



<b>Subject:</b>	Enforcement Action within Smoke Control Areas
<b>Date:</b>	8 <sup>th</sup> November 2022
<b>Reporting Officer:</b>	Siobhan Toland, Director of City Services
<b>Contact Officer:</b>	Vivienne Donnelly, City Protection Manager Alastair Curran Environmental Protection Manager

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
<i>After Committee Decision</i>	<input type="checkbox"/>
<i>After Council Decision</i>	<input type="checkbox"/>
<i>Sometime in the future</i>	<input type="checkbox"/>
<i>Never</i>	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of Main Issues</b>
1.1	At its hybrid meeting of 9 <sup>th</sup> August 2022, under restricted agenda item 2e, wherein the Committee considered the Belfast City Council 2022 Air Quality Progress Report, as part of the resultant discussion concerning the Progress Report, a member of the Committee asked for an update on enforcement action within the smokeless zones across the city. This report serves to address that request.
1.2	The Committee is advised that within Northern Ireland, statutory smoke control functions and enforcement are provided for via the Clean Air (Northern Ireland) Order 1981 and so is reflective of common industrial and domestic combustion processes and abatement technologies of that time.

1.3	Under the auspices of the above legislation, Smoke Control Areas were created to control emissions of smoke from industrial premises and homes in the city at a time when there was a greater reliance on coal fired appliances as the primary heating source for domestic premises. A grant was provided to domestic occupiers to assist with the conversion to approved “smokeless” appliances.
1.4	Within Smoke Control Areas, residents are required to use authorised fuels commonly known as “smokeless fuels” unless an exempt appliance has been installed. Businesses and industries are also required to take steps to ensure that dust, fumes grit and gases are minimised.
1.5	Smoke control works were substantially completed for the Belfast City Council area towards the late nineties, with most of the developed areas of the city designated as Smoke Control Areas, with the exception of the mountainous areas to the west / north west of the city, the port area and those areas subsumed from neighbouring councils under the 2015 Local Government Reform that were not designated as Smoke Control Areas by their previous council.
1.6	In view of more recent legislative controls for industrial and commercial activities, combined with consumer preferences for alternative heating systems such as gas, oil and renewable technologies, the prevalence of solid fuel appliances in use across the city has declined over recent years. Accordingly, whilst particulate matter (PM <sub>10</sub> ) continues to be monitored at a number of locations across the city, concentrations do not currently warrant action under the Council’s local air quality management processes and objectives. The Committee will be aware that our current Air Quality Management Areas, which have been designated along a number of the city’s arterial routes, combined with our 2021-2026 Air Quality Action Plan, are primarily aimed at addressing the few remaining transport related nitrogen dioxide (NO <sub>2</sub> ) hotspots.
1.7	The Council continues to use its range of enforcement powers to address ambient air quality issues and complaints using a proportionate and graduated approach.
<b>2.0</b>	<b>Recommendations</b>
2.1	The Committee is requested to <ul style="list-style-type: none"> <li>• Note the contents of this report.</li> </ul>
<b>3.0</b>	<b>Main report</b>
	<b><u>Key Issues</u></b>
3.1	The Committee is advised that the Clean Air (Northern Ireland) Order 1981 was commenced on 10 <sup>th</sup> February 1981 and includes a number of statutory tools for addressing emissions of

	<p>particulate matter in order to improve ambient air quality. The legislation is reflective of common industrial and domestic combustion processes and abatement technologies of that time.</p>
3.2	<p>The Order contains a general provision at Article 3 relating to the prohibition of dark smoke from chimneys, i.e., '<i>Subject to the provisions of this Order, dark smoke shall not be emitted from a chimney of any building, and if, on any day, dark smoke is so emitted, the occupier of the building shall be guilty of an offence</i>'. Dark smoke is defined as smoke which, if compared in the appropriate manner with a chart of the type known on 9<sup>th</sup> June 1964 as the Ringelmann Chart, would appear to be as dark as, or darker than shade 2 on that chart.</p>
3.3	<p>The Order also addresses dark smoke from industrial or trade premises at Article 4, and smoke, grit and dust from furnaces at Articles 5, 7, 8, 9, 11, 12 and 13. These interventions have however largely been superseded by newer emissions control legislation. The Industrial Pollution Control (Northern Ireland) Order 1997 and more recently the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013, recognise that certain industrial processes and activities can cause harm to the surrounding environment and as a consequence, those activities must be operated under a permit. Within Northern Ireland, the Northern Ireland Environment Agency (NIEA) regulates what are referred to in legislation as the larger and potentially more polluting Part A and B activities, whereas district councils regulate smaller Part C installations for emissions to air only. Permits relating to combustion and incineration activities routinely include detailed ambient air pollution emission limits for sulphur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and total particulate matter, along with monitoring and compliance conditions. Permits for other industrial activities that involve dust generation also routinely include emission limits, monitoring and compliance requirements for particulate matter. Medium combustion plant and specified generators have also recently become regulated under the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013.</p>
3.4	<p>Articles 14 and 15 of the Clean Air (Northern Ireland) Order 1981 address chimney heights to ensure that chimneys are installed to avoid the potential for nuisance from smoke, grit, dust or gas emissions. At present, chimney height matters are mostly dealt with as a component of the council's local air quality management functions through the planning process, via the submission of a rigorous Air Quality Impact Assessment for a proposed development. The Committee will be aware that the Belfast City Council 2022 Air Quality Progress Report, considered by Committee during its meeting of 9<sup>th</sup> August 2022, contained at, '<i>Section 4 Planning Applications</i>' a list of major new developments across the city that</p>

had the potential to have a negative impact on ambient air quality during the 2021 period, where ambient air quality impacts were managed through the planning process.

