



Carlisle City Council

Report to Executive

Meeting Date:

Portfolio: Environment and Transport

Key Decision: KD. 02/23

Policy and Budget

Framework Yes

Public / Private Public

Title: Smoke Control Area
Smoke Control Emission Enforcement Policy

Report of: Corporate Director Governance and Regulatory Services

Report Number: GD 10/23

Purpose / Summary:

The purpose of this report is to put forward a proposed Smoke Control Area Emission policy following the updates to the Clean Air Act 1993, under the Environment Act 2021. The adoption of the policy feeds into the air quality priorities under the Air Quality Action Plan 2021 in fulfilment of Part IV of the Environment Act 1995 Local Air Quality Management Framework.

Recommendations:

- 1. To approve the smoke control area emission policy including the new proposed civil penalty charging structure therein.**

Tracking

Executive:	20 th March 2023
Scrutiny:	
Council:	N/A

1.0 INTRODUCTION

- 1.1 Local authorities have a major role to play in monitoring and improving air quality. The Environment Act 1995 included the responsibilities of local authorities to actively review and assess potential concentrations and sources of air quality pollutants. The 2019 Clean Air Strategy¹ sets out the case for action, with goals even more ambitious than EU requirements, to reduce exposure to harmful pollutants. The Road to Zero² sets out the approach to reduce exhaust emissions from road transport through several mechanisms.
- 1.2 Monitored air pollution levels are steadily declining, year on year in Carlisle. Our extensive monitoring programme has shown that Nitrogen Dioxide (NO₂) is the only pollutant of concern. There are four localised areas, where levels are exceeding or could potentially exceed the national objective level. In these areas Air Quality Management Areas (AQMA's) have been declared.
- 1.3 In declaring Air Quality Management Areas, the Council is obliged to produce an Action Plan, that sets out the measures that it, and its partners, intend to take to reduce NO₂ concentrations. The annual air quality assessments and Action Plan 2021 were undertaken by Carlisle City Council's Environmental Health service and can be viewed here: [pollution-and-air-quality \(carlisle.gov.uk\)](https://www.carlisle.gov.uk/pollution-and-air-quality)
- 1.4 The action plan prepared and approved by Executive in 2021, sets out 12 key priorities for the period 2021 to 2026. Priority Number 8 focuses on the Authorities duty to investigate black smoke, smoke nuisance and managing the smoke control areas. It also includes enforcement action where necessary.

Table 1 (Local Air Quality Action Plan 2021, section 5.1)

Carlisle City Council

Measure No.	Measure	EU Category	EU Classification	Lead Authority	Planning Phase	Implementation Phase	Key Performance Indicator	Target Pollution Reduction in the AQMA	Progress to Date	Estimated Completion Date	Comments
8	The City Council will continue to investigate complaints of black smoke and smoke nuisance as well as managing smokeless zones. Enforcement action will be taken as necessary.	Public Information	Other	Carlisle City Council	Ongoing	Ongoing	Reduction in the number of complaints from members of the public. Reduction in repeat offences.	Not calculated	There is information on website. Environmental Health provide advice and enforcement as required. Smoke complaints are responded to involving domestic fires, bonfires, trade waste, industrial and dark smoke. Advice leaflet sent out for all cases of domestic burning. Advice given to minimise potential for smoke issues and ensure compliance with smokeless zones.	Ongoing	The Air Quality Strategy set out a goal to cut public exposure to particulate matter pollution. The aim is to reduce by half the number of people in the United Kingdom exposed to the WHO guideline concentration of 10 µg m ⁻³ by 2025. The measures set out here will contribute to this target.

¹Defra. Clean Air Strategy, 2019

² DfT. The Road to Zero: Next steps towards cleaner road transport and delivering our Industrial Strategy, July 2018

