



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill:
Consideration of Issues and Informal Clause-
by-clause Scrutiny

7 November 2013

NORTHERN IRELAND ASSEMBLY

Committee for Social Development

Licensing of Pavement Cafés Bill: Consideration of Issues and Informal Clause-by-clause Scrutiny

7 November 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Jim Allister
Ms Paula Bradley
Mr Trevor Clarke
Mr Michael Copeland
Mr Fra McCann
Mr Sammy Wilson

Witnesses:

Mr Gary McAlorum	Department for Social Development
Mr Liam Quinn	Department for Social Development

The Chairperson: With us again are Liam Quinn and Gary McAlorum. Liam and Gary, good morning. You are very welcome to the Committee.

We intend to informally go through the Bill clause by clause. I know that some members did not go through the Welfare Reform Bill but will have gone through other legislation. We intend to go through the clauses — I think that there are 32 clauses — and the one schedule with the Department. I will ask Liam and Gary to take us through the clauses one by one or a collection of clauses as they see fit and explain any updates or any new things that they may have taken on board.

The purpose of today's session is to make sure that all members are absolutely sure what the clauses are designed to do. We will not make a decision on any clauses, seek to amend them or reject them. Fortunately, we had a fair bit of discussion on the Bill, and a number of presentations have been made.

Liam and Gary will start by going through the clauses one at a time. They will then stop and tell us whether they have taken on board any of the recommendations or suggestions that were made by any of the stakeholders or anything that a Committee member has raised that they think needs a response. Liam, will you take us through your views of clause 1 and whether you have decided to change it, amend it or otherwise? We will then stop and check whether members are content that they understand what that clause means. If members are content, we will move quickly to the next clause. Is that fair enough? We will not debate the clauses per se. We will do that in our meeting on, I think, 21 November, although I stand to be corrected on that.

Are members happy with that approach?

Members indicated assent.

The Chairperson: Liam, over to you.

Mr Liam Quinn (Department for Social Development): Thanks, Chairman. I will spend a couple of minutes going through some of the key issues that were raised during the oral evidence sessions. Gary will then go through each clause in turn.

The Licensing of Pavement Cafés Bill seeks to strike a balance between robust regulation and the necessary flexibility for councils to respond to local circumstances. The Bill prohibits the operation of a pavement cafe except under a licence granted by a council. Councils must grant a licence unless any of the specified grounds for refusal applies. They will be able to impose a range of licence conditions, charge a reasonable fee and may vary, suspend or revoke a licence in certain circumstances. Councils will be able to remove facilities at unlicensed pavement cafes, and several new offences have been created to aid enforcement.

The Department is encouraged by the generally positive response to the Committee's call for evidence. There is a broad recognition that the Bill will put the regulation of pavement cafes on a firm statutory footing and foster the necessary consistency and clarity for all concerned.

During the oral evidence sessions, stakeholders and members touched on a number of issues and themes. Clarification was sought on the definition of the public area and on the businesses that may apply for a licence. Concerns were raised about safeguards for pedestrians, particularly people with disabilities, and about controls on the consumption of alcohol at pavement cafes. Several stakeholders recommended the introduction of a fixed penalty scheme for breaches of licence conditions, and it was suggested that a power for the Department to issue model terms and conditions should be added to the Bill to promote consistency of approach.

The Department's policy position on the definition of the public area is that the Bill should not interfere in any way with the rights of private landowners. The Bill will allow businesses that are not normally associated with the serving of food or drink, for example, hairdressers were mentioned, to apply for a licence. However, the Department believes that the statutory requirements and the application costs will discourage such businesses from applying.

An important safeguard for pedestrian access is the requirement for councils to consult Roads Service on individual applications. Roads Service is best placed to advise councils on the site, location and impacts on pedestrians, and on suitable footpath widths for access.

There are a number of safeguards in the Bill on the consumption of alcohol. For example, a council could make a policy decision not to allow a licensed pavement cafe to operate in an area that is designated under drinking in public by-laws. It could also refuse a licence if there are concerns about disorder. Where any licensed premises is permitted to operate a pavement cafe licence, the relevant requirements of the Licensing (Northern Ireland) Order 1996 will automatically apply to the pavement cafe area.

The Department considers the use of fixed penalties to be inappropriate and heavy-handed for the enforcement of pavement cafes.

Finally, model terms and conditions will be addressed in our best practice-type guidance for councils, but we do not believe that it needs to be on a statutory basis.

If the Chairman is content, I will pass over to Gary to go through the clauses of the Bill.

The Chairperson: OK. If members are happy with that explanation, we will hand over to Gary. Thanks very much, Liam.

Mr Gary McAlorum (Department for Social Development): Thank you, Chair. As you said, there are 32 clauses in the Bill and one schedule. I must say that the Bill is rather larger than we thought it would be when we began this work.

I will give you a brief overview of the Bill. Clauses 1 and 2 deal with the general requirements to obtain a pavement cafe licence. Clauses 3 to 12 set out the application procedures for the granting,

renewal and variation of a licence. Clause 13 sets out the procedure when there are multiple licence holders and there is a change of business partner. Clauses 14 to 19 deal with revocation, suspension and compulsory variation of a licence. Clause 20 makes provision for certain matters to be recorded in the register under liquor licensing law. Clause 21 specifies the circumstances in which appeals can be made against a decision of a council. Clauses 22 to 24 give councils powers of entry, removal etc for the purpose of enforcing the Bill. A number of supplementary matters are set out in clauses 25 to 32.

