

Title of Report	Consolidation of Historic Smoke Control Orders and Amendment to Include Moored Vessels	
Key Decision No	CHE S221	
For Consideration By	Cabinet	
Meeting Date	26 February 2024	
Cabinet Member	Cllr Mete Coban, Cabinet Member for Climate Change, Environment and Transport	
Classification	Open	
Ward(s) Affected	All Wards	
Key Decision & Reason	Yes	Significant in terms of its effects on communities living or working in an area comprising two or more wards
Implementation Date if Not Called In	6 March 2024	
Group Director	Rickardo Hyatt, Group Director - Climate, Homes and Economy	

1. Cabinet Member's introduction

- 1.1. Air pollution is a significant public health issue which can affect everyone. Evidence shows that exposure to high levels of air pollution does not just affect the heart and lungs, it is also linked to other health issues including low birth weights and a decline in cognitive function. Therefore, air pollution can impact people's health at any stage of their lives.
- 1.2. The dates of the historic Smoke Control Orders show that efforts to improve air quality have a long history. Air quality has improved since the Orders were first created, but the revised World Health Organisation guidelines show that health challenges still remain. We know that previous policy measures have been successful in improving air quality, and this is being reflected in the monitoring data. However, we also know that there is more that needs to be done.
- 1.3. The contribution that solid fuel burning makes to concentrations of particulate matter in the local air is significant. Therefore, taking action to reduce emissions from this source is a really important step to improving air quality and helping us to meet the standards needed to protect public health.

1.4. Labour's manifesto during the 2022 Local Council elections contains a commitment to tackle the health and air quality impacts associated with solid fuel burning, and this proposal will help us to deliver on this commitment.

2. **Group Director's introduction**

2.1. Solid fuel burning is a significant contributor to local air pollution, especially to the smaller particles that can reach further into people's airways and get deposited in the lungs.

2.2. Hackney's Air Quality Action Plan was approved by Cabinet in 2021. The Action Plan contains 47 measures that we are working to implement over its 5-year lifetime. This includes a measure to ensure the borough's Smoke Control Areas are enforced, and to raise awareness of the regulatory requirements. This proposal will help officers to enforce by having a single, clear and up-to-date Order, as well as providing them with additional powers to tackle currently uncontrolled emissions arising from solid fuel burning in the borough.

2.3. Hackney has also committed to meeting the 2005 World Health Organisation Guidelines which, for particulate matter, are more stringent than the Air Quality Objectives set out in the National Air Quality Strategy. Therefore, taking action to reduce the impacts from solid fuel burning will help to work towards this goal and demonstrates our commitment to meeting the health-based targets.

2.4. We know that residents are concerned about air quality and that air pollution features as one of the greatest environmental concerns in Londonwide surveys. Data shows that the contribution to emissions of particulate matter from solid fuel burning is increasing, which may result in a rise in complaints about this issue. Having the powers available to Council Officers is important to enable them to respond to complaints and concerns in the most effective manner.

2.5. We also recognise that the cost of living is increasing and fuel costs, in particular, have seen substantial price rises in recent years. We want to ensure that those who are dependent on solid fuel burners for their heating receive support to enable them to continue to heat their home and will look to provide financial assistance where appropriate.

3. **Recommendations**

Cabinet is recommended to:

- 3.1. **Approve the proposal to take the relevant steps in order to revoke all existing Smoke Control Orders across the London Borough of Hackney, which will then go to the Secretary of State for confirmation/approval;**
- 3.2. **Approve the proposal to publish, and seek public comment on, a new draft Smoke Control Order which covers the entire borough and which extends the smoke control provisions to include moored vessels (hereafter, Order);**
- 3.3. **Approve a cap of £2,300 per vessel to those who are eligible, for the purpose of upgrading appliances to meet compliance standards should the Order be approved.**

