



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill: DSD
Briefing

13 June 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Michael Copeland
Mr Mark Durkan

Witnesses:

Mr Gary McAlorum	Department for Social Development
Mr Liam Quinn	Department for Social Development

The Chairperson: We will move on to the Licensing of Pavement Cafés Bill. We will have a departmental briefing from Gary McAlorum and Liam Quinn. You are rotating this morning, Liam.

Mr Liam Quinn (Department for Social Development): Yes. I am trying to get it all done in the one day.

The Chairperson: All right. Again, members, the briefing paper is in your packs, and the session is being recorded by Hansard.

It is over to you and Gary.

Mr Quinn: Thank you, Chairman. The Executive recently agreed to the Bill's introduction to the Assembly. The First Stage is provisionally scheduled for Monday, subject to the Speaker's agreement. Members will have a short summary of the Bill, and I will briefly go through the policy background and context and give a broad overview of the Bill.

The Department for Social Development's (DSD) involvement in the development of a pavement cafe-licensing policy stems primarily from its responsibility for street-trading legislation. The Department also has responsibility for liquor licensing and drinking in public, which will be impacted on by the pavement cafe-licensing scheme. Well-managed pavement cafes will complement the investment that DSD has carried put into the public realm in recent years. We have seen the Streets Ahead project in Belfast and other schemes in places such as Newcastle, and those schemes have encouraged businesses to start putting tables and chairs outside their cafes.

In response to representations that were made to Executive members, a consultation on a proposal to introduce a statutory scheme for pavement cafes was carried out in 2011. That consultation envisaged a licensing role for district councils, with the Department for Regional Development's (DRD) Roads Service looking after the on-the-ground enforcement. At present, Roads Service adopts a toleration policy to cafes operating on the pavement, which is regarded as an interim arrangement, pending the introduction of a suitable licensing scheme.

When officials briefed the Committee some time ago on responses to the consultation, members indicated their support for a statutory licensing scheme. However, the Committee took the view that district councils should assume the role of a single licensing and enforcement authority, which would mean that they would carry out enforcement, rather than our original proposal, which was for Roads Service to do so. The Minister subsequently agreed to that approach, and the Bill that is before you now has been drafted on that basis. The licensing scheme is intended primarily to cater for owners of relevant businesses, such as cafes, restaurants and pubs, that wish to provide a designated outdoor area in a public space that is furnished with tables and chairs for the benefit of their customers. A number of important safeguards have been included in the licensing regime to ensure that any proposed pavement cafe is appropriate to the surrounding area.

In broad terms, the Bill prohibits the operation of a pavement cafe except under licence granted by a district council. The Bill places an onus on a council to grant a licence unless any of the grounds for refusal that are specified in the Bill apply. Councils will be able to impose a range of conditions and may vary, suspend or revoke the licence in certain circumstances. If they so wish, councils may charge a reasonable fee for the licence. The Bill sets out the circumstances in which appeals can be made against licensing decisions. It also gives district councils the power to inspect relevant premises for licensing purposes and to remove facilities at unlicensed pavement cafes. Finally, the Bill creates several new offences and penalties that may be prosecuted through a Magistrates' Court by the local council.

Chairman, if you would find it helpful, my colleague Gary can take a few minutes to give you an overview of the provisions of the Bill and go into a bit more detail.

Mr Gary McAlorum (Department for Social Development): The Bill is much larger than we first expected for a consent scheme that merely allows cafe furniture to be placed on the pavement. I thought that it might be helpful to give members a flavour of the Bill, rather than going through all 32 clauses.

I will look first at eligibility. Any person who is carrying on a business involving the supply of food or drink in or from premises to members of the public may apply for a pavement cafe licence. The licensing scheme is primarily intended to cater for owners of premises such as cafes, restaurants and pubs, but councils will also be able to consider applications from takeaway premises. The area that may be licensed is given a fairly broad definition:

*"a place in the open air
(a) to which the public has access, without payment, as of right".*

Generally speaking, the locations that are most suitable for creating a pavement cafe are the pedestrianised areas of town and city centres. However, the location, size and layout of the pavement cafe would very much depend on the characteristics of the site and the space available. Anyone wishing to apply for a licence must submit a plan of the proposed pavement cafe area. Applicants will also be required to fix a notice to the premises in a prominent place stating that an application for a licence has been made. The Bill places an onus on a council to grant a pavement cafe licence, unless the area is considered unsuitable, its use is likely to cause undue interference or inconvenience or to result in disorder. An application may also be refused where an applicant has not complied with due procedures or has had a licence previously revoked for disciplinary reasons.

