

National Bargee Travellers Association

Questions and Proposals regarding DEFRA guidance to local authorities on the application of Smoke Control Areas to boats under the Environment Act 2021

Questions

1. How will smoke from boat chimneys be measured? s44 (1) of the Clean Air Act 1993 refers to dark smoke and the use of the Ringelman Chart to prove that dark smoke has been emitted. Will Ringelman charts be used to measure smoke emissions from boat chimneys? Or will some other method be used and if so, what method? Will this be the same method as the one used to measure smoke emissions from the chimneys of houses?
2. How will exhaust emissions from boat engines be measured? Will Ringelman charts be used? Or will some other method be used and if so, what method? Will this be the same method as the one used to measure smoke emissions from the chimneys of houses?
3. We note that there is an exemption for running boat engines to generate electricity, but no exemption for heating. Given that boat dwellers are very unlikely to have any other method of heating their homes in winter than a solid fuel stove or in a minority of cases a diesel stove, how can this lack of an exemption be justified?
4. Given that some boat dwellers do not have any other method of cooking than their solid fuel stove, why is there no exemption for cooking?
5. How will boaters know when they are entering a Smoke Control Area?
6. Will local authorities put up notices at each boundary point on every waterway in their area to inform boaters that they are now entering a Smoke Control Area?
7. Given that in many cases, a river forms the boundary of a county or local authority area, one bank of a river could potentially be in a Smoke Control Area for a considerable length whilst the other bank is not. Will local authorities put up notices informing boaters of the Smoke Control Area all the way along the river bank?
8. Will it be a defence for the boater to state that they did not know that they were moored within a Smoke Control Area? Natural justice and the rule of law would suggest that it should be a defence, do you agree? (The law must be intelligible, clear, and predictable, so that the citizen knows when his actions would be unlawful - Lord Bingham, *The Rule of Law*, 2010).
9. What if a boater enters a Smoke Control Area with their stove alight and moors their boat, but their stove still has to finish burning the fuel that may be non-compliant? It is dangerous to remove burning coal or wood from a stove and it would endanger animals and people to dump it outside on the towpath. What should they do?
10. How will boat dwellers, especially those without a permanent mooring who are likely to be required to move to a new place every 14 days, and who therefore frequently move between local authority areas, and who do not have a postal address in the area, be supported and enabled to take part in local consultations on imposing Smoke Control Areas?

11. The criteria for financial help to replace appliances sets a qualifying time of six months on the same mooring in one local authority area. Bargee Travellers are unlikely to qualify, as although they may spend six months within one local authority area, they will normally be moving to a different place in the local authority area every 14 days. Where do Bargee Travellers stand regarding financial help?

12. If Bargee Travellers are moving every 14 days but they do spend six months within a local authority area, do they qualify for financial help?

13. Who qualifies for financial help? Is it just liveaboards or do all eligible boat owners qualify?

14. Are we right in assuming boaters can continue to use their existing stove as long as they burn DEFRA-approved smokeless fuel?

15. What about using kindling (paper and small pieces of wood) to light the stove each day? How are we expected to light our stoves if kindling is not permitted? Firelighters are expensive, inefficient, create emissions and do not necessarily work.

16. Will the proposed application of Smoke Control Areas to boats give a grace period of 20 minutes to light the stove?

17. What will happen to boat dwellers who are fined for burning smoky fuel in a Smoke Control Area but who are unable to pay the fine? Will they be at risk of a prison sentence?

Proposals regarding DEFRA guidance to local authorities

Signposting of Smoke Control Areas

1. In *The Rule of Law* (2010) Lord Bingham states that the law must be intelligible, clear, and predictable, so that the citizen knows when his actions would be unlawful.

2. Smoke Control Areas must be clearly signed at all entry points on the waterway so that the person in charge of a vessel entering a Smoke Control Area can tell that they are entering a Smoke Control Area.

3. Where the waterway forms a boundary between an area that is a Smoke Control Area and an area that is not, the Smoke Control Area must be clearly signed at all points along the waterway so that the person in charge of a vessel entering a Smoke Control Area can tell that they are entering a Smoke Control Area if or when they cross to the other bank of the waterway.

4. It is not sufficient to place notices informing boaters that they are in a Smoke Control Area only at designated, purpose built visitor moorings; in general, boaters have the right to moor along the whole of the waterway towpath and sometimes on the offside as well, regardless of whether it is signposted as a visitor mooring.

5. It is not sufficient to only provide information online about the boundaries of Smoke Control Areas. Mobile broadband, the only way that boaters can obtain internet access, is expensive and unreliable. It has around 5% of the speed and capacity compared to

landline broadband, at around 10 times the cost. Some boaters do not have internet access on their boat at all.

Signposting informing boat owners of their rights

6. Any signposting of the boundaries of Smoke Control Areas must also inform boat owners of their rights to propel their boats; to generate electricity; to use kindling to light their stoves; to use their existing stoves provided that they only burn DEFRA-approved smokeless fuel; to burn dry wood if they use a DEFRA-approved stove; and their rights to appeal if they receive a warning letter or a fine. This will also serve to inform the general public of the rights of boaters, which will help to discourage any malicious or vindictive reporting of emissions from boats.

Boats entering a Smoke Control Area

7. Many boaters travel in winter with their domestic heating stove alight. If a boater enters a Smoke Control Area with their stove alight and then moors their boat, there should be a clearly publicised grace period reflecting the time it takes for any non-smokeless fuel in the stove to burn out. This should be based on expert advice.

