

## **Submission to Consultation of the Licensing of Pavement Cafes Bill**

Founded in 1872, Pubs of Ulster is the trading name of the Federation of the Retail Licensed Trade NI and is the professional body of the Retail Licensed Trade in Northern Ireland; with membership consisting of pubs, bars, café-bars, nightclubs, restaurants, hotels and independent off-sales.

Pubs of Ulster welcomes the opportunity to make a submission to the Social Development Committee on this important legislation, which has the potential to directly impact on the rejuvenation of Northern Ireland's nighttime economy. It is our view that the towns and villages in Northern Ireland are in decline and consequently, their sustainable regeneration must be a Government priority.

To succeed in this regeneration will require the conjoined efforts of the retail and hospitality sectors. We believe that the Pavement Cafes Licensing Bill has the potential to create a 'cafe culture' across Northern Ireland, mirroring successful developments in other European countries. Pavement Cafes have a real potential to add vibrancy, increase trade and boost tourism, if successfully managed.

It is clear the current Roads Service 'toleration' policy is not viable in the long term. Therefore Pubs of Ulster recognise the requirement for a statutory licensing scheme to regulate pavement cafes. Such legislation will bring Northern Ireland into line with other parts of the UK, including England and Wales, where cafe owners may apply to local councils for such licenses. This should lead to the creation and controlled expansion of pavement cafes in suitable venues, in support of the development of a thriving day to nighttime economy in our town centres.

Overall Pubs of Ulster is supportive of the legislation and believes that it will foster consistency and clarity for business owners and councils with regard to the establishment and running of pavement cafes. The legislation will enable necessary development and its passage is in the interest of the wider economy. We welcome this Bill as one of a number of initiatives, including Business Improvement Districts, to improve the viability and sustainability of licensed premises in our town centres.

We consider the majority of the Bill's clauses to be constructive, clear and concise. However, we do have concerns covering a few key areas within the Bill which need to be addressed. It is regarding these concerns that we wish to focus our comments, which seek to be constructive. We detail our concerns and suggestions as to possible amendments to the Bill in the following paragraphs. Our major concern is the issue of cost, detailed under clause twelve.

### **Clause Four:**

#### **Grant or refusal of license**

We view it as positive that the onus in this clause is placed on the Council to grant the license, unless it merits refusal on the grounds detailed. This is in line with the aim that the legislation will be mainly enabling towards pavement cafes.

However, Section 4, 2(d) states that one of the grounds which Councils can cite for refusal is that the applicant has at any time had a license which has been revoked, for reasons within the applicant control. This, "one strike and you're out" policy was also raised as an area of concern by Mr Brady during the second stage of the Bill. We acknowledge that there is an appeals procedure that exists in Clause 21. However, going through this process would be time consuming and potentially costly in terms of lost revenue to the business concerned. It is our opinion that each application should be considered on the current circumstances, and not based on previous decisions that may have been made under different, historic conditions.

An issue which isn't directly referred to in the legislation is the particular requirements of disabled, visually impaired and elderly people. We recognise the importance of future regulation ensuring that all pedestrians can use roads and pavements with ease. Clause 4, section 2(b) sets out that one of the grounds of refusal of a pavement cafe would be that it was, "likely to result in undue interference or inconvenience to persons/vehicles in the vicinity." We would advise that this should be reviewed with a view to including wording specifically protecting accessibility for those groups. It should not be a question of refusing pavement cafes on these grounds, but rather one of ensuring that they are appropriately positioned and regulated in a way which protects easy public access, in particular for these vulnerable individuals.

It may be relevant to review Clause 4 Section 5 which states, "The Council may consult such other persons it considers relevant." This gives the Council autonomy to select the representative groups that they consult, which is positive as it provides them with the flexibility that they need. However, there needs to be a consistent approach to this matter across Councils to balance the needs of the various interest groups with the economic well being of the community. Pubs of Ulster believe that it is in the interest of all these groups that our towns and cities are vital and economically healthy.

### **Clause Six:**

#### **Conditions of license**

Clause 6, Section 3 a - c sets out conditions of the license whereby a Council may specify clauses, "limiting the furniture which may be placed on the area covered by the license by reference to the kind, amount, size or nature of the furniture."

