



## BRIEFING PAPER

Number CBP 8804, 25 February 2020

# Local Government Air Quality Responsibilities

By Alex Adcock and  
Louise Smith

### Contents:

1. Local Air Quality Management (LAQM) regime
2. Actions to improve air quality
3. Proposals for change



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Local Air Quality Management (LAQM) regime</b>	<b>4</b>
1.1 National Air Quality Strategy 2007	4
Local authorities in England	4
Devolved administrations	6
1.2 Air quality legislation: standards and targets	6
Air Quality Directive and regulations	6
Environment Act 1995	7
Environment (Northern Ireland) Order 2002 Part III	7
1.3 The LAQM process	8
Annual Status Reports (ASRs) Annual Progress Reports (APRs)	8
Reporting in Northern Ireland	9
Air Quality Management Areas (AQMAs)	10
Air Quality Action Plans	10
Enforcement of local authority obligations	12
Case study: Birmingham City Council	12
<b>2. Actions to improve air quality</b>	<b>14</b>
2.1 Clean Air Zone Framework (England)	14
Charging zones	15
Low emission zones (Scotland)	16
Clean Air Zone Framework for Wales	17
2.2 Smoke Control Area Framework	17
Powers to require creation or suspension of smoke control areas	17
2.3 Statutory nuisance powers	18
Exemptions from statutory nuisance	18
Enforcement	19
2.4 Planning	19
Planning conditions	20
2.5 Government funding for local authorities to improve air quality (England)	20
<b>3. Proposals for change</b>	<b>22</b>
3.1 Consultations on domestic fuel burning	22
3.2 Clean Air Strategy 2019	23
3.3 Environment Bill 2019-20	24
Local Air Quality Management (LAQM)	24
Smoke control areas	25
Statutory nuisance for smoke emissions from private dwellings	26

Contributing Authors: Gabrielle Garton Grimwood

## Summary

This briefing paper summarises the responsibilities that local authorities have for local air quality.

Responsibility for meeting air quality targets is devolved to the national administrations in Scotland, Wales and Northern Ireland. As such this briefing focuses predominantly on the situation in England. The main legislative provisions, policy and guidance in the devolved nations are also provided.

The [Environment Act 1995](#) (as amended) requires the UK Government and the devolved administrations for Scotland and Wales to produce a national air quality strategy containing standards, objectives and measures for improving ambient air quality and to keep these policies under review. The [Environment \(Northern Ireland\) Order 2002](#) makes corresponding requirements for Northern Ireland. The latest version of the strategy is the 2007 [Air Quality Strategy for England, Scotland, Wales and Northern Ireland](#).

In addition to this, the EU "Air Quality Directive" ([EU Directive 2008/50/EC](#)) on ambient air quality and cleaner air for Europe sets legally binding standards for ambient air quality (the condition of the air in the outdoor environment). The Directive is implemented in the UK through regulations for each country.

The local air quality management (LAQM) regime requires every district and unitary authority to regularly review and assess air quality in their area. These reviews identify whether national objectives have been, or will be, achieved at relevant locations, by an applicable date.

In general, local authorities are required to produce annual reviews of air quality in their areas. If standards are not being met authorities must designate geographically defined air quality management areas. They must then produce action plans to improve or safeguard air quality within those areas.

In England, local authority obligations may be enforced by the Secretary of State, and in Greater London by the Mayor of London. In Wales enforcement rests with Welsh Ministers. In Scotland obligations may be enforced by the Scottish Environment Protection Agency (SEPA) (acting with the approval of the Secretary of State), and in Northern Ireland by the Department of Agriculture, Environment and Rural Affairs (DAERA).

Local authorities use various means to achieve air quality standards, such as traffic and parking management, road design and planning, vehicle regulation, introducing Clean Air Zones, establishing Smoke Control Areas, enforcing statutory nuisance powers and regulating planning.

The Government has published and consulted on various proposals aimed at improving local air quality management. Some of these were included in the Environment Bill 2019 which fell at Dissolution. A new *Environment Bill* (Bill 9, 2019-20) was introduced on 30 January 2020 containing measures to clarify duties and enable greater cooperation under the Local Air Quality Management Framework, make smoke emissions in Smoke Control Areas in England subject to civil penalty notices (fines) rather than prosecution as criminal offences, and redefine smoke from private dwellings in smoke control areas in England as a statutory nuisance.

# 1. Local Air Quality Management (LAQM) regime

The local air quality management (LAQM) regime is the statutory process by which local authorities monitor, assess and act to improve local air quality. These reviews identify whether national objectives have been, or will be, achieved at relevant locations, by an applicable date. This section sets out the legislative provisions and requirements for local authorities.

## 1.1 National Air Quality Strategy 2007

The [Environment Act 1995](#) (as amended) requires the UK Government and the devolved administrations for Scotland and Wales to produce a national air quality strategy containing standards, objectives and measures for improving ambient air quality and to keep these policies under review. Similar requirements apply in Northern Ireland (see sections 1.2 and 1.3).

The latest version of the strategy is the 2007 [Air Quality Strategy for England, Scotland, Wales and Northern Ireland](#).

The National Air Quality Strategy (NAQS) is intended to improve air quality in the UK to benefit public health and quality of life and to help protect the environment.<sup>1</sup>

Under the strategy, “the UK Government’s and devolved administrations’ primary objective is to ensure that all citizens should have access to outdoor air without significant risk to their health, where this is economically and technically feasible.”<sup>2</sup> Section 82 of the *Environment Act 1995* requires local authorities to review air quality in their respective areas and assess whether the air quality standards specified in the NAQS are being achieved.

### Local authorities in England

Local authorities have specific air quality duties. In England (outside of London), required actions on air quality are set out in Department for Environment, Food and Rural Affairs (Defra) guidance.<sup>3</sup> Actions required of London borough authorities are set out in guidance from the Mayor of London.<sup>4</sup> The statutory framework for all these requirements is provided by part IV of the *Environment Act 1995*.

---

<sup>1</sup> Department for Environment, Food and Rural Affairs, [The Air Quality Strategy for England, Scotland, Wales and Northern Ireland \(Volume 1\)](#), 2007, Executive Summary.

<sup>2</sup> Ibid para 15

<sup>3</sup> Defra, [Local Air Quality Management Policy Guidance, Policy Guidance \(PG16\)](#), April 2016

<sup>4</sup> Mayor of London, [London Local Air Quality Management](#), Policy Guidance 2019 (LLAQM.PG (19)).

