

Committee for Social Development

Report on the Licensing of Pavement Cafés Bill (NIA Bill 24/11-15)

**Together with the Minutes of Proceedings, Minutes of Evidence
and Written Submissions relating to the Report**

**Ordered by the Committee for Social Development to be printed 12 December 2013
Report: NIA 122/11-15 (Committee for Social Development)**

Membership and Powers

The Committee for Social Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister for Social Development.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

Mr Alex Maskey (Chairperson)

Mr Mickey Brady (Deputy Chairperson)

Mr Jim Allister¹

Ms Paula Bradley²

Mr Gregory Campbell³

Mr Trevor Clarke⁴

Mr Michael Copeland

Mr Stewart Dickson⁵

Ms Dolores Kelly⁶

Mr Fra McCann

Mr Sammy Wilson^{7 8 9 10 11}

-
- | | |
|----|--|
| 1 | With effect from 09 September 2013 Mr Jim Allister replaced Mr David McClarty |
| 2 | With effect from 20 February 2012 Ms Paula Bradley replaced Mr Gregory Campbell |
| 3 | With effect from 01 October 2012 Mr Gregory Campbell replaced Mr Alex Easton |
| 4 | With effect from 16 September 2013 Mr Trevor Clarke replaced Ms Pam Brown |
| 5 | With effect from 01 October 2013 Mr Stewart Dickson replaced Mrs Judith Cochrane |
| 6 | With effect from 30 September 2013 Mrs Dolores Kelly replaced Mr Mark H Durkan |
| 7 | With effect from 26 March 2012 Mr Alastair Ross replaced Mr Sammy Douglas |
| 8 | With effect from 01 October 2012 Mr Sammy Douglas replaced Mr Alastair Ross |
| 9 | With effect from 11 February 2013 Mr Sydney Anderson replaced Mr Sammy Douglas |
| 10 | With effect from 07 May 2013 Mr Sammy Douglas replaced Mr Sydney Anderson |
| 11 | With effect from 16 September 2013 Mr Sammy Wilson replaced Mr Sammy Douglas |
-

Table of Contents

Report

| | |
|---------------------------|----|
| Executive Summary | 1 |
| Recommendations | 2 |
| Introduction | 4 |
| Consideration of the Bill | 5 |
| Clause-by-Clause | 15 |

Appendix 1

| | |
|---|----|
| Minutes of Proceedings Relating to the Report | 21 |
|---|----|

Appendix 2

| | |
|---------------------|----|
| Minutes of Evidence | 35 |
|---------------------|----|

Appendix 3

| | |
|---------------------|-----|
| Written Submissions | 111 |
|---------------------|-----|

Appendix 4

| | |
|--------------------------|-----|
| Departmental Submissions | 217 |
|--------------------------|-----|

Appendix 5

| | |
|----------------|-----|
| Research Paper | 259 |
|----------------|-----|

Appendix 6

| | |
|-------------------|-----|
| List of Witnesses | 277 |
|-------------------|-----|

List of Abbreviations

| | |
|--------|---|
| CBI | Confederation of British Industry |
| DDA | Disability Discrimination Act |
| DOE | Department for the Environment |
| DRD | Department for Regional Development |
| DSD | Department for Social Development |
| EU | European Union |
| GB | Great Britain |
| IMTAC | The Inclusive Mobility and Transport Advisory Committee |
| MLA | Member of Legislative Assembly |
| NILGA | Northern Ireland Local Government Association |
| NIIRTA | Northern Ireland Retail Trade Association |
| NITB | Northern Ireland Tourist Board |
| PSNI | Police Service of Northern Ireland |
| SDC | Social Development Committee |
| UK | United Kingdom |

Executive Summary

1. The Licensing of Pavement Cafés Bill will introduce a mandatory licensing scheme for the regulation of pavement cafés.
2. Evidence from stakeholders indicated there was broad support for such a licensing scheme, although there were concerns raised over a number of provisions.
3. Central to the Committee's consideration were concerns raised by disability groups regarding safeguards for disabled pedestrians. However, the Minister has given his assurance to the Committee that DSD guidance will place particular emphasis on putting the needs of pedestrians, including those with disabilities and mobility needs, at the heart of the licensing regime.
4. Many concerns related to the granting or revocation of a licence with some believing that the controls were not strong enough to allow councils to take action when licence conditions are breached, and others concerned that they were too strict, i.e. a 'one strike and you're out' policy, for even minor contraventions of the licensing conditions. However, the Committee was reassured by the Minister's actions to amend Clause 19 to ensure there was a more balanced approach to revoking or suspending a licence.
5. The Committee welcomed an amendment to Clause 21 to extend the right of appeal to a decision to limit the duration of a licence under Clause 5. The decision by the Minister to allow an appeal to the council in the first instance, and to allow the licence holder to continue to trade with the pavement café while this appeal was considered, also went some way to ameliorate the Committee's concerns about the appeals process.
6. Stakeholders expressed concerns that the legislation should be more specific, but the Department emphasised the importance of allowing the councils some discretion to tailor applications appropriately to their local area. It is evident to the Committee, therefore, that the Department's guidance on the implementation of this legislation will be important for councils. With this in mind, it made a number of recommendations regarding issues, brought to its attention during evidence sessions, which it believes should be included in this guidance.

Recommendations

7. Throughout the Committee Stage, following consideration of evidence provided by stakeholders, the Committee raised a number of issues with the Department. In most cases the Department was able to address these by providing clarification on certain clauses. However, on other issues the Minister responded by bringing forward two amendments and providing written assurances to the Committee. In addition to these actions the Committee agreed a number of recommendations for the Minister's consideration.

Amendments

Clause 14

8. The Committee proposed that Clause 14 be amended. This clause deals with the revocation of a pavement café licence. The Committee felt that Clause 14(1)(d) which allows a council to revoke a pavement café licence at any time if it is satisfied that 'any condition of the licence has not been complied with' was too broad. The Committee was of the opinion that strict interpretation of this clause could allow the revocation of a licence even when there were very minor breaches of conditions.
9. The Department considered the Committee's view, and agreed to amend the clause to refer to 'persistent breaches' of conditions. The amended clause is included in the Committee's clause-by-clause consideration on page 15 of this report.

Clause 21

10. The Minister agreed to amend the Bill to extend the right of appeal to a decision to limit the duration of a licence under Clause 5. The Committee welcomed this amendment. Furthermore, the Committee had raised concerns about the right of a licence holder to continue trading while an appeal was being heard. However, the Committee acknowledged that the amendment to Clause 19 (allowing initial representation to the council) to some extent addressed these concerns.

Specific recommendations

11. The Committee had some concerns about the definition of a 'public area' as outlined in Clause 1(2) of the Bill. The Department provided clarity on the definition at the Committee meeting on 7 November. The Committee was content with the clarification provided but made the following recommendation:

That the definition of a 'public area' is made clear in the guidance and, in particular, the relevance of this to the licensing of pavement cafés on public and private land.

12. The Committee expressed concern that advertising boards ('A' boards) associated with pavement cafés were not included in furniture in Clause 1(3) and made the following recommendation:

That the guidance clearly states that menus and advertising ('A' boards) associated with the pavement café must be placed within the enclosed pavement café area.

13. In reference to Clause 3(4), and particularly following representation from groups representing disabled people including those with visual impairments, the Committee expressed concern that pavement cafés could potentially hinder the free movement of pedestrians. The Department stated that as part of the application process for a licence, a plan of the proposed pavement café would be required. In addition, a pre-application visit by the relevant council official would be expected to ensure the pavement café did not hinder the movement of pedestrians. Furthermore, the Department advised that the Roads Service would be a statutory consultee as part of the application process and could provide comment on the suitability of the proposed pavement café. The Committee made the following recommendation:

That the guidance provided by the Department states that a pre-application visit to the applicant's premises by the appropriate council or Roads Service official is a pre-requisite prior to approval of a pavement café licence, and that it is also made clear in the guidance that any plan that does not show the relationship between the pavement café area and the streetscape will be rejected.

14. The Department has acknowledged that defining the duration of a licence is a complex issue and that this will be addressed in the guidance. The Committee made the following recommendation:

That the guidance provided by the Department must provide clarity on the ability of a council to limit the duration of the licence in the context of the requirements under the EU Services Directive.

15. Clause 10 makes it a requirement for premises applying for a pavement café licence to make the application available to be viewed by the public until the end of the period allowed for representations. Some stakeholder groups, particularly those representing the visually impaired, raised questions about how this information would be made accessible and expressed concerns that there was potential for people with visual impairment to be excluded from making representations. The Department noted that it was up to individual councils to dictate how the application would be advertised, but that it anticipated that the applications would be displayed on council websites. The Committee made the following recommendation:

Councils, when advertising pavement café applications, should be proactive in contacting groups which represent people with disabilities to ensure they have an opportunity to comment on the proposed pavement café application and accompanying plan.

16. Clause 11(2) relates to the fixing of notice of application to the premises applying for the pavement café licence and states that the notice should be clearly visible and legible to the public from outside the premises. The Committee expressed concerns similar to those around Clause 10(4) and believed this emphasised the need for councils to proactively seek the opinion of groups representing people with disabilities.

Introduction

17. In its consultation paper on Business Improvement Districts and Licensing of Pavement Cafés in 2010, the Department of Social Development noted that:

There has been a significant increase in the number of pavement cafés operating in towns and cities across Northern Ireland, particularly since the 2007 introduction of the smoking ban. However, no legislation exists to enable the authorisation and control of such areas.

18. Therefore, in spite of the proliferation of pavement cafés in recent years, there has been no formal regulatory system in place. A 'toleration' policy is currently adopted here in respect of pavement cafés, with Roads Service enforcing removal of furniture where it is deemed to be an obstruction. Given the increase in numbers of pavement cafés, this is regarded as an inadequate solution in the long term, and the Department has therefore recognised the need to introduce a suitable licensing scheme.

19. Legislation exists in other jurisdictions and requires café owners to apply for permission from their local council to place tables and chairs on the pavement outside their premises. However, Northern Ireland is the first jurisdiction to introduce a Bill dealing specifically with pavement cafés.

20. The Committee received an initial briefing on the Bill from the Department on 13 June 2013 outlining the policy background and giving a broad overview of the provisions of the Bill. It was subsequently introduced to the Northern Ireland Assembly on 17 June 2013 where the Minister made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Licensing of Pavement Cafés Bill would be within the legislative competence of the Northern Ireland Assembly"

21. The Second Stage of the Bill was agreed on the 25 June 2013, after which it was referred to the Committee for Social Development for consideration. The Bill, as introduced by the Minister, contains 32 clauses and 1 schedule.
22. The Committee considered the Bill and related issues at its meetings on 13 June 2013, 3, 10, 17 and 24 October 2013, 7, 14, 21 and 28 November 2013 and 5 December 2013. The relevant extracts from the Minutes of Evidence for these meetings are included at appendix 2.
23. As part of the Committee's consideration of the Bill a public consultation was initiated in July 2013, with the Committee seeking submissions through advertisements placed in the Belfast Telegraph, Newsletter and Irish News.
24. The Committee received 23 written submissions to the consultation, which are included at appendix 3. The Committee subsequently took oral evidence from 8 of these stakeholders as part of its consideration. Minutes of Evidence for these meetings are included at appendix 2. The Committee also met with the Department on a number of occasions and received written papers from the Department and the Minister, which are included at appendix 4.
25. On 12 September 2013, the Assembly agreed to extend the Committee Stage of the Bill to 13 December 2013. The Committee carried out its clause-by-clause scrutiny of the Bill at its meeting on 21 November. The Bill report was agreed at its meeting on 5 December.

Consideration of the Bill

Background

26. Consideration of a statutory licensing scheme for pavement cafés has its origins in a DSD consultation of October 2010. The responses indicated that there was strong support for a licensing scheme and the development of a ‘café culture’.
27. However, following this consultation it was determined that one of the key assumptions - that Roads Service should undertake the enforcement of the scheme - would no longer be pursued. Instead it was decided that a statutory scheme to be administered by local councils would be preferable.
28. Indeed, during the pre-legislation briefing on 13 June 2012 the Committee heard that, despite the proliferation of pavement cafés here, there was no legislation in place to regulate this activity. Rather, the Roads Service generally ‘tolerates’ pavement cafés provided they do not restrict the free flow of pedestrians or vehicles, or compromise public safety.
29. At this meeting the Committee considered the principles and main provisions of the Bill – See appendix 2.
30. The Committee also commissioned a research paper into pavement cafés for information, prior to consultation with stakeholders. This is included at appendix 5.
31. The Committee agreed that while it welcomed the development of pavement cafés, which could help make city and town centres more welcoming places to live in and visit, it was necessary to establish their regulation on a proper statutory footing.

Call for evidence

32. In response to its call for evidence the Committee received 23 written submissions. All the written submissions received by the Committee are included at appendix 3.
33. The Committee received oral briefings from stakeholders at its meetings of 10, 17 and 24 October 2013. Representatives from the following organisations gave evidence:
 - Northern Ireland Independent Retail Trade Association (NIIRTA)
 - Pubs of Ulster
 - Northern Ireland Local Government Association (NILGA)
 - Belfast City Council
 - Institute of Licensing
 - The Licensing Forum
 - The Inclusive Mobility and Transport Advisory Committee (IMTAC)
 - Guide Dogs for the Blind Association.
34. The Committee is content that it received oral evidence which adequately reflects the views of the majority of respondents to the written consultation.
35. Following consideration of the evidence given by stakeholders, the Committee received further briefings from Departmental officials on 24 October and 7 November, where it addressed the concerns raised by stakeholders.

Key Issues

36. The key issues in relation to specific clauses raised in both written and oral evidence are outlined below. The Minister also wrote to the Committee on 12 November to advise of amendments to be brought forward at consideration stage and to address concerns of the Committee. These are referred to in the following section as they arise.

Clause 1 Meaning of “pavement café” and other key terms

37. A number of stakeholders, mostly local councils, queried the intention of the Bill in respect of privately owned land. When raised by the Committee, the Department confirmed that the definition of a “public area” does not extend to an area to which the public have access only because the owner has given permission (express or implied). Therefore, while the Bill allows councils to regulate pavement cafés in a public area, it does not apply to pavement cafés situated in areas that the public do not have access as *of right*.
38. The Department also made it clear that where a pavement café area is owned by licensed premises, that area is not a public area and therefore is not subject to regulation under the Pavement Café Bill. However, the Department also clarified that any consumption of alcohol in that pavement café area will be subject to liquor licensing law.
39. The Minister also indicated his intention to amend Clause 1(2)(b) and associated Clause 30 to exclude from the licensing scheme areas where historic rights to hold a market or fair exist.

Clause 2 Offence of placing furniture on public area without pavement café licence

40. Concern was raised that the cost of administering the scheme will far exceed what councils will be comfortable with charging businesses, particularly in the current trading environment. However, the Department stated that the fee charging regime is similar to those for other statutory licensing schemes and that councils can recover costs at their discretion.
41. Some councils highlighted that the creation of offences under this clause will run parallel to existing offences under legislation enforced by Roads Service. The Department agreed and indicated that it will provide greater clarity in its guidance on this issue and on the impact on other relevant legislation such as street trading law and the operational implications.

Clause 3 Application for licence

42. The requirement for a ‘plan’ of the proposed area on the application for a licence was considered a welcome step by stakeholders.
43. The Committee was supportive of this provision and believe that any plan should show the spatial relationship between the proposed pavement café area and street furniture, crossing points, bus stops, placement of ‘A’ boards etc. to ensure that there is sufficient space to allow unobstructed flow of pedestrians. Of particular concern to the Committee in this regard were the needs of people with disabilities. The Minister has also noted his concerns to the Committee regarding safeguards for disabled pedestrians and has given his assurance that DSD guidance will place particular emphasis on putting the needs of pedestrians including those with disabilities and mobility needs, at the heart of the licensing regime. The Committee welcomed this assurance.

Clause 4 Grant or refusal of licence

44. Stakeholders gave conflicting opinions on this issue with some believing that the grounds for refusing a licence did not cover enough eventualities, therefore weakening the control of councils; while others felt that the council could refuse an application if the applicant had had a previous licence revoked i.e. “one strike and you’re out” policy. However, the Department replied that the clause was sufficiently flexible to allow Councils to impose a wide range of licence conditions.

45. Some members of the Committee also raised concerns about the length of time that councils could take to consult with relevant agencies or organisations on licence applications. However the Minister responded that the Bill was drafted in such a way as to comply with the EU Services Directive. This should be 'reasonable', fixed and made public in advance. It was of some reassurance to members that, where a decision has not been made at the end of this period, the licence will be granted.
46. The Minister also highlighted that Clause 10(5) limits the period of representation on licence applications to 28 days and notes that this approach works well in relation to consultation with Roads Service on street trading licences. The Minister has thanked the Committee for bringing this issue to his attention and notes it will be dealt with in the accompanying guidance for councils.

Clause 5 Form, duration etc of a licence

47. Of key concern to stakeholders and committee members was the duration of the licence. There was some confusion as to whether the licence was issued for an indefinite period or subject to a time limit. The Department has stated that it will provide clarity in its accompanying guidance but noted that, if a council believes it can justify reasons for limiting the duration of licence, then it can do so but that this will have to comply with the requirements of the EU Services Directive. The Minister refers to this in his letter to the Committee.
48. Disability groups also raised concerns about Clause 5(3)(b) which refers to provision in the Bill to vary the area covered by the licence. However, the Department made it clear that this was simply to allow the council to make minor changes to the proposal and therefore obviate the need to reject the proposal and require the applicant to resubmit. The Department was clear that this would not facilitate regular changes in the positioning of a pavement café area.

Clause 6 Conditions of licence

49. Some members of the committee raised concerns about the provisions of this clause which might suggest a relaxation of the licensing laws where a pavement café licence is granted. However, the Department explained that the provisions are more nuanced than this.
50. Any pavement café associated with a licensed premises will be subject to licensing law but 6(2)(b) also allows the council to prohibit the consumption of alcohol in the pavement café area as a condition of a licence if it believes that this is likely to result in disorder.
51. Furthermore, councils are free to impose restrictions on the time that consumption of alcohol can take place in a pavement café if there are concerns about noise or nuisance linked to alcohol consumption.
52. Also, should the council believe that alcohol by-laws that prohibit consumption of alcohol in certain areas should not be breached it can establish this as a reason for refusing a licence or, indeed, grant the licence with the proviso that alcohol should not be consumed in the pavement café area.
53. Members also raised the issue of public liability insurance – Clause 6(3)(e) with suggestion that some consideration should be given to making it mandatory for licence holders to take out public liability insurance. However, the Minister notes that this provision was included at the request of councils who wished to have this discretionary power. The Minister also notes that the Department is not aware of any statutory requirement for pub, café or restaurant owners to take out public liability insurance and that requiring this of pavement café owners would therefore be excessive.

Clause 7 Renewal of licence

54. No comments received on this clause.

Clause 8 Variations of section 6(3) conditions of area covered by licence

55. No comments received on this clause.

Clause 9 Variation by removal of alcohol prohibition

56. This clause raised similar issues to Clause 6 although its provisions are quite different. Clause 9 provides that where a pavement café licence contains an alcohol prohibition, the holder of the licence may, in certain circumstances, apply to a council for the licence to be varied by the removal of the alcohol prohibition.

Clause 10 Applications: general provision

57. The Committee heard from disability groups that, depending on the method of publication of an application for a pavement café, people with disabilities, who would likely be most impacted by the placement of such a café, would have no knowledge of the proposal and therefore not be in a position to comment at the application stage.
58. The Committee shared these concerns and made a recommendation that councils should be proactive in seeking out the opinion of these groups when they receive an application for a pavement café.

Clause 11 Notice of application to be displayed

59. Similar comments were made as those in Clause 10. Again the Committee agreed and reiterated its recommendation that councils should be proactive in seeking out the opinion of these groups when they receive an application for a pavement café.

Clause 12 Fees

60. Many of the stakeholders thought there should be a fixed fee to ensure consistency across council areas. However, the Committee accepted the Department's argument that councils could only collect fees to cover administration costs and that there should be enough flexibility in the Bill to address the potential variation in the cost of recovery across different council areas. The Committee also noted the requirement for councils to publish how fees are collected.
61. While there was support from business organisations for funding to be provided for initial start-up costs, the Department maintained that the decision to establish a pavement café was a commercial one and that it would be difficult to justify providing financial support that would ultimately result in a commercial benefit.

Clause 13 Change in persons carrying on a business

62. One stakeholder believed that there should be provision to transfer the licence where a business changes hands. However, the Department was clear that the conditions imposed on the licence have to be specific not just to the site, but also the person that the licence is granted to.

Clause 14 Revocation of licence

63. The Committee raised concerns about the provisions of 14(1)(d) which suggested that a licence could be revoked if there was a single breach of the licensing conditions. The Minister wrote to the Chair indicating his intention to address this concern by amending the clause to ensure that a licence could only be revoked or suspended for "persistent" breaches of the licence. The Committee welcomed this amendment.

64. The Committee also noted that the Department interpreted “persistent” as a “three strikes and you’re out” approach.

Clause 15 Suspension of licence

65. Disability organisations felt that 15(1)(b), which indicates that a refusal, revocation, suspension or compulsory variation of a licence where the placement of furniture may “result in undue interference or inconvenience to persons or vehicles in the vicinity”, was open to interpretation. However, the Department indicated that it was designed this way in order to give councils the flexibility to cover a wide range of situations that could potentially arise.

Clause 16 Compulsory variation of section 6(3) conditions

66. The ability of councils to vary the conditions of a licence was welcomed by stakeholders.

Clause 17 Compulsory variation: prohibition of alcohol

67. Clause 17 allows a council at any time to vary a pavement café licence which does not have an alcohol prohibition by including such a prohibition in the licence conditions. Stakeholders raised issues which are dealt with under Clause 6.

Clause 18 Compulsory variation of an area covered by licence

68. While one stakeholder felt this clause provided insufficient scope to deal with potential problems, others welcomed the clause, which will allow a council to change the area permitted by the licence where there has been a material change in the street environment.

Clause 19 Notice of revocation, suspension or compulsory variation

69. As noted previously, the Committee had concerns about the wide-ranging powers that the Bill gave to councils to revoke or suspend a licence. The Minister responded to these concerns by indicating his intention to amend the Bill to require councils to give advance notice to the licence holder should the intention be to revoke or suspend a licence and to allow for representation before a final decision is taken. The Committee was content with this response.

Clause 20 Matters to be recorded in register under Licensing Order

70. No comments received on this clause.

Clause 21 Appeals

71. The Minister agreed to amend the Bill to extend the right of appeal to a decision to limit the duration of a licence under Clause 5. The Committee welcomed this amendment. Furthermore, the Committee had raised concerns about the right of a licence holder to continue trading while an appeal was being heard. However, the Committee acknowledged that the amendment to Clause 19 (allowing initial representation to the council) to some extent addressed these concerns.

Clause 22 Powers of entry and inspection

72. One stakeholder welcomed this provision.

Clause 23 Power to remove unlicensed furniture

73. No comments received on this clause.

Clause 24 Offence of obstruction

74. One council believed a level 3 fine was insufficient, but the Department noted that this is the same offence and level of penalty as is used under the Street Trading Act 2001.

Clauses 25 to 28

75. No comment received on these clauses.

Clause 29 Byelaws

76. This was welcomed by one stakeholder.

Clause 30 Definitions

77. Comment on this clause actually refers more specifically to 5(3)(b) – the ‘area covered by a licence’. The Department responded that, once a licence has been granted, the area cannot be routinely changed i.e. on a daily basis.

Clause 31 and 32

78. No comment received on these clauses.

Schedule

79. Positive comment was made in respect of the licensing laws and the pavement café legislation in that it will facilitate tourists.
80. The Minister also indicated his intention to bring forward an amendment of new article 76 of Licensing Order and amendment of section 2 of the Street Trading Act 2001. Details of the amendment can be found in the Minister’s letter to the Committee. The Committee was content with these amendments.

Summary of oral evidence sessions

81. The following is a summary of the oral evidence heard by the Committee. For the complete written and oral evidence received by the Committee see appendix 3 and 2 respectively.

Evidence session 1: 10 October 2013 - Northern Ireland Local Government Association, Belfast City Council, Institute of Licensing and Licensing Forum

Definition of ‘pavement café’

82. The representatives expressed a concern that the stated definition could allow any premises that sells food or drink to apply for a licence and that the definition should be narrowed and clarified.

Definition of a ‘public area’

83. The representatives highlighted apparent ambiguity in the definition of public vis à vis private area, and noted that this could lead to inconsistency in how different premises are dealt with in the legislation. They also suggested that this presented further potential problems around liquor licensing and that applying the definition of ‘public area’ used in liquor licensing would clarify this.

Alcohol consumption

84. In discussion with the representatives, members of the Committee raised concerns over the fact that patrons would be permitted to drink alcohol at pavement cafés associated with particular premises, without breaking local alcohol by-laws.

Disability Access

85. Disability access was seen as a concern both from the point of view of access to actual premises and to potential obstruction to the footway in the vicinity of pavement cafés. It was suggested that there should be a statutory obligation for applications to be referred to a consultee group such as Disability Action.

Administration Fees

86. There was concern that the cost of administering the scheme would lead to councils having to charge application fees that would exceed what they would be comfortable charging or which would be unreasonable for local businesses.

Grounds for Refusal of Licence

87. The representatives expressed concern that the grounds for refusal were limited and should incorporate a wider range of offences.

Enforcement

88. The representatives felt that options for enforcement were limited and that penalties were potentially disproportionate to the offences. They called for additional enforcement sanctions for minor infringements.

Commencement Date

89. The representatives noted the commencement date in 2014 and proposed a transitional period for implementation to allow for councils to process a potentially high volume of applications that would take in existing pavement café owners as well as new applicants.

Technical and managerial provisions for pavement cafés

90. The representatives proposed that more detail on the design and management of pavement café be included within the legislation, rather than being dealt with by regulations, and recommended that model terms and conditions could be drawn up by relevant stakeholder groups.

Evidence session 2: 17 October 2013 - Guide Dogs for the Blind Association and Inclusive Mobility and Transport Advisory Committee (IMTAC)**Definition of pavement café**

91. Representatives reiterated concerns expressed by local councils that the definition of pavement café was worded too broadly in the legislation and could potentially allow for any business selling food and drink to apply for a licence.

Current issues with movement around pavement cafés

92. The representatives raised issues around the restriction to free movement that could be imposed by obstacles such as street furniture and advertising boards, particularly for pedestrians requiring assistance e.g. the use of a guide dog, long cane or wheelchair. They emphasised that best practice was to allow 2 metres width on the pavement free for unrestricted movement and noted the concept of a quality walking corridor.

Enforcement

93. The representatives emphasised the importance of effective enforcement and of councils being afforded the resources to carry out this enforcement. They noted that in the current situation Roads Service has the power to remove obstructions to the pavement, but that this has not proved effective.

Technical provisions for pavement cafés

94. The representatives regarded it as important that applications for pavement cafés take into consideration how the café will relate to existing street furniture.

Review of licences

95. The representatives felt that pavement café licences should be subject to periodic review and potentially subject to change should the surrounding street environment be altered.

Notification of application

96. The representatives expressed concern that the methods of displaying notification of a licence application may exclude partially sighted people from making representations.

Evidence session 3: 24 October 2013 - Northern Ireland Independent Retail Trade Association (NIIRTA) and Pubs of Ulster

Support for the Bill

97. The representatives broadly welcomed the legislation and welcomed the fact that the Bill places an onus on councils to grant a licence. They indicated the positive contribution that the Bill should make towards generating economic activity and creating vibrant town centres, particularly alongside BIDs legislation. In general, they were welcoming of light-touch legislation, allowing councils flexibility to design applications tailored appropriately for the local area. They also felt that this legislation will bring Northern Ireland in line with other jurisdictions.

Alcohol consumption

98. On the matter of alcohol consumption being permitted at pavement cafés, exempting local by-laws, the representatives noted that the Bill makes it a duty for the council to consult the PSNI where a pub licence is involved and that the council can take the approach not to allow the sale of alcohol in by-law areas, if it feels this to be appropriate.

Access

99. The representatives emphasised the importance of access, both along footways next to pavement cafés and to the premises themselves, noting that premises would lose customers if they were not accessible. They welcomed the discretion given to councils to determine the appropriate amount of space surrounding a pavement café in a specific area.

Technical provisions for pavement cafés

100. The representatives also voiced support for a degree of flexibility around the furniture and enclosures used for pavement cafés, noting that councils would be best placed to advise what furniture would be most appropriate in a specific area, but that a minimum standard ought to be included in the legislation.

Enforcement

101. Contrary to views expressed on 10 October, the representatives felt that the power to remove furniture from pavement cafés was a suitable penalty in relation to offences by pavement café owners and would act as an effective deterrent from breaches of licence conditions.

Administration Fees

102. The representatives expressed concerns around the cost of applications and emphasised that the new legislation for pavement cafés needed to be seen as an opportunity for businesses to run pavement cafés and play a role in vibrant town centres, rather than simply as an additional fee they had to incur.

Departmental Response

103. Following oral evidence sessions with the stakeholders, the Committee met with Departmental officials to discuss the issues raised during consideration of the Bill on 24 October (appendix 2).

104. The Department subsequently addressed the Committee in more detail at its meeting on 7 November (see appendix 2). These issues are addressed in the clause-by-clause section of the report and the Department's paper is available at appendix 4. Evidence taken by the Committee at the meeting of 24 October can be summarised as follows:

Definition of pavement café

105. Addressing concerns raised around the potential for businesses deemed inappropriate applying for a licence, the Department provided reassurance that, while the Bill is designed to allow a range of business premises to apply for a licence, councils would be able to decide what premises are appropriate on a case-by-case basis. It also felt that the cost of applying for a licence would discourage applications from premises whose primary purpose is not the sale of food or drink.

Definition of a 'public area'

106. The Department considered that it would be inappropriate to use the definition of a public area used in the Street Trading Act and stated that the definition in the Bill was intended to exclude land clearly in private ownership.

Alcohol consumption

107. With regard to concerns raised around the consumption of alcohol and exemption of pavement cafés from by-laws, the Department emphasised that this was not intended to encourage drinking in public. It explained that councils would have control over opening times of pavement cafés and could enforce by-laws where it felt this was appropriate.

Enforcement

108. The Department advised strongly against the introduction of fixed penalties within the legislation, as this would involve the creation of criminal offences and would be too heavy-handed an approach. Rather, the Bill provides a robust regulatory framework for pavement cafés.

Access

109. The Department also considered the issue of access to, and around, pavement cafés, particularly for disabled people. It highlighted that statutory consultation with Roads Service would take into account access for pedestrians. Councils will also be able to consult with organisations representing the interests of disabled people, and guidance provided by the Department would highlight that pavement cafés should be enclosed to allow for safe navigation of the surrounding area.

Time for application process

110. The Department also addressed a concern, raised by Committee members, that consultation with some organisations may delay the application process. It noted that the EU Services Directive requires an application to be processed within a reasonable time which is fixed and made public in advance, and that if no response was received from organisations within this time that the licence would be deemed to be granted.

Guidance for councils

111. The Department addressed concerns raised by stakeholders regarding the guidance that would be issued by the Department in respect of pavement cafés. It noted that councils would be able to place reasonable conditions on a licence and that the guidance would

emphasise the importance of accommodating the needs of pedestrians. The Departmental officials reassured the Committee that non-compliance with guidance would be challengeable in the courts.

Outcome of consideration

112. The Committee considered evidence given by both stakeholders and the Department and based on this sought an amendment to Clause 14(1)(d) which refers to revocation of a licence. The Committee have also made a number of recommendations which are included on page 2 of this report.
113. The Minister wrote to the Committee in response to its key concerns and this response is included with the Departmental submissions in appendix 4 of this report.

Clause-by-Clause Scrutiny

114. The Committee undertook its formal clause-by-clause scrutiny of the Pavement Cafés Bill on 21 November 2013; in addition to this, the Committee undertook an informal clause-by-clause consideration of the Bill on 7 November 2013, which included discussion with Departmental officials.
115. Prior to the Committee's formal clause-by-clause consideration of the Bill, the Minister for Social Development wrote to the Chair of the Committee, addressing some of the concerns that had been raised by Committee stakeholders, and outlining technical amendments that the Department would be introducing. The letter, dated 12 November 2013, is included in appendix 4.
116. The Committee's clause-by-clause scrutiny of the Bill proceeded as follows:

Clause 1: Meaning of "pavement café licence" and other key terms

117. The Committee agreed that it was content with Clause 1 as amended by the Department.

Clause 2: Offence of placing furniture on public area without pavement café licence

118. The Committee agreed that it was content with Clause 2 as drafted.

Clause 3: Application for licence

119. The Committee agreed that it was content with Clause 3 as drafted.

Clause 4: Grant or refusal of licence

120. The Committee agreed that it was content with Clause 4 as drafted.

Clause 5: Form, duration etc. of licence

121. The Committee agreed that it was content with Clause 5 as drafted.

Clause 6: Conditions of licence

122. The Committee agreed that it was content with Clause 6 as drafted.

Clause 7: Renewal of licence

123. The Committee agreed that it was content with Clause 7 as drafted.

Clause 8: Variation of section 6(3) conditions or of area covered by licence

124. The Committee agreed that it was content with Clause 8 as drafted.

Clause 9: Variation by removal of alcohol prohibition

125. The Committee agreed that it was content with Clause 9 as drafted.

Clause 10: Applications – general provision

126. The Committee agreed that it was content with Clause 10 as drafted.

Clause 11: Notice of application to be displayed

127. The Committee agreed that it was content with Clause 11 as drafted.

Clause 12: Fees

128. The Committee agreed that it was content with Clause 12 as drafted.

Clause 13: Change in persons carrying on business

129. The Committee agreed that it was content with Clause 13 as drafted.

Clause 14: Revocation of licence

130. The Committee agreed that it was content with Clause 14 as amended by the Department.

Clause 15: Suspension of licence

131. The Committee agreed that it was content with Clause 15 as drafted.

Clause 16: Compulsory variation of section 6(3) conditions

132. The Committee agreed that it was content with Clause 16 as drafted.

Clause 17: Compulsory variation: prohibition of alcohol

133. The Committee agreed that it was content with Clause 17 as drafted.

Clause 18: Compulsory variation of area covered by licence

134. The Committee agreed that it was content with Clause 18 as drafted.

Clause 19: Notice of revocation, suspension or compulsory variation

135. The Committee agreed that it was content with Clause 19 as amended by the Department.

Clause 20: Matters to be recorded in register under Licensing Order

136. The Committee agreed that it was content with Clause 20 as drafted.

Clause 21: Appeals

137. The Committee agreed that it was content with Clause 21 as amended by the Department.

Clause 22: Powers of entry and inspection

138. The Committee agreed that it was content with Clause 22 as drafted.

Clause 23: Power to remove unlicensed furniture

139. The Committee agreed that it was content with Clause 23 as drafted.

Clause 24: Offence of obstruction

140. The Committee agreed that it was content with Clause 24 as drafted.

Clause 25: Service of notices and documents

141. The Committee agreed that it was content with Clause 25 as drafted.

Clause 26: Power to make further provision

142. The Committee agreed that it was content with Clause 26 as drafted.

Clause 27: Regulations

143. The Committee agreed that it was content with Clause 27 as drafted.

Clause 28: Consequential amendments

144. The Committee agreed that it was content with Clause 28 as drafted.

Clause 29: Byelaws

145. The Committee agreed that it was content with Clause 29 as drafted.

Clause 30: Definitions

146. The Committee agreed that it was content with Clause 30 as amended by the Department.

Clause 31: Short title

147. The Committee agreed that it was content with the short title as drafted.

Clause 32: Commencement

148. The Committee agreed that it was content with Clause 32 as drafted.

Schedule

149. The Committee agreed that it was content with the Schedule as amended by the Department.

Long Title of Bill

150. The Committee agreed with the long title as drafted.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings Relating to the Report

Thursday 13 June 2013

Room 29 Parliament Buildings

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

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Sammy Douglas MLA
Mr Fra McCann MLA
Mr David McClarty MLA

10.11am The Deputy Chairperson declared the meeting open to the public.

Pavement Cafés Bill – Departmental Briefing

10.55am The following officials from the Department joined the meeting:

- Gary McAlorum, Urban Regeneration Strategy Directorate, DSD
- Liam Quinn, Head of Social Policy Unit, DSD

The officials briefed the Committee on the Bill that the Executive has agreed to introduce, noting that well managed cafés complement regeneration.

10.58am Mark Durkan MLA joined the meeting.

The Committee asked whether liaison with district councils had already begun. The officials replied that they had been in touch with councils to inform them that the Bill was forthcoming.

The Committee asked whether the revocation of a licence could indefinitely prevent a person from getting a licence again. The officials responded that this would be at the discretion of the relevant council and that a case for appeal was built in.

Members expressed concerns of the potential impact of pavement café furniture on the ability of disabled people to move freely, specifically noting that representatives from RNIB had spoken to Committee Members informally and had noted that chairs and tables on pavements often presented a problem. The Committee sought assurance that relevant representative groups would be consulted. The officials stated that it was up to individual councils to determine which groups they consulted.

Members asked if it will also be up to individual councils to decide on appropriate markings and delineation for pavement cafés. Officials confirmed that the Department would provide guidance and recommendations on this, but that ultimately it would be up to the councils.

Members also expressed concern over the provision that allowed for the charging of a 'reasonable fee' for a licence, citing that this was subjective and might see multi-national companies being able to afford a licence and smaller businesses losing out. The officials clarified that councils would only be permitted to charge to offset costs and that they would be obliged to justify the cost.

11.10am Judith Cochrane MLA joined the meeting.

Members asked whether pavement café licences would be restricted to the frontage of the premises applying for the licence, whether any thought had been given to insurance liability and whether there would be any issue with HMRC regarding VAT on hot food. The officials replied that it would be up to councils to consult with owners of the premises to determine the extent of the area outside the café to be used. The legislation would allow for the applicant to take public liability insurance.

The officials agreed to investigate the VAT issue and respond to the Committee.

Members queried whether the Bill should progress before the Review of Public Administration was complete. Officials acknowledged that this could create a vacuum in terms of responsibility, but that the Bill should be ready only months before responsibility for planning passed to local councils.

11.19am The officials left the meeting.

[EXTRACT]

Thursday 3 October 2013

Café Room, Foyle Arts Centre, University Of Ulster Magee Campus

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Gregory Campbell MLA
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mr Stewart Dickson MLA
Mr Fra McCann MLA
Mr Sammy Wilson MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Ms Paula Bradley MLA
Ms Dolores Kelly MLA

10.30am The meeting commenced in closed session.

11.56am The Chairperson declared the meeting open to the public.

Pavement Cafés Bill – Departmental Briefing

1.45pm The following officials joined the meeting:

- Mr Liam Quinn, DSD
- Mr Gary McAlorum, DSD
- Mr David Irvine, Social Policy Unit, DSD

The officials briefed the Committee on the Pavement Cafés Bill.

Members had some queries about provisions for exemptions from alcohol by-laws within the curtilage of Pavement Café areas for licensed premises. The officials noted that individual councils would have discretion as to whether these exemptions were allowed and that consultation with the PSNI is mandatory.

The Committee noted that references to street furniture in Clause 4 of the Bill were framed in broad terms and officials noted that this was to allow individual councils to have grounds for restricting the placement of furniture if they felt this was appropriate.

Members queried whether it would be helpful for a time limit to be applied to consultations on the granting of pavement café licenses to ensure the granting of licenses is not delayed and if this should be included on the face of the Bill. The officials noted that the timeframe was at the discretion of individual councils but amending the legislation to standardize this was an option.

The chairperson noted that the Committee will be receiving oral briefings from respondents to the call for evidence at next week's meeting.

1.05pm The officials left the meeting.

[EXTRACT]

Thursday 10 October 2013

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Fra McCann MLA
Mr Sammy Wilson MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: None

10.05am The meeting commenced in closed session.

Pavement Cafés Bill – Oral Evidence Session with NILGA, Belfast City Council, Institute of Licensing and Licensing Forum

12.36pm The following officials joined the meeting:

- Mr Derek McCallan, Chief Executive, NILGA
- Mr Trevor Martin, Belfast City Council
- Mr James Cunningham, Institute of Licensing
- Mr Stephen Hewitt, Licensing Forum

The officials briefed the Committee on their response to the Pavement Cafés Bill, outlining their support of their Bill, but highlighting some issues that caused them concern.

During the course of discussion, the need to clearly define what constitutes a pavement café was raised, as well as that of screening to physically demarcate pavement café areas.

Issues around smoking, alcohol consumption and the definitions of public and private land were also discussed. The officials noted that on the last of those issues, there was potential to employ elements of the legislation on Street Trading – an approach that has been adopted in England.

This session was recorded by Hansard.

1.10pm The officials left the meeting.

[EXTRACT]

Thursday 17 October 2013

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mr Stewart Dickson MLA
Mrs Dolores Kelly MLA
Mr Fra McCann MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Stephen Orme (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: None

10.01am The Chairperson declared the meeting open to the public.

Pavement Cafés Bill – Oral Evidence Session with IMTAC and Guide Dogs NI

10.30am The following officials joined the meeting:

- Mr Michael Lorimer, IMTAC
- Mr David Mann, IMTAC
- Mr Andrew Murdock, Guide Dogs
- Ms Elaine Orwin, Guide Dogs

The Chairperson offered apologies on behalf of the Committee for having to postpone this briefing, originally scheduled for 10 October, at short notice and invited the officials to brief the Committee.

The officials noted the need to regulate pavement cafes, which they considered overdue, but outlined a number of concerns with the proposed Bill, particularly the perceived lack of emphasis on ensuring unobstructed movement of pedestrians on the pavement.

Focusing on this issue there was discussion around the ‘light touch’ approach of the Bill, the need for robust enforcement of the licensing arrangements, greater clarity on a range aspects including the definition of a ‘pavement café’, and emphasis on ‘pedestrians’ rather than ‘persons’, as currently noted in the Bill.

11.05am Ms Dolores Kelly MLA left the meeting.

This session was recorded by Hansard.

11.09am The officials left the meeting.

[EXTRACT]

Thursday 24 October 2013

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mrs Dolores Kelly MLA
Mr Fra McCann MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Stephen Orme (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)

Apologies: Mr Stewart Dickson MLA
Mr Jim Allister MLA

10.00 am The meeting commenced in closed session.

10.01 am Paula Bradley MLA left the meeting.

10.40 am The Chairperson declared the meeting open to the public.

Pavement Cafés Bill – Oral Evidence Session with NIIRTA and Pubs of Ulster

10.49 am The following officials joined the meeting:

- Mr Colin Neill, Chief Executive, Pubs of Ulster
- Mr Glyn Roberts, Chief Executive, NIIRTA

The officials briefed the Committee on their views of the legislation. Mr Neill welcomed the Bill but recognised the issues that other organisations had raised with the Committee, particularly in relation to the potential for pavements to become obstructed by such cafés. However, he felt that the Bill would address the current bad practice regarding pavement cafés and place on a sound regulatory footing the development of a pavement café culture and thus provide a balance acceptable to all interested parties.

Mr Roberts concurred with this position and advised the Committee of NIIRTA's view that town centres are becoming both shopping locations and social locations, and welcomed the Bill as a means of potentially strengthening the social appeal of town centres.

Members then questioned the officials on a range of issues.

This session was recorded by Hansard

11.13 am The officials left the meeting.

Licensing of Pavement Cafés Bill – Departmental Briefing

11.13 am The following officials joined the meeting:

- Mr Liam Quinn, Head of Social Policy Unit, DSD
- Mr Gary McAlorum, Social Policy Unit, DSD
- Mr David Irvine, Social Policy Unit, DSD

The officials noted that the Bill had generally been welcomed by stakeholders. They addressed issues raised by stakeholders in the oral evidence sessions and provided clarification as required.

They emphasised that the Bill would allow all councils to respond to individual circumstances in their own areas and require councils to implement the requirements of the Bill including enforcement.

Members then questioned the officials.

11.32 am Michael Copeland MLA left the meeting.

11.36 am Paula Bradley MLA returned to the meeting.

