

## ANNEX 1



### PAVEMENT CAFES BILL – DSD BRIEF FOR SDC INFORMAL CLAUSE BY CLAUSE SCRUTINY

CLAUSE	TOPIC	PAGE
	OVERVIEW	3
1	MEANING OF PAVEMENT CAFE AND OTHER KEY TERMS	4
2	OFFENCE OF PLACING FURNITURE	6
3	APPLICATION	7
4	GRANT OR REFUSAL	9
5	FORM, DURATION ETC	11
6	CONDITIONS	12
7	RENEWAL	14
8	VARIATION (CONDITIONS / AREA)	14
9	VARIATION (REMOVAL OF ALCOHOL PROHIBITION)	15
10	APPLICATIONS – GENERAL	15
11	NOTICE OF APPLICATION	16
12	FEES	17

<b>CLAUSE</b>	<b>TOPIC</b>	<b>PAGE</b>
13	CHANGE IN PERSONS (PARTNERSHIP)	18
14	REVOCATION	19
15	SUSPENSION	19
16	COMPULSORY VARIATION (CONDITIONS)	20
17	COMPULSORY VARIATION (ALCOHOL PROHIBITION)	20
18	COMPULSORY VARIATION (AREA)	21
19	NOTICE OF REVOCATION ETC	21
20	ALCOHOL LICENSING REGISTER	22
21	APPEALS	23
22	POWERS OF ENTRY AND INSPECTION	24
23	POWERS TO REMOVE UNLICENSED FURNITURE	24
24	OFFENCE OF OBSTRUCTION	25
25	SERVICE OF NOTICES AND DOCUMENTS	25
26	POWER TO MAKE FURTHER PROVISION	26
27	REGULATIONS	26
28	CONSEQUENTIAL AMENDMENTS	27
29	BYELAWS	28
30/31/32	DEFINITIONS /SHORT TITLE / COMMENCEMENT	29
	SCHEDULE	30

## **BILL OVERVIEW**

The Licensing of Pavement Cafes Bill contains **32 clauses** and **one Schedule**.

**Clauses 1 and 2** deal with the general requirement to obtain a pavement café licence.

**Clauses 3 to 12** set out the application procedures for the grant, renewal, and variation of a licence.

**Clause 13** sets out the procedure when there are multiple licence holders and there is a change of a business partner.

**Clauses 14 to 19** deal with revocation, suspension and compulsory variation of a licence.

**Clause 20** makes provision for certain matters to be recorded in the register under liquor licensing law.

**Clause 21** specifies the circumstances in which appeals can be made against a decision of a district council.

**Clauses 22 to 24** give district councils powers of entry, removal etc for the purpose of enforcing the provisions of the Bill.

Supplementary matters are set out in **Clauses 25 to 32**.

## **CLAUSE 1: MEANING OF “PAVEMENT CAFÉ LICENCE” AND OTHER KEY TERMS**

### **OVERVIEW**

*This clause provides a definition of a ‘pavement cafe licence,’ what the licence authorises and other key terms for the purpose of the Bill. It is important to make clear a pavement cafe licence simply authorises a person carrying on a business involving the supply of food or drink (in or from premises) to place furniture temporarily on a public area. A licensed area will remain a public place for the purpose of public order, environmental or other legislation.*

### **ISSUES RAISED BY STAKEHOLDERS**

#### **Definition of public area [Clause 1(2)]**

The “public area” for the purpose of licensing pavement cafes, is given a broader definition than that used in other in jurisdictions. Local government has asked for clarification about the licensing of pavement cafes on private land. The Department’s policy position is that the Bill should not interfere with the rights of private land owners. It has been suggested that the definition of a public area should be the same as that used in the Street Trading Act 2001. This definition can be justified for street trading because of the potential for nuisance. But DSD doubts whether the same justification can be used for the licensing of pavement cafes.

#### **Market exemption [Clause 1(2)(b)]**

Clarification was sought as to the precise circumstances in which markets will be exempt from the requirements of the licensing scheme. This exemption applies to any ‘lawful market.’ That is, one which has an historic right to operate, established by grant, presumed grant or statute. A council could therefore not authorise a pavement cafe situated in a lawful market area, whether the market is currently operating or not. This is the same exemption as used in the Street Trading Act 2001.