If you like, Chair, I will move to clause 1 and give you a brief overview of it. Clause 1 provides a definition of a pavement cafe licence, what the licence authorises and other key terms for the purpose of the Bill. It is important to make clear that a pavement cafe licence simply authorises a person who is carrying on a business involving the supply of food or drink in or from premises to place furniture temporarily on a public area. The licensed area will remain a public place for the purposes of public order or other legislation. Chair, I am happy to take questions on that.

The Chairperson: Are members happy enough with the explanation of clause 1?

Mr Wilson: There was some discussion about what is a public area and what is a private area. Belfast City Council, for example, raised the issue of Lanyon Place, which is a good example of an area right in the centre of the town that is not a public area but that the public have access to. Have you resolved where the line of demarcation rests regarding whether a licence would be required for an area such as that or an area in a retail park?

The Chairperson: Gary, before you respond, I remind members that we are at annex 1 on page 4 at tab 4 of the pack. I just want members to have the paperwork on front of them. You are going to take members through clause 1, which is on page 4 at tab 4. Members were working off the Bill folder.

Mr McAlorum: In answer to that point —

Mr Allister: Is it not at tab 5?

The Chairperson: It is annex 1 at tab 4. We have gone through pages 2 and 3, and now we are on page 4, which deals with clause 1. It is annex 1 at tab 4, Jim. It is just so that we can get to where we are at the moment. I want to work through it.

The Committee Clerk: Chair, the most recent paper is at tab 4, where it deals with —

Mr Allister: But annex 1 is at tab 5.

The Chairperson: It is only a few pages in from tab 4. You have annex 1, which starts off with the Licensing of Pavement Cafés Bill and the Department for Social Development (DSD) brief. There is an annex 1 at tab 5. It is the annex on page 4 at tab 4. Is everybody on the same page, so to speak?

I am sorry, Gary, Sammy had asked you a question.

Mr McAlorum: The definition of a public area is a place in the open air to which the public have access without payment as of right. The key words here are "as of right". If it is clearly a place to which the public have access and it is not subject to the permission of a private landowner, it can be licensed by a council. It just depends on the individual circumstances.

The Chairperson: Are you happy enough, Sammy?

Mr Wilson: Yes. I think that is OK.

The Chairperson: We may come to debate that. We will deal with it on November 21, and there may be an argument for or against it. It is just so that we understand what the clause intends to do.

Mr Wilson: Even though it is privately owned, people have access to it as of right.

The Chairperson: OK? Thank you. Clause 2, then.

Mr McAlorum: I will give you an overview of clause 2. It relates to the offence of placing furniture in a public area without a licence. The clause applies to businesses that are involved in the supply of food or drink in or from premises to members of the public. An offence may be committed by the owner of the business and any person concerned with the management of the premises. The penalty on summary conviction is a fine of up to £1,000.

The Chairperson: OK. Are members happy enough? Thank you, Gary. Next is clause 3.

Mr McAlorum: Clause 3 is in the part of the Bill that deals with applications. Clause 3 provides details of how a qualifying business may apply to the council for a pavement cafe licence. Applicants must attach a plan showing the location and dimensions of the proposed pavement cafe area or areas associated with the premises. Multiple applications are not permitted. This clause needs to be read in conjunction with clauses 10 and 11, which deal with general provisions and notices to be displayed regarding applications.

The Chairperson: OK. Happy enough, members? Thank you.

Mr McAlorum: I will move to clause 4, which deals with the granting or refusal of a licence. This clause places an onus on a council to grant a pavement cafe licence unless one of the grounds for refusing an application applies. Before deciding on an application, the council must consult Roads Service and, where the premises is a public house, the police. A council may consult other appropriate organisations or individuals before deciding on an application. In addition, councils must take into account any representations made in connection with an application.

Mr F McCann: I think that I raised this issue at an earlier stage. I have no difficulty with the fact that the Department for Regional Development (DRD) has to give an opinion, but many times in the past, it has been totally inflexible in its attitude. Is anything built into the Bill that will allow councils to give a licence even if DRD refuses it, or is DRD's decision law?

Mr McAlorum: Councils will have the final decision.

Mr F McCann: That is fine.

The Chairperson: I take it that there will be guidance and so on built into all this.

Mr McAlorum: We intend to work with Roads Service on preparing guidance that will hopefully make matters easier.

The Chairperson: OK.

Mr Wilson: When it comes to consultations on planning applications, Roads Service, in particular, is a nightmare. In many instances, people may wish to apply for a licence for an event that is happening in a locality. It might not be a permanent thing; it might just be for the summer, for a festival or whatnot. If Roads Service were to take its normal six months to respond to the consultation, the event could be over or what prompted the application for the licence may no longer be valid. Can we put some kind of requirement in the Bill that consultees must respond within a reasonable time and that, if they do not respond, it is taken that they have no view on or objections to it?

