



TOURISM COMMUNITIES, CULTURE AND LEISURE COMMITTEE
07/03/2024

REPORT TITLE:	REVOCATION AND UPDATE OF SMOKE CONTROL AREAS
REPORT OF:	DIRECTOR OF NEIGHBOURHOOD SERVICES JASON GOODING

REPORT SUMMARY

The aim of this report is to request approval to revoke all existing Smoke Control Orders (SCOs) and replace them with one consolidated order that covers the whole of the Local Authority area.

As only two additional areas of the borough will be newly covered by the new SCO, consolidating the existing areas has minimal risks, as the main outcome would be to clarify the existing areas.

The proposals within this report are consistent with national guidelines and will assist the Council to achieve its objective of improving the air quality within Wirral to help to better the environment and the health and well-being of all residents and visitors to the area.

The report supports the Council Plan: Wirral Working Together 2023-27, specifically the 'Protecting our Environment' theme.

This is a Key Decision. The proposed consolidation will affect the whole of the borough but in particular Clatterbridge and Bebington Wards.

RECOMMENDATION/S

The Tourism Communities, Culture and Leisure Committee is recommended to approve:

1. the revocation of the existing Smoke Control Orders which affect the Council's administrative area, subject to such revocations (listed in schedule 1 of the draft order) being subject to formal consultation and confirmation by the Secretary of State; and
2. the making of a single Smoke Control Order for the whole of the Council's administrative area in accordance with the draft order set out in Appendix 1 to this report, and also approve that such order be subject to formal consultation and confirmation by the Secretary of State;

3. that any objections to the orders referred to in recommendations 1 and 2 be referred to a future meeting of this Committee.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The existing smoke control orders which are extant within the Borough were individually enacted between 1957 and 1992 and do not provide coverage of the whole of the Borough. Some orders contain 'exemptions' that allow certain buildings or fireplaces to burn solid fuel in a non-approved manner. It is not generally clear why the exemptions were given, and due to the time that has elapsed since the orders were made, many of the buildings or fireplaces no longer exist.
- 1.2 Wood-burning takes place in just 8% of UK homes, and yet is the second highest cause of particle pollution in the UK It has grown by 35% in the last 10 years as more people install wood-burning stoves. Poor local air quality affects the health of those living and working in Wirral. The highest impacts on human health come from particulate matter but evidence for the effects of arsenic is growing as shown in the Chief Medical Officers Annual Report on Air Quality 2022.
- 1.3 Deaths in England linked to air pollution are estimated to be between 26,000 and 38,000 each year. Although air pollution can be harmful to everyone, the most susceptible to the effects of air pollution are typically the young, the old, and those with pre-existing health conditions. It particularly affects people living in more densely populated and polluted areas, which are often areas of higher deprivation, which can widen health inequalities.
- 1.4 Short-term exposure to air pollution can exacerbate respiratory conditions such as asthma and chronic obstructive pulmonary disease. Long-term exposure can cause respiratory and cardiovascular disease, cancer, depression, dementia, diabetes, and can affect foetal development.
- 1.5 The current smoke control regime can be confusing to officers, other users and the public, as it is not always clear which properties are exempt, or if they should remain listed as exempt.

Consolidating existing Smoke Control Orders into a single Order covering the whole of the Borough will simplify the enforcement and control of pollution from smoke. Currently, an Enforcement Officer would have to search the records to identify if there is a Smoke Control Order which applies to the area, and if so whether the property in question is included in that order, which takes time. Also, in some cases due to their age and the fact many of the existing orders were made by legacy authorities, records may be incomplete which makes taking enforcement action difficult or impossible.

- 1.6 The recommendations will assist in achieving three of the priority areas outlined in the Wirral Air Quality Strategy 2024-2028 - Priority Area 2- Improve indoor air quality, - Priority Area 4- Reduce domestic, commercial, industrial and agricultural emissions

and Priority Area 5- Raise public awareness and encourage behaviour change. The recommendations will also align with local and regional actions being taken to address the crisis faced, by helping to cut climate-damaging air pollution locally, in line with the Wirral Air Quality Strategy 2024-2028 and global targets.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Agree to revoke the 30 existing Smoke Control Orders and enact a single Smoke Control Order covering the existing areas.