4. **Reason(s) for decision**

- 4.1. The burning of solid fuel is a significant contributor to levels of particulate matter in the ambient air, especially the finer particles (PM_{2.5}). According to the 2019 Clean Air Strategy, it is estimated that 38% of the UK's primary PM_{2.5} emissions arise from wood / coal burning associated with residential heating. In London, this figure is estimated to be less but a recent study for the London Wood Burning Project has reported that domestic wood burning is the second biggest source of PM_{2.5} emissions in London.
- 4.2. Numerous scientific studies have provided evidence of the potential harm to health from exposure to emissions from solid fuel burning, especially the fine particulates which are capable of reaching further into the airways. Pollutants can be dispersed so concentrations will vary over distance. However, the highest concentrations are likely to occur close to the source so the health impacts arising from exposure will also be felt by those burning the solid fuel.
- 4.3. A total of 27 Smoke Control Orders are in place which relate to the London Borough of Hackney. The Smoke Control Orders are accompanied by Schedules which describe the area that is covered. These use features such as railways and canals, as well as roads, to describe the boundaries. As there have been changes since the date of their creation, both in terms of administrative boundaries and new developments changing road layouts, the descriptions are becoming less accurate over time.
- 4.4. The Smoke Control Orders cover almost the entire borough, but apply to fixed properties only. Among the Orders, one exemption has been found. This is a small geographical area that is believed to have been occupied at the time by commercial and industrial premises and which were exempted from the regulatory controls.
- 4.5. The Regulations are contained within the Clean Air Act 1993, which states that 'a Smoke Control Order in England "applies" to a building, fireplace, fixed boiler or industrial plant'. These controls do not apply to boats. The Environment Act 2021 introduced new provisions which allow local

authorities to include moored vessels within a Smoke Control Order. Amending a Smoke Control Order to include moored vessels is optional and the decision whether or not to do so rests with each local authority.

- 4.6. The number of complaints that the Council receives each year about solid fuel burning is relatively low compared to the numbers received about other environmental issues. However, complaints about emissions from moored vessels have been increasing slightly over recent years. The reasons for the increase are unknown. It might be attributed to increased awareness of air pollution's health impacts, leading to more reporting, or possibly due to canalside development reducing the distance between those residing on canals and those in adjacent properties.
- 4.7. The proposal is to have in place a single boroughwide Smoke Control Order. A draft Order is included at Appendix I. This will make it clearer for both residents and enforcement officers. It will also mean that, where enforcement action is taken, it will be less open to challenge on the grounds of the historical details. It is also proposed that moored vessels be included within the new Order, so that the same restrictions which apply to people living in properties will apply to those mooring vessels on the borough's waterways. By doing so, we can help to improve local air quality and better protect public health.
- 4.8. As the existing Smoke Control Orders are dated before 13th November 1980, the decision on their revocation rests with the Secretary of State. The revocation of the existing Orders requires a separate process to the designation of the new Smoke Control Area and, therefore, requires a separate Order. A draft Order for the revocation of existing Orders is included in Appendix II. People who may be affected by the change can raise an objection but this must be directed to the Secretary of State, who will then make a decision on the revocation after the period for raising an objection has closed.
- 4.9. For designating a new Smoke Control Order, including one which extends the controls to include moored vessels, the decision is delegated to the local authority. Therefore, a separate Order and process for allowing objections is required. Anyone wishing to raise an objection to the new Order will need to do so with the local authority.
- 4.10. The processes for the revocation and the designation are similar and can run simultaneously. However, the decision on the designation of a new Order will be dependent on the Secretary of State's decision on the revocation of the existing Orders. The existing Orders will remain in effect and will be enforceable until the date of their revocation. The new Order will not come into effect until the previous historic Orders have been revoked.

5. **Details of alternative options considered and rejected**

- 5.1. **Do Nothing.** Although the Smoke Control Orders continue to be valid and can be used to enforce the provisions, the changes in administrative boundaries and road layouts, etc. which have occurred since they were made make the area covered less clear. As further changes over time are expected, this may result in legal challenges. Also, the Smoke Control Orders that currently exist do not include moored vessels and recent changes to the legislation now allow these to be included within the scope. If no changes are made, it will not help to achieve the targets for particulate matter that Hackney Council has committed to meet by 2030. Therefore, the option to do nothing was rejected.
- 5.2. **Consolidate the existing historical Smoke Control Orders into a single Order without extending the scope to include moored vessels.** To revoke the historical Smoke Control Orders and replace them with a new single boroughwide Order without extending the current provisions was considered. As set out above, the opportunity to include moored vessels within the provisions has recently become available. There is not a requirement for local authorities to adopt these powers and, before doing so, a process of engagement would be required. A decision on whether to include moored vessels within the scope would be made following this process of engagement and would be dependent on the feedback received. It would be more efficient and practical to undertake this process at the same time as consolidating the Orders. Therefore, the option to not include this amendment was rejected.