In considering new applications, there will be a duty on councils to consult with Roads Service and, where the associated premises have a pub licence, with the police. It is worth noting that, since the first version of the Bill was sent to the Committee, the requirement for the council to consult the Department of the Environment's (DOE) Planning Service on applications has been removed. That is in anticipation of the function transferring to councils under local government reform.

Councils will be able to impose a broad range of licence conditions. For example, the council may impose conditions relating to the design and layout of the pavement cafe or its operating times. The applicant can be required to take out public liability insurance. Councils can also impose a prohibition

on the consumption of alcohol in the pavement cafe area if there are concerns about disorder. Where alcohol consumption is permitted, relevant conditions of the licensing law will automatically apply. The Bill also contains provisions that exempt the pavement cafe areas of licensed premises from the restrictions on drinking in designated areas. The conditions of a licence may be varied on application or by the council, depending on the circumstances. Unless a period is specified in the licence, it will remain valid indefinitely, and appeals against licence decisions will be heard by a Magistrates' Court.

As Liam indicated, councils will have the power of inspection and enforcement. The Bill creates three new offences for that purpose, and those will be prosecuted by councils through the Magistrates' Court. Those offences are: operating a pavement cafe without a valid licence; resisting or intentionally obstructing an authorised officer in the execution of his or her duties; and making a false statement in connection with an application. Offences will each attract a level 3 fine of up to £1,000. That tariff is in line with offences under street trading law. Councils will also be able to remove items of furniture at any pavement cafe that is operating without a licence.

The Bill specifies grounds for suspension and revocation, such as, where there is a breach of a licence condition or where the public area is no longer suitable for use as a pavement cafe. Suspension powers in particular may be invoked where utilities need access to the public area for maintenance purposes.

I would just like to mention arrangements for bringing the legislation into operation. Subject to the Bill's successful passage, councils will need some time to complete the preparations that are necessary to administer the new licensing scheme. Therefore, the Bill's main provisions will come into operation on a date appointed in an order that DSD will make following liaison with councils.

We are happy to take questions.

The Chairperson: Thank you for that. Just before I bring in members, I have a couple of wee queries. I take it that the liaison with district councils has not yet begun?

Mr McAlorum: We have certainly been in touch with district councils, and they know that this is coming down the tracks, as it were. We intend to write to councils when the Bill is introduced to update them.

The Chairperson: OK. Thank you for that. What about people who have had licences refused in the past? Is there any notion that a licence could be revoked forever; in other words, might the person not get a second chance? Is there any time limit after which an applicant who has previously been refused a licence can apply with hope of success?

Mr McAlorum: That would be a matter entirely for the council, based on the particular circumstances. Nothing on that is legislated for in the Bill.

The Chairperson: Does that mean that the council can tell someone that they were turned down for a licence five years ago and that they should not come back again?

Mr McAlorum: No time period is mentioned. Rights of appeal are built into the legislation, and there can be an appeal to a Magistrates' Court if a licence is revoked.

The Chairperson: OK, thank you.

Mr Campbell: I suppose that most people in warmer climates think that a pavement cafe culture is a great idea. I am very sympathetic towards it, with the obvious caveats about disability access. Before we get into any Bill, there are concerns about guide dogs and so forth under even the existing system. Am I right to presume that, in the implementation of the Bill, there will be consultation with all the necessary groups, including those representing disabled groups?

Mr McAlorum: We are making it a statutory requirement to consult Roads Service, and we will be producing guidance for councils in association with Roads Service. However, it will be a matter for a council to decide who it thinks it needs to consult about individual applications.

