



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill:
Departmental Briefing

24 October 2013

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Mr Gregory Campbell
Mr Trevor Clarke
Mr Michael Copeland
Mrs Dolores Kelly
Mr Fra McCann

Witnesses:

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

The Chairperson: We have with us Liam Quinn, Gary McAlorum and David Irvine from the Department for Social Development (DSD). You are very welcome again, gentlemen. Folks, do you want to present your briefing to members?

Mr Liam Quinn (Department for Social Development): Thank you, Chairman and Committee. The Department has already provided the Committee with clause-by-clause comments on the issues that stakeholders raised in response to the call for evidence. Officials are here today to brief the Committee on key issues arising from stakeholders' oral evidence. We would like to make some introductory comments to summarise the Department's current position and to focus the discussion on the key issues that stakeholders raised.

We are very grateful to the stakeholders for taking the time to scrutinise the Bill and for providing such insightful and detailed comments on specific clauses. The Department is encouraged by the generally positive response. Colin and Glyn were, generally, very positive in the previous session about the Bill. There is broad recognition that the Bill will put the regulation of pavement cafes on a firm statutory footing and will foster the necessary consistency and clarity for all concerned.

The Bill will provide councils with a flexible but robust legal framework to regulate an activity that has been part of the street scene for quite some time but that, regrettably, has been allowed to develop in a haphazard way. The Committee has been provided with photographic evidence of existing street cafes that are clearly inappropriate in their present location or layout and that are insensitive to pedestrians' needs. The Department wishes to assure members that there are sufficient safeguards in the Bill to ensure that such poorly designed pavement cafes will not be tolerated in the future.

We sense, from the evidence and from our discussions with disability interests, that stakeholders have fundamental concerns about the willingness of the relevant statutory authorities to implement the Bill fully. Those concerns may have prompted them to propose amendments to the Bill to ensure, as one stakeholder remarked in his evidence, a belt-and-braces approach to regulation. As you know, the Bill clearly places a formal statutory duty on councils to regulate this activity in the public interest. As observed by local government colleagues, Northern Ireland is the first region in these islands to promote a Bill that is specifically dedicated to the regulation of pavement cafes. There is, therefore, no question of councils opting out and simply allowing pavement cafes to continue to operate in the current unregulated manner.

As I mentioned in my opening remarks, the Bill seeks to balance the need for a robust regulation with the necessary flexibility for councils to respond to local circumstances. The legislation will be backed by comprehensive guidance that is informed by best practice elsewhere and prepared by DSD in conjunction with other agencies. That guidance will address important practical issues; for example, minimum access for pedestrians, design and enclosure of the pavement cafe area, the application process, consumption of alcohol, and circumstances in which a council may need to consider suspending or revoking a licence.

Although the terms and conditions of a licence will very much depend on the nature and location of the premises, the guidance will promote consistency of approach by councils. We wish to assure the Committee that councils will have to take seriously any guidance that the Department produces. As such, the Department does not believe that there is any compelling reason to amend the Bill to add a statutory power to issue guidance.

During the oral evidence sessions, stakeholders and members touched on a number of issues and themes that impinge on other agencies' statutory responsibilities. For example, there was a discussion about the placing on the pavement of commercial advertising, or A-boards, for which both the Planning Service and Roads Service have certain responsibilities. There was also discussion of environmental health issues, such as smoke-free legislation, for which the Department of Health, Social Services and Public Safety (DHSSPS) has statutory responsibility. Those issues will certainly be addressed in the guidance document that I referred to. However, it is important to note that the Department cannot really deal with those issues in a Bill that is designed to regulate pavement cafes. For example, we could specify that menu boards must be within the specified pavement cafe area, but other commercial premises also place A-boards on pavements. So, it would be outside the scope of this Bill to try to regulate A-boards.

If you would find it helpful, I will ask my colleagues to go through some of the main issues in a little bit more detail and to address some of the concerns that have been raised.

The Chairperson: OK, Liam, thank you for that.

