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Licensing of Pavement Cafés Bill

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The Licensing of Pavement Cafés Bill was introduced to the Assembly by the Minister for Social Development on 17 June 2013. This paper provides an overview of the Bill and the Department's pavement café appraisal exercise. This paper also looks briefly at the issue of café culture and explores some of the benefits which may be derived from the cultivation of a café culture in Northern Ireland. Although there has been significant support for a pavement café statutory framework for Northern Ireland, the paper also explores some of the concerns raised in relation to pavement café regulation.

Key Points

- Unlike other parts of the UK and the Republic of Ireland, in Northern Ireland the provision of tables and chairs on pavements is prohibited under the Roads (Northern Ireland) Order 1993 (which relates to the intentional or negligent obstruction of free passage along a road). However, despite issues around legality, a policy of 'toleration' has been applied to those cafés, restaurants, hotels and pubs in Northern Ireland that provide a "sitting out" area under the condition that they do not restrict the free flow of pedestrians or vehicles.
- The purpose of the Licensing of Pavement Cafés Bill is to regulate pavement cafés by introducing a statutory licensing scheme. The Bill is an enabling Bill which will provide local councils with the discretion to design their own scheme which suits their local circumstances. Such schemes will, for example, set out specific standards in relation to the design and layout of the pavement café area; standards in the quality of street furniture; disabled access; and, cleaning and maintenance.
- The Bill consists of 32 clauses and one Schedule setting out provisions in relation, for example, to the definition of a 'pavement café'; fines in relation to operating a pavement café without a licence; grounds for refusal to grant a licence; the conditions of a licence; the renewal, variation, revocation and suspension of licences; fixed notices to be displayed in order to provide the public with the opportunity to object before a licence is granted; fees; power to prohibit the sale of alcohol in the pavement café area; and, council powers of entry and inspection.
- The Department for Social Development launched a public pavement café consultation in October 2010 and carried out a comprehensive appraisal exercise consisting of a literature review; a business survey distributed to cafés, hotels, bars and restaurants; interviews with town centre managers; and a series of site visits to a number of locations across Northern Ireland to view examples of existing café culture. The public consultation and appraisal exercise clearly demonstrated that there was overwhelming support for a licensing scheme and for the further development of a local café culture.
- Although not a panacea, pavement cafés have an important role to play in the regeneration of local town and city centres which have been significantly affected by current economic circumstances. If regulated and promoted effectively, the growth in pavement café culture in Northern Ireland has the potential to assist in generating tourism and in growing and promoting the night-time economy.

- Although there is overwhelming support for a licensing scheme, a number of concerns have been expressed in relation to pavement cafés. For example, the lack of uniformity given that local councils can design their own licensing schemes; concerns about street cleanliness and anti-social behaviour; ensuring that the pavement cafés are suitable for the built environment in which it is located; ensuring that licence fees are set at an affordable level and that there is transparency in how fees are calculated; ensuring that pavement cafés do not impact negatively on people with disabilities (e.g. people with visual impairments); and ensuring that there is a balance between enjoyment of smokers and non-smokers using the pavement café area.

- It can be argued that a balanced pavement café framework and the encouragement of a thriving café culture cannot be seen in isolation to other key developments such as environment and public realm schemes, town centre masterplans, the creation of Business Improvement Districts; support for town and city centre businesses; and, continued improvement to the transport and roads infrastructure.

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1 Introduction

The [Licensing of Pavement Cafés Bill](#) was introduced to the Assembly by the Minister for Social Development on 17 June 2013 and went through [Second Stage](#) on 25 June 2013. In Northern Ireland the provision of tables and chairs on pavements is currently prohibited under the [Roads \(Northern Ireland\) Order 1993](#), which states, for example, “*Any person who, without lawful authority or reasonable excuse, in any way intentionally or negligently obstructs the free passage along a road shall be guilty of an offence*”. In addition to this, there are likely to be planning issues relating to any permanent or semi-permanent structures associated with pavement cafés¹.

Yet despite this, pavement cafés and facilities for “sitting out” in cafés, restaurants, hotels and pubs are now a common feature in many towns and cities across Northern Ireland and a “café culture” and night-time economy are evolving rapidly in line with consumer and business demand. At present, Roads Service generally ‘tolerates’ pavement cafés provided that they do not restrict the free flow of pedestrians or vehicles and do not compromise public safety². As an intermediate measure, there has been steps taken to informally regulate ‘sitting out’ areas. Belfast City Centre Management, for example, has developed a Café Culture ‘Memorandum of Understanding’ with businesses in order to promote good practice in the management of ‘sitting out’ areas and over 50 businesses have signed up³.