Mr McAlorum: The Bill will be caught by the EU services directive, which requires that an application be processed within a reasonable time, and that period is fixed and made public in advance. A similar process was gone through with street trading licences. We understand that that works very well, and Roads Service replies quite promptly. So, we do not envision that there will be any significant problems or, indeed, a need to make separate provision.

The Chairperson: Is there any provision in the Bill for something that is short term, ad hoc, temporary or occasional?

Mr McAlorum: No. There is no provision for a temporary or occasional pavement cafe licence.

The Chairperson: Following on from a couple of members' questions, has any consideration been given to that? It seems reasonable to have some facility for that.

Mr McAlorum: We felt that the process that would have to be gone through, including a consultation process with Roads Service and other interested parties, militated against granting a licence for a short period of time.

Mr Wilson: I do not think that anybody is saying that you should not go through the consultation process. I think that the issue is whether that consultation process should be elongated either because of negligence by some official in Roads Service or because it is just not given priority.

Mr Quinn: We raised that issue with the councils that deal with street trading applications, for which there is a requirement to consult Roads Service, and they said that Roads Service's response is not an issue and that it generally gets back to them inside a couple of weeks and certainly within, I think, 28 days.

The Chairperson: OK. Obviously the answer is no, but it is not outwith the Committee's ability to look at that by way of an amendment or something like that. Before our meeting on 21 November, when we will go through this clause by clause, I suggest that you give a wee bit more thought to that, Liam, just in case the Committee is minded to take a view on it one way or the other.

Mr Allister: There were quite strenuous representations, from Belfast City Council for example, that the grounds for refusal are not sufficiently wide to deal with inappropriate furniture or environmental impacts. Have you given any consideration to the need to widen the grounds for refusal?

Mr McAlorum: The provisions that we use for the granting or refusal are very similar to street trading legislation and are very broadly framed, and we believe that they can allow a council to take into account any factor that it considers reasonable. The area, even when licensed, remains a public area. So, environmental or public order legislation will apply to the public area.

Mr Allister: When the applicant makes the application for the licence, do they have to specify the nature and scope of the street furniture that they will use?

Mr McAlorum: No.

Mr Allister: If they do not, how then could you determine whether the street furniture is suitable?

Mr McAlorum: The way that we think it will work is that there will be a pre-application site visit between the council and the applicant, and the council will set out its requirements on minimum designs of furniture and so forth. There will need to be a sketch plan to accompany the licence, and that will indicate the type of furniture that will be used. It is our sense that the actual design of the furniture is a matter that will be subject to conditions of a licence, but we are satisfied that, given the way the legislation is drafted, a council will be able to take those factors into account.

Mr Allister: What if the activity would cause environmental problems or detract from the amenities of adjacent retailers or whatever? Where do you refuse it on these grounds?

Mr McAlorum: Clause 4(2)(b).

The Chairperson: Did you say 4(2)(b), Gary? That is about pedestrians and so on.

Mr McAlorum: Or even 4(2)(a).

Mr Allister: Clause 4(2)(b) is about undue interference or inconvenience to persons or vehicles in the vicinity. Are you satisfied that that includes operating businesses in the vicinity?

Mr McAlorum: Yes, indeed. Or even 4(2)(a). They are fairly interchangeable.

Mr Allister: Sorry, which clause?

Mr McAlorum: Clause 4(2)(a), where the site is unsuitable. The two clauses go in tandem basically and are almost interchangeable.

Mr F McCann: The issue of the quality of street furniture has been raised a number of times. You can bring a Bill like this in and make it law, but unless you have clear designs that people work towards, it becomes unsightly and dangerous. Have the comments from blind and partially sighted people been fully taken on board when coming to decisions? They said that there are some dangers for them in trying to use the footpath.

Mr Quinn: Detail like that will be covered in the guidance that the council has to take account of when it is granting a licence, and it will be a matter for the circumstances of each application. You may want a very high design standard in Belfast city centre, for example, but a shopping area outside the city centre may not require such a high standard. Similarly, issues such as having barriers cordoning off the pavement cafe area will be determined in the guidance for councils, and they will need to take account of that before they grant a licence.

Mr Wilson: The guidance is issued by the Department.

Mr Quinn: Yes, having worked with Roads Service and others to develop that guidance.

Mr Wilson: I take the opposite view to Jim. I think that the wording of clause 4 is so open-ended that councils could find it quite easy to find reasons for turning things down. We ought to be very careful that we do not get so specific about the layout and the furniture that we make it almost impossible and, indeed, lose the variety, because people will be innovative with these things. We should try to keep it as general as possible.

Mr F McCann: I understand what Sammy is saying. However, without wanting to sound too Belfast-centric — obviously, that is where I live — if you walk through Belfast, you will see aluminium tables and aluminium chairs lying all over the place. A happy medium has to be found so that we have well-structured street furniture and so that those who are partially sighted or blind are able to negotiate the footpath.

The Chairperson: But what this clause deals with is the fact that, ultimately, there will be guidelines. If we have an issue around what those guidelines might be, where should we locate that discussion?

Mr Quinn: The councils will apply the guidelines. As we said, the guidelines will simply be guidelines.

The Chairperson: But they are issued by the Department.

