

11CM13

12 September 2013

Committee for Social Development  
Northern Ireland Assembly  
Room 412, Parliament Buildings  
BELFAST  
BT4 3XX

Dear Sir/Madam

**LICENSING OF PAVEMENT CAFES – CALL FOR EVIDENCE**

Armagh City and District Council welcomes the opportunity to respond to the above consultation document.

Please find attached a response prepared by NILGA for the above consultation which has been endorsed by Armagh City and District Council.

The Council wishes to be kept informed of developments. It would be helpful if your response could be e-mailed to [jennifer.mcaneney@armagh.gov.uk](mailto:jennifer.mcaneney@armagh.gov.uk).

Yours faithfully

A handwritten signature in blue ink that reads "John Briggs". The signature is written in a cursive style and is centered on a light yellow rectangular background.

John Briggs  
**Clerk and Chief Executive**

Enc



This paper has been prepared with support from the local government Licensing Officers' Forum, the Institute of Licensing, and officers from a number of councils, as a draft submission to the NI Assembly Social Development Committee's Call for Evidence on the Licensing of Pavement Cafes Bill, which is due to close on 13<sup>th</sup> September 2013.

It is now forwarded to councils for their information and/or use, and will be finalised for consideration by the NILGA Executive Committee on 13<sup>th</sup> September. Should your council wish to make any amendments or contribute additional views to this paper, or if you wish to discuss the contents, please contact Fiona Douglas at the NILGA Offices [f.douglas@nilga.org](mailto:f.douglas@nilga.org) (028)90798972, by 12<sup>th</sup> September at the latest.

**Derek McCallan,**  
**Chief Executive**

**29<sup>th</sup> August 2013**

## **NILGA Views on the proposed Pavement Café Bill**

### **Pre-amble**

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland. Pavement Cafés is an issue for local government as district councils will be responsible for the licensing and enforcement arrangements. NILGA is pleased to be able to have an opportunity to comment on the proposed Bill and we trust that our comments will be taken into account when developing the final proposals. This response has been developed in liaison with the licensing officers from a number of councils.

NILGA would be happy to discuss this issue with the Committee, should an oral evidence session be planned in the future. For further information on this submission please contact [f.douglas@nilga.org](mailto:f.douglas@nilga.org) or call Fiona Douglas at the NILGA Offices (028) 90798972

### **Introduction**

NILGA welcomes the opportunity to comment on the Pavement Café Bill. The Bill introduces legislation that enables and regulates pavement cafés.

NILGA has voiced concerns for several years, on behalf of local government, about how the development of a café culture is being curtailed by requirements of the Roads (NI) Order, as well as other legislative barriers.

We appreciate that Roads Service has taken a sensible approach and not tended to pursue action against pavement cafés, provided they do not restrict the free flow of pedestrians and vehicles or compromise public safety. It is local government's view that developing a café culture can have a positive impact on urban environments, help promote town and city centres, and make a difference in terms of attracting visitors and tourists and can contribute to the general well-being of communities.

Local government is generally very supportive of the introduction of legislation which enables and regulates pavement cafés. NILGA has constructive comments aimed to help shape the Bill. We offer our knowledge and experience and are happy to assist the DSD in the development of guidance for councils.

### **General comments**

In general, NILGA welcomes an approach which favours approval and limits the burdens on businesses. However, there may be those traders who will not provide high quality, safe and appropriate facilities and NILGA is keen to ensure that councils are able to control these effectively.

Councils have expressed concern about the commencement of the Bill and the potential for a large number of applications to be submitted within a short time period. This is likely to place a heavy administrative and resource burden on both Members and Officers. NILGA recommends that a transitional period of implementation is put in place to allow councils an opportunity to consider applications from already established pavement cafés.