The purpose of the Licensing of Pavement Cafés Bill is to regulate pavement cafés by introducing a statutory licensing scheme. The Bill is an enabling Bill which will provide district councils with the discretion to design a scheme that suits their particular locality. This is in line with similar legislation in Great Britain, the Republic of Ireland and many European cities where it is common practice for local authorities to regulate and set standards specifying, for example, the design and layout of the pavement café area; the quality of street furniture; disabled access; and cleaning and maintenance.

The Bill defines a ‘pavement café licence’ as “*a licence authorizing the licence holder to place on a public area (identified by the licence) temporary furniture for use for the consumption of food or drink supplied, in the course of a business carried on by the licence holder, in or from premises specified in the licence*”⁴. Businesses likely to apply for a pavement café licence include, for example, cafés, restaurants, hotels and pubs.

¹ Department for Social Development (2010) Business Improvement Districts and Licensing of Pavement Cafés Consultation Paper, p18.

www.dsdni.gov.uk/ds1_10_308812_final_version_consultation_document_on_business_improvement_districts_and_licensing_of_pavement_cafes.pdf

² Licensing of Pavement Cafés Bill: Explanatory and Financial Memorandum.

www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/niabill-24-11-15-Licensing-of-Pavement-Cafes-EFM.pdf

³ Belfast City Centre Management. Café Culture Memorandum of Understanding. www.belfastcentre.com/projects/cafe-culture/

⁴ The Licensing of Pavement Cafés Bill

2 The Growth of Café Culture in Northern Ireland

Pavement cafés and the growth of a café culture in Northern Ireland cannot be seen in isolation to other developments such as environmental improvement schemes and public realm programmes (e.g. the [Belfast Streets Ahead](#) programme); town centre masterplans; the Living over the Shops initiative; Neighbourhood Renewal; Business Improvement Districts; and initiatives such as the “Backin’ Belfast” campaign. Additionally it should be viewed within the context policy frameworks such as the [Urban Regeneration and Community Development Policy Framework](#); the report of the [DSD High Street Renewal Taskforce](#); the [draft Tourism Strategy for Northern Ireland](#); and council tourism strategies, to name but a few.

Tourism is a significant component of the Northern Ireland economy, for example, it is estimated that in 2012 there were around 3.97 million overnight visitors to Northern Ireland who spent approximately £683 million on tourism activities⁵. The Quarterly Employment Survey (at December 2012) estimates that the tourism and leisure industries accounts for 8% of jobs in Northern Ireland (54,270)⁶. Research suggests that Northern Ireland has one of the fastest growing night-time economies in the UK⁷. Pavement café culture is an important part of the night-time (as well as the day-time) economy, and tourism in general, in many cities and towns throughout the UK, Republic of Ireland, Europe and North America.

If regulated and promoted effectively, a growth in pavement café culture will impact positively on towns and cities across Northern Ireland. The decline of Northern Ireland high streets is well documented. The Northern Ireland Independent Retail Trade Association’s report “[Town Centre First](#)” highlighted the significant levels of shop vacancy rates and the closure of small independent shops⁸. Although it is not a panacea, a pavement café culture may go some way to assisting in attracting consumers back into town centres thus assisting in the town centre regeneration. There is clear consumer demand for pavement cafés amongst both locals and tourists. A pavement café culture projects a sense of normality and a cosmopolitan atmosphere it also reflects the bringing together of divided communities in a shared and neutral space.

Cities such as London have a long established café culture, but there has been a significant growth and/or interest in pavement cafés in other cities such as Dublin and Edinburgh. It is suggested that in Dublin a continental café culture is rapidly developing and is arguably infringing on traditional pub life, as one news article describes this transformation constitutes “*the foam on a pint of stout...being replaced by the froth of a cappuccino*”⁹. Other cities within the UK are also keen to tap into the

⁵ NISRA. Northern Ireland Tourism Statistics 2012 (published July 2013), p8.

⁶ NISRA. Northern Ireland Tourism Statistics 2012 (published July 2013), p26.

⁷ Research by TBR Observatory quoted in The Independent “While you were sleeping ...somewhere hard at work’. 15 April 2012.

⁸ NIIRTA (2012) Town Centre First: 50 solutions for reinventing retail in tomorrow’s town centres.