Mr Quinn: They are issued by the Department, and a council will need to take them into account when it is making its decision on whether to grant a licence. The guidelines will cover things such as design standard. However, as Mr Wilson just said, we do not want to get into the detail, either in the guidance or in the Bill, with the Department specifying the exact type of furniture that is permitted. You want to have a bit of variety and flexibility for different areas.

The Chairperson: For the purposes of what we are doing at the minute, we are satisfied with the principle of guidelines being issued. We might have a discussion around what those guidelines will ultimately look like to get, as somebody said, a happy medium. So, we are happy enough with the clause as it stands. If members are happy enough, we will move on.

Mr Wilson: But we will look again at whether there should be a limit to the length of time for responses to the consultation.

The Chairperson: It is up to the Committee to come back to a whole range of things. What we are trying to do here is establish that we know what the clause is supposed to do. We will deal with what we do about that clause in the formal clause-by-clause consideration on 21 November.

Mr McAlorum: We move to clause 5, form, duration etc of licence. Clause 5 gives DSD the power to prescribe the form of a pavement cafe licence and district councils the power to decide how long a licence should last.

Mr Allister: Does that mean that some licences might last longer than others?

Mr McAlorum: Yes, that is right.

The Chairperson: What is the rationale for that, Gary?

Mr McAlorum: The provision is drafted to comply with the EU services directive.

Mr Allister: And.

Mr McAlorum: On the basis that that directive provides that a licence should be open-ended unless there are good reasons to limit the duration of a licence.

Mr Allister: Are you really anticipating open-ended licences?

Mr McAlorum: There is that potential, yes.

Mr Allister: That is what you have in mind, but that is not what it says, is it?

Mr McAlorum: Unless there are good reasons to limit a licence, we expect that it would be open-ended.

The Chairperson: It is important that that is clear. I do not know whether that needs corrected. If you do not mind, Liam and Gary, we can return to technical matters like that at our session on 21 November.

Mr Wilson: A licence that is granted under those conditions could be revoked only if there were complaints or if action was taken against the licensee for breach of the conditions. Could it be looked at again if there was a general complaint but no breach of the licence conditions, or would there have to be a breach of the licence conditions before it could be revoked?

Mr McAlorum: There is a provision in the Bill that allows a council to review a licence if there is a material change of circumstances. So, a licence could be revoked on that basis. There are other circumstances in which a licence would be reviewed; for example, if there is an application for a variation or if Roads Service conducts some work in the area and there is a need to vary the licence because the area has become unsuitable. There are a number of safeguards in the Bill to allow the council to review a licence if necessary.

Mr Allister: Could a council not then take a view on a particularly contested licence and say, "Let us try it for a year and see how it goes"? Can it not do that under this legislation?

Mr McAlorum: It would need to have a reason for doing that.

Mr Wilson: But you could do the same as you do with temporary planning permission, for example.

Mr McAlorum: Yes.

Mr Wilson: If a council thought that this was a bit iffy, it could say, "Let us test it".

Mr Allister: Could you do a temporary licence?

Mr Quinn: You could grant a licence for a year and specify the reasons why —

Mr Allister: You said that the services order required it to be open-ended.

Mr Quinn: The presumption is that it would be an open-ended licence unless there was a reason to limit it. The council needs to record that reason. The circumstances that you describe would be such circumstances.

Mr McAlorum: We do not think that the bar will be set too high. If a council had a good reason, it could limit the duration of a licence.

The Chairperson: The Bill does not state that it is expected that it will be an open-ended licence unless otherwise qualified. I say that just in case that leaves an area of ambiguity.

Ms P Bradley: Clause 5(5)(b) states:

"if no period is specified in the licence, [it will] remain valid indefinitely".

The Chairperson: That is not quite the same as saying that a licence under EU directives would be expected to be open-ended unless otherwise qualified.

Mr Wilson: The implication, though, is that it can be granted for a specific time period.

The Chairperson: I understand that.

Mr Quinn: I think that we will put that in guidance, Chairman, just to draw attention to it. Councils are familiar with the services directive, because they comply with it in a number of other areas. However, we will certainly put in the guidance that, to comply with the EU services directive, a licence should be open-ended unless a reason is provided to restrict it.

The Chairperson: I think that that is OK, provided that it is made clear somewhere.

Mr Brady: Will there be a requirement on councils to do periodic checks? If you have an open-ended licence, am I right that it would be revoked presumably only if people complained that its terms and conditions were not met? That might be more of a reactionary thing if people complain as a particular problem arose. Alternatively, will there be a requirement on councils to go out, in the way that environmental health or another council department does, to make regular checks on pavement cafes to ensure that the terms and conditions of the licence are being met?

Mr Quinn: I think that that is a matter for councils.

Mr Brady: That is what I am asking.

Mr Quinn: There is no requirement to do periodic checks, but it is a matter for a council to enforce the legislation and to manage the pavement cafes that are in its area.

The Chairperson: Trevor, did you want to ask a question?

Mr Clarke: Someone else covered my question.