### **Advertising / menu boards [Clause 1(3)]**

The regulation of commercial advertising in the form of 'A' Boards was raised. The placing of 'A' Boards in the street (not associated with a pavement cafe) would be an enforcement issue for Roads or Planning Services. However, DSD Guidance will highlight to councils that pavement cafés should be enclosed by means of barriers to ensure the safe passage of other users of the public area. All licensed furniture, including **menu boards** associated with any pavement cafe, will be required to be kept within the enclosed area.

### **Requirement for furniture to be capable of removal in 20 minutes [Clause 1(4)]**

The inclusion of the provision requiring pavement cafe furniture to be capable of being removed swiftly was queried. It is considered this time limit adds meaning to the definition and demonstrates that the furniture associated with a pavement cafe cannot be of a permanent or semi-permanent nature. A council can chose whether or not to specify in the licence an actual time requirement for removal of the furniture.

## **CLAUSE 2: OFFENCE OF PLACING FURNITURE ON PUBLIC AREA WITHOUT LICENCE**

### **OVERVIEW**

*This clause creates an offence of placing furniture, for use for the consumption of food or drink, on a public area without a pavement café licence. The Clause applies to businesses involved in the supply of food or drink (in or from premises) to members of the public. An offence may be committed by the owner of the business and any person concerned with the management of the premises. The penalty on summary conviction is a fine of up to £1,000.*

### **ISSUES RAISED BY STAKEHOLDERS**

Several stakeholders made comments here about a Fixed Penalty Scheme (for breaches of licence conditions) which is addressed under Clause 6.

## **CLAUSE 3: APPLICATION FOR LICENCE**

### **Overview**

*Clause 3 provides details of how a qualifying business may apply to the local council for a pavement café licence. Applicants must attach a plan showing the location and dimensions of the proposed pavement cafe area (or areas) associated with the premises. Multiple applications are not permitted. This Clause should be read in conjunction with Clause 10 (General provision) and Clause 11 (Notice to be displayed).*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Definition of qualifying business [Clauses 3(1) and (7)]**

There were concerns that businesses not normally associated with the serving of food or drink (such as hairdressers) will be eligible to apply. The Department believes that the statutory requirements and costs associated with making an application will discourage such businesses from applying for a licence. 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 this would rule out large retailers with coffee shops.

### **Dealing with multiple applications for the same public area**

Advice was sought on how councils should deal with local competition issues. DSD is not considering introducing measures to restrict competition. This would be in breach of the EU Services Directive which prohibits the case-by-case application of an economic test or market demand. DSD will address in Guidance possible options available to councils when dealing with applications for the same area and local competition issues. We would expect such applications to be rare.

### **Requirement for plan of pavement cafe area to accompany application [Clause 3(4)]**

While this requirement was welcomed there was some concern that the plan may not include the proposed pedestrian corridor or show existing street furniture in the vicinity.

The legislative intention is that the plan should show the relationship between the pavement cafe area and the streetscape. The application would otherwise be meaningless and be rejected. In practice, we expect a pre-application site visit will be arranged to discuss the council's detailed requirements. However, DSD will specifically address this and other aspects of the application process in Guidance.

### **Time for application to be processed**

During an earlier briefing, Members expressed some concern about possible delays in processing applications. The EU Services Directive requires an application to be processed within a reasonable time which is fixed and to be made public in advance. If no decision has been made at the end of this period, the licence is deemed to be granted. From research on pavement cafes in GB, a period of up to 3 months is allowed to decide on an application. Councils currently consult Roads Service on all applications for a street trading licence. The Department understands this process is working well with no significant delays.