⁹ The Telegraph. Café culture taking over in Dublin. 2 October 2006.

benefits derived from a café culture. Edinburgh's Princes Street, for example, could soon undergo a transformation into a prime location for a café culture. This is part of Edinburgh City Council's strategy to address the challenging economic conditions and decrease in the footfall in the city centre by enhancing both the retail environment and night time economy. New guidelines are being put out for consultation to allow 25 of the smaller retail units in Princes Street to transform into food and beverage outlets. Key to the move will be the widening of pavements by around two metres in some areas to accommodate the plans¹⁰.

Similar to proposed developments in Edinburgh, improvements to the built environment in towns and cities across Northern Ireland will be one of the key components that will nurture a local café culture (for example, the widening of pavements or the creation of pedestrian only zones where appropriate). As the Department for Social Development's Pavement Café appraisal exercise clearly demonstrates there is significant demand and support for the continued development of a local café culture.

3 The DSD Pavement Café Appraisal Exercise

The Department for Social Development launched a public [consultation](#) on the Licensing of Pavement Cafés (which also sought views on Business Improvement Districts) on 10 October 2010. This was following calls from stakeholders seeking an introduction of a statutory scheme in response to the growing number of pavement cafés in Northern Ireland. In addition to the consultation there was a [literature review](#); a [survey](#) of businesses; a series of meetings with town centre managers; and, site visits to a number of locations across Northern Ireland to view physical examples of existing café culture¹¹. The outcome of this appraisal was the conclusion that a *"common, clear and transparent legislative framework is required to enable a café culture to develop"*¹².

Provided below is a brief synopsis of the findings of some of the strands of the Department's appraisal. The following information has largely been extracted from DSD's ["A Review of Café Culture in Northern Ireland"](#).

Literature Review¹³

The literature review highlighted that local authorities in GB and ROI administer and enforce the pavement café licensing framework and that whilst licensing procedures

¹⁰ The Scotsman. 'Café culture coming to Edinburgh Princes Street'. 24 July 2013.

¹¹ Department for Social Development (2010) Business Improvement Districts and Licensing of Pavement Cafés Consultation Paper, pp18-19.

¹² Department for Social Development (2010) Business Improvement Districts and Licensing of Pavement Cafés Consultation Paper, p19.

¹³ Information in the literature review extracted from DSD's "A Review of Café Culture in Northern Ireland" www.dsdni.gov.uk/asu-cafeculture-sml.pdf

across the UK are relatively standard there is some variation from council to council on issues such as opening hours and licencing fees.

Fees ranged from around £150 per annum (in Tameside) to £1,000 in Taunton Deane Borough Council, some councils also charged an annual renewal fee (which was often lower than the initial licensing fee). Some local authorities based charges on the size of the area the pavement café covered. Wigan Council, for example, charged £250 if the area was less than 10m² and £400 if the area is larger than this (however these licenses covered a two year period). In the City of Westminster the fee was dependent up the number of chairs in a café, licenses covered the period up until 7pm with an additional charge applicable for each hour past that time. In the Republic of Ireland fees are based upon charge per table with a standard charge of €125 per table based on a one year licence.

The various pavement café licensing schemes had common features e.g.

- A specified distance between the curb and the licensed area.
- There must be an unobstructed corridor from the curb to the door of the premises.
- The pavement café area needs to be enclosed to enable pedestrians to distinguish the area, particularly for the visually impaired.
- All furniture and equipment should be of a high quality (councils discourage the use of cheap plastic garden furniture) and must be removed and stored off-street at the end of operating hours.
- Businesses must have mandatory indemnity insurance.
- There must be appropriate toilet facilities to cope with the potential increase in trade.
- Obligations in relation to the cleaning, maintenance, noise nuisance and other forms of anti-social behaviour.
- Before the granting of a licence, councils must consult with other relevant statutory authorities and require the applicant to place a notice in the window of their premises outlining the intention to operate an outside seating area. The purpose of this is to provide an opportunity for other businesses to raise any issues they may have in relation to the application.

The literature review also highlights that pavement café opening hours varied across local authorities with some licenses, for example, operating up to 7pm, 9pm and 11pm.

A full copy of the DSD/NISRA Literature Review is available to download [here](#)¹⁴.

Both the literature review and the various pavement café licensing schemes and guidelines in other jurisdictions will be valuable sources of information for local councils in Northern Ireland seeking to develop their own schemes.