Mr Campbell: This may change, but in places that I am familiar with that have warmer climates, there tends to be a series of pavement cafes in rows, and pedestrians are clear on the delineation between

cafes and bars because of the tables and chairs that are on the pavement adjacent to them. Under the current regime in Northern Ireland up to now, it has not tended to be like that. You may find a cafe on its own or on a corner with a few tables out.

Assuming that it remains the case under the Bill that we have sporadic cafes here and there, it will not be as clear, particularly to disabled groups, that there is a series of shops that do not have tables and chairs because they are not part of the pavement cafe scenario. However, you may then come to one that is. Will it simply be just for councils to decide markings and clear delineation so that people will know that they are in an area that is not like the rest of the street?

Mr McAlorum: That is certainly the intention. A person applying for a licence will have to attach a plan of the area. As I said, we will prepare guidance for councils on the implementation of the scheme. We will be recommending to councils that they clearly delineate the area of the pavement cafe with some kind of barrier. That may not always be appropriate, but we will address that in guidance for councils.

Mr Campbell: Where possibly charging a reasonable fee is concerned, the word "reasonable" is very subjective. The nature of the fee could be such that large, multinational restaurants or bar-restaurants that want what may be an attractive asset in the summer — maybe not so much in the winter — would not be deterred by it, but the small trader who employs five or six people could not cope with such a fee. Will a "reasonable fee" be nominal, or would it be entirely at the discretion of a council?

Mr McAlorum: A council will be constrained in that it will be able to charge fees only to offset the genuine costs of administering the scheme. The legislation will also provide for councils to charge a smaller amount, but that is the fee limit that is placed on councils.

Mr Campbell: Will there be a monetary limit beyond which a council could not go and below which it could set?

Mr McAlorum: No. A council would have to be able to justify its fees and demonstrate that they are cost-neutral.

Ms P Bradley: Thank you for the presentation. Gregory has probably asked most of what I wanted to. I am looking at the section in the papers about alcohol consumption and the proposed conditions of licence. Your briefing paper says that:

"Pavement café areas of licensed premises will be exempt from the restrictions on drinking in designated areas."

What reason would there be for alcohol consumption anywhere other than on a licensed premises? Is that just someone coming along and deciding, "Oh, there is a sunny spot. I will bring my bottle of wine and sit there and have a drink."?

Mr McAlorum: At the moment, alcohol cannot be consumed in a public area. The curtilage of licensed premises are exempt from that. So, the Bill will just extend that exemption to the pavement cafe area.

Ms P Bradley: OK, so that is just saying to people, "You can't come along and sit here with your own drink because this is on the sunny side of the road."?

Mr McAlorum: Yes. It is a facility whereby the pavement cafe is licensed, so no offence is being committed.

Ms P Bradley: What is the current licensing law on that? If you travel up the Lisburn Road or Botanic Avenue, you will see that plenty of places have that already. I know that that is the case. It is fantastic and great if we get the weather to do it, of course. Do they have to be licensed to do that?

Mr Quinn: There is no licensing scheme.

Ms P Bradley: None at all, yet that has been happening for many years?

Mr Quinn: There is a distinction between premises. Those who own the area in front of their premises are quite entitled to use it for legitimate business purposes. For others, the facility is on the public pavement. However, there is no licensing regime at present; this is a new scheme. Other parts of the United Kingdom and Ireland have such schemes, but we have not had one in Northern Ireland.

Ms P Bradley: There is a large pavement outside my office in Glengormley, but part of it is owned by the premises that I rent, so I know exactly what you are talking about. Mind you, we do not have any cafes at all along that road.

Pavement cafes could be outside in a public area, which we know, but not necessarily immediately adjacent to the premises. How far away are we talking? Would they be outside someone else's premises?

Mr Quinn: It would be for a council to determine whether the location was suitable. However, you may have a public square with a pavement in front of premises. A council may want to keep that pavement free but would permit tables and chairs maybe four or five metres away from the premises in the square.

Mr McAlorum: The key is that a council would need to be satisfied that the pavement cafe area could be properly supervised at all times.

Ms P Bradley: In other cities in Europe, you would see the square and waiters running back and forward to the cafes. That is what that means. That is fine. Thank you.

