

Liverpool City Council (Prohibition of Smoking in Places of Work) Bill

EXPLANATORY MEMORANDUM

This Bill is promoted by Liverpool City Council. It provides for a prohibition on smoking in enclosed places of work in the City of Liverpool.

Part 1 of the Bill deals with preliminary matters.

Clause 1 deals with citation and commencement, and *Clause 2* with definitions of certain expressions used in the Bill, including “smoking”.

Clause 3 provides for the provisions of the Bill to come into operation on a day to be appointed by the Council.

Part 2 contains the main operative provisions of the Bill.

Clause 4 defines the term “place of work”. It includes any place to which any person has access while at work, not being domestic premises. The clause goes on to specify that places within the premises to which employees have access are included within the definition, as are any other places used as a means of access to or egress from the place of work or where facilities are provided for use and in connection with the place of work.

The definition includes vehicles, vessels, aircraft or hovercraft, installations, tents and movable structures.

Subsection (1) of *Clause 5* provides that smoking is prohibited in places of work in the City.

Subsection (2) provides an exemption from the prohibition in subsection (1) for places which are wholly uncovered by any roof or ceiling.

Clause 6 makes provision for the display of signs on certain premises where smoking is prohibited. The Clause provides that signs must be placed in all parts of the premises to which members of the public have access indicating clearly that smoking is prohibited in those areas. The signs must also give the name of the person to whom a complaint may be made by a member of the public who observes another person smoking in the public area where smoking is prohibited.

Clause 7 provides for offences under the Bill. Subsection (1) provides that any person who contravenes *Clause 5* (Prohibition of smoking) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Subsection (2) provides that where there is a contravention of *Clause 5* (Prohibition of smoking) in a place of work, the occupier, manager and any other person for the time being in charge of the place shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Subsection (3) provides that where there is a contravention of *Clause 6* (Display of signs), the occupier and person in charge of the premises concerned shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Part 3 enables authorised officers of the Council to serve fixed penalty notices in cases where an offence is committed by a person who contravenes subsection (1) of *Clause 5* (Prohibition of smoking).

Clause 8 provides that where an authorised officer finds a person who he has reason to believe has committed an offence under subsection (1) of *Clause 5*, he may give the person a fixed penalty notice offering him the opportunity of discharging any liability to conviction by payment of a fixed penalty.

Clause 9 enables an accredited person, accredited under Chapter 1 of the Police Reform Act 2002, to serve fixed penalty notices under *Clause 8*. By applying provisions of that Act, it also enables accredited persons to require persons who are suspected of committing an offence under *Clause 7(1)* to give their names and addresses. Failure to do so, or the provision of incorrect information would be an offence under Schedule 5 to the 2002 Act.

Clause 10 provides that in cases where a fixed penalty notice is given in respect of an offence, no proceedings shall be instituted for the offence until 14 days after the date of the notice, and the recipient of the notice must not be convicted of the offence if he pays the fixed penalty before the end of that period.

Subsection (3) set outs categories of information which must be contained on the face of the notice.

Subsection (6) introduces the *Schedule* to the Bill which sets out financial provisions relating to fixed penalties payable under *Clause 10*. The *Schedule* entitles the Council to keep the proceeds from fixed penalty notices and to apply any surplus from annual receipts of fixed penalties towards the improvement of the health of residents in the City of Liverpool.

Clause 11 enables the Council to set the level of fixed penalties payable to them under *Clause 10* and *Clause 12* provides the Secretary of State with reserve powers to reduce the levels of fixed penalties set by the Council, where the Secretary of State thinks they are excessive.

Part 4 sets out a number of supplemental provisions.

Clause 13 provides authorised officers of the Council with rights of entry to inspect places of work and do such things as are reasonably necessary for the purpose of ascertaining whether there is or has been a contravention of *Clauses 5* and *6* of the Bill.

Clause 14 provides for an offence of intentionally obstructing any authorised officer acting in the exercise of his powers under the Bill.

Clause 15 enables an authorised officer of the Council to require persons to give them their name and address for service of a fixed penalty notice or a summons, where the officer has reasonable grounds for suspecting that an offence under subsection (1) of *Clause 7* has been committed. It is an offence to fail to furnish a name or to furnish a false name or address.

Clause 16 provides a defence of due diligence in proceedings for offences under the Bill.