### **District and County Councils (Two-Tier Authorities)**

Both district and county councils have statutory responsibilities for air quality and are required to cooperate in reviewing and deciding measures.

District councils are required to:<sup>5</sup>

- review air quality in their areas and set out their findings in an Annual Status Report (ASR); and
- designate an Air Quality Management Area (AQMA) where air quality objectives are not being achieved, or are not likely to be achieved; and if this is the case
- prepare an Action Plan that sets out how they will achieve the air quality standards or objectives for the area that it covers;
- take account of any recommendations from their county council in reviewing their areas and consult their county council on action plans;
- consult on their Action Plans and make them freely available for public inspection.

Where a district council is preparing an Action Plan, county councils are required to submit measures related to their functions (i.e. local transport, highways and public health) to help meet air quality objectives in their local area.<sup>6</sup>

Any disagreements between district and county councils over action plan proposals can be referred by either council to the Secretary of State for Environment, Food and Rural Affairs to decide.<sup>7</sup>

### **Unitary authorities**

Unitary authorities are responsible for all assessment and reporting for their areas, and action plans must include all the functions for which they have powers or responsibilities.<sup>8</sup>

### **Greater London**

Air quality in the capital is devolved to the Mayor of London, who has a supervisory role, with powers to intervene and direct local authorities in Greater London under Part IV of the *Environment Act 1995*. The Mayor of London has produced further guidance, the [London Local Air Quality Management, Policy Guidance 2019](#). In summary London's 32 boroughs (and the City of London) are required to:<sup>9</sup>

- monitor and assess air pollution in their areas and notify the Greater London Authority (GLA) air quality team of any addition or changes to their monitoring process;

---

<sup>5</sup> Defra, [Local Air Quality Management Policy Guidance](#), Policy Guidance (PG16) April 2016, paras 3.3-3.7

<sup>6</sup> Ibid para 3.9

<sup>7</sup> Ibid para 3.4

<sup>8</sup> Ibid para 3.16

<sup>9</sup> Mayor of London, [London Local Air Quality Management \(LLAQM\) Policy Guidance 2019](#) (LLAQM.PG (19)) para 2.12

## 6 Local Government Air Quality Responsibilities

- submit an ASR to the GLA and where necessary ensure an AQMA is declared;
- ensure that a current and relevant Air Quality Action Plan is in place for all AQMAs. The Action Plan should be updated every five years at a minimum, and progress against this should be reported every year in the ASR.

The Mayor's Office will support boroughs with bespoke emissions maps and data, compilation of ASRs and planned action by boroughs, and a Cleaner Air Borough rating system.<sup>10</sup>

### Devolved administrations

Air quality is a devolved policy area: Scotland, Northern Ireland, and Wales lead on policy within their own nations.

Local authorities' statutory responsibilities for, and guidance on, reviewing and reporting on their areas, designating AQMAs and creating action plans, are set out in the following guidance:

- Scottish Government, [Local air quality management for Scotland: policy guidance](#) (March 2016).
- Welsh Government, [Local air quality management in Wales Policy guidance](#) (June 2017).
- (Northern Ireland) [Local Air Quality Management Policy Guidance – LAQM PGNI \(09\)](#), (June 2010).

## 1.2 Air quality legislation: standards and targets

"The air quality objectives in the Air Quality Strategy are a statement of policy intentions or policy targets. As such, there is no legal requirement to meet these objectives except in as far as these mirror any equivalent legally binding limit values in EU legislation."<sup>11</sup>

### Air Quality Directive and regulations

[EU Directive 2008/50/EC](#), the "Air Quality Directive" on ambient air quality and cleaner air for Europe sets legally binding standards for ambient air quality (the condition of the air in the outdoor environment). Instead of setting a ceiling for pollutants, it sets limit values for concentrations of them.

The Air Quality Directive is implemented in the UK through the following regulations, as amended, which contain air quality objectives to be attained by the end of a specified 'relevant period' for specified pollutant levels:

- [Air Quality Standards Regulations 2010](#);
- [Air Quality Standards \(Wales\) Regulations 2010](#);
- [Air Quality Standards \(Scotland\) Regulations 2010](#);

---

<sup>10</sup> Ibid para 2.13

<sup>11</sup> HM Government, [The Air Quality Strategy for England, Scotland, Wales and Northern Ireland \(volume 1\)](#), July 2007, para 22.

- [\*Air Quality Standards Regulations \(Northern Ireland\) 2010\*](#).

### Box 1: LAQM pollutant objectives

A Defra table, [National air quality objectives and European Directive limit and target values for the protection of human health](#), sets out ambient air quality standards for each pollutant along with the date by which it should be achieved and maintained.

The “core pollutants” targeted by the LAQM process are Nitrogen Dioxide (NO<sub>2</sub>), Particulate Matter (PM<sub>10</sub>) and Sulphur Dioxide (SO<sub>2</sub>). Local authorities in England also have a role in working towards reducing emissions and concentrations of fine Particulate Matter (PM<sub>2.5</sub>). Defra [technical guidance](#) sets out specific local authority responsibilities under the LAQM for these pollutants and others.<sup>12</sup>

## Environment Act 1995

For England, Scotland and Wales, [Part IV of the \*Environment Act 1995\*](#) requires (among other things):

- the UK Government and the devolved administrations for Scotland and Wales to produce a national air quality strategy containing standards, objectives and measures for improving ambient air quality and to keep these policies under review;<sup>13</sup>
- every local authority to review the air quality within its area, both at the present time and the likely future air quality;<sup>14</sup>
- local authorities to designate an Air Quality Management Area (AQMA) where air quality objectives are not being achieved, or are not likely to be achieved, as set out in the *Air Quality (England) Regulations 2000*;<sup>15</sup>
- local authorities to develop an Action Plan detailing remedial measures to tackle the problem within the AQMA once the area has been designated.<sup>16</sup>

In addition, Section 85 gives the relevant authority (Secretary of State, Mayor of London or SEPA) power to require a local authority to again review its area, designate an AQMA or create another action plan, if objectives have not been, or are unlikely, to be met, or if procedures have been lacking or inappropriate to the circumstances.<sup>17</sup>

## Environment (Northern Ireland) Order 2002 Part III

Local authorities in Northern Ireland are bound by part III of the [Environment \(Northern Ireland\) Order 2002](#) the provisions of which are “mainly based on those contained in Part IV of the *Environment Act 1995* which covers England, Scotland and Wales.”<sup>18</sup>

<sup>12</sup> Defra, [Local Air Quality Management Technical Guidance \(TG16\)](#), February 2018, Table 1.1.