Members expressed concerns over the necessity for sufficient disabled access on public pavements; the regulation of advertisement boards, smoking and drinking areas in and near pavement cafés; and the necessity of stringent enforcement of the Bill's legal provisions.

Officials advised that the department would issue guidance for councils on the implementation of the Bill that they would be expected to follow.

This session was recorded by Hansard.

11.41 am Michael Copeland MLA returned to the meeting.

11.42 am The officials left the meeting.

[EXTRACT]

Thursday 7 November 2013

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mr Fra McCann MLA
Mr Sammy Wilson MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Stephen Orme (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Mr Stewart Kennedy (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Stewart Dickson MLA
Ms Dolores Kelly MLA

10.02am The Chairperson declared the meeting open to the public.

10.18am Michael Copeland MLA joined the meeting.

1. Licensing of Pavement Cafés Bill – consideration of issues and informal clause-by-clause

10.17am The following officials joined the meeting:

- Mr Liam Quinn, Head of Social Policy Unit, DSD
- Mr Gary McAlorum, Social Policy Unit, DSD

The Department addressed the Committee on the Licensing of Pavement Cafés Bill, addressing each clause individually and allowing the Committee the opportunity to raise any concerns in relation to each clause.

The Committee raised concerns regarding the time period for response to consultation on licences, the grounds for refusal of licence applications, the duration of a licence, the appeal process and public liability insurance in relation to Pavement Cafés. A potential amendment was also suggested to Clause 14.

The Department noted that they would be proposing a number of minor technical amendments to the Committee and agreed to provide the Committee with these in advance of its meeting on 14 November.

The Chairperson advised that the Committee is scheduled to read its clause-by-clause response formally into the record at its meeting of 21 November 2013.

This session was recorded by Hansard.

11.17am The officials left the meeting.

[EXTRACT]

Thursday 14 November 2013

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Gregory Campbell
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mr Stewart Dickson MLA
Mr Fra McCann MLA
Mr Sammy Wilson MLA

In Attendance: Mr Peter McCallion (Assembly Clerk)
Dr Kevin Pelan (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Stephen Orme (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Ms Allison Ferguson (Clerical Officer)

Apologies: Ms Dolores Kelly MLA

10:06am The Chairperson declared the meeting open to the public.

1. Licensing of Pavement Cafés Bill – Department’s Position on Committee Proposals

10:12am The following officials joined the meeting:

- Mr Liam Quinn, Head of Social Policy Unit, DSD
- Mr Gary McAlorum, Social Policy Unit, DSD

This session was recorded by Hansard.

The Departmental officials spoke to their paper, addressing issues that had previously been raised by Committee and stakeholders throughout the Committee Stage, and also outlined a number of technical amendments that the Minister proposed to introduce.

There was discussion around consultation with Planning Service, the requirement for premises to display their licence, the requirement for a business to take out public liability insurance.

10:24am Trevor Clarke joined the meeting.

The Chairperson drew members’ attention to a memo from the Committee Clerk outlining other issues that the Committee had discussed throughout the Committee Stage and that they may wish to include in the Bill Report as recommendations.

The Chairperson noted that the Committee would return to the Bill at the meeting on 21 November for the formal clause-by-clause and potentially to propose items to be included in guidance.

10:27am The officials left the meeting.

[EXTRACT]

Thursday 21 November 2013

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Stewart Dickson MLA
Mr Michael Copeland MLA
Ms Dolores Kelly MLA
Mr Fra McCann MLA
Mr Sammy Wilson MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Patricia Casey (Bill Clerk)
Mrs Angela McParland (Assistant Assembly Clerk)
Mr Stephen Orme (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Miss Allison Ferguson (Clerical Officer)

Apologies: No apologies.

10:05am The Chairperson declared the meeting open to the public.

1. **Licensing of Pavement Cafés: Formal Clause-by-Clause**

10:09am The following officials joined the meeting.

- Mr Liam Quinn, DSD
- Mr Gary McAlorum, DSD

The officials briefed the Committee on the consolidated list of amendments brought forward by the Department. Officials then took questions from the Members.

The Committee then moved to formal clause-by-clause consideration of the Bill.

Clause 1 was agreed, as amended by the Department.

Clauses 2 to 13 were agreed as drafted.

Clause 14 was agreed, as amended by the Department.

Clauses 15 to 18 were agreed as drafted.

Clause 19 was agreed, as amended by the Department.

Clause 20 was agreed as drafted.

Clause 21 was agreed, as amended by the Department.

Clauses 22 to 29 were agreed as drafted.

Clause 30 was agreed, as amended by the Department.

Clauses 31 and 32 were agreed as drafted.

The Schedule was agreed, as amended by the Department.

This session was recorded by Hansard.

10:24am The officials left the meeting.

[EXTRACT]

Thursday 28 November 2013

Room 29, Parliament Buildings

Present:

- Mr Alex Maskey MLA (Chairperson)
- Mr Mickey Brady MLA (Deputy Chairperson)
- Mr Jim Allister MLA
- Ms Paula Bradley MLA
- Mr Gregory Campbell MLA
- Mr Trevor Clarke MLA
- Mr Michael Copeland MLA
- Mrs Dolores Kelly MLA
- Mr Fra McCann MLA
- Mr Stewart Dickson MLA
- Mr Sammy Wilson MLA

In Attendance:

- Dr Kevin Pelan (Assembly Clerk)
- Ms Claire McCanny (Assistant Assembly Clerk)
- Mr Stephen Orme (Assistant Assembly Clerk)
- Mr Stephen Todd (Assistant Assembly Clerk)

10:06am The Chairperson declared the meeting open to the public.

1. Licensing of Pavement Cafés Bill – Draft Bill Report

Agreed: The Committee agreed to formally consider the Draft Bill Report at the next meeting, on 5 December.

This session was recorded by Hansard.

[EXTRACT]

Thursday 5 December 2013

Room 29, Parliament Buildings

Present: Mr Mickey Brady MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Mr Trevor Clarke MLA
Mr Michael Copeland MLA
Mr Fra McCann MLA
Mr Stewart Dickson MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Ms Claire McCanny (Assistant Assembly Clerk)
Mr Stephen Orme (Assistant Assembly Clerk)
Mr Stephen Todd (Assistant Assembly Clerk)
Miss Allison Ferguson (Clerical Officer)

Apologies: Mr Alex Maskey MLA (Chairperson)
Mr Sammy Wilson MLA

10.09 am The Committee commenced in closed session.

11.03 am The Chairperson declared the meeting open to the public.

1. Licensing of Pavement Cafés Bill: Draft Report

The Deputy Chairperson reminded members that the Bill had been agreed clause-by-clause at the meeting of 21 November, and sought agreement on the Committee Report.

Agreed: The Committee agreed paragraphs 7-16 of the Report, outlining the Committee's recommendations in relation to the Bill.

The Committee agreed paragraphs 17-25, which is the Introduction of the Bill Report.

The Committee agreed paragraphs 26-113, which records the oral evidence taking during Committee stage, both from stakeholders and the Department.

The Committee agreed paragraphs 114-150, outlining the Committee's clause-by-clause scrutiny of the Bill.

The Committee agreed paragraphs 1-6, the Executive Summary of the Report.

The Committee agreed "That the Report be the Sixth Report of the Social Development Committee to the Assembly."

The Committee agreed for the Report to be printed on 12 December 2013.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

13 June 2013

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 | <i>Department for</i> |
| Mr Liam Quinn | <i>Social Development</i> |

1. **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.
2. **Mr Liam Quinn (Department for Social Development):** Yes. I am trying to get it all done in the one day.
3. **The Chairperson:** All right. Again, members, the briefing paper is in your packs, and the session is being recorded by Hansard.
4. It is over to you and Gary.
5. **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.
6. 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.

7. 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.
8. 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.
9. 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.
 10. 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.
 11. **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.
 12. 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".
 13. 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.
 14. 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.
 15. 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.
 16. 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.
17. 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.
 18. 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.
 19. 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.
 20. We are happy to take questions.
 21. **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?
 22. **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.
 23. **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?
 24. **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.
 25. **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?
 26. **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.
 27. **The Chairperson:** OK, thank you.
 28. **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?
 29. **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.
30. **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.
31. 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?
32. **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.
33. **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?
34. **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.
35. **Mr Campbell:** Will there be a monetary limit beyond which a council could not go and below which it could set?
36. **Mr McAlorum:** No. A council would have to be able to justify its fees and demonstrate that they are cost-neutral.
37. **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.”*
38. 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.”?
39. **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.
40. **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.”?
41. **Mr McAlorum:** Yes. It is a facility whereby the pavement cafe is licensed, so no offence is being committed.
42. **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?

43. **Mr Quinn:** There is no licensing scheme.
44. **Ms P Bradley:** None at all, yet that has been happening for many years?
45. **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.
46. **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.
47. 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?
48. **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.
49. **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.
50. **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.
51. **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?
52. 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?
53. 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.
54. **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.
55. **Mr Copeland:** So, does that mean that an appeal mechanism exists?
56. **Mr McAlorum:** Yes, indeed.

57. The legislation provides for a council to require an applicant to take out public liability insurance and any other insurance that it considers necessary.
58. **Mr Copeland:** Does that mean those that are specific to the outdoor activities?
59. **Mr McAlorum:** Yes, indeed.
60. **Mr Copeland:** OK.
61. **Mr McAlorum:** HMRC is an interesting issue.
62. **Mr Copeland:** I know it is.
63. **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.
64. **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.
65. **The Chairperson:** That would be a matter between the tax people and the business, really.
66. **Mr McAlorum:** That would be our initial impression.
67. **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.
68. **Mr McAlorum:** Yes.
69. **The Chairperson:** Do any other members have any questions?
70. **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.
71. 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?
72. **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.
73. **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.
74. Since no other members have indicated that they wish to speak, I thank you, Gary and Liam, for your presence here this morning.

3 October 2013

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 | <i>Department for</i> |
| Mr Gary McAlorum | <i>Social Development</i> |
| Mr Liam Quinn | |

75. **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.

76. **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.

77. **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.

78. 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.
79. **Mr David Irvine (Department for Social Development):** I will give members an outline of the Bill rather than go through all 32 clauses.
80. 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".*
81. 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.
82. 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.
83. 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.
84. 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.
85. **The Chairperson:** Thank you very much for that, David, Gary and Liam.
86. **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.
87. **The Chairperson:** I will bring in a couple of members and then ask the officials to respond.

88. **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”.*
89. 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?
90. 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?
91. **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.
92. **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.
93. **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 —
94. **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.
95. **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?
96. **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.
97. **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?
98. **Mr Clarke:** Yes.

99. **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?
100. **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.
101. **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."
102. 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.
103. **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.
104. **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?
105. **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 —
106. **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.
107. **Mr McAlorum:** Yes. It is about whether a council could justify a decision. That is right.
108. **Mr Clarke:** What is the purpose of an exemption then?
109. **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.
110. 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.
111. **The Chairperson:** You may want to return to that, Trevor. You obviously do not need to decide today. Fra.
112. **Mr F McCann:** My points have been covered, Chair.
113. **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?
114. **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.

115. **Mr Wilson:** What about restricting the length of time that consultees have to respond?
116. **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.
117. **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.
118. **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 —
119. **Mr Wilson:** Sorry, I must have missed that. What is the length of time?
120. **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.
121. **Mr Wilson:** What is that period?
122. **Mr Irvine:** It is up to each council, but they will have to announce what that period is in advance.
123. **Mr McAlorum:** Reasonableness will come into it. It is what is considered reasonable.
124. **The Chairperson:** Is there no guidance on what a reasonable time might be? That is probably very important.
125. **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.
126. **Mr Wilson:** Will that be in guidance rather than in the legislation?
127. **Mr Quinn:** Yes.
128. **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.
129. **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.
130. **The Chairperson:** Could that be looked at, Liam?
131. **Mr Quinn:** Yes.
132. **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.

10 October 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Jim Allister
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Trevor Clarke
 Mr Michael Copeland
 Mr Stewart Dickson
 Mr Fra McCann

Witnesses:

| | |
|---------------------|--|
| Mr Trevor Martin | <i>Building Control, Belfast City Council</i> |
| Mr James Cunningham | <i>Institute of Licensing</i> |
| Mr Stephen Hewitt | <i>Licensing Forum</i> |
| Mr Derek McCallan | <i>Northern Ireland Local Government Association</i> |

meet all members on a shared basis because this information was drawn from all councils, and we were requested to make this joint presentation. The officers represent different professional officer groups. Trevor is head of building control at Belfast City Council, James represents the Institute of Licensing, and Stephen represents the Local Government Licensing Forum.

133. **The Chairperson:** I formally welcome Trevor Martin. How are you, Trevor? Long time, no see. I also welcome Derek McCallan, James Cunningham and Stephen Hewitt. You are very welcome to the Committee again, gentlemen. I apologise if you had to wait in the corridor while the Committee was in closed session. I leave it to you to make the presentation.

134. **Mr Derek McCallan (Northern Ireland Local Government Association):**
 Thank you, Chair, for your welcome. I realise that, like so many people, you are time-poor, so we will be as compelling but as technical as possible. The representative body for local government is the Northern Ireland Local Government Association. Because of a flight delay and a business contract worth quite a lot of money, the political members who were hoping to be here were not able to come, so you will have to do with the apolitical representatives on this occasion.

135. Again, renewed thanks and we are pleased to have an opportunity to

136. As a sector, we have voiced concerns for several years about how the development of a café culture is being curtailed by the current legislative requirements, so we are appreciative of the proportionate and reasoned approach that Roads Service has taken to this issue. At times, it is important to commend work that is done as opposed to creating a wish list of negativity.

137. Therefore, we are supportive of the introduction of legislation that enables and regulates pavement cafés. We are keen to work with the Committee to ensure that the Bill is implementable as well as robust. We are also keen to work with the Department to develop a robust working protocol. This is another good example of working collaboratively and joining things up. If this is consistent with, for example, how we approach in councils entertainments licensing, you will not have homogeneity but you will have consistency in enforcement and economic promotion.

138. We welcome the approach; it favours approval and we favour approval. We would like to limit the burdens on businesses. However, we also wish to ensure that councils can control effectively those traders who do not provide high-quality, safe and appropriate facilities because enforcement and promotion are one and the same in importance.

139. We want town centres, as do you and every sane person in this country, to be vibrant, well managed, attractive to

- visitors and tourists, contributing to the general well-being of communities, and to have the disabled and visually impaired as equal partners. That is the enforcement side.
140. To ensure that that is possible, we have a number of comments on the Bill. I will ask James to make a few points, and he will try to make a technical issue as compelling as possible.
141. **The Chairperson:** Is “sane person” a technical term?
142. **Mr McCallan:** Absolutely. *[Laughter.]*
143. **The Chairperson:** OK, thank you, Derek.
144. **Mr James Cunningham (Institute of Licensing):** Chairman and members of the Committee for Social Development, I thank you for the invitation to provide oral evidence. Although I represent the Institute of Licensing, which is the professional body for licensing practitioners throughout the United Kingdom, I am, with the agreement of my colleagues, presenting for all of us. This response was drafted and agreed by each of us on behalf of our associated bodies. In drafting the response, we consulted colleagues in Great Britain and the Republic of Ireland on how they license pavement cafés, and sought advice regarding issues that they have experienced.
145. There is a lack of consistency across the various jurisdictions in these islands on what legislation is used to license pavement cafés because there is no national legislation. We commend the Department and the Committee for introducing regional legislation, as it encourages consistency.
146. **The Chairperson:** Sorry to interrupt you, James, but I remind members that speaking notes are in their tabled items. I should have mentioned that earlier.
147. **Mr Cunningham:** First, I will deal with the definition of a pavement café in clause 1(1). The Bill defines a pavement café as a business involving the supply of food or drink in or from premises that place furniture in a public area for use by customers. The intention is that we will have al fresco dining and drinking outside cafés and bars, which is welcomed. However, from our interpretation of the wording of the proposed legislation, a consequence will be that any premises providing any form of food or drink, even from a vending machine, can apply. That could mean that a taxi depot, a bookmakers or an amusement arcade could apply, but I do not believe that that is the intention of the legislation, and that needs to be clarified.
148. Clause 1(2) deals with public and private spaces. The current definition of a space to be licensed under the proposed legislation is a public area. We believe that that definition will cause problems for regulators and could even disenfranchise some café and bar owners. For example, in many town and village centres, especially where old houses have been converted to shops and cafés, the existing gardens at the front have been removed and paved over and effectively have become the pavement over which the public transverses freely. There is therefore, to the public, and often the owner, no distinction in ownership or usage of the land.
149. There is a distinction in the legislation, however, between a private area, ie in the ownership of the building, which is not licensable, and a public area under the control of a statutory agency, such as DRD Roads Service, which is licensable. The legislation as it stands may result in a district council licensing some, but not all, premises on the same stretch of road where tables and chairs are placed on the footway depending on whether the portion of land is private or public. That means that we will be exercising controls on licensed pavement cafés in a public area while premises in a similar location, but on private land, may fall outside the scope of those controls. That will lead to confusion and claims of unfairness for those affected, and will not foster consistency, which we know the café

- owners and federations that represent them want.
150. The supply and consumption of alcohol, the conduct of patrons and smoking are dealt with in clause 29. Conversely, that private/public land distinction will work in the opposite way. If a café or bar can be licensed as premises with a liquor licence and a pavement café licence, it can allow patrons to consume alcohol without breaching the alcohol by-laws. If similar premises cannot be licensed as a pavement café because of the land issue, it will need to make an application to the County Court for the area outside its premises to be included in its liquor licence to supply and consume alcohol, as it will not be exempt from complying with the alcohol by-laws through the possession of a pavement café licence. That could lead to a two-tiered licensing system, with a cost differential associated with the two processes for the premises.
151. We suggest that obtaining a pavement café licence may be substantially less onerous than going to the County Court, but that option is not available to premises with private land. In order to rectify that, we suggest that the Committee examine the definition of public land contained in the street trading legislation for Northern Ireland. That definition includes a road, pavement or any other area not within permanently enclosed premises, within 10 metres of a road or footway, to which the public has access without payment.
152. On the design, layout, style and quality of a café, we believe that the Bill will allow councils a degree of flexibility in determining applications where tables and chairs cannot be placed immediately outside a premise. However, we are concerned that that broad flexibility may lead to differing standards and cause future problems of parity. It has also been suggested that councils physically mark the location of the pavement café, such as with stainless steel studs or by marking the ground with paint. There is no such power in this legislation. That problem also arises with the Street Trading Act, as there is an inability to mark pitches, and that has proved a problem for both traders and council officers.
153. Disability access issues are a major concern for all parties, not only in relation to disability access in the street café area itself, but also in relation to how the café area has now created restrictions on the pavement width and how that impacts with other possible obstacles in the area, such as street lighting and bins, especially for those who are partially sighted. The Committee could include as a statutory consultee a group such as Disability Action, which may be best placed to advise councils on the requirements needed for each application, to try to ensure compliance with the Disability Discrimination Act. However, that would impose significant resource requirements on those organisations.
154. Administration and fees are dealt with in clause 12. 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 already struggling businesses in the area. We suspect that the difference will come via rates or from other sources, such as a reduction in service or other areas of council work, to fund that new function. To assist both councils and business, we urge the Committee to consider some form of funding for councils or grant funding for applicants to cover the cost full or to provide assistance to keep costs to a minimum without affecting rates or a reduction in council services. We have noted that some councils have asked for fees to be set centrally. Although that may allow for a degree of consistency throughout the Province, it also restricts the council from setting charges to suit their own needs. I draw the Committee's attention to a recent landmark ruling from the Court of Appeal in May 2013 in the case of *Hemming versus Westminster City Council*, which looked at how councils set fees and that councils cannot charge more than the authorisation procedures themselves.

155. Clause 4(2) deals with limited grounds for refusal of a licence. As we have already stated in our written submission to the Committee, we are concerned that the grounds for refusal do not cover enough eventualities and, as such, weaken the options for councils to bring about effective control, which may prove problematic in the longer term. At present, there are no grounds to refuse where the activity will cause environmental problems or detract from the amenities of the adjacent retailers or occupiers; for example, if there are smells from food, alcohol or smoke close to a residential property or problems with noise from customers who cause nuisance and annoyance. There are no grounds to refuse if tables and chairs, et cetera, are not suitable for their use or where the overall design is an eyesore and inappropriate for the area.
156. Clauses 14 and 15 deal with enforcement. In order to ensure that the Bill complies with the better regulation principles, there needs to be more enforcement sanctions to cover minor infringements. At present, apart from revocation and suspension for breach of licence conditions, which are both quite draconian measures, and the power to remove tables and chairs, councils have no powers. We recommend that consideration be given to the introduction of a moderate fixed-penalty scheme as a cost-effective means of enforcing that piece of legislation for both councils and licensees and to include additional offences for non-compliance with licence conditions. For example, a fixed penalty would be used when a number of warnings had already been given and there was still no compliance instead of suspending a licence for minor licence breaches, such as when a pavement café has not displayed its licence, the furniture has not been removed at the end of trade or the licensee is spreading themselves out and using more space than is licensed for.
157. With regard to commencement of the legislation, I know that it has been suggested that the legislation may be implemented fully by the summer or autumn of 2014. When the Department is considering the commencement date, consideration should be given to a transitional period for implementation to allow councils an opportunity to consider applications from already established pavement cafés. Otherwise, councils may need to deal with a large number of applications in a short period, which will place a significant administrative and resource burden on members and officers. As I understand it, RPA is imminent in 2015. With shadow councils in operation in 2014 with a raft of other important issues to deal with, pavement café licensing may not be prominent on the agenda, resulting in businesses being left feeling frustrated with the speed at which their application is dealt with.
158. Finally, Chairman, model terms and conditions for technical and managerial provisions are dealt with in clause 27. In the Bill, there is a reference to making provisions by regulation. As I have stated a number of times throughout the presentation, we firmly believe and recommend to the Committee that consideration be given to introducing some form of model terms and conditions from a technical and managerial perspective that would help to ensure consistency of approach and to provide clear guidance to councils and industry on the intent of the legislation. The Committee advised that similar provisions exist under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, which enables councils to issue an entertainments licence subject to such terms, conditions and restrictions as may be determined. However, in doing so, they have to have regard to the model terms, conditions and restrictions that are published by the Department. A similar set of model terms could be drawn up by a working group that included councils, DRD's Roads Service, the PSNI, Pubs of Ulster, town and city centre management, Disability Action and other such groups. It could be drawn up and agreed quickly, need not be overly lengthy, but could be extremely beneficial to all parties. That

- would operate both as sword and shield for all concerned as it sets out clearly the requirements to run and operate an establishment that fits into the intention of the legislation. It would also ensure consistency across all councils, a level playing field for applicants and ensure that everyone's requirements are built into the agreed document. I know that it has been invaluable in the administration of entertainments licences.
159. Chairman, thank you once more for the opportunity to be heard.
160. **The Chairperson:** James, thank you very much for your extensive presentation. The broad approach that we are getting from you is that you support the legislation, but you draw attention to what you consider might be issues of concern. Trevor, last week you raised an issue.
161. **Mr Clarke:** Yes. I think that James is saying the same thing today.
162. **The Chairperson:** Yes, I think that he mentioned that.
163. **Mr F McCann:** Thanks for your presentation. Some of us on Belfast City Council were always arguing that we needed to change the way we were doing things, especially when it came to having a more European approach to pavement cafés, given the increase in tourism. Naively, probably, we just saw it as a straightforward movement. It is good to be steadied, especially by experts such as yourselves. It is about trying to find a happy medium that allows us to provide the pavement cafés but which has the regulations to allow us to deal with any given situation.
164. **Mr Allister:** You have drawn attention to a number of issues, the first of which is a possible problem with the qualification that if you provide any form of food or drink you are entitled to establish a pavement café. You are suggesting that even a vending machine would qualify you to do so. If you are right about that, how would you suggest tackling it? How do you solve that problem?
165. **Mr Trevor Martin (Building Control, Belfast City Council):** We thought of that, Mr Allister. We know what a pavement café looks like; everyone has it in their head that it is a continental thing. That is what we are striving to achieve, and we want to make sure that that is where we end up, once we start to police it.
166. We thought about wording the qualification so that if the venue is principally there for the provision of food and drink that would exclude the likes of a bookmaker's shop because it is not principally there for the provision of food and drink. The difficulty with that is that if a museum with a small café wanted to have a pavement café, that would fall outside the scope of the legislation. We also thought about things such as the premises having to have a food hygiene certificate issued by the local council. That, again, might ring-fence the sort of premises that we are looking at.
167. However, the wording needs to be such that, when we bring it in, the qualifying premises that can apply are true licensed premises or cafés, so that we do not get people coming in on the periphery, which is not what was intended. The wording should reflect that the significant reason why the premises exist is for the provision of food and drink.
168. **Mr Allister:** Well, would the stipulation about having a food hygiene certificate catch all genuine food providers?
169. **Mr Martin:** It might, but it may also let other people in who may apply for a food hygiene certificate. The significant reason for the premises is the best qualification. However, our difficulty is that we thought that that was the answer, but when we were talking about it in the café in this very building, we realised that if this building applied for a pavement café licence we would have to think about granting it because this building is not principally for the provision of food. Yet, it may be something that the café here might want. It is about trying to get a form of words that captures the sort of buildings

- that we want and excludes those that we do not want.
170. **Mr Allister:** Speaking of ring-fencing, what about the issue, particularly bearing in mind the needs of visually impaired people, of physical ring-fencing out on the pavement? In many European situations, the café is surrounded by a low screen that creates a physical barrier, whereas some of the photographs that have been supplied to us by people from whom we are to hear later show a very higgledy-piggledy approach to pavement cafés elsewhere. Do you have a view on that, Mr Martin?
171. **Mr Martin:** Yes. Our view — James expressed it at the end of his presentation — is that we want to ensure that the legislation does not impose a burden on licensed traders or cafés because they are already under serious pressure. However, we also want true pavement cafés. One of the ways in which we think we can do that — this happens because I also administer entertainment licensing — is through what are called model terms and conditions, which were drawn up when the legislation was introduced. They were drawn up by the trade bodies that were involved, by environmental health, by Building Control and DRD. You could establish technical requirements that a pavement café would have to meet, including that a pavement café would have some form of screening that would be set out in such a way as to protect people who were visually impaired. When we were thinking about this, I got in touch with Disability Action because disability is a major issue for anyone who has been down a street where these pavement cafés exist. Disability Action is keen on that idea, because you could bring it in when drawing up those conditions so that it could outline the requirements that need to be built into the legislation to keep its community safe.
172. Therefore, someone who was applying for pavement café licence would have to meet technical rules and provisions for a council to license them, and we would know that every council across the Province was exercising the same rules.
- I also assure people with disabilities that a licence would not be granted unless it met those conditions, and, if that worked, they would not have to be consulted on every application. It would mean that the conditions that they had agreed to were put into pavement café licences at the outset.
173. **Mr Allister:** Finally, are there any measures that could or should be taken to prevent the pavement café legislation simply becoming another way of legalising street drinking late at night?
174. **Mr Martin:** It is up to the council how it licenses it and what conditions it puts on licensing; that is why James touched on the distinction between public and private land. There are two sets of conditions that you can put on premises: the technical conditions of how they are laid out, and the managerial conditions thereafter. The managerial conditions, if drawn up, could include measures to do that. We got the intention from the Department, which wanted light-touch regulation, and we want light-touch enforcement. Light-touch enforcement will keep the cost of administration down, but to have it you have to set out clearly at the outset when people apply exactly what they are applying for and the conditions and restrictions on them. We will have to take that into consideration when we say clearly what the days and hours of use are. As James said, if someone were to infringe that, there would be some immediate measure that we could take such as a fixed-penalty notice to bring them back into line.
175. **Mr Allister:** The common perception of a pavement café is that it is very nice to sit on a sunny afternoon and have a cup of coffee, but if the same legislation means that, at 1.00 am on extended licensing, you can have people with all the attendant noise and drinking in the street, it may not be as attractive to local residents.
176. **Mr Martin:** You are absolutely right. We all know what a pavement café should look like, and that is the idea that we have in our head. We need to ensure

- that we have a mechanism whereby we get conditions down at the very outset before the legislation is drafted or introduced so that people know exactly what it is and, more importantly, what it is not.
177. **Mr Cunningham:** Mr Allister, the pavement café is on public land, and the council will have a control mechanism. We will be able to say that pavement cafés have to be finished at 7.00 pm, but, on our interpretation of how the Bill stands, if the pavement café is on private land we will not have that control mechanism.
178. **Mr Allister:** I thought that your example of the legislation on street trading was a good one to follow.
179. **Mr Cunningham:** The City of Westminster in London uses that to regulate its pavement cafés. It gives the council some control into private land so that it is not encroaching into a beer garden at the back of the premises but is dealing with the frontage.
180. **Mr Clarke:** I thought that I was the only one who was interpreting it that way, and I am glad that Jim shares my view. Jim is focusing on the situation late at night, and that is one aspect of it. I am also concerned because my reading of the wording is that it talks about the exemption from by-laws on alcohol in public places. The explanation that I got last week, which I am not entirely satisfied with, is that it is still up to the council to decide. If there is an exemption to a council by-law, I cannot see how a council can refuse to grant the licence, if you follow my point. If I own a public house and decide that I want to extend it to a café in an area that is designated as having no on-street drinking, the way that it is worded by the Department at the moment actually allows an exemption from that. I do not see how the council could refuse it based on the council by-law, because it has allowed for the exemption in the first instance. I do not know what your opinion is on that, but my reading is that the public house has been protected against the by-law.
181. **Mr Cunningham:** Yes, that is correct. That area as marked on a map will become exempt from the by-law.
182. **Mr Clarke:** That is my concern.
183. **Mr Stephen Hewitt (Licensing Forum):** I think that there is provision in the Bill to remove that exemption if there is a problem with disturbance. You can say that you are not allowed to have alcohol in that café area.
184. **Mr Clarke:** The problem with that is that it only comes after the problem.
185. **Mr Hewitt:** That is correct.
186. **Mr Clarke:** So someone will have suffered as a consequence of — in my opinion — a bad piece of legislation that allowed it in the first instance.
187. **Mr Dickson:** I have to leave the Committee shortly, but I want to address the issue of smoking. As someone who is rabidly anti-smoking, running the gauntlet of smokers at our hospital doors is offensive enough, and walking past pavement cafes where people sit outside and smoke is offensive. In fact, I would have thought that, for many businesses, it deters people from either sitting outside or running the gauntlet of smoke to get inside the premises to a smoke-free atmosphere. Have you any sense of how smoking might be dealt with in the legislation?
188. **Mr Cunningham:** As part of our research we looked across all these islands. In England, a number of councils, through their licence conditions, have said that you are not allowed to smoke in that area. In the South, they have gone down the line that it is an extension of the premises and you are not allowed to smoke in those areas. The flip side of that argument is that the pubs are saying that people now have to go outside to smoke and it is going to be very difficult to balance the decision for the trade as well as for the public. How that is managed is a concern for us, along with what we refer to as mass vertical drinking, when the area is no longer a pavement café; it becomes an extension. It is about putting those

- control mechanisms in, as we have said on a number of occasions, and those model terms and conditions. If we get those agreed with industry, they are the best mechanisms to deal with that, because it will be clear that that area has to have x number of tables and chairs and that, say, everybody has to be seated, or something along those lines. If that is agreed with all, nobody can say that you are targeting their part of the industry.
189. **Mr Dickson:** That is helpful. I am glad that there is recognition of that.
190. **The Chairperson:** Mass vertical drinking — is that people just —
191. **Mr Allister:** That is before they fall down. *[Laughter.]*
192. **The Chairperson:** That is another technical term.
193. **Mr F McCann:** Just on the question of street furniture, should designs for furniture be set to ensure uniformity or that it is presentable on the streets?
194. **Mr Martin:** I think that the answer is yes. The difficulty is what standard you set, but I think that there should be a standard, because if there is not, we will have complaints because one person will be providing quite nice furniture and the next person will be providing plastic chairs. You could have a situation where someone puts beer crates out and we sit on those. There should be some standard to make sure that it is what people expect it to be: a proper continental café-type culture. I am not quite sure how we set that standard. That is why I think that you should sit down with the industry to agree something that would be acceptable to councils but would not be an imposition. Without it, it would be open to the sort of situation that we do not want and we did not envisage.
195. **Ms P Bradley:** Thank you for your presentation. As someone who goes out in Belfast quite often, I know that we have these already in Belfast. They are all over the place in Belfast: in the city centre, on the Lisburn Road, at Botanic or wherever you go. I agree that we need legislation to look at all the issues that you have highlighted today. We also have them in place in bars in the city centre, where people go outside to stand and smoke and take a drink. Do we have any evidence through Belfast City Council that that has increased antisocial behaviour? Have there been any major complaints in relation to those areas outside pubs and restaurants?
196. **Mr Martin:** I am not aware that there have been major complaints about noise and nuisance. There have been complaints from pedestrians and Disability Action where these areas have infringed so far onto the pavement that people have difficulty getting past. I do entertainment licensing, and we have had complaints about people drinking outside bars. Although the introduction of the smoking legislation was very valuable on one side — as a non-smoker, I am very glad that it came in — it forced people to stand outside premises. We had a consequential rise in complaints from residents about noise on premises. It has settled down a bit where proper smoking shelters have been put in. In respect of entertainment licensing, we still get significant numbers of complaints about people smoking outside the premises as opposed to complaints about the music or the entertainment itself. The big issue that we have had, certainly in the city, is the blocking of pavements.
197. **Ms P Bradley:** As you state in your submission, many businesses — whether it is a cafe, a bar or whatever — own the part of the pavement in front of their premises, because it was once the garden of the house that was there. At my office in Glengormley, which I represent, I pay rent and rates for the area in front of my office. Can we dictate to people who are paying rates and rent for that area that they cannot use it because it is too close to the pavement or there is not enough room for people to walk by?
198. **Mr Cunningham:** We have made a suggestion to change the definition so that it includes private land; we used

- the example of street-trading legislation. As it stands, if you decided to put a stall outside your office, you will have to apply to the council for a street-trading licence — as silly as that sounds — because, even though it is privately owned land, you are effectively on the pavement, where the public go up and down. That gives a control mechanism so that you do not end up with the owner of an apartment putting, say, a hot dog stall outside. It is not about the council wanting to regulate everything; it is about having a control mechanism so that other properties are not affected by an antisocial behaviour order, for example.
199. It is likewise with the licensing of pavement cafés. Most pavement cafés will probably be very nice. However, our concern is that you could end up with something outside your property, particularly at night, and say, “Flip me, I wish that somebody could do something about that”, and the reply would be, “It is on privately owned land; it has nothing to do with you.” Councils have no real control and you are relying on the police to deal with it. However, if we had a control mechanism, it can at least form part of the licence.
200. **Ms P Bradley:** I agree with most of what you have said to us today. As an ex-councillor, I agree with you that we will be putting something else onto councils to legislate for. Therefore, it needs to be tightened up. There needs to be uniformity across all councils so that there is no ambiguity from one council to another. Some of the points that you have made have been very interesting. Thank you.
201. **Mr Cunningham:** The Institute of Licensing represents members right across the Province, and the same thing was coming back across the Province. It is just not me saying that it is a problem in Belfast.
202. **Mr McCallan:** I want to pick up on what Ms Bradley said about this not being all about councils. It received cross-party Executive support and the support of independent members. Given such consensus, we would like to work with you to make it happen.
203. **The Chairperson:** I appreciate that, Derek. As you said, there has been a positive response overall, but there are some negative issues that we have to address. You have articulated those issues very well this morning. Some of them have been raised by members before, so we are aware of them.
204. Thank you very much for your support for the Committee’s deliberations on this. We will no doubt have to return to this and have more significant discussions with you as we progress with the legislation. Derek, Stephen, Trevor and James, thank you very much for your presentation and patience this morning.

17 October 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Mr Jim Allister
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Trevor Clarke
 Mr Michael Copeland
 Mr Stewart Dickson
 Mrs Dolores Kelly
 Mr Fra McCann

Witnesses:

| | |
|--------------------|----------------------|
| Mr Andrew Murdock | <i>Guide Dogs NI</i> |
| Ms Elaine Orwin | |
| Mr Michael Lorimer | <i>IMTAC</i> |
| Mr David Mann | |

205. **The Chairperson:** We have an evidence session this morning with the Inclusive Mobility and Transport Advisory Committee and Guide Dogs Northern Ireland. I formally invite to the table Michael Lorimer and David Mann from IMTAC, and Andrew Murdock and Elaine Orwin from Guide Dogs. In the interests of best practice and in support of our delegation, I ask Committee members to introduce themselves going clockwise, and I will start. My name is Alex Maskey, and I am Chair of the Committee.
206. **Mr F McCann:** I am Fra McCann.
207. **Mr Brady:** I am Mickey Brady.
208. **Mr Copeland:** I am Michael Copeland.
209. **Mr Allister:** I am Jim Allister.
210. **Mr Dickson:** I am Stewart Dickson.
211. **Mr Clarke:** I am Trevor Clarke.
212. **Ms P Bradley:** I am Paula Bradley.
213. **Mr Campbell:** I am Gregory Campbell.
214. **Mrs D Kelly:** I am Dolores Kelly.
215. **The Chairperson:** Thank you very much, members.
216. Delegation, you are very welcome this morning. Members, you have a copy of the section of the clause-by-clause table at page 45 of the meeting pack. You also have Disability Action's comments. They have been included as they are relevant.
217. First, I want to formally apologise to you for the problems that we had last week. The Committee overran significantly. We then had to seek your indulgence to reschedule the presentation for this morning. I want to record our apologies on behalf of the Committee and thank you for your patience. Without any further ado, I invite you to make your presentation.
218. **Mr Michael Lorimer (IMTAC):** Thank you, Chair, for the opportunity to brief the Committee. Speaking on behalf of both organisations, we broadly welcome the decision to regulate pavement cafes. Over the past number of years, issues around pavement cafes have become an increasing difficulty for a range of disabled people and older people. Regulation is certainly long overdue. What we will express today is, I suppose, concern that light-touch regulation might make things worse. The key message that we want to stress to members is that access for pedestrians should be the priority in anything that we do. Pavement cafes should fit around the requirements for pedestrians, not the other way round.
219. Elaine Orwin will speak from a personal perspective. She is a guide dog user. Her dog, Chaz, is with her today. David Mann is a member of IMTAC and has also — I hope that he does not mind me saying so — recently been elected as the next chair of the Royal National Institute of Blind People (RNIB) in Northern Ireland. He will set out the benefits of effective regulation. Andrew Murdock from Guide Dogs and I will then set out the areas of the Bill that

- Guide Dogs and IMTAC feel need to be strengthened.
220. Without further ado, I ask Elaine to give her perspective.
221. **Ms Elaine Orwin (Guide Dogs NI):** I thank the panel for inviting us here today. It is very much appreciated.
222. As a pedestrian, my journeys involve use of the pavements with the assistance of my trusty guide dog, Chaz. Every one of my journeys involves using the pavement. Regularly, we are faced with obstacles such as cars that are parked on pavements, uneven surfaces, litter, inappropriately placed advertising boards and street furniture that obstructs our access along the pavement. In the same way as street furniture obstructs our access to cafes, quite often, chairs are placed in an area that obstructs my access to the cafe and my guide dog cannot then allow me to access the entrance. It is a major problem. It is impossible for my guide dog to then guide me in. He has also had to take me to the kerb when I have been unable to access the pavement because of obstructions. That, again, takes away from my self-esteem and independence in getting around with my dog.
223. Those obstructions have a major impact on my dog, causing him undue stress, and make our journey less pleasant and problem free than it could be and should be. Those negative experiences result in loss of confidence and a reluctance to return to that particular area. As a result, it takes away from my ability to go into that area and spend time and enjoy it as a normal service user. Getting independence with a guide dog has been amazing. All that we ask is that we have free access to the pavement and the services that we are using as ordinary pedestrians. Thank you very much.
224. **Mr David Mann (IMTAC):** Thank you, Elaine. Good morning, ladies and gentlemen.
225. I have just a tiny amount of residual vision. I use a long cane to get around outside. Like Elaine, I encounter a whole host of unnecessary barriers to my free movement on the pavement. The pavement should be a sanctuary from the relative danger of the carriageway. Actually, the Americans have got it right for once, if I can say that, when they call it the “sidewalk”, because it is for walking along, not just for walking across. It should be an area where you can exercise your right of free movement with confidence and in a relaxed manner. Far too often, it is not.
226. When it comes to pavement cafes, restaurants etc we have specific recommendations about how the regulations might accommodate that facility without impinging on the pedestrian area, so to speak. We like the concept of a quality walking corridor, which, I think, is a phrase that Roads Service has devised, that ensures that there will be a guaranteed area of a certain width in a straight line along the sidewalk. We recommend a corridor of at least 2 metres width of unrestricted movement. We have not just plucked that figure of the air. As you will see from our position paper, it is based on best practice elsewhere. It would enable, for example, a wheelchair user and a guide dog owner to pass without either having to give way or be squashed to the side.
227. It is important that cafes do not obstruct areas where people congregate, such as bus stops and pedestrian crossings. It is important that they are screened. Elaine referred to the possibility of ploughing into loose chairs and tables. It is important that pavement cafes are marshalled in that way. They would look a lot tidier as well as being less of a hazard, but that screening must be done in such a way that it does not impede access to the premises. It would be ironic if you had a restaurant that was basically accessible to, for example, a wheelchair user, but that accessibility was removed because of the way that the screens or the layout of the tables and chairs were arranged. That is in everyone’s interest; the business owner’s interest as much as that of the disabled pedestrian.

228. We want consistency across council areas. It would be confusing for everybody, businesses and pedestrians alike, if, for example, Lisburn, where I live, was thought to be a softer touch than Coleraine, for example. We want the same standards everywhere. That will help everyone.
229. Above all, we want effective enforcement of the legislation. If there is not effective enforcement, the whole exercise is a waste of time. Councils must have the resources and the will to ensure that the regulations are enforced for everybody's benefit.
230. Those are our specific requirements for the regulation of pavement cafes. Thank you.
231. **Mr Lorimer:** Thank you, David. I suppose that we will now touch on the specific comments that we have on the clauses of the Bill. I know that members have copies of our paper, but maybe to reinforce the points, I will invite Andrew to give the Guide Dogs perspective.
232. **Mr Andrew Murdock (Guide Dogs NI):** We identified a number of issues with the detail, one of which was that, when an application for a licence is being made, the proprietor should not only detail the dimension of the area that they want to apply for, but the positioning in relation to other street furniture, whether that be signposts, planted trees or anything else in the immediate environment. That would certainly impact on the minimum pavement width that is required for someone to navigate the pavement safely.
233. We are also looking for clarification or guidance for councils on what constitutes either "undue interference" or "inconvenience" to persons. We would very much like to see "persons" as "pedestrians" in that regard. With regard to the immediate street environment, we see issues with pavement cafes being located too close to crossing points or, as I mentioned, there are planted trees or other items in the environment. For us, that would constitute undue interference or inconvenience to the person.
234. The Bill allows for 25% of a cafe to be outside the planned or proposed area. We are looking for securities that the 25% that goes out of the planned area does not impact on other items in the street environment, for example, as I mentioned, being too close to crossing points or other street furniture.
235. Guide Dogs and IMTAC believe that every licence should be periodically reviewed and that no licensing arrangements should be valid indefinitely. It has to be reactive to changes to the street environment. We also seek clarification on what reasonable adjustments would be made so that blind and partially sighted people are aware of the notice of application, display of fees or how they can make rating submissions on licence applications.
236. **Mr Lorimer:** Finally, some of the issues from IMTAC's perspective will cover what Andrew said. Generally, we are concerned that the Bill is written in language that is generally permissive and does not provide adequate protections for pedestrians in particular. We would like clause 4(2) to be reworded and for clauses 14 and 15 to reflect that specific mention for access for pedestrians, rather than that language about "persons". We suggested that clause 6, which is on conditions, should include reference to access for disabled people and other pedestrians under the list of conditions.
237. Last week, I listened to the submission from the Northern Ireland Local Government Association (NILGA). We also have concerns that clause 1 is too broad with regard to what constitutes a pavement cafe. Obviously, we have a particular interest in those areas. We have started to see tables and chairs come out at places like hairdressers and convenience stores, where provision of food on the premises is not the prime function of those organisations. So, we want to see more clarity on that.

