



Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill:
Formal Clause-by-clause Scrutiny

21 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 Michael Copeland
Mr Stewart Dickson
Mrs Dolores Kelly
Mr Fra McCann
Mr Sammy Wilson

Witnesses:

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

The Chairperson: Officials from the Department are here to brief the Committee on the amendments and to ensure that members are clear on their meaning. We have with us Liam Quinn and Gary McAlorum, who will give the Committee a wee update on the amendments just to make sure that people are clear on their intention and are satisfied with them. Is that fair enough?

Mr Liam Quinn (Department for Social Development): It is, yes, Chairman. We have seven amendments. Most have come forward as a result of concerns raised by members and try to deal with those issues. There are also fairly minor technical amendments. I will ask my colleague Gary to go through the amendments one by one.

Mr Gary McAlorum (Department for Social Development): I will go through the amendments very briefly indeed.

The amendment to clause 1, and the amendment to the related definition in clause 30, clarify how councils should treat, for licensing purposes, areas where historical rights to hold a market exist.

Clause 14 allows a council to revoke a licence for a single breach of the licence conditions. To address members' concerns, the clause will be amended to allow for revocation where the licence holder has persistently failed to comply with any condition of the licence. Members will also wish to note that the amendment will apply to suspension of licenses under clause 15.

Members will note that clause 19 will be heavily amended. The proposed amendments address members' concerns by providing the opportunity for a licence holder to make representations to a

council before it takes the final decision to revoke, suspend or make a compulsory variation to a licence. The licence holder should normally have 21 days to make representations, but there may be exceptions to that: for example, if public safety concerns require the pavement cafe area to be closed with immediate effect.

Clause 21 provides for an appeal to the Magistrates' Court in respect of a wide range of licensing decisions taken by a council. The proposed amendment will extend the right of appeal to a decision to limit the duration of a licence under clause 5.

Two very minor amendments are to be made to the schedule. They simply clarify technical issues concerning the Bill's impact on liquor licensing and street trading legislation.

The Chairperson: Do members want to go through those amendments or need any further clarification?

Mr Wilson: We raised the issue of the length of time that consultees have to respond. I felt that the Committee had accepted that we should have some correction there, rather than simply a provision that people would be consulted. There has not been any change to that particular clause.

The Chairperson: Is there not something about 28 days in that requirement, Liam?

Mr Quinn: There are two things. First, there is the 28-day requirement to advertise and for people to respond if they have any objections to the licence. The second issue is that councils are already required, through the European services directive, to publish timescales for dealing with a licence application. So, as part of this process, a council will be required to say that it will deal with a licence application within a specified period. If it has not dealt with it within that period, the licence will be deemed to have been granted. So, as part of their licensing scheme, each council will say that it expects to deal with a licence application within, for example, two months or whatever it happens to be.

Mr McAlorum: As Liam said, under clause 10(5), the Bill makes provision for a period of 28 days for representations to be made on an application.

Mr Dickson: My apologies for using this opportunity to ask a question, but I am new to the Committee and was not here at the beginning of the Bill. Was an equality impact assessment done on the effects of the Bill? How does that affect any supplier of goods and services if a pavement cafe, for example, is in a public space where people may be seated beside kerbstones which are painted in various colours that are perceived to be not neutral and, therefore, may be a detriment to the delivery of goods and services?

Mr McAlorum: On the question of an equality impact assessment, we did a screening of the policy, but we did not do a full equality impact assessment, on the basis that the legislation itself will address issues particularly for pedestrians and the disabled in relation to access to the pavement.

Mr Dickson: It does not then, per se, deal with the issue of goods and services being delivered in a fair and equal way in a place where it is comfortable for people to sit?

Mr Quinn: No, it does not. However, if the council feels that it should not be granting a licence in an area of that nature, it will take that into account.

Mr Dickson: Does the council have the power to take that into account in the legislation? Does the legislation advise or direct it to take that into account?

Mr Quinn: No. The legislation does not specifically direct councils to take that into account, but it is something that they should take into account generally as part of their normal duties, is it not?

Mr Dickson: I have a serious concern that the Bill does not address the issue of the delivery of goods and services and equality in the area where people may be required to sit or be seated in public, and I ask the Department to consider that.

Mr F McCann: On the back of that, I am trying to work out how you actually do that and how premises are supplied. I know that, in some places, it is done in the middle of the night, so that it does not infringe on the delivery of a service from a cafe or whatever the premises may be. Could Stewart elaborate on that and how it fits in with the ability to run something like that?