The Bill refers to the making of provisions by regulation. NILGA recommends that these regulations are developed with the aim of ensuring consistency of approach. A provision exists under the Local Government (Miscellaneous Provisions) (NI) Order 1985 whereby councils can issue an entertainment licence subject to such terms, conditions and restrictions as it may determine. However, in doing so, regard must be given to the model terms, conditions and restrictions published by the Department. These 'model terms' were drawn up by a working group which included council officers. Councils have expressed that they have proved an invaluable assistance in the administration of entertainment licenses. Local government is keen to participate in any working group that DSD considers setting up, to progress this. It is also strongly recommended that the Department works closely with council licensing officers to develop agreed guidance on implementation.

NILGA also recommends that the scheme has regard to the mobility difficulties of the disabled and visually impaired; the needs of local business and economic activities as well as the vibrancy of town centres.

Local government notes the importance of good management, particularly of licensed areas, and of the desirability for all relevant statutory bodies to work well together and with the licensees to ensure these areas do not become loci for anti-social behaviour.

### **Clause by Clause Comments**

#### **1. Clause 1 - Private v Public Land**

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.*

This definition appears quite broad and we understand the rationale that this helps minimise bureaucracy and therefore is less burdensome on business. However, from an operational perspective, councils have raised the following issues:

Local government seeks clarification as to the intention of the Bill as regards privately owned land. Indications from DSD appear to suggest the Bill will not apply to any privately owned land. However, the definition of a public area within the legislation is a place in the open air 'to which the public has access, without payment, as of right'. DSD will be aware that there are significant areas of land which are privately owned. By way of example, Belfast Harbour Estate and Lanyon Place are privately owned however, they are open to public access. Local government welcomes clarification about how the legislation regards these.

Further, local government requires clarification on how the legislation applies to licensed premises on the same stretch where some own the land upon which they have placed pavement café furniture. It would appear under the proposed definition of a public area that these premises would not be required to apply for a licence.

This may result in council licensing some, but not all, premises on the same stretch where table and chairs are placed on the footway, requiring two distinct enforcement authorities. If a pavement café licence is issued, the enforcing authority will be a council. If the premises do not require a pavement café licence then the enforcement authority will be the PSNI. This will in effect result in two different licensing authorities and regimes regulating the same activity.

In practice, for some premises, this will result in no control on design, layout or operating times in the pavement cafe area. Local government is concerned that this will lead to confusion and claims of unfairness for those affected.

It is worth noting that in the Street Trading Act (NI) 2001, on which the Bill is modelled, there is a different definition of a public place. Local government considers that use of this definition would be more appropriate.

The Street Trading Act defines a public place as follows:

*25 (3) In this Act "street" includes-*

*(a) any road or footpath within the meaning of Article 2(2) of the Road Traffic (Northern Ireland) Order 1995 (NI 18);*

*(b) any public place within the meaning of subsection (4); and*

*(c) any part of a street.*

*(4) in subsection (3) "public place" means a place in the open air within 10 metres of a road or footpath-*

*(a) to which the public has access without payment, but*

*(b) which is not within enclosed premises or the curtilage of a dwelling."*

A final point relates to a 'market' being exempt from needing a licence. Clarification is sought as to whether a market must actually take place for the exemption to apply and that land which may host a market is not generally exempted.

Local government is concerned that the above issues may interfere with the objectives of the Bill. It is our view that if the licensing scheme does not regulate all pavement cafés then this may not support the creation of a vibrant daytime and evening economy and contribute to the general well-being of communities.

## 2. Clause 1 - Temporary Furniture

**Clause 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.

Local government appreciates that if no time limit was imposed then the furniture could effectively become permanent. However, if the applicant/licensee has a disability which restricts their ability to remove the furniture in the time permitted this could be considered discriminatory. It may also pose problems in relation to practicality of enforcement.

NILGA recommends that the discretion should lie with councils to determine what constitutes temporary furniture when processing each application, or that the wording of this clause is changed. Alternative wording could perhaps be a phrase such as “*remove or cause to be removed to a private place at the end of trading each day.*”

## 3. Clause 4 – Refusal of a License

Councils are concerned that the proposed grounds for refusal are not truly reflective of what may occur in reality and therefore weaken their ability to ensure effective control.