6. **Background**

Policy Context

- 6.1. The Clean Air Act 1956, later amended by the Clean Air Act 1993, gave local authorities the power to declare Smoke Control Areas within their boundaries. A Smoke Control Area designates an area where special provisions apply to control smoke. Within the designated area, smoke emissions are not permitted from a chimney unless either authorised fuel is being burned or the fuel is being burned in an 'exempt appliance'. The [list of authorised fuels](#) and [exempt appliances](#) are managed by DEFRA. Persons found guilty of breaking the rules could be fined up to £1,000.
- 6.2. From 1958, several Smoke Control Orders which cover parts of the London Borough of Hackney were put in place by the relevant administrative authorities at that time. The first Smoke Control Order was declared by Stoke Newington in March 1958 and covered an area around Green Lanes and Lordship Park.
- 6.3. Prior to 1965, the area which now forms the London Borough of Hackney consisted of several smaller Metropolitan boroughs, namely Hackney, Shoreditch and Stoke Newington. These 3 boroughs were merged to form

the London Borough of Hackney in 1965. Further Smoke Control Orders were issued by the London Borough of Hackney after its creation in 1965.

- 6.4. Most residential premises in the borough are now connected to a gas mains supply and have an energy supply for heating that does not require solid fuel. However, there has been an increase in the popularity of solid fuel burners in recent years. These are typically wood-burning stoves which are used in addition to the main form of heating within the home. Studies have been carried out to try to evaluate the impacts that solid fuel burning is having on local air quality as the number of households using wood-burning stoves continues to grow. This includes a [study by King's College in 2014](#) which, using tracers of wood burning, found indications that the practice is more consistent with discretionary heating rather than a need to heat the home.
- 6.5. London Borough of Hackney commissioned a door-knocking survey which was conducted by the Zero Emission Network in 2020. Through the survey, conversations were held with over 4,000 residents and data was collected on the prevalence of solid fuel burning and residents' awareness of the Regulations. Among the properties visited where a response was received, 10% had an open fireplace and 5% had a wood-burning stove.
- 6.6. The Regulations are designed to reduce the harmful emissions associated with solid fuel burning. Despite authorised fuels often being called 'smokeless', smoke and emissions are not eliminated completely. However, to meet the criteria for use within a smoke control area, the fuel must emit less than 5g per hour when tested to British Standards. Authorised fuel will typically emit only about 20% of the fine particulate matter that is associated with the use of house coal.
- 6.7. The Environment Act 2021 introduced some amendments to the Clean Air Act 1993. Schedule 12 of the Act introduces, for the first time, the option for local authorities to extend the scope of an Order to include vessels moored within a Smoke Control Area.
- 6.8. The Regulations require local authorities to provide financial support to those who may need to upgrade their appliance to one that is compliant with the new provisions. DEFRA has confirmed that this should only apply to those using moored vessels as this group is affected by the changes introduced by the Environment Act 2021. The requirement is to reimburse 70% of the costs of the upgrade in 6 monthly instalments. The opportunity to claim back a contribution to costs will be available only to those who have a vessel moored on the borough's waterways on the date the Order comes into force, and who have a licence to continue to moor in that location for a further six months.
- 6.9. While the eligibility criteria will restrict the number of people able to claim this funding, officers will endeavour to raise awareness of the opportunity so that all those who are eligible are able to receive the support that is on offer. For those who are not eligible because they do not have a mooring licence,

compliance will need to be through upgrading their appliance at their own expense or by using authorised fuel. Through the engagement process, we will try to make boaters aware of this and to have discussions with those affected on any other means by which we can support them.