## **CLAUSE 4: GRANT OR REFUSAL OF LICENCE**

### **Overview**

*Clause 4 places an onus on a district council to grant a pavement café licence unless one of the grounds for refusing an application applies. Before deciding on an application, a council must consult DRD Roads Service and where the premises is a pub, the PSNI. A council may consult other appropriate organisations or individuals before deciding on an application. In addition, councils must take into account any representations made in connection with an application.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Grounds for refusal [Clause 4(2)]**

A number of stakeholders considered that the grounds for refusal did not cover enough eventualities and provide the means for effective control. Some would like to see Clause 4(2)(b) amended to refer to access for 'pedestrians', rather than 'persons'. The powers available to a council in relation to grant of licence are widely drawn. The wording is very similar to that used in street trading legislation. The Bill will allow a council to take into account any factor which it considers reasonable when considering an application. The use of the term 'persons' in Clause 4(2)(b) would include 'pedestrians.' DSD is reluctant to amend the wording as this may distort or dilute the meaning. Furthermore, DSD believes that many of the concerns raised can be more appropriately addressed in conditions for the grant of the licence as opposed to grounds for refusal.

### **Minimum width requirements for pedestrian and other access [Clause 4(2)]**

It was recommended that the legislation should specify minimum width standards for the pedestrian corridor at a pavement cafe. The Bill is regarded as a positive step towards putting the management of this currently unregulated activity on a firm legislative footing. The Department is confident that the Bill has sufficient safeguards built-in to protect the interests of pedestrians. In particular, the Bill makes it a statutory requirement for councils to consult Roads Service on new applications. DSD considers that Roads Service is best

placed to provide advice on the suitability of a pavement cafe in a public area. For example, it will be able to make an assessment as to the acceptable minimum width for pedestrians on a site by site basis. It would be extremely difficult to draft meaningful and workable regulations in this respect.

### **Alcohol consumption at pavement cafes [Clause 4(4)(b)]**

Clarification was sought as to how applications involving licensed premises will be handled. 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 wishing to have a pavement cafe area. When considering applications from any licensed premises a council can, in relation to alcohol consumption, decide to:

- grant the pavement café licence and permit alcohol consumption;
- grant a pavement café licence, but insert an alcohol prohibition condition if there are concerns about possible disorder [Clause 6(2)], or;
- refuse the application altogether.

Where any licensed premises is granted a pavement cafe licence, relevant requirements of the Licensing Order 1996 will automatically apply to the pavement café area [see Schedule, para 2]. A point was raised about late night drinking at a pavement cafe. This would not be permitted as late opening hours only apply to the main business premises.

### **Refusal on grounds of past conduct [Clause 4(2)(d)]**

Some stakeholders said new applications should be considered on current circumstances and not take into account previous conduct. Similar provision exists in street trading legislation and inclusion of the provision in this Bill is considered appropriate. A council will, of course, need to be satisfied that any licensing decision taken is reasonable and proportionate given the particular circumstances.

## **CLAUSE 5: FORM, DURATION ETC OF LICENCE**

### **Overview**

*Clause 5 gives DSD the power to prescribe the form of a pavement cafe licence and district councils the power to decide how long a licence should last.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Facility to vary the pavement area applied for [Clause 5(3)] and [Clause 3(4)]**

There appears to be a misunderstanding about the extent to which the pavement cafe area may be varied on application. The purpose of this provision is to allow a council the flexibility to make minor changes to the pavement cafe area proposed rather than simply reject the application. There is no facility for a licence holder to unilaterally extend the approved pavement cafe area on a day to day basis. However, a licence holder may formally apply to have the area varied under Clause 8.

### **Duration of licence [Clause 5(5)]**

There were calls for the Bill to specify a fixed period for the duration of a licence to promote consistency and prevent the licence from becoming a tradable commodity. This provision has been drafted in such a way as to comply with the EU Services Directive. However, a council may chose to limit the duration of licences where justified. This is a complex issue that we intend to address in Guidance. The Bill does not provide for the formal transfer of a licence. As such DSD believes this should prevent a licence from becoming a tradable commodity.