2. SMOKE CONTROL AREAS - THE LEGISLATIVE BACKGROUND

- 2.1 The Clean Air Acts of 1956 and 1968 were introduced to deal with the smogs of the 1950s and 1960s which were caused by the widespread burning of coal for domestic heating and by industry. These smogs were blamed for the premature deaths of hundreds of people in the UK. The Acts gave local authorities powers to control emissions of dark smoke, grit, dust and fumes from industrial premises and furnaces and to declare “smoke control areas” in which emissions of smoke from domestic properties are banned. Since then, smoke control areas have been introduced in many of our large towns and cities in the UK.
- 2.2 The implementation of smoke control areas, the increased popularity of natural gas and the changes in the industrial and economic structure of the UK lead to a substantial reduction in concentrations of smoke and associated levels of sulphur dioxide (SO₂) between the 1950s and the present day.
- 2.3 These Acts, together with other associated clean air legislation, were repealed and consolidated by the [Clean Air Act 1993](#) which, together with regulations and Orders made under the Act, provide the current legislative controls. The Clean Air Act 1993 was updated by the [Environment Act 2021](#) and introduces a new legislative framework for Local Authorities in relation to smoke control areas. The new updates make provisions to:
- imposing financial penalties for the emission of smoke in smoke control areas in England
 - about offences relating to the sale and acquisition of solid fuel in England,
 - for applying smoke control orders to vessels in England, and
 - for authorised fuels and exempted fireplaces to be listed in Wales.
- 2.4 The details of which are contained within Schedule 12 of the Act, which in part makes principal amendments to the Clean Air Act 1993. England. Are Amendments to Smoke Control Area enforcement under the Environment Act 2021 came into effect on 1st May 2022.

3. SMOKE CONTROL AREAS IMPLEMENTED IN THE CARLISLE DISTRICT

- 3.1 Under the Clean Air Act of 1956, Carlisle has historically declared smoke control areas between 1976 and 1977. (see **Appendix 1 of the policy**) This information is also available on interactive map. [Smoke Control Area Interactive Map \(defra.gov.uk\)](https://defra.gov.uk)

The smoke control areas had been declared to make part of the authority to be a smoke control areas. It means it is an offence for any resident or business occupying these areas to emit smoke from a chimney of a building, from a furnace or from any fixed boiler if located in a designated smoke control area. The Council is responsible for enforcing the legislation in smoke control areas.

4. SMOKE CONTROL AREA EMISSION ENFORCEMENT POLICY

- 4.1 The guidance provided by Department of Environment, Food and Rural Affairs (DEFRA) sets out how Local Authorities should be implementing the enforcement of the smoke emission rules and is available [Smoke control area enforcement by local authorities in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/smoke-control-area-enforcement-by-local-authorities-in-england), The Policy on smoke control emission enforcement will make reference to the guidance when dealing with any complaints regarding emissions in smoke control areas and the process for any enforcement by means of a civil penalty. The Policy must be formally adopted by the Authority before any financial penalty can be imposed, the penalty can range from a minimum of £175 to a maximum of £300 for each notice of intent you send. The Policy must be based on how serious the offence is and if it's a repeat offence. The proposed policy for enforcement is referenced in **Appendix 1** of this report. The details of the civil penalty structure are contained in **Appendix 2** of the policy.

5. RISKS

- 5.1 The adoption of an enforcement policy and civil penalty structure will ensure that officers are able to apply enforcement in a fair and consistent manner in recognition of the Enforcement Concordat and the Regulators' Compliance Code. If there was no approved policy or structure, then the Council could be subject to challenge having not adopted a policy in line with the guidance issued by DEFRA.

6. CONSULTATION

- 6.1 Consultation was undertaken by DEFRA when implementing the Environment Act 2021, the penalty structure is already set at minimum and maximum level. The policy adoption locally is required to ensure we are following guidance. If implemented wide publicity will be undertaken to inform those affected of a change to the enforcement policy.

7. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 7.1 Air quality is extremely important for our residents and visitors to the area. Air pollution is associated with adverse health impacts. It is recognised as a contributing factor in the onset of heart disease and cancer. Additionally, air pollution particularly affects the most vulnerable in society: children, the elderly, and those with existing heart and lung conditions. There is also often a strong correlation with equalities issues. Areas with poor air quality are often less affluent areas^{3,4}. The mortality burden of air pollution within the UK is equivalent to 28,000 to 36,000 deaths at typical ages⁵, with a total estimated healthcare cost to the NHS and social care of £157 million in 2017⁶.
- 7.2 Our monitoring data confirms that all pollutant concentrations are below the national objective levels. Carlisle complies with both the UK standards and the World Health Organisation guidelines for particulate matter. There are four small areas where NO₂ has the potential to exceed national guidelines, which we are working to improve.
- 7.3 Air quality will continue to be monitored in the district and focussed on those areas which are most likely to require intervention.

8. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 8.1 The proposals will help support the Carlisle Plan priority to: Continue to improve the quality of our local environment and green spaces so that everyone can enjoy living, working in and visiting Carlisle: By continuing to monitor NO₂ and other pollutants we continue to ensure that where necessary steps are taken to ensure air quality is highlighted for improvement.