Mr Gary McAlorum (Department for Social Development): Members will have a briefing paper that the Department supplied earlier. It identifies a number of key issues that stakeholders raised. So, if it is OK, it is our intention to go through those issues one by one and to pause at the end of each for questions.

As a general remark, the issues that have been raised are not new to the Department. They were touched on during the consultation and in our discussions with stakeholders. The first of those issues is the definition of a public area. Local government has asked for clarification about pavement cafes on private land. Fundamentally, the Department's policy position is that the Bill should not interfere with private landowners' rights.

It is suggested that the definition of a public area should be the same as that used in the Street Trading (Northern Ireland) Act 2001. It is fair to say that we have used the Street Trading Act as the model in developing the Bill. We believe that the broader definition can be justified for street trading because of the potential for nuisance that is associated with street traders, who are basically operating a business on the pavement and are here today and gone tomorrow. However, we do not think that the same justification applies for pavement cafes for commercial business premises that are settled in town and city centres.

I am happy to take questions on that.

The Chairperson: Thank you for that. All members will probably have something to say about disability rights for people who are visually impaired and so on. As you are aware, we have had very strong representation on those issues. Can you give us any comfort on how the legislation would protect those types of disability rights?

Mr Quinn: First, if enacted by the Assembly, the Bill will be an improvement on what we have currently in that, for the first time, pavement cafes will be properly regulated. The councils will have responsibility for ensuring that any pavement cafe that they license meets the standards required to allow access by all persons and does not restrict access by persons or vehicles. So, the onus is very much on the council to consult, first with Roads Service, and, secondly, with any other body that it feels it is necessary to consult. If a particular issue were to arise with disabled access, that could include Disability Action or another lobby group representing disabled people. So, it is an improvement on where we are now, really.

The Chairperson: We have had a number of references to A-board advertisements. Is it not possible for the various Departments to come together and agree one piece of legislation to deal with that? It seems a bit ridiculous that, in this day and age, you have to keep running to two or three Departments about A-boards.

Mr Quinn: With this Bill, the councils can specify that any advertising, such as menu boards, is within the licensed area. Legislation is already in place about access on pavements, and I believe that it is a matter of enforcement. So, Roads Service already has responsibility for ensuring that pavements are free for pedestrians, and, if someone is blocking the pavement with A-boards advertising a mobile phone shop, a grocery store or whatever it happens to be, that should be enforced.

The Chairperson: Does that mean that someone who has a complaint about that can go straight to the council, or do they have to then run to another Department?

Mr Quinn: As far I understand it, they would need to go to Roads Service, which is responsible for enforcing it.

The Chairperson: There is not a one-stop shop for people to make a complaint. Is there no way that that can be tightened up for people?

Mr Quinn: I think that that would require a different Bill, Chairman.

Mr McAlorum: In the longer term, that may be helpful. We are aware that planning functions will be transferring to councils, so they should be able to deal with more of these issues in-house, because there are planning and development considerations. Indeed, we are aware that, in Great Britain, a number of councils insist that the granting of a pavement cafe licence is subject to acquiring a planning consent. So, the two issues are inextricably linked. You will be aware, Chair, that we originally intended to make Planning Service a statutory consultee in the Bill.

The Chairperson: In the context of the Bill, is it not possible that, if a person wishes to make a complaint about A-boards, they should, in the first instance, be able to go the council, which can then proceed with Roads Service or whoever else? Otherwise, the citizen has to go and find somewhere else to take their complaint, whereas the licensing authority is the council.

Mr McAlorum: If the issue relates to a pavement cafe, the council will be their first port of call. We are expecting the council to develop closer working relationships with Planning Service when the system gets up and running.

The Chairperson: We all know what bureaucracies are like, so expectations are not always realised. That is not your fault, but I am just making the point that I do not think that I would like to rely on that expectation.

