

## SCHEDULES

### SCHEDULE 12

#### SMOKE CONTROL IN ENGLAND AND WALES

##### PART 1

###### PRINCIPAL AMENDMENTS TO THE CLEAN AIR ACT 1993: ENGLAND

- 1 The Clean Air Act 1993 is amended as follows.
- 2 After section 19 insert—

*“Regulation of smoke and fuel in smoke control areas in England*

##### **19A Penalty for emission of smoke in smoke control area in England**

Schedule 1A makes provision for financial penalties in relation to the emission of smoke in smoke control areas in England.”

- 3 After Schedule 1 insert—

##### “SCHEDULE 1A

#### PENALTY FOR EMISSION OF SMOKE IN SMOKE CONTROL AREA IN ENGLAND

##### **Key definitions**

- 1 In this Schedule—
  - “relevant chimney” means—
    - (a) a chimney of a building to which a smoke control order in England applies, or
    - (b) a chimney which serves the furnace of any fixed boiler or industrial plant to which a smoke control order in England applies;
  - “person liable”, in relation to a relevant chimney, means—
    - (a) if the chimney is the chimney of a building, the occupier of the building, or
    - (b) if the chimney serves the furnace of any fixed boiler or industrial plant, the person having possession of the boiler or plant.

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### **Notice of intent**

- 2 (1) This paragraph applies where a local authority is satisfied, on the balance of probabilities, that on a particular occasion smoke has been emitted from a relevant chimney within a smoke control area declared by that authority.
- (2) The local authority may give to the person liable a notice under this paragraph (a “notice of intent”).
- (3) A notice of intent must—
  - (a) inform the person that the local authority is satisfied as specified in sub-paragraph (1),
  - (b) specify the occasion referred to in sub-paragraph (1),
  - (c) inform the person that the local authority proposes to impose a financial penalty under this Schedule (including the proposed amount of the penalty), and
  - (d) give details regarding the person’s right to object to the imposition of a financial penalty.

### **Amount of penalty**

- 3 (1) The minimum amount of a financial penalty that may be imposed under this Schedule is £175.
- (2) The maximum amount of a financial penalty that may be imposed under this Schedule is £300.
- (3) The Secretary of State may by regulations amend sub-paragraph (1) or (2) so as to substitute a different amount for the amount specified there.
- (4) Regulations under sub-paragraph (3) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

### **Right to object to proposed financial penalty**

- 4 (1) A person to whom a notice of intent is given may, within the period of 28 days beginning with the day after that on which the notice was given—
  - (a) object in writing to the local authority on a ground specified in sub-paragraph (2), and
  - (b) provide evidence that supports the objection.
- (2) The grounds of objection referred to in sub-paragraph (1) are—
  - (a) that there was no emission of smoke from the chimney on the occasion specified in the notice of intent;
  - (b) that the chimney was not a chimney to which a smoke control order applied on the occasion specified in the notice of intent;
  - (c) that the person to whom the notice of intent was given was not a person liable in relation to the chimney on the occasion specified in the notice of intent;

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- (d) that there are other compelling reasons why the financial penalty should not be imposed.
- (3) Where a person objects on the ground specified in sub-paragraph (2) (c), the objection must include the name and address of the person who was the person liable on the occasion specified in the notice of intent (if known).
- (4) The Secretary of State may by regulations amend this paragraph so as to amend the grounds of objection listed in sub-paragraph (2).
- (5) Before making regulations under sub-paragraph (4) the Secretary of State must consult anyone that the Secretary of State considers may have an interest in the proposed regulations.
- (6) Regulations under sub-paragraph (4) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

#### **Decision regarding a final notice**

- 5 (1) Where a local authority in England has given a notice of intent to a person, the authority may impose a financial penalty on the person if the local authority so decides within—
  - (a) the period of 56 days beginning with the day on which an objection is made under paragraph 4, or
  - (b) if no such objection is made, the period of 56 days beginning with the day after the day on which the period mentioned in paragraph 4(1) ended.
- (2) If the local authority decides not to impose a financial penalty on a person, or does not decide to impose a financial penalty on the person within the period specified in sub-paragraph (1), the authority must give a notice to that person that informs the person that a financial penalty will not be imposed.

