

## Appendix 2 – Relevant Legislation and Enforcement

### Relevant Legislation

- Environmental Protection SCA legislation is the Clean Air Act 1993, with the Environment Act 2021
- Environmental Protection Act 1990, Statutory Nuisance applies throughout England
- Environment Act 1995, duty to assess and improve local air quality applies throughout England
- The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 applies throughout England

### Smoke Control Area – Enforcement of relevant regulations

Trading Standards have responsibility for the enforcement of The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020. The regulations set out the requirements for the supply of :

- Under 2 cubic square metres of wood
- Wood supplied in an amount above 2 cubic square metres
- Manufactured solid fuel
- Bituminous coal, otherwise known as Traditional House Coal with a higher sulphur content that emits SO<sub>2</sub> and contributes to acid rain when burned

These regulations apply to the whole of England not just Smoke Control Areas.

Since the introduction of the regulations, officers have received one complaint regarding the sale of wood without the correct certification. An advice letter was sent; however the business is not currently trading so no further enforcement action was required.

Open source research on the internet and also Facebook Marketplace and Gumtree have not identified any further wood or solid fuel sellers based in the Brighton & Hove area.

There are no lists of sellers of these solid fuels, so to visit every potential premises that may sell them would be extremely resource intensive. Therefore as Trading Standards Officers carry out routine inspections at a range of business premises, they have been advised to look out for the sale of any solid fuels to ensure compliance with the regulations.

Open source research of suppliers of appliances since 2023 in Brighton and Hove has identified that all the businesses are selling only Defra approved appliances, otherwise known as exempt appliances allowed to be sold for use in a SCA, if used with the correct fuel. It is an offence to produce smoke from a chimney in an SCA. Exempt appliances and fuels reduce this risk, compared to open fireplaces and old stoves (fed with solid fuels including wood).

Additionally, under the Clean Air Act 1993 it is also a requirement that any business which sells controlled solid fuel needs to take reasonable steps to notify potential purchasers it is an offence to acquire the fuel for use in a Smoke Control Area.

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Whilst Trading Standards Officers are not authorised to enforce this Act, information gathered as part of routine inspections will be passed to Environmental Health for actioning.

### Enforcement

All enforcement activity taken by both Trading Standards and Environmental Health has to be considered in line with the [Safer Communities Enforcement Policy](#). The policy is in place to ensure that we help businesses and others to comply with the law, and that enforcement carried out is targeted, proportionate and risk based.

There is a hierarchy of enforcement and the first step unless immediate action is necessary and proportionate will be to provide advice and then a warning to businesses or residents. The different pieces of legislation in relation to this area of law provide for different outcomes including financial penalties, abatement notices and prosecution. However, these will be a last resort.

### Environmental Protection Team enforcement options.

In the past five years, five hundred complaints were received by the council related to bonfires and twelve due to smoke from a building chimney (2.4%). As with other local authorities, there were more complaints for bonfires around the time of Covid-19 stay at home directions in 2020 and 2021. Council messaging at the time related to thinking twice about domestic burning indoors and outdoors.

[Please think twice about fires - indoors or outdoors! \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk)

The Environmental Protection Team has a duty under the Environmental Protection Act 1990 Statutory Nuisance provisions to inspect its area from time to time for nuisances which includes smoke nuisance. As set out above, the data demonstrates that the majority of smoke complaints relate to bonfires and a small number relate to chimney smoke.

The authorised officers are aware that within the historically designated Smoke Control Areas (within Brighton only), that there is also an enforcement option under the Environment Act 2021, amendment of the Clean Air Act 1993:-

### **s.73 Smoke control areas: amendments of the Clean Air Act 1993**

Schedule 12 makes provision—

(a) for imposing financial penalties for the emission of smoke in smoke control areas in England,

As well as (b) about offences relating to the sale and acquisition of solid fuel in England, as discussed above.

When assessing a smoke from chimney complaint the authorised officers are aware that they have these alternative powers in those specific areas. So far fixed penalty notices have not been served under the 2021 Act as in the majority of cases there

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can be an informal resolution by advice and negotiation as per the regulatory continuum and the Enforcement Policy.

It is unclear whether there is a geographically specific issue with air quality from particulates in the existing historically designated SCAs or elsewhere in the city, but the roll-out of monitoring stations and sensors will shed further light on the matter, as explained in the main report. This is being progressed by the Air Quality specialist within the Transport Team. More than ten of these monitors are not near roads. Smoke emissions from fires and other non-continuous sources will influence monitoring results whether a sensor is located near a road or not.

Currently the BHCC wide duty and powers available under the Environmental Protection Act 1990 smoke nuisance provisions are equitable.

