

National Bargee Travellers Association

Objection to creation of The Birmingham Smoke Control Order 2025

General

This consultation response is from the National Bargee Travellers Association (NBTA). The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for Bargee Travellers: itinerant boat dwellers on Britain's inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has over 2,000 members who travel on all the major navigation authorities' waterways and beyond. The NBTA deals with approximately 200 individual cases each year.

Objections

The NBTA objects to the creation of the Birmingham Smoke Control Order 2025 for the following reasons.

Failure to consider the differences between boat dwellers and the housed population

The Council has failed to take into account the different circumstances that apply to boat dwellers, who do not have access to the same choices for heating their homes as those living on land. The Council has failed to take into account the fact that the homes of boat dwellers will become uninhabitable in winter if they are prohibited from using their solid fuel stoves for heating. There must be justice in the transition to clean energy, and that includes justice to those who have no viable alternatives to fossil fuels for heating and power.

Inadequate time given for consideration and response

The consultation runs from 19th June to 21st August 2025, some nine weeks. The consultation gives insufficient time for proper consideration of the proposals and inadequate time to formulate a response. Nine weeks is not sufficient for proper consideration of such serious proposals, especially as four weeks of the consultation period fall within school holidays when many consultees will be on holiday. The duration of this consultation is too short and is not in accordance with good practice. The consequence of a consultation period that is too short is that it disenfranchises those whose views ought to be taken into account. This is the case here, as Bargee Travellers who moor their homes in Birmingham for part of the time may not be in the area during the consultation period and will not have been contacted directly by the Council to take part. Bargee Travellers on Canal & River Trust (CRT) waterways are required to travel a range of at least 20 miles in their licence period, usually 12 months. This means they are likely to be outside the Birmingham City Council boundary for the majority of the year. The timescale is severely skewed towards enabling the participation of local housed residents and the exclusion of itinerant boat dwellers.

Failure to target consultation at those most likely to be affected or to take account of the groups being consulted

There are significant barriers that prevent itinerant liveaboard boaters from taking part in local consultations. No information has been provided regarding how the consultation will directly reach boat dwellers, whether itinerant or permanently moored. Although the Council has contacted the NBTAs, it has not explained what efforts have been made to directly obtain itinerant boat dwellers' opinions and comments on the impact and practicality of bringing moored vessels into the ambit of its Smoke Control Area.

Insufficient reasons provided to permit of intelligent consideration and response to the proposals

No evidence has been provided that there is a problem with smoke emissions from moored boats in Birmingham. The Council has not provided any information regarding whether it has received complaints from residents about smoke emissions from moored boats.

The lack of data about complaints means there is no clarity regarding whether the proposals are driven by hostility of local housed residents to boat dwellers or whether the proposed Smoke Control Order is likely to be used as a tool to remove boat dwellers from areas where the local authority or the housed population is opposed to boat dwellers.

No information has been provided regarding the number of moored boats and the total level and amount of smoke emissions from moored boats in Birmingham compared either to overall air pollution or to the quantity and type of emissions from bricks and mortar homes; industrial premises; construction sites or road transport. In addition, no comparison has been carried out between smoke emissions from moored boats and emissions of NO_x and Particulates from vehicles in the city.

No definition has been provided in the consultation of what the Council considers to be an 'emission of smoke'. No information has been provided about how smoke emissions from boat chimneys will be measured, in relation to Ringelman Charts or otherwise.

Paragraph 3 of the Final Notice states that a financial penalty will be imposed on anyone emitting smoke from a chimney "unless they can prove that the emission of smoke was not caused by the use of fuel other than an authorised fuel". This creates a fundamental injustice against boat dwellers, due to the administrative delay between the time of an alleged offence and the time a financial penalty is imposed. By the time a penalty is imposed, the fuel will have been burnt, the ash will have been disposed of, and the boat dweller will be unable to provide evidence that the fuel in question was authorised. Indeed they may not even be moored in the same local authority area as they were when the alleged offence took place.

Paragraph 4 of the Final Notice states that "If, on any day after the proposed Order comes into operation, any person acquires for use in a building or fireplace, use in any fixed boiler or industrial plant, use in a vessel moored within the Smoke Control Area..... they will be guilty of an offence". This wording is unclear. It can be interpreted as discriminating against boat dwellers, who travel widely, frequently crossing local authority boundaries and without being aware of them, and who may acquire fuel within the Birmingham City Council boundary for use outside the City boundary. The use of the word "acquire" discriminates against the poorest boat dwellers, who cannot afford to purchase solid fuel but who collect scrap wood or forage for fallen wood because that is all they can afford to burn to keep warm.

No information has been provided regarding how the Council will ensure that itinerant boat dwellers will be able to tell whether they are entering the proposed Smoke Control Area or not, as these areas are not generally signposted either at the boundaries or elsewhere. Boaters could enter a Smoke Control Area with their stove alight and then moor their homes, not knowing that smoke controls are in force or that they have crossed a local authority boundary, and be fined, especially if they have no smokeless fuel on board. DEFRA Guidance on the application of smoke control areas to moored vessels under the Environment Act 2021 recommends that local authorities should place "clear signs at all entry points on the waterway and any other locations deemed relevant, so that the person in charge of a vessel knows that they are entering a smoke control area". The consultation is therefore not consistent with DEFRA Guidance. Please see Appendix 1 for the text of the Guidance.