Mr McAlorum: Clause 6 deals with conditions of a licence. This clause provides the power for a council to impose conditions on a pavement cafe licence. All licences must contain a condition requiring the holder not to place furniture in an area other than that covered by the licence. Where the associated premises is an off-licence, the council must include a condition prohibiting the consumption of alcohol in the pavement cafe area. Councils have the discretion to impose a range of other conditions, including those relating to the design and layout of the pavement cafe area, operating times, arrangements for the storage of furniture, public liability insurance and the payment of fees.

The Chairperson: OK, are members happy enough?

Mr Wilson: Payment of fees has been raised. Will that be limited in the same way as any other fee application, simply to cover the costs that are involved? Councils cannot set fee levels that do more than cover the costs of processing the licence.

Mr McAlorum: Fees are dealt with on their own in clause 12. Perhaps we could pick that point up when we discuss that.

The Chairperson: OK.

Mr Copeland: Some bistros, restaurants and cafes that are not licensed operate a policy of charging corkage for bringing your own alcohol. If the primary business had that facility, would the licence be extended to allow people to consume alcohol that they brought themselves?

Mr McAlorum: The licensing law will apply to the pavement cafe area as it does to the inside of the premises.

Mr Copeland: In other words, if premises serve drink to people who bring it in themselves and charges them corkage, premises without a licence could see the consumption of alcohol in a more public place.

Mr McAlorum: If the pavement cafe area is part of licensed premises and a council is content for alcohol to be consumed at the pavement cafe area, it is treated for the purposes of licensing laws as part of the premises.

Mr Copeland: How does that relate to the restrictions on the consumption of alcohol in public places?

Mr Quinn: If a restaurant does not hold a liquor licence and someone brings wine to its pavement cafe, they are drinking in public, because it is still a public place.

Mr Copeland: So, it might need a bit of clarification. It would be OK if you were drinking inside but not outside.

Mr Quinn: You can drink inside, because it is within the premises. However, if you take a bottle on to the street, and there is a by-law on drinking in public in place, you are breaking the law.

Mr Wilson: According to clause 6, a condition can be applied where, even though the premises has a licence or an arrangement that you described, you can still say that that does not apply outside.

Mr Quinn: Absolutely.

Mr Copeland: So, you cannot drink outside at all.

The Chairperson: OK. We will move on to clause 7.

Mr McAlorum: Clause 7 deals with the renewal of a licence. It sets out the arrangements for renewals. The renewals procedure is broadly similar to that for new applications. However, a council will not be obliged to consult the statutory authorities that are mentioned in clause 4(4), which are the Roads Service or the police. The council may vary a licence on renewal.

The Chairperson: Thank you.

Mr McAlorum: Clause 8 deals with the variation of conditions or the area of a licence. It allows the holder of a pavement cafe licence to apply to the council for a variation of either the conditions of a licence or the area that is covered by the licence. The variation procedure is broadly similar to that for new applications.

The Chairperson: If, for example, someone wished to extend the curtilage of their pavement cafe, you are saying that, in those circumstances, the council would not be obliged to consult the statutory authorities. Would there not be an argument that they might need to consult Roads Service, for example?

Mr McAlorum: Yes. It does not make it a statutory requirement, but I expect that they would want to, particularly if the area is being significantly altered.

Mr Brady: If the licence were open-ended and indefinite in that sense, presumably the renewal would come about only if something had happened where the licence had been revoked and they had to reapply. Presumably they would have to look at the reasons why it was revoked in the first place and ensure that that problem was dealt with. Would that be —

Mr McAlorum: The provision is there in case a council, on application, decides that there is good reason to limit the duration of the licence. So, it would be renewed.

The Chairperson: In other words, if the council granted an application for a year or two years, there would be another renewal application.

Mr McAlorum: At the end of the two-year period.

The Chairperson: OK. Fair enough.

We will move on to clause 9.

Mr Clarke: Sorry, Chairman. The only thing about that is this: could councils not abuse that, because they could continually give short licences?

Mr Quinn: They would need to record a reason why they were granting a short licence.

Mr McAlorum: This is an application of a licence holder. As Liam said, they would need to record the reasons.

The Chairperson: We discussed that earlier, Trevor. The guidelines will highlight that, under the EU directive, licences will be deemed to be less qualified for a particular reason, which will be recorded. Are you happy enough with that?

Mr McAlorum: Clause 9 deals with variation by removal of an alcohol prohibition. It provides that, where a pavement cafe licence contains an alcohol prohibition, the holder of the licence may, in certain circumstances, apply to a council for the licence to be varied by the removal of the alcohol prohibition. The council must consult with the police before deciding on such an application.

The Chairperson: OK. That is straightforward enough. Members are happy enough with that. Thank you.

Mr McAlorum: I mentioned earlier that clauses 10 and 11 deal with general provisions for applying for a licence.

The Chairperson: OK. Members are content. Thank you.

Mr McAlorum: Clause 12 deals with fees and gives a district council the power to charge fees that will enable it to offset the cost of administering the pavement cafe licensing scheme. Fees may be charged for the grant, renewal or variation of a licence.

The Chairperson: Members are happy enough. Sammy, you were querying that earlier.

Mr Wilson: Councils can determine whether they do not want to cover all the costs.

Mr McAlorum: It is entirely at their discretion.