Local government appreciates that it may be intended to enable a light touch approach. However, in the experience of councils, this may prove problematic in the longer term, as there is likely to be a small number of traders who will not provide high quality, safe and appropriate facilities. Councils will need to be equipped to effectively control cases such as these.

It is our understanding the 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.

Local government urges DSD to produce supporting guidance to the legislation that incorporates the setting of conditions.

**Clause 4(2)(b)** of the Bill refers to interference to persons or vehicles in the vicinity – however, there is no consideration of interference or inconvenience to adjacent premises in the vicinity.

There are no grounds to refuse where the activity will cause environmental problems or detract from the amenities of the adjacent retailers/occupiers. For example, if there are any smells from food/alcohol/smoke close to the residential property or problems with noise from customers who cause nuisance or annoyance. Councils are mindful of the number of complaints that arose

about nuisance and disturbance caused by users of smoking shelters after the introduction of the smoking legislation.

Also, there are no grounds to refuse if the tables and chairs are not suitable for use i.e. being of a stable and robust design and suitable for the intensity of use that they will receive.

There are no grounds to refuse the overall design, if the design is an eyesore and not appropriate for the area or in keeping with the design of the streetscape, particularly if the area is of significant conservational importance. For example, the "Streets Ahead" project in Belfast has been successful and it would be desirable for the design of pavement cafés to compliment this scheme.

#### **4. Clause 5 - Duration of Licence**

NILGA would note some concern that if a licence is open ended there is potential for it to become a tradable commodity, where the licence is granted to a company. Additionally, the Bill states that a licence cannot be transferred from one person to another person. It is not clear what the intent of this prohibition is, but it would seem that the legislation gives scope to circumvent, whereby a company can continue to exist even if the directors change through a sale; whilst it is still the same company, in effect the licence has been transferred. It is presumed that a pavement café licence is not intended to be solely a personal licence and that a natural person or a legal entity can apply for a licence. However, this should be clarified in the Bill and the opportunity for circumvention removed.

##### **Clause 5(3)**

A matter for concern is those premises that trade from an area that is not adjacent to their premises. It is appreciated that the seating area could be in a square/plaza, slightly away from the premises. The Bill does deal with these expressly. Local government considers that there are benefits and potential problems associated with this approach. NILGA understands that it will give councils a degree of flexibility as there may be premises that cannot place their furniture directly outside the frontage of their property. However, there are concerns that this broad flexibility could also be exploited and cause future problems.

Councils urge DSD to determine the controls on limits required to ensure that inappropriate competition from businesses to acquire a licence in areas adjacent to other establishments does not occur. **NILGA considers it essential that guidance is provided on how competing applications for the same area should be processed.**

#### **5. Clause 10 (4) Publication of Representation Period by Councils**

*Clause 10(4) states – Where a council receives an application made in accordance with this Act, it must by such means as it thinks appropriate*

- (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 by writing to the council until the end of that period.*

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

## **6. Clause 12 - Fees**

Local government is concerned that the costs associated with administering the scheme will be considerable, particularly in the initial period of implementation. Councils acknowledge that the Bill permits them to charge a fee for a licence application to cover costs. However, in the current climate, when both businesses and domestic ratepayers are struggling, the choice of whether or not to put a charge in place would put councils in a very difficult position. If a fee is to be imposed we would strongly recommend that a fixed fee or scale of fees be specified in the legislation to ensure consistency across councils.

NILGA would therefore be keen to discuss an initial funding mechanism in line with 'New Burdens' principles, to cover costs of what will be a large number of initial assessments and new processing requirements, similar to the funding that was put in place when councils assumed Welfare of Animals responsibilities from DARD.