238. On the issue of what constitutes a pavement cafe, we do not see advertising boards and menu boards in clause 1(3). They should be included. In Belfast, for example, a lot of pavement cafes are well screened etc and then there are huge menu boards beside them, which really restrict the pavement to less than a metre in some places.
239. As I said, we do not want to see licences awarded indefinitely. Clause 5(5) indicates that there is potential for that to happen. There should be some sort of review of that.
240. That is our submission. We certainly welcome members' questions.
241. **The Chairperson:** Thank you, Michael. I remind members that page 45 of your packs contains the Department's response to various stakeholders' comments, organisation by organisation.
242. Thank you for your presentation. You will be aware of the Department's general response. Michael, I think that you referred to the legislation as being "generally permissive". The Department would offer the view that it wants the issue to be regulated, but in such a way that it is not more bureaucratic than necessary and that it eases the passage, so to speak — without any unfortunate pun intended. Do you have any particular response to that?
243. **Mr Lorimer:** It goes back to our response that the issue is always portrayed as something positive, which everybody welcomes, and that we want a cafe culture. I suppose that we do not feel as though the issue of obstruction of the pavement is ever raised. We made our point in our submission to the Committee that there is legislation that protects disabled people and promotes their rights. However, we believe that that should be built into legislation in the first place and it should not rely on disabled people having to fight retrospectively because the legislation is worded in such a general way. We do not see what the issue is with specifically mentioning pedestrians in the legislation. We feel that it is something that everybody should welcome.
244. On the issue of pavement cafes themselves, how is it in the interest of a business to block a pavement and restrict people's access? That does not make any sense. I do not know about anybody else, but I tend to avoid areas where I cannot use the pavement. We just think that it is a belt-and-braces approach, to be honest with you.
245. **The Chairperson:** That is fair enough; I appreciate that.
246. **Mrs D Kelly:** Thank you for your presentation. I am sure that we have all seen shops in many towns, particularly fruit and veg shops, that put their stalls out on the pavement, so there are already a number of obstacles. There are pavement cafes in the South of Ireland and in GB. What experiences can you draw on when it comes to this Bill? Do you believe that legislation elsewhere meets your requirements?
247. **Mr Murdock:** A lot of the evidence is based on the research that IMTAC carried out into what has been happening in council areas in the rest of the UK. From our perspective, they appeared to be inconsistent in their interpretation of the existing GB legislation. It was not consistent in each town, and, as Michael mentioned, we want consistency in each council area. Therefore, it is not good enough just to have the broad framework that councils can work within. We need to have stricter guidance on that.
248. **Mr Lorimer:** I might be wrong, but I think that we are probably the first to legislate specifically for pavement cafes. We looked at England, for example, where we believe there is a much more structured approach from local authorities and there is an awful lot of protection of access by way of policy. We feel that, because we are legislating, we should enshrine that protection in law as well.
249. **The Chairperson:** OK, thank you for that. I think David said that some places might be seen as a soft touch

- as opposed to other towns. You also mentioned that earlier.
250. **Mr F McCann:** I am one of the people who have seen the introduction of pavement cafes as the way forward in dealing with the increase in tourism but, unfortunately, have not taken into consideration the impact that it would have on other street users, including people who are blind or partially blind. I was arguing that, if pavement cafes were allowed, it was all to do with the type of street furniture that would be used. When the Bill was first mooted, did you have any discussions with the Department in order to give your opinion on the difficulties that it might pose? You said that there needed to be a free way of 2 metres on the pavement. There are some streets that may have a pavement that is only 2 metres wide. Do you think that there should not be any pavement cafes in streets with a 2-metre or less pavement width?
251. **Mr Mann:** Ideally, that would be the case. If the pavement is not suitable for encroachment, it should not be encroached upon. If anybody put tables and chairs on the carriageway, they would be removed in no time at all. They would be deemed not to be in the public interest because they were obstructing motor vehicles. The same principle should apply; it should not be acceptable to obstruct foot traffic. If a particular stretch of pavement is not wide enough to accommodate different uses, the needs of all pedestrians, but especially those with a disability, should be paramount.
252. **Mr Murdock:** Can I just add to that from a personal experience? For someone such as Elaine, who has to deal with those sorts of obstructions, it quite often means that she has to go round the obstacle and onto the road.
253. **Ms Orwin:** Can I add to that, Andrew? There are some streets that are very narrow. In those cases, where there are obstructions, people who would find them hard to access are effectively banned from them. That includes mums with pushchairs, wheelchair users and guide dog owners like me. All those people spend money as well. We spend money and we use those services, so obstructing those areas will make us reluctant to use them. In effect, people who could use those areas independently are being banned from them.
254. **Mr F McCann:** Did you have discussions with the Department?
255. **Mr Lorimer:** IMTAC and Guide Dogs NI responded to the initial consultation and proposals paper. We suggested that the whole thing should have been subject to a full equality impact assessment. Since the Bill was published, officials have briefed members of the committee and tried to reassure them. Therefore, there has been engagement with departmental officials. The message that you and we have got is that there are protections in the legislation, but we still do not feel that they are strong enough.
256. **Mr Dickson:** Both submissions refer to A-boards or sign boards. Such boards could just give the name of a cafe or display a menu — it does not really matter what is on them. The Department told us that, separately, those boards are subject to planning permission. My experience is that precious few of them have ever had or have ever even sought planning permission. I am sure that that it is the experience of most people around the table. Your suggestion that they should be included in the list of items that constitute a pavement cafe seems to be eminently sensible, and I support that.
257. **Mr Mann:** That is interesting. If they are subject to planning permission, which is not usually sought, what does that say about the burden of bureaucracy on businesses? Do they ignore the burden of bureaucracy? As Michael or Andrew said, a screened cafe might have a board on the far side of the screen, which reduces the size of the pavement.
258. **Mr Dickson:** The Department is dodging and saying that those boards require separate planning permission. That

- sounds as if the left hand does not know what the right hand is doing. Proprietors will rely on planning permission to plonk a board somewhere completely separate from the enclosed area, which can be contained, and people with a range of disabilities and others can use it.
259. **Mr Lorimer:** DSD officials told us that the protection for pedestrians is the fact that Roads Service is a statutory consultee. In our experience — A-boards being the primary example — Roads Service say that it can lift and carry out enforcement on A-boards, but the boards are back out again the following week. Roads Service is being seen as anti-business and picking on businesses, and it is almost a futile effort to try to control those signs. We feel that forcing Roads Service to police pavement cafes is neither fair nor effective.
260. **Mr Dickson:** I believe that A-boards and similar boards that move in the wind need to be contained in the pavement cafe area. If someone does not have a pavement cafe but wishes to have a board, he or she should seek planning permission from the relevant authority.
261. **Mr Brady:** Thank you for the presentation. David, you mentioned sidewalks. Pavements are for walking on, and if people, particularly those with a disability as you described, are obstructed, it is incumbent on the legislation and the relevant Department — the Department for Regional Development (DRD), the Department for Social Development (DSD) or the Department of the Environment (DOE) — to deal with it on those terms. It is difficult enough for people with disabilities to get around, and it is particularly so for someone with a guide dog. If cars are parked on pavements, it is also difficult for people who do not have a problem but who may have a buggy or a pram. If pavements are for walking on, no matter what happens with pavement cafes, that has to be taken into account and pavements must not be obstructed. If signs are obstructing a pavement, enforcement has to be carried out. It seems to be a fairly simple fundamental argument.
262. **Mr Mann:** Who has the problem? Is the problem that I am blind or that someone is putting a barrier in my way? It is incumbent on society to create an environment that is as barrier-free as possible and, in so doing, an environment that is pleasant for the population as a whole. I do not think that my rights as a citizen to move about are in conflict with other people's interests. Reference was made to pavement cafes being attractive for tourists. We are not Barcelona or Brazil. People want to sit in comfort, and I do not see why the concept of a thriving cafe culture cannot also include a thriving indoor cafe culture. It does not depend on tables and chairs on the pavement in the rain.
263. **Mr Brady:** In general, it is an indoor cafe culture here, taking into account our weather. We have no choice in that. There are periods when the weather may be more suited to being outdoors, but it goes back to the fundamental issue: pavements are for walking on, and the right to do that should be respected.
264. **Mr Campbell:** I welcome your presentation. I have seen good retailers, primarily food retailers, put out small circular tables with only one chair on either side to minimise their impact on a narrow footpath. I do not know whether this is possible, but, if a narrow pavement is immediately in front of a premises, would it be helpful if the legislation spelled out that at least a sufficient width of pavement should be available to pedestrians, including visually impaired pedestrians, as to retailers for their pavement cafe? In other words, at least 50% of the width of a pavement should be for pedestrians, and if that is not doable for retailers, they simply do not get a pavement cafe.
265. **Mr Mann:** Fifty per cent of what, though? That is the issue. Fifty per cent of one metre does not leave very much room.
266. **Mr Campbell:** That is what I meant. If someone was getting half a metre,

- obviously he or she could not provide a table and chairs, and pedestrians would get the full metre.
267. **Mr Lorimer:** Roads Service and DSD would have a clear idea of what constitutes sufficient pavement width when they look at public realm works. Accepted research states that the minimum width for inclusive pavements is two metres. Once a pavement is two metres or less in width, we have real problems in accommodating any furniture on that pavement. All sorts of pedestrians will start to be restricted — disabled people, parents with buggies, people with lots of luggage and shopping — who perhaps will have to move onto the roadway.
268. **Mr Campbell:** Is the essence of your contention that a footway of less than two metres in width should not be used as a pavement cafe?
269. **Mr Lorimer:** If a pavement cafe is designed well, screening will come out at least a metre, which will leave very little pavement space for pedestrians. The legislation should automatically state that we should not have pavement cafes in that sort of scenario or location. I know that that is difficult for historic places such as Londonderry/Derry.
270. **Mr Campbell:** That is clear enough. Thank you.
271. **The Chairperson:** The Department will argue that one reason for the legislation is to make sure that people should not have facilities such as pavement cafes where they are not appropriate. However, the question concerns what is appropriate, and your argument is that it is two metres.
272. **Ms P Bradley:** Thank you for your presentation. I read through your submission last night and, because I know Belfast, I recognised almost every cafe in the photographs. I have probably been in almost all those pavement cafes, and I enjoy the pavement cafe culture. However, I thought back to 20 years ago when I was pushing a pram around Belfast, and there would have been no way on earth that I would have been able to get past some of those, never mind someone who is visually impaired, which is absolutely dreadful.
273. The more we scrutinise the Bill, the more issues are highlighted and the more I see a need for the Bill to eradicate many of the points that you raise. As one of those people who uses pavement cafes quite often — maybe on a Saturday afternoon in Belfast for a cup of coffee — we do not think about a lot of the issues and problems for people such as you until they are put in front of us. We are getting this information, and it is teaching us and telling us that we need the Bill and that it must be fit for purpose. As I read your submission last night, it probably put more things into perspective than anything else that I have heard in relation to the Bill. I agree — the Committee also agreed last week — that we need consistency across all the councils and that nowhere can be different. It was a really good submission that brought it home to me that I use these places every day and do not think about how people get in, out or around them.
274. **Ms Orwin:** If there is not enough access, I have two choices: my dog will take me to the kerb, and then I am faced with the choice of having to go onto the road or to ask for assistance. My guide dog has given me joy in restoring my independence in getting along, but when that happens, another little bit of my self-esteem goes because I have to rely on people or put myself in danger. Those are my two choices.
275. **Ms P Bradley:** You should not be faced with those choices, and neither should a mother be faced with the choice of having to wheel a pram onto a road to get round a car. There are health and safety issues involved. Thank you; your submission has really highlighted a lot for me.
276. **Mr Allister:** Last week, departmental officials suggested that a number of your issues could be addressed through model guidance that could be issued through the licensing process as opposed to statutory provision. Would

- you care to comment on the suitability or viability of that?
277. **Mr Lorimer:** I listened to the NILGA presentation last week, and I thought that its proposal for a group of stakeholders to agree a broad outline of policy principles was sound. My difficulty is that we will be but one voice around a table of many in that scenario. We are relying on our voice being heard and given a priority. If access for pedestrians is written into legislation, we cannot avoid the issue. We cannot reduce the gravity of the issue if it is written into legislation. That is our bottom line, and then we agree the broad principles. I thought that the NILGA suggestion to develop broad policy proposals that would be adopted by all council areas is very good.
278. **Mr Allister:** What are the minimum requirements that you would like in the legislation?
279. **Mr Lorimer:** We have left our suggestions relatively broad. We simply want access for pedestrians to be mentioned in the legislation, because there are agreed standards.
280. **Mr Allister:** What about putting in the fact that all pavement cafes must be screened? Does that need to be in the legislation?
281. **Mr Lorimer:** One thing that we wanted in the list of conditions for pavement cafes was access for disabled people and other pedestrians. That leaves us the ability to negotiate what that means when it comes to the design of a pavement cafe. I understand that the people who write legislation do not want to make it so prescriptive, and there needs to be a bit of flexibility. However, we want a wording that gives us the protections to formulate those issues, such as the design of pavement cafes. We have a raft of guidance from across the water, which is very consistent on how pavement cafes should be designed.
282. **Mr Clarke:** Like my colleague, I have found today's evidence session very useful. It has brought a perspective that none of us had thought about. I probably have a different opinion on A-boards, in that I do not think that they should be there at all. If we are to screen an area that, as Elaine outlined, would remove the obstacle of tables and chairs, that area should be large enough for a business to advertise whatever it has to sell. It is unnecessary to create a further obstruction. Even in the absence of a pavement cafe, the very presence of A-boards can be dangerous. David said that we are not in Brazil or Barcelona, and Mickey talked about the rain, but there is also a fair amount of wind in this country. A-boards have not been useful. I enjoyed your submission and found it useful, but my only concern is that we should remove A-boards, full stop.
283. **Mr Mann:** A-boards are becoming much heavier, with solid bases and even electric currents connected to them, so they are more wind-resistant and more of a problem. It is no longer feasible, even for an enforcement official or an irate pedestrian, to pick up an A-board and move it. A-board is probably not the best generic term; they are more like sign boards or miniature hoardings.
284. **Mr Copeland:** I found your presentation extremely interesting. Maybe you could help me with a slightly different issue. If a partially sighted or visually impaired person is injured on a public footpath by a misplaced kerbstone, a crack, a pothole or whatever, is that treated differently by the public liability of, say, Roads Service? Will those operating pavement cafes have to pay particular attention to public liability insurance as it would affect a visually impaired or partially sighted person injuring themselves as a result of a pavement cafe? In other words, when it would be reasonable to assume that a fully sighted person would not injure him- or herself but a partially sighted or visually impaired person did, would the insurance details in those cases have to be enshrined in legislation to protect people who injure themselves using that public footpath?

285. **Mr Murdock:** I am not aware of any difference.
286. **Mr Lorimer:** I suppose that the requirement will be for cafes to have public liability insurance. If there were a claim, I imagine that an insurance company would want evidence that a proprietor had taken precautions to design a cafe in a way that would not cause injury. That reinforces the need for good design because if a cafe did not put in what is deemed to be good design practice, I am sure that an insurance company would be less likely to look on a claim favourably.
287. **Mr Mann:** I am not a lawyer but I think that the courts accept that a blind or partially sighted person, or a wheelchair user, could walk down any street at any time. Some streets are not more likely than others to have blind people on them. That is part of the provision, whether digging a hole in the road or displaying your wares. You have to take account of the fact that pavements are for all pedestrians all the time.
288. **Mr Copeland:** Although this sounds passé, for the purposes of the legislation, blind or partially sighted people are treated as if they had the entitlements of fully sighted people should they occasion an injury.
289. **The Chairperson:** No other members indicated that they want to speak. Does any member of the delegation want to add to what you heard?
290. **Mr Lorimer:** I do not think so. I think that we covered everything.
291. **The Chairperson:** I thank you very much, Elaine, Andrew, Michael and David, for being with us today, and I apologise again for last week. Thank you for the presentation and your responses to members' questions. Please be assured that your contribution is important in assisting the Committee in how we respond to this legislation. We very much appreciate your taking the time and making the effort to present to us. I have no doubt that your information will find its way into the legislation, hopefully
- in a way that assists your needs. Is that fair enough?
292. **Mr Mann:** That is great, and thank you.
293. **The Chairperson:** Thank you very much.

24 October 2013

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 Michael Copeland
 Mrs Dolores Kelly
 Mr Fra McCann

Witnesses:

| | |
|-----------------|---|
| Mr Glyn Roberts | Northern Ireland Independent Retail Trade Association |
| Mr Colin Neill | Pubs of Ulster |

294. **The Chairperson:** I welcome Colin Neill and Glyn Roberts to the Committee. The Floor is yours, gentlemen. You are well experienced in presenting evidence to the Committee.

295. **Mr Colin Neill (Pubs of Ulster):** I thank the Committee and the Chair for allowing us the opportunity to give evidence. I am sure that Glyn will second me on that.

296. Members are probably well aware of Pubs of Ulster as a voice for the pub industry in the Province and, hopefully, as a champion for the responsible retail of alcohol. However, we are also much more than that. As a membership organisation that covers pubs, bars, cafe bars, restaurants and hotels, we are the largest hospitality and tourism organisation in the Province. The Licensing of Pavement Cafés Bill is very important to us, because it covers that range of membership. I read some of the minutes from previous Committee meetings and saw some of the concerns that were raised. If the Committee is happy enough, I will touch briefly on some of those concerns to open the discussion.

297. Obviously, alcohol is always a major concern, particularly whenever we talk about pavement cafes. I reassure the

Committee that it is a concern for us as well. As a responsible industry, we do not want pavement cafes to be just an easy way to roll a boozer on to the street. That is not what it is for, and it is why we have been involved with the Department over a number of years since the inception of this concept. The Bill has a duty to consult with the PSNI where a pub licence is involved. A council can prohibit the granting of a licence if there is potential for disorder, and the police can bring of evidence that to the council. The Bill prohibits off-sales, meaning that the cafe society-type arrangement will allow consumption outside. There is also by-law exemption. The Bill does not exempt us from by-laws; it means that, if the automatic exemption is applied for and granted, councils can take the approach of not allowing alcohol sales in the by-law areas. That means that there is a redress. It keeps it simple for councils, which is important and is better than having to redraw every by-law to suit.

298. I noticed that there was some discussion on penalties and on having a greater range of penalties for breaches, as well as lesser penalties. As the industry body, we feel that the penalty of suspension or removal is appropriate. It may be the wrong term, but a healthy fear of the law often brings people into line. I think that there should be heavy penalties for breaches rather than small fines that people can take as part of the running cost. A decent penalty will keep the thing in order.

299. There is obviously the issue of whether these areas will become smoking areas. The Bill requires that, in the cafe society area, people are seated. I think that that will prevent them from being smoking areas. If you move to make the areas non-smoking, you will find that people will stand and smoke beyond them, blocking more of the footpath. So, there is a better way to manage it. I am a non-

- smoker, but we have to make provision for people to smoke in the right way and not to let these areas become smoking zones.
300. Disability access is very important to us in not only allowing people past on the footpath but allowing them into our members' premises. People with disabilities are a valuable customer base, and access for them is enshrined in law. It is important that whatever is put in place allows adequate footpath space to allow people with disabilities to pass. However, it has to be flexible because of the different widths of footpaths and different volumes of people in particular areas. I think that that is why it is important that councils have the power to decide what best suits their own area rather than taking a blanket approach. I did a bit of research. The Inclusive Mobility manual gives a minimum width of 2 metres, then 1.5 metres, and then 1 metre. So, it comes down to the particular situation. There will be areas where a pavement cafe is just not suitable, and I think that councils will make that call.
301. There also has to be flexibility with the furniture and enclosures. If we prescribe a certain type, that will impact on the footpath. There will be different levels, in that what you would want in the city centre may not be what you would want in a village or a seaside resort. So, I think that it is important that councils are allowed some flexibility on that.
302. As you will have seen from our response, cost is one of the major issues. The fact that the term that is used is "cost recovery" concerns us slightly, because how long is a piece of string? Under the economic pact from Westminster, there are moves to remove red tape and cost, and we are concerned that we are adding more. If you take a small restaurant or cafe, for example, you will see that figures of £250 for the first year and £100 a year after that are being knocked about. If you are running a 20% margin and you can use the area for only a limited time, you would have to sell £1,250 worth of goods just to pay that initial fee. You
- could use the area today but probably not tomorrow.
303. So, I think that we have to be realistic. I look at it from the point of view that we already pay considerable business rates. There are lots of areas, particularly in Belfast, where the cafe society exists and has grown. If we came in with a heavy charge, albeit with a bit of a concession, that would take away the opportunities that businesses have had. We should look at this as a method of giving businesses opportunities to stay in existence and to pay their rates. I know that councils were concerned about the extra burden and extra cost. However, if it is done at low cost and inspections are done alongside all the other inspections, such as those for health and safety and entertainment licences, there should be no real cost. We are really keen that this should be an opportunity for business rather than a charge against their operation.
304. **Mr Glyn Roberts (Northern Ireland Independent Retail Trade Association):** Just following on from that, we broadly welcome the legislation in the context of putting the social into shopping. As we have said in previous submissions to the Committee, the future of our town centres is as much social as retail. It is about developing our hospitality and cafe culture and making our town centres fun and making them destinations. So, in that context, we are very keen to engage on the Bill.
305. It should be seen with a sense of urgency, in that one in four shops in our town centres is vacant. As members know, that is not just the highest in the UK but twice the UK national average. So, as a matter of priority, we need to ensure that there is proper joined-up policy on town centres. Individual Departments have done some good things, but I think that we need better coordination. On a number of occasions, we have put to Ministers the need for the four main Departments at least — the Department for Social Development (DSD), the Department of the Environment (DOE), the Department for Regional Development (DRD), and the

- Department of Finance and Personnel (DFP) — to work together under an umbrella group called the “Northern Ireland Town Team” to ensure better coordination.
306. Broadly speaking, the legislation will bring us into line with the rest of the UK. I think that it could lead to the creation and controlled expansion of pavement cafes and support the thriving of a day-to-evening economy in our town centres. Alongside business improvement districts (BIDs), this is a step up for our town and city centres. It is positive that clause 4 places the onus on the council to grant the licence. In our opinion, each application that goes before councils should be considered based on the current circumstances and not on previous decisions that may have been made because of different historical conditions.
307. We need to ensure that accessibility is key. I met Guide Dogs principally about the growth of A-frames on pavements, which has obviously created problems for a lot of its members. Guide Dogs made some very valid points in its submission. We want to ensure that town and city centres and high streets are as inclusive for people with disabilities as they are for everybody else. At the end of the day, they are paying customers. That inclusivity is very much in the spirit of the Disability Discrimination Act, which was passed some years ago. A common sense, flexible approach is the way forward; that is very much the essence of the Bill. It boils down to fact that every town and city centre is different. Every pavement is different. Compared with streets in Belfast or other town centres, Hollywood, for instance, has very narrow pavements. Every town and city centre is different, so that flexibility is needed.
308. The wording of clause 6 is a bit vague. We need to ensure that there is a minimum standard for the furniture and so on that is put out on the pavement. Appearance is everything for town and city centres. So, we need to ensure that these areas contribute to a vibrant atmosphere in the town centres. In that sense, we say that, for a large part of the Bill, light-touch regulation is very much what is needed.
309. We also need to look at clause 6(3)(e). I think that it needs to be rewritten to specify that the liability of the pavement cafe falls to the owner and that, therefore, all pavement cafes should be required to possess the relevant insurance. That is crucial.
310. Clause 12 deals with fees, and it needs to ensure that the licensing scheme does not in any way disadvantage traders or make life difficult for them. As Colin said, many of those people are already paying a substantial amount in rates, so we need to ensure that there is light-touch regulation and a common sense approach to all this.
311. Generally, we are happy with the Bill. Obviously, a bit of tweaking to various clauses is needed, but, by and large, it is a step forward, alongside BIDs and things that other Departments do. I think that we can gradually turn around the fortunes of our town and city centres. Thank you for your time, Chair.
312. **The Chairperson:** Glyn and Colin, thanks very much. Before I bring in other members, I have a couple of questions. We dealt with the whole question of flexibility. Glyn, you referred to speaking to people in the blind sector. Where competing rights are concerned, disability rights advocates will argue that they need some degree of certainty to protect those people's rights. You said that you want places to be inclusive and so forth. How would we or the Department navigate through the question of the flexibilities or light-touch regulation that you are asking for? Some of the people who have presented evidence to the Committee said that they want certainty in this. They were asking for clearways of 2 metres and so on and so forth to allow those people to be able to progress down the street unhindered and unhurt.
313. **Mr Roberts:** Every town centre and every pavement is different. Some are wider than others. Obviously, A-frames

- are very important for a lot of our members, because every customer who comes through the door is vital in these very difficult economic times. The discussions that we have had with DRD on A-frames are about ensuring that there is flexibility rather than rigorous regulation. Guide Dogs put up a number of photographs of what it cites as good and bad practice. It put forward as good practice some tables being almost enclosed off the street so that you do not have chairs and tables spreading right on to the edge of the kerb and blocking the entire pavement. So, there are some sensible and practical things that can be done. Probably the best example of that is Ten Square opposite the City Hall, whose chairs and tables are enclosed so that they do not spread out on to the street. So, there are sensible things that can be done.
314. It gets back to the point that we very much want to see people with disabilities coming into our shops, restaurants and pubs, because, after all, they are paying customers. It sits with our vision of town and city centres as inclusive, shared spaces. Many people with disabilities rely on local shops, so we need to make it as easy as possible. That is why, if we approach this from a common sense position, there is room for flexibility for people who have disabilities as well as for pub, restaurant and shop owners. So, if we can approach it in that way, I am fairly sure that we can overcome such issues.
315. **Mr Campbell:** Further to the issue of inclusiveness, which Glyn mentioned, quite a few establishments have what might be regarded as internal guidelines for patrons on the wearing of tops and that sort of thing, particularly when there are sporting events on, for example. Most of those guidelines seem to work fairly well on most occasions.
316. I am just wondering how the legislation might be implemented in the small number of establishments where those guidelines are not used internally at the moment. If that were replicated for the pavement position, what steps could be taken to ensure that there was not a problem, which, at the minute, is contained inside those small number of places where there is not such a policy? If that policy were then re-enacted outside, there could be difficulties with people who are not patrons but who are out on the main road or on the pavement.
317. **Mr Neill:** Most premises will now have customer policies, whether it be on sports gear or behaviour and so forth. I think that it could be easily written in to the document that, in their application to the council, the premises are required to have a policy outlining customer behaviour and what is tolerable and what is not. Again, depending on the circumstances and the areas, it allows that flexibility. It is very hard to prescribe policy, and that is why such policies vary greatly from establishment to establishment.
318. **Mr Campbell:** Just so that I am clear, do you think that the councils should have in the application process that commercial premises go through a designation about restrictions or strictures on patrons and what could be worn?
319. **Mr Neill:** One council can control the hours that the area is available for use, but I think that it would not be unreasonable for councils to expect anybody who is applying to come forth with their own policy. The council can accept that in the context of the area, rather than just prescribing the rules. Most businesses nowadays would have that, and I think that encouraging them to have it through the Bill would help.
320. **Mr F McCann:** I have a couple of points. I have stated here before that I think that the introduction of the pavement cafe is long overdue. It has flourished elsewhere, but I understand and realise that, although the vast majority of either pub or restaurant owners operate under good practice, there are a number of people there who, no matter what you do, will try to take it the extra mile. Certainly, the presentation that the people from the blind sector gave last week opened up my eyes and told me that there are serious problems there.

- How do you cater for or legislate for people who just will not listen?
321. **Mr Neill:** It is one of the reasons that I touched on earlier. I think that the severe penalties should not be watered down. There is a clear line: if you breach the rules, the license is suspended or removed, rather than a £50 fine being given and then six months down the line, you can work with people. It is a black-and-white situation; it is about making sure that this is a plus to our town centres and villages and not a negative. Whether it is breaching the area that you are allowed to trade in, allowing rowdy behaviour or allowing the space to be a smoking area, I think that it should be clear that the penalty is that your licence is suspended until you can prove that you can operate properly and, if you cannot, you will not get it back.
322. **Mr F McCann:** You mentioned penalties. What is a decent penalty?
323. **Mr Neill:** I believe that the penalties in the Bill are immediate suspension or removal of licence. Those are strong; they are not watered down. I know that you could argue that there could be penalty points and a £100 fine if you do this, that or whatever. However, I think that people may get lax and, if they are making a reasonable turn out of it, the fine is just part of their profit margin, whereas if they have a fear of losing the licence, they will toe the line.
324. **Mr F McCann:** Thanks. I understand what you were both saying about there having to be regulations that determine and dictate what type of furniture is used. It does not have to be one fixed thing, but if you walk through Belfast city centre today, you will see that a lot of places have aluminium tables and chairs. They are all over the place. They are easily pushed out of the road, and they prove to be a blockage for people getting by. How do you deal with that?
325. **Mr Neill:** The existing problem in Northern Ireland is that the street furniture that we have is a halfway house. We do not have designated areas, and the furniture is what can be bought locally. On the continent, most of the street cafe furniture is smaller chairs and smaller tables. In some areas on the continent, there will be a row of chairs and tables along the front of the building. In other places, there will be a wider fenced-off area.
326. The Bill will allow businesses to go out and buy the proper furniture. There has to be a minimum standard, because the last thing that we want is people dragging a bench out from the back shed, and, all of a sudden, that is your cafe society. However, I think that if we are too prescriptive, we will just end up with what we have rather than better than that. If we do it right and allow it, there are good opportunities to have some really nice, attractive cafe furniture out on the street.
327. It is complicated, because how do you describe the quality of tables and chairs? I also think that local authorities should be allowed a degree of flexibility to say, "For our city centre, we want to have this quality. For our rural or seaside resort, it can be like that.". So, it has to be flexible. It is really about councils and businesses working in partnership, with the council having the ability to say, "No, that is not good enough.".
328. **The Chairperson:** Are members happy enough? I think that members are content, Glyn and Colin. That does not indicate the level of interest in the Bill; the Committee is very keenly interested in it. It is because we have heard a fair amount of this before. Is there anything else that you want to add?
329. **Mr Neill:** I will add one thing about the commencement date. As members will know, the Bill has been a long time in the making. I encourage the Committee to keep on line with the commencement date for the summer of 2014. If we delay because of RPA and other things, another year will be lost, and with more RPA matters, we might then lose the date again.
330. **The Chairperson:** Departmental officials are giving evidence following this session. My intention is to commence consideration of all the evidence at our meeting on 7 November. We will then

move swiftly into the clause-by-clause scrutiny, and the Bill will move out of the Committee's consideration. I concur with your sentiment that we should move swiftly and without any delay. Colin and Glyn, thanks very much and good morning.

24 October 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Trevor Clarke
 Mr Michael Copeland
 Mrs Dolores Kelly
 Mr Fra McCann

Witnesses:

| | |
|------------------|---------------------------|
| Mr David Irvine | <i>Department for</i> |
| Mr Gary McAlorum | <i>Social Development</i> |
| Mr Liam Quinn | |

331. **The Chairperson:** We have with us Liam Quinn, Gary McAlorum and David Irvine from the Department for Social Development (DSD). You are very welcome again, gentlemen. Folks, do you want to present your briefing to members?
332. **Mr Liam Quinn (Department for Social Development):** Thank you, Chairman and Committee. The Department has already provided the Committee with clause-by-clause comments on the issues that stakeholders raised in response to the call for evidence. Officials are here today to brief the Committee on key issues arising from stakeholders' oral evidence. We would like to make some introductory comments to summarise the Department's current position and to focus the discussion on the key issues that stakeholders raised.
333. We are very grateful to the stakeholders for taking the time to scrutinise the Bill and for providing such insightful and detailed comments on specific clauses. The Department is encouraged by the generally positive response. Colin and Glyn were, generally, very positive in the previous session about the Bill. There is broad recognition that the Bill will put the regulation of pavement cafes on a firm statutory footing and will foster the

necessary consistency and clarity for all concerned.

334. The Bill will provide councils with a flexible but robust legal framework to regulate an activity that has been part of the street scene for quite some time but that, regrettably, has been allowed to develop in a haphazard way. The Committee has been provided with photographic evidence of existing street cafes that are clearly inappropriate in their present location or layout and that are insensitive to pedestrians' needs. The Department wishes to assure members that there are sufficient safeguards in the Bill to ensure that such poorly designed pavement cafes will not be tolerated in the future.
335. We sense, from the evidence and from our discussions with disability interests, that stakeholders have fundamental concerns about the willingness of the relevant statutory authorities to implement the Bill fully. Those concerns may have prompted them to propose amendments to the Bill to ensure, as one stakeholder remarked in his evidence, a belt-and-braces approach to regulation. As you know, the Bill clearly places a formal statutory duty on councils to regulate this activity in the public interest. As observed by local government colleagues, Northern Ireland is the first region in these islands to promote a Bill that is specifically dedicated to the regulation of pavement cafes. There is, therefore, no question of councils opting out and simply allowing pavement cafes to continue to operate in the current unregulated manner.
336. As I mentioned in my opening remarks, the Bill seeks to balance the need for a robust regulation with the necessary flexibility for councils to respond to local circumstances. The legislation will be backed by comprehensive guidance that is informed by best practice elsewhere and prepared by DSD in conjunction

- with other agencies. That guidance will address important practical issues; for example, minimum access for pedestrians, design and enclosure of the pavement cafe area, the application process, consumption of alcohol, and circumstances in which a council may need to consider suspending or revoking a licence.
337. Although the terms and conditions of a licence will very much depend on the nature and location of the premises, the guidance will promote consistency of approach by councils. We wish to assure the Committee that councils will have to take seriously any guidance that the Department produces. As such, the Department does not believe that there is any compelling reason to amend the Bill to add a statutory power to issue guidance.
338. During the oral evidence sessions, stakeholders and members touched on a number of issues and themes that impinge on other agencies' statutory responsibilities. For example, there was a discussion about the placing on the pavement of commercial advertising, or A-boards, for which both the Planning Service and Roads Service have certain responsibilities. There was also discussion of environmental health issues, such as smoke-free legislation, for which the Department of Health, Social Services and Public Safety (DHSSPS) has statutory responsibility. Those issues will certainly be addressed in the guidance document that I referred to. However, it is important to note that the Department cannot really deal with those issues in a Bill that is designed to regulate pavement cafes. For example, we could specify that menu boards must be within the specified pavement cafe area, but other commercial premises also place A-boards on pavements. So, it would be outside the scope of this Bill to try to regulate A-boards.
339. If you would find it helpful, I will ask my colleagues to go through some of the main issues in a little bit more detail and to address some of the concerns that have been raised.
340. **The Chairperson:** OK, Liam, thank you for that.
341. **Mr Gary McAlorum (Department for Social Development):** Members will have a briefing paper that the Department supplied earlier. It identifies a number of key issues that stakeholders raised. So, if it is OK, it is our intention to go through those issues one by one and to pause at the end of each for questions.
342. As a general remark, the issues that have been raised are not new to the Department. They were touched on during the consultation and in our discussions with stakeholders. The first of those issues is the definition of a public area. Local government has asked for clarification about pavement cafes on private land. Fundamentally, the Department's policy position is that the Bill should not interfere with private landowners' rights.
343. It is suggested that the definition of a public area should be the same as that used in the Street Trading (Northern Ireland) Act 2001. It is fair to say that we have used the Street Trading Act as the model in developing the Bill. We believe that the broader definition can be justified for street trading because of the potential for nuisance that is associated with street traders, who are basically operating a business on the pavement and are here today and gone tomorrow. However, we do not think that the same justification applies for pavement cafes for commercial business premises that are settled in town and city centres.
344. I am happy to take questions on that.
345. **The Chairperson:** Thank you for that. All members will probably have something to say about disability rights for people who are visually impaired and so on. As you are aware, we have had very strong representation on those issues. Can you give us any comfort on how the legislation would protect those types of disability rights?
346. **Mr Quinn:** First, if enacted by the Assembly, the Bill will be an

- improvement on what we have currently in that, for the first time, pavement cafes will be properly regulated. The councils will have responsibility for ensuring that any pavement cafe that they license meets the standards required to allow access by all persons and does not restrict access by persons or vehicles. So, the onus is very much on the council to consult, first with Roads Service, and, secondly, with any other body that it feels it is necessary to consult. If a particular issue were to arise with disabled access, that could include Disability Action or another lobby group representing disabled people. So, it is an improvement on where we are now, really.
347. **The Chairperson:** We have had a number of references to A-board advertisements. Is it not possible for the various Departments to come together and agree one piece of legislation to deal with that? It seems a bit ridiculous that, in this day and age, you have to keep running to two or three Departments about A-boards.
348. **Mr Quinn:** With this Bill, the councils can specify that any advertising, such as menu boards, is within the licensed area. Legislation is already in place about access on pavements, and I believe that it is a matter of enforcement. So, Roads Service already has responsibility for ensuring that pavements are free for pedestrians, and, if someone is blocking the pavement with A-boards advertising a mobile phone shop, a grocery store or whatever it happens to be, that should be enforced.
349. **The Chairperson:** Does that mean that someone who has a complaint about that can go straight to the council, or do they have to then run to another Department?
350. **Mr Quinn:** As far I understand it, they would need to go to Roads Service, which is responsible for enforcing it.
351. **The Chairperson:** There is not a one-stop shop for people to make a complaint. Is there no way that that can be tightened up for people?
352. **Mr Quinn:** I think that that would require a different Bill, Chairman.
353. **Mr McAlorum:** In the longer term, that may be helpful. We are aware that planning functions will be transferring to councils, so they should be able to deal with more of these issues in-house, because there are planning and development considerations. Indeed, we are aware that, in Great Britain, a number of councils insist that the granting of a pavement cafe licence is subject to acquiring a planning consent. So, the two issues are inextricably linked. You will be aware, Chair, that we originally intended to make Planning Service a statutory consultee in the Bill.
354. **The Chairperson:** In the context of the Bill, is it not possible that, if a person wishes to make a complaint about A-boards, they should, in the first instance, be able to go the council, which can then proceed with Roads Service or whoever else? Otherwise, the citizen has to go and find somewhere else to take their complaint, whereas the licensing authority is the council.
355. **Mr McAlorum:** If the issue relates to a pavement cafe, the council will be their first port of call. We are expecting the council to develop closer working relationships with Planning Service when the system gets up and running.
356. **The Chairperson:** We all know what bureaucracies are like, so expectations are not always realised. That is not your fault, but I am just making the point that I do not think that I would like to rely on that expectation.
357. **Mr Campbell:** Returning to what Liam said, in any of the areas that we are talking about now, my view and, from what I have heard, that of most people, is that the legislation is a significant improvement on what we have at the minute. We are trying to deal with the small number of instances where people perceive that this will not end up as improvement for their accessibility from what it is currently. Looking at

- the case of visually impaired people, it seems to me that, for the most part in most instances, it will probably be an improvement, in that there will be pedestrianised zones and wide access routes. However, there are a small number of occasions where there are very limited facilities with just a couple of tables and a chair or no cafe culture. Under the legislation, there could be, but, because of restricted access and the narrowness of the pavement, it might end up that there are a small number of people whose accessibility past the cafe is more restricted under the new legislation than it is at the moment. It is trying to safeguard that. Now, we can take pedestrianised zones and the wider routes out of it and say that, for the most part, they will be OK. However, if we think about the smaller number of places with the narrow footpaths where there are no cafes at the moment but, under the new legislation, there may be, what comfort can we offer to people who envisage that their position will be worsened and not improved by the Bill?
358. **Mr Quinn:** The way that I see the Bill operating, and the way that it is intended to operate, is that an application would come in for a particular area. The council will probably know the width of the pavements in that council area, and it will know that it is unsuitable. So, it will be explained to the applicant at an early stage that there is no point in proceeding, because the pavement is simply too narrow. If they insist on proceeding, the Department for Regional Development's (DRD) Roads Service will have a view on the application, and its advice will be that it is simply too narrow, that the applicant does not have the minimum requirements to allow people or wheelchairs or prams or whatever to pass, so the application for that area should not be granted.
359. **Mr David Irvine (Department for Social Development):** Further to that, if somebody then decides to put out a pavement cafe, but it is not licensed, the Bill will give councils the power to remove the cafe furniture. So, I think that that is also an important safeguard for disabled people.
360. **Mr Clarke:** Following on from what you said and from what Gregory is saying, yes, we are moving on, but when I listen to Liam and Gary, it seems that it is the case that you need to go to someone else about the boards. We nearly need to buy another board to tell members of the public where to go to complain about the boards that are already there. I think that there is utter confusion with this, and I also think that, when we are trying to regulate the pavement cafes, we should be trying to incorporate that issue into the Bill to try to make it less onerous on members of the public. Each of us who runs constituency offices already get phone calls about some of the most bizarre things, because people do not know where to go. So, I think that there is a real opportunity here for DSD to grab this thorn and try to deal with it as opposed to saying, "Planning Service, the council or Roads Service could do it, but we do not want to do it."
361. **Mr Quinn:** I understand the member's point. Clearly, there is an issue with advertising various properties and commercial enterprises in our town centres and on the streets.
362. The other issue is access for pedestrians in these areas. Unfortunately, it falls outside the scope of the Bill and of DSD. Advertising is a matter for the Planning Service, and access on pavements is for Roads Service.
363. **Mr Clarke:** The problem that I have with that is that the consequence of some of these existing cafes means that part of the advertisement is advertising what they are doing in the cafe. I think, Liam, that if you went away and used your imagination, surely you would find enough people in the Department who are smart enough to try to incorporate that into the Bill. Although we are going to regulate cafes, which is a good thing, and we are going to try to do that in a uniform fashion, we have a system where A-boards, as you both said, may be Roads Service's responsibility or

- they may be the council's responsibility. That is not working, and it is not going to work until someone decides that, now that we are going to do this for the cafe culture, we should incorporate the signage into the Bill so that if the A-board is advertising the cafe, it can be brought into the legislation.
364. **Mr Quinn:** If the board is advertising that cafe or advertising its menus or wares, it can be brought in to this legislation.
365. **Mr Clarke:** That is a step forward.
366. **Mr Quinn:** It would mean that the council could put down a condition to say that the pavement cafe must be enclosed with a barrier and that anything relating to furniture, umbrellas, advertising of menus or whatever must be within that area. What the Bill cannot do is deal with a mobile phone shop, for example, that puts an A-board outside to advertise its deal of the week. We can deal with the pavement cafe issue.
367. **Mr Clarke:** As long as we are specific in that.
368. **Mr McAlorum:** Legislatively, that is very clear. Clause 1 sets out very clearly what type of furniture would be permitted in a pavement cafe.
369. **Mrs D Kelly:** On Trevor's final point about where that all could be tidied up, I wonder whether there is any flexibility in the handover of some of the functions from DSD under the RPA arrangements. Could that be examined?
370. **Mr Quinn:** In what particular regard?
371. **Mrs D Kelly:** In establishing responsibility for the determination around those A-boards.
372. **Mr Quinn:** Responsibility for advertising lies with Planning Service. It is a DOE matter.
373. **Mrs D Kelly:** I know that.
374. **Mr McAlorum:** That is not a function that we will be transferring.
375. **Mrs D Kelly:** No, but we are asking why there cannot be interdepartmental agreement on that. This is the problem that we get, and, as I am sure that Trevor knows, not only do the people get the runaround from constituency offices but constituency staff and MLAs get the runaround from Departments, Roads Service, DOE and councils. Surely if there is an opportunity to have some creative thinking and cross-departmental working, RPA is the vehicle in which to do it.
376. **Mr McAlorum:** That is maybe something to look at as part of the reform of local government.
377. **Mrs D Kelly:** That is what I said.
378. **The Chairperson:** We will note that, and we can deal with that again when we come to consider the evidence.
379. **Mr Brady:** Thanks for your presentation. I want to clarify something, because, obviously, there are different issues here. Liam, you are saying that the advertising and all that will be self-contained in the pavement cafes. However, you talked about advertisements for mobile phones and so forth, but that is all to be enforced by another Department. Enforcement is the issue in any of this. It is about people going along and saying that something should not be there. If the advertising is to be contained within the pavement cafe barriers, that will lessen the problem, but the other example that you gave is a different issue. It is the responsibility of another Department to enforce that, because councils, presumably, can enforce the pavement cafe aspect, whether it comes in under RPA or not. The other matter is for a different Department. As with any legislation, it is about enforceability and who enforces it. I thought that that was fairly clear.
380. **Mr Quinn:** Yes, that is the issue.
381. **The Chairperson:** Gary, I think that you want to go through a number of points, so we will do that and then take questions at the end. We are starting to move away from the particular point that you addressed.