Clause 13 is a technical provision that makes provision for changes to persons carrying on the business involving a partnership.

The Chairperson: OK. Thank you.

Mr McAlorum: Clauses 14 and 15 deal with the revocation and suspension of a licence. Members will note that they are very similar. Revocation is permanent, whereas suspension deals with the temporary suspension of a licence.

Clause 14 sets out the circumstances in which a district council may revoke a pavement cafe licence. Generally speaking, a council may revoke the licence if it is satisfied that the licensed area has become unsuitable, or that continuing to use it would cause undue interference or inconvenience to persons or vehicles in the vicinity or would result in disorder. A council may also revoke the licence if the licence holder has made a statement that he knew to be false in connection with an application, failed to fix a notice, failed to comply with any condition of a licence, or, indeed, failed to pay any fee. So, it is fairly comprehensive.

Mr Wilson: It is also fairly draconian. I can understand public order offences and everything else, but failure to comply with any condition of a licence is stated. That could be a very minor breach; it could be a one-off; it could even be unintentional. Yet, a council can not only suspend a licence but revoke it under those conditions. Is clause 14(1)(d) not a bit too draconian? A council could abuse it. Some circumstances might well be beyond the control of a cafe owner. For example, what happens if somebody gets up from a table, leaves the chair in the middle of the footpath, but the cafe owner is too busy to notice and is deemed to be in breach of the conditions? If someone falls over or whatever, that could be used as a reason for revoking the licence.

Mr McAlorum: First and foremost, councils would have to be able to justify any decisions that they take.

Mr Wilson: They would justify it on the basis of the Act. That is why I am asking whether it is not too draconian. The legislation would give them the total justification, which is that a condition has been breached and it can revoke the licence — end of story.

Mr Allister: There is an appeal to the Magistrates' Court.

Mr Quinn: There is an appeal, Chairman, but the guidance from the Department also sets out the suggested approach to dealing with breaches. We are thinking of a "three strikes and you're out" policy. Following the first breach of a condition, you would give them a warning, and, in the circumstances that you outlined, you would tell them that they needed to keep an eye on that sort of thing and not to let it happen. However, if somebody is breaching the conditions continually, and there are three breaches within a short period, suspension would probably be the next step. Following suspension, you would go on to revocation, because suspension is clearly not working.

Mr Wilson: I think that that is totally appropriate, if that is what happens, but that is not what the legislation would require a council to do.

Mr Quinn: We have to have it on the legislation that they are allowed to take that enforcement action, should it get to that point. The guidance would state that that is not a council's first port of call; it would need to go through a process of dealing with it in a more appropriate, even-handed manner before getting to the point at which it could say, "You have continually breached this condition, so we are going to revoke your licence". If we did not have that in the legislation, they could not ultimately take that action.

Mr Wilson: Clause 14(1)(d) states:

"any condition of the licence has not been complied with;"

Does it have to be worded like that? Can what you said not be reflected in the legislation? I cannot think of the wording. If it is continual, how do you define the term "continual"? If it is deliberate, how do you define the term "deliberate"? Can the wording not be amended to reflect what you said, rather than it just being in the guidance?

Mr McAlorum: The wording on that is very similar — almost identical — to the wording of the Street Trading Act (Northern Ireland) 2001, and it seems to work very well. I think that councils are very comfortable with the Street Trading Act, and we imagine that they will know what is required under this legislation.

The Chairperson: A couple of other members wanted to come in on that. Trevor will be followed by Jim.

Mr Clarke: I have concerns that we are over-relying on the guidance. We have all experienced guidance from agencies. At times, even the Minister's guidance to Planning Service was not relied on at all by Departments. I am concerned that there may be an over-reliance on the guidance documents that will be issued to councils, as well as about the interpretation of each council.

Mr Allister: Where there is a suspension or a revocation, there is a right of appeal to the Magistrates' Court under clause 21. Is the Bill silent on whether, in the meantime, the licence subsists?

Mr McAlorum: The council's decision is final until the appeal is dealt with.

Mr Allister: Where does it say that?

Mr McAlorum: I am not sure where it actually says that. I will look into that point, but we are satisfied that the council's decision is final.

Mr Allister: Is that the way that it should be, do you think?

Mr McAlorum: Yes. That certainly is the policy on the issue, and that is reflected here.

Mr Allister: So, if you successfully appeal, are you compensated six months later for the six months' loss?

Mr McAlorum: The Bill does not provide for compensation.

Mr Allister: So, is the loser in this potentially the operator?

Mr McAlorum: Yes.

Mr Clarke: Who won their appeal.

The Chairperson: OK. Gary, you said that you will look at that again. That would be an important bit of information for the Committee to consider.

There appears to be a concern in the room about the reference to complying with any condition for revocation, given that it is in there for a suspension. Do members think, as Sammy argued, that that may appear a bit draconian? Liam, I know that you said that it would be the equivalent of "three strikes and you're out", but I think that we need that clarified in the Bill. So, will you look at that before we consider it formally?

Mr Clarke: On the revocation of a licence, the condition in clause 14(1)(b):

"that continuing to place such furniture on, or on a particular part of, that area for use for the consumption of food"

should have been sorted out earlier. When did they change their mind? The operators have continued to do what was acceptable when the licence was issued, but all of a sudden an overzealous council official decides that they do not like the placing of such furniture, albeit that it was agreed to earlier. How can you revoke a licence on that basis?