3.5 Under Article 17 of the Order, which relates to Smoke Control Areas, a council may declare the whole or any part of its district as a Smoke Control Area. If on any day, smoke is emitted from a chimney of any building within a Smoke Control Area, the occupier of that building shall be guilty of an offence, unless they can prove that the fuel used was authorised or that the appliance used are approved by the Departments and are capable of not producing smoke.

3.6 A list of currently authorised fuels for Northern Ireland, including inherently smokeless generic fuels such as anthracite, semi-anthracite, electricity, gas and low volatile steam coals, is available via the following Defra weblink:

<https://smokecontrol.defra.gov.uk/fuels.php?country=northern-ireland>

3.7 It should be noted that home heating oil is not an authorised fuel as it is not inherently smokeless but under the subordinate legislation, appliances using oil are exempt from the provisions of Article 17 of the Clean Air (Northern Ireland) Order 1981. This exemption is conditional upon the appliance being installed, maintained and operated so as to minimise the emission of smoke.

3.8 Currently exempted combustion appliances within Northern Ireland and any associated exemption conditions are available via the following Defra weblink:

<https://smokecontrol.defra.gov.uk/appliances.php?country=northern-ireland>

The exempted appliances listed typically include what are termed multi-fuel stoves, wood burning stoves, wood pellet stoves, room heater stoves or various light and ultra-light boilers. The exemption process is presently administered by the Heating Equipment Testing and Approval Scheme (HETAS) and involves the manufacturer of the appliance demonstrating through accredited emissions testing that the appliance can achieve permitted smoke emissions limits that are related to the appliance's output in kilowatts.

<https://www.gov.uk/government/publications/apply-for-exemption-of-an-appliance-in-a-smoke-control-area>

3.9 When a Smoke Control Area was declared by a council, domestic property owners were able to claim a grant of up to 70% of the approved adaptation expenditure incurred in complying with the requirements of the Smoke Control Area, providing that the house was built before 1<sup>st</sup> March 1969 and was not in the ownership of the NIHE or Housing Association. The grants were funded by the Council (30% ) and DoENI / DAERA (40%).

3.10	Reasonable works in connection with compliance or adaptation works included; adapting or converting a fireplace; replacing any fireplace with another fireplace or some other means of heating or cooking; altering a chimney which serves a fireplace; providing gas ignition, electric ignition or any other special means of ignition; or carrying out any other incidental operation.
3.11	The Committee is advised that the Department of the Environment for Northern Ireland (DoENI), now the Department of Agriculture, Environment and Rural Affairs (DAERA), issued guidance in October 2006 concerning, ' <i>Policy Guidance on Smoke Control Areas LAQM.SCANI(06)</i> '. The guidance advises that there are a number of situations where a district council may consider it appropriate to declare a Smoke Control Area. For example, as part of a strategy to improve local air quality, where there is evidence of elevated concentrations of emissions from coal burning, or as part of an Action Plan within an Air Quality Management Area. The Committee will be aware that the principal focus of the council's recently adopted Air Quality Action Plan 2021-2026 is to address the few remaining transport related nitrogen dioxide (NO <sub>2</sub> ) 'hot spots' within our four Air Quality Management Areas. There is no evidence to support the need for further Smoke Control Areas in the undesignated areas and nor has funding provision been agreed with DAERA to support grants to householders.
3.12	All complaints are investigated using a graduated approach and in the first instance, officers will seek to establish if the smoke is due to lighting up which is permissible. Thereafter, advice will be provided to the occupier/homeowner on the types of fuels that are permissible for use within Smoke Control Areas. Whilst the Council has the power to prosecute for offences under the Order, officers will always seek to use a graduated approach to achieve compliance. Complaints are mostly resolved through dialogue and advice.
3.13	To support compliance, we highlighted our smoke control areas in June 2022 as part of this year's Clean Air Day promotions. Officers are presently developing an awareness campaign with Corporate Communications, to be delivered during the colder winter months via the council's social media channels, to highlight our smoke control areas and the use of authorised fuels. We are also working with the Community Awareness Team to incorporate key air quality messages into their schools education programme which will include this aspect of air quality.
3.14	In light of the current cost of living crisis however, any enforcement action taken must be proportionate and in the public interest. A person guilty of an offence under

	<p>Article 17 Smoke Control Areas is liable upon summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).</p> <p><b><u>Finance and Resource Implications</u></b></p> <p><u>Financial</u></p> <p>3.15 There are no financial or resource implications for the council in connection with this report.</p> <p><u>Human Resources</u></p> <p>3.16 There are no human resource implications for the council in connection with this report. Smoke control enforcement works are undertaken by staff within the Environmental Protection, Public Health and Housing Unit from within existing resources.</p> <p><u>Asset and Other Implications</u></p> <p>3.17 There are no asset or other implications for the council in connection with this report.</p> <p><b><u>Equality or Good Relations Implications/ Rural Needs Assessment</u></b></p> <p>3.18 There are no Equality or Good Relations Implications / Rural Needs Assessment implications for the council in connection with this report</p>
<b>4.0</b>	<b>Appendices – Documents Attached</b>
	None.