Mr Campbell: Returning to what Liam said, in any of the areas that we are talking about now, my view and, from what I have heard, that of most people, is that the legislation is a significant improvement on what we have at the minute. We are trying to deal with the small number of instances where people perceive that this will not end up as improvement for their accessibility from what it is currently. Looking at the case of visually impaired people, it seems to me that, for the most part in most instances, it will probably be an improvement, in that there will be pedestrianised zones and wide

access routes. However, there are a small number of occasions where there are very limited facilities with just a couple of tables and a chair or no cafe culture. Under the legislation, there could be, but, because of restricted access and the narrowness of the pavement, it might end up that there are a small number of people whose accessibility past the cafe is more restricted under the new legislation than it is at the moment. It is trying to safeguard that. Now, we can take pedestrianised zones and the wider routes out of it and say that, for the most part, they will be OK. However, if we think about the smaller number of places with the narrow footpaths where there are no cafes at the moment but, under the new legislation, there may be, what comfort can we offer to people who envisage that their position will be worsened and not improved by the Bill?

Mr Quinn: The way that I see the Bill operating, and the way that it is intended to operate, is that an application would come in for a particular area. The council will probably know the width of the pavements in that council area, and it will know that it is unsuitable. So, it will be explained to the applicant at an early stage that there is no point in proceeding, because the pavement is simply too narrow. If they insist on proceeding, the Department for Regional Development's (DRD) Roads Service will have a view on the application, and its advice will be that it is simply too narrow, that the applicant does not have the minimum requirements to allow people or wheelchairs or prams or whatever to pass, so the application for that area should not be granted.

Mr David Irvine (Department for Social Development): Further to that, if somebody then decides to put out a pavement cafe, but it is not licensed, the Bill will give councils the power to remove the cafe furniture. So, I think that that is also an important safeguard for disabled people.

Mr Clarke: Following on from what you said and from what Gregory is saying, yes, we are moving on, but when I listen to Liam and Gary, it seems that it is the case that you need to go to someone else about the boards. We nearly need to buy another board to tell members of the public where to go to complain about the boards that are already there. I think that there is utter confusion with this, and I also think that, when we are trying to regulate the pavement cafes, we should be trying to incorporate that issue into the Bill to try to make it less onerous on members of the public. Each of us who runs constituency offices already get phone calls about some of the most bizarre things, because people do not know where to go. So, I think that there is a real opportunity here for DSD to grab this thorn and try to deal with it as opposed to saying, "Planning Service, the council or Roads Service could do it, but we do not want to do it."

Mr Quinn: I understand the member's point. Clearly, there is an issue with advertising various properties and commercial enterprises in our town centres and on the streets.

The other issue is access for pedestrians in these areas. Unfortunately, it falls outside the scope of the Bill and of DSD. Advertising is a matter for the Planning Service, and access on pavements is for Roads Service.

Mr Clarke: The problem that I have with that is that the consequence of some of these existing cafes means that part of the advertisement is advertising what they are doing in the cafe. I think, Liam, that if you went away and used your imagination, surely you would find enough people in the Department who are smart enough to try to incorporate that into the Bill. Although we are going to regulate cafes, which is a good thing, and we are going to try to do that in a uniform fashion, we have a system where A-boards, as you both said, may be Roads Service's responsibility or they may be the council's responsibility. That is not working, and it is not going to work until someone decides that, now that we are going to do this for the cafe culture, we should incorporate the signage into the Bill so that if the A-board is advertising the cafe, it can be brought into the legislation.

Mr Quinn: If the board is advertising that cafe or advertising its menus or wares, it can be brought in to this legislation.

Mr Clarke: That is a step forward.

Mr Quinn: It would mean that the council could put down a condition to say that the pavement cafe must be enclosed with a barrier and that anything relating to furniture, umbrellas, advertising of menus or whatever must be within that area. What the Bill cannot do is deal with a mobile phone shop, for example, that puts an A-board outside to advertise its deal of the week. We can deal with the pavement cafe issue.

Mr Clarke: As long as we are specific in that.

Mr McAlorum: Legislatively, that is very clear. Clause 1 sets out very clearly what type of furniture would be permitted in a pavement cafe.

Mrs D Kelly: On Trevor's final point about where that all could be tidied up, I wonder whether there is any flexibility in the handover of some of the functions from DSD under the RPA arrangements. Could that be examined?

