 2021 states the range of financial penalties that may be imposed by a local authority is a minimum of £175 and a maximum of £300.
- 2.4 This report sets out the proposed civil penalty amounts to be imposed for the offence of emitting smoke within a smoke control area within the Borough of Ribble Valley. These civil penalty amounts will be included in the new 'Policy On Civil Penalties For Smoke Emissions Under The Clean Air Act 1993, as amended by the Environment Act 2021'.

### 3 PROPOSED CIVIL PENALTY AMOUNTS

The proposed civil penalty amounts to be imposed for the offence of emitting smoke within in a smoke control area within the borough of Ribble Valley is as follows:

Offence	Penalty Amount
1 <sup>st</sup> offence <sup>a</sup>	£225 (reduced by a quarter of the maximum amount)
2 <sup>nd</sup> offence <sup>b</sup>	£300 (statutory maximum amount)
3 <sup>rd</sup> and further offences <sup>c,d</sup>	£300 (statutory maximum amount)

<sup>a</sup> Where in the opinion of the Council no demonstrable measures have been implemented to minimise smoke emissions a maximum £300 fine will be issued for a first offence.

<sup>b</sup> Within 12 months of 1<sup>st</sup> offence.

<sup>c</sup> Within 12 months of 2<sup>nd</sup> or last offence

<sup>d</sup> Where appropriate (for example for repeated offences), the use of statutory nuisance and/or anti-social behaviour powers under section 79 of the Environmental Protection Act 1990 and/or Section 43 of the Anti-social Behaviour Crime and Policing Act 2014 may follow the serving of a civil penalty.

### 4. POLICY CONTENT

- 4.1 The aim of this policy is to provide guidance for those who wish to burn solid fuel in their home or industrial premises within a Smoke Control Area (SCA).
- 4.2 The Policy also explains what might happen in terms of enforcement and prosecution should a breach of the legislation be found.
- 4.3 A copy of the 'Policy On Civil Penalties For Smoke Emissions Under The Clean Air Act 1993, As Amended By The Environment Act 2021', is shown in **Appendix 1**.

### 5 RISK ASSESSMENT

5.1 The approval of this report may have the following implications:

- Resources – No implications envisaged.
- Technical, Environmental and Legal – No implications envisaged.
- Political – No implications envisaged.
- Reputation – No implications envisaged.
- Equality & Diversity – No implications envisaged.

## **6 RECOMMENDED THAT COMMITTEE**

- 6.1 Approve the proposed civil penalty amounts for the offence of emitting smoke within a smoke control area within the Ribble Valley.
- 6.2 Approve the Ribble Valley Borough Council 'Policy on Civil Penalties For Smoke Emissions Under The Clean Air Act 1993, As Amended By The Environment Act 2021'.

ANDREW DENT  
HEAD OF ENVIRONMENTAL HEALTH

MARSHAL SCOTT  
CHIEF EXECUTIVE

For further information please ask for Andrew Dent, extension 4466

Appendix 1



Ribble Valley  
Borough Council

---

[www.ribblevalley.gov.uk](http://www.ribblevalley.gov.uk)

**Policy On Civil Penalties For Smoke  
Emissions Under The Clean Air Act  
1993, As Amended By The Environment  
Act 2021**

## CONTENTS

Contents.....	2
Policy administration .....	3
Policy ownership.....	3
Version control and review date.....	3
Equality implications .....	3
Supporting documents or legislation relating to this policy.....	3
Introduction.....	4
Smoke Emission in a Smoke Control Area .....	5
What Can be Burnt in a Smoke Control Area.....	6
Burden of Proof.....	6
Determining the Civil Penalty Amount.....	7
Process for Imposing a Financial Penalty.....	8
Grounds of Appeal.....	9
Withdrawing or Amending Notices.....	10
Final Notice Appeals Process.....	10
Consequences of Non Payment of Penalty Charge.....	10
Keeping and Recording Financial Penalties.....	10
Review.....	11

## Policy administration

### Policy ownership

For any queries about this policy, please contact the plan owner.

