**Appendix 2 – Smoke Control Order Consultation Considerations**

**Summary of responses**

A total of 141 responses to the consultation were received. A high proportion of respondents indicated an affiliation with the boating community, either living on a boat or having an association with an organisation that represents boaters’ interests.

A common trend within the responses gave the impression that it is a widely held view that the order seeks to ban the use of solid fuel burning stoves or ban narrowboats from entering the Birmingham area.

Several respondents indicate that they are already using compliant fuels in the stoves on their boats.

Two formal objections were received. The National Bargee Travellers Association objected on the following grounds;

* Failure to consider the differences between boat dwellers and the housed population
* Inadequate time given for consideration and response
* Failure to target consultation at those most likely to be affected or to take account of the groups being consulted
* Insufficient reasons provided to permit of intelligent consideration and response to the proposals
* Breach of Climate Change Act 2008
* No alternative options proposed
* No evidence that DEFRA Guidance has been followed
* Disproportionate impact compared to population
* Significant adverse impact on boat dwellers
* No Equality Impact Assessment or welfare assessment carried out
* Article 8 ECHR (right to respect for private life, family life and home)

An individual objection was received from the occupier of a narrowboat moored on Gas Street Basin who cited the minimal impact on air quality, the cost of replacing the heating system, the small footprint of those who live on boats, and that canal boats add to the character of the city.

**Responses to the consultation questions**

*Q4. Do you agree that Birmingham City Council should aim to reduce pollution from domestic burning, including from canal barges.?*

141 responses with 24.82% saying Yes and 69.5% saying No.

*Q5. Do you support the proposed smoke control order?*

141 responses with 25.53 Yes and 63.12% No.

*Q6. Do you support the inclusion of moored vessels into the scope of the order?*

141 responses with 9.93% saying Yes and 87.94% saying No.

*Q7. If you have answered No to either/or Q.5. or Q.6. please give reason(s) why?*

130 responses received. Key themes identified were reliance on solid fuel stoves for heating and cooking (72 mentions); economic impact (mentioned 22 times); lack of alternatives (mentioned 16 times); culture and heritage (mentioned 13 times); and discrimination and rights (mentioned 13 times).

27 respondents explicitly expressed concerns that the Smoke Control Order would ban or prohibit the use of solid fuel stoves, log burners, or other traditional heating methods on boats.

10 respondents explicitly mention cost or expense as a concern—particularly in relation to fuel affordability or the replacement of stoves.

*Q8. Are you aware of any organisations that represent the owners and occupiers of canal barges that Birmingham City Council should consult with?*

A large number of organisations were identified with some having with little or no apparent connection to Birmingham or the wider West Midlands region. As a result of the initial responses the following organisations were notified directly to make them aware of the consultation.

National Association of Boat Owners

Residential Boat Owners Association

Inland Waterways Association

National Bargee Travellers Association

Accessible Waterways Association

Birmingham Canal Navigation Society

*Q9. Do you think the proposed smoke control order should be amended in any way?*

118 responses received with 85.82% saying Yes and 14.18%% saying No.

Overwhelming majority of responses (84.5%) argue that canal boats, narrowboats, and barges should be exempt from the Smoke Control Order. Common reasons include - boats are homes for many people, often with no alternative heating options; solid fuel stoves are essential for warmth and cooking; smokeless coal and kiln-dried wood are already widely used; emissions from boats are minor compared to road traffic and industry. Some responses call for greater education and enforcement of existing rules and highlight practical concerns in relation to alternatives.

*Q10. Are there any other comments you would like to make in relation to the proposed smoke control order?*

76 responses received. These show strong opposition from the boating community with many respondents, particularly liveaboard boaters, expressing deep concern about the impact of the SCO on their only source of heating and cooking—solid fuel stoves. Several emphasized that alternative heating options (electric, gas, diesel) are unaffordable, impractical, or unavailable on boats. There is a perception of discrimination and lack of understanding from the council regarding the boating lifestyle.