Mr Quinn: In what particular regard?

Mrs D Kelly: In establishing responsibility for the determination around those A-boards.

Mr Quinn: Responsibility for advertising lies with Planning Service. It is a DOE matter.

Mrs D Kelly: I know that.

Mr McAlorum: That is not a function that we will be transferring.

Mrs D Kelly: No, but we are asking why there cannot be interdepartmental agreement on that. This is the problem that we get, and, as I am sure that Trevor knows, not only do the people get the runaround from constituency offices but constituency staff and MLAs get the runaround from Departments, Roads Service, DOE and councils. Surely if there is an opportunity to have some creative thinking and cross-departmental working, RPA is the vehicle in which to do it.

Mr McAlorum: That is maybe something to look at as part of the reform of local government.

Mrs D Kelly: That is what I said.

The Chairperson: We will note that, and we can deal with that again when we come to consider the evidence.

Mr Brady: Thanks for your presentation. I want to clarify something, because, obviously, there are different issues here. Liam, you are saying that the advertising and all that will be self-contained in the pavement cafes. However, you talked about advertisements for mobile phones and so forth, but that is all to be enforced by another Department. Enforcement is the issue in any of this. It is about people going along and saying that something should not be there. If the advertising is to be contained within the pavement cafe barriers, that will lessen the problem, but the other example that you gave is a different issue. It is the responsibility of another Department to enforce that, because councils, presumably, can enforce the pavement cafe aspect, whether it comes in under RPA or not. The other matter is for a different Department. As with any legislation, it is about enforceability and who enforces it. I thought that that was fairly clear.

Mr Quinn: Yes, that is the issue.

The Chairperson: Gary, I think that you want to go through a number of points, so we will do that and then take questions at the end. We are starting to move away from the particular point that you addressed.

Mr McAlorum: If there are no questions on the definition of a public area, I will go on to the next issue, which is the definition of a business. Local government sought clarification about the definition of a qualifying business for licensing purposes. There are concerns about businesses that are not normally associated with the serving of food or drink, such as a hairdressers, which may wish to apply to operate a pavement cafe. The Department believes that the statutory requirements and costs that are associated with making an application would discourage such a business from applying for a licence. It is worth noting that any change in the definition may produce negative, unintended consequences. For example, if the Bill were to specify that the principal activity of the qualifying business must be the supply of food or drink, that would rule out large retailers with coffee shops, for example.

The other issue is alcohol consumption at pavement cafes. The Bill makes provision for the consumption of alcohol at certain pavement cafes, subject to restrictions. Prior consultation with the police is required for public houses that wish to have a pavement cafe area. As Pubs of Ulster mentioned, at all times, councils will be in control of alcohol consumption, so when considering applications from licensed premises, a council can decide to grant a pavement cafe licence and permit alcohol consumption. It can also grant a pavement cafe licence but insert an alcohol-prohibition condition, or simply refuse the application altogether. Where any licensed premises is granted a pavement cafe licence, relevant requirements of the Licensing (Northern Ireland) Order 1996 will automatically apply to the pavement cafe area.

A point was raised earlier about late-night drinking at pavement cafes. That would not be permitted, as a court order authorising additional permitted hours applies only to the main business premises.

The issue of the by-laws on drinking in public was also touched on. At present, it is common practice for councils to exempt the curtilage of licensed premises from the restrictions on drinking in areas that are designated in the by-laws. If a council were to decide to grant a pavement cafe licence to such premises, the current exemption would extend to the pavement cafe area. However, a council could make a policy decision not to allow licensed pavement cafes to operate in designated areas.

It is also worth pointing out that the Bill's provisions on drinking in public are primarily of a technical nature. The aim is to avoid the need for councils to make new by-laws should they decide to permit licensed pavement cafes to operate in designated areas.