<sup>13</sup> [Section 80](#), *Environment Act 1995*

<sup>14</sup> *Ibid* section 82

<sup>15</sup> *Ibid* section 83

<sup>16</sup> *Ibid* section 84

<sup>17</sup> *Ibid* section 85

<sup>18</sup> [Explanatory Memorandum to Environment \(Northern Ireland\) Order 2002](#)

### 1.3 The LAQM process

The legislation set out above provides the basis for local authorities' obligations to monitor and report on air quality in their areas and take appropriate action. In summary, the process works as follows:<sup>19</sup>

- Local authorities are required to submit an Annual Status Report (or an Annual Progress Report in Scotland and Wales) to the Secretary of State reporting progress in achieving reductions in concentrations of emissions relating to relevant pollutants below air quality objective levels, and identifying new or changing sources of emissions.
- The Secretary of State (Defra) will provide comments back in a timely manner and to which the local authorities are expected to have regard.
- If an authority identifies a risk that an air quality objective is or will be exceeded at a relevant location the local authority is required to move to declaring an Air Quality Management Area (AQMA). Any additional evidence gathered should be proportionate and ideally take no longer than four months.
- Once an AQMA has been designated, an Action Plan should ideally be prepared within 12 months following the date of designation. Progress on the Action Plan should be included in the annual report.

### Annual Status Reports (ASRs) Annual Progress Reports (APRs)

As mentioned above, local authorities are required to provide Annual Status Reports in England and similar Annual Progress Reports in Scotland and Wales. The required elements of these reports are set out in Defra guidance. In summary they include:<sup>20</sup>

- a description of the LAQM process and the relevant air quality objectives;
- an overview of local air quality, a summary of monitoring data from the previous five years and a comparison of the latest data with Air Quality Strategy objectives;
- planned actions including descriptions of currently declared AQMAs and pollutant and air quality objectives and links to Defra's [AQMA website](#);
- assessments of the progress and impact of completed, on-going, and planned Action Plan measures, and expected benefits to air quality;<sup>21</sup>

---

<sup>19</sup> Defra, [Local Air Quality Management Policy Guidance \(PG16\)](#) April 2016, paras 2.5 to 2.9

<sup>20</sup> Defra, [Local Air Quality Management Technical Guidance \(TG16\)](#), February 2018, para 3.07

<sup>21</sup> Ibid para 3.15



- any other strategy or policy likely to have a beneficial impact on air quality;<sup>22</sup> and
- details of any new developments or approved planning applications that may affect air quality.

Local authorities are encouraged to consult on ASRs and have full public consultations if they deem it appropriate and make all reports and decisions easily available to the public.<sup>23</sup>

## Reporting in Northern Ireland

The Defra guidance also sets out reporting requirements for authorities in Northern Ireland.

Rather than ASRs/APRs, local authorities in Northern Ireland are required to produce Updating and Screening Assessments every three years, and Progress reports in the intervening years. They must produce Detailed Assessments where indicated necessary by the Updating and Screening Assessments.<sup>24</sup>

### Updating and Screening Assessments

Updating and Screening Assessments are intended to identify changes that have occurred since the previous round of review and assessment, and focus on:<sup>25</sup>

- new sources of pollutants (new roads, industrial installations, etc); and
- existing sources that have changed significantly (changed traffic flows, changed industrial installations, etc) or were not previously considered relevant.

### Detailed Assessments

Detailed Assessments must be produced where the Updating and Screening Assessment has indicated that there is a risk of the air quality objectives not being achieved.

A Detailed Assessment is also required in circumstances where an authority proposes to revoke or otherwise amend an existing AQMA.<sup>26</sup>

The aim of the Detailed Assessment is to determine the likelihood of the objectives not being achieved and, where necessary, establish the magnitude and geographical extent of any exceedance.<sup>27</sup>

### Progress Reports

Progress Reports should contain:<sup>28</sup>

---

<sup>22</sup> Ibid para 3.17

<sup>23</sup> Defra, [Local Air Quality Management Policy Guidance, Policy Guidance \(PG16\)](#), April 2016, para 6.4

<sup>24</sup> Defra, [Local Air Quality Management Technical Guidance \(TG16\)](#), February 2018, Table 1.2

<sup>25</sup> Ibid para 5.09

<sup>26</sup> Ibid para 6.02

<sup>27</sup> Ibid para 6.03

<sup>28</sup> Ibid para 4.10

## 10 Local Government Air Quality Responsibilities

- New monitoring results;
- New local developments that might affect local air quality;
- Updates on current/planned/revoked AQMAs; and
- Progress on Action Plans.

### Air Quality Management Areas (AQMAs)

Where air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, local authorities are required to designate air quality management areas (AQMAs) (under section 83 of the *Environment Act 1995* and for Northern Ireland, the *Northern Ireland: Environment (Northern Ireland) Order 2002* Part III).

AQMAs are declared through Orders made by the relevant local authority. Defra guidance sets out that the Order should include:<sup>29</sup>

- the date on which the Order came (or will come) into force;
- a list of the pollutants to which it relates and the relevant objective exceedance;
- a map showing the area to be designated; and
- a description of the area; areas can cover single streets or road networks, a junction, roundabout or even a single dwelling. In many urban and built-up areas, especially where trans-boundary pollution is an issue, the authority may decide to designate the entire borough as an AQMA.

Orders should be accessible to members of the public and enquirers; and be lodged with Defra.<sup>30</sup>

### Revoking or amending an AQMA

Local authorities can revoke or amend AQMAs following a review.

Where an Order is revised, a copy of the revocation or amendment Order should be submitted to Defra and other statutory consultees and made publicly available to ensure the public and local businesses are aware of the situation. It is expected that the local authority will take the relevant action imposed by the Order within four months following receipt of comments from Defra.<sup>31</sup>

### Air Quality Action Plans

Where an AQMA is designated, local authorities are required to produce an Air Quality Action Plan (AQAP) describing the pollution reduction measures it will put in place.<sup>32</sup> Where a Local Authority has designated multiple AQMAs in its area, particularly if these are related to a similar

---

<sup>29</sup> Defra, [Local Air Quality Management Policy Guidance, Policy Guidance \(PG16\)](#), April 2016, para 4.4

<sup>30</sup> Defra, [Local Air Quality Management Policy Guidance, Policy Guidance \(PG16\)](#), April 2016, para 4.5

<sup>31</sup> Defra, [Local Air Quality Management Policy Guidance, Policy Guidance \(PG16\)](#), April 2016, para 4.10

<sup>32</sup> [Section 84\(2\)](#) of the *Environment Act 1995*.