This would provide an opportunity to review all exemptions and enable clearer responses to be provided to any requests for information and enforcement of domestic burning legislation whilst creating an opportunity to raise awareness to the issues associated with solid fuel combustion- linking in with the Department for Environment Food and Rural Affairs funded Domestic Burning Project and aligning with objectives set in the Wirral Council Air Quality Strategy and would not have an impact on the additional two wards that are not now covered by existing smoke control orders.

- 2.2 Do nothing. The existing smoke control areas have achieved their initial goals, and still offer some controls on solid fuel combustion, however, trends have changed, and there is the potential for levels of pollutants outside of the initial aim of the legislation to increase if the situation remains the same. There is also a lack of documents surrounding the original orders that could lead to difficulties in enforcing the legislation.

3.0 BACKGROUND INFORMATION

- 3.1 DEFRA's National Air Quality Strategy and Air Quality Action Plans set out how Government will improve and protect ambient air quality, as part of the creation of a sustainable environment.

- 3.2 The World Health Organisation has updated its health-based air quality guideline concentrations, due to a much stronger body of evidence showing how air pollution affects health at lower concentrations. The Government has set legal limits, known as air quality objectives, for air pollution, in line with European Directives. In addition, new lower objective levels have recently been introduced for particulate matter. Councils in England have duties regarding local air quality management and must regularly review and assess air quality to determine whether objectives are likely to be achieved.

- 3.3 Although the air quality in Wirral does not exceed legal limits, no safe level of exposure to air pollution has been identified, below which there are no negative health effects. In Wirral, 4.9% of deaths are attributed to Air Pollution. The North west average is 5.3% and the England average is 5.5%. The aim of the strategy is to reduce emissions and improve air quality across Wirral and it has been developed by collaborating with stakeholders across Wirral such as; housing associations, community, voluntary and faith sectors, local businesses, the National Health Service, Schools, Chamber of Commerce and transport sector, to ensure that it represents the priorities of the local community.

- 3.4 Smoke Control Orders were initiated under various Clean Air Acts, initially in 1956, then updated under the Clean Air Act 1993. The initial act was created in response to the large number of deaths attributed to air pollution and smogs in the winter of 1952. The Act enabled Local Authorities to enact Smoke Control Orders and to declare all or parts of their areas to be Smoke Control Areas. The Act itself can be seen to be a success, as air quality measurements show that the pollutants associated with the smogs have been very much reduced.
- 3.5 Once declared as a Smoke Control Order, only 'Authorised Fuels' can be used, unless burned on an 'Authorised Appliance' or with an 'exemption' from the Council.
- 3.6 More recently, solid fuel use has changed from being predominantly coal, to mostly wood. This has resulted in an increase in emissions of small particulate matter, which has been determined to be a significant contributor to earlier mortality and an increase in associated illnesses, such as the risk of pneumonia, COPD and lung cancer, as well as heart disease and stroke, leading to early death.
- 3.7 The 2019 UK Air Quality Strategy has focused on domestic solid fuel use and as a result several Councils are reviewing and consolidating their existing smoke control orders.
- 3.8 Wirral has had no reduction in particulate matter pollution in the last 5 years and is expected to produce a 35% reduction by 2040.
- 3.9 Currently, there is a lack of awareness of the existence of Smoke Control Areas and the controls required in the burning of fuels, and the Borough's current Smoke Control Orders are sporadic in their distribution. The declaration of a new Order requires a period of public consultation, which will create the opportunity to raise awareness of the order and issues about solid fuel combustion.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There will be future costs associated with the implementation of the new smoke control orders.
- 4.2 The potential revenue costs of implementing the new smoke control order will be determined and will need to be considered in the context of the Council's Medium Term Financial Strategy this will include production and publication of the Smoke Control Order and small staffing resource. This will be met within the existing service budget. The Clean Air Act 1993 states that the Council will need to publish a Public Notice and a copy of the Draft Order in the London Gazette and once at least in each of two successive weeks in a local newspaper.
- 4.3 Where they are council actions they will be delivered within business-as-usual operations or via capital funding bids. There may be an opportunity to apply for future additional funding to deliver local improvements and projects from external partners, for example, Department for Environment Food and Rural Affairs.
- 4.4 Section 31 funding (as contained in the Local Government Act 2003) allows a Minister of the Crown to pay a grant to a local authority in England towards expenditure incurred or to be incurred by it. In this case, Defra has committed to

providing ring-fenced Section 31 funding to local authorities in England for the purpose of preparing for new burdens for the enforcement and management of Smoke Control Areas. The Council has received £11,710 for the 22/23 financial year. The payments will be sent to Councils with Smoke Controlled Areas during 2023, 2024 and 2025 subject to satisfactory evidence of spend submissions. The Council is using this funding to secure training, develop new processes, undertake assessments of the Councils estate and cover officer time.

