



Smoke Control Order Enforcement Policy

ISSUED BY:

BROXTOWE BOROUGH COUNCIL
COUNCIL OFFICES, FOSTER AVENUE, BEESTON, NOTTINGHAM, NG9 1AB

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CONTENTS

1	INTRODUCTION.....	1
2	POLICY.....	1
	2.1 WRITTEN WARNING.....	1
	2.2 FINANCIAL PENALTY.....	1
	2.3 NOTICE OF INTENT.....	2
	2.4 FINAL NOTICE.....	2

1 INTRODUCTION

The Clean Air Act 1993 (as amended by the Environment Act 2021) provided local authorities with the legal means to control the emission of smoke from chimneys. There is a degree of flexibility in how the Council can apply such controls.

Broxtowe Borough Council has declared the entire district to be a 'smoke control area'.

Where smoke is emitted from a chimney within a smoke control area, the Council has the discretionary power (Schedule 1A) to issue a financial penalty; this is a civil matter, rather than a criminal offence.

Government guidance is that each local authority should have a policy to set out how financial penalties are to be applied. This document sets out how Broxtowe Borough Council will apply the provisions of the Clean Air Act 1993 in relation to smoke from chimneys, in respect of when financial penalties are to be issued and the scale of fees.

This policy shall follow the principles of the Council Corporate Enforcement Policy.

2 POLICY

2.1 WRITTEN WARNING

The current guidance issued by DEFRA is that a local authority *may* issue a written warning (also known as an improvement notice).

The enforcement policy provides for the issue of informal advice where there is a minor breach of the law.

Within this context, the Council will issue a written warning for a first offence, where it is appropriate in the circumstances to do so.

The Council will provide a one-month grace period against further enforcement following the first warning, to allow the responsible person a reasonable period to address the issue.

2.2 FINANCIAL PENALTY

Where it is appropriate to do so, the Council will issue a financial penalty under Schedule 1A. The financial penalty ranges from a minimum of £175 to a maximum of £300, to be set as part of Council policy.

The financial penalty should consider the seriousness of the offence, and whether it is a repeat offence.

Where a financial penalty is issued for the first time, it shall be £175.

Second and subsequent financial penalties shall be £300.

The Council will allow a one week grace period between the issue of separate financial penalties, to ensure that the responsible person receives correspondence from the Council before further offences are enforced.

2.3 NOTICE OF INTENT

Where it is intended to issue a financial penalty in accordance with this policy, the Council is required to issue a notice of intent.

The notice of intent provides the recipient of the financial penalty with 28 days to object the Council's decision. The grounds of objection 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 sent 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 they know).
- 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 it or provide it with electric power.

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

An appeal be made on the grounds of a 'compelling reason' will be assessed on a case-by-case basis, but generally will not include lack of finance as appropriate grounds.

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

2.4 FINAL NOTICE

The Council will issue a final notice within 56 days of the notice of intent being confirmed.

The recipient of a final notice has a 28-day right of appeal, which should be made to a first-tier tribunal.

The Council will pursue unpaid debts in line with its Corporate debt recovery policy as it will any other debt.