¹⁴ DSD/NISRA – ‘A Review of Café Culture in Northern Ireland’ - www.dsdni.gov.uk/asu-cafeculture-sml.pdf

Some Examples of Pavement Café Scheme Guidelines in other Jurisdictions

Chorley Council 'Pavement Café Design and Licence Guide' -

<http://chorley.gov.uk/Documents/Licensing/Pavement%20Cafe%20Design%20%20Licence%20Guide%20v1.pdf>

Newcastle City Council 'Pavement Cafés: A Guide to their operation in Newcastle upon Tyne' -

www.newcastle.gov.uk/wwwfileroot/legacy/regen/phep/NewPavementCafeGuidefeb10.pdf

City of Westminster 'Guidelines for the placing of tables and chairs on the Highway' -

www3.westminster.gov.uk/spgs/publications/tables%20and%20chairs.pdf

Business Survey

The survey took place in April/May 2010 with a questionnaire posted to 954 cafés, restaurants, bars and hotels across Northern Ireland. There were 122 completed questionnaires returned, the majority of businesses that responded were cafés. Of the 122 businesses 53 (43.4%) provided pavement café facilities and 69 (56.6%) did not.

In summary the survey revealed:

- There was confusion amongst business as to the legislation and planning regulations regarding the provision of pavement café facilities.
- Those businesses that did provide pavement café facilities did so response to the smoking ban and also to increase business revenue. Some also stated that such facilities were provided to improve the local atmosphere; to appeal to tourists; to provide a more continental feel; to respond to customer demand; and to make the most of improvements to the public realm.
- Whilst some businesses provided facilities all year round other provision was weather driven rather than tourist season driven.
- Of those businesses that provided facilities, around half only provided tables and chairs, however, some also provided enclosed barriers/fences, umbrellas and overhead awnings.
- For those business in the survey not currently providing pavement café facilities (i.e. 69 businesses) 64% stated that they would consider offering such facilities with 36% completely ruling out offering facilities (these were mainly pubs and restaurants).

The survey's qualitative analysis revealed the perceived **benefits** of pavement cafés, i.e.:

- Many respondents believed that pavement cafés offered a range of benefits – creating a cosmopolitan atmosphere/promoting a 'feel good' factor; increased footfall; and were attractive to tourists/increased tourism.

- Street furniture could be aesthetically pleasing particularly in favourable weather.
- Pavement cafés promoted increased cleanliness of the outdoor environment.

However, the survey also revealed some **concerns/issues**, i.e.:

- Litter, theft and having to deal with anti-social customers.
- Non-customers using the facilities provided.
- That the built environment/public realm could be unsuitable for business need e.g. narrow footpaths.
- Concern over the ambiguity around who was actually responsible for pavement cafés (DRD or councils?).
- Some business against the idea of pavement cafés believed that a café culture would not work as Northern Ireland has a pub culture.
- The majority of respondents were in favour of promoting a café culture but felt that more assistance needed to be provided to develop the sector.

A full copy of the DSD/NISRA Business Survey is available to download [here](#).

Public Consultation

The Department for Social Development published a [summary of responses](#) to its consultation on a statutory licensing scheme for the regulation of Pavement Cafes in September 2011. There were a total of 45 responses to the consultation from various organisations; local councils and a political party. DSD responses to the comments made in the consultation were as follows:

- The introduction of a statutory licensing scheme, administered by local councils, will have a positive effect on town and city centres in Northern Ireland and will make a real difference in attracting visitors.
- Given the overwhelming support for the proposal to allow each district council to design individual licensing schemes, the Department intended to proceed with the proposal for statutory licensing.
- In response to views from the vast majority of respondents, there should be a general presumption that no consent for a scheme should be unreasonably withheld by a council. Councils will be permitted to reject applications for specified reasons but it will not be possible for councils to place blanket bans on pavement cafés.
- Given the views expressed by the majority of councils that responded, councils should be provided with a suite of enforcement and prosecution powers in order to regulate pavement cafés.

The vast majority of respondents to the consultation were positive and supportive of a statutory licensing scheme. However, there were a number of concerns or points for clarification raised by a minority of respondents:

- One council and one organisation were against the proposal for statutory licensing, the council felt that 26 individual council schemes would make the management of pavement cafes more complex and add to unnecessary costs.
- Four councils felt that councils should be provided with the option not to permit pavement cafés in their area, although the vast majority of respondents felt that permission should not be unreasonably withheld.

4 Overview of the Bill

The [Licensing of Pavement Cafés Bill](#)¹⁵ consists of 32 clauses and one Schedule. This section of the paper provides a brief overview of some of the Bill's main clauses and includes information providing some context as to how licensing schemes operate in other jurisdictions. Further detailed information on the Bill can be found in the [Bill's Explanatory and Financial Memorandum](#)¹⁶.