<b>Department</b>	Environmental Health		
<b>Owner</b>	Andrew Dent	<a href="mailto:andrew.dent@ribblevalley.gov.uk">andrew.dent@ribblevalley.gov.uk</a>	01200 414466
<b>Committee</b>	Health and Housing		

This policy is maintained and published on behalf of Ribble Valley Borough Council. A copy of this policy will be published on the Council Intranet and will be reviewed and updated as stated below.

### Version control and review date

Version	Date	Reason for Publication	Approved by Committee / Date	Review Date
V1.0		New Policy	Health and Housing Committee	

This policy will be reviewed, as a minimum, on an annual basis. However, consideration should be given to reviewing the policy should there be any changes in legislation or guidance. The policy/procedure owner will ensure the document is reviewed as stated.

### Equality implications

	Action	Yes / No
	An Equality Impact Assessment (EIA) has been completed	
<b>EIA Hyperlink</b>		

### Supporting documents or legislation relating to this policy

Please include any supporting documents / legislation
1. Clean Air Act 1993
2. Environment Act 2021
3. Environmental Protection Act 1990
4. Anti-social Crime and Policing Act 2014

## 1. Introduction

- 1.1 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.
- 1.2 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 PM2.5) from soot and smoke have detrimental effects on human health, by getting into the lungs and blood.
- 1.3 The aim of this Policy is to provide guidance for those who wish to burn solid fuel in their home or industrial premises within a Smoke Control Area (SCA). The Policy also explains what might happen in terms of enforcement and prosecution should a breach of the legislation be found.
- 1.4 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 solid fuel burning. The CAA gives local authorities the power to make an order designating parts of their boroughs 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.
- 1.5 There are currently two designated smoke control areas within the borough of Ribble Valley and these are within in the parishes of Ramsgreave and Simonstone. **Appendix 1** shows a mapped area of the smoke control areas.
- 1.6 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 harmful to health or a nuisance. This previously applied to everywhere in England except within an 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 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.

- 1.7** Legislation under the Anti-social Behaviour, Crime and Policing Act 2014 also provides an enforcement option for local authorities where impacts have a detrimental effect on the quality of life of persons in the locality of a smoke emitting chimney. In this case if smoke emission issues persist after the issue of a warning notice, the local authority can issue a Community Protection Notice requiring the detrimental impact to stop.
- 1.8** The EA 2021 introduced 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.
- 1.9** 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 local authority will have regard to the Statutory Guidance issued under Section 28A of the CAA 1993 (as amended)

## **2. Smoke Emissions in Smoke Control Area**

- 2.1** 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.
- 2.2** A summary of the rules covering properties in a SCA can be found at: <https://uk-air.defra.gov.uk/sca/>
- 2.3** This means that anyone responsible for premises within a SCA:
- must not emit 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).
- 2.4** If smoke is emitted from a chimney then enforcement action may be taken.
- 2.5** Barbecues, chimineas, fireplaces or pizza ovens are not covered by the smoke control area; however, if any of these appliances release smoke through a chimney of a building - for example, a summerhouse, they are and therefore can only burn authorised fuel or must be exempt.



### 3. What Can Be Burnt in Smoke Control Areas

**3.1** In a SCA only fuel on the list of authorised fuels, or any of the following ‘smokeless’ fuels, can be burned unless an appliance approved by the Secretary of State for the Department for Environment, Food and Rural Affairs (DEFRA) is used (such appliances are also known as an ‘exempt appliances’ or ‘DEFRA-approved appliances’):

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

**3.2** Unauthorised fuels, such as wood, can only be burned in exempt appliances such as some boilers, cookers and stoves. Manufacturers instruction must be adhered to at all times.

**3.3** DEFRA-approved appliances that are installed within premises 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.