There was criticism of consultation process and respondents noted that boaters were not directly consulted, despite being significantly affected. The use of the term “barges” instead of “narrowboats” was repeatedly criticized as a sign of ignorance. There were calls to exempt boats from the SCO and some argued that boats contribute minimally to overall pollution.

A small number of respondents supported the SCO, citing air quality concerns, especially on towpaths in winter. One respondent highlighted issues with wood burners in residential areas rather than boats.

**Consideration of the Responses to the Consultation**

Concern 1:

A common trend within the responses gave the impression that it is a widely held view that the order seeks to ban the use of solid fuel burning stoves or ban narrowboats from entering the Birmingham area (27 respondents held this view).

Response 1:

The Smoke Control Order does not seek to ban the use of solid fuel burning stoves, nor seek to ban narrowboats from entering the Birmingham area.

The rules for solid fuel burning within a Smoke Control Area are stipulated on the Government’s website at [Smoke control areas: the rules - GOV.UK](https://www.gov.uk/smoke-control-area-rules)

The specific rules are that you can only burn authorised fuel, unless you use an appliance approved by Defra (also known as an ‘exempt appliance’ or ‘Defra approved appliance’).

**What you can burn in smoke control areas**

In a smoke control area you can only burn fuel on the [list of authorised fuels](https://smokecontrol.defra.gov.uk/fuels.php), or any of the following ‘smokeless’ fuels, unless you’re using a Defra approved appliance:

* anthracite
* semi-anthracite
* gas
* low volatile steam coal

**Exempt appliances that can burn unauthorised fuels**

Unauthorised fuels, such as wood, can only be burned in [exempt appliances such as some boilers, cookers and stoves](https://smokecontrol.defra.gov.uk/appliances.php).

You must only use the types of fuel that the manufacturer says can be used in the appliance.

There are 285 authorised fuels and 3300 exempt appliances certain of which will be suitable for use on narrowboats.

Several respondents indicate that they are already using compliant fuels in the stoves on their boats.

The Council carried out a search of all comments with the assistance of an AI programme to identify any references to ‘authorised fuels’, and identified the following:

*References to Authorised Fuels*

*These include mentions of:*

* *Smokeless coal / smokeless fuel (e.g., “I burn smokeless coal”, “approved smokeless coal”, “authorised/certified solid fuel”)*
* *Kiln dried wood / seasoned wood (e.g., “kiln dried wood”, “properly seasoned wood”, “dry wood”)*
* *DEFRA-approved stoves and fuels*
* *Correct fuels / suitable fuels*
* *There are at least 40 distinct references to the use of authorised fuels.*

*Positive: Many respondents expressed support for using smokeless coal and seasoned wood, showing willingness to comply.*

*Neutral: Some responses were factual or descriptive without strong emotion.*

*Negative: A few noted the high cost or impracticality of sourcing authorised fuels.*

There was no specific reference to ‘exempt appliance’ although there was the response from the NBTA which referenced Defra-approved stoves, which is another way of referencing exempt appliances:

*The response from the NBTA provided a commentary on the use of authorised fuels and exempt appliances: “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.”*

Other Concerns:

A range of other concerns were raised. When reviewing the comments it was determined that the other concerns align well with the formal objection raised by the NBTA and all of those concerns are captured within the points of objection from the NBTA. Accordingly, the other concerns have been responded to within the response to the formal objection from the NBTA.

**Consideration of the formal objection from the NBTA**

The National Bargee Travellers Association (NBTA) submitted a response to the consultation via a formal objection on the following grounds, each of which will be considered in turn as discreet points:

* Failure to consider the differences between boat dwellers and the housed population
* Inadequate time given for consideration and response
* Failure to target consultation at those most likely to be affected or to take account of the groups being consulted
* Insufficient reasons provided to permit of intelligent consideration and response to the proposals
* Breach of Climate Change Act 2008
* No alternative options proposed
* No evidence that DEFRA Guidance has been followed
* Disproportionate impact compared to population
* Significant adverse impact on boat dwellers
* No Equality Impact Assessment or welfare assessment carried out
* Article 8 ECHR (right to respect for private life, family life and home)

Point 1:

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

“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.”