- 4.5 The smoke control orders will be implemented through a plan that will be owned by Environmental Health, any actions within the plan will be developed with the relevant departments.
- 4.6 Any additional projects to raise awareness will be delivered via various funding methods or already have funding in place to deliver, for example, the council's current Domestic Burning Project 2023.

5.0 LEGAL IMPLICATIONS

- 5.1 Pursuant to section 18 of the Clean Air Act 1993, and section 73 and Schedule 12 of the Environment Act 2021 the Council has the discretion to declare the whole, or any part of its area to be a smoke control area via a smoke control order.
- 5.2 In a Smoke Control Area it is an offence to emit smoke from a chimney of a building or from a chimney serving the furnace of any fixed boiler or industrial plant within the area unless using an appliance on the Department Environment Food and Rural Affairs (DEFRA) exempt list or using an authorised fuel. Exemptions apply to the use of outdoor barbecues, chimineas, pizza ovens or garden bonfires (as long as specific rules are followed).
- 5.3 The Environment Act 2021 changed some of the controls which apply in smoke control areas. The previous criminal offence of emitting smoke from a chimney is now subject to a Civil Penalty. Fixed Penalty Notices of between £175 and £300 may be issued in the event of an offence being committed.
- 5.4 Schedule 1 of the Clean Air Act 1993, sets out the procedure which the Council must follow to make an Order, including publicising its intention to make an order and how objections may be made.
Under the order making procedure the Council makes the order and then publicises the making of the order and how objections to it may be made. The Council then considers the objections and may confirm the order with or without modification.
- 5.5 If the Council proceeds to make a new smoke control order, it cannot come into effect earlier than 6 months after it is made, although this date may be postponed by way of resolution and publicity. Any postponement of an order over 12 months needs the consent of the Secretary of State.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The Smoke Control Order can be implemented fully using existing staffing resources.

7.0 RELEVANT RISKS

- 7.1 As only two additional areas of the borough will be newly covered by the new SCO, consolidating the existing areas has minimal risks, as the main outcome would be to clarify the existing areas.
- 7.2 If the Smoke Control Orders are not consolidated, there is a risk that the current ambiguous state of some Orders, could result in incorrect advice being given to members of the public. It also takes officer time to go through the Orders each time try to make sure information given out is accurate.
- 7.3 As the pollutant of concern has changed since the Orders were made, the consultation required to consolidate them, provides an opportunity to review the extent of the problem, and at the same time, raise awareness of the issues around solid fuel combustion. This is a key policy in the Government's UK Air Quality Strategy and could be missed if Orders are not consolidated.
- 7.4 At present, combustion control is contained within several pieces of legislation and consolidating the Smoke Control Areas can in some situations provide an adequate means of control, with less bureaucracy and cost to the Authority and some operators, which could be missed if the Orders are not consolidated.
- 7.5 The risks will also be monitored by Environmental Health and any risks will be escalated via the Directorate Risk Register.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Revoking the existing orders and consolidating them into one order will remove some of the confusion relating to the exemptions granted by the Local Authority and add a layer of transparency to the Smoke Control regime.
- 8.2 The declaration of a new Smoke Control Order requires a period of consultation, which will create the opportunity to raise awareness of Smoke Control Areas and solid fuel combustion.
- 8.3 The Clean Air 1993 ("the Act") specifies that, prior to making the Order; the Council must advertise the intention and details in the London Gazette, and at least once in two successive weeks in the local press.
- 8.4 The Act also specifies that the Council must make the Order and associated paperwork available to any interested parties, for a period of no less than 6 weeks from the last publication on the notice for any objections to be raised.
- 8.5 For the same 6-week period in, the Council are also required to post, and keep posted, copies of the notice at conspicuous places within the area.
- 8.6 The Council cannot make the Order until any objections have been considered.
- 8.7 Subject to the paragraphs above, an order shall come into operation on such date not less than six months after it is made.