No cost benefit analysis or Impact Assessment has been carried out regarding the costs to the Council or the impact of fining people who will typically be unable to pay the fine and may thus be vulnerable to being imprisoned or to their possessions and even their homes being seized.

Breach of Climate Change Act 2008

There is no evident calculation in the consultation as to the carbon cost of the proposed Smoke Control Order. All fuels allowed under the proposal are fossil fuels with obvious carbon costs, except for kiln dried wood, which requires huge amounts of wood to be burned to fuel the kilns, and the vast majority is supplied from Baltic states with the accompanying shipping fuel costs. It is clear under Climate Change Act 2008 that these calculations must be shown.

No alternative options proposed

Paragraphs 28 and 41 of the Supreme Court judgement in *R(Moseley) v London Borough of Haringey* [2014] UKSC 56 state:

"28. But, even when the subject of the requisite consultation is limited to the preferred option, fairness may nevertheless require passing reference to be made to arguable yet discarded alternative options..."

41. ... Nevertheless, enough must be said about realistic alternatives, and the reasons for the local authority's preferred choice, to enable the consultees to make an intelligent response in respect of the scheme on which their views are sought."

Despite the existence of alternative options, including the availability of other enforcement powers, there is not even a brief reference to any possible alternatives to the proposed Smoke Control Order in this consultation. This is despite the fact that Part III, Section 18(2) (a) to (c) of the Clean Air Act 1993 authorises a local authority to exempt or limit the operation of the Smoke Control Order to include or exclude certain buildings, or plant. The Environment Act 2021 specifies that references to a building in Part III and in Section 54 should be read as also referring to a vessel. Therefore, Birmingham City Council has the power to exempt moored boats from the Smoke Control Order but this alternative has not been considered in the consultation.

Birmingham City Council should follow the example of other local authorities such as Oxford City Council and London Borough of Hackney. Both authorities have declined to include moored boats in their Smoke Control Orders and are instead focusing on securing compliance through education rather than issuing fines. In addition, London Borough of Hackney will be seeking sources of funding to enable it to provide a degree of financial support to those itinerant boat dwellers who would be affected by the extension of smoke controls.

No evidence that DEFRA Guidance has been followed

There is no evidence that the consultation has been carried out in line with the DEFRA Guidance to local authorities on the application of smoke control areas to moored vessels under the Environment Act 2021. The absence of an Equality Impact Assessment means that the needs of vulnerable groups, such as boat dwellers on low incomes, or who have mental health issues or physical disabilities, have not been properly considered. Please see Appendix 1.

Disproportionate impact compared to population

No information has been provided regarding the numbers of boat dwellers likely to be affected, or to compare the level of emissions from moored boats with the total level of air pollution. The estimated percentage of boat dwellers in the overall population of England and Wales is between 0.05% and 0.1% (from the Office for National Statistics 2021 Census data). This suggests that the level of smoke emissions from moored boats is *de minimis* compared to the domestic, industrial and transport emissions from the rest of the population of Birmingham. It is therefore disproportionate to include moored vessels in the proposed Smoke Control Order.

Significant adverse impact on boat dwellers

The proposed new Smoke Control Order will have a severe adverse effect on the quality of life of boat dwellers, especially Bargee Travellers: people who live on their boats without a permanent mooring. This is likely to penalise and punish people for the simple act of heating their homes, and in some cases for cooking and heating water. These are essential domestic activities without which people's homes are uninhabitable. Bargee Travellers are on some of the lowest incomes in the population, and many boat dwellers were simply unable to obtain the Government's Energy Bills Support Scheme and Alternative Fuels payments of £400 and £200 in 2022 and 2023. This means that many simply cannot afford to heat their homes using smokeless fuels, kiln dried wood and/or DEFRA-approved stoves. Smokeless coal and kiln dried wood are the most expensive forms of solid fuel. At present due to the steep increases in the price of all solid fuels, many boat dwellers have resorted to burning fallen or scrap wood or even old clothes to keep warm. Some boat dwellers have always heated their homes using scrap or fallen wood because that is all they can afford.

No Equality Impact Assessment or welfare assessment carried out

Birmingham City Council is bound by the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which requires public authorities to have due regard to a number of equality considerations when exercising their functions. However, the Council has not provided an Equality Impact Assessment regarding the impact of the proposed Smoke Control Order with this consultation. This means that insufficient evidence has

been provided regarding the impact of the proposed Smoke Control Order on boat dwellers and Bargee Travellers who have protected characteristics such as disability, old age or pregnancy, which may mean that they need to stay within the local authority boundary for longer in order to access medical and other services. In these cases the proposed application of the Smoke Control Order to moored vessels would have a greater impact on their ability to live in their homes. The absence of an Equality Impact Assessment means that the needs of vulnerable groups, such as boat dwellers on low incomes, or who have mental health issues or physical disabilities, have not been properly considered.