Clauses	Brief Overview	General Comments ¹⁷
<p>Clause 1 Definition of a 'pavement café' and associated pavement café furniture</p>	<p>Provides a definition of 'pavement café' licence and 'public area' and places a duty on the licence holder to ensure that furniture placed in a licensed area is of a temporary nature and can be removed swiftly. 'Furniture' includes items such as tables and chairs, umbrellas, barriers, heaters etc.</p> <p>'Temporary' means that a person must be able to remove all furniture in 20 mins and the furniture must be removed to a non-public area.</p>	<p>The removal and temporary nature of furniture is a common/standard feature of statutory licensing schemes in other jurisdictions as it is important for councils to discharge other duties e.g. street cleansing, in response to the need for emergency access.</p>
<p>Clause 2 Offence of placing furniture on a public area without a licence</p>	<p>Makes it an offence to place furniture (for the use of consumption of food and drink) on a public area without a pavement café licence. This offence can be committed by the 'a person carrying on the business' or any other person concerned in the management of the business, the offence is liable to a fine of up to £1,000 on summary conviction.</p> <p>A person can avoid being charged with an offence if they can prove they took all</p>	<p>Fines are also a standard feature of pavement café licensing schemes in other jurisdictions. Belfast City Council has suggested that consideration be given to introducing a provision enabling a fixed penalty notice to be issued as an alternative to prosecution¹⁸.</p> <p>As standard practice many councils in GB to issue verbal and written warnings before embarking on prosecution proceedings. A number of licensing schemes in other jurisdictions make clear that enforcement action should be proportionate to the offences committed. Many councils prioritise enforcement action on activities that comprise</p>

¹⁵ See www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/niabill-24-11-15-Licensing-of-Pavement-Caf%c3%a9s-Bill.pdf

¹⁶ See www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/niabill-24-11-15-Licensing-of-Pavement-Cafes-EFM.pdf

¹⁷ **These types of issues are likely to be addressed in the various licensing scheme guidance devised by local councils rather than detailed in the Bill (given the Bill is an enabling Bill).**

¹⁸ Belfast City Council Response to the Licensing of Pavement Cafés Consultation.

	<p>reasonable precautions and exercised 'due diligence' to avoid committing the offence.</p>	<p>health and safety. Resources tend to be particularly targeted at tackling persistent offenders.</p>
<p>Clause 3 Requirement to provide a plan showing location and dimension of proposed pavement café</p>	<p>Sets out the procedures for applying to the local council for a pavement café licence. This clause is applicable to businesses in which food or drink is (or will be) supplied from the premises.</p> <p>The application must include a plan which (a) shows the location and dimensions of the public area in which the applicant wishes to place the temporary furniture and, (b) must include any other requirements that the council may specify.</p>	<p>Many licensing schemes in GB also require applicants to provide a plan of the pavement café area showing details such as access points, boundaries, curbs, the siting of tables, elevation of barriers and enclosures, position of outdoor electrical circuits, details of additional lighting. Many require scale drawings of the site plan. Some also require the application to be accompanied with details of the furniture, barriers and heating appliances to be used (with manufacturer's brochures if possible).</p> <p>In the US there are quite stringent rules on the use of heaters. In New York City, for example, businesses planning to use a natural gas (not propane) heater in the enclosed 'sidewalk' café must receive approvals from the Fire Department and Department of Buildings to install and operate the heater¹⁹.</p> <p>In terms of other requirements that councils may specify – these may include health and safety risk assessments, proof of public liability insurance; evidence of any planning permission (if appropriate); a Management Plan detailing how the licensee intends to deal with anti-social behaviour.</p>
<p>Clause 4 Grounds for refusal to grant a licence</p>	<p>Places an onus on the council not to unreasonably withhold pavement café licences. The clause does, however, outline a number of grounds in which a council may refuse a licence – e.g. if the proposed pavement café area is unsuitable for that purpose; if the placing of furniture would cause undue interference and inconvenience to pedestrians or vehicles in that area; if the applicant makes a statement in their application which they know to be false; if the applicant fails to fix a notice to the premises re the application; if the applicant has been granted a licence before which has been revoked for reasons that were in the applicants control.</p> <p>This clause also places the onus on a council to consult with other agencies before deciding on an application – e.g. DRD; PSNI (where the premises has a pub licence); and/or any other person it deems appropriate (e.g. Planning Service).</p>	<p>Again these are standard grounds for refusal of licences in other jurisdictions. In some areas in the USA licences can be refused if the 'sidewalk café' has any other outstanding fees/debts owed to the city/town council or any other relevant statutory body (even if they are not relevant to the pavement café licence).</p>
<p>Clause 5 Form and duration of a licence</p>	<p>Provides the Department for Social Development to make regulations setting out the form of a pavement café licence – this must specify the holder of the licence, the premises to which it relates and any other matters which may be prescribed. The form must be accompanied by a plan showing the location and dimensions of the proposed pavement café area.</p>	<p>The Department's literature review revealed that most licences in GB are valid for one year, the majority operating from the day they are granted but with some operating on a financial year basis. Some councils issue two-year licences.</p>

¹⁹ NYC Department of Consumer Affairs : FAQ: Sidewalk Café Heaters.