382. **Mr McAlorum:** If there are no questions on the definition of a public area, I will go on to the next issue, which is the definition of a business. Local government sought clarification about the definition of a qualifying business for licensing purposes. There are concerns about businesses that are not normally associated with the serving of food or drink, such as a hairdressers, which may wish to apply to operate a pavement cafe. The Department believes that the statutory requirements and costs that are associated with making an application would discourage such a business from applying for a licence. It is worth noting that any change in the definition may produce negative, unintended consequences. For example, if the Bill were to specify that the principal activity of the qualifying business must be the supply of food or drink, that would rule out large retailers with coffee shops, for example.
383. The other issue is alcohol consumption at pavement cafes. The Bill makes provision for the consumption of alcohol at certain pavement cafes, subject to restrictions. Prior consultation with the police is required for public houses that wish to have a pavement cafe area. As Pubs of Ulster mentioned, at all times, councils will be in control of alcohol consumption, so when considering applications from licensed premises, a council can decide to grant a pavement cafe licence and permit alcohol consumption. It can also grant a pavement cafe licence but insert an alcohol-prohibition condition, or simply refuse the application altogether. Where any licensed premises is granted a pavement cafe licence, relevant requirements of the Licensing (Northern Ireland) Order 1996 will automatically apply to the pavement cafe area.
384. A point was raised earlier about late-night drinking at pavement cafes. That would not be permitted, as a court order authorising additional permitted hours applies only to the main business premises.
385. The issue of the by-laws on drinking in public was also touched on. At present, it is common practice for councils to exempt the curtilage of licensed premises from the restrictions on drinking in areas that are designated in the by-laws. If a council were to decide to grant a pavement cafe licence to such premises, the current exemption would extend to the pavement cafe area. However, a council could make a policy decision not to allow licensed pavement cafes to operate in designated areas.
386. It is also worth pointing out that the Bill's provisions on drinking in public are primarily of a technical nature. The aim is to avoid the need for councils to make new by-laws should they decide to permit licensed pavement cafes to operate in designated areas.
387. **Mr Irvine:** I will carry on dealing with a few issues. Several stakeholders recommended the introduction of a fixed penalty scheme for breaches of licence conditions. For fixed penalties to be introduced for a specific breach of a licence condition, the Bill would need to create an associated criminal offence. The Department, therefore, considers the use of fixed penalties inappropriate and heavy-handed for the enforcement of pavement cafes legislation. We consider that, in most cases, after formal warnings have been given, suspension and revocation powers are the most effective way of ensuring that a licence holder operates within the licence conditions.
388. We touched on the safeguards for disabled and visually impaired people. The Inclusive Mobility and Transport Advisory Committee (IMTAC) and Guide Dogs sought clarification on the protection that the Bill provides for the rights of disabled people and other pedestrians. As Liam mentioned, the Bill would put a currently unregulated activity into a solid legal piece of legislation. Therefore, the Bill will put the control and management of that on a firm legislative footing. An important safeguard will be the requirement to consult Roads Service on individual applications. It will provide advice on the location for a pavement cafe, the impact

- on pedestrians and appropriate footpath widths.
389. The powers that are available to a council in granting a licence are widely drawn. That will enable a council to take into account any factor that it considers reasonable when considering an application. Importantly, councils will also have the power to remove furniture from unlicensed cafes.
390. The Department will issue guidance associated with the Bill. That will be comprehensive and will demonstrate and highlight that pavement cafes should be enclosed within suitable barriers to safeguard any pedestrians or disabled people moving by the cafe.
391. Some stakeholders suggested that the guidance should have a statutory basis. Councils will still have to take seriously non-statutory guidance that the Department issues. Non-compliance by councils would be challengeable in the courts. As such, the Department feels that there is no compelling reason to amend the Bill to give the guidance a statutory basis.
392. Finally, during an earlier briefing, some members expressed concern about possible delays in processing the applications. The Bill falls within the scope of the European services directive, which requires an application to be processed within a certain time. That time has to be fixed and published in advance. From research in GB, we know that a period of up to three months is allowed to decide on an application. Councils currently consult Roads Service in all applications under the Street Trading Act. The Department understands that that process is working very well and that there have been no significant delays in that consultation.
393. **The Chairperson:** Thank you, David and Gary.
394. **Mr Quinn:** We are happy to answer any more questions.
395. **Mr Campbell:** I have a couple of questions on enforcement and breaches. We heard from Pubs of Ulster, I think it was, which said that, in its view, suspension would be more appropriate. For repeated offences, would there be an automatic suspension or a graded suspension, whereby the length of time is increased? Is that it?
396. **Mr Irvine:** The Bill allows the council to suspend or revoke a licence in various circumstances. Guidance will set out how we see that working in practice. For example, if there is a small breach of a condition, a council might give a formal warning to the licence holder and operate on the basis of three strikes and you are out. So, after getting three warnings, your licence would be suspended.
397. We see it panning out in that way. Suspension is the ultimate enforcement measure; your licence is taken away from you. However, there may be time for a cafe owner to correct any misdemeanours.
398. **Mr Campbell:** A policy of three strikes and you are out might be fair enough for minor breaches. However, is there a renewed three-strikes policy when a suspension expires and a licence is applied for again? How will it work for a second offence after a suspension?
399. **Mr McAlorum:** A council can revoke a licence. It is either suspension or revocation. Suspension is for minor breaches; you will be suspended for a limited period. However, the council will consider revocation for repeated offences, for want of a better word. As David said, we will prepare guidance for the council. However, we very much expect that it will be a graduated approach in line with the council's own enforcement policy. This is another licensing scheme for councils; they already have others. We think that this will dovetail with its other enforcement policies.
400. **Mr Campbell:** If revocation kicks in either because of a major breach or because somebody has worked their way up to that inevitable outcome, will that revocation simply lapse

eventually? Would there then have to be a reapplication, with the council having to decide whether or not the previous offence and revocation were sufficient for that person to be told that they are not getting a renewed licence?

401. **Mr McAlorum:** If there is a reapplication, the council has the power to take the past record into account and refuse the licence. Clause 4 makes that very clear.

402. **The Chairperson:** Are Members content with what they have heard so far? Liam, Gary and David, unless you have something else to add, we are happy enough to leave it there for today. Gentlemen, thank you very much for your support for the Committee in our deliberations.

7 November 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Mr Jim Allister
 Ms Paula Bradley
 Mr Trevor Clarke
 Mr Michael Copeland
 Mr Fra McCann
 Mr Sammy Wilson

Witnesses:

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

take us through your views of clause 1 and whether you have decided to change it, amend it or otherwise? We will then stop and check whether members are content that they understand what that clause means. If members are content, we will move quickly to the next clause. Is that fair enough? We will not debate the clauses per se. We will do that in our meeting on, I think, 21 November, although I stand to be corrected on that.

407. Are members happy with that approach?

Members indicated assent.

403. **The Chairperson:** With us again are Liam Quinn and Gary McAlorum. Liam and Gary, good morning. You are very welcome to the Committee.

408. **The Chairperson:** Liam, over to you.

404. We intend to informally go through the Bill clause by clause. I know that some members did not go through the Welfare Reform Bill but will have gone through other legislation. We intend to go through the clauses — I think that there are 32 clauses — and the one schedule with the Department. I will ask Liam and Gary to take us through the clauses one by one or a collection of clauses as they see fit and explain any updates or any new things that they may have taken on board.

409. **Mr Liam Quinn (Department for Social Development):** Thanks, Chairman. I will spend a couple of minutes going through some of the key issues that were raised during the oral evidence sessions. Gary will then go through each clause in turn.

405. The purpose of today's session is to make sure that all members are absolutely sure what the clauses are designed to do. We will not make a decision on any clauses, seek to amend them or reject them. Fortunately, we had a fair bit of discussion on the Bill, and a number of presentations have been made.

410. The Licensing of Pavement Cafés Bill seeks to strike a balance between robust regulation and the necessary flexibility for councils to respond to local circumstances. The Bill prohibits the operation of a pavement cafe except under a licence granted by a council. Councils must grant a licence unless any of the specified grounds for refusal applies. They will be able to impose a range of licence conditions, charge a reasonable fee and may vary, suspend or revoke a licence in certain circumstances. Councils will be able to remove facilities at unlicensed pavement cafes, and several new offences have been created to aid enforcement.

406. Liam and Gary will start by going through the clauses one at a time. They will then stop and tell us whether they have taken on board any of the recommendations or suggestions that were made by any of the stakeholders or anything that a Committee member has raised that they think needs a response. Liam, will you

411. The Department is encouraged by the generally positive response to the Committee's call for evidence. There is a broad recognition that the Bill will put the regulation of pavement cafes on a firm statutory footing and foster the necessary consistency and clarity for all concerned.

412. During the oral evidence sessions, stakeholders and members touched on a number of issues and themes. Clarification was sought on the definition of the public area and on the businesses that may apply for a licence. Concerns were raised about safeguards for pedestrians, particularly people with disabilities, and about controls on the consumption of alcohol at pavement cafes. Several stakeholders recommended the introduction of a fixed penalty scheme for breaches of licence conditions, and it was suggested that a power for the Department to issue model terms and conditions should be added to the Bill to promote consistency of approach.
413. The Department's policy position on the definition of the public area is that the Bill should not interfere in any way with the rights of private landowners. The Bill will allow businesses that are not normally associated with the serving of food or drink, for example, hairdressers were mentioned, to apply for a licence. However, the Department believes that the statutory requirements and the application costs will discourage such businesses from applying.
414. An important safeguard for pedestrian access is the requirement for councils to consult Roads Service on individual applications. Roads Service is best placed to advise councils on the site, location and impacts on pedestrians, and on suitable footpath widths for access.
415. There are a number of safeguards in the Bill on the consumption of alcohol. For example, a council could make a policy decision not to allow a licensed pavement cafe to operate in an area that is designated under drinking in public by-laws. It could also refuse a licence if there are concerns about disorder. Where any licensed premises is permitted to operate a pavement cafe licence, the relevant requirements of the Licensing (Northern Ireland) Order 1996 will automatically apply to the pavement cafe area.
416. The Department considers the use of fixed penalties to be inappropriate and heavy-handed for the enforcement of pavement cafes.
417. Finally, model terms and conditions will be addressed in our best practice-type guidance for councils, but we do not believe that it needs to be on a statutory basis.
418. If the Chairman is content, I will pass over to Gary to go through the clauses of the Bill.
419. **The Chairperson:** OK. If members are happy with that explanation, we will hand over to Gary. Thanks very much, Liam.
420. **Mr Gary McAlorum (Department for Social Development):** Thank you, Chair. As you said, there are 32 clauses in the Bill and one schedule. I must say that the Bill is rather larger than we thought it would be when we began this work.
421. I will give you a brief overview of the Bill. Clauses 1 and 2 deal with the general requirements to obtain a pavement cafe licence. Clauses 3 to 12 set out the application procedures for the granting, renewal and variation of a licence. Clause 13 sets out the procedure when there are multiple licence holders and there is a change of business partner. Clauses 14 to 19 deal with revocation, suspension and compulsory variation of a licence. Clause 20 makes provision for certain matters to be recorded in the register under liquor licensing law. Clause 21 specifies the circumstances in which appeals can be made against a decision of a council. Clauses 22 to 24 give councils powers of entry, removal etc for the purpose of enforcing the Bill. A number of supplementary matters are set out in clauses 25 to 32.
422. If you like, Chair, I will move to clause 1 and give you a brief overview of it. Clause 1 provides a definition of a pavement cafe licence, what the licence authorises and other key terms for the purpose of the Bill. It is important to make clear that a pavement cafe licence simply authorises a person who is carrying on a business involving the supply of food or drink in or from

- premises to place furniture temporarily on a public area. The licensed area will remain a public place for the purposes of public order or other legislation. Chair, I am happy to take questions on that.
423. **The Chairperson:** Are members happy enough with the explanation of clause 1?
424. **Mr Wilson:** There was some discussion about what is a public area and what is a private area. Belfast City Council, for example, raised the issue of Lanyon Place, which is a good example of an area right in the centre of the town that is not a public area but that the public have access to. Have you resolved where the line of demarcation rests regarding whether a licence would be required for an area such as that or an area in a retail park?
425. **The Chairperson:** Gary, before you respond, I remind members that we are at annex 1 on page 4 at tab 4 of the pack. I just want members to have the paperwork on front of them. You are going to take members through clause 1, which is on page 4 at tab 4. Members were working off the Bill folder.
426. **Mr McAlorum:** In answer to that point —
427. **Mr Allister:** Is it not at tab 5?
428. **The Chairperson:** It is annex 1 at tab 4. We have gone through pages 2 and 3, and now we are on page 4, which deals with clause 1. It is annex 1 at tab 4, Jim. It is just so that we can get to where we are at the moment. I want to work through it.
429. **The Committee Clerk:** Chair, the most recent paper is at tab 4, where it deals with —
430. **Mr Allister:** But annex 1 is at tab 5.
431. **The Chairperson:** It is only a few pages in from tab 4. You have annex 1, which starts off with the Licensing of Pavement Cafés Bill and the Department for Social Development (DSD) brief. There is an annex1 at tab 5. It is the annex on page 4 at tab 4. Is everybody on the same page, so to speak?
432. I am sorry, Gary, Sammy had asked you a question.
433. **Mr McAlorum:** The definition of a public area is a place in the open air to which the public have access without payment as of right. The key words here are “as of right”. If it is clearly a place to which the public have access and it is not subject to the permission of a private landowner, it can be licensed by a council. It just depends on the individual circumstances.
434. **The Chairperson:** Are you happy enough, Sammy?
435. **Mr Wilson:** Yes. I think that is OK.
436. **The Chairperson:** We may come to debate that. We will deal with it on November 21, and there may be an argument for or against it. It is just so that we understand what the clause intends to do.
437. **Mr Wilson:** Even though it is privately owned, people have access to it as of right.
438. **The Chairperson:** OK? Thank you. Clause 2, then.
439. **Mr McAlorum:** I will give you an overview of clause 2. It relates to the offence of placing furniture in a public area without a licence. The clause applies to businesses that are involved in the supply of food or drink in or from premises to members of the public. An offence may be committed by the owner of the business and any person concerned with the management of the premises. The penalty on summary conviction is a fine of up to £1,000.
440. **The Chairperson:** OK. Are members happy enough? Thank you, Gary. Next is clause 3.
441. **Mr McAlorum:** Clause 3 is in the part of the Bill that deals with applications. Clause 3 provides details of how a qualifying business may apply to the council for a pavement cafe licence. Applicants must attach a plan showing the location and dimensions of the proposed pavement cafe area or areas associated with the premises. Multiple

- applications are not permitted. This clause needs to be read in conjunction with clauses 10 and 11, which deal with general provisions and notices to be displayed regarding applications.
442. **The Chairperson:** OK. Happy enough, members? Thank you.
443. **Mr McAlorum:** I will move to clause 4, which deals with the granting or refusal of a licence. This clause places an onus on a council to grant a pavement cafe licence unless one of the grounds for refusing an application applies. Before deciding on an application, the council must consult Roads Service and, where the premises is a public house, the police. A council may consult other appropriate organisations or individuals before deciding on an application. In addition, councils must take into account any representations made in connection with an application.
444. **Mr F McCann:** I think that I raised this issue at an earlier stage. I have no difficulty with the fact that the Department for Regional Development (DRD) has to give an opinion, but many times in the past, it has been totally inflexible in its attitude. Is anything built into the Bill that will allow councils to give a licence even if DRD refuses it, or is DRD's decision law?
445. **Mr McAlorum:** Councils will have the final decision.
446. **Mr F McCann:** That is fine.
447. **The Chairperson:** I take it that there will be guidance and so on built into all this.
448. **Mr McAlorum:** We intend to work with Roads Service on preparing guidance that will hopefully make matters easier.
449. **The Chairperson:** OK.
450. **Mr Wilson:** When it comes to consultations on planning applications, Roads Service, in particular, is a nightmare. In many instances, people may wish to apply for a licence for an event that is happening in a locality. It might not be a permanent thing; it might just be for the summer, for a festival or whatnot. If Roads Service were to take its normal six months to respond to the consultation, the event could be over or what prompted the application for the licence may no longer be valid. Can we put some kind of requirement in the Bill that consultees must respond within a reasonable time and that, if they do not respond, it is taken that they have no view on or objections to it?
451. **Mr McAlorum:** The Bill will be caught by the EU services directive, which requires that an application be processed within a reasonable time, and that period is fixed and made public in advance. A similar process was gone through with street trading licences. We understand that that works very well, and Roads Service replies quite promptly. So, we do not envision that there will be any significant problems or, indeed, a need to make separate provision.
452. **The Chairperson:** Is there any provision in the Bill for something that is short term, ad hoc, temporary or occasional?
453. **Mr McAlorum:** No. There is no provision for a temporary or occasional pavement cafe licence.
454. **The Chairperson:** Following on from a couple of members' questions, has any consideration been given to that? It seems reasonable to have some facility for that.
455. **Mr McAlorum:** We felt that the process that would have to be gone through, including a consultation process with Roads Service and other interested parties, militated against granting a licence for a short period of time.
456. **Mr Wilson:** I do not think that anybody is saying that you should not go through the consultation process. I think that the issue is whether that consultation process should be elongated either because of negligence by some official in Roads Service or because it is just not given priority.
457. **Mr Quinn:** We raised that issue with the councils that deal with street trading applications, for which there is a requirement to consult Roads Service, and they said that Roads Service's

- response is not an issue and that it generally gets back to them inside a couple of weeks and certainly within, I think, 28 days.
458. **The Chairperson:** OK. Obviously the answer is no, but it is not outwith the Committee's ability to look at that by way of an amendment or something like that. Before our meeting on 21 November, when we will go through this clause by clause, I suggest that you give a wee bit more thought to that, Liam, just in case the Committee is minded to take a view on it one way or the other.
459. **Mr Allister:** There were quite strenuous representations, from Belfast City Council for example, that the grounds for refusal are not sufficiently wide to deal with inappropriate furniture or environmental impacts. Have you given any consideration to the need to widen the grounds for refusal?
460. **Mr McAlorum:** The provisions that we use for the granting or refusal are very similar to street trading legislation and are very broadly framed, and we believe that they can allow a council to take into account any factor that it considers reasonable. The area, even when licensed, remains a public area. So, environmental or public order legislation will apply to the public area.
461. **Mr Allister:** When the applicant makes the application for the licence, do they have to specify the nature and scope of the street furniture that they will use?
462. **Mr McAlorum:** No.
463. **Mr Allister:** If they do not, how then could you determine whether the street furniture is suitable?
464. **Mr McAlorum:** The way that we think it will work is that there will be a pre-application site visit between the council and the applicant, and the council will set out its requirements on minimum designs of furniture and so forth. There will need to be a sketch plan to accompany the licence, and that will indicate the type of furniture that will be used. It is our sense that the actual design of the furniture is a matter that will be subject to conditions of a licence, but we are satisfied that, given the way the legislation is drafted, a council will be able to take those factors into account.
465. **Mr Allister:** What if the activity would cause environmental problems or detract from the amenities of adjacent retailers or whatever? Where do you refuse it on these grounds?
466. **Mr McAlorum:** Clause 4(2)(b).
467. **The Chairperson:** Did you say 4(2)(b), Gary? That is about pedestrians and so on.
468. **Mr McAlorum:** Or even 4(2)(a).
469. **Mr Allister:** Clause 4(2)(b) is about undue interference or inconvenience to persons or vehicles in the vicinity. Are you satisfied that that includes operating businesses in the vicinity?
470. **Mr McAlorum:** Yes, indeed. Or even 4(2)(a). They are fairly interchangeable.
471. **Mr Allister:** Sorry, which clause?
472. **Mr McAlorum:** Clause 4(2)(a), where the site is unsuitable. The two clauses go in tandem basically and are almost interchangeable.
473. **Mr F McCann:** The issue of the quality of street furniture has been raised a number of times. You can bring a Bill like this in and make it law, but unless you have clear designs that people work towards, it becomes unsightly and dangerous. Have the comments from blind and partially sighted people been fully taken on board when coming to decisions? They said that there are some dangers for them in trying to use the footpath.
474. **Mr Quinn:** Detail like that will be covered in the guidance that the council has to take account of when it is granting a licence, and it will be a matter for the circumstances of each application. You may want a very high design standard in Belfast city centre, for example, but a shopping area outside the city centre may not require such a high standard. Similarly, issues such as having barriers cordoning off the pavement cafe area

- will be determined in the guidance for councils, and they will need to take account of that before they grant a licence.
475. **Mr Wilson:** The guidance is issued by the Department.
476. **Mr Quinn:** Yes, having worked with Roads Service and others to develop that guidance.
477. **Mr Wilson:** I take the opposite view to Jim. I think that the wording of clause 4 is so open-ended that councils could find it quite easy to find reasons for turning things down. We ought to be very careful that we do not get so specific about the layout and the furniture that we make it almost impossible and, indeed, lose the variety, because people will be innovative with these things. We should try to keep it as general as possible.
478. **Mr F McCann:** I understand what Sammy is saying. However, without wanting to sound too Belfast-centric — obviously, that is where I live — if you walk through Belfast, you will see aluminium tables and aluminium chairs lying all over the place. A happy medium has to be found so that we have well-structured street furniture and so that those who are partially sighted or blind are able to negotiate the footpath.
479. **The Chairperson:** But what this clause deals with is the fact that, ultimately, there will be guidelines. If we have an issue around what those guidelines might be, where should we locate that discussion?
480. **Mr Quinn:** The councils will apply the guidelines. As we said, the guidelines will simply be guidelines.
481. **The Chairperson:** But they are issued by the Department.
482. **Mr Quinn:** They are issued by the Department, and a council will need to take them into account when it is making its decision on whether to grant a licence. The guidelines will cover things such as design standard. However, as Mr Wilson just said, we do not want to get into the detail, either in the guidance or in the Bill, with the Department specifying the exact type of furniture that is permitted. You want to have a bit of variety and flexibility for different areas.
483. **The Chairperson:** For the purposes of what we are doing at the minute, we are satisfied with the principle of guidelines being issued. We might have a discussion around what those guidelines will ultimately look like to get, as somebody said, a happy medium. So, we are happy enough with the clause as it stands. If members are happy enough, we will move on.
484. **Mr Wilson:** But we will look again at whether there should be a limit to the length of time for responses to the consultation.
485. **The Chairperson:** It is up to the Committee to come back to a whole range of things. What we are trying to do here is establish that we know what the clause is supposed to do. We will deal with what we do about that clause in the formal clause-by-clause consideration on 21 November.
486. **Mr McAlorum:** We move to clause 5, form, duration etc of licence. Clause 5 gives DSD the power to prescribe the form of a pavement cafe licence and district councils the power to decide how long a licence should last.
487. **Mr Allister:** Does that mean that some licences might last longer than others?
488. **Mr McAlorum:** Yes, that is right.
489. **The Chairperson:** What is the rationale for that, Gary?
490. **Mr McAlorum:** The provision is drafted to comply with the EU services directive.
491. **Mr Allister:** And.
492. **Mr McAlorum:** On the basis that that directive provides that a licence should be open-ended unless there are good reasons to limit the duration of a licence.
493. **Mr Allister:** Are you really anticipating open-ended licences?

494. **Mr McAlorum:** There is that potential, yes.
495. **Mr Allister:** That is what you have in mind, but that is not what it says, is it?
496. **Mr McAlorum:** Unless there are good reasons to limit a licence, we expect that it would be open-ended.
497. **The Chairperson:** It is important that that is clear. I do not know whether that needs corrected. If you do not mind, Liam and Gary, we can return to technical matters like that at our session on 21 November.
498. **Mr Wilson:** A licence that is granted under those conditions could be revoked only if there were complaints or if action was taken against the licensee for breach of the conditions. Could it be looked at again if there was a general complaint but no breach of the licence conditions, or would there have to be a breach of the licence conditions before it could be revoked?
499. **Mr McAlorum:** There is a provision in the Bill that allows a council to review a licence if there is a material change of circumstances. So, a licence could be revoked on that basis. There are other circumstances in which a licence would be reviewed; for example, if there is an application for a variation or if Roads Service conducts some work in the area and there is a need to vary the licence because the area has become unsuitable. There are a number of safeguards in the Bill to allow the council to review a licence if necessary.
500. **Mr Allister:** Could a council not then take a view on a particularly contested licence and say, "Let us try it for a year and see how it goes"? Can it not do that under this legislation?
501. **Mr McAlorum:** It would need to have a reason for doing that.
502. **Mr Wilson:** But you could do the same as you do with temporary planning permission, for example.
503. **Mr McAlorum:** Yes.
504. **Mr Wilson:** If a council thought that this was a bit iffy, it could say, "Let us test it".
505. **Mr Allister:** Could you do a temporary licence?
506. **Mr Quinn:** You could grant a licence for a year and specify the reasons why —
507. **Mr Allister:** You said that the services order required it to be open-ended.
508. **Mr Quinn:** The presumption is that it would be an open-ended licence unless there was a reason to limit it. The council needs to record that reason. The circumstances that you describe would be such circumstances.
509. **Mr McAlorum:** We do not think that the bar will be set too high. If a council had a good reason, it could limit the duration of a licence.
510. **The Chairperson:** The Bill does not state that it is expected that it will be an open-ended licence unless otherwise qualified. I say that just in case that leaves an area of ambiguity.
511. **Ms P Bradley:** Clause 5(5)(b) states:
"if no period is specified in the licence, [it will] remain valid indefinitely".
512. **The Chairperson:** That is not quite the same as saying that a licence under EU directives would be expected to be open-ended unless otherwise qualified.
513. **Mr Wilson:** The implication, though, is that it can be granted for a specific time period.
514. **The Chairperson:** I understand that.
515. **Mr Quinn:** I think that we will put that in guidance, Chairman, just to draw attention to it. Councils are familiar with the services directive, because they comply with it in a number of other areas. However, we will certainly put in the guidance that, to comply with the EU services directive, a licence should be open-ended unless a reason is provided to restrict it.
516. **The Chairperson:** I think that that is OK, provided that it is made clear somewhere.
517. **Mr Brady:** Will there be a requirement on councils to do periodic checks? If you

- have an open-ended licence, am I right that it would be revoked presumably only if people complained that its terms and conditions were not met? That might be more of a reactionary thing if people complain as a particular problem arose. Alternatively, will there be a requirement on councils to go out, in the way that environmental health or another council department does, to make regular checks on pavement cafes to ensure that the terms and conditions of the licence are being met?
518. **Mr Quinn:** I think that that is a matter for councils.
519. **Mr Brady:** That is what I am asking.
520. **Mr Quinn:** There is no requirement to do periodic checks, but it is a matter for a council to enforce the legislation and to manage the pavement cafes that are in its area.
521. **The Chairperson:** Trevor, did you want to ask a question?
522. **Mr Clarke:** Someone else covered my question.
523. **Mr McAlorum:** Clause 6 deals with conditions of a licence. This clause provides the power for a council to impose conditions on a pavement cafe licence. All licences must contain a condition requiring the holder not to place furniture in an area other than that covered by the licence. Where the associated premises is an off-licence, the council must include a condition prohibiting the consumption of alcohol in the pavement cafe area. Councils have the discretion to impose a range of other conditions, including those relating to the design and layout of the pavement cafe area, operating times, arrangements for the storage of furniture, public liability insurance and the payment of fees.
524. **The Chairperson:** OK, are members happy enough?
525. **Mr Wilson:** Payment of fees has been raised. Will that be limited in the same way as any other fee application, simply to cover the costs that are involved?
- Councils cannot set fee levels that do more than cover the costs of processing the licence.
526. **Mr McAlorum:** Fees are dealt with on their own in clause 12. Perhaps we could pick that point up when we discuss that.
527. **The Chairperson:** OK.
528. **Mr Copeland:** Some bistros, restaurants and cafes that are not licensed operate a policy of charging corkage for bringing your own alcohol. If the primary business had that facility, would the licence be extended to allow people to consume alcohol that they brought themselves?
529. **Mr McAlorum:** The licensing law will apply to the pavement cafe area as it does to the inside of the premises.
530. **Mr Copeland:** In other words, if premises serve drink to people who bring it in themselves and charges them corkage, premises without a licence could see the consumption of alcohol in a more public place.
531. **Mr McAlorum:** If the pavement cafe area is part of licensed premises and a council is content for alcohol to be consumed at the pavement cafe area, it is treated for the purposes of licensing laws as part of the premises.
532. **Mr Copeland:** How does that relate to the restrictions on the consumption of alcohol in public places?
533. **Mr Quinn:** If a restaurant does not hold a liquor licence and someone brings wine to its pavement cafe, they are drinking in public, because it is still a public place.
534. **Mr Copeland:** So, it might need a bit of clarification. It would be OK if you were drinking inside but not outside.
535. **Mr Quinn:** You can drink inside, because it is within the premises. However, if you take a bottle on to the street, and there is a by-law on drinking in public in place, you are breaking the law.

536. **Mr Wilson:** According to clause 6, a condition can be applied where, even though the premises has a licence or an arrangement that you described, you can still say that that does not apply outside.
537. **Mr Quinn:** Absolutely.
538. **Mr Copeland:** So, you cannot drink outside at all.
539. **The Chairperson:** OK. We will move on to clause 7.
540. **Mr McAlorum:** Clause 7 deals with the renewal of a licence. It sets out the arrangements for renewals. The renewals procedure is broadly similar to that for new applications. However, a council will not be obliged to consult the statutory authorities that are mentioned in clause 4(4), which are the Roads Service or the police. The council may vary a licence on renewal.
541. **The Chairperson:** Thank you.
542. **Mr McAlorum:** Clause 8 deals with the variation of conditions or the area of a licence. It allows the holder of a pavement cafe licence to apply to the council for a variation of either the conditions of a licence or the area that is covered by the licence. The variation procedure is broadly similar to that for new applications.
543. **The Chairperson:** If, for example, someone wished to extend the curtilage of their pavement cafe, you are saying that, in those circumstances, the council would not be obliged to consult the statutory authorities. Would there not be an argument that they might need to consult Roads Service, for example?
544. **Mr McAlorum:** Yes. It does not make it a statutory requirement, but I expect that they would want to, particularly if the area is being significantly altered.
545. **Mr Brady:** If the licence were open-ended and indefinite in that sense, presumably the renewal would come about only if something had happened where the licence had been revoked and they had to reapply. Presumably they would have to look at the reasons why it was revoked in the first place and ensure that that problem was dealt with. Would that be —
546. **Mr McAlorum:** The provision is there in case a council, on application, decides that there is good reason to limit the duration of the licence. So, it would be renewed.
547. **The Chairperson:** In other words, if the council granted an application for a year or two years, there would be another renewal application.
548. **Mr McAlorum:** At the end of the two-year period.
549. **The Chairperson:** OK. Fair enough.
550. **We will move on to clause 9.**
551. **Mr Clarke:** Sorry, Chairman. The only thing about that is this: could councils not abuse that, because they could continually give short licences?
552. **Mr Quinn:** They would need to record a reason why they were granting a short licence.
553. **Mr McAlorum:** This is an application of a licence holder. As Liam said, they would need to record the reasons.
554. **The Chairperson:** We discussed that earlier, Trevor. The guidelines will highlight that, under the EU directive, licences will be deemed to be less qualified for a particular reason, which will be recorded. Are you happy enough with that?
555. **Mr McAlorum:** Clause 9 deals with variation by removal of an alcohol prohibition. It provides that, where a pavement cafe licence contains an alcohol prohibition, the holder of the licence may, in certain circumstances, apply to a council for the licence to be varied by the removal of the alcohol prohibition. The council must consult with the police before deciding on such an application.
556. **The Chairperson:** OK. That is straightforward enough. Members are happy enough with that. Thank you.

557. **Mr McAlorum:** I mentioned earlier that clauses 10 and 11 deal with general provisions for applying for a licence.

558. **The Chairperson:** OK. Members are content. Thank you.

559. **Mr McAlorum:** Clause 12 deals with fees and gives a district council the power to charge fees that will enable it to offset the cost of administering the pavement cafe licensing scheme. Fees may be charged for the grant, renewal or variation of a licence.

560. **The Chairperson:** Members are happy enough. Sammy, you were querying that earlier.

561. **Mr Wilson:** Councils can determine whether they do not want to cover all the costs.

562. **Mr McAlorum:** It is entirely at their discretion.

563. Clause 13 is a technical provision that makes provision for changes to persons carrying on the business involving a partnership.

564. **The Chairperson:** OK. Thank you.

565. **Mr McAlorum:** Clauses 14 and 15 deal with the revocation and suspension of a licence. Members will note that they are very similar. Revocation is permanent, whereas suspension deals with the temporary suspension of a licence.

566. Clause 14 sets out the circumstances in which a district council may revoke a pavement cafe licence. Generally speaking, a council may revoke the licence if it is satisfied that the licensed area has become unsuitable, or that continuing to use it would cause undue interference or inconvenience to persons or vehicles in the vicinity or would result in disorder. A council may also revoke the licence if the licence holder has made a statement that he knew to be false in connection with an application, failed to fix a notice, failed to comply with any condition of a licence, or, indeed, failed to pay any fee. So, it is fairly comprehensive.

567. **Mr Wilson:** It is also fairly draconian. I can understand public order offences and everything else, but failure to comply with any condition of a licence is stated. That could be a very minor breach; it could be a one-off; it could even be unintentional. Yet, a council can not only suspend a licence but revoke it under those conditions. Is clause 14(1)(d) not a bit too draconian? A council could abuse it. Some circumstances might well be beyond the control of a cafe owner. For example, what happens if somebody gets up from a table, leaves the chair in the middle of the footpath, but the cafe owner is too busy to notice and is deemed to be in breach of the conditions? If someone falls over or whatever, that could be used as a reason for revoking the licence.

568. **Mr McAlorum:** First and foremost, councils would have to be able to justify any decisions that they take.

569. **Mr Wilson:** They would justify it on the basis of the Act. That is why I am asking whether it is not too draconian. The legislation would give them the total justification, which is that a condition has been breached and it can revoke the licence — end of story.

570. **Mr Allister:** There is an appeal to the Magistrates' Court.

571. **Mr Quinn:** There is an appeal, Chairman, but the guidance from the Department also sets out the suggested approach to dealing with breaches. We are thinking of a “three strikes and you’re out” policy. Following the first breach of a condition, you would give them a warning, and, in the circumstances that you outlined, you would tell them that they needed to keep an eye on that sort of thing and not to let it happen. However, if somebody is breaching the conditions continually, and there are three breaches within a short period, suspension would probably be the next step. Following suspension, you would go on to revocation, because suspension is clearly not working.

572. **Mr Wilson:** I think that that is totally appropriate, if that is what happens, but

- that is not what the legislation would require a council to do.
573. **Mr Quinn:** We have to have it on the legislation that they are allowed to take that enforcement action, should it get to that point. The guidance would state that that is not a council's first port of call; it would need to go through a process of dealing with it in a more appropriate, even-handed manner before getting to the point at which it could say, "You have continually breached this condition, so we are going to revoke your licence". If we did not have that in the legislation, they could not ultimately take that action.
574. **Mr Wilson:** Clause 14(1)(d) states:
"any condition of the licence has not been complied with;"
575. Does it have to be worded like that? Can what you said not be reflected in the legislation? I cannot think of the wording. If it is continual, how do you define the term "continual"? If it is deliberate, how do you define the term "deliberate"? Can the wording not be amended to reflect what you said, rather than it just being in the guidance?
576. **Mr McAlorum:** The wording on that is very similar — almost identical — to the wording of the Street Trading Act (Northern Ireland) 2001, and it seems to work very well. I think that councils are very comfortable with the Street Trading Act, and we imagine that they will know what is required under this legislation.
577. **The Chairperson:** A couple of other members wanted to come in on that. Trevor will be followed by Jim.
578. **Mr Clarke:** I have concerns that we are over-relying on the guidance. We have all experienced guidance from agencies. At times, even the Minister's guidance to Planning Service was not relied on at all by Departments. I am concerned that there may be an over-reliance on the guidance documents that will be issued to councils, as well as about the interpretation of each council.
579. **Mr Allister:** Where there is a suspension or a revocation, there is a right of appeal to the Magistrates' Court under clause 21. Is the Bill silent on whether, in the meantime, the licence subsists?
580. **Mr McAlorum:** The council's decision is final until the appeal is dealt with.
581. **Mr Allister:** Where does it say that?
582. **Mr McAlorum:** I am not sure where it actually says that. I will look into that point, but we are satisfied that the council's decision is final.
583. **Mr Allister:** Is that the way that it should be, do you think?
584. **Mr McAlorum:** Yes. That certainly is the policy on the issue, and that is reflected here.
585. **Mr Allister:** So, if you successfully appeal, are you compensated six months later for the six months' loss?
586. **Mr McAlorum:** The Bill does not provide for compensation.
587. **Mr Allister:** So, is the loser in this potentially the operator?
588. **Mr McAlorum:** Yes.
589. **Mr Clarke:** Who won their appeal.
590. **The Chairperson:** OK. Gary, you said that you will look at that again. That would be an important bit of information for the Committee to consider.
591. There appears to be a concern in the room about the reference to complying with any condition for revocation, given that it is in there for a suspension. Do members think, as Sammy argued, that that may appear a bit draconian? Liam, I know that you said that it would be the equivalent of "three strikes and you're out", but I think that we need that clarified in the Bill. So, will you look at that before we consider it formally?
592. **Mr Clarke:** On the revocation of a licence, the condition in clause 14(1)(b):
"that continuing to place such furniture on, or on a particular part of, that area for use for the consumption of food"

593. should have been sorted out earlier. When did they change their mind? The operators have continued to do what was acceptable when the licence was issued, but all of a sudden an overzealous council official decides that they do not like the placing of such furniture, albeit that it was agreed to earlier. How can you revoke a licence on that basis?
594. **Mr McAlorum:** That would happen if there were a change in circumstances. A council would have to be able to justify the reason for revoking the licence.
595. **Mr Clarke:** As we heard, however, the justification is in the wording:
“that continuing to place such furniture on, or on a particular part of, that area for use for the consumption of food or drink supplied in or from the premises specified in the licence”.
596. So, the justification is already there. It is down to the interpretation of someone in the council of whether the operator has complied. My concern is that, previously, we have agreed on where the placing of the furniture has been agreed, but who decides that it is no longer suitable in that particular location?
597. **The Chairperson:** I think that that refers to where it has been changed.
598. **Mr Clarke:** But it does not say that.
599. **The Chairperson:** I presume that that is what it is supposed to mean. Perhaps that needs to be clarified; I do not know. Will you bear that in mind?
600. **Mr Wilson:** I am looking at clause 14(1)(e). When it comes to the non-payment of fees, it is “without reasonable explanation”. Could clause 14(1)(d) be amended so that it would read:
“that any condition ... has not been complied with, without reasonable explanation”
601. or something like that? If there is a get-out clause for why you have not paid the fee, why can there not be the same get-out clause, or at least an opportunity, for the licensee to explain why a condition has been breached?
602. **Mr Quinn:** We will consider that, Chairperson.
603. **The Chairperson:** OK, thank you. We will move on to clause 16.
604. **Mr McAlorum:** Clause 16 is concerned with the compulsory variation of licence conditions. It allows a council to vary any conditions that are attached to a pavement cafe licence where there has been a material change in circumstances.
605. **The Chairperson:** OK. If members are happy enough, we will move on to clause 17.
606. **Mr McAlorum:** Clause 17 deals with compulsory variation by prohibition of an alcohol condition. It allows a council, at any time, to impose a condition prohibiting the consumption of alcohol at a pavement cafe.
607. **Mr Copeland:** In some respects, is that not already prohibited by the legislation on not drinking in public?
608. **Mr Quinn:** That legislation would apply where the premises did not hold a liquor licence. If the premises has a liquor licence, that licence would supersede and drinking in public would be suspended in that area. That allows a council to come back after it has already permitted someone to serve alcohol at a particular area and say, “We are revoking that element”.
609. **Mr Wilson:** Is that because it has caused disorder or whatever?
610. **Mr Quinn:** Or whatever; yes.
611. **The Chairperson:** I presume that there needs to be some qualifications with that?
612. **Mr Quinn:** Yes, there needs to be an explanation. It allows them to remove the alcohol without removing the pavement cafe. They can still operate as a pavement cafe, provided that alcohol is not served and consumed.
613. **The Chairperson:** Will it be set out that that decision will, or could, be

- taken on consideration of particular circumstances?
614. **Mr Quinn:** Yes.
615. **The Chairperson:** OK. So, it is not arbitrary.
616. **Mr Quinn:** No.
617. **Mr McAlorum:** Clause 18 is on compulsory variation of an area covered by a licence. It allows a council to vary the area that is covered by a pavement cafe licence. That is regarded as an alternative to revocation where part of the area has become unsuitable or its continued use is likely to result in undue interference, inconvenience or disorder.
618. **The Chairperson:** OK. Thank you.
619. **Mr McAlorum:** Clause 19 is a technical provision that deals with notices for revocation, suspension or compulsory variation.
620. **The Chairperson:** OK. Thank you.
621. **Mr McAlorum:** Clause 20 is another technical clause that deals with matters that are to be recorded in the register under licensing law. It gives the Department the power to make regulations requiring details of pavement cafe licences that are granted to premises holding a liquor licence to be recorded in the relevant licensing registry.
622. **The Chairperson:** OK. Thank you for that.
623. **Mr McAlorum:** Clause 21 deals with appeals and sets out a range of circumstances in which appeals can be made to a Magistrates' Court.
624. **The Chairperson:** OK. Thank you.
625. **Mr McAlorum:** Clause 22 deals with powers of entry and inspection for councils. It enables a person who is authorised by a council to enter and inspect premises to which a pavement cafe licence or application relates for various purposes, including determining whether a licence should be granted or revoked etc.
626. **The Chairperson:** OK. Thank you.
627. **Mr McAlorum:** Clause 23 gives councils a power to remove furniture from unlicensed pavement cafes. The power does not extend to premises where a pavement cafe licence is operative. It places a duty on the council to notify the owner and to make provision for the disposal of the furniture.
628. **The Chairperson:** OK. Thank you.
629. **Mr McAlorum:** Clause 24 is on the offence of obstruction. It creates an offence of intentionally obstructing an authorised officer who is exercising the powers to enter and inspect premises or to remove unlicensed furniture. A person who is guilty of the offence is liable on summary conviction to a fine of up to £1,000.
630. **The Chairperson:** OK. Thank you.
631. **Mr McAlorum:** Clause 25 is a technical clause that deals with the service of notice and documents.
632. **The Chairperson:** OK. Thank you.
633. **Mr McAlorum:** Clause 26 allows the Department to make consequential and transitional provisions where necessary for the purposes of implementing the Bill. That can be regarded as a standard clause for a Bill of this nature.
634. **The Chairperson:** OK. Thank you.
635. **Mr McAlorum:** Similarly, clause 27 provides that regulations that are made under the Bill are subject to negative resolution procedure. However, regulations that amend any statutory provision may not be made unless the draft has been laid before and approved by a resolution of the Assembly.
636. **The Chairperson:** OK. Thank you for that.
637. **Mr McAlorum:** Clause 28 is another technical clause that gives legal effect to the provisions that are set out in the schedule.
638. **The Chairperson:** OK. Members are happy enough.
639. **Mr McAlorum:** Clause 29 deals with by-laws, which we were discussing earlier. It provides an exemption for certain

- pavement cafes from the restrictions on drinking in designated areas. People who are consuming alcohol at those pavement cafes would otherwise be committing an offence.
640. **The Chairperson:** OK. Thank you.
641. **Mr McAlorum:** Clause 30 deals with definitions in the Bill.
642. Clause 31 gives the Bill its short title.
643. **The Chairperson:** Thank you.
644. **Mr McAlorum:** Clause 32 provides for the Bill's main functions to come into operation on a date appointed in an order by the Department. It is about commencement.
645. **The Chairperson:** Do you have any comments to make on the schedule, or do you have any other comments?
646. **Mr F McCann:** I do not see this in the Bill, but say, for talk's sake, that this gets off the ground and is a real success. If a Department or utility company began prolonged street work, would businesspeople be entitled to compensation for the time that the business was disrupted?
647. **Mr McAlorum:** There is no provision in the Bill for compensation.
648. **The Chairperson:** That may be different legislation anyway, I think.
649. **Mr Allister:** I have two quick questions. Is there any immunity from liability for a council for any injury that is caused by, say, a chair blowing over? The council may have licensed the area but did not properly attend to the restraints.
650. **Mr McAlorum:** Yes. Clause 6 allows a council to impose a condition requiring the applicant to take out public liability insurance.
651. **Mr Allister:** Yes, but —
652. **Mr Wilson:** You are talking, Jim, about what would happen if they have not taken out public liability insurance.
653. **Mr Allister:** If I am walking down the street, and something from the cafe area causes me to trip, it may be my lawyer's advice that I sue the cafe and the council for its neglect in the licensing processes. Is there anything to prevent the council from being sued?
654. **Mr McAlorum:** The council would be able to indemnify them against claims.
655. **Mr Allister:** Sorry, the council would be — ?
656. **Mr McAlorum:** It would be able to indemnify itself against claims under clause 6(3)(e).
657. **Mr Allister:** Clause 6(3)(e)? So, would a council indemnify itself in the licence?
658. **Mr McAlorum:** Yes.
659. **Mr Allister:** So, if you are the unfortunate plaintiff, you just have to be sure that the occupier is insured.
660. **Mr McAlorum:** Satisfactorily insured, yes.
661. **Mr Allister:** What if he is not?
662. **Mr McAlorum:** We expect councils to require that to be a condition of the licence.
663. **The Chairperson:** Would that be clear? Would it be a requirement for the licensee to have such insurance as a condition for approval?
664. **Mr McAlorum:** It is entirely up to a council whether it wants to do that, but we expect that a council would do so.
665. **Mr Wilson:** What would happen if a council said, "OK, you can have these kinds of chairs and tables, but we are not asking you to put a wee fenced boundary around the area" and somebody came along and said, "If those tables or chairs had been heavier, they would not have blown out" like Jim said? Therefore, because a council did not specify that a wee tent be put around the licensed area or asked for heavy enough furniture, it cannot be indemnified. It cannot be a block indemnity on the basis of someone saying, "Well, we required the owner to have the insurance". The council could have checked that the owner had the insurance but could still be held liable

- because of the nature of the furniture or the way in which it asked for the area to be curtained off.
666. **Mr Quinn:** I think, maybe, Chairman, that that is one for the lawyers. It sounds to me that, if a council was negligent and did not carry out its duties properly under the Act, it may be liable.
667. **Mr Allister:** Despite the indemnity?
668. **Mr Quinn:** Despite the indemnity. However, I am not a lawyer.
669. **Mr Allister:** The purpose of including indemnities in clauses is to try to create the impression that a council can have immunity.
670. **Mr Quinn:** However, if a council were negligent and did not apply the law correctly, I would imagine that there may be a case.
671. **Mr Copeland:** This strikes me as being quite an important issue, because the public has an expectation that someone will ensure their safety in certain circumstances. Why has that been left to councils? I have been to places where they have to display their public liability insurance.
672. **Mr Wilson:** That is a requirement. The law requires that that will be one of the things that a council would look for. I think that Jim is saying that, even if you have the insurance, you could still find that there are circumstances in which somebody decides, "I am more likely to be able to pursue the council in this".
673. **The Chairperson:** You could have the same problem inside premises that were licensed as you could have outside.
674. **Mr Allister:** I think that it is a parallel. We are all meant to ensure our vehicles. If you do not ensure your car and have an accident, the unfortunate victim still has access through the Motor Insurers' Bureau. It is a safety net. I do not see that there is a safety net here for the unfortunate plaintiff who happens to trip up over something that is owned by a man of straw who is not insured.
675. **Mr Quinn:** Chairman, I think that we will look at that. That is all that I can say at this stage.
676. **The Chairperson:** OK.
677. I do not know whether you want to make any comment on the schedule or whether you have any other comments to make, but we have dealt with this question before: is the Department considering any amendments to the Bill as we speak?
678. **Mr McAlorum:** We have identified technical issues, and we will probably recommend to the Minister that a few technical amendments be made.
679. **The Chairperson:** Will we have that in advance of our consideration of the Bill on 21 November?
680. **Mr McAlorum:** Yes.
681. **The Chairperson:** There have been occasions when we were considering clauses and were told, subsequent to that, that the Department was going to amend them anyway. We do not think that that is good practice; it certainly is not. Do you expect to have any technical amendments that you wish to make in advance of that?
682. **Mr McAlorum:** We do, and it is certainly our intention to give that to you before the formal clause-by-clause consideration.
683. **The Chairperson:** OK. That is helpful. Thank you for that, Gary.
684. Do you have any comments to make on the schedule? No. You are happy enough.
685. Gary and Liam, thank you for your attendance this morning and for supporting the Committee in its work. We will return to this on 21 November, when we will carry out the formal clause-by-clause consideration of the Bill.