## **CLAUSE 6: CONDITIONS OF LICENCE**

### **Overview**

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

## **ISSUES RAISED BY STAKEHOLDERS**

### **Fixed Penalties**

Several stakeholders recommended the introduction of a fixed penalty scheme in relation to offences as a cost effective means of enforcement. It has been suggested that the scheme could apply specifically to breaches of licence conditions. In order 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 considers the use of fixed penalties to be inappropriate and heavy-handed for the enforcement of pavement cafés. DSD considers that suspension or revocation (under Clause 14 / 15) - in most cases after formal warnings have been given - is the most effective way of ensuring a licence holder operates within the licence conditions.

### **Model terms and conditions**

It has been suggested that the Department should develop 'model' terms and conditions for the management of pavement cafes in the interests of consistency and to provide clear guidance for councils. The 'model' should have a statutory basis. DSD will produce best practice type guidance incorporating model terms and conditions. The guidance will place

particular emphasis on putting the needs of pedestrians, including those with disabilities and mobility needs, at the heart of the licensing regime. Non-statutory guidance issued by DSD would have to be taken seriously by councils. Non-compliance by councils would be challengeable in the courts. As such, there is no compelling reason to amend the Bill to add a statutory power to issue guidance or to produce 'model' terms and conditions.

### **Disorder related to alcohol consumption [Clause 6 (2)(b)]**

There were concerns about restricting the grounds for imposing an alcohol prohibition to disorder. A statutory definition of the term 'disorder' was sought. Stakeholders asked for consideration to be given to including provisions to deal with ongoing incidents of disorder at pavement cafes. The Department does not believe a wider power to ban alcohol consumption at pavement cafes can be justified. A council could however impose restrictions on the opening hours of pavement cafes, attached to licensed premises, if it had concerns about social problems such as noise or nuisance. The term 'disorder' is used in licensing and criminal law, without formal definition. The standard legal principle is that such terms should be given their everyday meaning. It is worth noting that pavement cafes associated with licensed premises will be subject to licensing law under which powers of closure to tackle disorder are available to the police.

### **Design of street furniture [Clause 6 (3)(a)]**

There were calls for the Bill to include minimum standards for street furniture to promote consistency and uniformity of approach. The Department considers that this issue would be best dealt with in Guidance.

### **Public liability insurance [Clause 6 (3)(e)]**

The Bill allows councils to specify insurance requirements. It has been suggested it should be mandatory for a prospective licence holder to take out public liability insurance. The Department believes the provision as drafted is satisfactory. In practice we would expect councils to require separate public liability insurance to be taken out or for the prospective licence holder to prove that any existing premises insurance provides the necessary cover.

## CLAUSE 7: RENEWAL OF LICENCE

### Overview

*Clause 7 sets out the arrangements for renewal of a pavement café licence. The renewals procedure is broadly similar to that for new applications. However, a council will not be obliged to consult the statutory authorities mentioned in Clause 4 (4). A council may vary a licence on renewal.*

## ISSUES RAISED BY STAKEHOLDERS

No comments.

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## CLAUSE 8: VARIATION OF SECTION 6 (3) CONDITIONS OR OF AREA COVERED BY LICENCE (ON APPLICATION)

### Overview

*Clause 8 allows the holder of a pavement café licence to apply to the council for a **variation** of either the **conditions** of a licence or the **area** covered by the licence. The variation procedure is broadly similar to that for new applications. However, a council will not be obliged to consult the statutory authorities mentioned in Clause 4 (4).*

## ISSUES RAISED BY STAKEHOLDERS

No comments.

## **CLAUSE 9: VARIATION BY REMOVAL OF ALCOHOL PROHIBITION (ON APPLICATION)**

### **Overview**

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

## **ISSUES RAISED BY STAKEHOLDERS**

Alcohol related issues are dealt with under other clauses.

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## **CLAUSE 10: APPLICATIONS: GENERAL PROVISION**

### **Overview**

*Clause 10 sets out details of how applications for the grant, renewal or variation of a pavement café licence are to be made and a council's responsibility when such applications are received. It makes it an offence for a person, in connection with an application, to make a statement which is false in a material respect and to do so knowing it to be false. A person guilty of the offence is liable on summary conviction to a fine of up to £1,000.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Publicising applications [Clause 10 (4)]**

Clarification was sought as to the requirement to publicise applications received. It is for councils to decide how they wish to publicise the receipt of applications. We expect this will be done by putting details of applications on their websites.