8.8 In addition, it is proposed to seek advice from the Council's Media and Marketing sections on how best to engage the wider public, local media, and social media to raise awareness, as well as raising the issue in other public meetings wherever possible.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity. An Equality Impact Assessment has been undertaken and can be found at: <https://www.wirral.gov.uk/communities-and-neighbourhoods/equality-impact-assessments>.

9.2 There will be no impact on most residents or particular group as this is a consolidation of existing SCO's into one single order.

9.3 However, there could be a negative impact for residents suffering fuel poverty, specifically those who are driven to "foraging" for wood in parks and gardens to burn in their properties for heat. Foraged fuels are unsuitable for burning in a domestic property and there is a risk to the residents' health from poor indoor air quality, carbon monoxide poisoning and fire. Those affected most by poor air quality are people with existing medical conditions, the young and the elderly and so these groups will receive the greatest positive benefit.

9.4 Authorised solid fuels are designed to be more efficient when burnt so are cheaper than using coal and therefore there will not be negative financial impact for most residents. Residents will also be signposted to government and charitable organisations for advice regarding fuel poverty as part of the public consultation and related material.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 The declaration of a new SCA will allow for more efficient enforcement of the Clean Air Act 1993 (as amended by the Environment Act 2021) by Council officers. This includes the enforcement of the prohibition of emissions of smoke from properties and the prohibition of sales of non-authorised fuels in the Smoke Control Area's. This will reduce the emissions of particulate matter into the atmosphere and improve the overall air quality of Wirral.

10.2 The declaration of a new Smoke Control Order requires a period of consultation, which will create the opportunity to raise awareness of Smoke Control Areas and solid fuel combustion. It is hoped that this will trigger behaviour change and residents will choose to use smokeless fuels in their domestic burners. This will also reduce the emissions of particulate matter into the atmosphere and improve the overall air quality of Wirral.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 In the UK, the single biggest source of particulate matter air pollution (PM2.5) is from domestic burning. This makes it a significant risk to public health. Everyone is at risk from particulate matter air pollution, but people are more vulnerable if they have COPD, asthma or other lung conditions or are elderly or a child. Particulate matter air pollution can cause coughs, dizziness, inflamed airways and shortness of breath. It increases the risk of pneumonia, COPD and lung cancer, as well as heart disease and stroke, leading to early death. It can also impact pregnancy and the development of children's lungs. The declaration of a new SCO will therefore have positive public health impact thus reduce the burden on the NHS, improving health and reducing the health inequity gap on the borough.

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APPENDICES

The PDF file may not be suitable to view for people with disabilities, users of assistive technology, or mobile phone devices. Please contact environmentalhealth@wirral.gov.uk if you would like this document in an accessible format.

1. Draft Smoke Control Order
2. Emissions from Domestic Heating Sources Graphic
3. Map of Existing Wirral Smoke Control Area
4. Public Consultation Notice
5. Smoke Control Areas – Frequently Asked Questions

BACKGROUND PAPERS

1. The Clean Air Act 1993, Section 18 and Schedule 5
2. The Environment Act 2021, Section 73 and Schedule 12
3. Guidance to local authorities on the application of smoke control areas to moored vessels under the Environment Act 2021
4. Smoke Control Area Enforcement by Local Authorities in England: Statutory Guidance
5. Wirral Air Quality Strategy, 2024 – 2028, A four-year vision to improve air quality in Wirral.
6. The Air Quality Strategy for England, Scotland, Wales and Northern Ireland.
7. Chief Medical Officers Annual Report 2022. Air Quality
8. National Air Quality Strategy 2019
9. The Wirral Working Together Plan 2023-2027
10. WHO Global Air Quality Guidelines
11. Research to understand burning in UK homes and gardens - AQ1017

TERMS OF REFERENCE

This report is being considered by the Tourism, Communities, Culture And Leisure Committee in accordance with Section 6.2(i)(vi) of its Terms of Reference, The Committee is charged by full Council to undertake responsibility for the Council's role and functions: (i)for trading standards and environmental health, including but not limited to: (vi) air pollution control;

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
None	