#### **Final notice**

- 6 (1) This paragraph applies where a local authority in England decides to impose a financial penalty on a person who was given a notice of intent.
- (2) The local authority may impose a financial penalty by a notice given to that person (a “final notice”).
- (3) A final notice must specify—
  - (a) the amount of the financial penalty,
  - (b) the reasons for imposing the penalty,
  - (c) information about how to pay the penalty,
  - (d) the period for payment of the penalty, and
  - (e) information about rights of appeal.
- (4) The final notice must require the financial penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

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### **Withdrawal or amendment of notices**

- 7 (1) A local authority may at any time—
- (a) withdraw a notice of intent or a final notice, or
  - (b) reduce the amount of the financial penalty specified in a final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice to the person to whom the notice of intent or final notice was given.

### **Appeals**

- 8 (1) A person on whom a financial penalty is imposed by a final notice may, within the period of 28 days beginning with the day after that on which the notice was given, appeal against the notice to the First-tier Tribunal.
- (2) The grounds for an appeal under this paragraph are that the decision to impose the financial penalty was—
- (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unreasonable.
- (3) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (4) On an appeal under this paragraph the First-tier Tribunal may—
- (a) quash the final notice,
  - (b) confirm the final notice,
  - (c) vary the final notice by reducing the amount of the financial penalty, or
  - (d) remit to the local authority the decision whether to—
    - (i) withdraw or confirm the final notice, or
    - (ii) vary the final notice by reducing the amount of the financial penalty.

### **Recovery of penalties**

- 9 A financial penalty is recoverable as a civil debt due to the local authority that imposed the penalty.

### **Delegation**

- 10 (1) A local authority may delegate to a person the exercise of any of the authority's functions under this Schedule.
- (2) A delegation under this paragraph must be made by giving notice to the person.

### **Notices**

- 11 (1) A notice under this Schedule must be in writing.

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- (2) A notice under this Schedule may be given to a person by—
- (a) handing it to the person,
  - (b) leaving it at the person’s address,
  - (c) sending it by post to the person at their address, or
  - (d) with the person’s consent, sending it to them electronically.

**Notices: vessels which are moored**

- 12 (1) This paragraph applies in relation to a vessel which is moored in a smoke control area in England and is subject to the operation of this Schedule (see section 44).
- (2) If the local authority is unable to give a notice of intent to the occupier of the vessel who is not the registered owner of the vessel, the local authority may give the notice to the registered owner of the vessel instead.
- (3) In such a case, the ground for objecting to the proposed financial penalty mentioned in paragraph 4(2)(c) does not apply.
- (4) Where a notice of intent is given to a person in respect of a vessel, that person may object under paragraph 4 on the further ground that, on the occasion specified in the notice, the emission of smoke was solely due to the use of the vessel’s engine to propel the vessel or to provide electric power to the vessel.”

4 After section 19A (as inserted by paragraph 2 above)—

**“19B Acquisition and sale of controlled solid fuel in England**

- (1) A person who acquires in England any controlled solid fuel for use in—
- (a) a building to which a smoke control order in England applies,
  - (b) a fireplace to which such an order applies, or
  - (c) a fixed boiler or industrial plant to which such an order applies,
- is guilty of an offence.
- (2) Where a smoke control order in England applies to a moored vessel (see section 44), subsection (1)(a) does not apply in relation to the acquisition of controlled solid fuel for use in the propulsion of the vessel or to provide electric power to the vessel.
- (3) Subsection (1)(b) does not apply where the fireplace was an approved fireplace at the time of the acquisition.
- (4) A person who—
- (a) offers controlled solid fuel for sale by retail in England where the fuel is to be taken away by a purchaser, and
  - (b) fails to take reasonable steps to notify potential purchasers that it is an offence to acquire that fuel for any of the uses mentioned in subsection (1),
- is guilty of an offence.

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- (5) A person who sells any controlled solid fuel by retail in England for delivery by that person, or on that person’s behalf, to—
- (a) a building to which a smoke control order in England applies, or
  - (b) premises in which there is any fixed boiler or industrial plant to which such an order applies,
- is guilty of an offence.
- (6) In proceedings for an offence under subsection (5) it is a defence for the person accused to prove that the person believed and had reasonable grounds for believing that—
- (a) the building referred to in subsection (5)(a) was not one to which the smoke control order in question applied, or
  - (b) the fuel was acquired for use in—
    - (i) a fireplace that was, at the time of the delivery, an approved fireplace, or
    - (ii) a boiler or plant to which the smoke control order did not apply.
- (7) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction to a fine.

