



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill:
DSD Briefing

3 October 2013

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Gregory Campbell
Mr Trevor Clarke
Mr Fra McCann
Mr Sammy Wilson

Witnesses:

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

The Chairperson: We have with us Liam Quinn, Gary McAlorum and David Irvine from the policy unit of the Department for Social Development (DSD). The primary reason for putting the Bill back on the agenda today is that we have some new members on the Committee, and this is an opportune time to update them with a briefing. In addition, stakeholders are scheduled to give evidence at next week's Committee meeting. Some members will have heard earlier discussions and presentations. Liam, if there is anything that you think that you need to update members on, I will leave it to you. Members may then wish to ask questions. I do not think that members are likely to have a lot of questions, but do not take that as lack of interest, because, as you know, members have already heard most of this.

Mr Liam Quinn (Department for Social Development): We will run through the general content of the Bill. The Minister believes that well-managed pavement cafes can add vibrancy to the street scene and increase footfall. They can also boost tourism and complement the investment that the Department has made in the public realm across Northern Ireland. He was pleased to note the positive comments and general support for the Bill that were expressed during the Second Stage debate in June. If the Bill is passed by the Assembly, it would bring Northern Ireland into line with the rest of the United Kingdom, where local authorities have responsibility for licensing pavement cafes. Similar arrangements operate in the Republic of Ireland. My colleague Gary McAlorum will now briefly go over the policy background and content and give a broad overview of the Bill.

Mr Gary McAlorum (Department for Social Development): The Department for Social Development's involvement in this policy area stems primarily from its responsibilities for street trading legislation. The Department also has responsibility for liquor licensing and by-laws on drinking in public, which will be impacted by the pavement cafes licensing scheme. The drafting of the Bill followed a public consultation, which signalled strong support for the introduction of a statutory licensing scheme. The Bill makes district councils responsible for licensing and on-the-ground

enforcement. The licensing scheme is aimed mainly at owners of cafes, restaurants and pubs who wish to place tables and chairs on a pavement 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 a licence granted by a district council. The Bill places an onus on a council to grant a licence, unless any of the specified grounds for refusal apply. Councils will be able to impose a range of licence conditions and may vary, suspend or revoke a licence in certain circumstances. If they so wish, councils may charge a reasonable fee. The Bill provides for appeals against licensing decisions. The Bill 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, which will be prosecuted by councils through a Magistrates' Court. Chair, if you would find it helpful, my colleague David Irvine will take a few minutes to explain the Bill's provisions in a little more detail.

Mr David Irvine (Department for Social Development): I will give members an outline of the Bill rather than go through all 32 clauses.

On eligibility, any person who is carrying on a business involving the supply of food or drink in or from premises may apply for a pavement cafe licence. The area that may be licensed is given a fairly broad definition:

"a place in the open air ... 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. Anyone wishing to apply for a licence must submit a plan of the proposed pavement cafe area. This will provide legal clarity about exactly where furniture may be placed under a licence. A licence must be granted unless the public area is considered unsuitable or its use is likely to cause undue interference or inconvenience or result in disorder. Those provisions are broadly framed to allow a council to take into account any factor that it considers reasonable when considering an application. Before deciding on new applications, councils must consult with Roads Service and, when the associated premises has a pub licence, the police.

Councils will be able to impose a broad range of licence conditions. They may impose, for example, conditions relating to the design and layout of a pavement cafe and set operating times, and an applicant can be required to take out public liability insurance. Where alcohol consumption is permitted, relevant conditions of the licensing law will automatically apply. Pavement cafe areas of licensed premises will be exempt from the restrictions on drinking in public. The conditions of a licence may be varied in certain circumstances. Unless the period is specified in the licence, it will remain valid indefinitely. Appeals against licensing decisions will be heard by a Magistrates' Court.

I will turn to enforcement. The Bill creates three new offences, which will be prosecuted through a Magistrates' Court. First, operating a pavement cafe without a valid licence; secondly, resisting or intentionally obstructing an authorised officer in the execution of his or her duties; and, thirdly, making a false statement in connection with an application. Those offences will each attract a level 3 fine of up to £1,000. 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 of a licence — for example, when there is a breach of licence conditions or the public area is considered no longer suitable for use as a pavement cafe.

Finally, subject to the successful passage of the Bill, district councils will thereafter need some time to prepare for implementation. Therefore, the main provisions will come into operation on a date appointed in an order made by DSD. We are happy to answer any questions.