Response 1:

The consultation will not prohibit any boat dweller from using their solid fuel stove for heating. There are exempt appliances that may be installed and authorised fuels that may be used by boat dwellers when moored in the Birmingham area.

The following is excerpted from a Q&A session for local authorities, hosted by Defra on 14 June 2023. The text in **bold** is the question posed and the normal text the response from Defra.



Point 2:

Inadequate time given for consideration and response

Response 2:

The consultation ran for nine weeks which is three weeks longer than the minimum timeframe stipulated in both legislation and the Defra Guidance.

It is recognised that four weeks of the consultation period fall within school holidays and this is reflected in the increased time given for responses to be made.

It is acknowledged that not all bargee travellers who moor their homes in Birmingham may be in the area during the consultation period. There is no suggestion in Defra guidance specific to the application of smoke control areas to moored vessels of the need to increase the consultation period, however there is a suggestion to engage with organisations that represent boat owners and occupiers, with the NBTA being specified and this was undertaken.

The consultation was also sent to the following organisations, none of whom responded (excepting the NBTA):

National Association of Boat Owners

Residential Boat Owners Association

Inland Waterways Association

National Bargee Travellers Association

Accessible Waterways Association

Birmingham Canal Navigation Society

It is presumed therefore that Defra recognise the challenges in engaging with an itinerant community who may only spend a very small time in a particular local authority area and that the guidance reflects this situation.

The NBTA has made a comprehensive response to the consultation and likely brings forward concerns that itinerant boat dwellers would raise, certainly the comments made reflect certain of those comments made by other respondents. In light of this, the response from the NBTA has been considered in detail.

The Canals & Rivers Trust were contacted in advance to help the Council understand the likely affected population of itinerant boat users. A count of unique boat sightings within the Birmingham boundary, made between 1st November 2023 and 10th May 2024 identified 134 Continuous Cruisers - boats who do not have a home mooring but travel around the network.

It is recognised that the period was autumn / winter and that there may well be more boats on the network between June and October. We do not have a corresponding figure for that period. We also do not know how many of these actually stopped within the Birmingham area or were just seen on the network.

It is also noted however that the figure of 134 covers the winter period when the use of burners for heating purposes will be greater than during the summer period and as such may be a good reflection of the numbers most highly affected.

Point 3:

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

Response 3:

The consultation process included engagement with the Canals & Rivers Trust (CRT) and the direct erection of notices at fixed moorings in the Birmingham area. This also included the direct outreach to occupiers of permanent moorings via email by the CRT on behalf of the Council.

Having regards to the consultation reaching itinerant boat dwellers that is covered in the response to Point 2.

Point 4:

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

Response 4:

The burning of non-authorised fuel or inappropriate fuel in exempt appliances is the drive behind the new Smoke Control Order and it is noted that a number of other local authorities have made Smoke Control Orders that include moored vessels e.g. Sandwell, Hillingdon, Camden. These are all authorities within urban conurbations and as such the proposal by Birmingham is not deemed to be unreasonable or inconsistent.

Birmingham is a major city in the UK and the largest in terms of population size. Birmingham has an extensive canal network that extends into the heart of the city centre.

The city centre area is covered by a Clean Air Zone which seeks to drive down emissions of nitrogen dioxide (NO2) and it is recognised that NO2 is a product of combustion and as such will be released through solid fuel burning.

The burning of inappropriate solid fuel for the appliance in question will result in the release of various air pollutants such as fine particulate matter, polycyclic aromatic hydrocarbons, etc., all of which carry health risks, including to stove users. This is a major rationale for smoke control areas.