## **7. Clauses 14 and 15 – Revocation and Suspension, Enforcement**

NILGA would highlight the Government 'Enforcement Concordat' which articulates the Principles of Good Enforcement assisting businesses to comply with regulations; and helping enforcers achieve higher levels of voluntary compliance.<sup>1</sup>

A key principle is *proportionality*, which aims to ensure that enforcement action is proportionate to the risks involved.

Local government has concerns that this Bill does not appear to comply with the Concordat, as it contains no enforcement sanctions other than revocation and suspension for breach of licence conditions. In the experience of councils, the ability to prosecute for breach of licence conditions is an extremely effective enforcement tool. Local government would urge DSD to include the power to prosecute for breach of conditions. This would introduce a graduated enforcement approach which would be in line with the principles set out in the Enforcement Concordat.

The 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. Further, councils consider that a court hearing rather than a council hearing is far more appropriate to determine whether a licence condition has been breached.

Local government is of the view that a fixed penalty scheme would be a sensible introduction and proportionate for minor breaches of licence conditions similar to that contained within the Street Trading Act. This provides a less burdensome approach for councils and business. In addition,

---

<sup>1</sup> <http://www.cabinetoffice.gov.uk/regulation/publicservices/concordat/enforcecon.asp>

other new legislation has enabled district councils to use receipts from these penalties to assist with the costs of administering the function. **NILGA recommends that consideration is given to the introduction of fixed penalties as a cost effective means of enforcing this piece of legislation.**

Additionally, NILGA notes that suspending or 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.

## **8. Clauses 6, 9, 17, Schedule – Alcohol**

A Pavement Café licence can permit a person to consume alcohol legally in an area prohibited under the Alcohol Bye-Laws and that is welcomed, but it is noted that alcohol can only be consumed outside a public house, hotel, guest house which has a restaurant, a restaurant, or restaurant room in public transport premises.

NILGA queries why, for example, conference centres, higher educational institutions and places of public entertainment have been excluded; as such an exclusion could cause problems for these premises if they wanted to place tables and chairs outside.

We reiterate our comments made in relation to Clause 1, where premises with a Pavement Café licence can allow patrons to consume alcohol in a street without them breaching the Alcohol Bye-Laws, whilst the premises that do not need to be licensed because of the land issue could encourage their patrons to breach the Alcohol Bye-Laws.

It is noted that councils can impose a prohibition on the consumption of alcohol in a pavement cafe area if there are concerns about disorder, and that where alcohol consumption is permitted, relevant conditions of the licensing law will automatically apply. Councils will of course work closely with the PSNI to ensure appropriate licensing arrangements are put in place in such areas.

However, there is concern in relation to the lack of short term provision to deal with ongoing incidents of disorder in relation to pavement cafés where alcohol may be consumed. Provision of appropriate measures should be considered, particularly when the process of suspension or revocation may be lengthy.

## **9. Schedule - Amendments to other legislation**

The Bill amends the Street Trading Act (NI) 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.”*

Local government understands the intention of the Pavement Café 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. However, there are concerns that this could be mechanism to allow pavement cafés 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 cafe licence to effectively become a street trader.

In local government's view, 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 and drinks/food vending machines or alcohol from a temporary bar they should still require a street trading licence with all of the appropriate considerations and checks. It is our understanding that this is a requirement in other jurisdictions.

## **Conclusion**

NILGA would again thank the Committee for this opportunity to comment on the Bill, and would request the Committee to ensure 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.

### ***Disclaimer***

*The Northern Ireland Local Government Association (NILGA) endeavours to ensure that the information contained within our Website, Policies and other communications is up to date and correct.*

*We do not, however, make any representation that the information will be accurate, current, complete, uninterrupted or error free or that any information or other material accessible from or related to NILGA is free of viruses or other harmful components.*

*NILGA accepts no responsibility for any erroneous information placed by or on behalf of any user or any loss by any person or user resulting from such information.*