## **CLAUSE 11: NOTICE OF APPLICATION TO BE DISPLAYED**

### **Overview**

*Clause 11 requires an applicant for the grant, renewal or variation of a pavement café licence to fix a notice (in a form specified by the council) to the premises specified in the application.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Fixing of notice to premises [Clause 11 (2)]**

There were concerns that the arrangements for fixing of the notice of application may exclude the blind and partially sighted from making representations. DSD considers that the statutory requirements are sufficient to raise the awareness of the general public. There are other requirements in the Bill, such as the need for Councils to publicise applications [Clause 10), which should safeguard the interests of the groups mentioned. Councils also have a general responsibility to promote equality of opportunity in exercising their functions.



## **CLAUSE 12: FEES**

### **Overview**

*Clause 12 gives a district council the power to charge fees which will enable it to offset the cost of administering the pavement cafés licensing scheme. Fees may be charged for the grant, renewal or variation of a licence.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Level of fees**

There were concerns that the actual cost of administering the scheme will exceed what a council will be comfortable charging businesses. Some form of start-up financial assistance for local authorities is requested. The setting of a fixed fee in the Bill was mentioned.

The Department notes that the provisions relating to payment of fees are similar to those in street trading legislation. The provisions allow for genuine cost recovery only. The actual cost of processing applications will vary across councils so it is considered appropriate to allow councils to decide their own fee structure. After determining their fees, councils will be required to make public, a statement showing financial details and how fees were calculated which will promote transparency. The Department considers it would be difficult for it to justify funding support for councils aimed at promoting the development of pavement cafes. Ultimately it will be a commercial decision for a business to weigh up the costs of applying for a licence against the expected profit.

## **CLAUSE 13: CHANGE IN PERSONS CARRYING ON BUSINESS**

### **Overview**

*Clause 13 makes provision for changes to persons carrying on a business involving a partnership.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Transfer of a licence**

It has been suggested that the Bill should include provision for the formal transfer of a licence from one owner to another. The Department believes that, by not permitting the transfer of a licence from one owner to another, the licence is unlikely to become a tradable commodity. Also, a suitable mechanism for permitting a formal transfer would otherwise need to be devised in such a way as not to compromise the licensing objectives.

## CLAUSE 14: REVOCATION OF LICENCE

### Overview

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

### ISSUES RAISED BY STAKEHOLDERS

The issues raised replicate points made by stakeholders elsewhere, for example offences under Clause 2 and grounds for grant or refusal of a licence under Clause 4.

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## CLAUSE 15: SUSPENSION OF LICENCE

### Overview

*Clause 15 sets out the circumstances in which a district council may suspend a pavement café licence. Generally speaking, a council may suspend a licence if the licensed area has become **temporarily unsuitable** or continuing to use it would, **temporarily**, cause **undue interference or inconvenience** to persons or vehicles in the vicinity, or be likely to result in **disorder**. A council may also suspend a licence (as an alternative to revoking it under Clause 14) if the licence holder has made a **statement** he knew to be **false** in connection with an application, or **failed to fix a notice**, or failed to **comply with any condition** of a licence; or failed to pay any **fee**.*

### ISSUES RAISED BY STAKEHOLDERS

The issues raised replicate points made by stakeholders elsewhere, for example offences under Clause 2 and grounds for grant or refusal of a licence under Clause 4.

## **CLAUSE 16: COMPULSORY VARIATION OF 6(3) (licence) CONDITIONS**

### **Overview**

*Clause 16 allows a council to vary any conditions attached to a pavement cafe licence where there has been a material change in circumstances.*

### **ISSUES RAISED BY STAKEHOLDERS**

Comments received show good support for the inclusion of this provision.

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## **CLAUSE 17: COMPULSORY VARIATION: PROHIBITION OF ALCOHOL**

### **Overview**

*Clause 17 allows a council, at any time, to impose a condition prohibiting the consumption of alcohol at a pavement cafe.*

### **ISSUES RAISED BY STAKEHOLDERS**

Comments received have been addressed in other alcohol related clauses.