### **19C Exemptions relating to particular areas in England**

- (1) The Secretary of State may, if it appears to the Secretary of State to be necessary or expedient to do so, by order suspend or relax the operation of—
- (a) Schedule 1A (penalty for emission of smoke), or
  - (b) section 19B(1), (4) or (5) (offences relating to acquisition and sale of fuel),
- in relation to the whole or part of a smoke control area in England.
- (2) Before making an order under subsection (1) the Secretary of State must consult the local authority that declared the smoke control area in question unless satisfied that, on account of urgency, such consultation is impracticable.
- (3) As soon as practicable after the making of such an order the local authority must take such steps as appear to them suitable for bringing the effect of the order to the notice of persons affected.

### **19D Interpretation: “approved fireplace” and “controlled solid fuel”**

- (1) In section 19B, “approved fireplace” means a fireplace of a type specified in a list published by the Secretary of State.
- (2) The Secretary of State may only specify a type of fireplace in the list if satisfied that such a fireplace can, if used in compliance with any conditions specified in the list, be used for burning controlled solid fuel without producing any smoke or a substantial quantity of smoke.

(3) In section 19B and this section, “controlled solid fuel” means any solid fuel other than an approved fuel.

(4) In subsection (3), “approved fuel” means a solid fuel specified in a list which has been published by the Secretary of State for the purposes of this section.”

5 After section 26 insert—

**“26A Duty of local authority to reimburse for adaptations of vessels in England**

(1) This section applies where—

- (a) a local authority in England makes a smoke control order,
- (b) as a result of the order a vessel will, when the order comes into operation, be within a smoke control area and subject to the operation of Schedule 1A,
- (c) the owner or occupier of the vessel has a right to moor the vessel at a single mooring place within that area for the period which—
  - (i) begins on the day on which the smoke control order is made, and
  - (ii) ends six months after it comes into operation, and
- (d) the owner or occupier does not have access to a mains electricity or gas supply at the mooring place.

(2) If—

- (a) before the coming into operation of the order, the owner or occupier incurs expenditure on adaptations to or in connection with the vessel to avoid the imposition of a penalty under Schedule 1A,
- (b) the expenditure is incurred with the approval of the local authority given for the purpose of this section, and
- (c) the adaptations are completed to the satisfaction of the local authority,

the authority must pay to the owner or occupier of the vessel 70% of the expenditure.

(3) That amount must be paid in equal instalments every month for a period of six months.

(4) But the duty to pay instalments under this section ceases if, at any time after the coming into operation of the smoke control order—

- (a) the owner or occupier of the vessel ceases to have the right to moor the vessel at the single mooring place mentioned in subsection (1) (c), or
- (b) the vessel is absent from the smoke control area for a period of, or periods together totalling, three months.”

6 After section 28 insert—

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**“28A Guidance for local authorities in England**

A local authority in England must have regard to any guidance published by the Secretary of State about the exercise of the authority’s functions under this Part.”

7 In section 44 (vessels), after subsection (2) insert—

“(2A) A smoke control order made under section 18 by a local authority in England may provide for vessels which are moored in the smoke control area to be subject to the operation of Schedule 1A.

(2B) For the purposes of a smoke control order which so provides—

- (a) any reference in Part 3 and in section 54 to a building is to be read with any necessary modifications as a reference to such a vessel, but
- (b) references in sections 24 and 25 to dwellings do not include such vessels.

(2C) In subsection (2A) the reference to vessels which are moored includes a vessel which is unmoored but which is stationary at a mooring place in circumstances where it might reasonably be moored.”

8 In section 56 (rights of entry and inspection etc), for subsection (2) substitute—

“(2) Subsection (1) does not apply in relation to a private dwelling except in relation to—

- (a) a private dwelling in relation to which adaptations are required under section 24(1), or
- (b) a private dwelling that is a vessel in relation to which there is a duty to make payments under section 26A(3).”