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	Principal Health and	<u>amelia.morphet@carlisle.gov.</u>
	Housing Officer	<u>uk</u>

³ Public Health England. Air Quality: A Briefing for Directors of Public Health, 2017

⁴ Defra. Air quality and social deprivation in the UK: an environmental inequalities analysis, 2006

⁵ Defra. Air quality appraisal: damage cost guidance, July 2020

⁶ Public Health England. Estimation of costs to the NHS and social care due to the health impacts of air pollution: summary report, May 2018

Appendices **Appendix 1 – Smoke Control Area, Emission Policy 2023**
Appendix reference in Emission Policy
Appendix 1 (a) Maps
attached to report: **Appendix 2 – Penalty Framework**
Appendix 3 – Procedure, reference in policy.

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS:

Legal – The policies referred to in the Report are not ones reserved to full Council and are, therefore, a matter for the Executive. Relevant legal comments are contained within the body of the Report.

Property Services – None

Finance – The monitoring of local air quality is contained within the Council's base budgets. The introduction of financial penalties for the enforcement of the smoke emission rules could generate additional income for the Council.

Equality – None

Information Governance – None

Smoke Control Area Smoke Control Emission Enforcement Policy 2023

Legislative background

The Clean Air Acts of 1956 and 1968 were introduced to deal with the smogs of the 1950s and 1960s which were caused by the widespread burning of coal for domestic heating and by industry. These smogs were blamed for the premature deaths of hundreds of people in the UK. The Acts gave local authorities powers to control emissions of dark smoke, grit, dust and fumes from industrial premises and furnaces and to declare “smoke control areas” in which emissions of smoke from domestic properties are banned. Since then, smoke control areas have been introduced in many of our large towns and cities in the UK.

The implementation of smoke control areas, the increased popularity of natural gas and the changes in the industrial and economic structure of the UK lead to a substantial reduction in concentrations of smoke and associated levels of sulphur dioxide (SO₂) between the 1950s and the present day.

These Acts, together with other associated clean air legislation, were repealed and consolidated by the [Clean Air Act 1993](#) which, together with regulations and Orders made under the Act, provide the current legislative controls. Control of smoke emissions may also help reduce emission of a wide range of other pollutants such as particles, sulphur dioxide, [PAH and PCDD/F \(dioxins and furans\)](#), which may be present in smoke.

The Clean Air Act 1993 was updated by the [Environment Act 2021](#) and introduces a new legislative framework for Local Authorities in relation to smoke control areas. The new updates make provisions to

- (a) imposing financial penalties for the emission of smoke in smoke control areas in England
- (b) about offences relating to the sale and acquisition of solid fuel in England,
- (c) for applying smoke control orders to vessels in England, and
- (d) for authorised fuels and exempted fireplaces to be listed in Wales.

The details of which are contained within Schedule 12 of the Act, which in part makes principal amendments to the Clean Air Act 1993. England. Are Amendments to Smoke Control Area enforcement under the Environment Act 2021 came into effect on 1st May 2022.

Smoke control areas implemented in the Carlisle area

Under the Clean Air Act of 1956, Carlisle has historically declared smoke control areas between 1976 and 1977. (see **Appendix 1a**) This information is also available on interactive map. [Smoke Control Area Interactive Map \(defra.gov.uk\)](#) The smoke control areas had been declared to make part of the authority to be a smoke control areas. If you live or occupy a property within one

of these areas, then it is an offence to emit smoke from a chimney of a building, from a furnace or from any fixed boiler if located in a designated smoke control area. It is also an offence to acquire an “unauthorised fuel” for use within a smoke control area unless it is used in an “exempt” appliance (“exempted” from the controls which generally apply in the smoke control area).

Prior to the update in the legislation under the Environment Act 2021, the maximum level of fine was £1,000 for each offence. The Council is responsible for enforcing the legislation in smoke control areas.

The guidance provided by Department of Environment, Food and Rural Affairs (DEFRA) sets out how Local Authorities should be implementing the enforcement of the smoke emission rules and is available [Smoke control area enforcement by local authorities in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/smoke-control-area-enforcement-by-local-authorities-in-england), The Policy on smoke control emission enforcement will make reference to the guidance when dealing with any complaints regarding emissions in smoke control areas and the process for any enforcement by means of a civil penalty. The Policy must be formally adopted by the Authority before any financial penalty can be imposed, the penalty can range from a minimum of £175 to a maximum of £300 for each notice of intent you send. The Policy must be based on how serious the offence is and if it's a repeat offence.

Civil Penalties for smoke emissions

The Environment Act 2021 amends the Clean Air Act 1993 to allow civil penalties to be imposed as an alternative to prosecution for certain offences. The Council can impose a penalty of up to £300.00. The level of the financial penalty will be calculated with reference to the guidelines set out by DEFRA.