	<p>The clause provides each council with some flexibility to vary the proposed pavement café area.</p> <p>It also provides the council with discretion as to how long a pavement café licence may be valid.</p>	
<p>Clause 6 Conditions of a licence</p>	<p>Provides for the conditions of a licence i.e. temporary pavement café furniture should not be placed on public areas other than that specified in the licence; a prohibition on the consumption of alcohol at a pavement café where the associated premises is licenced for off-sales only; a council may prohibit the consumption of alcohol at a pavement café if it feels it would result in disorder.</p> <p>This clause also provides the council with discretion to specify other reasonable conditions – e.g. limiting the number and size of tables and chairs; limiting the number of days or times that they pavement café is not permitted to operate; arrangements for insurance and indemnities.</p>	<p>‘Other reasonable’ conditions imposed by some councils in GB include – specifying that wheelie bins, refuse sacks or other unsightly items should not be kept on the public highway; all litter within the licensed areas must be cleared as soon as possible; the area should be swept regularly and washed at the end of each day; licences should be available for inspection at any time by relevant officers (e.g. police, council officers).</p> <p>DSD have made clear that street furniture must be of a high quality (not of cheap plastic). In some areas of the US, conditions of a sidewalk café specify that food and beverages must not be served in or on any paper or plastic product of any kind²⁰.</p> <p>In the US certain other conditions are attached to a granting of a licence e.g. there must be no outdoor cooking (although in some states this is permitted if passed by environmental health), prohibition of the use and installation of speakers or other amplified sound equipment²¹.</p>
<p>Clauses 7, 8, 14 and 15 The renewal, variation, revocation and suspension of a licence</p>	<p>A council must grant a renewal of a licence unless it feels that it should refuse the application on the grounds outlined in Clause 4. Before deciding on an application for renewal the council may consult relevant persons and the council must take into consideration any representations made to it in relation to the application. When renewing a licence the council may vary that licence (e.g. specifying new conditions, removing an alcohol condition).</p> <p>A person holding a pavement café may apply to the council for a variation (e.g. in terms of the licensing conditions or a variation of the area covered by the licence). The council has the power to vary the conditions as requested, impose new conditions or refuse the application. The council may consult persons it considers appropriate.</p> <p>A council can, at any time, revoke a licence if the pavement café area is (or is going to become unsuitable); if the licence is likely to</p>	<p>Again rules governing the renewal, variation, revocations and suspension of a licence are similar to local authority licensing schemes in GB.</p> <p>A number of city/town councils in North America place a time-limited ban pavement cafés operating according to the scale of the offence (e.g. a one year ban for a significant number of anti-social behaviour incidents requiring police presence)²².</p>

²⁰ Village of Mamaroneck, NY. Side walk Café Regulations.

http://ecode360.com/7711557#/7711602?&_suid=137456703112108907134710948347

²¹ Seattle Department of Transportation. Sidewalk Café Regulations.

www.seattle.gov/transportation/stuse_sidewalkcafe_app2.htm

²² For example, City of Windsor (Ontario, Canada) Sidewalk Café Handbook. www.citywindsor.ca/residents/planning/Urban-Design-and-Community-Development/Windsor-SEEN-Urban-Design-Agenda/Documents/Sidewalk%20Cafe%20Handbook%20Amended%20May%202013-CH1-11.pdf