## **CLAUSE 18: COMPULSORY VARIATION OF AREA COVERED BY LICENCE**

### **Overview**

*Clause 18 allows a council to vary the area covered by a pavement licence. This is regarded as an alternative to revocation where part of the area has become unsuitable or its continued use is likely to result in undue interference or inconvenience, or in disorder.*

### **ISSUES RAISED BY STAKEHOLDERS**

The issues raised replicate points made by stakeholders elsewhere, for example grounds for grant or refusal of a licence under Clause 4.

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## **CLAUSE 19: NOTICE OF REVOCATION, SUSPENSION OF COMPULSORY VARIATION**

### **Overview**

*Clause 19 sets out the administrative steps that a council must take when it revokes, suspends or compulsorily varies a pavement café licence.*

### **ISSUES RAISED BY STAKEHOLDERS**

No comments.

## **CLAUSE 20: MATTERS TO BE RECORDED IN REGISTER UNDER LICENSING ORDER**

### **Overview**

*Clauses 20 gives the Department the power to make regulations requiring details of pavement café licences granted to premises holding a liquor licence, to be recorded in the relevant licensing register.*

### **ISSUES RAISED BY STAKEHOLDERS**

Comments received show support for the inclusion of this provision.

## **CLAUSE 21: APPEALS**

### **Overview**

*Clause 21 sets out the circumstances in which a new applicant or licence holder can lodge an appeal against a licensing decision of a district council. All appeals will be heard by a Magistrate's court.*

*A new applicant may appeal a decision of a council to refuse the application or, where the licence is granted, the conditions imposed. Licence holders may appeal a decision not to renew the licence, or a refusal to vary the area or conditions of the licence or to remove an alcohol prohibition. Licence holders may also appeal a decision to suspend or revoke a licence or vary the area and conditions of a licence (as an alternative to revocation).*

## **ISSUES RAISED BY STAKEHOLDERS**

### **Operation of pavement cafe pending outcome of appeal**

There appears to be some confusion about the operation of a pavement cafe where an appeal is lodged with the Magistrate's court. The Bill provides that any licensing decision of a council will remain in force until the outcome of the appeal is known. For example, if a council decides to suspend a licence the pavement cafe area must remain closed until the court hears the appeal and makes a ruling.

## CLAUSE 22: POWERS OF ENTRY AND INSPECTION

### Overview

*Clause 22 enables a person authorised by a district council to enter and inspect premises, to which a pavement café licence or application relates, for various purposes, including determining whether a licence should be granted, revoked etc.*

### ISSUES RAISED BY STAKEHOLDERS

The provision is welcomed.

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## CLAUSE 23: POWER TO REMOVE UNLICENSED FURNITURE

### Overview

*Clause 23 gives a district council the power to remove furniture from **unlicensed** pavement cafés. The power **does not** extend to premises where a pavement cafe licence is operative. It places a duty on the council to notify the owner and makes provision for disposal of the furniture.*

### ISSUES RAISED BY STAKEHOLDERS

No comments.



## **CLAUSE 24: OFFENCE OF OBSTRUCTION**

### **Overview**

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

## **ISSUES RAISED BY STAKEHOLDERS**

### **Level of fine**

It has been suggested that the level of the fine is insufficient and sends out the wrong message. The Department notes that the offence and penalty mirrors the law on street trading. This is considered a reasonable and proportionate penalty.

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## **CLAUSE 25: SERVICE OF NOTICE AND DOCUMENTS**

### **Overview**

Clause 25 allows for the service of notices and documents for licensing purposes to be completed via electronic communication. This is necessary because the Interpretation Act (NI) 1954, which makes provision for the general operation and interpretation of legislation, is silent on this issue. Also, the EU Directive on Service in the Common Market specifies that electronic means must be made available for licensing purposes.

## **ISSUES RAISED BY STAKEHOLDERS**

No comments.

## **CLAUSE 26: POWER TO MAKE FURTHER PROVISION**

### **Overview**

*Clause 26 allows the Department to make consequential and transitional provisions where necessary for the purpose of implementing the Bill. This can be regarded as a standard Clause for a Bill of this nature.*

### **ISSUES RAISED BY STAKEHOLDERS**

No comments.