Clause 17 makes provision for the liability of directors and other officers where an offence under the Act is committed by a body corporate. A director or officer will be liable for such an offence where it has been committed with the consent or connivance of, or is attributable to the neglect of the director or officer.

Clause 18 sets out provisions about the making of regulations under the Bill.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of Liverpool City Council the provisions of the Liverpool City Council (Prohibition of Smoking in Places of Work) Bill are compatible with the Convention rights.

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A

B I L L

To provide for the prohibition of smoking in places of work in the City of Liverpool.

WHEREAS—

- (1) The City of Liverpool (hereinafter called “the city”) is a metropolitan borough under the management and local government of Liverpool City Council (hereinafter called “the council”):
- (2) It is expedient that smoking should be prohibited in places of work in the city:
- (3) It is expedient that the provisions contained in this Act should be enacted: 5
- (4) The objects of this Act cannot be attained without the authority of Parliament:
- (5) In relation to the promotion of the Bill for this Act the council have complied with the requirements of section 239 of the Local Government Act 1972 (c. 70):

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— 10

PART 1

PRELIMINARY

1 Citation and commencement

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- (1) This Act may be cited as the Liverpool City Council (Prohibition of Smoking in Places of Work) Act 2005.
- (2) This Act, apart from this Part, shall come into operation on the appointed day.

2 Interpretation

In this Act, except where the context otherwise requires—

“authorised officer”, in relation to the council, means—

- (a) any employee of the council;
- (b) any other person by whom, in pursuance of arrangements made with the council, any functions under this Act fall to be discharged; or 5
- (c) any employee of any such person,

who is authorised in writing by the council to act in relation to the relevant provision of this Act;

“the city” means the City of Liverpool; 10

“the council” means the Liverpool City Council;

“smoking” means having a lighted cigarette, cigar, pipe or any other lighted smoking product, and “smoke” shall be construed accordingly;

“smoking product” means any tobacco or other product that is intended to be smoked. 15

3 Appointed day

(1) In subsection (2) of **section 1** (Citation and commencement) of this Act “the appointed day” means such day as may be fixed by resolution of the council, subject to and in accordance with the provisions of this section.

(2) The council shall cause to be published in a local newspaper circulating in the city and in the London Gazette notice— 20

- (a) of the passing of any such resolution and of a day fixed by them; and
- (b) of the general effect of the provisions of this Act coming into operation on that day,

and the day so fixed shall not be earlier than the expiry of one month from the publication of the said notice. 25

(3) A photostatic or any other reproduction certified by the officer appointed for that purpose by the council to be a true reproduction of a page or part of a page of any such newspaper or the London Gazette—

- (a) bearing the date of its publication; and 30
- (b) containing any such notice,

shall be evidence of the publication of the notice, and of the date of publication.

PART 2

PROHIBITION OF SMOKING

4 Meaning of “place of work”

- (1) In this Act, “place of work” includes—
- (a) any place to which any person has access while at work; and 5
 - (b) any room, lobby, corridor, staircase, or other place—
 - (i) used as a means of access to or egress from that place of work; or
 - (ii) where facilities are provided for use in connection with that place of work,
- but does not include domestic premises. 10
- (2) In subsection (1) above—
- “domestic premises” has the same meaning as in Part 1 of the Health and Safety at Work etc. Act 1974 (c. 37);
- “place” includes—
- (a) any vehicle, vessel, aircraft or hovercraft; 15
 - (b) any installation on land (including the foreshore and other land intermittently covered by water), and any other installation (whether floating or resting on other land covered with water or the subsoil of such land), and any tent or movable or temporary structure;
- “work” has the same meaning as in section 52 of the Health and Safety at Work etc. Act 1974 (meaning of work and at work) and “at work” shall be construed in accordance with that section. 20

5 Prohibition of smoking

- (1) Subject to subsection (2) below, smoking is prohibited in places of work in the city. 25
- (2) This section shall not apply to a place, or a part of a place, that is wholly uncovered by any roof, ceiling or canopy, whether fixed or movable.

