

National Bargee Travellers Association

Response to HMRC Consultation on Implementation of the Court of Justice of the European Union (CJEU) judgment on diesel fuel used in private pleasure craft

INTRODUCTION

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 itinerant boat dwellers on Britain's inland and coastal waterways. The term Bargee Traveller includes anyone whose home is a boat and who does not have exclusive use of 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 around 900 members on all the major navigation authorities' waterways and beyond.

GENERAL

Red diesel is used by the vast majority of the UK's boat dwellers. There are no accurate statistics for the total number of boat dwellers in the UK or for the numbers of boat dwellers either with or without permanent moorings. Estimates suggest a total of 50,000 to 70,000 boat dwellers, of whom around 15,000 to 20,000 are itinerant and do not have permanent moorings.

Most of the UK's boat dwellers live on the inland waterways, but some live on coastal estuaries and harbours. For those who do have permanent moorings, these may be in purpose-built marinas; in boatyards; on quaysides or on the banks of a waterway. Some boat dwellers take temporary moorings, especially in winter. Anecdotal evidence suggests that there are slightly more boat dwellers in urban areas, and in the south of England, but boat dwellers travel and are located throughout the UK's inland waterways.

The majority of boat dwellers in the UK live on narrowboats, which are usually propelled by diesel engines running on red diesel. A sizeable minority live on boats propelled by petrol engines and a few live on boats propelled by other methods such as solar power or pedal power or unpowered boats. The majority of narrowboats and their engines are not new; many are 20 to 40 years old and some boats have vintage engines. Diesel engines cannot easily be adapted to run on alternatives to diesel fuel.

The majority of boat dwellers are working people on low incomes or retired people on fixed incomes. The number of boat dwellers has gradually increased in the past 15 to 20 years. The increasingly unaffordable nature of rented housing and home ownership in the UK in relation to income has been a factor in the increase in people living on boats.

QUESTIONS FOR DIESEL FUELLED CRAFT USERS AND OWNERS

Q9) Where do you use your craft? If more than one type of location please estimate in percentage terms the amount of time per year your craft spends in these areas.

Bargee Travellers are located throughout the UK's inland and coastal waterways. The majority live on the waterways of the Canal & River Trust, which is the UK's largest navigation authority. A significant number live on waterways managed by the Environment Agency; the Cam Conservancy; the Broads Authority and the Middle Level

Commissioners. The NBTA has a handful of members on international waterways outside the UK. The majority of Bargee Travellers live on the artificial canals but a significant proportion live and travel on natural or canalised rivers.

Q10) What do you use your craft for? If more than one type of use please estimate in percentage terms the amount of time per year you use your craft for.

Bargee Travellers use their boat as their only or main home all year round. The vast majority of Bargee Travellers are itinerant and do not have a permanent mooring. A proportion of Bargee Travellers also work and/or trade from their boats thus a proportion of their use is commercial.

The NBTA maintains that residential boats that are the owner's only or main home should not be classified as either "private pleasure craft" or as "recreational vessels". Residential boats should be classified as "domestic" or "hybrid".

At the very least, boats belonging the Bargee Travellers that are moored in one place for longer than 14 days, such as boats on winter moorings, should be classified as residential boats and should continue to be able to purchase red diesel at the lower duty rate for all purposes.

Q11) Where do you usually buy your diesel fuel? If more than one type of location please estimate in percentage terms the amount of time per year your craft uses these areas.

Bargee Travellers most frequently buy their diesel fuel from boatyards and from coal and fuel boats that travel around and supply fuel to boats where they are moored. They are less likely to buy fuel from marinas unless there is no other supplier. However where the choice of suppliers is limited they will need to buy fuel from the only supplier. There have been isolated incidents where fuel suppliers have refused to sell to Bargee Travellers out of prejudice.

Q12) How much diesel do you purchase at any one time?

Bargee Travellers are typically on low incomes and thus are less likely to buy large qualities of fuel at once. Many buy 20-25 litres at a time rather than filling their tanks every time they refuel.

Q13) How often do you refuel your craft?

Being on lower incomes, Bargee Travellers refuel their boats more frequently than wealthy boaters who are more likely to buy fuel in large quantities.

Q14) If the place where you currently buy fuel did not supply white diesel, where would you buy fuel from? What difficulties would you encounter?

Bargee Travellers would have difficulty buying enough fuel if boatyards and fuel boats did not supply white diesel. They would not be able to buy enough at a time from garages as the limit for selling fuel in cans is 10 litres. There would also be a serious risk of spillages and thus pollution of the water when pouring diesel from a can into the boat's fuel tank if Bargee Travellers were forced to buy white diesel from garages. They would be more likely to have to buy from garages if the number of fuel suppliers on the waterway is reduced,

because of both their inability to afford to buy fuel in large quantities and because of travel requirements set either by law or unlawfully.