If the Council wishes to impose a civil penalty as an alternative to prosecution, it must first issue a notice of intent. This must set out the reasons for the proposed penalty and the amount of the proposed penalty. The full details of determining the level of penalty are set out in **Appendix 2**

The person who has been given the notice then has 28 days to make representations to the Council. This will not be considered by the serving Officer, but the relevant Head of department. A right to make representations against the penalty notice is given and any representations for a reduction in fine levied, considering any extenuating circumstances. At the end of this 28 day period, the Council must decide if it wishes to impose a penalty, and if it does, it must issue a final notice. If individual does not object, the penalty should be issued within 56 days from the end of the 28-day objection period. If they object unsuccessfully, you should issue the financial penalty within 56 days from the date they objected.

The final notice must set out the amount of the penalty, the reasons for imposing the penalty, the period for paying the penalty, information on how to pay, information on rights of appeal, and the consequences of failure to comply. A person on whom a final notice is served has a right of appeal to the First Tier Tribunal. If an appeal is made, the notice is suspended until the outcome of the appeal is determined. The penalty may be recovered through the county court as if it were payable under an order of that court. The financial penalties may be retained by the local authority and may be used to meet the costs of enforcement action.

The full process for Officers to follow is to set out in **Appendix 3**.

CITY OF



CARLISLE

THE CLEAN AIR ACT 1956

THE CITY OF CARLISLE (No. 1) SMOKE CONTROL ORDER
1976

The Council of the City of Carlisle in exercise of the powers conferred upon them by Section 11 of the Clean Air Act 1956, hereby make the following Order:-

1. This Order may be cited as the City of Carlisle (No. 1) Smoke Control Order 1976.
2. The area which is coloured green on the map prepared in duplicate, sealed with the Common Seal of the said Council of the City of Carlisle and marked "Map Referred To in the City of Carlisle (No. 1) Smoke Control Order 1976" is hereby declared to be a Smoke Control Area. One duplicate of the map is deposited in the offices of the said Council of the City of Carlisle and the other is deposited in the offices of the Secretary of State for the Environment.
3. This Order shall come into operation on the First day of November 1976.

GIVEN under the Common Seal of the Council of the City of Carlisle the Twenty-ninth day of January, 1976.

THE COMMON SEAL of THE)
COUNCIL OF THE CITY OF)
CARLISLE was hereunto)
affixed in the presence)
of:-)