6 Display of signs

- If smoking is prohibited under **section 5** (Prohibition of smoking) of this Act in any place (“the relevant place”), there shall be displayed at all times in each part of the relevant place to which members of the public have access, either as of right or with the permission of the occupier of the relevant place (“the public areas”), a sign indicating clearly to the public— 30
- (a) that smoking is prohibited in that public area; and
 - (b) the name of either the occupier, manager or other person for the time being in charge of the relevant place; and 35

- (c) the name of the person (being either the occupier, manager or other person for the time being in charge of the place) to whom a complaint may be made by a member of the public for the time being present in the place who observes another person smoking in a public area in which smoking is prohibited. 5

7 Offences

- (1) Any person who contravenes subsection (1) of **section 5** (Prohibition of smoking) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Where in relation to a place of work there is a contravention of the said **section 5**, the occupier, manager and any other person for the time being in charge of the place shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 10
- (3) Where there is a contravention of **section 6** (Display of signs) of this Act, the occupier, manager and any other person in charge of the place concerned for the time being shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 15

PART 3

FIXED PENALTIES

8 Fixed penalty offences 20

- (1) Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed an offence under subsection (1) of **section 7** (Offences) of this Act, the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty. 25
- (2) **Sections 10** (Fixed penalty notices), **11** (Level of fixed penalty) and **12** (Fixed penalty: reserve powers of Secretary of State) of this Act shall apply in respect of fixed penalty notices under this section.
- (3) An authorised officer may not exercise the powers under subsection (1) above, and **section 9** (Powers exercisable by accredited persons) of this Act and the said **section 10** shall have no effect, until the level of fixed penalty set by the council in accordance with the said **section 11** has come into force for the first time in accordance with the said **section 11**. 30

9 Powers exercisable by accredited persons

- (1) Subsection (2) below applies to an accredited person whose accreditation specifies that paragraph 1 of Schedule 5 to the 2002 Act applies to him. 35

- (2) The power of an authorised officer to give a notice under **section 8** (Fixed penalty offences) of this Act shall be a power which an accredited person to whom this subsection applies shall have, in relation to an individual who he has reason to believe has committed or is committing an offence under subsection (1) of **section 7** (Offences) of this Act. 5
- (3) An offence under subsection (1) of the said **section 7** is, for the purposes of paragraph 2 of the 2002 Act a relevant offence in relation to an accredited person.
- (4) In this section—
“accredited person” has the same meaning as in Chapter 1 of the 2002 Act; 10
“the 2002 Act” means the Police Reform Act 2002 (c. 30).

10 Fixed penalty notices

- (1) The provisions of this section shall have effect in relation to notices (in this section referred to as “fixed penalty notices”) which may be given under **section 8** (Fixed penalty offences) of this Act by an authorised officer or accredited person in respect of an offence under subsection (1) of **section 7** (Offences) of this Act. 15
- (2) Where a person is given a fixed penalty notice in respect of an offence—
(a) no proceedings shall be instituted for that offence before the expiration of 14 days following the date of the notice; and 20
(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state— 25
(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;
(b) the amount of the fixed penalty; and
(c) the name of the person to whom and the address at which the fixed penalty may be paid, 30
and without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (4) Where a letter is sent in accordance with subsection (3) above, payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post. 35
- (5) The fixed penalty payable in pursuance of a fixed penalty notice under this section shall be paid to the council.
- (6) The **Schedule** to this Act shall have effect with respect to financial provisions relating to fixed penalties payable in pursuance of a fixed penalty notice under this section. 40

- (7) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of the chief finance officer of the council; and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- 5
- shall be evidence of the facts stated.
- (8) In this section, “chief finance officer”, in relation to the council, means the person having responsibility for the financial affairs of the council.

11 Level of fixed penalty

- (1) It shall be the duty of the council to set the level of fixed penalty payable to them under **section 10** (Fixed penalty notices) of this Act. 10
- (2) In setting the level of fixed penalty under subsection (1) above the council may take account of—
- (a) any reasonable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of this Act; and 15
 - (b) the cost or expected cost of enforcing the provisions of this Act.
- (3) Levels of fixed penalties set by the council in accordance with this section may only come into force in accordance with **section 12** (Fixed penalty: reserve powers of Secretary of State) of this Act.
- (4) The council shall publish, in such manner as the Secretary of State may determine, the level of fixed penalty which has been set by the council in accordance with this section. 20