Whilst the contribution of NO2 and particulate emissions arising from solid fuel burning on narrowboats and other moored vessels is unlikely to significant to local pollution levels it nevertheless will be contributory and in the city centre where there is a need to further drive down concentrations it is important to ensure all appropriate action is taken to regulate pollutant emissions so as to achieve the Council’s ambition of improving air quality across all neighbourhoods.

The process for investigating compliance is contained within the changes introduced within the Environment Act 2021 in which civil penalties were introduced. There is no longer any need to obtain evidence from inside a property / moored vessel, rather the inference is that if smoke is observed then on the balance of probabilities it cannot be an authorised fuel and / or exempt appliance; the onus then is on the occupier to explain the emission as part of the regulatory process. It is recognised that a small amount of smoke may arise during start up and refuelling, and as such we would adopt a proportionate approach.

The following is excerpted from a Q&A session for local authorities, hosted by Defra on 14 June 2023. The text in **bold** is the question posed and the normal text the response from Defra.



Clear signage will be erected at entry points to the network and at fixed moorings to designate the area as a Smoke Control Area.

Point 5:

Breach of Climate Change Act 2008

Response 5:

The Smoke Control Area regulatory scheme is contained in primary legislation, the Clean Air Act 1993 as amended by the Environment Act 2021. The local authority is following primary legislation and complying with associated guidance issued by Government. There is no requirement in the regulatory process for enacting a Smoke Control Area, nor in associated guidance, to undertake any climate change calculations.

Point 6:

No alternative options proposed

Response 6:

The Smoke Control Area regulatory scheme is contained in primary legislation, the Clean Air Act 1993 as amended by the Environment Act 2021. The local authority is following primary legislation and complying with associated guidance issued by Government.

The introduction of the Environment Act 2021 allowed for moored vessels to be included in a Smoke Control Area. It is accepted that the Council does not have to include moored vessels in the new Smoke Control Area but for the broad reasons specified in Response 4, namely to improve air quality within a city authority and thereby protect public health.

The Council are pursuing options for engaging funds to assist owners of moored vessels to upgrade their boilers, either through the Defra grant scheme, or through Clean Air Zone allocated funds.

Point 7:

No evidence that DEFRA Guidance has been followed

Response 7:

The local authority is following primary legislation and complying with associated guidance issued by Government.

An Equalities Impact Assessment was undertaken and is available on the Council’s website.

Point 8:

Disproportionate impact compared to population

Response 8:

The response to Point 4 is relevant.

Birmingham is a major city in the UK and the largest in terms of population size. Birmingham has an extensive canal network that extends into the heart of the city centre.

The city centre area is covered by a Clean Air Zone which seeks to drive down emissions of nitrogen dioxide (NO2) and it is recognised that NO2 is a product of combustion and as such will be released through solid fuel burning.

The burning of inappropriate solid fuel for the appliance in question will result in the release of various air pollutants such as fine particulate matter, polycyclic aromatic hydrocarbons, etc., all of which carry health risks, including to stove users. This is a major rationale for smoke control areas.

Whilst the contribution of NO2 and particulate emissions arising from solid fuel burning on narrowboats and other moored vessels is unlikely to significant to local pollution levels it nevertheless will be contributory and in the city centre where there is a need to further drive down concentrations it is important to ensure all appropriate action is taken to regulate pollutant emissions so as to achieve the Council’s ambition of improving air quality across all neighbourhoods.

The Canals & Rivers Trust were contacted in advance to help the Council understand the likely affected population of itinerant boat users. A count of unique boat sightings within the Birmingham boundary, made between 1st November 2023 and 10th May 2024 identified 134 Continuous Cruisers - boats who do not have a home mooring but travel around the network.

It is recognised that the period was autumn / winter and that there may well be more boats on the network between June and October. We do not have a corresponding figure for that period. We also do not know how many of these actually stopped within the Birmingham area or were just seen on the network.