14 November 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Mr Jim Allister
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Trevor Clarke
 Mr Michael Copeland
 Mr Stewart Dickson
 Mr Fra McCann

Witnesses:

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

686. **The Chairperson:** We have Liam Quinn and Gary McAlorum back with us this morning. You are very welcome, gentlemen. As Committee members will recall, throughout our discussions, we have put a number of questions to the Department. Views have been expressed by a range of stakeholder organisations and members. The Department confirmed that it would adopt a number of the amendments and take on board the range of views raised by the Committee last week. It wanted to come back today to give us an update following last week's discussions in advance of our clause-by-clause scrutiny session scheduled for next week. Members have papers detailing the various proposals in their Bill folder.
687. The Committee Clerk: There is a letter from the Minister dated 12 November.
688. **The Chairperson:** Liam and Gary, would you like to take members through the goody bag that you have for us from last week?
689. **Mr Liam Quinn (Department for Social Development):** Thank you, Chairman. During the informal clause-by-clause scrutiny last week, you asked the Department to consider certain policy issues that the Committee had some concerns around. I will summarise the

Department's policy position on the main issues raised last week before taking questions from members.

690. Some of the issues that were discussed are interlinked, but, for the purpose of the briefing, they mainly concern the extent of the licensing powers available to councils, in particular the power to revoke or suspend a licence; limiting the time for consultation on applications; the duration of a licence; insurance requirements; the continuance of a licence on appeal; and temporary licences.
691. Some members expressed concern that certain provisions in the Bill — for example, those relating to the granting, revocation or suspension of a licence — were either too restrictive or possibly open to exploitation by overzealous council officials. In particular, it was noted that a licence could be revoked or suspended for a single breach of a licence condition. As members will be aware, the Bill is subject to the EU services directive. The regulations that transpose the directive into EU law require a decision to withdraw an authorisation to be fully reasoned, so a council will have to fully explain its reason for revoking or suspending a licence. The same test would apply to a decision made by a council to refuse a licence.
692. However, to address members' concerns, the Minister proposes to table two amendments to the Bill. First, the Bill would be amended to allow for revocation or suspension only where a licence holder has persistently breached the licence conditions. In practice, we expect that councils will, in most situations, adopt a three-strikes-and-you-are-out policy, with the severity of the breaches determining whether the licence should be suspended or revoked. Secondly, the Bill will require a council to give the licence holder advance notice of its intention to

- revoke, suspend or make a compulsory variation to the licence, and to allow for representation to be made before a final decision is taken. That will be subject to there not being any public safety concerns that require any immediate closure of the pavement cafe area. The procedure may prevent a formal appeal to a court later, but, more importantly, it will provide transparency in the decision-making process and ensure that councils are in full possession of the facts before making a final decision.
693. It was suggested that provision be made to limit the time for consultation on applications, and I think that the concern was mainly around the input from Roads Service, which is quite important to the process. The EU services directive requires an application to be processed within a reasonable time, which is fixed and made public in advance. If no decision has been made at the end of that period, the licence is deemed to be granted. It should be noted that the Bill allows for a period of 28 days for representations to be made on an application. Councils currently consult the Roads Service on the Street Trading Act (Northern Ireland) 2001, and, as far as we are aware, there are no difficulties with input from Roads Service on that particular issue.
694. On the duration of a licence, the Bill provides that this shall:
- "if no period is specified ... remain valid indefinitely."*
695. Some members thought that it would be helpful to specify a time limit. The terminology used in the clause — clause 5 — is common to other licensing systems and has been adopted by the Department in order to meet the requirements of the services directive. However, there is nothing to prevent a council from limiting the duration of a licence if it has good reason. Indeed, clause 7 recognises that there may be circumstances in which that will be required in providing for the renewal of a licence.
696. The Bill allows councils to specify insurance requirements, including
- public liability insurance. It has been suggested that it should be mandatory for a prospective licence holder to take out public liability insurance. The relevant provision is widely drawn and was included in the Bill at the request of local government, who are keen to have a discretionary power in that regard. The Department is not aware of any statutory requirement for businesses, such as public houses, restaurants or cafes, to take out public liability insurance to cover their everyday operations. In addition to the power already described, a council could ask an applicant to produce evidence of insurance cover, or, after a licence is granted, it could be required that a council be notified about any matters affecting the licence holder's insurance. There is never going to be a cast-iron guarantee that such conditions of a licence will be adhered to, but the Department does not consider it necessary for the relevant provisions to be made mandatory.
697. The issue of continuance of a pavement cafe licence on appeal was raised. The Department was asked why the Bill did not provide for the continuance of a pavement cafe licence pending an appeal to a court against revocation or make provision for compensation. The circumstances in which a council is likely to revoke a licence could be concerns around public safety, disorder or where the licence holder has shown complete disregard for the terms of a licence. The amendment that the Minister is preparing to table around persistent breaches will cover that as well. As such, it would not be in the public interest to provide for the continuance of a licence while the licence holder is pursuing an appeal. It should be noted that a pavement cafe licence simply provides a business with a special dispensation to extend trading into a public area, which is not really its main business.
698. Moreover, the Department believes that the proposed amendment, which would allow a licence holder to make representation to the council before the decision to revoke a licence is

- confirmed, should help to promote procedural fairness and sound decision-making. In particular, it would ensure that a council is in full possession of the facts before a decision is finally taken and should provide a strong evidence base should court proceedings follow.
699. The Committee asked about the granting a temporary licence for, for example, a street festival. That is not included in the Bill, simply because we believe that such applications would be very rare. We also doubt whether the benefits of operating a pavement cafe on a short-term basis would be worth the time and expense of going through the whole licensing process. Additionally, if a business owner had an expectation that a licence would be granted in principle, one would ask why a council should limit the licence's duration to, say, a weekend-long street festival. There is also a risk that providing for the granting of a temporary licence, perhaps at short notice, could compromise the licensing objectives, and it may not allow time for proper consultation with Roads Service on disabled access, and so on.
700. In addition to the proposed amendments that I outlined, the Minister has provided you with details of a small number of technical amendments. Those amendments, in part, clarify issues raised by stakeholders and deal with market rights, appeals, licensing and street trading law. We are happy to take any questions from members.
701. **The Chairperson:** OK. Any questions, members?
702. **Mr Copeland:** Liam, I would just like clarification on a point. Being licensed is one thing, but do owners require planning permission for the structures, albeit they are portable?
703. **Mr Quinn:** They are portable, so they do not require planning permission.
704. **Mr Copeland:** But the licence allows them to be there for a set time frame that, I think, is in excess of what allows them to be considered portable. I just wondered whether any consideration was given to that. At this stage, therefore, is there no requirement for planning permission?
705. **Mr Gary McAlorum (Department for Social Development):** We originally made provision in the Bill for consultation with Planning Service on the applications, because — you are quite right — it is certainly a planning consideration. However, we are aware that, under the reform of local government, the planning function will transfer to councils, so the matter can be dealt with in-house, as it were.
706. **Mr Copeland:** Therefore, there is no mechanism to oppose an application for those who, for whatever reason, object — there will always be people who object — and there are no third-party appeals. None of that exists.
707. **Mr McAlorum:** Anybody can certainly object to a pavement cafe licence being granted.
708. **Mr Copeland:** And that person would be notified just as a pavement cafe licence has been granted, almost without any approval or a planning application.
709. **Mr McAlorum:** The person could make representations to the council, and the council would have to take into account those representations.
710. **Mr Copeland:** By what mechanism would the person become aware of it?
711. **Mr McAlorum:** We are requiring the applicant to post a notice on the front of the premises.
712. **Mr Copeland:** OK. Thank you.
713. **Mr Dickson:** Apologies, I probably should know this, but I just want to check whether there is a requirement to display a licence once it has been granted.
714. **Mr McAlorum:** No, there is not.
715. **Mr Dickson:** Should there be?
716. **Mr McAlorum:** We felt not, but we certainly did consider it. Under the street trading legislation, if you are granted a licence, you are requested to display your notice, but we thought that, because a pavement cafe is an

- extension of settled business premises, it would not really be necessary.
717. **Mr Allister:** The Department is not minded to impose a requirement in the legislation for public liability insurance, even though the setting is going to be in a public area. In the letter, the Department and the Minister justify that stance by saying that, at the moment, there is no obligation on a pub or a restaurant to have public liability insurance, but is there not a distinct distinction when the operation is in a public place?
718. **Mr McAlorum:** The council would have the discretionary power to require —
719. **Mr Allister:** Why does the legislation not expect public liability insurance for a public place?
720. **Mr McAlorum:** We did not think that it was necessary to go that far. We provided councils with a power to require, if they so wish, public liability insurance to be taken out.
721. **Mr Allister:** Will the guidance suggest that they should or should not?
722. **Mr McAlorum:** Yes, it certainly will.
723. **Mr Allister:** That they should?
724. **Mr McAlorum:** We believe that they should. Local government asked us for provision to be made in the Bill, and we are seeking to do that by giving it the opportunity to require public liability insurance to be taken out. However, we have fallen slightly short of making it mandatory.
725. **Mr Allister:** You think that it should happen and recognise that it is a public place, but you do not think that you should make it mandatory. That is the Department's position.
726. **Mr McAlorum:** Yes.
727. **The Chairperson:** Thank you for that. I draw members' attention to the tabled items folder. The Committee Clerk has included a briefing paper in the pack that identifies a number of issues that members raised during the discussions,
- including the definition of "public areas", advertising boards and so on.
728. I am not receiving any requests to have anything clarified, so I will conclude the session. We intend to return to the Bill next week when we will look at it clause by clause. If members want anything put in or amended or if they have requests that should be included in the guidance, we will do that at next week's session.
729. Liam and Gary, thank you for attending.

21 November 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Mr Jim Allister
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Michael Copeland
 Mr Stewart Dickson
 Mrs Dolores Kelly
 Mr Fra McCann
 Mr Sammy Wilson

Witnesses:

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

730. **The Chairperson:** Officials from the Department are here to brief the Committee on the amendments and to ensure that members are clear on their meaning. We have with us Liam Quinn and Gary McAlorum, who will give the Committee a wee update on the amendments just to make sure that people are clear on their intention and are satisfied with them. Is that fair enough?
731. **Mr Liam Quinn (Department for Social Development):** It is, yes, Chairman. We have seven amendments. Most have come forward as a result of concerns raised by members and try to deal with those issues. There are also fairly minor technical amendments. I will ask my colleague Gary to go through the amendments one by one.
732. **Mr Gary McAlorum (Department for Social Development):** I will go through the amendments very briefly indeed.
733. The amendment to clause 1, and the amendment to the related definition in clause 30, clarify how councils should treat, for licensing purposes, areas where historical rights to hold a market exist.
734. Clause 14 allows a council to revoke a licence for a single breach of the licence conditions. To address members' concerns, the clause will be amended to allow for revocation where the licence holder has persistently failed to comply with any condition of the licence. Members will also wish to note that the amendment will apply to suspension of licenses under clause 15.
735. Members will note that clause 19 will be heavily amended. The proposed amendments address members' concerns by providing the opportunity for a licence holder to make representations to a council before it takes the final decision to revoke, suspend or make a compulsory variation to a licence. The licence holder should normally have 21 days to make representations, but there may be exceptions to that: for example, if public safety concerns require the pavement cafe area to be closed with immediate effect.
736. Clause 21 provides for an appeal to the Magistrates' Court in respect of a wide range of licensing decisions taken by a council. The proposed amendment will extend the right of appeal to a decision to limit the duration of a licence under clause 5.
737. Two very minor amendments are to be made to the schedule. They simply clarify technical issues concerning the Bill's impact on liquor licensing and street trading legislation.
738. **The Chairperson:** Do members want to go through those amendments or need any further clarification?
739. **Mr Wilson:** We raised the issue of the length of time that consultees have to respond. I felt that the Committee had accepted that we should have some correction there, rather than simply a provision that people would be consulted. There has not been any change to that particular clause.

740. **The Chairperson:** Is there not something about 28 days in that requirement, Liam?
741. **Mr Quinn:** There are two things. First, there is the 28-day requirement to advertise and for people to respond if they have any objections to the licence. The second issue is that councils are already required, through the European services directive, to publish timescales for dealing with a licence application. So, as part of this process, a council will be required to say that it will deal with a licence application within a specified period. If it has not dealt with it within that period, the licence will be deemed to have been granted. So, as part of their licensing scheme, each council will say that it expects to deal with a licence application within, for example, two months or whatever it happens to be.
742. **Mr McAlorum:** As Liam said, under clause 10(5), the Bill makes provision for a period of 28 days for representations to be made on an application.
743. **Mr Dickson:** My apologies for using this opportunity to ask a question, but I am new to the Committee and was not here at the beginning of the Bill. Was an equality impact assessment done on the effects of the Bill? How does that affect any supplier of goods and services if a pavement cafe, for example, is in a public space where people may be seated beside kerbstones which are painted in various colours that are perceived to be not neutral and, therefore, may be a detriment to the delivery of goods and services?
744. **Mr McAlorum:** On the question of an equality impact assessment, we did a screening of the policy, but we did not do a full equality impact assessment, on the basis that the legislation itself will address issues particularly for pedestrians and the disabled in relation to access to the pavement.
745. **Mr Dickson:** It does not then, per se, deal with the issue of goods and services being delivered in a fair and equal way in a place where it is comfortable for people to sit?
746. **Mr Quinn:** No, it does not. However, if the council feels that it should not be granting a licence in an area of that nature, it will take that into account.
747. **Mr Dickson:** Does the council have the power to take that into account in the legislation? Does the legislation advise or direct it to take that into account?
748. **Mr Quinn:** No. The legislation does not specifically direct councils to take that into account, but it is something that they should take into account generally as part of their normal duties, is it not?
749. **Mr Dickson:** I have a serious concern that the Bill does not address the issue of the delivery of goods and services and equality in the area where people may be required to sit or be seated in public, and I ask the Department to consider that.
750. **Mr F McCann:** On the back of that, I am trying to work out how you actually do that and how premises are supplied. I know that, in some places, it is done in the middle of the night, so that it does not infringe on the delivery of a service from a cafe or whatever the premises may be. Could Stewart elaborate on that and how it fits in with the ability to run something like that?
751. **Mr Dickson:** My understanding of the equality legislation is that, under goods and services, somebody delivering goods or a service to the general public is required to do that from an equality perspective. That includes freedom from sectarian graffiti, for example, which is unlikely to be inside the premises but has real potential to be outside the premises. Therefore, depending on their particular viewpoint, members of the public would be deterred by the colours that were painted on the pavement or the graffiti demonstrated on the walls within the roped-off or contained area for the pavement cafe. There is a general duty of care on the council to deal with that, and I understand that, but it has not been highlighted. I am concerned that it has not been highlighted

- in respect of the equality impact assessment.
752. **Mr McAlorum:** Even when a licence is granted, the area remains a public area for the purposes of the law.
753. **Mr Dickson:** It does not mean that it is a shared area.
754. **The Chairperson:** There will have to be a recommendation from the Committee at the end of this, because we do not have a formal proposition on the table as yet.
755. **Mr Allister:** Maybe Stewart has more working knowledge of painted pavements than I have, but I would have thought that the problem with painted pavements is at the extremity of the pavement, at the kerb, as it is normally kerb painting. With regard to the Bill, I cannot anticipate any pavement cafe extending to the kerb. Therefore, if the concern is about what is happening within the specified area, it is hard to imagine that it will be a problem.
756. **Mr Wilson:** If the concern is about graffiti on a wall, I imagine that anybody who has premises with such graffiti would get it cleaned off fairly quickly for the sake of the appearance of their premises. My worry would be about how far you would go on this. If, for example, you have a closed-off area and there is a lamp post at the edge of the footpath with a flag on it, are you saying that that would be a reason for not granting the licence for the closed-off area? That would be outside the control of the owner.
757. **Mr Dickson:** I accept that. However, there are circumstances where there are murals and other words and things painted on the kerbstones of the pavement, which could be inside the curtilage of the prescribed area. What equality impact assessment has been done in respect of that?
758. **Mr Quinn:** The equality impact assessment that we carried out focused very much on access for disabled people and those sorts of issues.
759. **Mr Dickson:** It missed out other equality issues.
760. **Mr Quinn:** We did not really see the Licensing of Pavement Cafés Bill as a vehicle for trying to improve shared spaces; it was more about improving the economy —
761. **Mr Dickson:** That is the answer to my question: you did not.
762. **The Chairperson:** At this point, it falls without the legislation on pavement cafes. That is the point that you are making. However, all premises are subject to all the other normal laws of the land as they may be. Without any formal suggestion or recommendation on that, we will move on. Stewart, thank you for that.
763. If members are happy, we will move on to the clause-by-clause scrutiny. Are members happy with the amendments as outlined by Liam and Gary?
- Members indicated assent.*
764. **The Chairperson:** We will move to the clause-by-clause section of the meeting. I will have to go through these — as it says on the tin — clause by clause.
- Clause 1 (Meaning of — pavement café licence — and other key terms)**
765. **The Chairperson:** I do not want to go through each clause if people are happy that we know what they are.
766. Some issues were raised in respect of clause 1, and the Department addressed those on 14 November. I take it that people have the amendments before them. Is the Committee content with clause 1 as amended by the Department?
- Question, That the Committee is content with the clause, put and agreed to.*
- Question, That the Committee is content with clauses 2 to 13 put and agreed to.*

Clause 14 (Revocation of licence)

767. **The Chairperson:** Is the Committee content with clause 14 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clauses 15 to 18 put and agreed to.

Clause 19 (Notice of revocation, suspension or compulsory variation)

768. **The Chairperson:** Is the Committee content with clause 19 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 20 put and agreed to.

Clause 21 (Appeals)

769. **The Chairperson:** Is the Committee content with clause 21 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 22 to 29 put and agreed to.

Clause 30 (Definitions)

770. **The Chairperson:** Is the Committee content with clause 30 as amended by the Department?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 31 and 32, put and agreed to.

Schedule (Consequential Amendments)

771. **The Chairperson:** I remind members that the Department proposes to amend the schedule, and I refer you to the consolidated list for the exact wording of that. Are people happy with the schedule

as proposed under the amended wording? I will put the question formally.

Question, That the Committee is content with the schedule, subject to the proposed amendment, put and agreed to.

Long title agreed to.

772. **The Chairperson:** That concludes the Committee's clause-by-clause consideration of the Bill. A draft report will be considered by the Committee at next week's meeting. Are members content with that?

Members indicated assent.

773. **The Chairperson:** Thank you, members; and thank you, Liam and Gary, for your support to the Committee over the past number of months.

28 November 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Mr Jim Allister
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Michael Copeland
 Mr Stewart Dickson
 Mrs Dolores Kelly
 Mr Fra McCann
 Mr Sammy Wilson

practice means by 12 December. That is the final Committee meeting.

780. **The Chairperson:** If anybody has any comments that they want to discuss, can I ask that they do that early enough for them to be included in the packs so that all members can have advance sight of them before we finally deal with the report next Thursday? Thank you.
774. **The Chairperson:** The next item on the agenda is the draft report on the Licensing of Pavement Cafés Bill. You should have a copy of the draft report in front of you. I am sorry; given our move to paperless work, I am told that it has been e-mailed to you, so it will be in your electronic packs.
775. I do not know whether members have had a chance to go through that report. We can take comments on it this morning, but I want to deal with it formally and expedite it by next week at the latest. So, we can take comments on it now, if you are happy enough, or, if you are content, we can address it formally next week. It is up to members.
776. **Mr Wilson:** I take it that there are paper copies of the report somewhere as well.
777. **The Chairperson:** There is one that you can borrow, but you have to put a £1,000 deposit on it.
778. I am getting the sense that members want to deal with the draft report on the Licensing of Pavement Cafés Bill next week. So, can I say that we will deal with it next week, and we will hopefully dispense with it then?
779. **The Committee Clerk:** We will have a more formal draft next week. I am happy to take comments, which we can incorporate into any draft for next week. The Committee has to agree the report officially by 13 December, which, in

5 December 2013

Members present for all or part of the proceedings:

Mr Mickey Brady (Deputy Chairperson)
 Ms Paula Bradley
 Mr Gregory Campbell
 Mr Stewart Dickson
 Mr Fra McCann

781. **The Deputy Chairperson:** We move to the draft report on the Licensing of Pavement Cafés Bill. I remind members that the draft report was provided before last week's meeting and is in today's pack. I advise members that the document in the pack is the main body of the report; the rest of the report will be made up of standard appendices, namely Hansard transcripts, minutes of the relevant meetings and written submissions from stakeholders. I ask members whether they have any comments on the report.

782. I remind members that the Bill was agreed, clause by clause, at our meeting on 21 November and that amendments brought forward by the Minister were also agreed at that stage. I advise the Committee that, today, we will agree the substantive text of the report as provided in draft form. After that, the report can go to print. The rest of the report will be made up of the cover page, contents, written submissions, minutes of proceedings and Hansard transcripts. Is the Committee content that we now agree the report on the Licensing of Pavement Cafés Bill?

Members indicated assent.

783. **The Deputy Chairperson:** Pages 2 and 3 of the report outline the Committee's recommendations on the Licensing of Pavement Cafés Bill. Is the Committee content with paragraphs 7 to 16 on pages 2 and 3 of the report as drafted?

Members indicated assent.

784. **The Deputy Chairperson:** Page 4 of the report contains the introduction of the

report. Is the Committee content with paragraphs 17 to 25 on page 4 of the report as drafted?

Members indicated assent.

785. **The Deputy Chairperson:** Pages 5 to 14 of the report outline the Committee's consideration of the Bill and record the oral evidence taken at Committee Stage from stakeholders and the Department. Is the Committee content with paragraphs 26 to 113 on pages 5 to 14 of the report as drafted?

Members indicated assent.

786. **The Deputy Chairperson:** Pages 15 to 17 outline the Committee's clause-by-clause scrutiny of the Bill. Is the Committee content with paragraphs 114 to 150 on pages 15 to 17 of the report as drafted?

Members indicated assent.

787. **The Deputy Chairperson:** I advise members that the executive summary of the report must be agreed. It is on page 1 of the report. Is the Committee content with paragraphs 1 to 6 on page 1 of the report as drafted?

Members indicated assent.

788. **The Deputy Chairperson:** Is the Committee content that the report be the sixth report to the Assembly of the Committee for Social Development?

Members indicated assent.

789. **The Deputy Chairperson:** As the Committee has now agreed this, the report should not be further amended. Is the Committee content that the report be printed on 12 December?

Members indicated assent.



Northern Ireland
Assembly

Appendix 3

Written Submissions

List of Written Submissions

Ards Borough Council
Armagh City and District Council
Belfast City Centre Management
Belfast City Council
Confederation of British Industries
Craigavon Borough Council
Department for Enterprise Trade and Investment
Department for the Environment
Derry/Londonderry City Council
Disability Action
Dungannon and South Tyrone Borough Council
Fermanagh District Council
Guide Dogs for the Blind Association
Inclusive Mobility and Transport Advisory Committee
Institute of Licensing NI
Larne Borough Council
Licensing Forum NI
Newry and Mourne District Council
Northern Ireland Housing Executive
Northern Ireland Independent Retail Trade Association
Northern Ireland Local Government Association
North Down Borough Council
Police Service of Northern Ireland
Pubs of Ulster

Ards Borough Council

Response to the Department for Social Development's Call for Evidence on Licensing of Pavement Cafés Bill.

3. General Comments

Council expresses concern in relation to the commencement of the Bill and the potential for a large number of applications to be submitted within a short time period. This will place heavy administrative and resource burden on Council. A transitional period of implementation would be preferable to allow Council the opportunity to consider applications from already established pavement cafes.

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

Council requests clarification that it will have discretion/ability to suspend a licence when circumstances e.g. Parade necessitate.

4. Specific Comments

1. Definition of areas that can be licensed.

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.

Council would agree with NILGA's assertion that some areas of land are privately owned (NILGA uses example of Belfast Harbour Estate and Lanyon Place) but they are open to public access. Council would welcome clarification about the legislation as regards these.

Premises could exist on the same stretch, where some own the land upon which they have placed pavement café furniture, these premises would not be required to apply for a Council issued license, the enforcement authority in these cases will be the PSNI.

This could mean two different licensing authorities regulating the same activity on the same stretch; this will result in no control on design, layout or operating times.

Council is concerned this will lead to confusion and claims of unfairness.

In the Bill “a market” is exempt from needing a license. Council requests clarification is sought as to whether a market must actually take place for exemption to apply.

2. Location of Pavement Café furniture

The Bill provides that an area licensed as a pavement café does not need to adjoin the applicant premises. This is reasonable in that it will allow flexibility to license premises that cannot place their furniture directly outside their property.

Council however would request that controls are placed on inappropriate competition from businesses which, for example apply for a license in areas adjacent to other establishments.

3. Fees

Council is concerned that although the Bill allows a Council to charge fees for a License application the actual cost of administering the scheme will far exceed what a Council will be

comfortable with charging businesses in their area. Some form of funding for local authorities 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

Where a Council receives an application made in accordance with this Act, it must

- 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 in writing to the Council until the end of that period

Council would request guidance in relation to what will be regarded as adequate publicity, given the costs associated with the normal method of advertising i.e. newspaper, and the potential for use of websites at a much lower cost to the public purse.

6. Refusal/Control

Council 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. 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.

Council reiterates our comments made in section one of this submission regarding fairness and consistency.

It is noted Councils can impose a prohibition on the consumption of alcohol in a pavement café area if there are concerns about disorder, and that where alcohol consumption is permitted, relevant conditions of the licensing law will automatically apply.

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 cafés 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.

Conclusion

Council requests the Committee ensures 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.

Armagh City and District Council

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.

Yours faithfully

A handwritten signature in purple ink that reads "John Briggs".

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 13th 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 13th 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 (028)90798972, by 12th September at the latest.

Derek McCallan,
Chief Executive

29th 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 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.¹

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.

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

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, 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.

Belfast City Centre Management

Licensing of Pavement Cafes Bill

Response to DSD Committee
September 2013



Introduction

Belfast City Centre Management (BCCM) welcomes DSD's commitment to improving Northern Ireland's town and city centres and is grateful for the opportunity to respond to the Committee on the licensing of pavement cafes.

In July 2010, BCCM agreed a Memorandum of Understanding (MoU) for businesses in relation to pavement cafes. This MoU was drawn up by consulting with all the relevant statutory agencies, BCCM Board and Belfast Chamber of Trade & Commerce Executive Council and the business community. The MoU gives guidance and direction to those businesses that provide 'sitting out' areas for customers on the public footway. The guidelines were drawn up to encourage a consistent and responsible approach by businesses in relation to their 'sitting out' area. This is a voluntary code of conduct.

BCCM is keen to see legislation in place for the licensing of pavement cafes and welcomes the proposals to introduce legislation permitting the establishment of pavement cafés as they add to the vitality of the city centre making them more friendly and attractive places to dwell in.

About Belfast City Centre Management Company

This response is submitted on behalf of BCCM, a public/private sector partnership, setup to bring together key stakeholders within the city centre with the following mission statement:

BCCM will deliver additional services into Belfast city centre, on behalf of its core funders, which contribute in a measurable way to a cleaner, safer and more accessible city

Working as an operational vehicle for Belfast City Council, the Department for Social Development and Belfast Chamber of Trade and Commerce, BCCM acts as an enabler, facilitator and coordinator in the city centre.

BCCM works in partnership with its key stakeholders to deliver a shared city centre agenda, focusing on the following three areas:

- Economic Performance;
- Public Space Management; and
- Safer City.

BCCM is a company limited by guarantee and has been structured in such a way that enables the private sector to become involved in the improvement of Belfast city centre and influence the decision-making process. This relationship with Belfast Chamber of Trade & Commerce is the result of the signing of the 'strategic alliance' agreed on 22nd March 2002.

Comments on the Licensing of Pavement Cafes

BCCM sees this legislation as further evidence of DSD's commitment to improving Northern Ireland's town and city centres. BCCM believes that private sector investment and well managed public space strengthens our town and city centres by creating a quality, safe urban environment, which is attractive to investors, employees, residents, shoppers and visitors.

Specific comments are as follows:

Responsibility

BCCM agrees with the Department that each council should have the power to design an appropriate licensing scheme in accordance with the size/location of the town/city.

Consultation process

BCCM suggests that councils should consult representative bodies and businesses in the decision making process. Specifically, this would include experienced bodies such as public/private partnerships and town centre management companies. Equally, any consultation should also include appropriate disability organisations.

Licence consideration

BCCM is concerned that the circumstances of refusal are not comprehensive enough and do not cover enough scenarios and councils, as a control/monitoring body, may have difficulties if they choose to refuse applications on certain grounds.

BCCM strongly advises that each licence should be considered in the context of environmental impact, visual impact, public amenity, access for disabled users and the general maintenance and management of the area. This is particularly important considering the Department's public realm investments in towns and cities across Northern Ireland and any licensing should be mindful of public investment.

BCCM would share the concerns of many councils that some businesses may not provide high quality, safe and appropriate facilities. This type of scenario is one that councils should be empowered to control effectively. Similar to BCCM's policy on street trading stalls, BCCM would request that the Bill enables councils to request that any sitting out street furniture is visually attractive and of a good standard.

Section 4 (2) (b) of the Bill refers to interference to persons or vehicles in the vicinity. This is welcome, however it is noticeable that no consideration is given for interference to adjacent premises in the vicinity.

BCCM would also like to highlight that the Bill does not include grounds to refuse where the activity will cause environmental problems or detract from the amenities of the adjacent businesses. This scenario could be a result of food, alcohol or cigarette smoke related issues.

Location of furniture

BCCM interprets the Bill as potentially allowing businesses to apply for a licence in an area that does not adjoin the applicant premises. BCCM would be against legislation permitting licensed street furniture in a remote location. The Department should consider how controls on limits could be placed on potentially inappropriate competition from businesses (for example a licence being granted for a remote location in direct competition with an established business in that area). Any additional competition for established businesses in the current economic climate would be unwelcome.

In terms of size, BCCM would suggest that the pavement café area should be proportionate to the interior of the premises.

Any guidance issued by the Department should consider the requirements of town centre users with mobility issues or impairments.

BCCM would also stress the need for legislation to ensure that furniture should be removed at certain times to allow council cleansing operatives access to the area.

The Bill refers to a 'public area' as 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 terminology clearly covers

the area where the licence covers, however BCCM would suggest that clarification regarding privately owned land would be beneficial. It appears that the Bill will not apply to any privately owned land. Belfast city centre contains several areas of land which are privately owned or managed by local and central government departments. BCCM would welcome clarification as to whether such areas are intended to be excluded from the requirement to have licence. This may result in a council licensing some, but not all, premises in the same area where furniture is placed on the footway depending if the portion of land is private or public, which will mean two distinct enforcement authorities. If a pavement cafe licence is issued, the enforcing authority will be a council. However, if the premises do not require a pavement cafe licence then the enforcing authority will sit with the Police. Two different licensing authorities, with different operational objectives, regulating the same activity is less than desirable.

Management

BCCM would reinforce the view that the businesses should maintain their pavement café area in terms of cleansing. Local councils should not have an added responsibility for cleaning up resultant litter from businesses with a licence.

Fees

Whilst BCCM recognises that councils will incur costs to administer the licence process, any associated fees for businesses should be nominal.

Any fee should be relevant to the size of the area requiring a licence.

Many businesses are already struggling with operational costs as a result of the macro economic climate. Although the amount will be dependent upon the council, legislation should note that prospective applicants will need to invest in a reasonable standard of street furniture and extend their public liability insurance and consider that a pavement cafe licence may also impact on the business rate liability of the associated property.

Consumption of alcohol

The licence can permit a person to consume alcohol legally in an area prohibited under the Alcohol Bye-Laws and that is welcomed.

BCCM believes that there is a danger of creating a 'drinking culture' rather than a 'café culture'. BCCM suggest that the terms and conditions of the licence should state that in pubs and bars a food menu should also be offered.

Enforcement

In terms of enforcement, the licence should be set up in such a way that it is an offence to breach any of the terms and conditions of the licence. The offence could incur an escalating fine or penalty and or loss of licence.

Consideration should be given to the terms and conditions of the licence incorporating issues regarding resultant litter and anti social behaviour. Consideration should also be given to the enforcement of items related to the pavement cafés which may be located outside the boundary e.g. 'A' Boards.

Licences should have clarity on the penalties for breaches of the terms and conditions.

The pavement café scheme should be managed through enforcement to ensure that no permanent structures are used on the footpath and that the size of the pavement café is proportionate to the interior of the premises.

This Bill does not appear to state there are no enforcement sanctions apart from revocation and suspension for breach of licence conditions. BCCM agrees with Belfast City Council's view that that being able to prosecute for breach of licence conditions is an extremely

effective enforcement tool. BCCM would request that the Department includes the power to prosecute for breach of conditions.

BCCM feels that the ability to prosecute for breach of a licence condition would 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. BCCM feels that a fixed penalty scheme would be a sensible introduction and proportionate for minor breaches of licence conditions. BCCM would suggest that suspending or revoking a licence should be a decision taken by a Licensing Committee which has delegated authority from a council to make the final decision as to whether a licence is suspended or revoked.

Peter Mann

Business Liaison Officer
Belfast City Centre Management Company
2nd Floor Sinclair House
95-101 Royal Avenue
Belfast BT1 1FE

T: (028) 9024 2111

E: p.mann@belfastcentre.com

Belfast City Council

Pavement Café Bill Submission for Consideration by the Social Development Committee

Having considered the Pavement Café Bill, Belfast City Council would wish to submit the following comments and recommendations for consideration in respect of the Bill.

The Council has voiced concern for several years that the development of a café culture in the City is curtailed by requirements of the Roads (NI) Order, as well as other legislative barriers.

Roads Service has taken a very sensible approach in Belfast and have not tended to pursue action against pavement cafés provided they do not restrict the free flow of pedestrians or vehicles or compromise public safety.

The Council believe that developing a café culture can have a positive effect on urban environments, help promote town and city centres, make a difference in terms of attracting visitors and tourists and contribute to the general well-being of communities.

The Council is generally very supportive of the introduction of legislation which enables and regulates pavement cafés and wishes to make constructive comments to help shape the Bill and offers its officer's expertise, to work with the Department in producing any guidance documents or associated publications.

General comment

Belfast City Council is in favour of an approach which favours approval and limits burdens on businesses. However there may well be a small number of traders who will not provide high quality, safe and appropriate facilities and the Council would like to be able to control these effectively

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 already established pavement cafés. Otherwise Councils may need to deal with a large number of applications within a short time period which will place a significant administrative and resource burden on both 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.

Committee are advised that a similar provision exists under the Local Government (Miscellaneous Provisions) (NI) Order 1985 which enables councils to issue an entertainments licence subject to such terms, conditions and restrictions as it may determine but in doing so must have regard to the model terms, conditions and restrictions published by the Department. Such model terms were drawn up by a working group which included council officers and have been an invaluable assistance in the administration of entertainments licences. Belfast City Council would be keen to participate in any working group that the Department considers setting up to undertake such a task.

It is also recommended that any guidance documents issued by the Department have regard to the mobility difficulties of the disabled and the visually impaired and aim to balance this with the needs of local business and economic activities as well as the vibrancy of our town centres.

In introducing the Pavement Cafés Bill the Department should be mindful to avoid the potential for licensed areas to simply become smoking shelters or areas for ‘mass vertical drinking’.

Specific Comments

1. Private v Public Land

In the Bill, Section (1) para (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.*

On initial reading of the definition of ‘a public area’ in the Bill, it appears to be very broad and as such it may be argued that this cuts down on red tape and is to be welcomed if this minimises any burden on business. However, from an operational point of view the Council would like raise the following points.

The Council would welcome clarification as to the intention of the Bill as regards privately owned land. Initial discussions with Department officials would appear to suggest that 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”.

The Department will be aware that there are significant areas of land, particularly within the Belfast City Council area, which are privately owned for example, Belfast Harbour Estate and Lanyon Place. These are however areas over which the public do have access. The Council would welcome clarification as to whether such areas are intended to be excluded from the requirement to have a pavement cafe licence.

Furthermore, within Belfast city centre there are some bars which own the land upon which they have placed pavement cafe furniture, for example Ten Square and Victoria’s bar. 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 the Council licensing some, but not all, premises on the same stretch of road where tables and chairs are placed on the footway depending if the portion of land is private or public, which will mean two distinct enforcement authorities. If a pavement cafe licence is issued, the enforcing authority will be a council. However, if the premises do not require a pavement cafe licence then the enforcing authority will be the PSNI. This will be in effective two different licensing authorities and regimes regulating the same activity.

For some premises this will result in no control on design, layout or operating times in the pavement café area; this is particularly important where there have been problems with disorder. This will lead to confusion and claims of unfairness for those affected. Conversely, premises with a Pavement Café Licence can allow patrons to consume alcohol without them breaching the Alcohol Bye-Laws whereas the premises that cannot be licensed because of the land issue will not be exempt from complying with the Alcohol Bye-Laws.

It is worth noting that in the Street Trading Act (N.I.) 2001, on which the Bill is modelled, there is a different definition of a public place. It is suggested that this definition should be considered as a more appropriate definition to adopt as it would deal with all of the above problems. An extract of the Street Trading Act is provided for clarity:

(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 that a market must be actually taking place for the exemption to apply and that land which may host a market is not generally exempted.

The Committee may wish to consider if the above issues, if not addressed, would support the objectives of the Bill. 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

It is the Council’s reading of the Bill that an area licensed as a pavement cafe does not need to adjoin the applicant premises. We believe this a sensible approach to allow councils a degree of flexibility as there may be premises that cannot place their furniture directly outside the frontage of their property.

However, we are concerned that this broad flexibility may also be exploited and cause future problems. We would request that the Department considers how controls on limits could be placed on inappropriate competition from businesses which, for example, apply for a licence in areas adjacent to other establishments. It is also essential that guidance is provided on how competing applications for the same area should be dealt with.

For example, a pub could apply for a pavement café licence some distance away from its premises – possibly the whole of a town square – thus gaining an economic advantage over competing pub premises. It is doubtful whether this is the intent of the legislators but is a matter that should be addressed, together with guidance on completing applications, so as to provide clarity for councils and applicants alike.

3. Fees

There is a concern that although the Bill allows the Council to charge fees for a Licence application the actual cost of administering the scheme will far exceed what the Council will be comfortable with charging already struggling businesses in the City.

Apart from the application fee prospective applicants will need to invest in a reasonable standard of street furniture, produce a site drawing / plan, extend their public liability insurance and consider that the grant of a pavement cafe licence may also impact on the business rate liability of the associated property.

4. Temporary Furniture

Section (1) para (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.*

The Council accepts that if no time limit was placed here then furniture could effectively become permanent. However, if the applicant/licensee has a disability which restricts their ability to remove their furniture in the time permitted this may be seen as discriminatory. It should be for a Council to determine what constitutes temporary furniture when considering the circumstances of each application otherwise our power of discretion is being fettered.