12 Fixed penalty: reserve powers of Secretary of State

- (1) Where the council sets the level of fixed penalty under subsection (1) of **section 11** (Level of fixed penalty) of this Act, they shall notify the Secretary of State of the level of fixed penalty so set. 25
- (2) Where notification of the level of fixed penalty is required to be given under subsection (1) above, the level of fixed penalty shall not come into force until after the expiration of—
- (a) the period of one month beginning with the day on which the notification is given; or 30
 - (b) such shorter period as the Secretary of State may allow.
- (3) If, before the expiration of that period, the Secretary of State gives notice to the council that he objects to the level of fixed penalty on the grounds that it is or may be excessive, the level of fixed penalty shall not come into force unless and until the objection has been withdrawn. 35
- (4) If, at any time before the level of fixed penalty required to be notified under subsection (1) above to the Secretary of State has come into force, the Secretary of State considers that it is excessive, he may make regulations setting the level of fixed penalty. 40

- (5) The level of fixed penalty set under subsection (4) above must be no higher than that notified under subsection (1) above.
- (6) Regulations under subsection (4) above are without prejudice to the duty imposed on the council by subsection (1) of the said **section 11**; but where the Secretary of State makes any such regulations the council must not set any further the level of fixed penalty under the said subsection (1) until after the expiration of the period of 12 months beginning with the day on which the regulations are made. 5

PART 4

SUPPLEMENTAL 10

13 Rights of entry

- (1) An authorised officer (on producing, if so required, a duly authenticated document showing his authority), an accredited person or any constable may at all reasonable times enter and inspect any place of work in the city and may do all such things as are reasonably necessary for the purpose of— 15
 - (a) ascertaining whether there is, or has been, in or in connection with, the place, a contravention of **section 5** (Prohibition of smoking) or **section 6** (Display of signs) of this Act;
 - (b) serving a fixed penalty notice under **section 10** (Fixed penalty notices) of this Act (in the case of an authorised officer or an accredited person). 20
- (2) Subsections (2), (3) and (4) of section 287 of the Public Health Act 1936 (c. 49) shall apply in respect of entry to premises for the purposes of subsection (1) above as they apply in respect of entry to premises for the purposes of subsection (1) of that section.

14 Obstruction of authorised officer 25

Any person who intentionally obstructs any authorised officer acting in the exercise of his powers under this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

15 Provision of information to authorised officer

- (1) This section applies where an authorised officer of the council has reasonable grounds for suspecting that an offence under subsection (1) of **section 7** (Offences) of this Act has been or is being committed. 30

- (2) If, on being requested by the authorised officer to furnish his name and address for service of a summons or fixed penalty notice, the relevant person—
- (a) fails to furnish a name;
 - (b) furnishes a false name; or
 - (c) furnishes a false address,
- 5
- the relevant person shall, unless the authorised officer failed to produce his authorisation on making the request, be guilty of an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) In this section “the relevant person” in relation to an offence, means any person whom the authorised officer has reasonable grounds to suspect of having committed the offence or being in the course of committing the offence. 10

16 Defence of due diligence

- (1) In proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. 15
- (2) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, no later than 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of that other person. 20

17 Liability of directors, etc.

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence. 25
- (2) Where the affairs of the body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 30

18 Regulations

- (1) Any power to make regulations conferred by this Act includes power to make provision in respect of such cases only as may be specified in the regulations and to make different provision for different circumstances. 35
- (2) Any power to make regulations conferred on the Secretary of State by this Act shall be exercised by statutory instrument.
- (3) Any statutory instrument made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament. 40

SCHEDULE

Section 10

FINANCIAL PROVISIONS RELATING TO SECTION 10
(FIXED PENALTY NOTICES) OF THIS ACT

- 1 The council shall keep an account of their income and expenditure in respect of the administration and enforcement of **sections 8** (Fixed penalty offences) and **10** (Fixed penalty notices) of this Act.
- 2 At the end of each financial year any deficit in the account shall be made good out of the general rate fund, and (subject to paragraph 3 below) any surplus shall be applied to purposes connected with the improvement of the health of residents in the city or any part of the city. 5
- 3 If the council so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under paragraph 1 above to the next financial year. 10
- 4 The council shall, after each financial year, report to the Secretary of State on any action taken by them, pursuant to paragraph 2 or 3 above, in respect of any deficit or surplus in their account for the year.
- 5 The report under paragraph 4 above shall be made as soon after the end of the financial year to which it relates as possible. 15

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B I L L

To provide for the prohibition of smoking in places of work in the City
of Liverpool.

SESSION 2004–05

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LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited

22.11.04.

(992083)

53/4