emissions source, it is advised that a single AQAP should be submitted, but this should clearly address each individual AQMA in the area.<sup>33</sup>

### **Contents of an AQAP**

AQAPs are required to develop measures to reduce emissions sufficiently to achieve the air quality objectives within specified timescales; and should be continually reviewed and developed, to ensure progress of current measures and the introduction of new measures. Defra policy guidance sets out the required elements of a plan (the guidance does not specify specific measures to be used to improve air quality):<sup>34</sup>

- Quantification of the source contributions (e.g. HGVs, buses, taxis etc.) responsible for the exceedance of the relevant objective;
- Quantification of the impacts of the proposed measures – including, where feasible, data on emissions and concentrations (either locally obtained and/or via national monitoring/modelling statistics);
- Clear timescales, including milestones and expected outcomes which the authority and other delivery partners propose to implement the measures within the Action Plan; and
- How the local authority, including transport, planning and health departments, and other external delivery partners, will take ownership of the problem and in what capacity they will work together to implement the AQAP.

### **Timescale for preparing a plan**

Plans should be prepared, “ideally” within 12 months of an AQMA being declared, or 12 to 18 months in Northern Ireland.<sup>35</sup>

### **Examples of action plans**

Defra has published examples of project reports submitted as part of the Air Quality Grant Programme (see section 2.5 of this paper on Government funding of local authorities to improve air quality). The examples include:<sup>36</sup>

- Low Emission Zones (LEZ) and Low Emission Strategies (LES)
  - Oxford City Council
  - York Council
- Greener Transport (non - LEZ)
  - Chichester District Council
  - Gedling Borough Council
  - London Borough of Merton

---

<sup>33</sup> Defra, [Local Air Quality Management Technical Guidance \(TG16\)](#), February 2018, para 2.03

<sup>34</sup> Defra, [Local Air Quality Management Policy Guidance, Policy Guidance \(PG16\)](#), para 5.2

<sup>35</sup> Defra, [Local Air Quality Management Technical Guidance \(TG16\)](#), February 2018, para 2.02.

<sup>36</sup> Defra, [Examples of Air Quality Action Plan Measures](#) June 2013

## 12 Local Government Air Quality Responsibilities

- Communication Projects
  - Brighton & Hove City Council
  - Colchester Borough Council
  - Corporation of London
  - London Borough of Camden
  - South Lakeland District Council

### Enforcement of local authority obligations

Under section 85 of the *Environment Act 1995* the Secretary of State (with functions transferred to Welsh Ministers in Wales), the Scottish Environment Protection Agency (SEPA) (acting with the approval of the Secretary of State), and the Mayor of London (for Greater London only) can:<sup>37</sup>

- Review the air quality of a local authority's area and assess whether air quality standards are being achieved.
- Give directions to the local authority if it is not meeting air quality standards, if it is failing to discharge its duties under the LAQM system, or if its actions under LAQM are inappropriate.

Directions made by the Secretary of State, or the Mayor of London can require a local authority to:<sup>38</sup>

- Carry out an air quality review under section 82.
- Designate or modify or revoke a designation of an area as an AQMA under section 83.
- Prepare or modify an action plan under section 84.
- Implement the measures in an action plan.

Similar powers are available to the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under article 14 of the *Environment (Northern Ireland) Order 2002*.

### Case study: Birmingham City Council

The case study in Box 2 below illustrates how the LAQM process has worked in practice.

---

<sup>37</sup> [Section 85 \(2\),\(3\), Environment Act 1995.](#)

<sup>38</sup> [Section 85 \(4\), Environment Act 1995.](#)

## Box 2: Case study on air quality: Birmingham City Council

The whole of Birmingham City Council area has been designated an **Air Quality Management Area** (AQMA) under the Environment Act 1995. This means that the council has a duty to monitor and report on levels of nitrogen dioxide (NO<sub>2</sub>), particulates (PM<sub>10</sub> and PM<sub>2.5</sub>) and sulphur dioxide (SO<sub>2</sub>). Where those limits are breached or will be breached, it will produce an Air Quality Action Plan to bring the air quality under the limits.

The Council states that according to [Defra modelling](#), the concentration of nitrogen dioxide in Birmingham's air is up to 50% higher than it should be. If no action is taken, it is not expected to reach the legal limit until 2027.

### Air Quality Annual Status Reports

The City Council has produced a number of Air Quality Annual Status Reports. These are available on the [Birmingham City Council website](#). Examples of some of the practical measures taken, as shown in the latest report include:

- increasing the number of park and ride schemes;
- providing charging infrastructure to encourage the take up of electric vehicles; and
- improving the bus fleet under the Statutory Bus Quality Partnership.

### Air Quality Action Plan

The council last produced an Air Quality Action Plan in 2011. According to the [latest annual status report](#), this was under review.

### Clean Air Strategy Consultation

The Council consulted on a Clean Air Strategy. It sets out a series of high-level pledges as to how the council and others in the city can "support the journey towards cleaner air." Consultation on the Clean Air Strategy closed on 26 April 2019.

### Clean Air Zone

In December 2017 the Government issued Environment Act 1995 [Air Quality Direction](#) for Birmingham City Council (among others) to consider whether a Clean Air Zone would deliver compliance in its area with the legal limit value for nitrogen dioxide in the shortest possible time. As a result of this the council undertook a [number of reports, consultation, appraisals and feasibility studies examining a clean air zone](#). These are available from the council website.

The council has decided to proceed with a charging Clean Air Zone. Its [website](#) states that "It is expected that Birmingham's Clean Air Zone will come into operation on 1 July 2020." Further information about the scheme, the level of charges and area covered is available online.

The Council published a [draft Birmingham Transport Plan](#) which includes, "Reallocating road space. Moving away from single occupancy private cars to support the delivery of a public transport system fit for a global city, fundamentally changing the way that people and goods move about the city." The publication prompted several reports (\*) that private cars would be banned from driving through the City centre.

(\*For example: [Birmingham cars could be banned from driving through city centre](#), BBC News, 13 January 2020)

### Smoke Control Area

Birmingham City Council area was designated as a [Smoke Control Area](#) in 1995 to improve air quality. As a result of this, residents are only allowed to burn authorised fuels in an open fireplace or in an exempt appliance. Burning coal is not permitted in Birmingham.

## 2. Actions to improve air quality

Local authorities employ a wide variety of measures to improve (or prevent deterioration in) air quality, which are presented in their Air Quality Action Plans; these can include traffic and parking management, road design and planning, vehicle regulation, and encouragement of sustainable transport methods, among many others.<sup>39</sup> Examples of some of the measures are set out in this section.