	<p>result in undue interference or inconvenience to person or vehicles in the vicinity; or if it is likely to result in disorder. The licence can also be revoked if the licence holder made a knowingly false statement in their application, failed to pay any fee due to council in respect of the licence or failed to comply with any condition of the licence.</p> <p>A licence can be suspended by the council at any time on similar grounds outlined above. The clause also allows a licence to be suspended for the purposes of utilities maintenance, road works etc.</p>	
<p>Clause 10 The format and process for application forms</p>	<p>Concerns the form format and process for application forms for the granting of new or variation of a licence. The application form must – be made in writing and in a way specified by the council; be accompanied by a fee (if the council decides a fee is payable); must confirm that the applicant has fixed a notice to the premises (see clause 12); and contain the information and accompanying documents required by the council.</p> <p>When a council receives an application it must – make the application available for the public to view and publicise that representations relating to the application can be made in writing.</p> <p>The council can require the applicant to provide further information or documents it feels necessary.</p> <p>If an application is refused a council must inform the applicant in writing and inform the applicant of the appeals process.</p> <p>If a person makes a knowingly false statement in their application they can be liable on summary conviction to a fine of up to £1,000.</p>	<p>Some illustrative examples of pavement café licensing applications forms:</p> <ul style="list-style-type: none"> • Wirral Borough Council www.wirral.gov.uk/downloads/2619 • Reading Borough Council http://www.reading.gov.uk/businesses/Licensing/street-pavement-cafe-licence/
<p>Clause 11 Fixed notice of application to be displayed</p>	<p>Where an applicant is made for the granting, renewal or variation of a licence the applicant must on the day the application is made place a fixed notice to the premises. The notice must be one specified by the council and must visible and legible to the public from outside the premises. The notice should remain in place until the end of a 28 day period (to allow representations to be made to the council).</p>	<p>Fixed notices and an opportunity for stakeholders to raise concerns around a potential pavement café licence are standard practice in GB, Europe and North America.</p>
<p>Clause 12 Fees</p>	<p>Concerns the payment of fees. A council is permitted to charge fees for the granting, renewal or variation of a licence. The council is permitted to determine the fees chargeable. However, the fees must only</p>	<p>In some US States in addition to the standard fee, local authorities require that an additional refundable deposit is retained until the expiration of the permit as security for compliance with regulations. The deposit can be retained or partly retained for expenses occurred by the local authority</p>

	<p>cover reasonable administrative or other costs related to the council's functions under the Act.</p> <p>Before determining or altering fees, the council must give licence holders notice and publicise the proposed fees by any means if feels appropriate. The notice and publicity must provide a statement demonstrating how the proposed fees were calculated.</p>	<p>for failure of the permit owner to adhere to the regulations²³.</p>
<p>Clause 17 Power of council to prohibit the sale of alcohol in pavement café area</p>	<p>This provides the council with the power to include a prohibition of the sale of alcohol in the licensing conditions (e.g. if the council feels the supply of alcohol in the pavement café area is likely to result in disorder). Clause 20 also gives the Department power to make regulations requiring that particulars of pavement café licenses associated with those premises licensed under the Licensing (NI) Order 1996, to be recorded in the licensing register.</p>	<p>This is similar to rules enforced by local authorities in GB prohibiting the sale of alcohol in certain circumstances.</p> <p>In a number of US States alcoholic beverages must be served in glasses or plastic cups which clearly identifies the retail food establishment from which alcoholic beverage was purchased²⁴</p>
<p>Clause 22 Powers of entry and inspection</p>	<p>Provides the power for an 'authorised officer' (i.e. authorised by the district council) to enter and inspect premises (e.g. to inspect furniture, to assess whether the granting, renewal or variation of a licence is suitable, to ascertain if whether the conditions of a licence are being complied with).</p> <p>Under clause 24 a person obstructing an "authorised officer" from carrying out their duties relating to entering and inspecting a premises can be fined up to £1,000.</p>	<p>Standard practice in pavement and sidewalk café licensing schemes. In some US States local authorities provide an easy reference 'inspection checklists' to assist licence holders with the types issues the inspectors look for to help avoid violations²⁵. The frequency of inspections varies, in Philadelphia, for example, the Street Department conduct monthly inspections to ensure that there is compliance with licensing regulations²⁶. In other cases inspections are carried out on an ad hoc, or risk-based basis, or as a result of a compliant.</p>
<p>Clause 23 Power to remove furniture from the pavement café area of an unlicensed premises</p>	<p>Provides the council with a power to remove furniture from unlicensed pavement cafés and recover the cost of removing and storing the furniture. The council can dispose of, or sell, the furniture if not claimed by the 'responsible' person within three months.</p> <p>Under clause 24 a person obstructing an "authorised officer" from carrying out their duties in respect of this clause can be fined up to £1,000.</p>	<p>This is standard practice in pavement and sidewalk café licensing schemes in other jurisdictions.</p>

5 Some issues raised by MLAs and other consultees

The Department for Social Development's consultation clearly demonstrated that there was overwhelming support for statutory licensing of pavement cafés. There was

²³ Village of Mamaroneck, NY. Side walk Café Regulations.