- 6.10. DEFRA is making funding available to local authorities who extend the scope of the Smoke Control Order to include moored vessels. This funding will cover all of the reimbursement costs which a local authority is required to pay to vessel owners, and an application can be made when the window opens around May 2024. We will look into the possibility of any additional funding being made available to boaters who don't meet the eligibility criteria. In addition, a bid for funding to the Mayor of London has been made with neighbouring boroughs to deliver an awareness-raising project among boaters across the whole project area.
- 6.11. The Council approved Hackney's Air Quality Action Plan in July 2021. The Action Plan includes 47 measures to be delivered between 2021 and 2025 that aim to improve air quality across the borough. Action 15 is to 'Promote and Enforce the Borough's Smoke Control Area'. The proposals to consolidate the historic Smoke Control Orders and to consult on including moored vessels within the scope would contribute to delivering this action.
- 6.12. The proposals are intended to put in place the framework to allow improved enforcement of smoke control regulations. This will help to improve local air quality and, therefore, reduce the harm to health that can arise from exposure to air pollution. This will help to meet the Council's Corporate priority of Reducing Harm and the Mayoral priority of a Greener, Healthier Hackney.

Equality impact assessment

- 6.13. Hackney Council must comply with the Public Sector Equality Duty set out in Section 149 of the Equality Act 2010. This requires us to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations by reference to people with protected characteristics. An Equality Impact Assessment has been carried out to assess the impacts from both processes together, that is the revocation of the historic Smoke Control Orders, and the designation of a boroughwide Smoke Control Area with the controls also being applied to moored vessels.
- 6.14. While there are two separate processes, the publication of the Orders, and the period allowed for objections, will be carried out simultaneously. The intended outcome is that the provisions of the new Order will replicate those contained in the historic Smoke Control Orders which are being revoked, but will be extended to include moored vessels. Consequently, there will be one single Order covering the entirety of the borough and this will make it easier to understand and to regulate.
- 6.15. Geographically, the areas that will now be covered by an Order which have not previously been so, are limited. There is a small pocket where

exemptions were previously in place. However, there is also some uncertainty where a border / layout change has affected the description of the boundary. Removing the exemptions and addressing these anomalies will ensure a fair and consistent approach to enforcement.

- 6.16. As most post-war developments have provisions for heating that do not rely solely on solid fuel, the changes are not expected to limit people's ability to heat their homes. It may, however, impact on people who have an open fireplace or a woodburner, which they wish to use as an additional source of heating.
- 6.17. The proposal is to also extend the scope of the smoke control provisions to include moored vessels. As moored vessels have not previously been covered by Smoke Control Regulations, the proposals will impact most on those who moor vessels on Hackney's waterways. The Equality Impact Assessment has used available data on those who use London's waterways to help assess the impacts on equality.
- 6.18. People who live on houseboats will depend almost entirely on solid fuel for their heating. Some of the appliances being used on boats are likely to include those that have been exempted by DEFRA and which are already suitable for use in a Smoke Control Area. The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 bans the sale of wet wood and house coal. As a result of this, much of the solid fuel being used is likely to have reduced emissions as that is all that is available to purchase. However, people may still use fuel obtained from other sources, such as foraged wood.
- 6.19. Some of the people using moored vessels will depend on solid fuel as their sole form of heating and will be using an appliance which is non-compliant. Limited data is available on the people using Hackney's waterways for mooring vessels, but a survey of people living on and using boats on London's waterways was carried out by the Canal & River Trust (CRT) in 2016. Data from this survey has been used in the Equality Impact Assessment to ascertain whether the proposal is likely to disproportionately affect any people with a protected characteristic and, if so, how the impacts can be mitigated.
- 6.20. The data from the CRT survey indicates that people using vessels on the waterways tend to be people aged under 35, who live alone or with a partner (without children) and who are white. There is no data to indicate that the proportions of other protected characteristics differ between the boating community and the wider population.
- 6.21. While not a protected characteristic under the Equality Act, Hackney recognises low income as a characteristic requiring consideration in addition to those which are listed in the Act. People living on houseboats may have lower incomes, as 50% of those who responded to the survey said that affordability / financial reasons was a motivation for living on a boat. The support that the local authority is required to provide to help with costs can

help to mitigate the financial impacts on some, but not all of those with lower incomes.

