



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill:
Discussion of Committee Proposals

14 November 2013

NORTHERN IRELAND ASSEMBLY

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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 Gregory Campbell
Mr Trevor Clarke
Mr Michael Copeland
Mr Stewart Dickson
Mr Fra McCann

Witnesses:

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

The Chairperson: We have Liam Quinn and Gary McAlorum back with us this morning. You are very welcome, gentlemen. As Committee members will recall, throughout our discussions, we have put a number of questions to the Department. Views have been expressed by a range of stakeholder organisations and members. The Department confirmed that it would adopt a number of the amendments and take on board the range of views raised by the Committee last week. It wanted to come back today to give us an update following last week's discussions in advance of our clause-by-clause scrutiny session scheduled for next week. Members have papers detailing the various proposals in their Bill folder.

The Committee Clerk: There is a letter from the Minister dated 12 November.

The Chairperson: Liam and Gary, would you like to take members through the goody bag that you have for us from last week?

Mr Liam Quinn (Department for Social Development): Thank you, Chairman. During the informal clause-by-clause scrutiny last week, you asked the Department to consider certain policy issues that the Committee had some concerns around. I will summarise the Department's policy position on the main issues raised last week before taking questions from members.

Some of the issues that were discussed are interlinked, but, for the purpose of the briefing, they mainly concern the extent of the licensing powers available to councils, in particular the power to revoke or suspend a licence; limiting the time for consultation on applications; the duration of a licence; insurance requirements; the continuance of a licence on appeal; and temporary licences.

Some members expressed concern that certain provisions in the Bill — for example, those relating to the granting, revocation or suspension of a licence — were either too restrictive or possibly open to exploitation by overzealous council officials. In particular, it was noted that a licence could be revoked or suspended for a single breach of a licence condition. As members will be aware, the Bill is subject to the EU services directive. The regulations that transpose the directive into EU law require a decision to withdraw an authorisation to be fully reasoned, so a council will have to fully explain its reason for revoking or suspending a licence. The same test would apply to a decision made by a council to refuse a licence.

However, to address members' concerns, the Minister proposes to table two amendments to the Bill. First, the Bill would be amended to allow for revocation or suspension only where a licence holder has persistently breached the licence conditions. In practice, we expect that councils will, in most situations, adopt a three-strikes-and-you-are-out policy, with the severity of the breaches determining whether the licence should be suspended or revoked. Secondly, the Bill will require a council to give the licence holder advance notice of its intention to revoke, suspend or make a compulsory variation to the licence, and to allow for representation to be made before a final decision is taken. That will be subject to there not being any public safety concerns that require any immediate closure of the pavement cafe area. The procedure may prevent a formal appeal to a court later, but, more importantly, it will provide transparency in the decision-making process and ensure that councils are in full possession of the facts before making a final decision.

It was suggested that provision be made to limit the time for consultation on applications, and I think that the concern was mainly around the input from Roads Service, which is quite important to the process. The EU services directive requires an application to be processed within a reasonable time, which is fixed and made public in advance. If no decision has been made at the end of that period, the licence is deemed to be granted. It should be noted that the Bill allows for a period of 28 days for representations to be made on an application. Councils currently consult the Roads Service on the Street Trading Act (Northern Ireland) 2001, and, as far as we are aware, there are no difficulties with input from Roads Service on that particular issue.

On the duration of a licence, the Bill provides that this shall:

"if no period is specified ... remain valid indefinitely."

Some members thought that it would be helpful to specify a time limit. The terminology used in the clause — clause 5 — is common to other licensing systems and has been adopted by the Department in order to meet the requirements of the services directive. However, there is nothing to prevent a council from limiting the duration of a licence if it has good reason. Indeed, clause 7 recognises that there may be circumstances in which that will be required in providing for the renewal of a licence.

The Bill allows councils to specify insurance requirements, including public liability insurance. It has been suggested that it should be mandatory for a prospective licence holder to take out public liability insurance. The relevant provision is widely drawn and was included in the Bill at the request of local government, who are keen to have a discretionary power in that regard. The Department is not aware of any statutory requirement for businesses, such as public houses, restaurants or cafes, to take out public liability insurance to cover their everyday operations. In addition to the power already described, a council could ask an applicant to produce evidence of insurance cover, or, after a licence is granted, it could be required that a council be notified about any matters affecting the licence holder's insurance. There is never going to be a cast-iron guarantee that such conditions of a licence will be adhered to, but the Department does not consider it necessary for the relevant provisions to be made mandatory.