Mr McAlorum: That would happen if there were a change in circumstances. A council would have to be able to justify the reason for revoking the licence.

Mr Clarke: As we heard, however, the justification is in the wording:

"that continuing to place such furniture on, or on a particular part of, that area for use for the consumption of food or drink supplied in or from the premises specified in the licence".

So, the justification is already there. It is down to the interpretation of someone in the council of whether the operator has complied. My concern is that, previously, we have agreed on where the placing of the furniture has been agreed, but who decides that it is no longer suitable in that particular location?

The Chairperson: I think that that refers to where it has been changed.

Mr Clarke: But it does not say that.

The Chairperson: I presume that that is what it is supposed to mean. Perhaps that needs to be clarified; I do not know. Will you bear that in mind?

Mr Wilson: I am looking at clause 14(1)(e). When it comes to the non-payment of fees, it is "without reasonable explanation". Could clause 14(1)(d) be amended so that it would read:

"that any condition ... has not been complied with, without reasonable explanation"

or something like that? If there is a get-out clause for why you have not paid the fee, why can there not be the same get-out clause, or at least an opportunity, for the licensee to explain why a condition has been breached?

Mr Quinn: We will consider that, Chairperson.

The Chairperson: OK, thank you. We will move on to clause 16.

Mr McAlorum: Clause 16 is concerned with the compulsory variation of licence conditions. It allows a council to vary any conditions that are attached to a pavement cafe licence where there has been a material change in circumstances.

The Chairperson: OK. If members are happy enough, we will move on to clause 17.

Mr McAlorum: Clause 17 deals with compulsory variation by prohibition of an alcohol condition. It allows a council, at any time, to impose a condition prohibiting the consumption of alcohol at a pavement cafe.

Mr Copeland: In some respects, is that not already prohibited by the legislation on not drinking in public?

Mr Quinn: That legislation would apply where the premises did not hold a liquor licence. If the premises has a liquor licence, that licence would supersede and drinking in public would be suspended in that area. That allows a council to come back after it has already permitted someone to serve alcohol at a particular area and say, "We are revoking that element".

Mr Wilson: Is that because it has caused disorder or whatever?

Mr Quinn: Or whatever; yes.

The Chairperson: I presume that there needs to be some qualifications with that?

Mr Quinn: Yes, there needs to be an explanation. It allows them to remove the alcohol without removing the pavement cafe. They can still operate as a pavement cafe, provided that alcohol is not served and consumed.

The Chairperson: Will it be set out that that decision will, or could, be taken on consideration of particular circumstances?

Mr Quinn: Yes.

The Chairperson: OK. So, it is not arbitrary.

Mr Quinn: No.

Mr McAlorum: Clause 18 is on compulsory variation of an area covered by a licence. It allows a council to vary the area that is covered by a pavement cafe licence. That is regarded as an alternative to revocation where part of the area has become unsuitable or its continued use is likely to result in undue interference, inconvenience or disorder.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 19 is a technical provision that deals with notices for revocation, suspension or compulsory variation.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 20 is another technical clause that deals with matters that are to be recorded in the register under licensing law. It gives the Department the power to make regulations requiring details of pavement cafe licences that are granted to premises holding a liquor licence to be recorded in the relevant licensing registry.

The Chairperson: OK. Thank you for that.

Mr McAlorum: Clause 21 deals with appeals and sets out a range of circumstances in which appeals can be made to a Magistrates' Court.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 22 deals with powers of entry and inspection for councils. It enables a person who is authorised by a council to enter and inspect premises to which a pavement cafe licence or application relates for various purposes, including determining whether a licence should be granted or revoked etc.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 23 gives councils a power to remove furniture from unlicensed pavement cafes. The power does not extend to premises where a pavement cafe licence is operative. It places a duty on the council to notify the owner and to make provision for the disposal of the furniture.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 24 is on the offence of obstruction. It creates an offence of intentionally obstructing an authorised officer who is exercising the powers to enter and inspect premises or to remove unlicensed furniture. A person who is guilty of the offence is liable on summary conviction to a fine of up to £1,000.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 25 is a technical clause that deals with the service of notice and documents.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 26 allows the Department to make consequential and transitional provisions where necessary for the purposes of implementing the Bill. That can be regarded as a standard clause for a Bill of this nature.

The Chairperson: OK. Thank you.

Mr McAlorum: Similarly, clause 27 provides that regulations that are made under the Bill are subject to negative resolution procedure. However, regulations that amend any statutory provision may not be made unless the draft has been laid before and approved by a resolution of the Assembly.

The Chairperson: OK. Thank you for that.

Mr McAlorum: Clause 28 is another technical clause that gives legal effect to the provisions that are set out in the schedule.

The Chairperson: OK. Members are happy enough.

Mr McAlorum: Clause 29 deals with by-laws, which we were discussing earlier. It provides an exemption for certain pavement cafes from the restrictions on drinking in designated areas. People who are consuming alcohol at those pavement cafes would otherwise be committing an offence.