Sustainability and climate change

- 6.22. The proposals aim to tackle emissions from solid fuel burning which impact on local air quality. While solid fuel burning is not being prohibited, the proposals aim to ensure that the fuel is burned in a way that reduces emissions.
- 6.23. In May 2023, Hackney approved a Climate Action Plan for the borough which sets out how everyone in Hackney can tackle climate change and work towards preventing the increase in global temperatures from exceeding the 1.5°C target set in the Paris Agreement. Environmental Quality, which includes air quality, forms one of the chapters within the Action Plan. Actions by residents to reduce the extent of solid fuel burning will play a part in reducing the borough's emissions of particulates and nitrogen dioxide. At the same time, encouraging a shift to more renewable technologies will have benefits for carbon reduction. It is recognised that the cumulative impacts from a range of collective actions is required in order to meet the target.
- 6.24. The use of wood and biomass has previously been promoted as being carbon neutral. However, this is complicated as it requires taking account of the carbon sequestered by the tree while growing. There are also emissions associated with the forestry and transport industries which need to be taken into account in the full life-cycle emissions assessment.
- 6.25. Some other authorised fuels, such as those made from pulverised anthracite, are likely to have higher carbon emissions. The table below provides a comparison of carbon emissions for different types of fuel. For comparison purposes, this shows the amount in grammes of CO₂ emitted for each kilowatt hour of electricity generated and it can be seen that wood and coal are among the highest emitters.

Fuel	Emissions in grammes of CO₂ per kilowatt hour of primary energy	Emissions in grammes of CO₂ per megajoule of primary energy
Lignite	398.7	110.8
Wood	367.6	102.1
Hard Coal	338.2	93.9
Fuel Oil	266.5	74.0
Diesel	266.5	74.0
Crude Oil	263.9	73.3

Kerosene	263.9	73.3
Gasoline	263	73.3
Liquid Petroleum Gas	238.8	66.3
Natural Gas	200.8	55.8

Source: 8billiontrees.com Carbon Footprint of Wood Burning Stoves

- 6.26. As well as reducing emissions during the burning process, the proposals aim to also reduce the prevalence of solid fuel burning. Engagement with the public on the changes to the Smoke Control Orders will run alongside an awareness campaign to highlight the impacts of solid fuel burning on air quality and, therefore, health. Hackney is an Associate Member of a Londonwide project which is running an awareness-raising campaign on the impacts of solid fuel burning during the autumn and winter of 2023/24. Households which currently burn solid fuel in compliance with the regulations may be encouraged to burn less regularly. In this way, the proposals may result in a reduction in carbon emissions, which will have positive impacts for climate change.

Consultations

- 6.27. The consultation process associated with the revocation and declaration of Smoke Control Areas are laid down in the Regulations.
- 6.28. No consultation has yet been undertaken. Approval is being sought to initiate the process which will involve advertising, by means of a Statutory Notice, the intention to revoke the historic Smoke Control Orders. As the Smoke Control Orders were made before 13th November 1980, the process for revoking them is set out in Part 3 of Schedule 5 of the Clean Air Act 1993. This requires the Order to be confirmed by the Secretary of State. At the same time, a Statutory Notice setting out the proposed new Smoke Control Area will be advertised. The information accompanying the Notices will make clear that any objections to the revocation must be raised with the Secretary of State, while any objections about the new Order must be raised with London Borough of Hackney.
- 6.29. The legislation requires the borough to first make an Order setting out the proposed revocations. A separate draft Order designating the proposed new Smoke Control Area will be issued at the same time. The local authority must then publish notices in the London Gazette as well as in a local newspaper for at least once in each of two consecutive weeks. A copy of the Orders, and any map or plan to which they refer, must be made available for inspection by any person free of charge at all reasonable times for no less than six weeks from the date of publication of the notices. The locations where these can be inspected must be included in the notices.

- 6.30. Any person who may be affected by the revocation of the historic Smoke Control Orders can object by writing to the Secretary of State. This will be by writing to DEFRA and an address for correspondence will be provided.
- 6.31. Any person who may be affected by the designation of the new Smoke Control Order can object by writing to the London Borough of Hackney. An address for correspondence will be provided.
- 6.32. Throughout the period of engagement, the Council must keep copies of the notices posted in several locations in the relevant area to help ensure that people who may be affected by the Orders are aware of them.
- 6.33. Guidance issued by DEFRA advises local authorities to make the engagement process as inclusive as possible. The Guidance includes a list of organisations that it recommends should be engaged in order to help ensure that various communities who may be affected by the changes are engaged. Officers will follow the guidance and look to go further in order to engage communities in Hackney while recognising that boaters will be moving along the waterways so that wider engagement is needed.
- 6.34. To raise awareness of the Orders and the opportunity to raise objections, officers within Hackney will:
- Place the required notices in relevant London publications and Hackney Citizen;
 - Make hard copies available to view in public locations (libraries, Town Hall, etc) and advise people where hard copies and maps can be viewed;
 - Send email communications to the organisations recommended by DEFRA;
 - Engage key organisations that represent boat owners and have expertise in solid fuel burning on ways to connect with people likely to be affected;
 - Conduct visits to borough waterways at times when boats are likely to be occupied in order to have face-to-face conversations with people who may be affected;
 - Place notices in locations frequented by boaters and those communities living near the canal;
 - Create and disseminate a leaflet with answers to anticipated questions including details on how to respond to the proposals;
 - Make efforts to identify and contact organisations and communities occupying buildings immediately adjacent to a waterway.
- 6.35. After carrying out the above steps and allowing for a period for objections to be raised, the Council must send the Revocation Order to DEFRA for confirmation, including a copy of the notice and details of the steps undertaken to meet the borough's regulatory requirements.

