



Pavement Café Bill
Licensing Forum Response

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Respondent Details

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General Comments

The Licensing Forum welcomes the opportunity to provide information for consideration by the Committee for Social Development to assist it with the scrutiny of the Pavement Café Bill.

By way of background, the Licensing Forum was formed in 2000 to enable licensing officers from each of the 26 Councils to come together to discuss issues of mutual concern. A key objective of the Forum is to ensure that there is a consistent approach taken to the application of licensing legislation across N. Ireland. The Forum also meets to review consultations on proposed new or amended licensing legislation.

The Licensing Forum is fully supportive of legislation aimed at helping to further develop a café culture in our town and cities.

When the Department is considering the commencement date for the Bill consideration should be given to a transitional period of implementation to allow councils an opportunity to consider applications from established pavement cafés and help avoid a significant administrative and resource burden on both elected Members and Officers.

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

recommended that the Department works closely with council licensing officers to develop these Regulations along with any guidance on implementation.

Specific Comments

1. Definition of areas that can be licensed.

In the Bill, Section (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.*

Clarification is sought as to the intention of the Bill regarding privately owned land. As it stands this may result in a district council licensing some, but not all, premises where tables and chairs are placed on the footway and may lead to confusion and claims of unfairness for those affected depending if the portion of land is deemed private or public.

There is concern that if the licensing scheme does not regulate all pavement cafes then this will not support the creation of a vibrant daytime and evening economy for the general well-being of communities.

2. Location of Pavement Café Furniture

The Bill provides that an area licensed as a pavement cafe does not need to adjoin the applicant premises. This is a sensible provision and will allow council's flexibility to licence premises that cannot place their furniture directly outside their property.

However, this broad flexibility may also be open to misuse and the Department should consider how controls could be placed on inappropriate competition from businesses which, for example, apply for a licence in areas adjacent to other establishments.

3. Fees

There is a concern that although the Bill allows a council to charge fees for a Licence application the actual cost of administering the scheme will far exceed what a council will be comfortable with charging businesses in their area that are already struggling in the current financial climate. Some form of funding for local authorities, in the early stages of implementation at least, 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

Guidance is desirable in relation to what will be regarded as adequate publicity, given the costs associated with the normal method of advertising applications i.e. newspaper advertising, and the potential for use of websites and social media at much lower cost to the public purse.

6. Refusal/Control

The Licensing Forum 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 and that is welcomed. 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.

We reiterate our comments made in section one of this submission regarding fairness and consistency.

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 cafes 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.