

## ANNEX 2



### **DEPARTMENTAL BRIEFING FOR SOCIAL DEVELOPMENT COMMITTEE 24<sup>TH</sup> OCTOBER 2013 - LICENSING OF PAVEMENT CAFÉS BILL - KEY ISSUES**

Following evidence received by the Social Development Committee from stakeholders on the Licensing of Pavement Cafés Bill, the Department wishes to clarify a number of key issues.

#### **DEFINITION OF A PUBLIC AREA**

Local government seeks clarification on the Bill's intention with regards to licensing of pavement cafés on open private land fronting a pavement.

- The definition used in the Bill makes a differentiation between public and private land, by excluding land clearly in private ownership.
- The Bill is not intended to 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. However, the Department has concerns that if this definition was adopted the meaning would be less clear and make it possible for a business owner to apply for a pavement café licence on his neighbour's land.

#### **DEFINITION OF A BUSINESS**

Local government seeks clarification as to whether the definition of a business would allow unsuitable premises to apply for a pavement café licence.

- The definition was widely drawn so as to include any business supplying food or drink to the public. Councils will make decisions on a case by case basis.
- The definition allows a range of business premises to apply for a licence. For example a pub, restaurant / café, large retail outlet with a café area, or coffee kiosk licensed under the Street Trading Act 2001.
- The Department believes that the statutory requirements and costs associated with making an application would discourage hairdressers etc from applying for a licence.

- The Department furthermore understands that a business supplying food or drink to the public should already be registered with a district council for that purpose.

### **ALCOHOL CONSUMPTION AT A PAVEMENT CAFÉ**

The Department wishes to clarify issues surrounding alcohol consumption at a pavement café following queries raised by Members.

- The Bill allows alcohol to be consumed in a pavement café in certain circumstances.
- Where a premises with a Pub licence applies for a pavement café licence, a council must consult the Police before the grant of the licence.
- A council can then decide to:
  - a) grant the pavement café licence and permit alcohol consumption;
  - b) grant a pavement café licence, but insert an alcohol prohibition condition, or;
  - c) refuse the application altogether.
- A council can place an alcohol prohibition condition on any pavement café licence.
- Where the premises has a liquor licence, the Bill extends the requirements of the Licensing Order 1996 to the pavement café area.
- The Bill does not extend the provisions in the Licensing Order with respect to late opening hours – so the sale of alcohol to customers in a pavement café will have to stop at normal closing time.
- A council will have the final say on the opening hours of any pavement café. For example, a council could decide that all pavement cafés in a particular street have to be removed by 8pm.

### **DRINKING IN PUBLIC (DIP) BYELAWS**

- At present, the curtilage of licensed premises are exempt from the drinking in public byelaws.
- If a council decides to grant a pavement café licence to such premises the current exemption will extend to the pavement café area.
- A council may chose not to allow ‘licensed’ pavement cafés to operate in drinking in public areas. However, this could effectively rule out alcohol consumption at pavement cafés in many town and city centres.
- The Bill provisions on drinking in public are of a technical nature so as to avoid the need for Councils to make new byelaws to cater for ‘licensed’ pavement café areas.

## **FIXED PENALTIES**

Several stakeholders suggested that a fixed penalty scheme could ensure effective enforcement where licence conditions have been breached.

- In order for fixed penalties to be introduced for a specific breach of conditions, 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.
- Generally speaking, fixed penalty schemes aim to control low-level nuisance and annoyance. This Bill on the other hand aims to promote pavement cafés within a robust regulatory framework.
- The Department considers that suspension or revocation (in most cases after formal warnings have been given) is the most effective way of ensuring a licence holder operates within the licence conditions. A business is unlikely to want to jeopardise the operation of its pavement café as it is an additional commercial opportunity of the business.

## **SAFEGUARDS FOR DISABLED PEOPLE**

IMTAC and Guide Dogs NI seek clarification on the Bill with regards to the protection of the rights of disabled people and other pedestrians.

- The Bill will place a previously unregulated activity on a solid legal platform.
- The Department considers that the statutory consultation with DRD Roads Service on all new applications will provide the relevant advice for councils with respect to issues impacting on pedestrians, suitable location and appropriate footpath widths.
- When required, the Bill allows a council to consult applications with anyone it considers appropriate – this could be groups representing the interests of disabled people.
- 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 furniture licensed (including menu boards) will be required to be within the enclosed pavement café area.

## **GUIDANCE**

Several stakeholders seek clarification on the guidance the Department will issue to councils to assist with implementation of the Bill. It has been suggested that this should have a statutory basis.

- Best practice and legislative guidance is due to be issued to councils to assist in the implementation of the Bill. This guidance will make clear that the needs of pedestrians must be the primary consideration when assessing applications.
- 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.
- The Bill allows a council to place on a licence any reasonable conditions it sees fit, and guidance will detail a wide range of such potential conditions.
- It is likely that councils will place conditions relating to the operating hours of a pavement café – For example, a council could set operating times from 10am to 8pm, Monday to Saturday.

## **TIME FOR APPLICATION TO BE PROCESSED**

During an earlier briefing, Members suggested there could be a delay on application decisions when councils consult with DRD Roads Service.

- The EU Services Directive requires an application to be processed within a reasonable time which is fixed and made public in advance.
- A council may extend this period once for a limited period. If no decision has been made at the end of this period, a pavement café licence is deemed to be granted.
- From research on pavement cafés in GB, a period of up to 3 months is allowed to decide on an application.

- It should be noted that Councils are required to consult Roads Service on street trading applications. The Department have been informed that this process works well, and there have been no substantial delays.