5. Publication of Representation Period by Councils

Section (10) para (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 in writing to the council until the end of that period.*

Clarification is sought that the requirement to ‘publicise’ will be met by councils publishing a list of pavement café applications via such means as on their website. If the intent is otherwise and if, for example, a newspaper publication is required this is expensive and will add unnecessarily to the cost of obtaining a Pavement Café Licence.

6. Refusal/Control

The Council is concerned that the grounds of refusal do not cover enough eventualities and as such weaken the option for Councils to bring about effective control. This may well be intentional and based on the ‘light touch’ approach favoured by central government but may prove problematic in the longer term. Belfast City Council is in favour of an approach which favours approval and limits burdens on businesses. However there may well be a small number of traders who will not provide high quality, safe and appropriate facilities and the Council would like to be able to control these effectively.

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

At present there is no ground to refuse where the activity will cause environmental problems or detract from the amenities of the adjacent retailers/occupiers. For example, if there are smells from food/alcohol/smoke close to residential property or problems with noise from customers who cause nuisance or annoyance. The Council is mindful of the significant number of complaints regarding nuisance and disturbance arising from smoking shelters after the introduction of the smoking legislation.

There is no ground to refuse if the tables and chairs, etc. are not suitable for their use i.e. being of a stable and robust design and suitable for the intensity of use that they will receive on the city’s streets.

There is no ground 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. The Council is mindful of the success of the Streets Ahead project in Belfast and the design of the pavement café must compliment this scheme.

7. Enforcement

The Enforcement Concordat articulates the Principles of Good Enforcement that help businesses to comply with regulations and help enforcers to achieve higher levels of voluntary compliance.

One of the key Principles is Proportionality: ensuring that enforcement action is proportionate to the risks involved.

This Bill does not appear to comply in that there are no enforcement sanctions apart from revocation and suspension for breach of licence conditions. Experience has demonstrated in the Belfast City Council area that being able to prosecute for breach of licence conditions is an extremely effective enforcement tool. The Council would therefore request that the Department includes 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. 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.

A Fixed Penalty scheme would have been a sensible introduction and proportionate for minor breaches of licence conditions such as contained within the Street Trading Act.

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.

Suspending and Revoking a licence is not a function which is normally delegated to officers. Such a decision in Belfast is taken by the Licensing Committee which has delegated authority from the Council to make the final decision as to whether a licence is suspended or revoked. Should officers consider it necessary to bring a licensee before Committee to consider licence suspension or revocation it is estimated that this will take at least 6 to 8 weeks. It is suggested this process may take even longer for other Councils in N. Ireland.

It is recommended that consideration is given to the introduction of fixed penalties as a cost effective means of enforcing this piece of legislation.

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.

Alcohol can only be consumed outside a public house, hotel, guest house which has restaurant, a restaurant, or a refreshment room in public transport premises. The Council queries why conference centres, higher educational institutions and places of public entertainment were excluded – this exclusion would cause problems for these premises if they wanted tables and chairs outside.

We reiterate our comments made in section one of this submission 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 will be encouraging their patrons to breach the Alcohol Bye-Laws.

9. Duration of licence

If the Licence is open ended there is potential that it may become a tradable commodity if the licence is granted to a company. In addition, 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 this in that 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 cafe 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 possibility for circumvention removed.

10. 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.”.

We understand the intention of the Licensing of Pavement Cafes 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.

There is a concern that this could be a mechanism to allow pavement cafes 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 café licence 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 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.

We understand that in other jurisdictions where they have the licensing of tables and chairs there is still a requirement to obtain a street trading licence.

Confederation of British Industries

David Fry
Senior Policy Adviser

DL: 028 9010 1102
E: david.fry@cbi.org.uk

CBI Northern Ireland
2nd Floor , Hamilton House
3 Joy Street , Belfast , BT2 8LE

T: +02890 101100 F: +02890 101119
E: ni.mail@cbi.org.uk W: www.cbi.org.uk/ni

Director-General: John Cridland CBE President: Sir Michael Rake

Registered No: RC000139 (England and Wales)
Registered Office: CBI Centre Point
103 New Oxford Street London WC1A 1DU

NI 11 13

CBI Northern Ireland response to the Committee for Social Development's Call for Evidence on the Committee Stage of the Licensing of Pavement Cafes Bill

Introduction

CBI Northern Ireland is an independent, non-party political organisation funded entirely by its members in industry and commerce. Across the UK, the CBI speaks for some 240,000 businesses which together employ around a third of the private sector workforce. Our membership in Northern Ireland includes businesses from all sectors and of all sizes. It includes the majority of the top 100 companies, small and medium-sized enterprises (SMEs), social enterprises, manufacturers and sectoral associations.

CBI Northern Ireland welcomes the opportunity to respond to the Committee's Call for Evidence on the Committee Stage of the Licensing of Pavement Cafes Bill.

Comments

We very much welcome the introduction of this legislation to the Assembly. As we noted in our response to the Department of Enterprise, Trade and Investment's draft Tourism Strategy in 2010 it is important to remove *'the barriers...to creating a café culture'*. At the time of our 2010 submission one CBI member noted the negative implications for tourism of having little in the way of pavement cafes in Belfast on a Sunday morning. While this does of course link into trading and opening hours issues which are not part of this Bill, we do believe it is important that the Executive takes steps to further promote a well-managed café culture – we believe this Bill is one such step.

Growing revenues from tourism is, and must continue to be, a key target for the Executive and local economy. By putting in place measures which bring us more into line with, not just the rest of the UK, but also continental Europe and other key tourist locations, we undoubtedly enhance Northern Ireland's offering. In addition developing thriving local communities in our towns and cities requires the creating of attractive environments to live, work, and play, and the provision of services, such as a café culture, which exist in most other countries, is a fundamental part of that environment.

It is right that this Bill proposes that local councils are responsible for the licensing regime that will be put in place. As several MLAs noted during the Second Stage debate of the Bill in the Assembly on 25 June 2013, they are best placed to understand the needs of their local towns and villages – rather than central Government.

It is beyond question that our town centres, like many others in the UK and Republic of Ireland, have been done significant harm by the impacts of the recession. While the Department for Social Development's various public realm schemes have done much to improve the 'look' of town centres right across Northern Ireland and we have welcomed the creation of Business Improvement Districts in Northern Ireland, it remains important that additional measures are taken to assist in regeneration and, therefore, developing opportunities for investment.

In terms of the detail of the Bill we welcome the intention in Clause 12 that councils will only be able to set licensing fees, if they wish to charge them, which cover their administration costs, rather than act as a revenue raiser. It is also important that councils make publicly available the detail of their fees and how these were calculated. We agree with the comments of the Deputy Chair of the Social Development Committee, Mr Mickey Brady MLA, during the Second Stage debate when he said, *"such transparency is important if traders are to buy into the need for a licence fee"*.

In respect of the three new offences that will be introduced as part of enforcement of the new licensing system, we would urge, much like we would with environmental legislation as an example, that councils seek to enter into constructive engagement with businesses that are seen to be in breach of the system, rather than seek to prosecute as a first step. The new licensing system can only work properly if it is seen to be fair and balanced.

As the countdown to local government reform continues, it is vitally important that councils, within the proposed statutory transition committees, begin to take into consideration the new powers in respect of urban regeneration that they will have at their disposal. They will be able to take steps to shape local towns and communities in order to open up opportunities for economic growth. This Bill will assist the new councils to target areas that they believe will benefit from the pavement café culture, in terms of approving some applications over others, and we look forward to it coming into law and being seen to work in practice.

CBI Northern Ireland

July 2013

Craigavon Borough Council

This response has been drafted by Craigavon Borough Council in response to the Department for Social Development's call for evidence to Committee in relation to the Licensing of Pavement Cafes Bill.

This is our FINAL submission

Licensing of Pavement Cafes Bill – FINAL Craigavon Borough Council submission

September 2013

Craigavon Borough Council support the introduction of this Bill. The Council believe that pavement cafe concept can add to the street scene and general ambience by allowing businesses to increase capacity while permitting members of the public to enjoy a meal or refreshments including alcoholic beverages in an outdoor environment and surroundings. It is also anticipated that people may be encouraged into towns and villages adding to the overall vitality of the area.

At this stage Craigavon Borough Council wish to raise the following concerns

Article 1, Meaning of Pavement Cafe Licence and any other terms

Article 1 (2)

For both clarity and consistency the definition of 'public place' should be the same as the Street Trading Act (N.I.) 2001 article 25 (3)

Article 1(4)

The requirement for furniture to be capable of being removed within twenty minutes appears very rigid. While it is understood that the furniture cannot become permanent, surely as long as the furniture is removed to a private place as soon as trading has ceased each day, would be sufficient.

Article 4, Grant or Refusal of Licence

The reasons for refusal are limited. As the council has the ability to set conditions, some of which may be relevant to the application e.g. the type of furniture and barriers to be used, it would be pertinent to have the ability to refuse a licence if the councils required condition wasn't been met rather than waiting to the licence was issued and having to revoke or suspend the licence.

Article 14 – 19, Revocation ,suspension and compulsory variation of a licence

Currently enforcement is only by means of revocation, suspension or variation. The Council would suggest that the ability to impose fixed penalty fines would be a quick and effective way of dealing with contraventions of conditions of licence, in the first instance.

Article 12, Fees

If a fee is to be required then we would strongly recommend that a fixed fee or scale of fees be specified in the legislation to achieve consistency across all councils.

Additionally Craigavon Borough Council would welcome appreciate guidance in relation to the legislation and setting of conditions. One area of concern is the area which a premise will wish to trade from when not adjacent to their premises. It is appreciated that the seating area could be in a square/plaza, slightly away from the premise, but should the dimensions of the pavement cafe have a correlation to the dimensions of the original premises and should they be allowed to extend the area to a greater width than their current frontage? Clarification/advice on what factors may influence decisions in relation to article 5 (3) (b) would be welcomed.

Department for Enterprise Trade and Investment

From the Office of the Minister



Department of
**Enterprise, Trade
and Investment**
www.detini.gov.uk

NETHERLEIGH
MASSEY AVENUE
BELFAST
BT4 2JP
Tel: 028 90 529452
Fax: 028 90 529545

E Mail: private.office@detini.gov.uk

Our Ref: DETI COR 334/2013

Mr Alex Maskey MLA
Chairperson
Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

2 August 2013

Dear Mr Maskey

Licensing of Pavement Cafes Bill – Call for Evidence

Thank you for your letter dated 1 July 2013 regarding the Licensing of Pavement Cafés Bill.

I welcome its introduction as well regulated pavement cafes can enhance the visitor experience and boost tourism.

As Minister of Enterprise, Trade and Investment please find attached a detailed response to your call for evidence on this Bill.

Yours sincerely

ARLENE FOSTER MLA
Minister of Enterprise, Trade & Investment

ANNEX 1

WRITTEN SUBMISSION ON LICENSING OF PAVEMENT CAFES BILL

CONTENTS

Requirement for pavement café licence

1. Meaning of “pavement café licence” and other key terms

The definition of the term ‘pavement café licence’ should provide clarity to business owners and assist in encouraging them to develop this opportunity within the required regulatory framework.

2. Offence of placing furniture on public area without pavement café licence

The introduction of a regulated licensing scheme should enable the development of a high standard of pavement cafes that will enhance Northern Ireland’s image as a modern and vibrant tourist destination.

Application for licence

3. Application for licence

The requirement to submit a plan of the proposed area on application of a licence is reasonable.

4. Grant or refusal of licence

The intention of the Bill to support the development of pavement cafes is reflected by placing the onus on a district council to grant a pavement café licence (unless reasonable grounds for refusal exist).

Consultation with the PSNI where a premise has a pub licence is appropriate as visitors seek a welcoming and safe environment.

5. Form, duration etc. of licence

It may be helpful to recommend how long a licence should remain valid, to ensure a consistent approach and to facilitate businesses in the hospitality and tourism industries with premises in different locations across Northern Ireland.

6. Conditions of licence

The prohibition of consumption of alcohol at a café where the associated premises are licensed for off-sales underpins the policy objective to facilitate the controlled expansion of suitable premises such as cafes, restaurants and pubs. These play a key role in delivering a good visitor experience.

Renewal

7. Renewal of licence

NITB has nothing further to add.

Variation on application of licence holder

8. Variation of section 6(3) conditions or of area covered by licence

NITB has nothing further to add.

9. Variation by removal of alcohol prohibition

NITB notes this allows for flexibility by permitting a premise to apply to the council to request a current alcohol prohibition be reviewed. NITB has nothing further to add.

Applications: general provision

10. Applications: general provision

NITB has nothing further to add.

11. Notice of application to be displayed

NITB has nothing further to add.

12. Fees

NITB is aware of the challenges facing the tourism and hospitality industries to continue to deliver a high quality offering and remain competitive against the pressure of a rising cost base. NITB welcomes the stipulation that fees set by Councils should cover reasonable costs only (not for profit) and that a statement be issued showing how fees have been calculated, so as to address any potential perception that a pavement café might not be a viable commercial opportunity.

Change in persons carrying on business

13. Change in persons carrying on business

NITB has nothing further to add.

Revocation, suspension and compulsory variation

14. Revocation of licence

NITB has nothing further to add.

15. Suspension of licence

NITB has nothing further to add.

16. Compulsory variation of section 6(3) conditions

NITB notes that should a premise obtain an alcohol licence this permits opening hours of a pavement café to be aligned. NITB has nothing further to add.

17. Compulsory variation: prohibition of alcohol

As above NITB has nothing further to add.

18. Compulsory variation of area covered by licence

NITB has nothing further to add.

19. Notice of revocation, suspension or compulsory variation

NITB has nothing further to add.

Matters to be recorded in register

20. Matters to be recorded in register under Licensing Order

NITB notes that this provides particulars of pavement café licences to be recorded in the Alcohol Licensing Register if relevant. NITB has nothing further to add.

Appeals

21. Appeals

NITB has nothing further to add.

Powers of entry, removal, etc.

22. Powers of entry and inspection

NITB has nothing further to add.

23. Power to remove unlicensed furniture

NITB has nothing further to add.

24. Offence of obstruction

NITB has nothing further to add.

Supplementary

25. Service of notices and documents

NITB has nothing further to add.

26. Power to make further provision

NITB has nothing further to add.

27. Regulations

NITB has nothing further to add.

28. Consequential amendments

NITB has nothing further to add.

29. Byelaws

NITB welcomes the exemption of pavement cafes from byelaws prohibiting the consumption of alcohol in a particular place (e.g. on street drinking) if these are associated with pubs, hotels, restaurants or guesthouses.

30. Definitions

NITB has nothing further to add.

31. Short title

NITB has nothing further to add.

32. Commencement

NITB's understanding is that DSD has advised that the Bill's main provisions will come into operation on a date appointed in an order that DSD will make following liaison with councils. NITB looks forward to an implementation date being agreed in due course and for well regulated and attractive pavement cafes to appear in tourism destinations across Northern Ireland.

Schedule

NITB notes that the Schedule contains amendments to other legislation as a consequence of the introduction of the Bill including The Licensing (Northern Ireland) Order 1996.

NITB had previously sought information on the consumption of alcohol at pavement cafés and welcomes that the Bill clarifies that where alcohol consumption is permitted, relevant conditions of the liquor licensing legislation will apply.

Amendments to Articles 76A to 76E (Licensing Northern Ireland) Order:

NITB notes that the provision for the area where alcohol may be consumed will be extended to include a pavement café area but does **not** extend the area where liquor can be sold, which must remain within the main premises. From the perspective of the visitor being able to savour the local atmosphere outside over a drink will be facilitated.

NITB notes that a children's certificate, which permits access to an area where alcohol is consumed in certain circumstances, will also apply to the pavement café enabling families to enjoy this space.

Annex 1

Written Submission On Licensing Of Pavement Cafes Bill

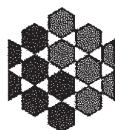
| |
|--|
| <p style="text-align: center;">Contents</p> <p style="text-align: center;">Requirement for pavement café licence</p> |
| <p>1. Meaning of “pavement café licence” and other key terms</p> <p>The definition of the term ‘pavement café licence’ should provide clarity to business owners and assist in encouraging them to develop this opportunity within the required regulatory framework.</p> |
| <p>2. Offence of placing furniture on public area without pavement café licence</p> <p>The introduction of a regulated licensing scheme should enable the development of a high standard of pavement cafes that will enhance Northern Ireland’s image as a modern and vibrant tourist destination.</p> |
| <p style="text-align: center;">Application for licence</p> |
| <p>3. Application for licence</p> <p>The requirement to submit a plan of the proposed area on application of a licence is reasonable.</p> |
| <p>4. Grant or refusal of licence</p> <p>The intention of the Bill to support the development of pavement cafes is reflected by placing the onus on a district council to grant a pavement café licence (unless reasonable grounds for refusal exist). Consultation with the PSNI where a premise has a pub licence is appropriate as visitors seek a welcoming and safe environment.</p> |
| <p>5. Form, duration etc. of licence</p> <p>It may be helpful to recommend how long a licence should remain valid, to ensure a consistent approach and to facilitate businesses in the hospitality and tourism industries with premises in different locations across Northern Ireland.</p> |
| <p>6. Conditions of licence</p> <p>The prohibition of consumption of alcohol at a café where the associated premises are licensed for off-sales underpins the policy objective to facilitate the controlled expansion of suitable premises such as cafes, restaurants and pubs. These play a key role in delivering a good visitor experience.</p> |
| <p style="text-align: center;">Renewal</p> |
| <p>1. Renewal of licence</p> <p>NITB has nothing further to add.</p> |
| <p style="text-align: center;">Variation on application of licence holder</p> |
| <p>2. Variation of section 6(3) conditions or of area covered by licence</p> <p>NITB has nothing further to add.</p> |
| <p>3. Variation by removal of alcohol prohibition</p> <p>NITB notes this allows for flexibility by permitting a premise to apply to the council to request a current alcohol prohibition be reviewed. NITB has nothing further to add.</p> |
| <p style="text-align: center;">Applications: general provision</p> |
| <p>4. Applications: general provision</p> <p>NITB has nothing further to add.</p> |
| <p>5. Notice of application to be displayed</p> <p>NITB has nothing further to add.</p> |

| |
|---|
| <p>6. Fees</p> <p>NITB is aware of the challenges facing the tourism and hospitality industries to continue to deliver a high quality offering and remain competitive against the pressure of a rising cost base. NITB welcomes the stipulation that fees set by Councils should cover reasonable costs only (not for profit) and that a statement be issued showing how fees have been calculated, so as to address any potential perception that a pavement café might not be a viable commercial opportunity.</p> |
| Change in persons carrying on business |
| <p>7. Change in persons carrying on business</p> <p>NITB has nothing further to add.</p> |
| Revocation, suspension and compulsory variation |
| <p>8. Revocation of licence</p> <p>NITB has nothing further to add.</p> |
| <p>9. Suspension of licence</p> <p>NITB has nothing further to add.</p> |
| <p>10. Compulsory variation of section 6(3) conditions</p> <p>NITB notes that should a premise obtain an alcohol licence this permits opening hours of a pavement café to be aligned. NITB has nothing further to add.</p> |
| <p>11. Compulsory variation: prohibition of alcohol</p> <p>As above NITB has nothing further to add.</p> |
| <p>12. Compulsory variation of area covered by licence</p> <p>NITB has nothing further to add.</p> |
| <p>13. Notice of revocation, suspension or compulsory variation</p> <p>NITB has nothing further to add.</p> |
| Matters to be recorded in register |
| <p>14. Matters to be recorded in register under Licensing Order</p> <p>NITB notes that this provides particulars of pavement café licences to be recorded in the Alcohol Licensing Register if relevant. NITB has nothing further to add.</p> |
| Appeals |
| <p>15. Appeals</p> <p>NITB has nothing further to add.</p> |
| Powers of entry, removal, etc. |
| <p>16. Powers of entry and inspection</p> <p>NITB has nothing further to add.</p> |
| <p>17. Power to remove unlicensed furniture</p> <p>NITB has nothing further to add.</p> |
| <p>18. Offence of obstruction</p> <p>NITB has nothing further to add.</p> |
| Supplementary |
| <p>19. Service of notices and documents</p> <p>NITB has nothing further to add.</p> |

| |
|---|
| <p>20. Power to make further provision</p> <p>NITB has nothing further to add.</p> |
| <p>21. Regulations</p> <p>NITB has nothing further to add.</p> |
| <p>22. Consequential amendments</p> <p>NITB has nothing further to add.</p> |
| <p>23. Byelaws</p> <p>NITB welcomes the exemption of pavement cafes from byelaws prohibiting the consumption of alcohol in a particular place (e.g. on street drinking) if these are associated with pubs, hotels, restaurants or guesthouses.</p> |
| <p>24. Definitions</p> <p>NITB has nothing further to add.</p> |
| <p>31. Short title</p> <p>NITB has nothing further to add.</p> |
| <p>32. Commencement</p> <p>NITB's understanding is that DSD has advised that the Bill's main provisions will come into operation on a date appointed in an order that DSD will make following liaison with councils. NITB looks forward to an implementation date being agreed in due course and for well regulated and attractive pavement cafes to appear in tourism destinations across Northern Ireland.</p> |
| <p style="text-align: center;">Schedule</p> |
| <p>NITB notes that the Schedule contains amendments to other legislation as a consequence of the introduction of the Bill including The Licensing (Northern Ireland) Order1996.</p> |
| <p>NITB had previously sought information on the consumption of alcohol at pavement cafes and welcomes that the Bill clarifies that where alcohol consumption is permitted, relevant conditions of the liquor licensing legislation will apply.</p> |
| <p>Amendments to Articles 76A to 76E (Licensing Northern Ireland) Order:</p> <p>NITB notes that the provision for the area where alcohol may be consumed will be extended to include a pavement café area but does not extend the area where liquor can be sold, which must remain within the main premises. From the perspective of the visitor being able to savour the local atmosphere outside over a drink will be facilitated.</p> <p>NITB notes that a children's certificate, which permits access to an area where alcohol is consumed in certain circumstances, will also apply to the pavement café enabling families to enjoy this space.</p> |

Department for the Environment

**From the office of the
Minister of the Environment**



Department of the
Environment

www.doeni.gov.uk

Alex Maskey MLA
Chairperson, Committee for Social
Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX

DoE Private Office
8th Floor
Goodwood House
44 - 58 May Street
Town Parks
BELFAST
BT1 4NN

Telephone: 028 902 56019

Email: private.office@doeni.gov.uk

Your reference: CSD/013/2011/SK

Our reference: COR/650/2013

05 August 2013

Dear Alex

Thank you for your letter of 1 July 2013 to my predecessor Alex Attwood inviting my Department to make a written submission on the Licensing of Pavement Cafés Bill as part of the Social Development Committee's call for evidence.

I am aware of the details of the Bill from my previous membership of the Social Development Committee and at second stage debate recently I had raised a concern regarding the removal of a statutory obligation on councils to consult with DOE Planning. However, I am now satisfied that the arrangements being put in place by DSD, informed by my officials, should ensure proper consideration of planning issues both before and after the transfer of planning functions to the new district councils.

Consequently, I can confirm that I have no concerns regarding the Bill as introduced and welcome the opportunities it may bring for small businesses and the benefits to the local economy within a properly regulated system.

Yours sincerely

MARK H DURKAN MLA
Minister of the Environment

Copied to:

Anna Lo, MLA – Chairperson of the Environment Committee
Helen Richmond – DOE DALO

Derry/Londonderry City Council

| | | |
|---|---|---|
| Item/Min Ref: ES279/13 | Title of Report: Licensing of Pavement Cafés Bill | Officer presenting: Strategic Director Author: Licensing Officer |
|---|---|---|

1. Purpose of Report/Recommendations

- 1.1 To update Members on the progress of the Licensing of Pavement Cafés Bill and determine Council's view on the provision contained in the proposed legislation.

2. Background

- 2.1 The Department for Social Development has produced a consultation document on a proposal to introduce a licensing scheme in respect of "pavement cafés". The objective behind this proposal is to introduce a statutory licensing scheme for the regulation of pavement cafés by district councils. Legislation has been introduced in Great Britain under which café owners etc. may apply to their local council for permission to place tables and chairs on the pavement outside their premises (with or without a liquor licence). The relevant legislation in England and Wales is the Highways Act 1980. In the Republic, local authorities issue licences under the Planning and Development Act 2000 and associated regulations. The regulations specify the appliances, apparatus and structures suitable for licensing. However, in Northern Ireland the provision of tables and chairs on the footpath is currently prohibited under the Roads (NI) Order 1993. There may also be planning issues associated with the provision of facilities of a permanent or semi-permanent nature.
- 2.2 The Assembly's Committee for Social Development, has circulated a 'Call for Evidence', attached as Appendix A.

3. Key Issues

- 3.1 A Bill, incorporating a statutory licensing scheme to be administered by district councils, was recently approved by the NI Executive and introduced into the Assembly. The Bill has been published on the Assembly's website and a link to this and the associated Explanatory and Financial Memorandum is below.

<http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/primary-legislation-current-bills/licensing-of-pavement-cafes-bill/>

- 3.2 In summary, the Bill allows district councils to:
- authorise a person carrying on a business involving the supply of food or drink (from premises), to place tables, chairs etc in a public area;
 - require the applicant to fix a notice to the premises and submit a plan of the proposed pavement café area;
 - impose conditions on the licence;
 - vary, suspend or revoke the licence;
 - charge a reasonable fee; and
 - take enforcement action including removing the facilities in certain circumstances.
- 3.3 The Bill places a duty on councils, when dealing with new applications, to consult DRD Roads Service. Councils must also consult with the PSNI where an applicant holds a pub licence. Other safeguards have been included in the Bill to ensure that there are strict controls on

alcohol consumption at relevant pavement cafés. Rights of appeal to a Magistrate's Court against licensing decisions are included and the following offences will be created:

- operating a pavement café without a valid licence;
- making a statement, known to be false, in connection with an application; and
- obstructing an authorised officer in the execution of his/her duties.

3.4 Each offence attracts a level 3 fine (up to £1,000) on summary conviction.

3.5 One area of concern to officers in most Councils, is how the proposed legislation amends the Street Trading Act. The 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.”.

It is understood that the intention of the Licensing of Pavement Cafes 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.

There is a concern that this could be a mechanism to allow pavement cafes 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 café licence to effectively become a street trader.

It is officers’ view that businesses eligible to operate an outdoor café should be required to provide food/drinks prepared inside the main premises and if a trader wishes to sell from barbecues, ice cream machines and drinks/food vending machines, etc., they should still require a street trading licence with all of the appropriate considerations and checks.

4. Financial and Other Implications

4.1 There are no financial implications for Council. The income mentioned above is to cover the administration of the applications and other work associated with delivering the licensing function in relation to pavement café licensing.

5. Recommendations

5.1 Members are asked to consider the above comments for endorsement.

6. Background Papers

Environmental Services Committee Minutes February 2011- ES47/11 Consultation Document - Licensing of Pavement Cafés.

The Licensing Officer introduced the above report and indicated that Members consider the draft response, paying particular attention to concerns which had been raised by officers within the report.

Councillor Hassan Moved, Councillor J. Carr Seconded and the Committee

Resolved that Members endorse the above recommendations in respect of the Licensing of Pavement Cafés Bill as outlined within the report.

Disability Action

The Licensing of Pavement Cafés Bill Call for Evidence Social Development Committee

Disability Action Response
September 2013

Introduction

Disability Action is a pioneering Northern Ireland charity working with and for people with disabilities. We work with our members to provide information, training, transport awareness programmes and representation for people regardless of their disability; whether that is physical, mental, sensory, and hidden or learning disability.

As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community.

Disability Action welcomes this opportunity to respond to the Committee for Social Development call for evidence on the licensing of pavement cafes in Northern Ireland.

For convenience the following comments will follow the order of the Bill where possible and reference the relevant section numbers.

General Comments

Disability Action welcomes the introduction of legislation to licence and as such control the introduction of temporary and moveable street furniture, such as café chairs and tables on pavements.

Whilst Disability Action has concerns regarding the introduction of additional potential hazards on to our streetscapes, the reality is that current legislation which prohibits the obstruction of pavements is not applied with any consistency. Since the introduction of the “smoking ban” street furniture of many forms has increasingly appeared outside many different types of premises across villages, towns and cities and on occasion with little regard for the safety or convenience of the pedestrian.

Disability Action understands and supports the desire to create attractive and lively streetscapes toward a European-style “café culture” but we also are concerned that a lively streetscape may be or appear to be hazardous to people with disabilities. The perception of a lack of accessibility or potential danger is as real as an actual hazard and can be detrimental to disabled people who will avoid an area rather than take a risk. This is particularly relevant to blind or partially sighted people but is also a reality for people with mobility disabilities and others with mental health or learning disabilities and for many older people.

It is crucial therefore that in legislating for the introduction of obstructions on our footpaths that issues relating to accessibility and to control the impact in terms of people with disabilities is a guiding criterion.

Specific Comments

What constitutes a “pavement café”?

The definition 1(1) suggests the type of premises to which a pavement café license may apply as those which may “place on a public area ... temporary furniture for the consumption of food or drink supplied, in the course of a business carried on by the licence holder, in or from premises specified in the licence”.

Is there potential for abuse of the terminology “supplied in the course of business”? Since the introduction of the smoking ban tables and chairs have appeared outside many different types of business premises for example convenience stores, hairdressing salons, and amusement arcades/bingo halls. Will the legislation create a potential loop hole to allow the obstruction of the footpath beyond a café culture?

Control of the design and layout of pavement cafes

The proposed legislation requires the submission of a plan which “shows the location and dimensions of the public area” 3(4) but the control of size and layout and any other matters are to be within the control of the council.

Each council could therefore create its own specific requirements in terms of for example a requirement for screening, the minimum passage space etc leading to confusion amongst people with disabilities and inconsistency across the province of accessibility standards in the public realm.

The Department should take a lead in establishing the minimum requirements which pavement cafés must meet in terms of layout and design, the minimum pavement width or passage space required, the need for clear visibility and screening, etc which can be applied consistently across Northern Ireland.

The proposed Bill allows for a refusal, revocation, suspension or compulsory variation of a licence where the placement of furniture may “result in undue interference or inconvenience to persons or vehicles in the vicinity” 4(2), 14(1), 15(1) and 18(1). As above this is open to interpretation and potential misunderstanding, the legislation should specify people with disabilities who have very particular access needs but which could be unwittingly misunderstood if not set out in minimum requirements.

Again the Department should set a minimum standard for application across all council areas rather than leaving these critical fundamental access requirements open to interpretation and inconsistency.

5(3)b says that the area of the pavement café is required to be “an area at least 75% of which falls within an area which was so proposed”. Disability Action understands that it is difficult to regulate or enforce zero tolerance however; dependant upon the size of the pavement café, a 25% tolerance could mean a significant change in the placement of a pavement café. Someone who has a visual impairment will learn or become accustomed to the location of a pavement café in very specific terms, therefore it could become a significant hazard if the obstruction could potentially move or overspill on a daily basis. The Committee should consider a reduction in the percentage tolerance.

Disability Action are also concerned that the pavement cafés are themselves accessible to disabled people to enjoy and participate in café culture and in keeping with the Disability Discrimination Act, and that they do not obstruct access to the existing (indoor) services.

Disability Action refers the Committee and the Department to the Imtac position paper on the regulation of pavement cafés in Northern Ireland July 2013 which includes a summary of the accessibility requirements of 61 British councils in respect of their licensing arrangements.

Validity and conditions of a licence

Disability Action does not believe that a licence should “remain valid indefinitely” 5(5)(b).

Disability Action welcomes that a council can place conditions on a licence pertaining to the kind and amount of furniture, the days and times of opening and in terms of storage etc. 6(3). But as above we believe that there should be consistency across Northern Ireland and that the Department should set the minimum requirements.

Consultation

Disability Action believes that in the assessment of an application a council should consult with disability groups and organisations 4(5) and should seek out opinion of local disabled people and disability groups in respect of renewal applications.

In respect of notification 11(2), the Notice of Application to be displayed so as to be “easily visible and legible to the public outside the premises” (for a period of 28 days) will not address the needs of blind or partially sighted people and may be missed by others. Disability Action suggests that notes of applications are also held at a central point such as the council website and brought (by the council) to the attention of interested or affected groups and parties.

Equality Impact Assessment

Disability Action does not agree that the proposed statutory licensing scheme does not have any significant implications for equality and believe that this proposed Bill and any future application for a pavement café licence should be subject to an assessment of equality impact from the perspective of disabled people, older people and people with dependants (parents and carers).

Conclusion

Disability Action welcomes this opportunity to respond to the Committee for Social Development call for evidence on the licensing of pavement cafes in Northern Ireland.

We will welcome the opportunity to work with the Committee, the Department and the Councils on the application of controls on the introduction of street furniture such as café tables, chairs, umbrellas etc to ensure minimum obstruction and maximum accessibility for disabled people.

Dungannon and South Tyrone Borough Council

OUR REF: RG/ ST/

Department for Social Development
Level 4, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

24 September 2013

Dear Sir/ Madam

Licensing of Pavement Cafes Bill

I am writing on behalf of the Council in relation to the introduction of the above Bill to the Assembly.

At a recent meeting of the relevant committee of this Council which deals with licensing matters the Bill was discussed and, in general, Councillors welcomed the introduction of such a scheme that would not only compliment the improvements to Dungannon town currently about to start as part of a Public Realm Scheme, but would also help to encourage entrepreneurialism and help create a vibrant evening economy in the borough. The committee were made aware of the letters already forwarded to the Department written by NILGA and the Licensing Forum and Institute of Licensing (which were produced following direct input from licensing officers, including an officer from this council) in which some practical elements and potential difficulties in the Bill were discussed, comments with which the committee concurred.

The Council welcome any further opportunity it may be afforded to provide assistance and evidence in relation to the Bill's development during its passage through the Assembly.

Yours faithfully

Rodney Gillis
Senior Licensing Officer

Fermanagh District Council



Brendan Hegarty B.S.Sc. F.C.A. Chief Executive

Our ref: LH/VK

12th September 2013

committee.socialdevelopment@niassembly.gov.uk

Dear Sir/Madam,

RE: LICENSING OF PAVEMENT CAFÉ'S BILL

Fermanagh District Council has considered the proposed Bill and would make the following comments in an effort to try and achieve consistency across Councils in the interpretation and application of the legislation:

Section 1 – Meaning of pavement café licence

- (a) Further definition/explanation required regarding "public place", in particular, clarification regarding 'as of right'.
- (b) It is recommended that the set up time of 20 minutes is removed from Section 1 (4). A time may be specified in the guidance but it is felt that this is too prescriptive to be included within the Bill.

Section 2 – Offences

- (a) The Bill allows it to be an offence to place furniture on a public area without a pavement café licence and that the licence may be revoked or suspended for a variety of reasons including:

"that any of the conditions of licence have not been complied with". The offence is then that there is no licence and the person, if guilty, is liable on summary conviction to a fine not exceeding Level 3.

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.

In addition, new legislation enables District Councils to use receipts from these penalties. It is recommended that the Department consider the introduction of fixed penalties as a cost effective means of enforcing this piece of legislation and to include additional offences for non-compliance with licence conditions.

Desmond Reid F.R.I.C.S. D.M.S. Director of Regulatory Services

Environmental Health, Townhall, 2 Townhall Street, Enniskillen, County Fermanagh, Northern Ireland, BT74 7BA
Tel: 028 6632 1805 Textphone: 028 6632 7969 Fax: 028 6632 9081
Email: envhealth@fermanagh.gov.uk Web: www.fermanagh.gov.uk

12 September 2013

2

Section 4 – Grant or Refusal of Licence

(a) Clarification is required on use of Section 4 (b). Can this be used for the refusal of a licence on the grounds of limiting disabled access? If no, provision should be included to ensure there is no impact on people with disability.

IMTAC (The Inclusive Mobility and Transport Advisory Committee) have produced a position paper on the Regulation of Pavement Cafés in Northern Ireland in July 2013 which makes a number of recommendations including that, in line with Inclusive Mobility Guidance, the minimum unobstructed width should be 2 metres. Consideration should be given to not allowing pavement cafés where there is a restricted width of pavement.

Section 10 – Applications – General Provision

(a) Any guidance should refer to the 'appropriateness' of Councils to publicise the application – is displaying on Council premises or on their website deemed 'appropriate'?

(b) The applicant should be responsible for publicising the application in local papers as is the case with Entertainment Licences.

Section 12 – Fees

(a) It is strongly recommended that a fixed fee (or scale of fees) be specified in the legislation to achieve consistency across all Councils.

(b) If a licence is revoked there should be no requirement to return all or part of the fee – (the work has been done by the Council).

Yours faithfully,



LYNDA HUTTON (MRS.)
Head of Environmental Health

**Committee for Social Development:
Licensing of Pavement Cafes Bill**



Consultation response submitted by:
The Guide Dogs for the Blind Association

Date: 13th September 2013

Committee for Social Development: Licensing of Pavement Cafes Bill

A response from The Guide Dogs for the Blind Association (Guide Dogs)

Introduction

Guide Dogs wants a society in which people who are blind and partially sighted enjoy the same freedom of movement as everyone else. We seek to remove the many barriers which inhibit or discourage people who are blind and partially sighted from going about their daily lives, whether that be going to work, visiting friends, going out socially, shopping, or accessing health services.

Guide Dogs seeks to work in collaboration with others to create modern, attractive and accessible public realm which enables the greater social inclusion of people who are blind and partially sighted.

Guide Dogs will be using a number of photographs to illustrate some of the challenges pavement cafes currently pose to people who are blind and partially sighted. In doing so it is not our intention to single out any particular premises or proprietor. It is our intention to illustrate points of principle and to highlight the need for effective regulation. Guide Dogs acknowledges that without legislation and regulation these proprietors are working within current accepted practice.

Social Inclusion and Pavement Cafes

For someone who is blind or partially sighted going out independently takes a lot of confidence and courage and negative experiences can be most damaging. If a person who is blind or partially sighted has a negative experience when navigating the street environment they may stop going to that particular place. Like anyone else who has a bad experience (eg. if you have a bad meal at a restaurant) the blind or partially sighted person will not only stop going to that place themselves, but they will tell others of their experience which in turn puts them off from going to that particular place. It can mean that people who are blind and partially sighted start to restrict where they go because they feel vulnerable or unsafe, negatively impacting on their freedom of movement, social inclusion and quality of life. Staying away from areas or pavement cafes was recognised by Mark Durkin MLA during a debate at the second stage of the Bill: 'about the problems for those with visual impairments and disabilities accessing, and in truth be told, avoiding pavement cafes. Greater consultation with such groups will ensure their safety and make for more appropriate schemes'.

Many people who are blind and partially sighted want to be socially included, to live varied and fulfilling lives which may include embracing the café culture that has evolved in our town and city centres over recent years. Many also have money to contribute to a thriving economy. However they do not want to be unnecessarily hindered as they go about their daily lives. Although acknowledging the right and need of proprietors to optimise income in times of economic recession the recent upsurge in unregulated pavement cafes presents many challenges and difficulties for people who are blind or partially sighted and highlights the need for legislation and effective regulation. Guide Dogs therefore welcome the opportunity to respond to this consultation.



Negotiating the A-board and open seated area to find the entrance door would be extremely challenging for any blind or partially sighted person.



A-board opposite the open seated area narrows the street and makes finding the door difficult.



The open seated area on both sides of the door makes locating the door difficult without walking into the tables and chairs. The A-board positioned at the side of the seated area only compounds orientation difficulties on approach.



A-board, utility pole, bench seating, and the open café seating area make the area very disorientating and finding the door incredibly difficult.

Legal Obligation, Good Practice and Existing Practice

The future licensing and regulation of pavement cafes must comply with current statutory and legal obligations of public bodies in relation to people with a disability. Under Section 75 of the Northern Ireland Act 1998 public bodies are required to consider equality impacts on disabled people and under the Disability Discrimination Order (2006) they are also required to promote the participation of disabled people in public life and to promote positive attitudes to disabled people. There is also a need to ensure that access to the premises and services of café are maintained under the Disability Discrimination Act 1995.

Mickey Brady MLA expressed the views of several members of the Assembly during a debate on pavement cafes at the second stage of the Bill when he said ‘one general concern that the Committee had was the potential implications of pavement cafes for those with disabilities’ and ‘it is the Committees view that it is important that groups that represent people with disabilities are consulted’.

‘Manual for Streets’ and ‘Inclusive Mobility’ provide best practice guidance for an inclusive and accessible pedestrian environment. Both documents recommend a minimum unobstructed pavement width of 2 metres and are routinely used as standard guidelines by both Roads Service and DSD. It is essential that the regulation and licensing of pavement cafes is developed within this accepted framework for an accessible and inclusive pedestrian environment.

The Imtac Position Paper on the regulation of pavement cafes looked at how the Highways Act 1980 in Great Britain had been implemented by local authorities in England. This web based research identified 61 local councils with detailed guidance on the licensing of pavement cafes. Key findings included

- A specific requirement to maintain a minimum area of unobstructed footway around the pavement café – 8% required an area greater than 2 metres, 49% an area of at least two metres, 28% an area of at least 1.8metres and 13% an area less than 1.8m.



Unnecessary obstruction combined with screened café area creates chicane effect. This is compounded by the A-board opposite the entrance which requires further change of direction causing disorientation. This area is very difficult and challenging to negotiate, but particularly when the street is busy



Unscreened café in side street



Unscreened café in side street

- 34% of local authorities require larger unobstructed areas around pavement cafes on pavements where footfall is high and in pedestrian areas, this ranges from 2.4 metres to 5 metres



Attractive screened off café in pedestrianised area

- 66% of local authorities require pavement cafes to be enclosed. Most local authorities are explicit about the design of screening and require for instance a top rail to be included at a height of 100mm.



Poor example of screening. Screening although secured to the pole is too loose making detection with a long cane inconsistent. Screening stops short of seated

area. Anyone expecting to turn at the end of the screening to locate the door would instead walk into the open seated area.

- 25% of local authorities will take into account the wider access impact on the environment surrounding a proposed pavement café – this includes proximity to pedestrian crossings, bus stops and taxi ranks



Screening directly in-line with tactile paving causes obstruction and disorientation after having crossed the road.



The screening is right in front of the tactile paving blocking the way and preventing straight line travel. The photograph on the left shows that if a blind or partially sighted person 'veers' left to avoid the screening they walk into the path of oncoming pedestrians or unscreened café seating area.



Pedestrians funnelled between open seated café area and bus stop. Very challenging if busy. A-board on the periphery of the sated area only adds to difficulties and disorientation.

- 16% of local authorities do not permit A-boards and other clutter outside the screening of the pavement café



The A-board positioned on the outer shoreline opposite the entrance to the café reduces pavement width



A-board positioned in front of door between open seated area on both sides. A blind or partially sighted person turning left or right to avoid the A-board would walk into the open seated area.



The café illustrates a good example of screening . However the A-board positioned at the entrance (at the end of the screening) causes further inconvenience and disorientation for blind and partially sighted person

- 36% of local authorities require service providers to demonstrate that both the pavement cafes and associated premises remain accessible to disabled people.

Detailed Comment on the Bill

3 4(a) 'Application for License' requires an application to include the 'location and dimensions of the public area (or each of the public areas) on which the applicant wishes to place temporary furniture' Guide Dogs believes this submission must also detail the remaining unobstructed pavement width, and the cafes position in relation to other street furniture, tactile crossing points, accessible parking bays or bus stops.

3 4(b) 'Application for License'. Guide Dogs would like to see specific reference to how the café will be screened off and the location of any other proposed promotional/ information material such as A-Boards

4 (2) (b) 'Grant or refusal of license' states that a license may be refused where it 'would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity...'. Guide Dogs believes that unscreened seated areas, having less than 2 metres unobstructed pavement width, or having the café close to other environmental features such as crossing points with tactile paving constitutes interference or inconvenience and therefore may give reason for the refusal of a license.

4 (2) (b) 'Grant or refusal of license' states that a license may be refused where it 'would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity...' Guide Dogs believes that the term 'persons' should be more specific and changed to 'pedestrians'.

5 (1) (b) 'Form, duration etc of license' requires the licence to 'include a plan showing the location and dimensions of the public area to which it relates'. See previous response to 3 (4) (a) - Guide Dogs believes this submission must also detail remaining unobstructed pavement width, and the cafe position in relation to other environmental features such as crossing points, accessible parking bays, planted trees, signposts etc.