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## **CLAUSE 27: REGULATIONS**

### **Overview**

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

### **ISSUES RAISED BY STAKEHOLDERS**

No comments.

## **CLAUSE 28: CONSEQUENTIAL AMENDMENTS**

### **Overview**

*Clause 28 gives legal effect to the provisions set out in the Schedule. The Schedule amends a number of pieces of primary legislation in order to give full effect to the legislative intention. This can be regarded as a standard Clause for a Bill of this nature.*

### **ISSUES RAISED BY STAKEHOLDERS**

No comments.

## **CLAUSE 29: BYELAWS**

### **Overview**

*Clause 29 provides an exemption for certain pavement cafés from the restrictions on drinking in designated areas. People consuming alcohol at these pavement cafes would otherwise be committing an offence.*

## **ISSUES RAISED BY STAKEHOLDERS**

### **General exemption for licensed premises in designated areas**

During earlier briefing by officials, some concerns were expressed about exemptions from the drinking in public byelaws. At present, it is common practice for district councils to exempt the curtilage of licensed premises from the restrictions on drinking in areas designated in byelaws. If a council decides to grant a pavement café licence to such premises the current exemption will extend to the pavement café area. However, a council could make a policy decision not to allow 'licensed' pavement cafés to operate in designated areas. It is also worth pointing out that the Bill provisions on drinking in public are primarily of a technical nature. The aim is to avoid the need for Councils to make new byelaws should they decide to permit 'licensed' pavement cafés to operate in designated areas.

## **CLAUSE 30: DEFINITIONS**

### **Overview**

*Clause 30 clarifies important terms used in the Bill.*

### **ISSUES RAISED BY STAKEHOLDERS**

Comments received have been dealt with under Clause 5.

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## **CLAUSE 31: SHORT TITLE**

### **Overview**

*Clause 31 gives this legislation its short title which is the 'Licensing of Pavement Cafes Act (Northern Ireland) 2013'.*

### **ISSUES RAISED BY STAKEHOLDERS**

No comments.

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## **CLAUSE 32: COMMENCEMENT**

### **Overview**

*Clause 32 provides for the main functions of the Bill to come into operation on a date appointed in an order made by the Department. This is because it will take some time for councils to make the necessary preparations to begin receiving licensing applications.*

### **ISSUES RAISED BY STAKEHOLDERS**

Comments received have been dealt with under Clause 12.

## **COMMENTS ON THE SCHEDULE AND OTHER GENERAL COMMENTS**

### **Overview**

*The Schedule contains amendments to other primary legislation as a consequence of the introduction of the Bill. A new Part VA is inserted into the Licensing (Northern Ireland) Order 1996. Consequently, the provisions of the Licensing Order regarding opening hours, drinking up time, offences and penalties etc, will apply to relevant pavement café areas. However, councils will be able to curtail opening hours at the pavement café and impose an alcohol prohibition if there are concerns about disorder.*

*The Criminal Justice (NI) Order 2008 is amended to provide an exemption for certain pavement cafés from the restrictions on alcohol consumption in designated areas. Technical amendments are made to the Roads (Northern Ireland) Order 1993 and the Street Trading (Northern Ireland) Act 2001 so that a pavement café licensed by a council can operate lawfully.*

### **ISSUES RAISED BY STAKEHOLDERS**

#### **Exclusion of certain licensed premises from the scheme**

Most of the issues raised under this heading are dealt with in earlier clauses. However, a provision in paragraph 2 of the Schedule, which excludes certain licensed premises from the pavement cafe licensing scheme, has been queried. New Article 76B excludes a conference centre, higher education institution, a seaman's canteen, indoor arena and places of public entertainment from being authorised by a council to serve alcohol at a pavement cafe. The reason for this is that these particular licensed premises are not freely accessible to the general public. For example, entry to the Odyssey Indoor Arena is normally restricted to paying patrons only. As such, the requirement in Clause 1(2), that a public area must be a place to which the public have access 'as of right,' would not be met.