It is also noted however that the figure of 134 covers the winter period when the use of burners for heating purposes will be greater than during the summer period and as such may be a good reflection of the numbers most highly affected.

It should also be noted, and this is specifically relevant for this Point, that the City Council has a duty to all residents of the city and this includes itinerant boat users who may be passing through the city, irrespective of their duration of stay. This duty includes promoting and protecting community health by addressing disease prevention, health promotion, and environmental health protection and is discharged in Birmingham City Council through our Public Health team. The team are acutely aware of the risks arising from solid fuel burning e.g. through exposure to pollutants such as PM2.5 and as such the risks posed to boat users who do not use the correct appliance : fuel combination are increased. It would not be right to ignore these risks, but it may well be appropriate to balance those risks through a proportionate enforcement strategy.

Point 9:

Significant adverse impact on boat dwellers

Response 9:

The response to Point 8 is relevant.

The Council are pursuing options for engaging funds to assist owners of moored vessels to upgrade their boilers, either through the Defra grant scheme, or through Clean Air Zone allocated funds.

It is recognised that the Council cannot provide for an upgrade to all Bargee Travellers who may at some point pass through Birmingham and as such it is acknowledged that the most likely to benefit from any upgrade are those resident on fixed moorings.

The burning of non-authorised fuel or inappropriate fuel in exempt appliances is the drive behind the new Smoke Control Order and it is noted that a number of other local authorities have made Smoke Control Orders that include moored vessels e.g. Sandwell, Hillingdon, Camden. These are all authorities within urban conurbations and as such the proposal by Birmingham is not deemed to be unreasonable.

Point 10:

No Equality Impact Assessment or welfare assessment carried out

Response 10:

An Equalities Impact Assessment was undertaken and is available on the Council’s website.

The Smoke Control Area regulatory scheme is contained in primary legislation, the Clean Air Act 1993 as amended by the Environment Act 2021. The local authority is following primary legislation and complying with associated guidance issued by Government. There is no requirement in the regulatory process for enacting a Smoke Control Area, nor in associated guidance, to undertake any welfare assessment. There is no duty on the local authority to undertake a welfare assessment in accordance to the Regulatory Reform (Housing Assistance) (England and Wales) Order SI 2002/1860. This Order also relates to local housing authorities

Point 11:

Article 8 ECHR (right to respect for private life, family life and home)

Response 11:

The Smoke Control Area regulatory scheme is contained in primary legislation, the Clean Air Act 1993 as amended by the Environment Act 2021. The local authority is following primary legislation and complying with associated guidance issued by Government. ECHR Article 8 rights are acknowledged but have to be balanced against the wider benefits of making a new Smoke Control Order and on that basis, it is proportionate to proceed with the making of the Smoke Control Order.

Conclusion:

The points raised by the NBTA are deemed to have been considered. The proposal by the Council is to proceed and make the Smoke Control Order and to include moored vessels in that Order.

Furthermore, following consideration of the comments from the consultation the Council propose to create and implement a Moored Vessels Enforcement Policy (“Policy”) which specifically relates to moored vessels. It is intended that this Policy be created before the Smoke Control Order takes effect.

The current Smoke Control Orders already apply to buildings and industrial plants and therefore the new Smoke Control Order will not have any material impact on them in terms of what they can and cannot do.

The current Smoke Control Orders do not apply to moored vessels. The new Smoke Control Order however includes vessels within the scope and therefore to allow time to engage further with those affected and to provide education on the Smoke Control Order, it is proposed to only enforce the new Smoke Control Order against vessels once the Policy has been implemented. The Policy will take into account the specific circumstances of the moored vessels community, both on permanent and temporary moorings including itinerant boat users. This Policy is to be developed after engaging in further discussions with affected parties and representative bodies to ensure the Policy which is implemented is proportionate and equitable.