5 (3) (b) 'Form, duration etc of license' states that 'an area at least 75% of which falls within an area which was so proposes...'. Guide Dogs would like wording to ensure that the 25% falling outside of the original submitted plan cannot impact on other environmental features such as minimum pavement width, proximity to tactile paving etc. A proprietor cannot be seen to be meeting license requirements while causing interference or inconvenience to pedestrians because their café meets the 75% criteria. Interference or inconvenience must take precedence.

5 (5) (b) 'Form, duration etc of license' states that 'if no period is specified in the license, remain valid indefinitely. Guide Dogs is concerned that where there may be changes to the immediate street environment eg. a new crossing point, new street furniture (eg. sign posts, lighting columns), new accessible parking provision or any other significant changes that such eventualities must take precedence over a license validated indefinitely. Guide Dogs wishes to see wording that any license should be reviewed where changes to the immediate street environment occurs.

11 (2) (a) 'Notice of application to be displayed' requires the applicant to ensure that the 'required notice is fixed to the premises specified in the application so as to be easily visible and legible to the public from outside the premises. Guide Dogs is concerned that people who are blind and partially sighted will not be able to view this notice, be aware of the application or how to make any representation to the Council regarding the application should they choose to do so. Guide Dogs seeks clarification as to how the needs of people who are blind and partially sighted will be met and what reasonable adjustments will be made to ensure the information is made accessible

11 (3) (d) 'Notice of application to be displayed'– states that the notice would indicate 'how the application is to be viewed'. See response to 11(2) (a) Guide Dogs seeks clarification how the needs of people who are blind and partially sighted will be met and what reasonable adjustments will be made to ensure that the information is made accessible

11 (3) (e) 'Notice of application to be displayed' states that representations relating to the application may be made in writing to the council' See response to 11 (2) (a)

Guide Dogs seeks clarification how the needs of people who are blind and partially sighted will be met and what reasonable adjustments will be made to ensure that should they choose to do so how a blind or partially sighted can make representation to the Council

12 (5) (b) 'Fees' – See response (11) (a,d & e) Guide Dogs seeks clarification how the needs of people who are blind and partially sighted will be met and what reasonable adjustments will be made to ensure the information is accessible

12 (5) (c) 'Fees' - See response (11) (a,d & e) Guide Dogs seeks clarification how the needs of people who are blind and partially sighted will be met and what reasonable adjustments will be made to ensure the information is accessible.

14 (1) (b) 'Revocation of license' states that a license may be revoked where it 'would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity...' Guide Dogs believes that changes to the immediate street environment may constitute grounds for revoking a license

15 (1) (b) 'Suspension of license' states that a Council may suspend a license where placing such furniture would temporarily 'be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity. Guide Dogs welcomes this inclusion to allow for an appropriate response where temporary street or roads works may occur.

16 (2) 'Compulsory variation of section 6(3) conditions' states that a Council /may make a variation under this section only if it considers that it ought to do so as a result of material change in the circumstances on which the conditions specified in the license ...'.Guide dogs welcomes this inclusion to allow an appropriate response to changes in the immediate street environment eg. a new crossing point, new street furniture (eg. sign posts, lighting columns), new accessible parking provision

18 (1) (b) 'Compulsory variation of area covered by license' states that a compulsory variation may be made by the Council where that 'continuing to place such furniture'...'would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity' See previous response 16 (2) Guide dogs welcome this inclusion to allow an appropriate response to changes in the immediate street environment eg. a new crossing point, new street furniture (eg. sign posts, lighting columns), new accessible parking provision

22 (1) (c) 'Powers of Entry or Inspection' Guide Dogs welcomes the powers given to Councils to 'inspect any other object placed on a public area with such furniture. This will help to ensure additional street furniture such as A-boards are not put out after the granting of the license.

30 (1) 'Definitions'. See response to 5(3)(b) whereby Guide Dogs is concerned that 'the area covered by the license' cannot be manipulated so that the 25% allowed

under 5(3)(b) to fall outside of the original submitted plan is able to cause obstruction, interference or inconvenience.

Conclusion

Guide Dogs concurs with the recommendations contained within the Imtac Position Paper on the Licensing of Pavement Cafes and believe that they should form the basis of the licensing and regulation of pavement cafes.

The adoption of these standards would ensure the introduction of a thriving pavement café culture while protecting the rights and needs not just people who are blind or partially sighted but also wheelchair users, parents with buggies, or elderly people less able to cope with congested areas.

Ensuring accessibility for disabled people, older people and other pedestrians should be explicit within the clauses of pavement café legislation

- Each District Council should be required to issue detailed guidance in relation to licensing pavement cafes
- District councils should consult with Guide Dogs, Imtac, Disability Action and other organisations of and for disabled people when developing guidance
- Guidance should reflect statutory duties in relation to equality in general and disability in particular by providing explicit requirements in relation to access for disabled people
- Guidance should only permit pavement cafes where accepted standards of unobstructed minimum pavement width are maintained – in line with Inclusive Mobility guidance should make clear the minimum width should be 2metres.
- Greater unobstructed widths will be required in pedestrian areas and areas of high pedestrian usage
- Pavement cafes should not be permitted where it may restrict access at crossings, junctions or other facilities such as bus stops and taxi ranks
- All pavement cafes should be enclosed to a specified standard and include a tap rail
- All material including A-boards should be required to be within the screened area
- Service providers should be required to maintain access to their premises and the pavement café for disabled people in line with the requirements of the DDA.

Guide Dogs recognises the competing demands of pedestrians and proprietors. We also recognise the competition between proprietors and the effect this can have on incomes and livelihoods. We acknowledge that as a result of this legislation and regulation that proprietors in one street may be able to benefit from a café culture

while proprietors in another street may not be able to do so. We also acknowledge that proprietors in those towns with narrow streets may not be able to benefit from a café culture. However the pavements are for everyone and blind and partially sighted people are entitled to go about their daily lives unhindered being able to make the same choices as everyone else as to where they go or shop in their town or city

Guide Dogs endorses the comments of Judith Cochrane MLA during a debate on pavement cafes at the second stage of the Bill when she said 'Although we recognise the economic benefits and the enhancement of the street scene that these schemes can provide, it is important that they are well designed and set out and do not impinge on safety or inconvenience pavement users. The legislation must ensure that disabled, blind or visually impaired people's needs are taken into account'.

Should you have any queries or wish to discuss this response in more detail, please contact:

Andrew Murdock
Policy & Engagement Manager
The Guide Dogs for the Blind Association
Unit 17
18 Heron Road
Belfast BT3 9LE
Tel: 08453727402
Email: andrew.murdock@guidedogs.org.uk

IMTAC

Submission on the call for evidence from the Social Development Committee on the Licensing of Pavement Cafes Bill

September 2013

Imtac is committed to making information about our work accessible. Details of how to obtain information in your preferred format are included on the next page.

Making our information accessible

As an organisation of and for disabled people and older people Imtac recognises that the way information is provided can be a barrier to accessing services and participation in public life. We are committed to providing information about our work in formats that best suit the needs of individuals.

All our documents are available in hard copy in 14pt type size as standard. We also provide word and pdf versions of our documents on our website – www.imtac.org.uk. In addition we will provide information in a range of other formats. These formats include:

- Large print
- Audio cassette or CD
- Daisy disc
- Braille
- Electronic copies on disc or via email in PDF or word
- Easy read
- Information about our work in other languages

If you would like this publication in any of the formats listed above or if you have any other information requirements please contact:

Michael Lorimer
Imtac
Titanic Suites
55-59 Adelaide Street
Belfast BT2 8FE
Telephone/Textphone: 028 9072 6020 or 028 90 726 005

Fax: 028 9024 5500
Email: info@imtac.org.uk
Web: www.imtac.org.uk

About Imtac

Imtac is a committee of disabled people and older people as well as others including key transport professionals. Our role is to advise Government and others in Northern Ireland on issues that affect the mobility of older people and disabled people.

Our aim is to ensure that older people and disabled people have the same opportunities as everyone else to travel when and where they want.

Background

Imtac welcomes the introduction of legislation to regulate pavement cafes. Over recent years there has been a marked increase in the number of retailers placing tables and chairs on the pavement. This has not just been confined to the owners of cafes and bars but has included small convenience stores and even hairdressers. Anecdotal evidence would suggest that much of growth in this type of activity has been to accommodate smoking rather than any sort of café culture.

The Committee is not opposed to pavement cafes per se. Well designed and appropriate pavement cafes can enhance our towns and cities, however poorly designed provision can have a major detrimental impact on pedestrians and in particular disabled people, older people and people with young children through the obstruction caused on the pavement and hazards created by poor design.

Imtac believes that future regulation of pavement cafes can strike the balance between allowing appropriate provision of pavement cafes and protecting the free movement of pedestrians. We have developed a report based on current good practice by local authorities in England which identifies the key conditions required in regulation to protect pedestrians. We have enclosed a copy of the report with this submission. In relation to the current Bill Imtac believes that it is essential that the final legislation is explicit in prioritising the protection of pedestrians over other interests and that access for disabled people and others is acknowledged as a key consideration.

The legislative context

It is important to recognise that Government Departments have specific equality duties around promoting the participation of disabled people in public life and promoting positive attitudes towards disabled people. Imtac believes that these duties should not only be reflected in the development of policy and guidance developed by Departments but, where appropriate legislation should also reflect and underpin these duties. With regard to pavement cafes the potential exists for light touch regulation, creating a more hostile pedestrian environment for disabled people. The legislation should therefore underpin the statutory equality duties by explicitly recognising access for disabled people as a key consideration in the provision of pavement cafes making it an essential and unavoidable consideration for local councils.

Comments on the Bill

Imtac is concerned that as currently worded the Bill will provide for a largely permissive licensing regime and does not provide adequate protection for pedestrians and more specifically disabled people, older people and people with young children. We would seek the strengthening of Clause 4 and Clause 6 of the Bill in particular to give explicit recognition of the requirement to protect pedestrians and the need to consider access for disabled people both to the broader environment but also the premises of the business making the application.

As currently worded Clause 4 paragraph 2 (b) does refer to “undue interference or inconvenience to persons or vehicles in the vicinity” as one of the grounds for refusal of a licence. Imtac views this wording as insufficient and would recommend that access for pedestrians be included in the wording of this paragraph. The Committee recommends that the wording could be amended to read:

“(b) that placing such furniture on, or on a particular part of, that area for use for the consumption of food and drink supplied in or from the premises specified in the application would be likely to result in undue interference, inconvenience or restrict access for pedestrians or vehicles in the vicinity....”

Imtac welcomes the proposed inclusion of Roads Service as a statutory consultee for councils. The role of Roads Service should however supplement and reinforce the inclusion of explicit protection for pedestrians in the wording of legislation. Such a “belt and braces” approach will empower Roads Service to more effectively promote protections for pedestrians.

Many of the local authorities we have examined in England have explicit and detailed guidance around maintaining access for disabled people. This involves not just access to the surrounding pedestrian environment but also the business premises making the application including the pavement café itself. Whilst Imtac understand that both DSD and individual councils will develop guidelines for future regulation once the legislation is introduced the Committee recommends that the legislation enshrines the requirement to maintain access and accessibility in its clauses.

Imtac believes that this is best achieved by the inclusion of an additional condition under paragraph 3 of clause 6. This condition should read:

“Maintaining access for disabled people to the premises and surrounding environment.”

Imtac has a number of further comments on the clauses of the Bill.

- Clause 1 (1) should specify that the provision of food and drink is the main part of the business of the applicants. Imtac is aware that business such as hairdressers have been known to put tables and chairs outside premises and do provide drinks to customers. This type of activity should not be allowed under the proposed regulation.
- Clause 1 (3) should also include advertising and menu boards
- We note that clause 10 requires the applicant to display the application in a prominent place during the decision making process to allow for representation. This process significantly disadvantages people with a visual impairment, a group of people who are most disadvantaged by inappropriate provision of pavement cafes. The wording of the Bill must place a requirement on both the applicant and the council to make information about applications for pavement cafes available in formats other than written notices outside premises.
- Clause 5 (5) b contains the option for licence to “remain valid indefinitely”. Imtac is of the view that all licences should be subject to periodic review.

Imtac would like to make one final general point in relation to the regulation of pavement cafes. In our view there is a need for a concerted effort to ensure that there is consistency in approach to regulation across each of the councils. Potentially 11 different variations in Northern Ireland is not in the interests of business or the general public

Conclusion

Imtac welcomes the opportunity to make this submission to inform the Committees consideration of the Licensing of Pavement Cafes Bill. Regulation of in this area is long overdue, however Imtac is concerned that as currently worded the Bill does not afford sufficient protection to pedestrians in general and more specifically to older people and disabled people. Imtac hopes that the Committee find our suggestions for strengthening protections helpful. Our members would welcome the opportunity to provide the Committee with an oral briefing.

IMTAC

Position paper on the regulation of pavement cafes in Northern Ireland

July 2013

Imtac is committed to making information about our work accessible. Details of how to obtain information in your preferred format are included on the next page.

Making our information accessible

As an organisation of and for disabled people and older people Imtac recognises that the way information is provided can be a barrier to accessing services and participation in public life. We are committed to providing information about our work in formats that best suit the needs of individuals.

All our documents are available in hard copy in 14pt type size as standard. We also provide word and pdf versions of our documents on our website – www.imtac.org.uk. In addition we will provide information in a range of other formats. These formats include:

- Large print
- Audio cassette or CD
- Daisy disc
- Braille
- Electronic copies on disc or via email in PDF or word
- Easy read

We will also provide information about our work in other languages if you require this.

If you would like this publication in any of the formats listed above or if you have any other information requirements please contact:

Michael Lorimer
Imtac
Enterprise House
55-59 Adelaide Street
Belfast BT2 8FE
Telephone/Textphone: 028 9072 6020

Fax: 028 9024 5500
Email: info@imtac.org.uk

About Imtac

Imtac is a committee of disabled people and older people as well as others including key transport professionals. Our role is to advise Government and others in Northern Ireland on issues that affect the mobility of older people and disabled people.

Our aim is to ensure that older people and disabled people have the same opportunities as everyone else to travel when and where they want.

About this paper

Imtac shares the widespread desire to create an environment in our towns and cities that is attractive both to visitors and residents. Safe and accessible pedestrian routes are an essential component of an inclusive town or city. Whilst Imtac recognises that good quality pavement cafes can also contribute to an attractive town or city, too often their provision and layout can present a significant obstacle for many pedestrians including disabled people, older people and others such as parents with children in buggies. Rather than making cities and towns more attractive poor design and provision of pavement cafes can make towns and cities a hazardous and hostile environment for a significant number of pedestrians.

Currently in Northern Ireland pavement cafes have no legal basis. Despite this there are a growing number of retailers who provide seating outside their premises. Imtac believes that regulation of this activity is long overdue and welcomes the development of legislation to allow the regulation of pavement cafes. The purpose of this paper is to highlight how future regulation should protect the mobility and safety of disabled people, older people and others whilst delivering the desired outside space for eating and drinking.

In developing this paper we have looked at two key areas of evidence that should inform the development of legislation and subsequent regulation by local councils. The first relates to accepted best practice around an accessible pedestrian environment and the second relates to lessons from the regulation of pavement cafes in England. In addition the paper considers statutory and legal obligations on Government and service providers. Based on the evidence gathered the Committee has made a number recommendations designed to inform the development of proposals for the regulation of pavement cafes in Northern Ireland.

Building and maintaining an accessible pedestrian environment

In developing proposals for regulation of pavement cafes it is essential that accessibility for pedestrians is protected. Practically every journey we make involves using the pedestrian environment. Imtac has previously undertaken work with disabled people and older people who highlighted how a range of barriers in the pedestrian environment, including clutter on the pavement, made many journeys difficult or impossible¹. The evidence we have gathered demonstrates that difficulties using the pedestrian environment has a major impact on the day to day lives of disabled people and older people.

Best practice guidance recognises the importance of developing an inclusive and accessible pedestrian environment. Manual for Streets provides comprehensive guidance on how to achieve well-designed and inclusive streets². Inclusive Mobility provides best practice guidance in ensuring the pedestrian environment is accessible³. Both documents highlight that inclusive streets should contain pavements with a minimum unobstructed pavement width of 2 metres. Both documents are now used as standard guidelines when providing new pedestrian and public realm infrastructure by amongst others Roads Service and DSD. It is essential that the regulation and licensing of pavement cafes are developed within the accepted framework of an accessible and inclusive pedestrian environment.

-
- 1 Highlighting barriers in the pedestrian environment - Report into issues, good practice and recommendations (Imtac 2012)
 - 2 Manual for Streets (Department for Transport 2007)
 - 3 Inclusive Mobility - A guide to best practice on access to pedestrian and transport infrastructure (Department for Transport 2005)
-

Regulation of pavement cafes in Great Britain

The Highways Act 1980 allows local authorities in Great Britain to regulate pavement cafes. In compiling this paper Imtac studied the approach taken by local authorities in England⁴. We did this by looking at information on websites of county, city and borough councils. Many local authorities had only generic information on licensing pavement cafes which includes general statements about protecting accessibility for pedestrians. However 61 councils surveyed included detailed guidance on the licensing of pavement cafes. Analysis shows there is a degree of consistency with regard to the access requirements of licensing arrangements. These include:

- A broad requirement to consider the impact of any proposed café on the mobility of pedestrians and of disabled people and older people in particular.
- A specific requirement to maintain a minimum width of unobstructed⁵ footway around the pavement café – 8% required an a width greater than 2 metres, 49% a width of at least 2 metres, 28% a width of at least 1.8 metres and 13% a width less than 1.8 metres.
- 34% of local authorities require larger unobstructed areas around pavement cafes on pavements where footfall is high and in pedestrian areas – this ranges from 2.4 metres to 5 metres in width.
- 66% of local authorities require pavement cafes to be enclosed. Most local authorities are explicit about the design of screening and require for instance a tap rail to be included at a height of 100mm.
- 25% of local authorities will take into account the wider access impact of a proposed pavement café on the surrounding environment – this includes proximity to pedestrian crossings, bus stops and taxi ranks.
- 16% of local authorities do not permit A-boards and other clutter outside the screening of the pavement café.
- 36% of local authorities require service providers to demonstrate that both the pavement café and associated premises remain accessible to disabled people.

Meeting Statutory and legal obligations

When considering legislation and future regulation of pavement cafes it is a requirement to consider statutory and legal obligations in relation to disabled people (and older people). All designated public bodies in Northern Ireland are required by Section 75 of the Northern Ireland Act 1998 to consider equality impacts of any policy in relation to disabled people, older people and others including people with dependents. All designated public bodies also have additional statutory duties under the Disability Discrimination Order (2006) to promote the participation of disabled people in public life and to promote positive attitudes to disabled people. Finally legislation and regulation should also consider impacts in relation to the Disability Discrimination Act 1995. In relation to pavement cafes care needs to be taken to ensure that access to premises/services are maintained.

Recommendations for the future regulation of pavement cafes

Based on evidence gathered around statutory obligations and best practice Imtac would make the following recommendations:

4 A full list of local authorities is contained in Appendix A

5 Unobstructed means a clear footway with no obstacles such as street furniture or lighting columns

1. The Department for Social Development should ensure that the maintenance of a safe and accessible pedestrian environment be explicit within the clauses of pavement café legislation.
2. The legislation should require local authorities to issue detailed guidance in relation to licencing pavement cafes.
3. It is essential that there is a consistent approach to regulation between local authorities particularly with regard to access for pedestrians. Imtac has concerns that variations in standards between local authorities could lead to a disparity in access standards for disabled people and older people between different locations in Northern Ireland.
4. Local authorities should consult with Imtac and other organisations of and for disabled people when developing guidance.
5. Guidance should reflect statutory duties in relation to equality in general and disability in particular by providing explicit requirements in relation to access for disabled people.
6. Guidance should only permit pavement cafes where accepted standards of unobstructed minimum pavement width are maintained – in line with Inclusive Mobility guidance should make clear the minimum width should be 2 metres.
7. Guidance should specify greater unobstructed widths in pedestrian areas and areas of high pedestrian usage.
8. Pavement cafes should not be permitted where it could restrict pedestrian access at crossings, junctions or other facilities such as bus stops and taxi ranks.
9. All pavement cafes should be enclosed to a specified standard and include a tap rail.
10. All materials including A-boards should be required to be within a screened area.
11. Service providers should be required to maintain access to their premises and the pavement café for disabled people in line with the requirements of the DDA.
12. Local authorities should set out clearly how regulations will be enforced, including prompt and meaningful sanctions for breaches of regulation. Local authorities should provide clear evidence of how enforcement will be resourced.

Conclusion

Whilst Imtac welcomes the regulation of pavement cafes in Northern Ireland there is great concern amongst members that “light-touch” regulation will have a major detrimental impact on the mobility of disabled people and older people as well as others. It is essential that legislation and regulation protects and enhances access for pedestrian to our towns and cities. In this paper the Committee has demonstrated the steps that should be taken to ensure that the appropriate balance is struck between the ensuring pedestrians can use pavements in safety whilst allowing businesses and customers the ability to eat and drink outdoors.

Appendix A – Local authorities surveyed

| | |
|-------------|-----------------|
| Barnet | Bradford |
| Barnsley | Brighton & Hove |
| Bedford | Calderdale |
| Bournemouth | Camden |

| | |
|-------------------------------|----------------------------|
| Cheshire East | Nottingham County Council |
| Croydon | Nottingham City Council |
| Derbyshire County Council | Oxford |
| Devon County Council | Oxfordshire County Council |
| Durham | Preston |
| Ealing | Redcar & Cleveland |
| Greenwich | Sefton |
| Hackney | Shropshire County Council |
| Havering | Solihull |
| Herefordshire County Council | Southend-on-Sea |
| Hillingdon | St Helens |
| Islington | Stockport |
| Kensington & Chelsea | Stoke-on-Trent |
| Kent County Council | Surrey County Council |
| Kirklees | Sutton |
| Lambeth | Tameside |
| Leicester | Torbay |
| Lewisham | Tower Hamlets |
| Lincolnshire County Council | Wakefield |
| Liverpool | Warrington |
| Luton | West Berkshire |
| Middlesbrough | Westminster |
| Newcastle upon Tyne | Wigan |
| North Somerset | Windsor & Maidenhead |
| North Yorkshire | Wirral |
| Northumberland County Council | York |

Institute of Licensing

Pavement Café Bill Institute of Licensing Response

13 September 2013

Respondent Details

| | |
|-----------------------|---|
| Name | James Cunningham – Northern Ireland Branch Chairman |
| Organisation (if any) | Institute of Licensing – Northern Ireland Branch |
| Address | <p>Central Address: Lilac Cottage Aller Somerset TA10 0RA</p> <p>Branch Address: C/O Belfast City Council Building Control Service 5th Floor, 9 Lanyon Place Belfast, BT1 3LP</p> |
| Telephone No | 028 90320202 ext 3375 |
| Email | news@instituteoflicensing.org CunninghamJ@belfastcity.gov.uk |

General Comments

The Institute of Licensing (IoL) welcomes the Committee for Social Development's call for evidence to assist it with the scrutiny of the Pavement Café Bill.

By way of background, the Institute of licensing is the professional body for licensing practitioners, servicing the interests of licensing practitioners in local government, the police, private sector and the legal profession, the Institute operates throughout England, Wales, Scotland and Northern Ireland.

The Institute is fortunate in having access through its membership to well-known and respected licensing practitioners, including Philip Kolvin QC, Susanna Fitzgerald QC and Professor Colin Manchester.

This response has been drafted and agreed by members of the Northern Ireland Branch of the Institute of Licensing whose members are local authority licensing practitioners and members of the legal profession.

The Institute believes that developing a café culture can have a positive effect on urban environments, help promote town and city centres, make a difference in terms of attracting visitors and tourists and contribute to the general well-being of communities.

The Northern Ireland Branch of the Institute is aware that in GB many businesses who seek to benefit from pavement café permission are being frustrated by the hurdles being put in

place by some local authorities, as there is no national legislative regime. Local Authorities are using highway consents that tend to cause the most confusion as the name of the consent required varies between different authorities. The names include a Highway Amenity licence, a Pavement Licence, a Street Café Agreement, a Tables and Chairs Licence and in places street trading legislation is used.

As such, the Institute welcomes and is very supportive of the introduction of regional legislation for all of the Province which enables and regulates pavement cafés, as it will provide a level for consistency across district councils and the Institute wishes to make constructive comments to help shape the Bill and offers its expertise, to work with the Department in producing any guidance documents or associated publications.

General comment

The Institute is in favour of an approach which favours approval and limits burdens on businesses. However there may well be a small number of traders who will not provide high quality, safe and appropriate facilities and district councils will need to be able to control these effectively.

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 already established pavement cafés. Otherwise Councils may need to deal with a large number of applications within a short time period which will place a significant administrative and resource burden on both 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.

Committee are advised that a similar provision exists under the Local Government (Miscellaneous Provisions) (NI) Order 1985 which enables councils to issue an entertainments licence subject to such terms, conditions and restrictions as it may determine but in doing so must have regard to the model terms, conditions and restrictions published by the Department. Such model terms were drawn up by a working group which included council officers and have been an invaluable assistance in the administration of entertainments licences.

It is also recommended that any guidance documents issued by the Department have regard to the mobility difficulties of the disabled and the visually impaired and aim to balance this with the needs of local business and economic activities as well as the vibrancy of our town centres.

In introducing the Pavement Cafés Bill the Department should be mindful to avoid the potential for licensed areas to simply become smoking shelters or areas for 'mass vertical drinking'.

Specific Comments

1. Definition of areas that can be licensed.

In the Bill, Section (1) para (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.*

On initial reading of the definition of 'a public area' in the Bill, it appears to be very broad and as such it may be argued that this cuts down on red tape and is to be welcomed if this minimises any burden on business.

The Institute would welcome clarification as to the intention of the Bill as regards privately owned land, as it would appear to suggest that 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”. The Department will be aware that there are significant areas of land which are privately owned for example, Belfast Harbour Estate, Lanyon Place, portions of the Donegall Road and Lisburn Road in Belfast etc. These are however areas over which the public do have unfettered access over the land, it is most likely that the land has become a ‘public area’.

Consideration also needs to be given by councils in determining any application to land with restrictive planning conditions or legal agreements regarding its use.

The definition of a public area to which the Bill will apply may result in a district council licensing some, but not all, premises on the same stretch of road where tables and chairs are placed on the footway depending if the portion of land is private or public.

For some premises this will result in no control on design, layout, operating times or control over alcohol consumption in the pavement café area; this is particularly important where there have been problems with disorder. This will lead to confusion and claims of unfairness for those affected. Conversely, premises with a Pavement Café Licence can allow patrons to consume alcohol without them breaching the Alcohol Bye-Laws whereas the premises that cannot be licensed because of the land issue will not be exempt from complying with the Alcohol Bye-Laws.

It is worth noting that in the Street Trading Act (N.I.) 2001, on which the Bill is modelled, there is a different definition of a public place. It is suggested that this definition should be considered as it would have dealt with all of the above problems. An extract of the Street Trading Act is provided for clarity:

(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.”

The Committee may wish to consider if the above issues, if not addressed, would support the policy objectives of the Bill.

“Roads Service generally ‘tolerates’ pavement cafés provided they do not restrict the free flow of pedestrians or vehicles or compromise public safety..... The policy objective of this Bill is to introduce a statutory licensing scheme for the regulation of pavement cafés by district councils. The scheme would facilitate the controlled expansion of suitable premises such as cafés, restaurants and pubs in support of the creation of a vibrant daytime and evening economy and for the general well-being of communities.”

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.

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

2. Location of Pavement Café Furniture

It is the Institute's reading of the Bill that an area licensed as a pavement cafe does not need to adjoin the applicant premises. We believe this a sensible approach to allow councils a degree of flexibility as there may be premises that cannot place their furniture directly outside the frontage of their property.

However, we are concerned that this broad flexibility may also be exploited and cause future problems. We would request that the Department considers how controls on limits could be placed on inappropriate competition from businesses which, for example, apply for a licence in areas adjacent to other establishments and that the guidance considers how competing applications for the same area should be dealt with.

For example, a pub could apply for a pavement café licence some distance away from its premises – possibly the whole of a town square – thus gaining an economic advantage over competing pub premises. It is doubtful whether this is the intent of the legislators but is a matter that should be addressed so that councils' are not left with an unnecessary problem.

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 already struggling businesses in their area. However, how will the function be funded? We suspect that in part at least, via the rates or from other sources such as a reduction in service in other areas of council work to fund this new function.

Apart from the application fee prospective applicants will need to invest in a reasonable standard of street furniture, produce a site drawing / plan, extend their public liability insurance and consider that the grant of a pavement cafe licence may also impact on the business rate liability of the associated property.

4. Temporary Furniture

Section (1) para (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.*

The Institute accepts that if no time limit was placed here then furniture could effectively become permanent. However, if the applicant/licensee has a disability which restricts their ability to remove their furniture in the time permitted this may be seen as discriminatory. It should be for a council to determine what constitutes temporary furniture when considering the circumstances of each application otherwise our power of discretion is being fettered.

5. Publication of Representation Period by Councils

Section (10) para (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 in writing to the council until the end of that period.

Clarification is sought that the requirement to 'publicise' will be met by councils publishing a list of pavement café applications via such means as on their website. If the intent is

otherwise and if, for example, a newspaper publication is required this is expensive and will add unnecessarily to the cost of obtaining a Pavement Café Licence.

6. Refusal/Control

The Institute is concerned that the grounds of refusal do not cover enough eventualities and as such weaken the option for district councils to bring about effective control. This may well be intentional and based on the 'light touch' approach favoured by central government but may prove problematic in the longer term. The Institute is in favour of an approach which favours approval and limits burdens on businesses. However there may well be a small number of traders who will not provide high quality, safe and appropriate facilities and district councils must be able to control these effectively.

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

At present there is no ground to refuse where the activity will cause environmental problems or detract from the amenities of the adjacent retailers/occupiers. For example, if there are smells from food/alcohol/smoke close to residential property or problems with noise from customers who cause nuisance or annoyance. The Institute is aware of the significant number of complaints regarding nuisance and disturbance arising from smoking shelters after the introduction of the smoking legislation.

There is no ground to refuse if the tables and chairs, etc. are not suitable for their use i.e. being of a stable and robust design and suitable for the intensity of use that they will receive on the street.

There is no ground 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. The Institute believes that the town centre regeneration schemes to improve the streetscape such as Streets Ahead project in Belfast or the promenade in Newcastle must have a pavement café design which compliments the scheme.

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.

A Fixed Penalty scheme would have been a sensible introduction and proportionate for minor breaches of licence conditions such as contained within the Street Trading Act.

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.

Suspending and Revoking a licence is not a function which is normally delegated to officers. Such a decision is not normally a delegated function from a council to officers. Should officers consider it necessary to bring a licensee before council to consider licence suspension or revocation it is estimated that this will take at least 6 to 8 weeks if not longer!

The Institute would suggest 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 is recommended that consideration is given to the introduction of fixed penalties as a cost effective means of enforcing this piece of legislation and to include additional offences for non-compliance with licence conditions.

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.

Alcohol can only be consumed outside a public house, hotel, guest house which has restaurant, a restaurant, or a refreshment room in public transport premises. The Institute queries why conference centres, higher educational institutions and places of public entertainment were excluded – this exclusion would cause problems for these premises if they wanted tables and chairs outside.

We reiterate our comments made in section one of this submission 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 will be encouraging their patrons to breach the Alcohol Bye-Laws.

9. Duration of licence

If the Licence is open ended there is potential that it may become a tradable commodity if the licence is granted to a company. In addition, 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 this in that 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 cafe 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 possibility for circumvention removed.

10. 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.”

We understand the intention of the Licensing of Pavement Cafes 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.

There is a concern that this could be a mechanism to allow pavement cafes 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 café licence 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 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.

We understand that in other jurisdictions where they have the licensing of tables and chairs there is still a requirement to obtain a street trading licence.

Larne Borough Council

Environmental Health Service

E-Mail Address: ehealth@larne.gov.uk

Ref: SM/MC

18 September 2013

The Committee Clerk
Room 410
Parliament Buildings
Stormont
Belfast
BT4 3XX

Dear Sir/Madam

Pavement Café Licensing Bill

Please find attached response on behalf of Larne Borough Council in relation to the above. I can confirm that the response was endorsed by the Council after a meeting of its Environment Committee on 16th September 2013.

Yours faithfully

Sean Martin



Head of Environmental Health

Larne Borough Council - Pavement Café Licensing Response

Larne Borough Council welcomes the introduction of the Bill which we believe will allow for the appropriate regulation of pavement cafes. The use of pavements in this way has become increasing common and as such there is a need for a scheme which balances the needs of business and the local economy with public safety and nuisance issues.

While the introduction of the Bill is welcomed the Council would have some concern about the detail of the Bill. These concerns are set out below.

General Comments

Larne Borough Council feel the inclusion of an offence for breaching the conditions of a pavement café licence would be beneficial particularly if fixed penalty provisions were enacted along with the offence. We believe that the suspension or revocation of a pavement café licence is a big step and feel that the inclusion of an offence for breaching the conditions of the licence would aid enforcement and provide for an early warning to those businesses that are causing a problem. The addition of such an offence with a fixed penalty notice would streamline enforcement in the small number of cases where it is necessary to take formal action and as a result the costs of administering the scheme would be reduced hence licenses themselves would be more affordable to businesses

The council is also unclear what would happen if Roads Service or a contractor need to carryout work on an area where a pavement café licence exists.

In supporting the general principle of pavement café licensing the council feel is important that the food or drink which is consumed is prepared and served from within the premises. This would ensure that this legislation does not become a way of evading street trading legislation.

Clause 1 meaning of pavement café licence and other key terms

Clause 1 (4) provides a definition of temporary. Larne Borough Council feel that the definition provided is too subjective and that a more objective definition should be sought.

Clause 2 Offence of placing furniture on public area without pavement café licence

The effect of clause 2 is to create an offence for those types of business which can avail of a pavement café licence but who have not done so, yet have placed furniture in a public area. This will run parallel to existing offences under legislation enforced by Roads Service which has a wider application. It is therefore important that Councils and Roads Service work effectively together to ensure a consistent approach to enforcement where items are placed in a public area.

Clause 4 Grant or refusal of a licence

Larne Borough Council are concerned that the grounds listed for refusal of a licence are very narrow and a greater degree of flexibility should be incorporated into the Bill.

The Council also notes the absence of a provision to allow the transfer of a licence where a business changes hands. We believe that the inclusion of a Clause allowing for transfer of an existing licence would be helpful.

Clause 6 Conditions of licence

Larne borough council are concerned that the grounds specified in clause 6(2)(b) for attaching an alcohol condition to a licence are too narrow and note that the Bill appears not to provide a definition of the term "disorder" which is used throughout the Bill.

Clause 9 Variation by removal of alcohol prohibition

The grounds for refusing to remove an alcohol condition are very narrow and it is Larne Borough Councils view that the Bill should provide councils with greater discretion. As noted above the term “disorder” is not defined.

Clause 13 Change in person carrying on business

As stated above we feel that the lack of a transfer process is an oversight.

Clause 14 Revocation of licence

Larne Borough Council believes that this clause should include a more general reason for permitting the revocation of a licence. We would suggest that the following could be inserted

“(1) A council may at any time revoke a pavement café licence if it is satisfied;

(e) that continuing to allow the placing of tables and chairs in the area covered by the licence is no longer in the best interests of persons working or visiting or living in the general area”

Clause 15 Suspension of licence

As outlined in relation to clause 14 above we feel that a more general reason for suspension of a licence should be included.

Clause 17 Compulsory variation: prohibition of alcohol

Clause 17(3)(a) seems unnecessary given that such a condition is required under clause 6(2)(a)

Clause 17(3)(b) is drafted very narrowly and does not provide sufficient discretion to councils in determining whether to attach an alcohol condition. Larne Borough Council feel that councils should be given a greater degree of discretion and are concerned that the term “disorder” which is not defined in the Bill does not provide for a sufficient range of factors to be considered.

Clause 18 Compulsory variation of area covered by the licence

Larne Borough Council are concerned as to the meaning that will be applied to the terms “interference or inconvenience” and as indicated earlier to the meaning of the term “disorder”. Given the lack of definition of these terms in the Bill we are concerned that there is insufficient scope to deal with pavement cafes which are becoming problematic.

Clause 24 Offence of obstruction

Larne Borough Council feel that preventing officers from carrying out their functions is a serious offence and the council believes that a level 3 penalty is insufficient and sends out the wrong message.

Licensing Forum NI

Pavement Café Bill Licensing Forum Response

10 September 2013

Respondent Details

| | |
|-----------------------|---|
| Name | Stephen Hewitt – Chairman |
| Organisation (if any) | Licensing Forum Northern Ireland |
| Address | C/O Belfast City Council Building Control Service 5th Floor, 9 Lanyon Place Belfast, BT1 3LP |
| Telephone No | 028 90270287 |
| Email | hewitts@belfastcity.gov.uk |

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.

Newry and Mourne District Council

Response from Newry and Mourne District Council on the Licensing of Pavement Cafés Bill

Respondent Details

| | |
|--------------------------|---|
| Contact Name: | Colum Jackson |
| Position: | Assistant Director of Environment, Health & Building Services |
| Address: | Newry and Mourne District Council O'Hagan House Monaghan Row Newry BT35 8DJ |
| Telephone Number: | (028) 3031 3000 |
| Email: | buildingcontrol@newryandmourne.gov.uk |

Having considered the Pavement Café Bill, Newry and Mourne District Council would wish to submit the following comments and recommendation for consideration in respect of the Bill.

The Council believe that developing a café culture can have a positive effect on the urban environments, helps promote town and city centres, makes a difference in terms of attracting visitors and tourists and contributes to the general well being of communities.

The Council is generally very supportive of the introduction of legislation which enables and regulates pavement cafés and wishes to make constructive comments to help shape the Bill.

1. The Council would endorse the comprehensive response made by the Licensing Fourm, Belfast City Council and NILGA.
2. The consultation process should include responses from the DOE Road Service.
3. There should be consistency across Councils on how this is to be promoted and consistency of the application.
4. Guidance is required on the restriction of trading on open spaces.
5. Consideration to be given for dedicated storage spaces for the street furniture remote from existing fire escapes.
6. Position of street furniture should not restrict the existing fire escape routes.
7. Licence time limits should not be restricted to summer months but should be based on an annual licence, as this is difficult to enforce.
8. The licence provided by the Council should be displayed in a prominent position.

Northern Ireland Housing Executive

2nd Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB

Telephone: 028 9082 9325
Facsimile: 028 9082 9324
E-Mail: susan.mccarty@dsdni.gov.uk
<mailto:jim.wilkinson@dsdni.gov.uk>

10 September 2013

Dr Kevin Pelan
Committee Clerk
Committee for Social Development
Room 412
Parliament Buildings
Ballymiscaw
Belfast

BT4 3XX

Dear Kevin

Licensing of Pavement Cafes Bill – Call for Evidence

The Social Development Committee wrote to Dr John McPeake, Chief Executive, Northern Ireland Housing Executive (NIHE) inviting the Housing Executive to submit written evidence for consideration at the Committee Stage of the above Bill.

The Northern Ireland Housing Executive has advised that the Bill will impact on its commercial tenants who carry on business that includes the sale of food and wish to provide street furniture outside the demise of their tenancy for patrons to sit and eat. The tenants will apply direct to the local councils for the licensing of an area outside their tenancy. They will solely have to abide by the licensing terms and conditions. Therefore the Housing Executive see this Bill as having no direct impact on its Commercial Portfolio.

It may also impact on the Housing Executive if the pavements are not adopted by the Department for Regional Development and are still the responsibility of the Housing Executive. The Housing Executive would therefore require consultation before a license would be granted.

However, the Housing Executive advise that as this Bill will have no direct impact on its Commercial Portfolio, they see no need to change the clauses in the Bill.

I trust this is helpful.

Yours sincerely



Susan McCarty

NI Independent Retail Trade Association

Submission to Consultation of the Licensing of Pavement Cafes Bill

The Northern Ireland Retail Trade Association has over 1,400 members from the independent retail and wholesale sector in Northern Ireland. Collectively, they generate in excess of £3 billion turnover every year and employ over 30,000 staff.

NIIRTA 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 town centres. It is our view that the town centres 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' in Belfast, mirroring successful developments in other European cities. 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 we 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 evening economy in our town centres.

Overall our Association 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 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 pavement cafe. 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. We 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. We 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 town centres 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. We 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 cafes.

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."¹ 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 small businesses 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, we 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 town centres 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.

1 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].

For further information contact:

Glyn Roberts, NIIRTA CEO
245 Upper Newtownards Road, Belfast BT4 3JF
Email: glyn.roberts@niirta.com Tel: 028 9022 0004

Northern Ireland Local Government Association (NILGA)



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 13th 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 13th 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 (028)90798972, by 12th September at the latest.

Derek McCallan,
Chief Executive

29th 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 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.¹

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.

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

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, 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.

North Down Borough Council



Your Ref: DB

Our Ref:

12 September 2013

The Committee Clerk
Room 410
Parliament Buildings,
Ballymiscaw,
Stormont
Belfast
BT4 3XX

Dear Chairman

LICENSING OF PAVEMENT CAFES BILL

Further to the Committee's request for comments on the Licensing of Pavements Bill I would like to take this opportunity to forward the comments of North Down Borough Council.

The Bill was generally welcomed and is considered a good response to deal with the growing problem of uncontrolled street furniture on our streets. Council would forward a few comments and concerns regarding the Bill.

1. Private v Public Land

In the Bill *"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.*

On initial reading of the definition of 'a public area' in the Bill, it appears to be very broad and as such it may be argued that this cuts down on red tape and is to be welcomed if this minimises any burden on business. However, from an operational point of view the Council would like to raise the following points: -

The Council would welcome clarification as to the intention of the Bill with regard to privately owned land. Initial discussions with Department officials would appear to suggest that 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".

Within North Down there are some commercial premises which own the land in front of their property, albeit it is maintained by Roads Service as a public pavement. It

Trevor Polley BA MBA
Chief Executive and Town Clerk
North Down Borough Council
1 Town Hall The Castle
Bangor, Co. Down BT20 4BT
Tel: (028) 9127 0371
Fax: (028) 9127 1370
E-Mail: enquiries@northdown.gov.uk
Website: www.northdown.gov.uk

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 the Council licensing some, but not all, premises on the same stretch of road, where tables and chairs are placed on the footway, depending if the portion of land is in private or public ownership, which will mean two distinct enforcement authorities. If a pavement cafe licence is issued, the enforcing authority will be a council. However, if the premises do not require a pavement cafe licence then the enforcing authority will be the PSNI. This will be, in effect, two different licensing authorities and regimes regulating the same activity.

For some premises this will result in no control on design, layout or operating times in the pavement café area; this is particularly important where there have been problems with disorder. This will lead to confusion and claims of unfairness for those affected. Conversely, premises with a Pavement Café Licence can allow patrons to consume alcohol without them breaching the Alcohol Bye-Laws, whereas the premises that cannot be licensed because of the land issue will not be exempt from complying with the Alcohol Bye-Laws.

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. It is suggested that this definition should be considered as a more appropriate definition to adopt as it would deal with all of the above problems.

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

It appears under the proposed Bill that an area licensed as a pavement cafe does not need to adjoin the applicant premises. In many ways, this is a sensible approach, to allow councils a degree of flexibility as there may be premises that cannot place their furniture directly outside the frontage of their property.

However, we are concerned that this broad flexibility may also be exploited and cause future problems. We would request that consideration be given to how controls on limits could be placed on inappropriate competition from businesses which, for example, apply for a licence in areas adjacent to other establishments. It is also essential that guidance is provided on how competing applications for the same area should be dealt with.

For example, a public house could apply for a pavement café licence some distance away from its premises thus gaining an economic advantage over competing pub premises. It is doubtful whether this is the intent of the legislators but is a matter that should be addressed, together with guidance on completing applications, so as to provide clarity for councils and applicants alike.

3. Fees

There is a concern that although the Bill allows the Council to charge fees for a Licence application, the actual cost of administering the scheme is likely to be high

(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.”.

