

Ards Borough Council

Response to the Department for Social Development's Call for Evidence on Licensing of Pavement Cafés Bill.

3. General Comments

Council expresses concern in relation to the commencement of the Bill and the potential for a large number of applications to be submitted within a short time period. This will place heavy administrative and resource burden on Council. A transitional period of implementation would be preferable to allow Council the opportunity to consider applications from already established pavement cafes.

Reference is made in the Bill to the making of provisions by Regulation. It is recommended that the Department consider introducing Regulations to help ensure consistency of approach and to provide guidance to Councils on the intent of the legislation.

Council requests clarification that it will have discretion/ability to suspend a licence when circumstances e.g. Parade necessitate.

4. Specific Comments

1. Definition of areas that can be licensed.

In the Bill Clause 1(2) states – In this Act “ a public area” means a place in the open air to which the public has access, without payment, as of right and which is not in a market.

Council would agree with NILGA's assertion that some areas of land are privately owned (NILGA uses example of Belfast Harbour Estate and Lanyon Place) but they are open to public access. Council would welcome clarification about the legislation as regards these.

Premises could exist on the same stretch, where some own the land upon which they have placed pavement café furniture, these premises would not be required to apply for a Council issued license, the enforcement authority in these cases will be the PSNI.

This could mean two different licensing authorities regulating the same activity on the same stretch; this will result in no control on design, layout or operating times.

Council is concerned this will lead to confusion and claims of unfairness.

In the Bill “a market” is exempt from needing a license. Council requests clarification is sought as to whether a market must actually take place for exemption to apply.

2. Location of Pavement Café furniture

The Bill provides that an area licensed as a pavement café does not need to adjoin the applicant premises. This is reasonable in that it will allow flexibility to license premises that cannot place their furniture directly outside their property. Council however would request that controls are placed on inappropriate competition from businesses which, for example apply for a license in areas adjacent to other establishments.

3. Fees

Council is concerned that although the Bill allows a Council to charge fees for a License application the actual cost of administering the scheme will far exceed what a Council will be comfortable with charging businesses in their area. Some form of funding for local authorities would be an important consideration for the successful introduction of the proposed legislation.

4. Temporary Furniture

Section (1)(4) states - For the purposes of this Act, furniture placed on a public area, by or on behalf of a person is “temporary” if that person can remove, or cause to be removed, all of it in 20 minutes.

It is accepted that if no time limit was placed here then furniture could effectively become permanent. However, it is suggested that it should be for a Council to determine what constitutes temporary furniture when considering the circumstances of each application.

5. Publication of Representation Period by Councils

Where a Council receives an application made in accordance with this Act, it must

- a) make the application available to be viewed by the public until the end of the period allowed for representations; and
- b) publicise the fact that representations relating to the application may be made in writing to the Council until the end of that period

Council would request guidance in relation to what will be regarded as adequate publicity, given the costs associated with the normal method of advertising i.e. newspaper, and the potential for use of websites at a much lower cost to the public purse.

6. Refusal/Control

Council is concerned that the grounds of refusal, whilst they may well be based on

the 'light touch' approach favoured by central government, may prove problematic in the longer term. An approach which favours approval and limits burdens on businesses is welcome as long as the sanctions for those who choose not to provide safe facilities which are sympathetic to their neighbourhood are effective.

It is our understanding that Councils will have the ability to set conditions, some of which may be relevant to the application, such as the type of furniture and barriers to be used. We recommend the legislation enables Councils to refuse a licence, if the Council's required condition is not met, rather than doing so retrospectively after the licence has been issued.

7. Enforcement

This Bill does not appear to comply with 'better regulation' principles in that there are no enforcement sanctions apart from revocation and suspension for breach of licence conditions.

Other recently introduced legislation includes provision for fixed penalty notices offering the person committing the offence the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty. This provides a less burdensome approach for councils and business. In addition, other new legislation has enabled district council's to use receipts from these penalties to assist with the costs of administering the function.

It is suggested that an ability to prosecute for breach of a licence condition would also be helpful in the context of the potential revocation or suspension of a licence as it would provide clear evidence to demonstrate whether a condition of licence has been complied with. It is respectfully suggested that a court hearing as opposed to a council hearing is a far more appropriate way of determining whether a licence condition has been breached.

It should be noted that Suspending and Revoking a licence is not a function which is normally delegated to officers and may require up to eight weeks for a decision to be made by a council. The Bill as drafted does not appear to provide any facility to deal with an imminent threat, or ongoing incidents, of disorder in relation to pavement cafes where alcohol may be consumed. Provision for this should be considered given that the process of suspension or revocation will be lengthy.

8. Alcohol

The pavement café licence can permit a person to consume alcohol legally in an area prohibited under the Alcohol Bye-Laws. The exclusion of conference centres, higher educational institutions and places of public entertainment from this exemption may warrant further scrutiny to examine why they would not be permitted to place tables and chairs outside also.

Council reiterates our comments made in section one of this submission regarding fairness and consistency.

It is noted Councils can impose a prohibition on the consumption of alcohol in a pavement café area if there are concerns about disorder, and that where alcohol consumption is permitted, relevant conditions of the licensing law will automatically apply.

9. Amendments to other legislation

This Bill amends the Street Trading Act (N.I.) 2001 in that, where a pavement café licence is in force, any trading carried out in the area covered by the licence, is exempt if;

- (i) the trading is done in the course of a business involving the supply of food or drink to members of the public, or of a section of the public, which is carried on by the licence holder at the premises specified in the licence; and
- (ii) the trading does not involve a contravention of the conditions of the licence.”.

There is a concern that this could be a mechanism to allow pavement cafés to set up barbecues, ice cream machines, coffee machines and other equipment for the sale of food and drink and to effectively become a street trader.

It is our view that businesses eligible to operate an outdoor café should be required to provide food/drinks prepared inside the main premises. If a trader wishes to sell from barbecues, ice cream machines, etc. or alcohol from a temporary bar they should still require a street trading licence with all of the appropriate considerations and checks as is the case in other jurisdictions.

Conclusion

Council requests the Committee ensures that the Department works closely with local government, to further develop the Bill as highlighted above and also to develop the guidance necessary to ensure its effective implementation.