Q15) Approximately how many litres of diesel fuel do you use in a typical year:

Bargee Travellers may use as little as 80 litres per year for propulsion for private use and 100 to 160 litres per year for non-propulsion use (mainly to charge batteries in winter and sometimes to heat water). For those who trade from their boats the propulsion use is dual private and commercial use. Even where Bargee Travellers fill up their tank in one fuelling, it may take them 18 months to use up that full tank.

There is a legal requirement specified in the British Waterways Act 1995 on Canal & River Trust waterways that a boat without a permanent mooring must travel to a different place after spending 14 continuous days in any one place. In addition, Canal & River Trust has imposed an unlawful requirement on boats without a home mooring to travel a range of at least 20 miles during the licence period. If boaters without a permanent mooring do not meet this requirement they risk having their boats seized and removed by Canal & River Trust, making them homeless. These requirements do not apply on other navigation authorities' waterways. However, on other waterways, enforcement such as £100 per day fines for mooring, and prejudice against Bargee Travellers, means that they are increasingly being forced to travel longer distances, thus needing to use more diesel. Either way, Bargee Travellers with diesel powered boats are required by a combination of the law and unlawful enforcement measures to use diesel for propulsion.

Q16) Are the purposes specified in question 15) fuelled from the same tank?

The majority of narrowboats and other diesel powered craft on the inland waterways only have one fuel tank. It is very unusual for a small boat of the size normally lived on by Bargee Travellers to have more than one fuel tank. Therefore all uses of diesel are fuelled from the same tank.

If "yes":

a. Would it be possible to fit a separate fuel tank for non-propulsion purposes? If not, please outline your reasons;

The design and small size of most narrowboats and inland waterway craft means that there is no space to fit a second fuel tank. Installation of an additional fuel tank could seriously affect the stability, and therefore the safety, of boats that were designed and built with only one tank.

For most Bargee Travellers, unless they could fit a second fuel tank, running the engine to generate electricity and for heating water would mean that propulsion duty would be charged on these basic essentials. Bargee Travellers would therefore be discriminated against by having duty imposed on domestic fuel when house dwellers do not incur this tax.

Even when a boat is being driven under power, the red diesel used to power the engine fulfils a domestic function because it charges the batteries while the boat is under way and is often used to heat water for domestic use and to run or charge appliances such as washing machines, refrigerators, shower pumps, laptops or phones while the boat is moving. This means that imposing a higher tax on diesel used for propulsion by boat

dwellers is unfairly imposed as the diesel is being used for domestic purposes at the same time.

The NBTA observes that requiring a retailer, in supplying a customer with diesel for domestic utility use, to levy duty of approximately 50.39% and VAT of 20%, is unlawful for the purposes of VATA. Parliament has not sanctioned an amendment to VATA that provides for this material effect.

b. How costly would this be and how prohibitive would this be for you?

Fitting a second fuel tank, even where the space exists to do so, would be prohibitive on grounds of cost for most Bargee Travellers. This would cost at least £1000 and would require the boat to be dry docked or craned out (dry docking usually costs at least £100 per day); fabrication; installation; pressure testing and certification by a Boat Safety Scheme examiner; and possibly draining the existing fuel tank for safety depending on the alterations that were made. The cost of a second fuel tank could lead to substandard installations with the consequent safety and pollution risks.

c. How long typically would it take to run down your red diesel stock?

All diesel tanks that have been used for red diesel will test positive for red for some considerable time after red diesel becomes unavailable. This is because after all usable red diesel is used up, there will still be a significant amount of red diesel below the fuel pipe which will contaminate any white diesel that is added. It could take between several years to indefinitely before all traces of red diesel disappear from tanks. It is likely that Bargee Travellers who can afford it will attempt to completely fill their tank with red diesel and lay up stocks before the changes are implemented. This could further extend the period when any diesel tank will contain traces of red diesel.

There is a very high risk of injustice to boaters who are found with traces of red diesel in their tanks if HMRC does not accept the above. The NBTA recommends that HMRC fully investigates and measures through modelling and actual examination the length of time it takes for red diesel residue to fully disappear from specific types and designs of fuel tank. HMRC must do this before implementing any enforcement regime. Alternatively HMRC must provide funding for every affected boater to have their fuel tank professionally cleaned. This is a very expensive job.

Due to the very long life within diesel tanks of traces of red diesel, HMRC needs to accept that in the interests of justice, new regulations will be unenforceable for some time and it will have to accept a low percentage of red in any tank that is tested.