- 6.36. If any objections are raised and not withdrawn, the Secretary of State may require a local inquiry to be held to consider the objections and make a decision. If the Order is confirmed by the Secretary of State, it will come into effect not less than 6 months after the date of confirmation.
- 6.37. The designation of the new borough-wide Smoke Control Area is dependent on the historic Orders being revoked, which requires a decision being made by the Secretary of State. A date when the historic Orders cease to apply will be set based on the date when the decision is made.
- 6.38. At the same time, the local authority will need to consider any objections raised to the proposed new Smoke Control Area. A decision on the introduction of the new Smoke Control Area will need to be made based on the responses received during the period of engagement and will be dependent on the decision made by the Secretary of State. Should the new Order be approved, the date for the introduction of the new Smoke Control Area will be aligned so that it comes into effect as the others are revoked.

Risk assessment

- 6.39. High level risks, and mitigation measures, associated with the recommended proposals are set out below:

Risk	Mitigation
Objections are made to the Secretary of State and not withdrawn.	We will make people aware that the process to revoke is being run alongside a process to designate a borough-wide Smoke Control Area to ensure people have the correct information and understand how the processes are aligned. We will also work with partners to engage the communities most likely to be affected.
Objections are made to the local authority which are not withdrawn.	Messages to raise awareness of the harmful impacts of solid fuel burning on air quality and health will be scheduled prior to the Order being made and throughout the winter period. To address concerns about the financial impacts, we will bid for funding from DEFRA to provide financial support to those needing to upgrade their appliance and will advertise the opportunity for assistance to encourage uptake. We will also work with partners to engage the communities most likely to be affected.
Financial risks to the Council	The legislation requires that the local authority reimburse 70% of the costs of upgrading an appliance to be compliant to boilers provided that they meet the eligibility criteria. A cap of £2,300 will

	<p>be implemented for the reimbursement costs and this will be included in the engagement material. There is a risk to the Council of having to cover the reimbursement costs which would be a maximum of £690,000. DEFRA is making funding available to local authorities to cover these costs through a non-competitive bid. Provided that an application for funding is made, and is successful, during the available window, all costs associated with providing reimbursements will be covered. The decision on the funding application is likely to be known around the time when the period for raising objections ends.</p> <p>The costs to the Council will primarily be for publishing the Notice and engaging communities to make them aware of the contents of the Order. These costs will be limited to officer time, printing, advertising and administration costs which can be met through existing budgets.</p>
<p>Financial costs for the boating community and effects on community relations</p>	<p>Although up to 70% of the costs of upgrading to achieve compliance can be reimbursed, this is dependent on eligibility criteria and does not cover all of the costs. Therefore, those who have a right to moor their vessel in the borough for 6 months can receive some support but will need to finance the remaining 30% of the costs themselves. There will be no financial support for those who use the borough's waterways but do not have a permanent mooring. To address the risks of negative relations with the boating community, we will actively engage with people who may be affected and help them explore alternative ways to comply with the regulatory changes. We will also be liaising with DEFRA regarding the financial support which they may be able to provide to the local authority to assist with those boaters who are not eligible for reimbursement costs.</p>
<p>Risks of increased expectations about the new regulatory controls.</p>	<p>The number of complaints that the Council receives about smoke arising from vessels on the borough's waterways is relatively low but has been increasing. The Order will require people using vessels to either use authorised fuel or to use an exempt appliance. In doing so, this will reduce emissions but does not eliminate smoke and odour completely. The controls also apply only to fuel used for heating and not to the fuel that is used to power the vessel's movement. Therefore, complaints may be received about</p>

	compliant behaviour with an erroneous expectation that enforcement action be taken. The risks will be mitigated through the awareness-raising campaign that will aim to educate people about the controls and what is, and is not, covered.
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7. **Comments of the Interim Group Director, Finance**