This wording is fairly vague, and could lead to the proliferation of different practices from town to town. Pubs of Ulster believe that instead there should be a minimum standard for the furniture, which would be understandable and consistent across Northern Ireland. This should ensure that the streets look tidy and the legislation does not impose unnecessary costs on local businesses. This should not put unreasonable demands on the standards of furniture. We are concerned that the standards set do not exclude establishments with limited resources or limit more affluent local businesses from creating pavement cafes of distinction to their own budgets.

It is important that both public safety and the appearance of the streets in towns and villages are preserved. A level of flexibility in this clause will also enable venues to

develop pavement cafes which align with their choice of decor, creating a vibrant and eclectic atmosphere akin to that of our European counterparts. A light, consistent touch in regulating street furniture will benefit businesses and local interests.

### **Clause 6, Section 3 e**

This clause states that one of the other conditions Councils “may in particular include” is, “for securing that such insurances and indemnities as may be specified in the license are put in place.” This is the only reference made within the Bill to the issue of Public Liability Insurance.

It is evident that at this time, with the current Roads Service ‘toleration’ approach, the issue of liability in a pavement cafe space is unclear. This needs to be promptly resolved, and done so clearly without ambiguity. Pubs of Ulster would advise that this section of the clause is rewritten to specify that the liability of pavement cafes falls to the owner, and therefore all pavement cafes should be required to possess relevant insurance. We recommend that this be a universal clause, and not one that Councils can impose at their discretion. This would protect the owners, staff and customers of the businesses involved.

### **Clause Twelve:**

#### **Fees**

One of the main issues of concern in the proposed legislation is the cost of the pavement cafe licenses. We appreciate that the Bill states that Councils can only charge actual cost, and must publish how they calculate the cost. Despite this, the issue could still prove obstructive, in particular for small businesses. Especially given that use of the pavement café may be limited to a few months per year due to weather conditions.

Pre-existing pavement cafes are not currently required to pay any licensing fee under the Roads Service ‘toleration’ approach. So the imposition of an additional cost for a cafe with a limited number of tables, may lead them to close an existing pavement cafe area. Alternatively it may prevent a cafe from opening an area due to the combined costs of furniture, licensing fee, public liability insurance, and other set-up costs. As these businesses are already paying substantial rates, additional costs will serve to further slash narrow profit margins. Recognising that the Bill is intended to promote local business during a period of a serious economic downturn, it is important that the Bill does not become self-defeating by promoting over regulation or too high a license fee. This runs the risk of undermining the viability of small businesses, in direct contradiction to the aims of the legislation.

It is our view that the cost of the license should be fixed across all Councils, and kept to an absolute minimum. There is an argument that a proportion of the fee should be part funded out of existing rate payments - while this would mean Councils absorbing a portion of the costs, this would reduce the likelihood of business failure with a negative impact on rates revenue. We also support the comments of Mr Durken MLA, “the licensing scheme should not in any way disadvantage traders, the department should look at that, even if it

means providing some sort of small grant...(to) assist traders in the set up of pavement cafe's." <sup>1</sup> The availability of a grant could help to counteract this issue of costs.

Recognising that there are potential start-up costs associated with any investment in a Pavement Cafe, there is also a case to be made in favour of offering businesses a one year fee holiday. This would encourage early local investment and ensure that possible developments have a chance to become fully established before fees fall due.

### **General issues:**

One of our main priorities with regard to this Bill in general is to minimise unnecessary regulation and 'red tape.' Our premises are trading in difficult times and cannot afford to devote time and money to grappling with time consuming, obstructive and potentially costly rules and regulations. We appreciate that there are safeguards in place, like the appeals clause, should issues arise. However, an appeals process would inevitably be time consuming and therefore costly. It is of paramount importance that a degree of flexibility is built into the legislation to prevent unnecessary bureaucracy, and to ensure the smooth running of pavement cafes across Northern Ireland.

### **Conclusion**

In summary, having clearly addressed our key concerns above, Pubs of Ulster reaffirm our support for this Bill. We believe that, provided the above issues are reviewed and the Bill amended, the legislation offers many positive benefits to our evening and nighttime economy and the expansion of pavement cafes will be of economic and social benefit to Northern Ireland. We welcome the creation of vibrant multi-dimensional spaces in our towns, and believe that proportionate legislation in this area will do much to improve the commercial atmosphere and provide necessary legal clarity to promote the expansion of business opportunities across Northern Ireland.

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<sup>1</sup> Second stage of Pavement Cafe's Bill, Official Report. Available at: <<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/25-June-2013/#5>>[Accessed August 2013].