Town Clerk

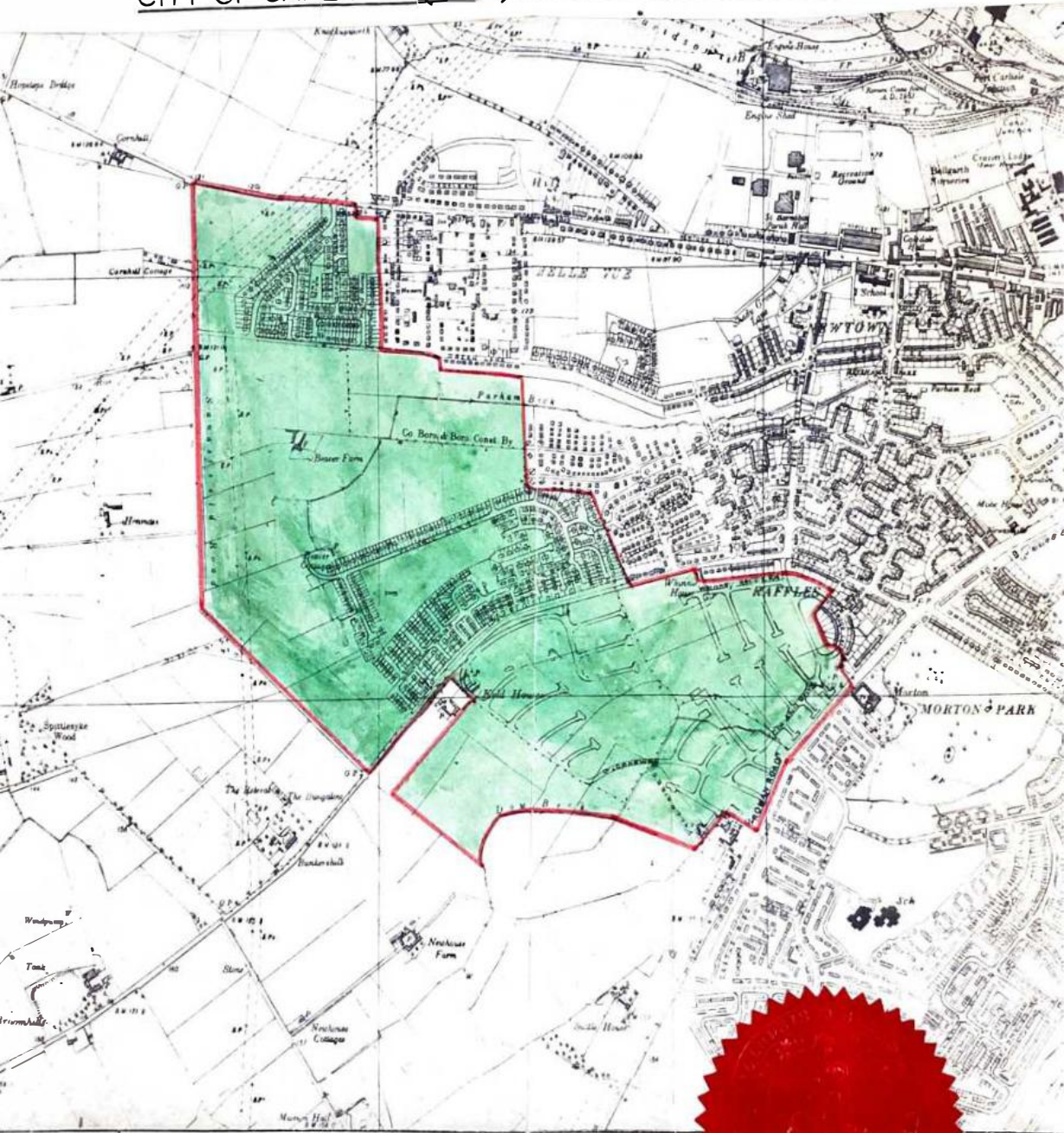


The Secretary of State for the Environment hereby confirms the foregoing Order.

Signed by authority
of the Secretary of
State
22ND APRIL 1976

CITY OF CARLISLE

MAP REFERRED TO IN THE
CITY OF CARLISLE (NO.1) SMOKE CONTROL ORDER 1976



SCALE 6" = 1 MILE THE COMMON SEAL OF THE COUNCIL OF THE CITY OF CARLISLE WAS HEREUNTO AFFIXED 29th ~~THE~~ *January* ~~DAY~~ OF 1976



J. J. Harris
1976
TOWN CLERK

CITY OF



CARLISLE

THE CLEAN AIR ACT 1956

THE CITY OF CARLISLE (No. 2) SMOKE CONTROL ORDER 1976

The Council of the City of Carlisle in exercise of the powers conferred upon them by Section 11 of the Clean Air Act 1956, hereby make the following Order:-

1. This Order may be cited as the City of Carlisle (No. 2) Smoke Control Order 1976.
2. The area which is coloured green on the map prepared in duplicate, sealed with the Common Seal of the said Council of the City of Carlisle and marked "Map Referred To in the City of Carlisle (No. 2) Smoke Control Order 1976" is hereby declared to be a Smoke Control Area. One duplicate of the map is deposited in the offices of the said Council of the City of Carlisle and the other is deposited in the offices of the Secretary of State for the Environment.
3. This Order shall come into operation on the First day of November 1976.

GIVEN under the Common Seal of the Council of the City of Carlisle the Twenty-ninth day of January, 1976.

THE COMMON SEAL of THE)
COUNCIL OF THE CITY OF)
CARLISLE was hereunto)
affixed in the presence)
of:-)