- 7.1. This report requests approval to create a single borough wide Smoke Control Order and extend the provisions to include moored vessels. The council will be required to consult upon the Order.
- 7.2. The report also requests approval to provide funding to moored vessel owners up to a cap of £2,300 per vessel to those who are eligible, for the purpose of upgrading appliances to meet compliance standards should the Order be approved.
- 7.3. DEFRA will fund the costs incurred via the Smoke Control Areas Waterways Air Quality Grant Scheme which will run across 2023/24 and 2024/25.
- 7.4. Although as many as 300 boats with permanent moorings might apply for upgrades, eligibility criteria will reduce the number of applicants, with reimbursement costs likely to remain below £690,000. In 2024/25, a funding window opportunity will be available to secure the funding to cover 70% of the costs for eligible boaters. Boaters will be required to fund the remaining 30% of cost from their own resources.
- 7.5. Consequently the Council's costs will be limited to consultation, staff time to implement and enforce the Order and to enable the reimbursement payment to an estimated 300 applicants. The Council's costs will be managed within existing budgets within the Environmental Strategy service within Climate Homes and Economy.
- 7.6. DEFRA will require a breakdown of costs and the reasoning behind the figures, such as: expected number of vessels requiring adaptation; steps to be taken to ensure that boat owners/occupiers meet specific reimbursement conditions; verify the accuracy and appropriateness of adaptation claims and confirmation that adaptations are completed to satisfaction; how to enforce certain mooring and absence requirements; and involve anti-fraud checks.
- 7.7. The Council should be aware that further detail might be necessary, as the anti-fraud process is currently under review by DEFRA.

8. **Comments of the Acting Director of Legal, Democratic and Electoral Services**

- 8.1. 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's used in an 'exempt' appliance (appliances which are approved for use in smoke control areas).
- 8.2. Smoke Control Orders are governed by The Clean Air Act 1993. Amendments to this Act by the Environmental Protection Act 2021 have fundamentally changed how smoke control orders work and how the rules are enforced by local authorities.
 - 8.3. Under the amendments, local authorities now have the discretion to extend the scope of their smoke control orders so that their restrictions include moored vessels (i.e. canal boats, although smoke emissions are allowed from fuel used by an engine to move or provide electric power to the vessel).
 - 8.4. It is unlawful to emit smoke from a property (including moored vessels) that falls under a smoke control order. Officers of the council can issue a financial penalty of between £175 and £300 where they witness the emission of a 'significant quantity of smoke from a chimney', regardless of the appliance being used or the type of fuel burned. Wood, timber or logs will need to be used in a DEFRA approved stove or smokeless fuel should be used.
 - 8.5. Recommendation 3.1 requests Cabinet Approval to initiate the process to revoke all current smoke control orders within the borough. Any comments/objections from the public are to be sent to the Secretary of State, and the final decision as to confirmation of revocation rests with the Secretary of State.
 - 8.6. Recommendation 3.2 of this report requests Cabinet approval to seek public comment on a new draft Smoke Control Order (Appendix I) which covers the entire borough and which extends the smoke control provisions to include moored vessels.
 - 8.7. Recommendation 3.3 of this report seeks Cabinet approval of a cap of £2,300 per vessel to those who are eligible, for the purpose of upgrading appliances to meet compliance standards, should both the revocation and a new Order be approved.
 - 8.8. A key decision is a Cabinet decision which is likely to:
 - i) Result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decisions relates, or
 - ii) Be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council.
 - 8.9. The recommendations set out in part 3 of this report fall within the definition of a Key decision under the Council's Constitution.

Appendices

Appendix I - Draft Smoke Control Order 2024

Appendix II - Draft Smoke Control Revocation Order 2024
Appendix III - Equality Impact Assessment

Background documents

ZEN Fuel Burning Engagement Project Final Report

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