Mr Dickson: My understanding of the equality legislation is that, under goods and services, somebody delivering goods or a service to the general public is required to do that from an equality perspective. That includes freedom from sectarian graffiti, for example, which is unlikely to be inside the premises but has real potential to be outside the premises. Therefore, depending on their particular viewpoint, members of the public would be deterred by the colours that were painted on the pavement or the graffiti demonstrated on the walls within the roped-off or contained area for the pavement cafe. There is a general duty of care on the council to deal with that, and I understand that, but it has not been highlighted. I am concerned that it has not been highlighted in respect of the equality impact assessment.

Mr McAlorum: Even when a licence is granted, the area remains a public area for the purposes of the law.

Mr Dickson: It does not mean that it is a shared area.

The Chairperson: There will have to be a recommendation from the Committee at the end of this, because we do not have a formal proposition on the table as yet.

Mr Allister: Maybe Stewart has more working knowledge of painted pavements than I have, but I would have thought that the problem with painted pavements is at the extremity of the pavement, at the kerb, as it is normally kerb painting. With regard to the Bill, I cannot anticipate any pavement cafe extending to the kerb. Therefore, if the concern is about what is happening within the specified area, it is hard to imagine that it will be a problem.

Mr Wilson: If the concern is about graffiti on a wall, I imagine that anybody who has premises with such graffiti would get it cleaned off fairly quickly for the sake of the appearance of their premises. My worry would be about how far you would go on this. If, for example, you have a closed-off area and there is a lamp post at the edge of the footpath with a flag on it, are you saying that that would be a reason for not granting the licence for the closed-off area? That would be outside the control of the owner.

Mr Dickson: I accept that. However, there are circumstances where there are murals and other words and things painted on the kerbstones of the pavement, which could be inside the curtilage of the prescribed area. What equality impact assessment has been done in respect of that?

Mr Quinn: The equality impact assessment that we carried out focused very much on access for disabled people and those sorts of issues.

Mr Dickson: It missed out other equality issues.

Mr Quinn: We did not really see the Licensing of Pavement Cafés Bill as a vehicle for trying to improve shared spaces; it was more about improving the economy —

Mr Dickson: That is the answer to my question: you did not.

The Chairperson: At this point, it falls without the legislation on pavement cafes. That is the point that you are making. However, all premises are subject to all the other normal laws of the land as they may be. Without any formal suggestion or recommendation on that, we will move on. Stewart, thank you for that.

If members are happy, we will move on to the clause-by-clause scrutiny. Are members happy with the amendments as outlined by Liam and Gary?

Members indicated assent.

The Chairperson: We will move to the clause-by-clause section of the meeting. I will have to go through these — as it says on the tin — clause by clause.

Clause 1 (Meaning of “pavement café licence” and other key terms)

The Chairperson: I do not want to go through each clause if people are happy that we know what they are.

Some issues were raised in respect of clause 1, and the Department addressed those on 14 November. I take it that people have the amendments before them. Is the Committee content with clause 1 as amended by the Department?

Question, That the Committee is content with the clause, put and agreed to.

Question, That the Committee is content with clauses 2 to 13 put and agreed to.

Clause 14 (Revocation of licence)

The Chairperson: Is the Committee content with clause 14 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clauses 15 to 18 put and agreed to.

Clause 19 (Notice of revocation, suspension or compulsory variation)

The Chairperson: Is the Committee content with clause 19 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 20 put and agreed to.

Clause 21 (Appeals)

The Chairperson: Is the Committee content with clause 21 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 22 to 29 put and agreed to.

Clause 30 (Definitions)

The Chairperson: Is the Committee content with clause 30 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 31 and 32, put and agreed to.

Schedule (Consequential Amendments)

The Chairperson: I remind members that the Department proposes to amend the schedule, and I refer you to the consolidated list for the exact wording of that. Are people happy with the schedule as proposed under the amended wording? I will put the question formally.

Question, That the Committee is content with the schedule, subject to the proposed amendment, put and agreed to.

Long title agreed to.

The Chairperson: That concludes the Committee's clause-by-clause consideration of the Bill. A draft report will be considered by the Committee at next week's meeting. Are members content with that?

Members indicated assent.

The Chairperson: Thank you, members; and thank you, Liam and Gary, for your support to the Committee over the past number of months.