Town Clerk

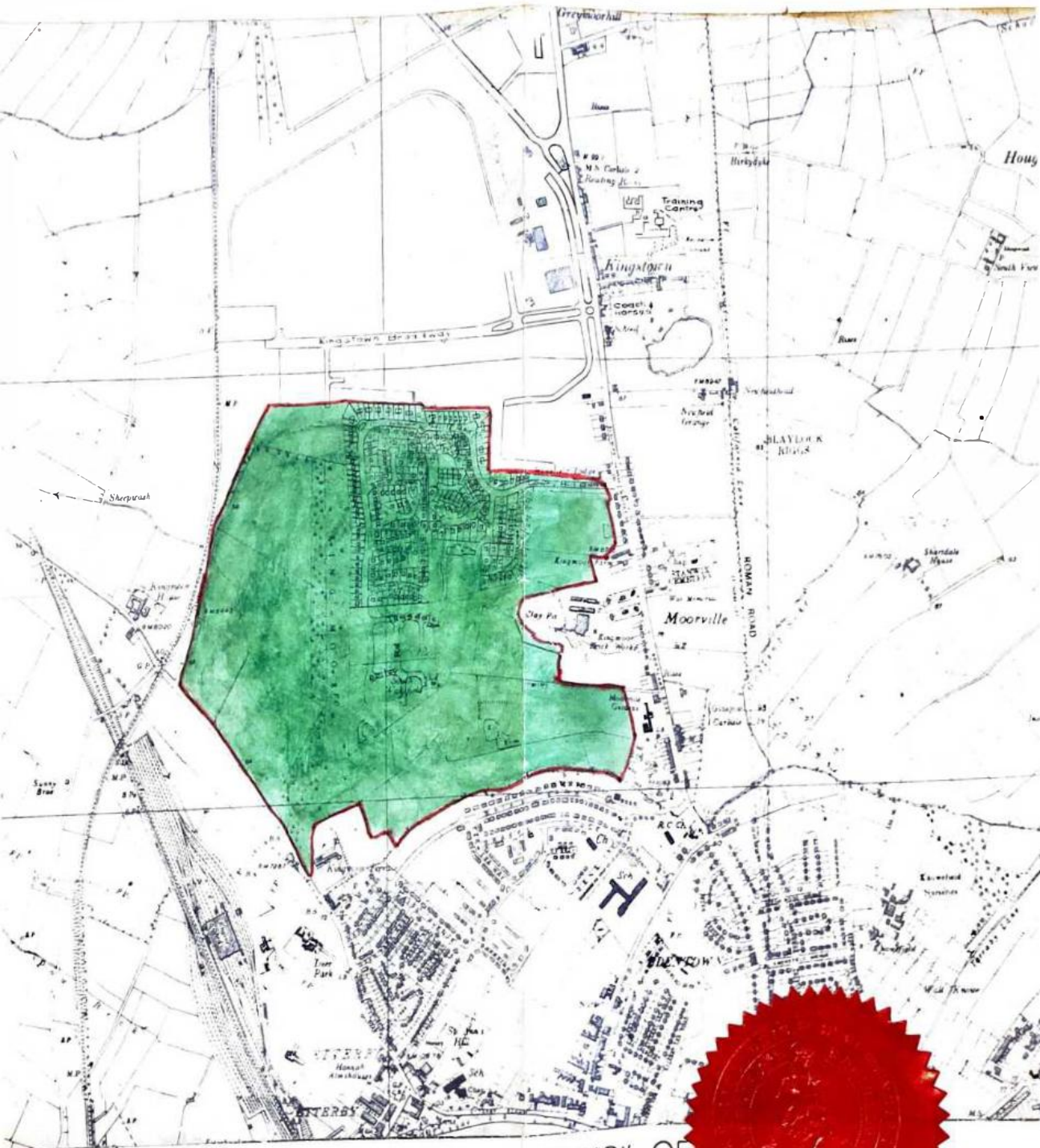
The Secretary of State for the Environment hereby confirms the foregoing Order.

Signed by authority of the Secretary of State

22ND APRIL 1976.

CITY OF CARLISLE

MAP REFERRED TO IN THE
CITY OF CARLISLE (NO.2) SMOKE CONTROL ORDER 1976



SCALE 1/5000
THE COMMON SEAL OF THE COUNCIL OF
THE CITY OF CARLISLE WAS HEREUNTO
AFFIXED 29th JANUARY 1976

[Red Seal]
1976
TOWN CLERK



THE CLEAN AIR ACT 1956

THE CITY OF CARLISLE (No. 3) SMOKE CONTROL ORDER 1976

The Council of the City of Carlisle in exercise of the powers conferred upon them by Section 11 of the Clean Air Act 1956, hereby make the following Order:-

1. This Order may be cited as the City of Carlisle (No. 3) Smoke Control Order 1976.
2. The area which is coloured green on the map prepared in duplicate, sealed with the Common Seal of the said Council of the City of Carlisle and marked "Map Referred To in the City of Carlisle (No. 3) Smoke Control Order 1976" is hereby declared to be a Smoke Control Area. One duplicate of the map is deposited in the offices of the said Council of the City of Carlisle and the other is deposited in the offices of the Secretary of State for the Environment.
3. This Order shall come into operation on the First day of November 1976.

GIVEN under the Common Seal of the Council of the City of Carlisle the Twenty-ninth day of January, 1976.

THE COMMON SEAL of THE)
COUNCIL OF THE CITY OF)
CARLISLE was hereunto)
affixed in the presence)
of:-)

Town Clerk



19982

The Secretary of State for the Environment hereby confirms the foregoing Order.