Mr Irvine: I will carry on dealing with a few issues. Several stakeholders recommended the introduction of a fixed penalty scheme for breaches of licence conditions. For fixed penalties to be introduced for a specific breach of a licence condition, the Bill would need to create an associated criminal offence. The Department, therefore, considers the use of fixed penalties inappropriate and heavy-handed for the enforcement of pavement cafes legislation. We consider that, in most cases, after formal warnings have been given, suspension and revocation powers are the most effective way of ensuring that a licence holder operates within the licence conditions.

We touched on the safeguards for disabled and visually impaired people. The Inclusive Mobility and Transport Advisory Committee (IMTAC) and Guide Dogs sought clarification on the protection that the Bill provides for the rights of disabled people and other pedestrians. As Liam mentioned, the Bill would put a currently unregulated activity into a solid legal piece of legislation. Therefore, the Bill will put the control and management of that on a firm legislative footing. An important safeguard will be the requirement to consult Roads Service on individual applications. It will provide advice on the location for a pavement cafe, the impact on pedestrians and appropriate footpath widths.

The powers that are available to a council in granting a licence are widely drawn. That will enable a council to take into account any factor that it considers reasonable when considering an application. Importantly, councils will also have the power to remove furniture from unlicensed cafes.

The Department will issue guidance associated with the Bill. That will be comprehensive and will demonstrate and highlight that pavement cafes should be enclosed within suitable barriers to safeguard any pedestrians or disabled people moving by the cafe.

Some stakeholders suggested that the guidance should have a statutory basis. Councils will still have to take seriously non-statutory guidance that the Department issues. Non-compliance by councils would be challengeable in the courts. As such, the Department feels that there is no compelling reason to amend the Bill to give the guidance a statutory basis.

Finally, during an earlier briefing, some members expressed concern about possible delays in processing the applications. The Bill falls within the scope of the European services directive, which requires an application to be processed within a certain time. That time has to be fixed and published in advance. From research in GB, we know that a period of up to three months is allowed to decide on an application. Councils currently consult Roads Service in all applications under the Street Trading Act. The Department understands that that process is working very well and that there have been no significant delays in that consultation.

The Chairperson: Thank you, David and Gary.

Mr Quinn: We are happy to answer any more questions.

Mr Campbell: I have a couple of questions on enforcement and breaches. We heard from Pubs of Ulster, I think it was, which said that, in its view, suspension would be more appropriate. For repeated offences, would there be an automatic suspension or a graded suspension, whereby the length of time is increased? Is that it?

Mr Irvine: The Bill allows the council to suspend or revoke a licence in various circumstances. Guidance will set out how we see that working in practice. For example, if there is a small breach of a condition, a council might give a formal warning to the licence holder and operate on the basis of three strikes and you are out. So, after getting three warnings, your licence would be suspended.

We see it panning out in that way. Suspension is the ultimate enforcement measure; your licence is taken away from you. However, there may be time for a cafe owner to correct any misdemeanours.

Mr Campbell: A policy of three strikes and you are out might be fair enough for minor breaches. However, is there a renewed three-strikes policy when a suspension expires and a licence is applied for again? How will it work for a second offence after a suspension?

Mr McAlorum: A council can revoke a licence. It is either suspension or revocation. Suspension is for minor breaches; you will be suspended for a limited period. However, the council will consider revocation for repeated offences, for want of a better word. As David said, we will prepare guidance for the council. However, we very much expect that it will be a graduated approach in line with the council's own enforcement policy. This is another licensing scheme for councils; they already have others. We think that this will dovetail with its other enforcement policies.

Mr Campbell: If revocation kicks in either because of a major breach or because somebody has worked their way up to that inevitable outcome, will that revocation simply lapse eventually? Would there then have to be a reapplication, with the council having to decide whether or not the previous offence and revocation were sufficient for that person to be told that they are not getting a renewed licence?

Mr McAlorum: If there is a reapplication, the council has the power to take the past record into account and refuse the licence. Clause 4 makes that very clear.

The Chairperson: Are Members content with what they have heard so far? Liam, Gary and David, unless you have something else to add, we are happy enough to leave it there for today. Gentlemen, thank you very much for your support for the Committee in our deliberations.