²⁴ See City of Chicago. Department of Business Affairs. Rules and Regulations for Sidewalk Cafés. www.cityofchicago.org/dam/city/depts/bacp/rulesandregs/RulesRegsForSidewalkCafes.pdf

²⁵ See New York City Department of Consumer Affairs. Inspection Checklist: Sidewalk Café. www.nyc.gov/html/dca/downloads/pdf/SidewalkCafe.pdf

²⁶ Roxborough Review. Street Department to increase sidewalk café inspections. 1 May 2013. www.montgomerynews.com/articles/2013/05/01/roxborough_review/news/doc517fe4a84a259454370007.txt

positive support for the Bill at the Second Stage in the Assembly on the 25 June, including support from the Committee for Social Development on the principles of the Bill. The Committee noted the important role of pavement cafés in town centre regeneration²⁷. However, the Deputy Chair highlighted a number of concerns that the Committee had raised in its initial deliberations on the Bill, i.e.

- The **definition of a ‘public area’** – some members queried whether some café owners could set up a business some distance from the café (e.g. in a public square or park). The Committee was, however, informed that councils will be provided with discretion in the granting of licenses to determine whether the public area is suitable, or not suitable, for a pavement café.
- The Committee noted that a council could refuse a licence if the applicant **had a previous licence revoked**. The Committee expressed concern that this could potentially result in the indefinite refusal of a licence. However, it did welcome the provision in the Bill for an appeals mechanism.
- The Committee also queried the **potential costs of a licence** given that the current ‘toleration’ policy does not incur any cost. However, the Committee was assured by Departmental officials that costs would be set at a level that would allow a council to recoup its administration costs. The Committee also welcomed that the Bill provided transparency in that councils would be required to publicise their fees, including details of how they are calculated. The issue of setting fees at an affordable level was raised by other Members during the course of the debate.
- The Committee also raised concerns regarding the **potential implications for people with disabilities**, particularly those with visual impairments. The Committee believed that it was important that groups that represent people with disabilities are consulted²⁸.

A number of Members also raised other issues, i.e.:

- That there should be consideration to balancing the rights of smokers and non-smokers using the pavement cafés area. The Minister stated that he would encourage councils and café owners to take steps to create non-smoking areas.
- How the added tax regime could impact on the serving of food in pavement cafés.
- Ensuring that there is appropriate access for families including prams.
- Ensuring that pavement cafés do not obstruct parts of the pavement that have been designated as cycle paths.

The Department’s consultation also highlighted that a number of consultees were concerned about the impact of pavement cafés on litter and anti-social behaviour. One council in particular felt that a statutory licensing scheme would lack uniformity with 26 individual councils designing their own schemes. However, it is important to reiterate that the majority of respondents to the consultation were in favour of a statutory licensing framework.

²⁷ Northern Ireland Assembly Official Report. 25 June 2013.

²⁸ Northern Ireland Assembly Official Report. 25 June 2013.

6 Conclusion

Research carried out on behalf of the Department for Social Development indicates that there is already an existing café culture in a number of locations within Northern Ireland i.e. – Belfast, Holywood, Coleraine, and Portstewart. There is also an emerging café culture in Newry, Ballymena, Armagh, Lisburn, Newcastle, and Warrenpoint²⁹.

It is clear that Northern Ireland town and city centres, like many other town and city centres throughout the UK, are struggling in the context of current economic circumstances. It is worth reiterating that although it is not a panacea, balanced regulation of pavement cafés and the encouragement of a thriving café culture may go some way in attracting consumers back into these areas. However, this can only be achieved in tandem with progress with other related developments, for example, environmental and public realm programmes; the establishment of successful Business Improvement Districts; continued improvements to the transport and roads infrastructure; and improved parking facilities in towns and city centres.

Café culture generates significant benefits in towns and cities across Europe, North America and the UK. Some areas have even promoted annual festivals dedicated solely to promoting a café culture (e.g. the Chorlton's 3 day Coffee Fest in Manchester)³⁰. Coffee is now big business and a café culture is indicative of a 'mature' society. A balanced regulatory framework for pavement cafés in Northern Ireland can be viewed as a positive step in generating both economic and societal benefits.

²⁹ DSD Consultation on Business Improvement Districts and Pavement Cafés.

³⁰ Manchester Confidential. 'Chorlton Coffee Festival: Wake up and smell the suburb'. 25 April 2013. – For further information on the festival see www.chorltoncoffeefestival.com/