Signed by authority of the Secretary of State

22ND APRIL 1976

CITY OF CARLISLE
 MAP REFERRED TO IN THE
CITY OF CARLISLE (NO 3) SMOKE CONTROL ORDER 1976



SCALE THE COMMON SEAL OF THE COUNCIL OF
 1/5 MILE THE CITY OF CARLISLE WAS HEREUNTO
 AFFIXED THE 29th DAY OF January 1976



19982

TOWN CLERK

CITY OF



CARLISLE

THE CLEAN AIR ACT 1956

THE CITY OF CARLISLE (No. 4) SMOKE CONTROL ORDER 1976

The Council of the City of Carlisle in exercise of the powers conferred upon them by Section 11 of the Clean Air Act 1956, hereby make the following Order:-

1. This Order may be cited as the City of Carlisle (No. 4) Smoke Control Order 1976.
2. The area which is coloured green on the map prepared in duplicate, sealed with the Common Seal of the said Council of the City of Carlisle and marked "Map Referred To in the City of Carlisle (No. 4) Smoke Control Order 1976" is hereby declared to be a Smoke Control Area. One duplicate of the map is deposited in the offices of the said Council of the City of Carlisle and the other is deposited in the offices of the Secretary of State for the Environment.
3. This Order shall come into operation on the First day of November 1976.

GIVEN under the Common Seal of the Council of the City of Carlisle the Twenty-ninth day of January, 1976.

THE COMMON SEAL of THE)
COUNCIL OF THE CITY OF)
CARLISLE was hereunto)
affixed in the presence)
of:-)



19983

Town Clerk

The Secretary of State for the Environment hereby confirms the foregoing Order.

Signed by authority of the Secretary of State

22nd APRIL 1976

CITY OF CARLISLE

MAP REFERRED TO IN THE
CITY OF CARLISLE (NO.4) SMOKE CONTROL ORDER 1976



SCALE THE COMMON SEAL OF THE COUNCIL OF
1/5 MILE THE CITY OF CARLISLE WAS HEREUNTO
AFFIXED THE 29th DAY OF January 1976

1983.

TOWN CLERK

CITY OF



CARLISLE

THE CLEAN AIR ACT 1956

THE CITY OF CARLISLE (NO. 5) SMOKE CONTROL ORDER 1977

The Council of the City of Carlisle in exercise of the powers conferred upon them by Section 11 of the Clean Air Act 1956, hereby make the following Order:-

1. This Order may be cited as the City of Carlisle (No. 5) Smoke Control Order 1977.
2. The area which is coloured green on the map prepared in duplicate, sealed with the Common Seal of the said Council of the City of Carlisle and marked "Map referred to in the City of Carlisle (No. 5) Smoke Control Order 1977" is hereby declared to be a smoke control area. One duplicate of the map is deposited in the offices of the said Council of the City of Carlisle and the other is deposited in the offices of the Secretary of State for the Environment.
3. This Order shall come into operation on the First day of November 1977.

GIVEN under the Common Seal of the Council of the City of Carlisle the Twenty seventh day of January 1977.

THE COMMON SEAL of THE COUNCIL)
 OF THE CITY OF CARLISLE was)
 hereunto affixed in the)
 presence of:-)

Town Clerk.



20808

The Secretary of State for the Environment
hereby confirms the foregoing Order.

Signed by authority
of the Secretary of
State

18 APR 1977

CITY OF CARLISLE

MAP REFERRED TO IN THE

CITY OF CARLISLE (NO 5) SMOKE CONTROL ORDER 1977



SCALE

1-2500

THE COMMON SEAL OF THE COUNCIL
OF THE CITY OF CARLISLE WAS
HEREUNTO AFFIXED

the 27th day of January 1977.



20809
[Signature]
TOWN CLERK

Appendix 2: Penalty Policy Framework – Smoke Emissions

	Penalty amount as Issued	Penalty reduction threshold after representations
First Offence	£175.00	£115.00
Second Offence in 12 months	£200.00	£135.00
Second Offence in 6 months	£250.00	£165.00
Repeat Offender	£300.00	None

Factors, which the Council will consider in reducing the penalty

The Council will consider any factors, which indicate a reduction in the penalty and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty.

- impact of the financial penalty on offender’s ability to comply with the law or make restitution to victims;
- impact of the financial penalty on employment of staff, service users, customers and local economy.
- Reduction for early admission of guilt. (early payment fee structure)

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances, there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour. Any reduction should not result in a penalty, which is less than the amount of gain from the commission of the offence itself

Smoke Control Area Procedure Note

Complaints.