If penalties include the seizure of boats, this will have a very significant disproportionate adverse effect on Bargee Travellers who will consequently lose their homes. This will contravene their rights to due process and respect for their homes under Articles 6 and 8 of the European Convention on Human Rights and the Human Rights Act 1998. We cannot stress enough the high possibility for such abject injustices to occur if HMRC does not accept that traces of red diesel may take many years to disappear from a fuel tank or may never disappear without expensive professional tank cleaning.

The NBTA will be advising its members to retain all their diesel receipts after any change is implemented and to record their engine hours and/or mileage in order to mitigate any

unjust accusations of having red diesel in their tanks after any changes are implemented. However this alone will not prevent such injustices occurring.

Q17) Do you foresee any problems with refuelling if you are required to use white diesel for propulsion e.g. areas where you would be concerned that white diesel would be unavailable? Please provide details of the likely implications.

It is likely to be wholly uneconomic for marine and inland waterway diesel suppliers to fit additional pumps and storage tanks for provision of both red and white diesel. This is almost certain to lead to a drastic reduction in the availability of diesel on the coastal and inland waterways.

The implications for Bargee Travellers of poor or no availability of diesel are stark. If they cannot obtain diesel, they will be unable to travel and thus unable to comply with Section 17 (3) (c) (ii) of the British Waterways Act 1995 and associated unlawful range requirements on Canal & River Trust waterways, or on other waterways they will be unable to comply with other enforcement measures such as £100 per day fines for mooring that force them to travel longer distances than they may choose. If they do not comply they risk having their boats seized and removed, rendering them homeless; depriving them of the only valuable asset that they own; and making them a burden on the state rather than an independent, self sufficient community.

Typically Bargee Travellers are people on low incomes and the effect on them of higher diesel prices will be significant and disproportionate in relation to their income. This would also have the indirect effect of triggering enforcement action that would result in the loss of their homes if they are unable to afford to buy white diesel in the same quantities that they know they can afford with red diesel. This is because with increased unaffordability of diesel they may not be able to meet any lawful or unlawful travel requirements for which the penalty for non-compliance is the non-renewal of the boat licence and the eventual seizure and removal of their home.

Q18) If you use your craft for a mix of commercial and private pleasure use, how easy would it be to completely remove red diesel from your fuel tank after commercial use, before using white diesel for private pleasure use? Please provide details.

Removing diesel from a boat's fuel tank and storing it is usually a difficult operation and not a task that most boaters would want to attempt . The risk of spillages and pollution would be high. For most Bargee Travellers the cost of professionally cleaning fuel tanks when switching from commercial to private use would be prohibitive. In any event, Bargee Travellers who trade from their boats travel and use diesel for multiple purposes in the same journey: to comply with the law on Canal & River Trust waterways; to reach the next trading venue; to travel for reasons of access to schools, family and social connections; and to charge or use appliances such as fridges, washing machines and laptops.

Penalties

Q19) Do you agree with aligning penalties for misuse of red diesel in private pleasure craft with the current penalties for misuse of red diesel in road vehicles is appropriate? If not, what difficulties do foresee?

No, we do not agree. The difficulties we foresee are the extremely high risk of injustice due to the fact that all diesel tanks that have been used for red diesel will test positive for red for some considerable time after red diesel becomes unavailable. This is because after all usable red diesel is used up, there will still be a significant amount of red diesel below the fuel pipe which will contaminate any white diesel that is added. It could take between several years to never before all traces of red diesel disappear from tanks.

If penalties include the seizure of boats, this will have a very significant disproportionate adverse effect on Bargee Travellers who will consequently lose their homes. This will contravene their rights to due process and respect for their homes under Articles 6 and 8 of the European Convention on Human Rights and the Human Rights Act 1998. We cannot stress enough the high possibility for such abject injustices to occur if HMRC does not accept that traces of red diesel may take many years to disappear from a fuel tank. In addition, HMRC has not thought through the consequence of creating such a climate of fear among our community. Bargee Travellers already face regular threats of seizure and removal of their homes from Canal & River Trust and private mooring enforcement companies and this would unjustly increase the stress our community faces.

In any event, the impact of unjustly being fined for having red diesel residue in a tank will also have a disproportionately high impact on Bargee Travellers. Unlike recreational boaters, who can simply give up a hobby, and static residential boat dwellers who will not be affected, Bargee Travellers will be penalised for simply living in their homes. This is grossly disproportionate in comparison with the proposed offence.

Any measures taken by HMRC to implement the CJEU judgement must above all include measures to avoid such injustices taking place.

National Bargee Travellers Association
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