Local authorities may also apply for central government funding to improve air quality; information is provided at the end of this section.

### 2.1 Clean Air Zone Framework (England)

Clean Air Zones (CAZs), or Low Emission Zones (LEZs) as they are also referred to, are local authority-designated areas with policies designed to reduce pollution and particularly vehicle emissions. They are areas where only the cleanest vehicles are encouraged to operate, to improve air quality.

The Government set out principles for Clean Air Zones in [Air quality: clean air zone framework for England](#) (May 2017). CAZs are intended to achieve the following outcomes:<sup>40</sup>

- supporting local growth and ambition (decoupling growth and pollution).
- accelerating the transition to a low emission economy.
- immediate action to improve air quality and health.

The framework document sets out some of the measures that authorities may employ. As a minimum requirement CAZs are expected to:<sup>41</sup>

- be in response to a clearly defined air quality problem, seek to address and continually improve it, and ensure this is understood locally;
- have signs in place along major access routes to clearly delineate the zone;
- be identified in local strategies including (but not limited to) local land use plans and policies and local transport plans at the earliest opportunity to ensure consistency with local ambition;
- provide active support for ultra low emission vehicle (ULEV)<sup>2</sup> take up through facilitating their use;
- include a programme of awareness raising and data sharing;

---

<sup>39</sup> Further examples of local government measures to improve air quality can be found in Defra's [Air Quality A Briefing for Directors of Public Health](#), March 2017.

<sup>40</sup> Defra, DoT, [Clean Air Zone Framework Principles for setting up Clean Air Zones in England](#), May 2017, para 17.

<sup>41</sup> Ibid para 27.

- include local authorities taking a lead in terms of their own and contractor vehicle operations and procurement in line with this framework;
- ensure bus, taxi and private hire vehicle emission standards (where they do not already) are improved to meet Clean Air Zone standards using licensing, franchising or partnership approaches as appropriate; and
- support healthy, active travel.

### **Box 3: Councils required to undertake a feasibility study for establishing Clean Air Zones**

A series of air quality directions made by the Government have required local authorities with concentrations of NO<sub>2</sub> forecast to exceed legal limits, to consider whether establishment of clean air zone would deliver a way to meet air quality targets in the shortest possible time. Initially these cities were Birmingham, Leeds, Nottingham, Derby and Southampton.<sup>42</sup>

Further councils across England were required to consider the establishment of clean air zones as a way of meeting air quality targets in the shortest possible time through the issue of [Environment Act 1995 air quality directions](#). Among them were:

- [Basildon Borough Council and Essex County Council](#)
- [Bristol City Council](#)
- [Coventry City Council](#)
- [Greater Manchester Councils](#)
- [Sheffield City Council and Rotherham Metropolitan Borough Council](#)

Not all cities subject to a direction will necessarily need to establish a Clean Air Zone. Nottingham, for example, has demonstrated to the Government that a Clean Air Zone would not be required as modelling suggested measures including bus retrofits and stricter requirements for taxi drivers would bring the city into compliance with NO<sub>2</sub> limits in a shorter timeframe.<sup>43</sup>

Background information on the development of Government air quality directions can be found in Section 4 of the Library briefing paper, [Brexit and Air Quality](#) (May 2019).

## **Charging zones**

Clean Air Zones may be 'charging' or 'non-charging'. In addition to the measures listed above, vehicle owners in charging zones are required to pay a fee to enter, or move within, a zone if they are driving a vehicle that does not meet the particular prescribed emissions standard.

Charging Clean Air Zones are sub-divided into classes on the basis of the types of vehicles to which the charging schemes may apply; detailed descriptions of these categories and any exemptions are set out in the Framework document.<sup>44</sup>

<sup>42</sup> Defra, DoT, [Air quality plan for nitrogen dioxide \(NO<sub>2</sub>\) in UK](#) (2017) Documents setting out the UK's plan for reducing roadside nitrogen dioxide concentrations (July 2017).

<sup>43</sup> AirQualityNews.com, [Ministers approve Nottingham's clean air plan](#), 22 November 2018

<sup>44</sup> Defra, DoT, [Clean Air Zone Framework Principles for setting up Clean Air Zones in England](#), May 2017, Annex A and Ch 3.3 and 3.9

### Existing charging schemes

CAZs are specifically intended to address local air quality issues. There are also *congestion* charging schemes in London and Durham.<sup>45</sup>

The congestion charging scheme in London covers the same area as the Ultra Low Emission Zone (ULEZ) in London (London's CAZ).<sup>46</sup> There are separate and additional charges for polluting vehicles under the ULEZ and they apply at any time. Over the past decade, successive mayors of London have continued to strengthen the emissions requirements for vehicles entering the zone.

#### Box 4: Planned clean air charging zones

Two of the councils (Birmingham and Leeds) directed to implement CAZs (Box 3) had planned to launch charging schemes in January 2020. However, these plans have been delayed: further details of the charging criteria and the reason for the delay are provided on the Leeds Council website<sup>47</sup> and the Birmingham City Council website.<sup>48</sup>

In addition, the following councils have plans for charging zones:

- Bath Council plans to charge most higher-emission vehicles to drive in the city centre from late 2020.<sup>49</sup>
- Sheffield Council has plans to introduce a Clean Air Zone in early 2021.<sup>50</sup>
- Manchester councils have proposed a Clean Air Zone across the whole of Greater Manchester in two phases from 2021 and 2023.<sup>51</sup>

### Powers to charge for road use

Local road charges can be introduced in England, Wales and Scotland; there is no authority for such charges in Northern Ireland.