**3.4** Defra’s list of authorised fuels and exempt appliances can be found via the links below:

Authorised fuels permitted to be used in a SCA:

<https://smokecontrol.defra.gov.uk/fuels.php?country=england>

Exempt appliances that can be used in a SCA (when using the specified fuel(s)):

<https://smokecontrol.defra.gov.uk/appliances.php?country=england>

### 4. Burden of Proof

**4.1** Where a local authority is satisfied, on the balance of probabilities, that on a particular occasion smoke has been emitted from a relevant chimney<sup>1</sup> within an SCA declared by that authority, a civil penalty can be issued by the local authority.

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

<sup>1</sup> 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.

## 5. Determining the Civil Penalty Amount

- 5.1** Schedule 12 of the EA 2021 states the range of financial penalties that may be imposed is a minimum of £175 and a maximum of £300.
- 5.2** 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:
- 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 repeated incident.
- 5.3** For a first offence the statutory minimum financial penalty will be issued unless it is clear to the Council that no demonstrable attempt has been made to manage smoke emissions being mindful of council communications before the issue of a penalty notice. In the latter case a maximum penalty will be issued. A maximum penalty will be issued for any repeat offences (the table below set out the approach to civil penalties).

- 5.4** **Table 1** below sets out the proposed civil penalty bandings:

**Table 1. Civil Penalty Bandings.**

<b>Offence</b>	<b>Penalty Amount</b>
1 <sup>st</sup> offence <sup>a</sup>	£225 (reduced by a quarter of the maximum penalty)
2 <sup>nd</sup> offence <sup>b</sup>	£300 (statutory maximum amount)
3 <sup>rd</sup> and further offences <sup>c,d</sup>	£300 (statutory maximum amount)

<sup>a</sup> Where in the opinion of the Council no demonstrable measures have be implemented to minimise smoke emissions a maximum £300 fine will be issued for a first offence.

<sup>b</sup> Within 12 months of 1<sup>st</sup> offence.

<sup>c</sup> Within 12 months of 2<sup>nd</sup> or last offence

<sup>d</sup> Where appropriate (for example for repeated offences), the use of statutory nuisance and/or anti-social behaviour powers under section 79 of the Environmental Protection Act 1990 and/or Section 43 of the Anti-social Behaviour Crime and Policing Act 2014 may follow the serving of a civil penalty.

## 6. Process for Imposing a Financial Penalty

6.1 Where it has been determined that a financial penalty may be appropriate to impose, the Council will follow the following process:

### Step 1

Issue a written warning including:

- 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
- information about how the person can burn solid fuels without emitting a amount of 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)
- details of the person's right to object to the financial penalty.

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

### Step 2

Issue a 'notice of intent' including:

- 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 i.e £225.
- 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 write to the local authority and include supporting evidence

If further smoke emissions are witnessed from a chimney after the notice of intent is issued, additional notices may be issued for each separate incident.

### Step 3

Issue a final notice:

The local authority 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 reject the reasons for objection.

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

If they object unsuccessfully, the financial penalty should 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 notice or penalty).

## 7. Grounds for Appeal

**7.1** The local authority can agree internally (authorisation level to be determined) to an appeal/objection after a notice of intent is issued, and cancel or reduce the fine if any of the following apply:

- 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

## **7.2 Withdrawing or Amending Notices**

**7.3** A notice of intent or a final notice may be withdrawn at any time.

## **7.4 Final Notice Appeals Process**

**7.5** Following the serving of the final notice, the person on whom the notice was served must appeal to the First-tier Tribunal if they feel that the financial penalty was:

- based on a factual error
- based on a legal error
- unreasonable

**7.6** 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.

## **7.7 Consequences of Non-payment of Penalty Charge**

**7.8** 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.

## **7.9 Keeping and Recording Financial Penalties**

**7.10** 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

## **8. Review**

**8.1** This policy will be reviewed on an annual basis and updated accordingly as required to reflect local and national changes and priorities.

# Appendix 1 – Smoke Control

