**Environmental Health & Public Protection Service**

**Enforcement Policy**

**Appendix 1**

**Smoke Control Order**

**Enforcement**

Issued By:

Cannock Chase Council

Civic Centre

Beecroft Road

Cannock

Staffordshire

WS11 1BG

Date: 2023

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| **Prepared by** | **Hal Sambrooke** |  |
| **Reviewed by** | **David Prosser-Davies** | **21.09.2023** |

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| **Date** | **Revision** | **Prepared by** |
| **2023** | **1** |  |

In accordance with the authority delegated to me (Council minute 32 (ii) of 06/09/2023), I hereby authorise and approve this Appendix 1 to the Environmental Health & Public Protection Enforcement Policy - Smoke Control Order enforcement. This becomes effective immediately.

 21/11/23

……………………………………… **Date**……………………………

**Gregg Stott**

**Deputy Chief Executive (Place)**

**Contents**

[1 Introduction 1](#_Toc146215200)

[1.1 Environmental Protection Act 1990 1](#_Toc146215201)

[2 Enforcement Procedure 1](#_Toc146215202)

[2.1 Outline 1](#_Toc146215203)

[2.2 Written Warning 1](#_Toc146215204)

[2.3 Notice of Intent 2](#_Toc146215205)

[2.4 Final Notice 2](#_Toc146215206)

[3 Miscellaneous 2](#_Toc146215207)

[3.1 Schedule of Fees 2](#_Toc146215208)

[3.2 Simultaneous Offences 3](#_Toc146215209)

## Introduction

This document has been prepared in accordance with the Environmental Health & Public Protection Enforcement Policy, which sets out the Council’s overall approach to achieving regulatory compliance, and under which this Policy is annexed.

The [Clean Air Act 1993](https://www.legislation.gov.uk/ukpga/1993/11/contents) provides local authorities with the power to make ‘Smoke Control Orders’ (which prohibit the emission of smoke within the specified ‘Smoke Control Area’), together with the means of enforcement.

Cannock Chase District Council has declared its entire District to be a ‘smoke control area’. The Council has the power (under [Schedule 1A](https://www.legislation.gov.uk/ukpga/1993/11/schedule/1)) to issue a financial penalty of between £175 and £300 for the emission of smoke from a chimney.

[Statutory guidance](https://www.gov.uk/government/publications/smoke-control-area-enforcement-local-authorities-in-england/smoke-control-area-enforcement-by-local-authorities-in-england) states that each local authority should have a policy which sets the scale of fees. This policy sets out how Cannock Chase District Council will enforce its Smoke Control Order.

### Environmental Protection Act 1990

Under the Environmental Protection Act 1990, the Council has a duty to investigate complaints of statutory nuisance, including those from the emission of smoke.

This policy has been prepared without prejudice to the investigation of statutory nuisance under the Environmental Protection Act 1990.

## Enforcement Procedure

### Outline

Offences under the Clean Air Act 1993 are enforced through the issue of a ‘financial penalty’ of between £175 and £300. The outline procedure is as follows:

1. The Council is satisfied that there is sufficient evidence of an offence. A written warning (an ‘improvement notice’) may be issued to the responsible person.
2. A ‘notice of intent’ to issue a financial penalty is issued to the responsible person, who can object to the Council on specified grounds.
3. The Council considers any objections and, either cancels the financial penalty, or issues a ‘final notice’. The responsible person has a right of appeal to a first-tier tribunal.

### Written Warning

Statutory guidance states that a local authority *may* issue a written warning (also known as an improvement notice) for a first offence.

In accordance with Section 5 of the Environmental Health & Public Protection Service Enforcement Policy, the Council will issue a suitable written warning for a first offence.

The Council will then allow 20 working days’ grace against enforcement of further offences, to give the responsible person a reasonable chance to address the issue.

Where an offence is serious, involving significant ongoing smoke emissions, the Council may forego the written warning and issue a financial penalty.

### Notice of Intent

When a notice of intent (to issue a financial penalty) is issued, the responsible person has 28 days to object the Council. Objections must be made on specified grounds, which are:

* 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 receiving the notice of intent was not responsible for the chimney at the time given in the notice of intent - in which case, they must provide the name and address of the person who was liable at the time (if known to them).
* there are other compelling reasons why the financial penalty should not be imposed.
* (for moored vessels) the smoke emission was from the engine and was used to move the vessel or to provide it with electric power.

The onus is on the objector to provide evidence to support their objection.

An objection made on the grounds of a ‘compelling reason’ will be assessed on a case-by-case basis; grounds of ‘hardship’ will not generally be considered.

Where the Council allows an objection, it will withdraw the notice and inform the objector of its decision in writing.

### Final Notice

Where an appeal to a notice of intent is not made, or is rejected, the Council will issue a final notice (the financial penalty), to which the recipient has 28 days to either:

* Pay the financial penalty, or;
* Make an appeal to a first-tier tribunal (in which case, the notice is suspended until the appeal has resolved).

The Council will pursue unpaid debts in line with its corporate debt recovery policy.

## Miscellaneous

### Schedule of Fees

If:

* after the issue of a written warning, further offences are identified, or;
* a first-time offence is serious.

the Council will issue a financial penalty under Schedule 1A. The first financial penalty issued by the Council shall be for £175; Second and subsequent financial penalties shall be for £300.

### Recurring Offences

The Council will allow a minimum of 10 working days between the issue of separate financial penalties, to allow sufficient time for the responsible person to receive and consider / respond to correspondence from the Council, before action is taken for further offences.