Further information on road charging schemes can be found in the Library briefing paper [Local road charges](#) (March 2018) and the Government's Clean Air Zone framework document.<sup>52</sup>

### Low emission zones (Scotland)

The first phase of Scotland's first Low Emission Zone (LEZ) was launched in Glasgow in 2018, with a further phase to commence in 2020. There are also plans to have LEZs in Edinburgh, Aberdeen and Dundee by 2020.<sup>53</sup>

Glasgow's LEZ is being phased in and to start with will only apply to local service buses. When the LEZ is fully implemented (this is scheduled

<sup>45</sup> Durham County Council, [Durham Road User Charge Zone \(congestion charge\)](#)

<sup>46</sup> Transport for London, [London Congestion Charge/ULEZ zone](#)

<sup>47</sup> Leeds City Council, [Clean Air Charging Zone overview](#)

<sup>48</sup> Birmingham City Council, [A clean air zone for Birmingham](#)

<sup>49</sup> Bath and North East Somerset Council, [BathBreathes2021](#)

<sup>50</sup> Sheffield City Council, [Clean air zone proposals](#)

<sup>51</sup> Clean Air Greater Manchester, [Greater Manchester Clean Air Plan proposals](#)

<sup>52</sup> Defra, DoT, [Clean Air Zone Framework Principles for setting up Clean Air Zones in England](#), May 2017

<sup>53</sup> [Protecting Scotland's Future: the Government's Programme for Scotland 2019-2020 \(September 2019\)](#), Chapter 1, Low emission zones



to be 31 December 2022), all vehicles entering the zone will have to meet specified exhaust emission standards.<sup>54</sup>

The Scottish Government plans to introduce LEZs into all other Air Quality Management Areas (AQMAs) by 2023 where evidence shows they are the appropriate option to improve air quality.<sup>55</sup>

## Clean Air Zone Framework for Wales

There are currently no CAZs in Wales.

The Welsh Government's [Clean Air Zone Framework for Wales](#) (April 2018) provides guidance for local authorities on how to establish either charging schemes or complete bans on vehicles that do not meet the stipulated emissions standards.

The framework document identified Cardiff as a suitable area for a CAZ. Cardiff Council's preferred option to achieve compliance with air quality regulations, was a package of measures rather than a charging CAZ.<sup>56</sup> However, it was later reported that a £2 congestion charge was being considered to improve air quality.<sup>57</sup>

## 2.2 Smoke Control Area Framework

[Section 18](#) of the *Clean Air Act 1993* (CAA 1993) allows local authorities to designate smoke control areas by making *smoke control orders*.

In a smoke control area only fuel on the list of authorised fuels, or a specified "smokeless" fuel, may be burned, unless an exempt appliance is used.

Government guidance [Smoke control areas: the rules](#) sets out what can be burned in smoke control areas.

Defra's [Exempt Appliances](#) webpages show the exempt appliances and the relevant legislation for each nation .

Also under section 18 of the CAA 1993 a local authority can choose to apply smoke control orders to particular classes of buildings.

Under [section 20](#) of the CAA 1993 it is an offence to emit smoke from chimneys using unauthorised fuel and offenders may on conviction be fined an amount not exceeding level 3 on the standard scale (currently £1000).

### Powers to require creation or suspension of smoke control areas

Under [section 19](#) of the CAA 1993 the Secretary of State (in England and Wales) may direct a local authority to prepare and submit proposals

---

<sup>54</sup> Glasgow City Council, [Low Emission Zone \(LEZ\)](#)

<sup>55</sup> [Low Emission Zones Scotland](#), About low emission zones

<sup>56</sup> Cardiff Council, [Clean Air Cardiff](#), What are the Solutions? [downloaded on 10 February 2020]

<sup>57</sup> Cardiff Council, [£2bn transport vision revealed](#); BBC, [Cardiff congestion: £2 charge plan to cut city traffic](#), (both 15 January 2020).

for one or more smoke control orders if it considers that an authority has not adequately done so.

Under [section 22](#) the Secretary of State/SEPA may, if it appears necessary or expedient, suspend or relax the operation of section 20 (prohibition of smoke emissions in smoke control area) in relation to the whole or any part of a smoke control area.

### 2.3 Statutory nuisance powers

The [Environmental Protection Act 1990](#) (EPA) provides for a statutory nuisance regime in England, Wales and Scotland. The Act specifies 11 different categories of statutory nuisance, which include:<sup>58</sup>

- smoke emitted from premises so as to be prejudicial to health or a nuisance;
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

Under section 79 of the EPA, a local authority must take "such steps as are reasonably practicable" to investigate a statutory nuisance complaint. Local authorities also have a duty to inspect their areas to detect whether a nuisance exists or is likely to occur or recur.<sup>59</sup>

A similar regime applies in Northern Ireland under the [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011](#). (The EPA as it applies in Scotland is slightly amended by the [Public Health etc. \(Scotland\) Act 2008](#)).

### Exemptions from statutory nuisance

Section 79 of the EPA also sets out sources of nuisance that do not fall under statutory nuisance powers. This includes smoke from private dwellings within a smoke control area, and smoke, fumes or gases from premises other than private dwellings; that is industrial, trade or business premises.<sup>60</sup> These may be dealt with under other local authority powers, or environmental regulation. In cases which might be dealt with by nuisance and environmental regulation, local authorities may need consent from the relevant Government authority before prosecuting an individual or organisation, although they may still be able to take actions up to and including serving abatement notices.<sup>61</sup>

---

<sup>58</sup> [Section 79](#) (1), *Environmental Protection Act 1990*.

<sup>59</sup> Ibid

<sup>60</sup> Ibid (3)

<sup>61</sup> Guidance is provided for each country: DEFRA, [Environmental Permitting \(England and Wales\) Regulations 2016 Interaction between Environmental Permitting and local authorities' statutory nuisance duties](#), September 2017; Scottish Government, [Guidance to accompany the Statutory Nuisance Provisions of the Public Health etc. \(Scotland\) Act 2008](#), 2009; [Section 63 \(14\) Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011](#). Further information can be found in the Library briefing, [Nuisance complaints](#) (March 2018).

## Enforcement

While the local authority is obliged to investigate complaints of nuisance, it is for them to decide whether it constitutes a statutory nuisance or not. Once satisfied that there is a statutory nuisance, a local authority must serve an abatement notice setting out whatever remedial action it deems necessary.

Causing a statutory nuisance is not an offence in itself but not complying with an abatement notice or court order without reasonable excuse is: under section 80 of the EPA offenders may be subject to a fine not exceeding level 5 on the standard scale together (currently unlimited) with a further fine for each day on which the offence continues after the conviction.

Further information on the statutory nuisance regime and how it relates to environmental regulation can be found in the Library briefing, [Nuisance complaints](#) (March 2018).

## 2.4 Planning

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how it expects these to be applied. It provides the framework for producing local plans for housing and other development, which in turn provide the background against which applications for planning permission are decided.