If we receive a complaint in a smoke control area, then we need as much information as possible at first point of contact to establish if the issue needs to be investigated as a potential statutory nuisance, a smoke control area breach or if it would be considered actionable as significant impact on the community for Community Protection.

The complainant will be asked to provide contact name, address, contact number and e-mail, without this information the Officers will be unable to progress the case. The Officer may also find it relevant to gather additional information such as how many people live in the property, are there children in the household, how long have you been in the property, do you have any issues with the neighbour.

If the matter is determined as a potential statutory nuisance, then the Officer will provide the complainant with a Bothered by Nuisance Booklet at first point of contact.

If the issues reported are potential smoke control area breaches, the complainant should be asked to provide video evidence if possible, this can be submitted to EnvironmentalHealth@carlisle.gov.uk referencing the service request number.

If this is not possible, then the Officer will ask the complainant to provide a diary of when the breaches are occurring, so the Officer can then make reasonable attempts to visit the property to witness any potential breaches. Providing dates and time will enable our resources to be used more effectively during any investigation. A maximum of three visits will be undertaken to witness any breaches after which the complaint will be closed.

Enforcing after confirming a smoke emission

If an Officer detects a substantial amount of smoke from a chimney in a smoke control area, they can issue a warning to the person responsible. But this is not a legal requirement. The departments initial approach will be to educate and inform individuals at first point of contact, this may then be followed up by a formal letter, enclosing any advice leaflets.

No action will be required if individuals are using an authorised fuel or an exempt appliance correctly. This is because the appliance should not be emitting substantial amounts of smoke.

If they continue to emit a substantial amount of smoke from their chimney after an initial warning, you must follow these steps:

1. Issue a notice of intent.
2. Issue a final notice with a financial penalty.

You may give a written warning or notice by one of the following means:

- handing it to the person responsible
- leaving it at the person's address
- sending it by post to the person at their address

- emailing it to the person (if you have their consent).

Information required when issuing a written warning

The notice should include:

- the smoke control area's restrictions
- specific details about when the smoke was seen
- an explanation of how the person has broken smoke control area rules
- information about the negative impact on local air quality
- information about how the person can burn solid fuels without emitting a substantial amount of smoke, including appropriate fuel to burn and which appliances to use
- details of next steps if they do not follow the rules

Issuing a notice of intent

You can give a notice of intent to the person responsible for smoke emissions from a chimney in a smoke control area. It must tell them:

- that there is enough evidence to prove that smoke was emitted from their chimney in a smoke control area
- when smoke was emitted from a chimney in a smoke control area
- that you intend to issue them with a financial penalty under Schedule 1A of the Clean Air Act (as amended by the Environment Act 2021)
- the proposed amount of the penalty, which can be any amount between £175 and £300, as determined by the penalty policy.
- 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 – The details of how to make representations will be in the notice and then should include supporting evidence

If there are further smoke emissions from a chimney after you send a notice of intent, you can issue additional notices for each separate incident.

Financial penalty amount

The financial penalties range from a minimum of £175 to a maximum of £300 for each notice of intent you send. The amount is set out in the Smoke Control Area, Emission Policy.

If someone objects to your notice of intent to issue a financial penalty

You can agree to an objection and cancel 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 sent the notice of intent 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

If you agree to the objection and decide not to impose a financial penalty, you must tell the person responsible in writing.

Issue a final notice

You can issue a final notice with a financial penalty if the person responsible:

- does not object to the notice of intent within 28 days
- objects within 28 days but you reject the reasons for their objection

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

If they object unsuccessfully, you should issue the financial penalty 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

Withdrawing or amending notices

You can withdraw a notice of intent or a final notice at any time. You can also reduce the amount of the financial penalty.

If you decide not to impose a financial penalty, you must tell the person responsible in writing.

Appeals process

In the final notice, you must tell the person they have the right to appeal within the 28-day period, starting on the day after the final notice was given. They'll need to appeal to the [first-tier tribunal](#).

You must inform them that they can appeal the financial penalty if it was:

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

If a person appeals against the penalty, you must suspend the final notice until you get the result of the appeal or the appeal is withdrawn.

The first-tier tribunal may:

- cancel the final notice
- confirm the final notice
- change the final notice by reducing the amount of the financial penalty
- ask you as the relevant local authority to decide whether to withdraw or confirm the final notice or reduce the amount of the financial penalty

Keeping and recording financial penalties

You can keep any income you receive from the financial penalties.

It's good practice to keep a record of financial penalties collected. The information might include the:

- number of financial penalties issued
- number of financial penalties collected
- amount collected