

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2004-05

**LONDON LOCAL AUTHORITIES (PROHIBITION OF SMOKING
IN PLACES OF WORK) [H.L.]**

P E T I T I O N

Against the Bill - on Merits - Praying to be heard by Counsel, &c.

To the Right Honourable the Lords, Spiritual and Temporal in Parliament assembled.

THE HUMBLE PETITION of the WESTMINSTER LICENSEES
ASSOCIATION,

SHEWETH as follows:—

1. A Bill (“the Bill”) has been introduced and is now pending in your Right Honourable House intituled “A Bill to provide for the prohibition of smoking in places of work in Greater London.”.

2. The Bill is promoted by Westminster City Council acting on behalf of the London borough councils. The Preamble to the Bill recites, inter alia, that it is expedient that smoking should be prohibited in places of work in Greater London.

3. In the Bill, and in this Petition, “borough council” means a London borough council and includes the Common Council of the City of London in its capacity as a local authority and in this Petition a “borough” means the area of a borough council.

4. Your Petitioners are an incorporated trade association founded in [2001] and registered under the Companies Acts. Amongst their activities and pursuant to their objects, your Petitioners generate information, support and assistance on matters that are to the benefit of their members who operate one or more licensed premises in the Westminster area and whose members include pub, club, bar and restaurant owners.

5. Your Petitioners allege that the property, rights and interests of their members are prejudicially and injuriously affected by the Bill to which they object for the reasons, amongst others, set out below.

6. The following provisions of the Bill are of particular concern to your Petitioners.

(a) Clause 3 of the Bill would enable a borough council to pass a resolution to bring the intended Act into operation within their borough; and different dates may be fixed for different boroughs.

(b) Clause 5 of the Bill would prohibit the smoking of cigarettes and other tobacco products in a place of work in a borough. The expression “place of work” is widely defined by clause 4 of the Bill and most, if not all, of the premises operated by your Petitioners’ members would fall within the definition of place of

work where smoking would be prohibited. Furthermore, that definition would extend to the vehicles used by the employees of your Petitioners' members in the course of those members' respective businesses.

- (c) Clause 7 of the Bill would make it an offence for a person to contravene the prohibition on smoking to be imposed by clause 5 and a person committing an offence would be liable on summary conviction to a fine not exceeding level 5 on the standard scale which is currently fixed at £5,000.
- (d) Clause 8 of the Bill would enable an authorised officer to give a person who is suspected of having committed an offence under clause 5 an opportunity of discharging any liability to conviction by payment of a fixed penalty and, by clause 10, a borough council would be entitled to retain any sum paid as a fixed penalty.
- (e) Clause 11 would enable a borough council to set the level of fixed penalties payable to them under clause 10 and clause 11 would provide the Secretary of State with reserve powers to reduce the level of any fixed penalty set by a borough council where the Secretary of State considers that the level set is excessive.

7. The effect of prohibiting smoking in the premises of your Petitioners' members would be to deter people who smoke from attending those premises thereby resulting in a downturn in trade. Such a downturn in trade could ultimately lead to the closure of the premises operated by your Petitioners' members with the resultant impact on employment and knock on effects to the local economy together with a loss of amenity to local residents.

8. Your Petitioners submit that existing legislation adequately provides for the protection of the health and safety of employees at work as employers are under an obligation to assess the risks to health at the workplace and introduce appropriate steps to minimise such risks.

9. Some borough councils may bring the intended Act into operation within their borough whereas other borough councils may not do so. This would result in the introduction of localised restrictions with members' businesses within affected boroughs being unfairly discriminated against and penalised as a result of arbitrary local authority boundaries. Furthermore those borough councils which resolve to bring the intended Act into operation within their borough may subsequently set fixed penalties at different levels from each other. As a result, there would be disparate legislation applicable throughout Greater London so that, in some boroughs offences could be committed which would not be committed in other boroughs and the penalties payable could differ between different boroughs. Your Petitioners submit that such patchwork legislation is unreasonable and undesirable.

10. Your Petitioners apprehend that some borough councils might adopt a policy of enforcing the provisions of the intended Act with exceptional rigour as a means of raising revenue by imposing fixed penalties and consequently cause further loss and damage to your Petitioners' members' businesses.

11. Your Petitioners submit that an outright prohibition on smoking as envisaged by the Bill is disproportionate and unreasonable. In a White Paper (Choosing Health) the Government proposes to regulate smoking - with only some prohibitions - which would be far less sweeping than the prohibition to be imposed by the Bill. Your Petitioners submit that the proposals in the White Paper offer a better alternative to the Bill and those proposals should be discussed by the Government with all sections of the licensed trade so that a consensus may be reached as to the

regulation of smoking in places of work. The Bill is, accordingly, premature and should not be allowed to proceed.

12. Your Petitioners further submit that the Bill would confer on the borough councils draconian and misconceived powers which would irreparably damage your Petitioners' members' businesses and deprive their employees of their livelihoods without making any provision for compensation. The Bill lacks proportionality and accordingly the Bill should be rejected.

13. The Preamble to the Bill is incapable of proof and your Petitioners submit that the Bill should not be permitted to proceed.

YOUR PETITIONERS therefore humbly pray your Right Honourable House that the Bill may not be allowed to pass into law and that they may be heard by themselves, their Counsel, Agents or witnesses against the Preamble to the Bill and, if the same do pass, against all the clauses and provisions of the Bill which relate to or affect their property rights and interests and in support of other clauses and provisions for their protection and benefit and their property rights and interests or that such other relief may be given to your Petitioners in the premises as your Right Honourable House shall deem meet.

AND your Petitioners will ever pray, &c.

Agents for the Petitioners

Deposited [] February 2005

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AGAINST,

BY COUNSEL, &c.

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