In its [chapter on conserving and enhancing the natural environment](#), the NPPF says (amongst other things) that planning policies and decisions should contribute towards compliance with relevant air quality limit values, and opportunities to improve air quality should be identified, preferably at the plan-making stage:

181. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.<sup>62</sup>

The more detailed guidance in the [Planning Practice Guidance \(PPG\) on air quality](#) published by the Ministry of Housing, Communities and Local Government (MHCLG) reiterates that consideration of air quality issues at the plan-making stage can ensure a strategic approach and help secure net improvements in overall air quality. It points out too that it is important to take into account air quality management areas, Clean Air Zones and other areas including sensitive habitats or designated sites of importance for biodiversity, where there could be specific requirements

<sup>62</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 52

or limitations on new development because of air quality. The guidance also outlines various impacts on air quality to be considered before granting planning permission.<sup>63</sup>

### Planning conditions

Local planning authorities have wide powers, when granting planning permission, to impose planning conditions. They therefore sometimes impose planning conditions to limit or prevent problems that may otherwise be caused by the development for which planning permission is being sought and so the question sometimes arises of whether planning conditions could be used, to impose controls on air quality or mitigate harms.

The PPG also deals with the [use of planning conditions](#).<sup>64</sup> As it explains, planning conditions may be imposed where tests set out in the NPPF are met. The current wording of the tests is laid out in paragraph 56 of the NPPF, which says that the conditions should be:

- necessary to make the development acceptable in planning terms
- directly related to the development and
- fairly and reasonably related in scale and kind to the development.<sup>65</sup>

The PPG observes that conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning and so it may be more appropriate to remind applicants of the need to obtain the necessary consents.<sup>66</sup>

### Annual Reporting

New local developments that may affect air quality or any submitted or approved planning applications, with relevant exposure nearby, should be included in ASR/APRs.<sup>67</sup>

## 2.5 Government funding for local authorities to improve air quality (England)

Defra has an air quality grant scheme providing funding to eligible local authorities in England to help improve air quality.

The [Air quality grant programme](#) webpages provide links to apply for funding and details of the various schemes that have been funded; these include practical measures such as speed limits, planning, educational and awareness initiatives.

On 6 February 2020 the Department of Transport announced funding for [all-electric bus towns](#). £50 million was made available in total to support the transformation to all-electric bus towns or cities. English

---

<sup>63</sup> MHCLG, [Guidance: Air quality](#), 6 March 2014, updated 1 November 2019

<sup>64</sup> MHCLG, [Guidance: Use of planning conditions](#), 6 March 2014, updated 23 July 2019

<sup>65</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 16

<sup>66</sup> MHCLG, [Guidance: Use of planning conditions](#), 6 March 2014, updated 23 July 2019: paragraph 005, revised 23 July 2019

<sup>67</sup> Defra, [Local Air Quality Management Technical Guidance \(TG16\)](#), February 2018, Ch 3.

local authorities outside London were eligible to bid for the funding which could go towards one or more areas.<sup>68</sup>

---

<sup>68</sup> DoT, [All-Electric Bus Town Call for Expressions of Interest](#), 6 February 2020

## 3. Proposals for change

### 3.1 Consultations on domestic fuel burning

This section relates to the *Clean Air Act 1993* provisions

In January 2018 the Government, then led by Prime Minister May, announced a [call for evidence](#) seeking views on the use of house coal, smokeless coal, manufactured solid fuels and wet wood used for heating homes, as this had been identified as a significant contribution to air pollution. It quoted [National Atmospheric Emissions Inventory](#) (NAEI) data for 2015 estimating that domestic burning of house coal, smokeless solid fuels and wood was the single largest source of harmful particulate matter emissions in the UK, accounting for around 40% of total emissions.

In August 2018 a further [Consultation on cleaner domestic burning of solid fuels and wood](#) set out Government proposals to:

- prohibit the sale of the most polluting fuels;
- ensure only the cleanest stoves are available for sale by 2022;
- update outmoded legislation on 'dark smoke' from chimneys and underused provisions on Smoke Control Areas to bring these into the 21st century with more flexible, proportionate enforcement powers for local government;
- work with industry to identify an appropriate test standard for new solid fuels entering the market;
- ensure that consumers understand what they can do to reduce their impact from emissions from domestic burning.

The Government published its response to the consultation on 21 February 2020;<sup>69</sup> and announced plans to introduce the following a year from this date:

- a ban on all pre-packaged traditional bituminous house coal
  - a ban will apply on loose sales via coal merchants at a later date
- wood sold in single units under 2m<sup>3</sup> (loose stacked) must have a moisture content of 20% or less
- a national requirement for certified controlled sulphur content and a smoke emission limit on manufactured solid fuels (currently applies in Smoke Control Areas)<sup>70</sup>

The Environment Bill 2019-20 included some changes to Smoke Control Area regulation (see Section 3.3 below).

The Government has aimed to raise consumer awareness about emissions from burning unseasoned, wet, wood. It has worked with

---

<sup>69</sup> Defra, [Consultation outcome Summary of responses and government response](#), 21 February 2020

<sup>70</sup> Defra, [Consultation outcome Air quality: using cleaner fuels for domestic burning](#), 21 February 2020

industry to launch a new industry-led [Ready to Burn standard](#) for dry wood. A Ready to Burn certification mark is available to wood log suppliers who can demonstrate to Woodsure (a not-for-profit certification organisation) that their ready to burn logs have a moisture content consistently below 20%.<sup>71</sup>

The Government has also developed guidance to help inform consumers of what they can do to reduce their impact when burning solid fuels at home such as burning less often, switching to cleaner fuels or moving to a cleaner burning/more efficient appliance. The Government is working with Local Authorities to ensure this message is available for householders at a local level. For further information see Defra, [Open fires and wood-burning stoves: a practical guide](#).

### 3.2 Clean Air Strategy 2019

The May Government's [Clean Air Strategy 2019](#), January 2019, summarised the effect of air pollution on health and its causes, and set out the actions required to reduce it.<sup>72</sup>

Clean air is essential for life, health, the environment and the economy. Government must act to tackle air pollution which shortens lives. We have already acted to reduce concentrations of nitrogen dioxide (NO<sub>2</sub>) around roads from cars. But vehicles are not the only source of harmful emissions. Air pollution is a result of the way we currently generate power, heat our homes, produce food, manufacture consumer goods and power transport. Better, cleaner technologies and simple changes in behaviour will tackle the pollution that claims lives.