Mr Copeland: This issue is similar but not exactly the same as that which Paula raised. For the purposes of licensing an area of pavement or public space to a premises, would the area that is considered worthy of consideration for a licence be limited to the frontage of the building concerned? I can foresee difficulties if you have two or three establishments and somebody applies for a pavement cafe that goes over the frontage of the establishment next door. So, is there a relationship between the frontage of the premises concerned and the area that is under consideration for a pavement cafe?

Has any thought been given to the insurance liability for people who find themselves in a public space, albeit one that is licensed to someone else, and are injured as a result of a failure or damage to the pavement? In other words, the pavement belongs to someone; someone has a licence to use it. Does it indemnify the council that granted the licence in the first place, Roads Service or the Housing Executive — whoever owns the footpath — from public liability claims arising from the use of the footpath for a purpose for which it was not intended?

Have you talked with HMRC about hot food bars in particular? If a place has a sit-in facility, there is a difference in the VAT regime in what is paid for hot food that is carried out compared with hot food that is eaten in. Where does the Bill refer to food that is consumed on a pavement cafe that may have been purchased inside the property as hot food and carried out? The VAT issue with hot food bars was a nightmare when it was first introduced.

Mr McAlorum: Frontages are a matter for councils. If the applicant were proposing to have a pavement cafe with an adjoining premises, you would expect a council to consult with the owners of those premises. On making the application, the applicant will have to fix a notice of his intention to the premises. The plan of the site will be freely accessible and published in the Department, so there will be ample opportunity for people to appeal.

Mr Copeland: So, does that mean that an appeal mechanism exists?

Mr McAlorum: Yes, indeed.

The legislation provides for a council to require an applicant to take out public liability insurance and any other insurance that it considers necessary.

Mr Copeland: Does that mean those that are specific to the outdoor activities?

Mr McAlorum: Yes, indeed.

Mr Copeland: OK.

Mr McAlorum: HMRC is an interesting issue.

Mr Copeland: I know it is.

Mr McAlorum: It is not an issue that we thought about, and we will certainly go back to think about it. However, I question whether it is directly relevant to our legislation.

Mr Copeland: Anomalies will arise. If a hot food bar does not have an eat-in facility and supplies hot food that is eaten out, the VAT people may look at that in an entirely different way. I would think that quite a lot of people are involved in that business.

The Chairperson: That would be a matter between the tax people and the business, really.

Mr McAlorum: That would be our initial impression.

The Chairperson: I think that everybody appears to be on the same page in trying to enable this development and for it to be successful. Everybody has agreed that we would like to see this happening more, although it has to be regulated. The Bill will try to do that. A lot of the decision-making has, as you say, been devolved to councils, and any fee that they may charge has to be proven to be minimal and cost neutral. In fact, they do not even have to charge a fee. That is a matter for them, but they cannot charge to make a profit.

Mr McAlorum: Yes.

The Chairperson: Do any other members have any questions?

Mr Durkan: Thank you, gents. I am sorry that I was late for the presentation. I will return to Gregory's point about consultation. A few Committee members met representatives of the RNIB a few weeks ago. They expressed concern about recent public realm developments and about how virtually no consideration was given to people with a visual impairment or the impact that that has on them day to day. If we are to have sporadic cafes, chairs and tables popping up outside places, as Gregory put it, that will also be extremely problematic.

I understand the logic behind the removal of the Planning Service from the consultee list in anticipation of the transfer of planning powers to councils post-review of public administration (RPA). Should this Bill get through the Assembly before RPA, could we create a sort of wee vacuum?

Mr McAlorum: That is possible. We think it unlikely that the Bill will be fully implemented before the summer or autumn of next year. That is only months before the proposed date for the transfer of functions under local government reform, which is, as I understand it, April 2015. It is our intention in the intervening period to recommend in our guidance for councils that they consult with the Planning Service on new applications.

The Chairperson: Just to reaffirm that, we met representatives of the RNIB just last week, and they drew our attention to those issues. We would like it recorded that we would like such organisations for those who suffer from visual impairment and other disabilities to be consulted in a structured format. That is because these proposals will have a direct impact on the quality of their lives and on their ability to move around freely.

Since no other members have indicated that they wish to speak, I thank you, Gary and Liam, for your presence here this morning.