The Chairperson: Thank you very much for that, David, Gary and Liam.

Mr Clarke: Apologies, Chair; I am relatively new on the Committee, and this is only my second day. I have reservations about the exemption from council by-laws on drinking in public places. When will we get into that level of detail? I know that, in the area that I represent and even the village that I come from, people would use that as an opportunity to extend the size of their licensed premises out onto the street. I do not think that that would be widely accepted by the public.

The Chairperson: I will bring in a couple of members and then ask the officials to respond.

Mr Wilson: My concern is twofold. First, the Bill could be deemed as being too restrictive. Clauses 4(2)(a) and 4(2)(b) state that a council may refuse an application if an area is unsuitable for that purpose or if the granting of a licence is:

"likely to result in undue interference or inconvenience to persons or vehicles in the vicinity".

You could argue that almost any furniture on a pavement would fall into that category, and, indeed, some organisations that deal with people who are partially sighted or blind are already making the argument that this would impede some of their members. I know that Roads Service has been fairly dogmatic on some of these issues and has even removed single signs from pavements on some main roads on the basis that they cause interference. Can you give us an idea on how restrictive the Department sees that?

My second concern is about the responsibility to consult with Roads Service and the PSNI. From dealing with planning applications, I know that one of the slowest organisations to respond is Roads Service, which can take months rather than weeks to respond in some cases. With the City of Culture here in Londonderry, for example, people might want pavement cafes only for particular events or for temporary periods, and a delay in responding could mean that, even if an application is granted, it comes too late. Is there any intention, or will the Bill be able, to put a restriction on the length of time allowed for consultees to respond?

Mr McAlorum: At present, with licensed premises in a designated public area, the curtilage of those premises is exempt from the by-laws on drinking in public. All we are doing is extending that exemption to a licensed premises that has a pavement cafe authorised by a council. That is our intention. It is certainly not our intention to set aside by-laws on drinking in public.

Mr Clarke: Even though you have qualified the definition of extending an exemption, I still have reservations. It is accepted that, if people want a drink, they will go to a pub and if that is within the curtilage, that is fair enough. However, extending the area, it brings it into a public place. It conflicts with other laws, whereby you would expect the police to prosecute in accordance with by-laws or to take people's names. The Bill states that a public house can allow its patrons to sit outside and drink alcohol in a public place.

Mr McAlorum: There is an issue as to whether that would be in the spirit of pavement cafes. Pubs or restaurant owners might think that that is part of the cafe culture, to be able to —

Mr Clarke: That is where confusion can arise. There may be public disorder, and it may become difficult for the police to manage a situation like that. People would use that as an opportunity to consume alcohol. In many villages, there have been problems, and the police have asked proprietors to close their doors and have expected people to stay inside. We are now being asked to legislate to allow pubs to have seated areas outside where patrons are permitted to drink. I have reservations about that.

The Chairperson: Trevor, you are suggesting that there will be some places in which by-laws prohibit the consumption of alcohol in certain areas. Are you asking whether that conflicts with the Bill?

Mr Clarke: All I am asking is whether an exemption has to be given. The short summary of the Bill's content states that an exemption can be made for that purpose. "Exempt" is the word that is used. The Bill is saying that we will forget about the by-law and make an applicant exempt so that he can flout the rules, for want of a better term.

Mr Campbell: A premises that is located in an area that is covered by a by-law prohibiting drinking in public may be granted a licence. Is that Trevor's point?

Mr Clarke: Yes.

Mr Campbell: If that pub applies to extend its licence out onto the pavement, the existing premises may be licensed but the street in which it is located is covered by a by-law prohibiting drinking in public. Is that the point?

Mr Quinn: That is the point. Let me explain. When someone who is operating a bar with a licence applies for a pavement cafe licence, a council has to consult with the PSNI. A council must also

decide whether the area to which the licence pertains is suitable. If a council deems that it is not suitable for people to drink alcohol in that street or square, it will not accept applications for that area.

Mr Clarke: In your short summary of the Bill's content, paragraph 5 states:

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

That gives an opportunity for an appeal. A refusal on the grounds that a council by-law forbids public drinking will not work. The definition states that they are allowed an exemption.

Mr Wilson: In that case, is the council not the body that has to grant an exemption? If a council deems that the by-law has been put there for a good reason, and it does not want any drinking in public in a particular street, those are grounds for refusing to grant a licence.

