

Item/ Min Ref: ES279/13	Title of Report: Licensing of Pavement Cafés Bill	Officer presenting: Strategic Director Author: Licensing Officer
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1. Purpose of Report/Recommendations

- 1.1 To update Members on the progress of the Licensing of Pavement Cafés Bill and determine Council’s view on the provision contained in the proposed legislation.

2. Background

- 2.1 The Department for Social Development has produced a consultation document on a proposal to introduce a licensing scheme in respect of “pavement cafés”. The objective behind this proposal is to introduce a statutory licensing scheme for the regulation of pavement cafés by district councils. Legislation has been introduced in Great Britain under which café owners etc. may apply to their local council for permission to place tables and chairs on the pavement outside their premises (with or without a liquor licence). The relevant legislation in England and Wales is the Highways Act 1980. In the Republic, local authorities issue licences under the Planning and Development Act 2000 and associated regulations. The regulations specify the appliances, apparatus and structures suitable for licensing. However, in Northern Ireland the provision of tables and chairs on the footpath is currently prohibited under the Roads (NI) Order 1993. There may also be planning issues associated with the provision of facilities of a permanent or semi-permanent nature.

2.2 The Assembly’s Committee for Social Development, has circulated a ‘Call for Evidence’, attached as [Appendix A](#).

3. Key Issues

- 3.1 A Bill, incorporating a statutory licensing scheme to be administered by district councils, was recently approved by the NI Executive and introduced into the Assembly. The Bill has been published on the Assembly’s website and a link to this and the associated Explanatory and Financial Memorandum is below.

<http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Licensing-of-Pavement-Cafes-Bill/>

- 3.2 In summary, the Bill allows district councils to:

- authorise a person carrying on a business involving the supply of food or drink (from premises), to place tables, chairs etc in a public area;
- require the applicant to fix a notice to the premises and submit a plan of the proposed pavement café area;
- impose conditions on the licence;
- vary, suspend or revoke the licence;
- charge a reasonable fee; and
- take enforcement action including removing the facilities in certain circumstances.

3.3 The Bill places a duty on councils, when dealing with new applications, to consult DRD Roads Service. Councils must also consult with the PSNI where an applicant holds a pub licence. Other safeguards have been included in the Bill to ensure that there are strict controls on alcohol consumption at relevant pavement cafés. Rights of appeal to a Magistrate's Court against licensing decisions are included and the following offences will be created:

- operating a pavement café without a valid licence;
- making a statement, known to be false, in connection with an application; and
- obstructing an authorised officer in the execution of his/her duties.

3.4 Each offence attracts a level 3 fine (up to £1,000) on summary conviction.

3.5 One area of concern to officers in most Councils, is how the proposed legislation amends the Street Trading Act. The 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."

It is understood that the intention of the Licensing of Pavement Cafes Bill is to provide district councils with the power to licence occupiers of suitable premises to place tables and chairs on the pavement to facilitate their customers.

There is a concern that this could be a mechanism to allow pavement cafes to set up 'off the premises' barbecues, rotisseries, ice cream machines, drinks/food

vending machines, coffee machines and other equipment for the sale of food and drink. The exemption may allow a café/bar to obtain a pavement café licence to effectively become a street trader.

It is officers' view that businesses eligible to operate an outdoor café should be required to provide food/drinks prepared inside the main premises and if a trader wishes to sell from barbecues, ice cream machines and drinks/food vending machines, etc., they should still require a street trading licence with all of the appropriate considerations and checks.

4. Financial and Other Implications

- 4.1 There are no financial implications for Council. The income mentioned above is to cover the administration of the applications and other work associated with delivering the licensing function in relation to pavement café licensing.

5. Recommendations

- 5.1 Members are asked to consider the above comments for endorsement.

6. Background Papers

Environmental Services Committee Minutes February 2011- ES47/11
Consultation Document - Licensing of Pavement Cafés.

The Licensing Officer introduced the above report and indicated that Members consider the draft response, paying particular attention to concerns which had been raised by officers within the report.

Councillor Hassan Moved, Councillor J. Carr Seconded and the Committee

Resolved that Members endorse the above recommendations in respect of the Licensing of Pavement Cafés Bill as outlined within the report.