Addressing the role of local government in tackling poor air quality the strategy stated that, "In summary, the current legislative framework has not driven sufficient action at a local level" and that a new Environment Bill would contain measures to rectify this.<sup>73</sup> In relation to local authority air quality responsibilities, it outlined the following options under consideration:<sup>74</sup>

- ensuring accountability sits at the right tier of the local government structure;
- shifting the focus towards prevention, promoting greater action to avoid exceedances, rather than tackling air pollution only when limits are surpassed;
- creating the concept of a 'lead authority' with requirements on neighbouring local authorities and other public bodies to work collectively to tackle air pollution;
- requiring local authorities to create an action plan to reduce population exposure during air pollution episodes to protect public health;

---

<sup>71</sup> Woodsure website, [Is your firewood Ready to Burn?](#) [downloaded on 10 February 2020]

<sup>72</sup> Defra, [Clean Air Strategy 2019. Executive summary](#), 14 January 2019

<sup>73</sup> Defra, [Clean Air Strategy 2019](#), p81

<sup>74</sup> Ibid

- enabling greater local action on PM2.5 by updating the Smoke Control Area (SCA) framework;
- enabling greater local action by improving guidance on the use of existing local powers, strengthening these powers where necessary and introducing new powers;
- developing clear, effective guidance on how AQMAs, SCAs and CAZs interrelate and how they can be used by local government to tackle air pollution.

### 3.3 Environment Bill 2019-20

An Environment Bill (2019) was introduced in October 2019. It passed second reading but fell at the dissolution of Parliament.<sup>75</sup> It contained various measures affecting the role of local government in air quality regulation.

Defra published a new Environment Bill on 30 January 2020. The [Environment Bill 2019-20](#) reintroduced measures from the previous Bill to “amend the Local Air Quality Management Framework to clarify duties and enable greater cooperation between different levels of local government, and other relevant public bodies, in the preparation of Local Air Quality Action Plans;” and “enable quicker, simpler and more proportionate enforcement of Smoke Control Areas.”<sup>76</sup>

#### Local Air Quality Management (LAQM)

The *Environment Bill 2019-20* contains amendments to the *Environment Act 1995* to change certain aspects of the LAQM regime.<sup>77</sup> Clause 69 and schedule 11 contain amendments to Part 4 of the *Environment Act 1995*:

- Local authorities are required to identify sources of emissions responsible for any failure to achieve air quality standards or objectives, and identify the local or public authorities responsible for the emissions.<sup>78</sup>
- Tighter requirements are placed on Local authorities to prepare Air Quality Action Plans to ensure air quality standards or objectives are achieved in Air Quality Management Areas, and to specify how air quality targets will be achieved and maintained, and dates by which measures will be carried out.<sup>79</sup>
- A new concept, “air quality partners” is introduced in the Bill: these are neighbouring authorities, relevant public authorities or the Environment Agency responsible for emissions contributing to exceedance of local air quality objectives. Air quality partners are required to assist local authorities with reasonable requests (for example by providing information on a source of air pollution), and contribute to action plans being developed by local authorities.<sup>80</sup>

---

<sup>75</sup> [Environment Bill 2019 \(HC Bill 3\)](#)

<sup>76</sup> [Environment Bill \(Bill 009 2019-21\) Explanatory Notes](#), Overview of the Bill, para 7

<sup>77</sup> [Environment Bill 2019-20 \(HC Bill 9\)](#)

<sup>78</sup> [Environment Bill \(Bill 009 2019-21\) Explanatory Notes](#), para 1386

<sup>79</sup> *Ibid* paras 1390-93

<sup>80</sup> *Ibid* para 1400-05



- If informed by a district council of its intention to prepare action plans, a county council must propose measures it will take to help secure the achievement and maintenance of air quality standards and objectives in the local authority's area, including target dates by which the measures should be carried out. District councils should incorporate county council proposals and dates in their action plans.<sup>81</sup>
- As with county and district councils above, local authorities in London must inform the Mayor of London if they intend to prepare an action plan, and having been informed of a local authority's intention to prepare an action plan, the Mayor must propose measures that the Mayor will take to help contribute to the achievement and maintenance of air quality standards and objectives, including target dates. Local authorities are required to incorporate the Mayor of London's proposals and dates into their action plans.<sup>82</sup>
- As with the two-tier and London authorities above, local authorities in a combined authority area must notify the combined authorities of intended plans and combined authorities must produce proposed measures and dates, to be incorporated into local authorities plans.<sup>83</sup>

### Smoke control areas

Clause 70 and schedule 12 of the Environment Bill 2019-20 contains amendments to the *Clean Air Act 1993* making provisions regarding smoke control areas (areas where only authorised fuels or appliances may be used. See section 2.2):

- Local authorities are given powers to issue financial penalties for emitting smoke from a chimney in a smoke control area in England, within minimum and maximum limits which may be amended by the Secretary of State.<sup>84</sup> It would mean that in England, emitting smoke from a chimney would be no longer be a criminal offence but rather subject to a civil penalty notice (a fine).
- In England, in addition to the existing offence of acquiring controlled solid fuel for use in buildings or appliances subject to a smoke control order, it becomes an offence: to sell by retail a controlled solid fuel for use where a smoke control order applies; or to fail to take reasonable steps to notify potential customers that it is an offence to purchase the fuel for use in circumstances where a smoke control order applies.<sup>85</sup>
- The financial limit is removed on penalties on conviction for the sale of controlled fuels for use in circumstances where a smoke control order applies. The penalty would be determined by the Court.<sup>86</sup>

---

<sup>81</sup> Ibid para 1415

<sup>82</sup> Ibid paras 1419-22

<sup>83</sup> Ibid para 1423-26

<sup>84</sup> Ibid paras 1434-40

<sup>85</sup> Ibid paras 1448-52

<sup>86</sup> Ibid para 1455

- Local authorities in England are allowed to extend their Smoke Control Areas to include moored vessels.<sup>87</sup>
- In Wales, Ministers are enabled to publish lists of authorised fuels and exempt fireplaces which can be updated.<sup>88</sup>

### **Statutory nuisance for smoke emissions from private dwellings**

The Bill also amends section 79 of the *Environmental Protection Act 1990* (EPA) as it relates to statutory nuisances in England (see section 2.3, Exemptions from statutory nuisance): it removes the exemption of smoke emitted from a chimney of a private dwelling within a smoke control area. The exemption remains applicable in Wales. The explanatory notes to the Bill set this out as follows:

It means that private dwellings in smoke control areas in England are no longer exempt from nuisance legislation, but retains the exemption for Wales. This means that smoke from private dwellings in smoke control areas in England can constitute a statutory nuisance, provided that it is prejudicial to health or a nuisance, as is currently the case for private dwellings outside of smoke control areas in England.<sup>89</sup>

Further information on the Bill is available in the Library briefing paper, [Commons Library analysis of the Environment Bill 2019-20](#) (18 February 2020)

---

<sup>87</sup> Ibid para 1467

<sup>88</sup> Ibid paras 1470-72

<sup>89</sup> Ibid para 1485

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).