The Chairperson: OK. Thank you.

Mr McAlorum: Clause 30 deals with definitions in the Bill.

Clause 31 gives the Bill its short title.

The Chairperson: Thank you.

Mr McAlorum: Clause 32 provides for the Bill's main functions to come into operation on a date appointed in an order by the Department. It is about commencement.

The Chairperson: Do you have any comments to make on the schedule, or do you have any other comments?

Mr F McCann: I do not see this in the Bill, but say, for talk's sake, that this gets off the ground and is a real success. If a Department or utility company began prolonged street work, would businesspeople be entitled to compensation for the time that the business was disrupted?

Mr McAlorum: There is no provision in the Bill for compensation.

The Chairperson: That may be different legislation anyway, I think.

Mr Allister: I have two quick questions. Is there any immunity from liability for a council for any injury that is caused by, say, a chair blowing over? The council may have licensed the area but did not properly attend to the restraints.

Mr McAlorum: Yes. Clause 6 allows a council to impose a condition requiring the applicant to take out public liability insurance.

Mr Allister: Yes, but —

Mr Wilson: You are talking, Jim, about what would happen if they have not taken out public liability insurance.

Mr Allister: If I am walking down the street, and something from the cafe area causes me to trip, it may be my lawyer's advice that I sue the cafe and the council for its neglect in the licensing processes. Is there anything to prevent the council from being sued?

Mr McAlorum: The council would be able to indemnify them against claims.

Mr Allister: Sorry, the council would be — ?

Mr McAlorum: It would be able to indemnify itself against claims under clause 6(3)(e).

Mr Allister: Clause 6(3)(e)? So, would a council indemnify itself in the licence?

Mr McAlorum: Yes.

Mr Allister: So, if you are the unfortunate plaintiff, you just have to be sure that the occupier is insured.

Mr McAlorum: Satisfactorily insured, yes.

Mr Allister: What if he is not?

Mr McAlorum: We expect councils to require that to be a condition of the licence.

The Chairperson: Would that be clear? Would it be a requirement for the licensee to have such insurance as a condition for approval?

Mr McAlorum: It is entirely up to a council whether it wants to do that, but we expect that a council would do so.

Mr Wilson: What would happen if a council said, "OK, you can have these kinds of chairs and tables, but we are not asking you to put a wee fenced boundary around the area" and somebody came along and said, "If those tables or chairs had been heavier, they would not have blown out" like Jim said? Therefore, because a council did not specify that a wee tent be put around the licensed area or asked for heavy enough furniture, it cannot be indemnified. It cannot be a block indemnity on the basis of someone saying, "Well, we required the owner to have the insurance". The council could have checked that the owner had the insurance but could still be held liable because of the nature of the furniture or the way in which it asked for the area to be curtained off.

Mr Quinn: I think, maybe, Chairman, that that is one for the lawyers. It sounds to me that, if a council was negligent and did not carry out its duties properly under the Act, it may be liable.

Mr Allister: Despite the indemnity?

Mr Quinn: Despite the indemnity. However, I am not a lawyer.

Mr Allister: The purpose of including indemnities in clauses is to try to create the impression that a council can have immunity.

Mr Quinn: However, if a council were negligent and did not apply the law correctly, I would imagine that there may be a case.

Mr Copeland: This strikes me as being quite an important issue, because the public has an expectation that someone will ensure their safety in certain circumstances. Why has that been left to councils? I have been to places where they have to display their public liability insurance.

Mr Wilson: That is a requirement. The law requires that that will be one of the things that a council would look for. I think that Jim is saying that, even if you have the insurance, you could still find that there are circumstances in which somebody decides, "I am more likely to be able to pursue the council in this".

The Chairperson: You could have the same problem inside premises that were licensed as you could have outside.

Mr Allister: I think that it is a parallel. We are all meant to ensure our vehicles. If you do not ensure your car and have an accident, the unfortunate victim still has access through the Motor Insurers' Bureau. It is a safety net. I do not see that there is a safety net here for the unfortunate plaintiff who happens to trip up over something that is owned by a man of straw who is not insured.

Mr Quinn: Chairman, I think that we will look at that. That is all that I can say at this stage.

The Chairperson: OK.

I do not know whether you want to make any comment on the schedule or whether you have any other comments to make, but we have dealt with this question before: is the Department considering any amendments to the Bill as we speak?

Mr McAlorum: We have identified technical issues, and we will probably recommend to the Minister that a few technical amendments be made.

The Chairperson: Will we have that in advance of our consideration of the Bill on 21 November?

Mr McAlorum: Yes.

The Chairperson: There have been occasions when we were considering clauses and were told, subsequent to that, that the Department was going to amend them anyway. We do not think that that is good practice; it certainly is not. Do you expect to have any technical amendments that you wish to make in advance of that?

Mr McAlorum: We do, and it is certainly our intention to give that to you before the formal clause-by-clause consideration.

The Chairperson: OK. That is helpful. Thank you for that, Gary.

Do you have any comments to make on the schedule? No. You are happy enough.

Gary and Liam, thank you for your attendance this morning and for supporting the Committee in its work. We will return to this on 21 November, when we will carry out the formal clause-by-clause consideration of the Bill.