The issue of continuance of a pavement cafe licence on appeal was raised. The Department was asked why the Bill did not provide for the continuance of a pavement cafe licence pending an appeal to a court against revocation or make provision for compensation. The circumstances in which a council is likely to revoke a licence could be concerns around public safety, disorder or where the licence holder has shown complete disregard for the terms of a licence. The amendment that the Minister is preparing to table around persistent breaches will cover that as well. As such, it would not be in the public interest to provide for the continuance of a licence while the licence holder is pursuing an appeal. It should be noted that a pavement cafe licence simply provides a business with a special dispensation to extend trading into a public area, which is not really its main business.

Moreover, the Department believes that the proposed amendment, which would allow a licence holder to make representation to the council before the decision to revoke a licence is confirmed, should help

to promote procedural fairness and sound decision-making. In particular, it would ensure that a council is in full possession of the facts before a decision is finally taken and should provide a strong evidence base should court proceedings follow.

The Committee asked about the granting a temporary licence for, for example, a street festival. That is not included in the Bill, simply because we believe that such applications would be very rare. We also doubt whether the benefits of operating a pavement cafe on a short-term basis would be worth the time and expense of going through the whole licensing process. Additionally, if a business owner had an expectation that a licence would be granted in principle, one would ask why a council should limit the licence's duration to, say, a weekend-long street festival. There is also a risk that providing for the granting of a temporary licence, perhaps at short notice, could compromise the licensing objectives, and it may not allow time for proper consultation with Roads Service on disabled access, and so on.

In addition to the proposed amendments that I outlined, the Minister has provided you with details of a small number of technical amendments. Those amendments, in part, clarify issues raised by stakeholders and deal with market rights, appeals, licensing and street trading law. We are happy to take any questions from members.

The Chairperson: OK. Any questions, members?

Mr Copeland: Liam, I would just like clarification on a point. Being licensed is one thing, but do owners require planning permission for the structures, albeit they are portable?

Mr Quinn: They are portable, so they do not require planning permission.

Mr Copeland: But the licence allows them to be there for a set time frame that, I think, is in excess of what allows them to be considered portable. I just wondered whether any consideration was given to that. At this stage, therefore, is there no requirement for planning permission?

Mr Gary McAlorum (Department for Social Development): We originally made provision in the Bill for consultation with Planning Service on the applications, because — you are quite right — it is certainly a planning consideration. However, we are aware that, under the reform of local government, the planning function will transfer to councils, so the matter can be dealt with in-house, as it were.

Mr Copeland: Therefore, there is no mechanism to oppose an application for those who, for whatever reason, object — there will always be people who object — and there are no third-party appeals. None of that exists.

Mr McAlorum: Anybody can certainly object to a pavement cafe licence being granted.

Mr Copeland: And that person would be notified just as a pavement cafe licence has been granted, almost without any approval or a planning application.

Mr McAlorum: The person could make representations to the council, and the council would have to take into account those representations.

Mr Copeland: By what mechanism would the person become aware of it?

Mr McAlorum: We are requiring the applicant to post a notice on the front of the premises.

Mr Copeland: OK. Thank you.

Mr Dickson: Apologies, I probably should know this, but I just want to check whether there is a requirement to display a licence once it has been granted.

Mr McAlorum: No, there is not.

Mr Dickson: Should there be?

Mr McAlorum: We felt not, but we certainly did consider it. Under the street trading legislation, if you are granted a licence, you are requested to display your notice, but we thought that, because a pavement cafe is an extension of settled business premises, it would not really be necessary.

Mr Allister: The Department is not minded to impose a requirement in the legislation for public liability insurance, even though the setting is going to be in a public area. In the letter, the Department and the Minister justify that stance by saying that, at the moment, there is no obligation on a pub or a restaurant to have public liability insurance, but is there not a distinct distinction when the operation is in a public place?

Mr McAlorum: The council would have the discretionary power to require —

Mr Allister: Why does the legislation not expect public liability insurance for a public place?

Mr McAlorum: We did not think that it was necessary to go that far. We provided councils with a power to require, if they so wish, public liability insurance to be taken out.

Mr Allister: Will the guidance suggest that they should or should not?

Mr McAlorum: Yes, it certainly will.

Mr Allister: That they should?

Mr McAlorum: We believe that they should. Local government asked us for provision to be made in the Bill, and we are seeking to do that by giving it the opportunity to require public liability insurance to be taken out. However, we have fallen slightly short of making it mandatory.

Mr Allister: You think that it should happen and recognise that it is a public place, but you do not think that you should make it mandatory. That is the Department's position.

Mr McAlorum: Yes.

The Chairperson: Thank you for that. I draw members' attention to the tabled items folder. The Committee Clerk has included a briefing paper in the pack that identifies a number of issues that members raised during the discussions, including the definition of "public areas", advertising boards and so on.

I am not receiving any requests to have anything clarified, so I will conclude the session. We intend to return to the Bill next week when we will look at it clause by clause. If members want anything put in or amended or if they have requests that should be included in the guidance, we will do that at next week's session.

Liam and Gary, thank you for attending.