Guidance to local authorities on practical issues regarding boat stoves and engines

8. Local authorities need to get expert advice on the practicalities of living on boats, such as from the National Barge Travellers Association, HETAS qualified engineers and/or the Boat Safety Scheme. Otherwise there is a danger that the normal everyday activities of boat dwellers to heat their homes and to cook food will be made unlawful, rendering their home uninhabitable in winter and thus making the boat dweller homeless, exacerbating the housing, homelessness or rough sleeping problem within the local authority.

9. Local authorities need to be aware that for most boaters, both liveaboard and leisure boaters, the only form of heating is a solid fuel stove and the only means of generating electricity for lighting, domestic water pumps and water heating is the boat engine or a petrol or diesel generator.

10. Local authorities need to be aware that there will be many boat dwellers without a permanent mooring who live within their boundary for extended or significant non-consecutive periods of time, moving every 14 days, who will not meet the six month qualifying period for financial help to replace appliances either because they are not on the same mooring for a continuous six month period, or they are moving to a different place every 14 days within the local authority boundary.

11. Local authorities must be provide transparent and easy to understand information about how smoke and exhaust emissions are measured; about who has the power to measure these emissions; and who has the power to deem any emissions unlawful.

12. Local authorities must be aware that generating electricity by the use of the boat engine or a petrol or diesel generator is lawful. It may assist local authorities to know the times when boaters are likely to be doing so: on Canal & River Trust waterways the boat licence conditions specify that engines and generators must not be run between 8pm and 8am unless for the purpose of moving off from a mooring.

13. Guidance must be provided to local authorities regarding what solid fuel heating stoves boaters are permitted to use; that they are permitted to use their existing stove and do not need a DEFRA-approved stove to use smokeless fuel to heat their home; that they may burn dry wood provided that they have a DEFRA-approved stove; and what other fuels they are permitted to burn in a DEFRA-approved stove.

14. Guidance must be provided to local authorities regarding the use of kindling to light the stove and grace periods for lighting stoves; the NBT recommends that local authorities do not ban the use of kindling because this would be counter-productive in terms of air quality because using firelighters creates emissions, and in addition it would cause hardship to boat dwellers.

15. Local authorities need to be aware that only a minority of boats have the capability to use 240v electric hook up and the use that can be made of this on board is limited and unique to each boat. Most 240v shore power electric hook ups only power a ring of 240v plug sockets and a battery charger for the batteries that power the 12v electric installations (lights, 12v plug sockets, water pumps and bilge pumps).

Hardship and vulnerable boat dwellers

16. Local authorities need to be aware that the boat dwellers who are most likely to fall foul of the amendments to the Clean Air Act under the Environment Act 2021 are the most vulnerable members of the liveaboard boating community, often working people living on incomes even below benefit levels, or whose benefits may have been sanctioned or stopped, or living only on small HM forces pensions, who may have mental health issues, poor literacy or physical disabilities.

17. These vulnerable boat dwellers have until now been able to heat their often poorly-insulated homes by foraging, scavenging or being given fallen wood in rural areas or waste wood in urban areas. They cannot necessarily afford to buy coal and they will have already been financially disadvantaged by the recent withdrawal from sale of cheaper bituminous coal. They are the least able to pay any fines, but are the most likely to fall foul of the extension of Smoke Control Areas to boats. What are local authorities going to do to prevent these boat dwellers from being unable to live in their homes and unable to pay any fines incurred as the result of the enforcement of Smoke Control Areas?

Inclusion of itinerant boat dwellers in consultations

18. Guidance must be provided to local authorities on how to include itinerant boat dwellers in consultations, given that they may not necessarily spend very long at a time in a particular local authority area; they are unlikely to have regular access to a postal address; they may not be able to use the internet easily due to the very poor performance of mobile broadband compared to landline broadband; they may be unable to afford internet access; they may not have a computer or even a smartphone; even boat dwellers with permanent moorings will not necessarily have a local postal address due to the lack of residential planning consent for most moorings and the reluctance of mooring managers to allow post to be sent to the marina or mooring office address.

Consultations and awareness of hate crime towards itinerant boat dwellers

19. Local authorities must be aware that boat dwellers, like the rest of the Travelling communities, are frequently the victims of prejudice and hate crime from the general

public. Local authorities must not use the consultation as a method of whipping up hate against boat dwellers.

20. Consultations must make it clear to respondents that boats are entitled to moor on the towpath and banks of navigable canals and rivers; that the mooring time limit on most areas of most waterways is 14 days with the right to stay longer if it is reasonable in the circumstances; that there is a Public Right of Navigation on rivers that includes the right to moor for a reasonable time; that 'reasonable' cannot be defined in advance but is dependent on many factors; that there are no laws prohibiting people from living on boats without a permanent mooring; and that there is no legislation stating a minimum distance that boats must travel.

21. Local authorities must be aware that a consultation of this nature will unleash consultation responses that make prejudiced, hateful, vexatious, oppressive, and unfounded allegations about boat dwellers that are intended to result in harsh or wrongful treatment of them. Any such consultation must be handled with the utmost sensitivity.

22. Local authorities must ignore consultation responses that appear to make vexatious, oppressive, and unfounded allegations about boat dwellers that are intended to result in harsh or wrongful treatment of them.

23. Local authorities must carry out their own research to quantify any emissions from boats and not rely on reports from local residents who may be prejudiced against boat dwellers.

National Bargee Travellers Association
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