The Chairperson: If the Bill passes on that basis, it would be subject to there being no prohibition of the consumption of alcohol in that location. Is that right?

Mr McAlorum: It is important to state that a pavement cafe becomes part of a licensed premises for the purpose of the licensing law. If a council has concerns about disorder in a pavement cafe, whether or not it is in a public area, it would consult the police and take their view. Otherwise, the licensing law —

Mr Wilson: Clause 4 covers that in any case. A council would simply say that, in light of the fact that it has made a certain area a non-drinking area, it is unsuitable for the purpose of a pavement cafe.

Mr McAlorum: Yes. It is about whether a council could justify a decision. That is right.

Mr Clarke: What is the purpose of an exemption then?

Mr McAlorum: An exemption would apply only when people have obtained their cafe licence. There would be no point in a pub having a pavement cafe licence if by-laws on drinking in public applied, and they could not serve alcohol or someone could not have a glass of wine with a meal. You could not have the two, and it would be a nonsense to have a conflict.

If a council grants a licence for a cafe in a public area, the licensing laws will apply rather than the by-laws on drinking in public. Licensees will have an exemption, but only after they obtain their cafe licence. Councils will have the opportunity to decide whether an area is suitable for a pavement cafe. Furthermore, given that a licensed premises is involved, they will consult the PSNI, who might feel that it is unsuitable, there is the potential for disorder in that area, and they are not happy with it.

The Chairperson: You may want to return to that, Trevor. You obviously do not need to decide today. Fra.

Mr F McCann: My points have been covered, Chair.

Mr Wilson: I want to ask about the responses from Roads Service and the police. Given how wide the terms in clause 4 are, how restrictive is that? Does it not make the legislation too restrictive?

Mr McAlorum: The wording is very similar to that in the Street Trading Act (Northern Ireland) 2001. We borrowed that definition. It is drafted in terms that will allow councils to refuse a licence for any reason that they consider legitimate. It is very broadly drafted.

Mr Wilson: What about restricting the length of time that consultees have to respond?

Mr McAlorum: The inclusion of Roads Service as consultees is to deal with issues that mainly relate to access by the disabled and those with mobility needs. We felt that it was important to make Roads Service a statutory consultee on all licensing applications.

Mr Wilson: I am not querying that it should be a consultee; I am querying its slowness of response. I am sure that everybody around the table can think of planning applications that Roads Service has

taken a year to respond to when it decided that it wanted to go slow on something. It is about whether it is reasonable to put a restriction on an application and whether, if there is no response within six weeks, it is deemed that there has been no objection to it.

Mr McAlorum: This licensing scheme would be caught by the EU services directive, which sets out limits on how long councils can take to consider applications. The Bill also makes some provision in that regard. When councils receive applications, they will need to give an indication of how long they expect to take to deal with them. They can further extend that period if —

Mr Wilson: Sorry, I must have missed that. What is the length of time?

Mr Irvine: Councils will have to publish how long they expect to take to process applications. The EU services directive allows councils to extend that period once, but if they have not made a decision by the end of that period, the licence is deemed to be granted.

Mr Wilson: What is that period?

Mr Irvine: It is up to each council, but they will have to announce what that period is in advance.

Mr McAlorum: Reasonableness will come into it. It is what is considered reasonable.

The Chairperson: Is there no guidance on what a reasonable time might be? That is probably very important.

Mr Quinn: The Department intends to publish guidance for the councils as to how they should operate the scheme. Given the comments that have been expressed here, I think that what we would consider a reasonable time to process an application is a key point that we need to include. We would also make it clear that, if there are no objections by the statutory consultees by a set date, councils should assume that they were content.

Mr Wilson: Will that be in guidance rather than in the legislation?

Mr Quinn: Yes.

Mr Wilson: Is there a reason why it cannot be included in the legislation? At one point, there was discussion — it was dropped at the end of the day — that the Planning Bill would include specific time periods for consultees to respond, rather than putting it in guidance. Guidance is often ignored.

Mr Quinn: The intention behind the Bill is to give most of the power to local government — the councils — to administer. I cannot think of a good reason why that could not be included if someone was minded to table an amendment.

The Chairperson: Could that be looked at, Liam?

Mr Quinn: Yes.

The Chairperson: Members are happy enough if you are happy enough. Sorry for keeping you so long while we took the earlier presentations. We appreciate your patience. Thank you.