In addition, the Council has not presented any evidence that it has carried out a welfare assessment regarding the proposed Smoke Control Order, or an assessment of the impact of the proposal on the number of boat dwellers who may as a consequence seek support from the Council's Household Support Fund or otherwise under the Regulatory Reform (Housing Assistance) (England and Wales) Order SI 2002/1860. Therefore insufficient information has been provided, contrary to the Government's Consultation Principles.

Article 8 ECHR

No account has been taken of the right to respect for private life, family life and home under Article 8 of the European Convention on Human Rights (ECHR). This is not even referred to. The proposed Smoke Control Order would penalise boat dwellers for the simple act of heating their homes, cooking and heating water. Unlike houses and flats, boats do not have gas or electric heating. The solid fuel stove is, for the vast majority of boat dwellers, the only way of heating their homes and for some also the only way to cook and heat water. Without solid fuel stoves, boat dwellers' homes would effectively become uninhabitable. This is a grossly disproportionate proposal and would violate the rights of boat dwellers to respect for their home under Article 8. The fines of £300 to £1000 would impoverish Bargee Travellers, who are typically on the lowest incomes.

Conclusion

The proposed Smoke Control Order will have a disproportionate adverse impact on boat dwellers, thus violating their rights under Article 8 ECHR and the Equality Act 2010. There is a danger that, if implemented, the proposed Smoke Control Order may be used as a tool to remove boat dwellers from the local authority area. The consultation does not meet criteria in the Government Consultation Principles 2018; in *R(Moseley) v London Borough of Haringey* [2014] UKSC 56; and in *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168. In addition, the consultation has failed to carry out an Equality Impact Assessment on the proposal and has failed to consider the DEFRA Guidance on the application of smoke control areas to moored vessels under the Environment Act 2021.

The consultation is therefore flawed and thus challengeable by way of Judicial Review. For the reasons stated above, the proposed Smoke Control Order should not be implemented.

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Appendix 1

DEFRA Guidance to Local Authorities on the Application of Smoke Control Areas to Moored Vessels under the Environment Act 2021

The following guidance is intended to set out best practice for the application of smoke control area rules to vessels which are moored.

A smoke control area is an area where people and businesses must not:

- emit a substantial amount of smoke from a chimney
- buy or sell unauthorised fuel for use in a smoke control area unless it is used in an 'exempt' appliance (appliances which are approved for use in smoke control areas)

Local authorities can take enforcement action if they consider a smoke emission to be substantial. Please visit Smoke control area enforcement by local authorities in England - GOV.UK (www.gov.uk) for more information on smoke control area enforcement.

How to include moored vessels in your smoke control area

If you wish to include moored vessels in the scope of your smoke control area rules, you must change your smoke control order. Please refer to separate guidance on creating, changing, or revoking an SCA.

You must consult with the public before you can apply the smoke control area rules to vessels which are moored.

You should ensure that your consultation is conducted in a way that is as inclusive as possible, ensuring that boat owners and occupiers who will be affected have an opportunity to respond. You should consider:

- itinerant boat owners and occupiers, who may not spend a long time in a particular local authority area. They may not have regular access to a postal address or be able to use the internet easily

- vulnerable groups, such as boat owners and occupiers on low incomes, those with mental health issues or physical disabilities

- carefully consider all responses and evidence from all those who may be affected by the inclusion of moored vessels, including boat owners and occupiers and other local residents

During the consultation period, you may wish to engage with organisations that represent boat owners and occupiers and/or have expertise in solid fuel burning. The following organisations may be considered:

- The National Bargee Travellers Association
- Navigation authorities such as Canal & River Trust, Environment Agency, and any other relevant organisation for your area
- HETAS
- Solid Fuel Association (SIA)
- The Boat Safety Scheme

We recommend that you engage with any navigation authorities that manage waterways within the local authority area in order to communicate information about the consultation to boat licence holders.

Signposting of smoke control areas that include moored vessels

Once you have included moored vessels in the scope of a smoke control area, we recommend that you have clear signs at all entry points on the waterway and any other locations deemed relevant, so that the person in charge of a vessel knows that they are entering a smoke control area.

Signposting of the boundaries of smoke control areas should also inform those on boats of their rights and responsibilities within smoke control areas, including that they may:

- emit smoke emissions to propel their vessels or generate electricity,
 - use kindling to light stoves,
 - use existing stoves provided that only authorised fuel is burnt, and
 - burn dry wood (ready to burn) if a Defra exempt appliance is used.
- not emit a substantial amount of smoke from a chimney.

Communications to moored vessels suspected of breaching smoke control area rules

We recommend that communications to specific moored vessels alleging breach of the rules follow standard wording recommended by DEFRA* and include the following:

- An explanation of the different and escalating stages in the enforcement process
- How to appeal against a warning notice, a notice of intent and a financial penalty

* <https://www.gov.uk/government/publications/smoke-control-area-enforcement-local-authorities-in-england/smoke-control-area-enforcement-by-local-authorities-in-england#enforcing-smoke-emission-rules>