The intention of the Licensing of Pavement Cafes Bill is to provide councils with the power to licence occupiers of suitable premises to place tables and chairs on the pavement to facilitate their customers. It would be a concern that this could allow pavement cafes 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. This exemption could allow a café/bar to obtain a pavement café licence to effectively become a street trader.

It is considered that businesses licensed to operate an outdoor café should be required to prepare all food/drinks inside the main premises and not in the café area. 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.

In other jurisdictions where they licence pavement café’s there remains a requirement to obtain a street trading licence.

Yours sincerely



Graham Yarr
Director of
Environmental Services

PSNI

Personal, Professional, Protective Policing



MARK HAMILTON
ASSISTANT CHIEF CONSTABLE

Our Ref: 13\6971

13 September 2013

Dr K Pelan
Clerk, Committee for Social Development
Northern Ireland Assembly
Room 412
Parliament Buildings
BELFAST

Dear Dr Pelan

RE: LICENSING OF PAVEMENT CAFES BILL – CALL FOR EVIDENCE

Thank you for your correspondence dated 28 June 2013 and for giving the Police Service of Northern Ireland (PSNI) the opportunity to submit written evidence to the Social Development Committee on the Licensing of Pavement Cafes Bill which incorporates a statutory licensing scheme to be administered by District Councils.

As there has been a significant increase in the number of pavement cafes operating in towns and cities across Northern Ireland, PSNI welcome the proposal to regulate them. Councils, when dealing with new applications are required to consult DRD Roads Service who will be able to provide expert advice on the suitability of any public place for a pavement cafe and potential adverse impacts on street users, particularly those with mobility problems. PSNI support the proposal for councils having to consult with us where an applicant holds a pub licence and note that other safeguards have been included in the Bill to ensure there are strict controls on alcohol consumption at relevant pavement cafes.

As a result, no major issues have been identified by PSNI, however we would ask you to consider the following two points: -

1. Revocation and Suspension of a Licence

It would appear the only sanction currently proposed is suspension or revocation of a licence and we would make the comment that this may not be a suitable means of disposal in all cases. For minor breaches, PSNI would suggest that a Fixed Penalty would be a more appropriate sanction.

2. Appeals

With regard to Appeals, it is noted that these must be brought within 21 days beginning with the day after the date on which notice is given of the refusal; grant; renewal; variation; revocation, suspension or extension. PSNI would recommend that the Appeals process should be tightened to such an extent that the pavement cafe should not operate during the appeal process.

I hope this is of some assistance.

Yours sincerely



MARK HAMILTON
Assistant Chief Constable
Service Improvement Department

Assistant Chief Constable's Office
PSNI Headquarters, 65 Knock Road, Belfast BT5 6LE
Telephone: (028) 9056 1596 Fax: (028) 9070 0192
Email: mark.hamilton2@psni.pnn.police.uk

Pubs of Ulster

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." 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.



Northern Ireland
Assembly

Appendix 4

Departmental Submissions

Department for Social Development

Dr Kevin Pelan
Clerk, Committee for Social Development
Room 412
Parliament Buildings
Belfast
BT4 3XX

Level 4, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB
028) 90829510 Network: 38510

Your Ref:
Our Ref:

6 June 2013

Dear Kevin

Licensing of Pavement Cafes Bill – Pre Introductory Brief 13 June

On 20 May, the Minister sent the Social Development Committee Chair, copies of the draft Licensing of Pavement Cafes Bill (and associated Explanatory Memorandum and short summary document) on an in-confidence basis pending Executive Committee approval to introduce the Bill into the Assembly.

I am writing to confirm that at today's meeting the Executive approved the introduction of the Bill subject to a small number of mainly technical amendments. I would however take the opportunity to let you know that the requirement for a council to consult DOE Planning Service on new applications (Clause 4(4)(b) of the earlier draft Bill) has been removed. This is in anticipation of planning functions transferring to councils under Reform of Local Government.

I enclose a copy of the final Bill, Explanatory Memorandum and a short summary of the Bill content.

I would confirm that Gary McAlorum and I will be available to provide pre-introductory briefing at the Committee meeting arranged for 13 June.

Yours sincerely



Liam Quinn
Head of Social Policy Unit

Encs Bill
EFM
Summary of Bill Content

Social Development Committee - Short Summary of Licensing of Pavement Cafés Bill Content

Background

- The NI Executive Committee has agreed to the introduction of the Licensing of Pavement Cafés Bill into the Assembly. The Bill will bring Northern Ireland into line with the rest of the United Kingdom where local authorities have responsibility for licensing pavement cafés.

Consultation

- In September 2011 officials briefed SDC on the outcome of the earlier public consultation. That consultation was taken forward by DSD in conjunction with DRD Roads Service. SDC was very supportive of the proposal to introduce a statutory licensing scheme and recommended that district councils act as the 'single' licensing and enforcement authority.

Overview

- The licensing scheme caters for proprietors of relevant businesses such as cafés, restaurants and pubs who wish to provide a designated outdoor area on the public highway, furnished with tables and chairs. In broad terms the Bill prohibits the operation of a pavement café unless a licence has been granted by a district council. The Bill provides that no consent shall be unreasonably withheld but may be given subject to any reasonable conditions. Councils may vary, suspend or revoke the licence, and if they wish, charge a reasonable fee. The Bill sets out the circumstances in which an applicant or a licence holder can appeal to a Magistrate's Court against a decision of a district council.
- District councils will have the power to inspect relevant premises and remove facilities at unlicensed pavement cafés. Several new offences are created prosecutable by councils through a Magistrate's Court.

Summary of Main Provisions

Eligibility

- 1 Open to any person carrying on a business involving the supply of food or drink (from premises) to seek permission to place tables, chairs etc in a public area. Tables, chairs etc may be placed in 'a public area' outside (but not necessarily immediately adjacent to) the premises. The definition of a public area is widely drawn to include any place in the open air to which the public have access as of right.

Application Process

- 2 Applications for the grant, renewal, etc of a licence must be made in a form (including a plan of the public area) and at a time specified by the council. The applicant must fix a notice to the premises, indicating that an application has been submitted for a pavement café licence.

Grant of a Pavement Café Licence

- 3 The Bill places an onus on a council to grant / renew a pavement café licence unless the area is deemed unsuitable or its use may cause undue interference etc to the public. An application may also be refused where an applicant has not complied with due procedures or has had a licence revoked for disciplinary reasons.

Duty to consult

- 4 The Bill places a duty on councils, when considering new applications, to consult with the Roads Service and, where the associated premises has a pub licence, the PSNI, before arriving at a decision. Councils may also consult any other interested parties.

Power to impose conditions on licence

- 5 The Bill allows a council to specify in the licence a range of conditions including conditions relating to the design and layout of the pavement café, operating times, public liability insurance, etc. Councils may impose a prohibition on the consumption of alcohol in the pavement café area in certain circumstances. Where alcohol consumption is permitted in the pavement café area relevant conditions of the licensing law will automatically apply. Pavement café areas of licensed premises will be exempt from the restrictions on drinking in designated areas.
- 6 The conditions or area covered by a licence may be varied on application by the licence holder or compulsorily by a council where there is a material change in circumstances. A licence will remain valid for an indefinite period (unless specified in the licence). Appeals against licensing decisions will be heard by a Magistrate's Court.

Enforcement

- 7 Councils will have powers of inspection and enforcement. For this purpose the Bill creates three new offences prosecutable through a Magistrate's Court.
- Operating a pavement café without a valid licence.
 - Resisting or intentionally obstructing a council official in the execution of his duties; and
 - Making a false statement in connection with an application.
- 8 Offences will each be punishable by a fine of up to £1 000 (level 3). In addition, councils will have the power to inspect premises in connection with an application, and will be able to remove facilities at any pavement café operating without a licence.

Suspension / Revocation

- 9 The Bill specifies grounds where a council can suspend or revoke a licence such as the location being no longer suitable, failure to comply with licence conditions or making a false statement in the application process. A council may suspend a licence for a specified time, if the circumstances outside the licensee's control have changed since the granting of a licence leaving the location temporarily unsuitable.

Implementation

- 10 The main provisions of the Bill will come into operation on a date appointed in an Order made by the Department, following liaison with district councils about their readiness to begin receiving applications.

Pavement Cafes - Letter to Committee 18.10.13

Level 4, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

028) 90829510 Network: 38510

Your Ref:

Our Ref: SUB/893/2013

Clerk, Committee for Social Development

Room 412
Parliament Buildings
BELFAST
BT4 3XX

18 October 2013

Dear Kevin

Licensing of Pavement Cafes Bill – DSD’s Comments on Specific Issues Raised by Stakeholders

The Committee has recently heard evidence from several key stakeholders on the Licensing of Pavement Cafes Bill and the Department now wishes to provide some clarity on a number of issues raised.

Please find attached (**Annex 1**) a briefing paper for the Committee which reflects the Department’s earlier response to written evidence from stakeholders. The briefing paper highlights the same issues but addresses them by way of a more thematic approach, and I trust the Committee will find it useful in their consideration of the Bill.

Officials will brief the Committee on Thursday 24th October.

Yours sincerely



Liam Quinn

Head of Social Policy Unit

Encs Annex 1

Pavement Cafes - DSD Briefing for Committee

24.10.13 - Annex 1

Departmental Briefing For Social Development Committee 24th October 2013 - Licensing Of Pavement Cafés Bill - Key Issues

Following evidence received by the Social Development Committee from stakeholders on the Licensing of Pavement Cafés Bill, the Department wishes to clarify a number of key issues.

Definition of a Public Area

Local government seeks clarification on the Bill's intention with regards to licensing of pavement cafés on open private land fronting a pavement.

- The definition used in the Bill makes a differentiation between public and private land, by excluding land clearly in private ownership.
- The Bill is not intended to interfere with the rights of private land owners.
- It has been suggested that the definition of a public area should be the same as that used in the Street Trading Act 2001. However, the Department has concerns that if this definition was adopted the meaning would be less clear and make it possible for a business owner to apply for a pavement café licence on his neighbour's land.

Definition of a Business

Local government seeks clarification as to whether the definition of a business would allow unsuitable premises to apply for a pavement café licence.

- The definition was widely drawn so as to include any business supplying food or drink to the public. Councils will make decisions on a case by case basis.
- The definition allows a range of business premises to apply for a licence. For example a pub, restaurant / café, large retail outlet with a café area, or coffee kiosk licensed under the Street Trading Act 2001.
- The Department believes that the statutory requirements and costs associated with making an application would discourage hairdressers etc from applying for a licence.
- The Department furthermore understands that a business supplying food or drink to the public should already be registered with a district council for that purpose.

Alcohol Consumption at a Pavement Café

The Department wishes to clarify issues surrounding alcohol consumption at a pavement café following queries raised by Members.

- The Bill allows alcohol to be consumed in a pavement café in certain circumstances.
- Where a premises with a Pub licence applies for a pavement café licence, a council must consult the Police before the grant of the licence.
- A council can then decide to:
 - a) grant the pavement café licence and permit alcohol consumption;
 - b) grant a pavement café licence, but insert an alcohol prohibition condition, or;
 - c) refuse the application altogether.
- A council can place an alcohol prohibition condition on any pavement café licence.

- Where the premises has a liquor licence, the Bill extends the requirements of the Licensing Order 1996 to the pavement café area.
- The Bill does not extend the provisions in the Licensing Order with respect to late opening hours – so the sale of alcohol to customers in a pavement café will have to stop at normal closing time.
- A council will have the final say on the opening hours of any pavement café. For example, a council could decide that all pavement cafés in a particular street have to be removed by 8pm.

Drinking in Public (DIP) Byelaws

- At present, the curtilage of licensed premises are exempt from the drinking in public byelaws.
- If a council decides to grant a pavement café licence to such premises the current exemption will extend to the pavement café area.
- A council may choose not to allow ‘licensed’ pavement cafés to operate in drinking in public areas. However, this could effectively rule out alcohol consumption at pavement cafés in many town and city centres.
- The Bill provisions on drinking in public are of a technical nature so as to avoid the need for Councils to make new byelaws to cater for ‘licensed’ pavement café areas.

Fixed Penalties

Several stakeholders suggested that a fixed penalty scheme could ensure effective enforcement where licence conditions have been breached.

- In order for fixed penalties to be introduced for a specific breach of conditions, the Bill would need to create an associated criminal offence.
- The Department considers the use of fixed penalties to be inappropriate and heavy-handed for the enforcement of pavement cafés.
- Generally speaking, fixed penalty schemes aim to control low-level nuisance and annoyance. This Bill on the other hand aims to promote pavement cafés within a robust regulatory framework.
- The Department considers that suspension or revocation (in most cases after formal warnings have been given) is the most effective way of ensuring a licence holder operates within the licence conditions. A business is unlikely to want to jeopardise the operation of its pavement café as it is an additional commercial opportunity of the business.

Safeguards for Disabled People

IMTAC and Guide Dogs NI seek clarification on the Bill with regards to the protection of the rights of disabled people and other pedestrians.

- The Bill will place a previously unregulated activity on a solid legal platform.
- The Department considers that the statutory consultation with DRD Roads Service on all new applications will provide the relevant advice for councils with respect to issues impacting on pedestrians, suitable location and appropriate footpath widths.
- When required, the Bill allows a council to consult applications with anyone it considers appropriate – this could be groups representing the interests of disabled people.
- Guidance will highlight to councils that pavement cafés should be enclosed by means of barriers to ensure the safe passage of other users of the public area.
- All furniture licensed (including menu boards) will be required to be within the enclosed pavement café area.

Guidance

Several stakeholders seek clarification on the guidance the Department will issue to councils to assist with implementation of the Bill. It has been suggested that this should have a statutory basis.

- Best practice and legislative guidance is due to be issued to councils to assist in the implementation of the Bill. This guidance will make clear that the needs of pedestrians must be the primary consideration when assessing applications.
- Non-statutory guidance issued by DSD would have to be taken seriously by councils. Non-compliance by councils would be challengeable in the courts. As such, there is no compelling reason to amend the Bill to add a statutory power to issue guidance.
- The Bill allows a council to place on a licence any reasonable conditions it sees fit, and guidance will detail a wide range of such potential conditions.
- It is likely that councils will place conditions relating to the operating hours of a pavement café – For example, a council could set operating times from 10am to 8pm, Monday to Saturday.

Time for Application to be Processed

During an earlier briefing, Members suggested there could be a delay on application decisions when councils consult with DRD Roads Service.

- The EU Services Directive requires an application to be processed within a reasonable time which is fixed and made public in advance.
- A council may extend this period once for a limited period. If no decision has been made at the end of this period, a pavement café licence is deemed to be granted.
- From research on pavement cafés in GB, a period of up to 3 months is allowed to decide on an application.
- It should be noted that Councils are required to consult Roads Service on street trading applications. The Department have been informed that this process works well, and there have been no substantial delays.

Letter to SDC 31 October 2013

Dr Kevin Pelan
Clerk, Committee for Social Development
Room 412
Parliament Buildings
Belfast
BT4 3XX

Level 4, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB
(028) 90829510
Network: 38510

Your Ref:

Our Ref:

31 October 2013

Dear Kevin

Licensing of Pavement Cafes Bill – Informal Clause by Clause Scrutiny

The Committee has agreed to carry out the informal clause by clause scrutiny of the Licensing of Pavement Cafes Bill at its meeting on 7 November.

Please find attached (Annex 1) clause by clause briefing on issues raised by stakeholders together with comments on points made by Committee Members at recent evidence sessions. The document is largely based on the stakeholder table of issues which the Department commented on in my letter of 3 October. We have refined that table to remove multiple references to common issues and aligned comments made to the appropriate clause. We think this document could form the basis for discussion at the informal clause by clause session.

I am also enclosing for convenience (Annex 2) the key issues paper which accompanied my letter of 18 October. Officials briefed the Committee on the key issues at its meeting on 24 October.

Gary McAlorum and I will attend the meeting next week to assist the Committee in its scrutiny of the Bill.

Yours sincerely



Liam Quinn

Head of Social Policy Unit
Encs Annex 1 - Paper for clause by clause scrutiny
Annex 2 – Key issues paper

Clause by clause briefing for sdc 7 November 2013

Annex 1

Pavement Cafes Bill – DSD Brief for SDC Informal Clause by Clause Scrutiny

| Clause | Topic | Page |
|--------|--|------|
| | Overview | 3 |
| 1 | MEANING OF PAVEMENT CAFE AND OTHER KEY TERMS | 4 |
| 2 | OFFENCE OF PLACING FURNITURE | 6 |
| 3 | APPLICATION | 7 |
| 4 | GRANT OR REFUSAL | 9 |
| 5 | FORM, DURATION ETC | 11 |
| 6 | CONDITIONS | 12 |
| 7 | RENEWAL | 14 |
| 8 | VARIATION (CONDITIONS / AREA) | 14 |
| 9 | VARIATION (REMOVAL OF ALCOHOL PROHIBITION) | 15 |
| 10 | APPLICATIONS – GENERAL | 15 |
| 11 | NOTICE OF APPLICATION | 16 |
| 12 | FEES | 17 |
| 13 | CHANGE IN PERSONS (PARTNERSHIP) | 18 |
| 14 | REVOCATION | 19 |
| 15 | SUSPENSION | 19 |
| 16 | COMPULSORY VARIATION (CONDITIONS) | 20 |
| 17 | COMPULSORY VARIATION (ALCOHOL PROHIBITION) | 20 |
| 18 | COMPULSORY VARIATION (AREA) | 21 |
| 19 | NOTICE OF REVOCATION ETC | 21 |
| 20 | ALCOHOL LICENSING REGISTER | 22 |
| 21 | APPEALS | 23 |
| 22 | POWERS OF ENTRY AND INSPECTION | 24 |
| 23 | POWERS TO REMOVE UNLICENSED FURNITURE | 24 |
| 24 | OFFENCE OF OBSTRUCTION | 25 |
| 25 | SERVICE OF NOTICES AND DOCUMENTS | 25 |
| 26 | POWER TO MAKE FURTHER PROVISION | 26 |
| 27 | REGULATIONS | 26 |
| 28 | CONSEQUENTIAL AMENDMENTS | 27 |

| Clause | Topic | Page |
|----------|---|------|
| 29 | BYELAWS | 28 |
| 30/31/32 | DEFINITIONS /SHORT TITLE / COMMENCEMENT | 29 |
| | SCHEDULE | 30 |

Bill Overview

The Licensing of Pavement Cafes Bill contains **32 clauses** and **one Schedule**.

Clauses 1 and 2 deal with the general requirement to obtain a pavement café licence.

Clauses 3 to 12 set out the application procedures for the grant, renewal, and variation of a licence.

Clause 13 sets out the procedure when there are multiple licence holders and there is a change of a business partner.

Clauses 14 to 19 deal with revocation, suspension and compulsory variation of a licence.

Clause 20 makes provision for certain matters to be recorded in the register under liquor licensing law.

Clause 21 specifies the circumstances in which appeals can be made against a decision of a district council.

Clauses 22 to 24 give district councils powers of entry, removal etc for the purpose of enforcing the provisions of the Bill.

Supplementary matters are set out in **Clauses 25 to 32**.

Clause 1: Meaning of “pavement café licence” and other key terms

Overview

This clause provides a definition of a ‘pavement cafe licence,’ what the licence authorises and other key terms for the purpose of the Bill. It is important to make clear a pavement cafe licence simply authorises a person carrying on a business involving the supply of food or drink (in or from premises) to place furniture temporarily on a public area. A licensed area will remain a public place for the purpose of public order, environmental or other legislation.

Issues raised by stakeholders

Definition of public area [Clause 1(2)]

The “public area” for the purpose of licensing pavement cafes, is given a broader definition than that used in other in jurisdictions. Local government has asked for clarification about the licensing of pavement cafes on private land. The Department’s policy position is that the Bill should not interfere with the rights of private land owners. It has been suggested that the definition of a public area should be the same as that used in the Street Trading Act 2001. This definition can be justified for street trading because of the potential for nuisance. But DSD doubts whether the same justification can be used for the licensing of pavement cafes.

Market exemption [Clause 1(2)(b)]

Clarification was sought as to the precise circumstances in which markets will be exempt from the requirements of the licensing scheme. This exemption applies to any ‘lawful market.’

That is, one which has an historic right to operate, established by grant, presumed grant or statute. A council could therefore not authorise a pavement cafe situated in a lawful market area, whether the market is currently operating or not. This is the same exemption as used in the Street Trading Act 2001.

Advertising / menu boards [Clause 1(3)]

The regulation of commercial advertising in the form of 'A' Boards was raised. The placing of 'A' Boards in the street (not associated with a pavement cafe) would be an enforcement issue for Roads or Planning Services. However, DSD Guidance will highlight to councils that pavement cafés should be enclosed by means of barriers to ensure the safe passage of other users of the public area. All licensed furniture, including **menu boards** associated with any pavement cafe, will be required to be kept within the enclosed area.

Requirement for furniture to be capable of removal in 20 minutes [Clause 1(4)]

The inclusion of the provision requiring pavement cafe furniture to be capable of being removed swiftly was queried. It is considered this time limit adds meaning to the definition and demonstrates that the furniture associated with a pavement cafe cannot be of a permanent or semi-permanent nature. A council can choose whether or not to specify in the licence an actual time requirement for removal of the furniture.

Clause 2: Offence of Placing Furniture on Public Area Without Licence

Overview

This clause creates an offence of placing furniture, for use for the consumption of food or drink, on a public area without a pavement café licence. The Clause applies to businesses involved in the supply of food or drink (in or from premises) to members of the public. An offence may be committed by the owner of the business and any person concerned with the management of the premises. The penalty on summary conviction is a fine of up to £1,000.

Issues raised by stakeholders

Several stakeholders made comments here about a Fixed Penalty Scheme (for breaches of licence conditions) which is addressed under Clause 6.

Clause 3: Application for Licence

Overview

Clause 3 provides details of how a qualifying business may apply to the local council for a pavement café licence. Applicants must attach a plan showing the location and dimensions of the proposed pavement cafe area (or areas) associated with the premises. Multiple applications are not permitted. This Clause should be read in conjunction with Clause 10 (General provision) and Clause 11 (Notice to be displayed).

Issues raised by stakeholders

Definition of qualifying business [Clauses 3(1) and (7)]

There were concerns that businesses not normally associated with the serving of food or drink (such as hairdressers) will be eligible to apply. The Department believes that the statutory requirements and costs associated with making an application will discourage such businesses from applying for a licence. Any change in the definition may produce negative unintended consequences. For example, if the Bill were to specify that the principal activity of

the qualifying business must be the supply of food or drink this would rule out large retailers with coffee shops.

Dealing with multiple applications for the same public area

Advice was sought on how councils should deal with local competition issues. DSD is not considering introducing measures to restrict competition. This would be in breach of the EU Services Directive which prohibits the case-by-case application of an economic test or market demand. DSD will address in Guidance possible options available to councils when dealing with applications for the same area and local competition issues. We would expect such applications to be rare.

Requirement for plan of pavement cafe area to accompany application [Clause 3(4)]

While this requirement was welcomed there was some concern that the plan may not include the proposed pedestrian corridor or show existing street furniture in the vicinity. The legislative intention is that the plan should show the relationship between the pavement cafe area and the streetscape. The application would otherwise be meaningless and be rejected. In practice, we expect a pre-application site visit will be arranged to discuss the council's detailed requirements. However, DSD will specifically address this and other aspects of the application process in Guidance.

Time for application to be processed

During an earlier briefing, Members expressed some concern about possible delays in processing applications. The EU Services Directive requires an application to be processed within a reasonable time which is fixed and to be made public in advance. If no decision has been made at the end of this period, the licence is deemed to be granted. From research on pavement cafes in GB, a period of up to 3 months is allowed to decide on an application. Councils currently consult Roads Service on all applications for a street trading licence. The Department understands this process is working well with no significant delays.

Clause 4: Grant or Refusal of Licence

Overview

Clause 4 places an onus on a district council to grant a pavement café licence unless one of the grounds for refusing an application applies. Before deciding on an application, a council must consult DRD Roads Service and where the premises is a pub, the PSNI. A council may consult other appropriate organisations or individuals before deciding on an application. In addition, councils must take into account any representations made in connection with an application.

Issues raised by stakeholders

Grounds for refusal [Clause 4(2)]

A number of stakeholders considered that the grounds for refusal did not cover enough eventualities and provide the means for effective control. Some would like to see Clause 4(2) (b) amended to refer to access for 'pedestrians', rather than 'persons'. The powers available to a council in relation to grant of licence are widely drawn. The wording is very similar to that used in street trading legislation. The Bill will allow a council to take into account any factor which it considers reasonable when considering an application. The use of the term 'persons' in Clause 4(2)(b) would include 'pedestrians.' DSD is reluctant to amend the wording as this may distort or dilute the meaning. Furthermore, DSD believes that many of the concerns raised can be more appropriately addressed in conditions for the grant of the licence as opposed to grounds for refusal.

Minimum width requirements for pedestrian and other access [Clause 4(2)]

It was recommended that the legislation should specify minimum width standards for the pedestrian corridor at a pavement cafe. The Bill is regarded as a positive step towards putting the management of this currently unregulated activity on a firm legislative footing. The Department is confident that the Bill has sufficient safeguards built-in to protect the interests of pedestrians. In particular, the Bill makes it a statutory requirement for councils to consult Roads Service on new applications. DSD considers that Roads Service is best placed to provide advice on the suitability of a pavement cafe in a public area. For example, it will be able to make an assessment as to the acceptable minimum width for pedestrians on a site by site basis. It would be extremely difficult to draft meaningful and workable regulations in this respect.

Alcohol consumption at pavement cafes [Clause 4(4)(b)]

Clarification was sought as to how applications involving licensed premises will be handled. The Bill makes provision for the consumption of alcohol at certain pavement cafes subject to restrictions. Prior consultation with the police is required for public houses wishing to have a pavement cafe area. When considering applications from any licensed premises a council can, in relation to alcohol consumption, decide to:

- grant the pavement café licence and permit alcohol consumption;
- grant a pavement café licence, but insert an alcohol prohibition condition if there are concerns about possible disorder [Clause 6(2)], or;
- refuse the application altogether.

Where any licensed premises is granted a pavement cafe licence, relevant requirements of the Licensing Order 1996 will automatically apply to the pavement café area [see Schedule, para 2]. A point was raised about late night drinking at a pavement cafe. This would not be permitted as late opening hours only apply to the main business premises.

Refusal on grounds of past conduct [Clause 4(2)(d)]

Some stakeholders said new applications should be considered on current circumstances and not take into account previous conduct. Similar provision exists in street trading legislation and inclusion of the provision in this Bill is considered appropriate. A council will, of course, need to be satisfied that any licensing decision taken is reasonable and proportionate given the particular circumstances.

Clause 5: Form, Duration Etc of Licence**Overview**

Clause 5 gives DSD the power to prescribe the form of a pavement cafe licence and district councils the power to decide how long a licence should last.

Issues raised by stakeholders**Facility to vary the pavement area applied for [Clause 5(3)] and [Clause 3(4)]**

There appears to be a misunderstanding about the extent to which the pavement cafe area may be varied on application. The purpose of this provision is to allow a council the flexibility to make minor changes to the pavement cafe area proposed rather than simply reject the application. There is no facility for a licence holder to unilaterally extend the approved pavement cafe area on a day to day basis. However, a licence holder may formally apply to have the area varied under Clause 8.

Duration of licence [Clause 5(5)]

There were calls for the Bill to specify a fixed period for the duration of a licence to promote consistency and prevent the licence from becoming a tradable commodity. This provision has been drafted in such a way as to comply with the EU Services Directive. However, a council may choose to limit the duration of licences where justified. This is a complex issue that we intend to address in Guidance. The Bill does not provide for the formal transfer of a licence. As such DSD believes this should prevent a licence from becoming a tradable commodity.

Clause 6: Conditions of Licence**Overview**

Clause 6 provides the power for a council to impose conditions on a pavement cafe licence. All licences must contain a condition requiring the holder not to place furniture in an area other than the area covered by the licence. Where the associated premises is an off-licence the council must include a condition prohibiting the consumption of alcohol in the pavement cafe area. Councils have discretion to impose a range of other conditions including conditions relating to the design and layout of the pavement café area, operating times, arrangements for the storage of furniture, public liability insurance and the payment of fees.

Issues raised by stakeholders**Fixed Penalties**

Several stakeholders recommended the introduction of a fixed penalty scheme in relation to offences as a cost effective means of enforcement. It has been suggested that the scheme could apply specifically to breaches of licence conditions. In order for fixed penalties to be introduced for a specific breach of a licence condition, the Bill would need to create an associated criminal offence. The Department considers the use of fixed penalties to be inappropriate and heavy-handed for the enforcement of pavement cafés. DSD considers that suspension or revocation (under Clause 14 / 15) - in most cases after formal warnings have been given - is the most effective way of ensuring a licence holder operates within the licence conditions.

Model terms and conditions

It has been suggested that the Department should develop 'model' terms and conditions for the management of pavement cafes in the interests of consistency and to provide clear guidance for councils. The 'model' should have a statutory basis. DSD will produce best practice type guidance incorporating model terms and conditions. The guidance will place particular emphasis on putting the needs of pedestrians, including those with disabilities and mobility needs, at the heart of the licensing regime. Non-statutory guidance issued by DSD would have to be taken seriously by councils. Non-compliance by councils would be challengeable in the courts. As such, there is no compelling reason to amend the Bill to add a statutory power to issue guidance or to produce 'model' terms and conditions.

Disorder related to alcohol consumption [Clause 6 (2)(b)]

There were concerns about restricting the grounds for imposing an alcohol prohibition to disorder. A statutory definition of the term 'disorder' was sought. Stakeholders asked for consideration to be given to including provisions to deal with ongoing incidents of disorder at pavement cafes. The Department does not believe a wider power to ban alcohol consumption at pavement cafes can be justified. A council could however impose restrictions on the opening hours of pavement cafes, attached to licensed premises, if it had concerns about social problems such as noise or nuisance. The term 'disorder' is used in licensing and criminal law, without formal definition. The standard legal principle is that such terms should

be given their everyday meaning. It is worth noting that pavement cafes associated with licensed premises will be subject to licensing law under which powers of closure to tackle disorder are available to the police.

Design of street furniture [Clause 6 (3)(a)]

There were calls for the Bill to include minimum standards for street furniture to promote consistency and uniformity of approach. The Department considers that this issue would be best dealt with in Guidance.

Public liability insurance [Clause 6 (3)(e)]

The Bill allows councils to specify insurance requirements. It has been suggested it should be mandatory for a prospective licence holder to take out public liability insurance. The Department believes the provision as drafted is satisfactory. In practice we would expect councils to require separate public liability insurance to be taken out or for the prospective licence holder to prove that any existing premises insurance provides the necessary cover.

Clause 7: Renewal of Licence

Overview

Clause 7 sets out the arrangements for renewal of a pavement café licence. The renewals procedure is broadly similar to that for new applications. However, a council will not be obliged to consult the statutory authorities mentioned in Clause 4 (4). A council may vary a licence on renewal.

Issues raised by stakeholders

No comments.

Clause 8: Variation of Section 6 (3) Conditions or of Area Covered by Licence (On Application)

Overview

Clause 8 allows the holder of a pavement café licence to apply to the council for a variation of either the conditions of a licence or the area covered by the licence. The variation procedure is broadly similar to that for new applications. However, a council will not be obliged to consult the statutory authorities mentioned in Clause 4 (4).

Issues raised by stakeholders

No comments.

Clause 9: Variation by Removal of Alcohol Prohibition (On Application)

Overview

Clause 9 provides that where a pavement café licence contains an alcohol prohibition, the holder of the licence may, in certain circumstances, apply to a council for the licence to be varied by the removal of the alcohol prohibition. The council must consult with the police before deciding on such an application.

Issues raised by stakeholders

Alcohol related issues are dealt with under other clauses.

Clause 10: Applications: General Provision

Overview

Clause 10 sets out details of how applications for the grant, renewal or variation of a pavement café licence are to be made and a council's responsibility when such applications are received. It makes it an offence for a person, in connection with an application, to make a statement which is false in a material respect and to do so knowing it to be false. A person guilty of the offence is liable on summary conviction to a fine of up to £1,000.

Issues raised by stakeholders

Publicising applications [Clause 10 (4)]

Clarification was sought as to the requirement to publicise applications received. It is for councils to decide how they wish to publicise the receipt of applications. We expect this will be done by putting details of applications on their websites.

Clause 11: Notice of Application to be Displayed

Overview

Clause 11 requires an applicant for the grant, renewal or variation of a pavement café licence to fix a notice (in a form specified by the council) to the premises specified in the application.

Issues raised by stakeholders

Fixing of notice to premises [Clause 11 (2)]

There were concerns that the arrangements for fixing of the notice of application may exclude the blind and partially sighted from making representations. DSD considers that the statutory requirements are sufficient to raise the awareness of the general public. There are other requirements in the Bill, such as the need for Councils to publicise applications [Clause 10], which should safeguard the interests of the groups mentioned. Councils also have a general responsibility to promote equality of opportunity in exercising their functions.

Clause 12: Fees

Overview

Clause 12 gives a district council the power to charge fees which will enable it to offset the cost of administering the pavement cafés licensing scheme. Fees may be charged for the grant, renewal or variation of a licence.

Issues raised by stakeholders

Level of fees

There were concerns that the actual cost of administering the scheme will exceed what a council will be comfortable charging businesses. Some form of start-up financial assistance for local authorities is requested. The setting of a fixed fee in the Bill was mentioned.

The Department notes that the provisions relating to payment of fees are similar to those in street trading legislation. The provisions allow for genuine cost recovery only. The actual cost of processing applications will vary across councils so it is considered appropriate to allow councils to decide their own fee structure. After determining their fees, councils will be required to make public, a statement showing financial details and how fees were calculated which will promote transparency. The Department considers it would be difficult for it to justify funding support for councils aimed at promoting the development of pavement cafes. Ultimately it will be a commercial decision for a business to weigh up the costs of applying for a licence against the expected profit.

Clause 13: Change in Persons Carrying on Business

Overview

Clause 13 makes provision for changes to persons carrying on a business involving a partnership.

Issues raised by stakeholders

Transfer of a licence

It has been suggested that the Bill should include provision for the formal transfer of a licence from one owner to another. The Department believes that, by not permitting the transfer of a licence from one owner to another, the licence is unlikely to become a tradable commodity. Also, a suitable mechanism for permitting a formal transfer would otherwise need to be devised in such a way as not to compromise the licensing objectives.

Clause 14: Revocation of Licence

Overview

Clause 14 sets out the circumstances in which a district council may revoke a pavement café licence. Generally speaking, a council may revoke the licence if it is satisfied that the licensed area has become unsuitable, or continuing to use it would cause undue interference or inconvenience to persons or vehicles in the vicinity, or result in disorder. A council may also revoke the licence if the licence holder has made a statement he knew to be false in connection with an application, or failed to fix a notice, or failed to comply with any condition of a licence; or failed to pay any fee.

Issues raised by stakeholders

The issues raised replicate points made by stakeholders elsewhere, for example offences under Clause 2 and grounds for grant or refusal of a licence under Clause 4.

Clause 15: Suspension of Licence

Overview

Clause 15 sets out the circumstances in which a district council may suspend a pavement café licence. Generally speaking, a council may suspend a licence if the licensed area has become temporarily unsuitable or continuing to use it would, temporarily, cause undue interference or inconvenience to persons or vehicles in the vicinity, or be likely to result in disorder. A council may also suspend a licence (as an alternative to revoking it under Clause 14) if the licence

holder has made a statement he knew to be false in connection with an application, or failed to fix a notice, or failed to comply with any condition of a licence; or failed to pay any fee.

Issues raised by stakeholders

The issues raised replicate points made by stakeholders elsewhere, for example offences under Clause 2 and grounds for grant or refusal of a licence under Clause 4.

Clause 16: Compulsory Variation of 6(3) (Licence) Conditions

Overview

Clause 16 allows a council to vary any conditions attached to a pavement cafe licence where there has been a material change in circumstances.

Issues raised by stakeholders

Comments received show good support for the inclusion of this provision.

Clause 17: Compulsory Variation: Prohibition of Alcohol

Overview

Clause 17 allows a council, at any time, to impose a condition prohibiting the consumption of alcohol at a pavement cafe.

Issues raised by stakeholders

Comments received have been addressed in other alcohol related clauses.

Clause 18: Compulsory Variation of Area Covered by Licence

Overview

Clause 18 allows a council to vary the area covered by a pavement licence. This is regarded as an alternative to revocation where part of the area has become unsuitable or its continued use is likely to result in undue interference or inconvenience, or in disorder.

Issues raised by stakeholders

The issues raised replicate points made by stakeholders elsewhere, for example grounds for grant or refusal of a licence under Clause 4.

Clause 19: Notice of Revocation, Suspension or Compulsory Variation

Overview

Clause 19 sets out the administrative steps that a council must take when it revokes, suspends or compulsorily varies a pavement café licence.

Issues raised by stakeholders

No comments.

Clause 20: Matters to be Recorded in Register Under Licensing Order

Overview

Clauses 20 gives the Department the power to make regulations requiring details of pavement café licences granted to premises holding a liquor licence, to be recorded in the relevant licensing register.

Issues raised by stakeholders

Comments received show support for the inclusion of this provision.

Clause 21: Appeals

Overview

Clause 21 sets out the circumstances in which a new applicant or licence holder can lodge an appeal against a licensing decision of a district council. All appeals will be heard by a Magistrate's court.

A new applicant may appeal a decision of a council to refuse the application or, where the licence is granted, the conditions imposed. Licence holders may appeal a decision not to renew the licence, or a refusal to vary the area or conditions of the licence or to remove an alcohol prohibition. Licence holders may also appeal a decision to suspend or revoke a licence or vary the area and conditions of a licence (as an alternative to revocation).

Issues raised by stakeholders

Operation of pavement cafe pending outcome of appeal

There appears to be some confusion about the operation of a pavement cafe where an appeal is lodged with the Magistrate's court. The Bill provides that any licensing decision of a council will remain in force until the outcome of the appeal is known. For example, if a council decides to suspend a licence the pavement cafe area must remain closed until the court hears the appeal and makes a ruling.

Clause 22: Powers of Entry and Inspection

Overview

Clause 22 enables a person authorised by a district council to enter and inspect premises, to which a pavement café licence or application relates, for various purposes, including determining whether a licence should be granted, revoked etc.

Issues raised by stakeholders

The provision is welcomed.

Clause 23: Power to Remove Unlicensed Furniture

Overview

Clause 23 gives a district council the power to remove furniture from unlicensed pavement cafés. The power does not extend to premises where a pavement cafe licence is operative. It places a duty on the council to notify the owner and makes provision for disposal of the furniture.

Issues raised by stakeholders

No comments.

Clause 24: Offence of Obstruction

Overview

Clause 24 creates an offence of intentionally obstructing an authorised officer exercising the powers to enter and inspect premises or to remove unlicensed furniture. A person guilty of the offence is liable on summary conviction to a fine of up to £1 000.

Issues raised by stakeholders

Level of fine

It has been suggested that the level of the fine is insufficient and sends out the wrong message. The Department notes that the offence and penalty mirrors the law on street trading. This is considered a reasonable and proportionate penalty.

Clause 25: Service of Notice and Documents

Overview

Clause 25 allows for the service of notices and documents for licensing purposes to be completed via electronic communication. This is necessary because the Interpretation Act (NI) 1954, which makes provision for the general operation and interpretation of legislation, is silent on this issue. Also, the EU Directive on Service in the Common Market specifies that electronic means must be made available for licensing purposes.

Issues raised by stakeholders

No comments.

Clause 26: Power to Make Further Provision

Overview

Clause 26 allows the Department to make consequential and transitional provisions where necessary for the purpose of implementing the Bill. This can be regarded as a standard Clause for a Bill of this nature.

Issues raised by stakeholders

No comments.

Clause 27: Regulations

Overview

Clause 27 provides that regulations made under the Bill are subject to negative resolution procedure. However, regulations that amend any statutory provision may not be made unless a draft has been laid before and approved by a resolution of the Assembly.

Issues raised by stakeholders

No comments.

Clause 28: Consequential Amendments

Overview

Clause 28 gives legal effect to the provisions set out in the Schedule. The Schedule amends a number of pieces of primary legislation in order to give full effect to the legislative intention. This can be regarded as a standard Clause for a Bill of this nature.

Issues raised by stakeholders

No comments.

Clause 29: Byelaws

Overview

Clause 29 provides an exemption for certain pavement cafés from the restrictions on drinking in designated areas. People consuming alcohol at these pavement cafes would otherwise be committing an offence.

Issues raised by stakeholders

General exemption for licensed premises in designated areas

During earlier briefing by officials, some concerns were expressed about exemptions from the drinking in public byelaws. At present, it is common practice for district councils to exempt the curtilage of licensed premises from the restrictions on drinking in areas designated in byelaws. If a council decides to grant a pavement café licence to such premises the current exemption will extend to the pavement café area. However, a council could make a policy decision not to allow 'licensed' pavement cafés to operate in designated areas. It is also worth pointing out that the Bill provisions on drinking in public are primarily of a technical nature. The aim is to avoid the need for Councils to make new byelaws should they decide to permit 'licensed' pavement cafés to operate in designated areas.

Clause 30: Definitions

Overview

Clause 30 clarifies important terms used in the Bill.

Issues raised by stakeholders

Comments received have been dealt with under Clause 5.

Clause 31: Short Title

Overview

Clause 31 gives this legislation its short title which is the 'Licensing of Pavement Cafes Act (Northern Ireland) 2013'.

Issues raised by stakeholders

No comments.

Clause 32: Commencement

Overview

Clause 32 provides for the main functions of the Bill to come into operation on a date appointed in an order made by the Department. This is because it will take some time for councils to make the necessary preparations to begin receiving licensing applications.

Issues raised by stakeholders

Comments received have been dealt with under Clause 12.

Comments on the Schedule and Other General Comments

Overview

The Schedule contains amendments to other primary legislation as a consequence of the introduction of the Bill. A new Part VA is inserted into the Licensing (Northern Ireland) Order 1996. Consequently, the provisions of the Licensing Order regarding opening hours, drinking up time, offences and penalties etc, will apply to relevant pavement café areas. However, councils will be able to curtail opening hours at the pavement café and impose an alcohol prohibition if there are concerns about disorder.

The Criminal Justice (NI) Order 2008 is amended to provide an exemption for certain pavement cafés from the restrictions on alcohol consumption in designated areas. Technical amendments are made to the Roads (Northern Ireland) Order 1993 and the Street Trading (Northern Ireland) Act 2001 so that a pavement café licensed by a council can operate lawfully.

Issues Raised by Stakeholders

Exclusion of certain licensed premises from the scheme

Most of the issues raised under this heading are dealt with in earlier clauses. However, a provision in paragraph 2 of the Schedule, which excludes certain licensed premises from the pavement cafe licensing scheme, has been queried. New Article 76B excludes a conference centre, higher education institution, a seaman's canteen, indoor arena and places of public entertainment from being authorised by a council to serve alcohol at a pavement cafe. The reason for this is that these particular licensed premises are not freely accessible to the general public. For example, entry to the Odyssey Indoor Arena is normally restricted to paying

patrons only. As such, the requirement in Clause 1(2), that a public area must be a place to which the public have access 'as of right,' would not be met.

Department for Social Development – October 2013

Departmental Briefing for Social Development Committee 24th October 2013 - Licensing of Pavement Cafés Bill - Key Issues

Following evidence received by the Social Development Committee from stakeholders on the Licensing of Pavement Cafés Bill, the Department wishes to clarify a number of key issues.

Definition of a Public Area

Local government seeks clarification on the Bill's intention with regards to licensing of pavement cafés on open private land fronting a pavement.

- The definition used in the Bill makes a differentiation between public and private land, by excluding land clearly in private ownership.
- The Bill is not intended to interfere with the rights of private land owners.
- It has been suggested that the definition of a public area should be the same as that used in the Street Trading Act 2001. However, the Department has concerns that if this definition was adopted the meaning would be less clear and make it possible for a business owner to apply for a pavement café licence on his neighbour's land.

Definition of a Business

Local government seeks clarification as to whether the definition of a business would allow unsuitable premises to apply for a pavement café licence.

- The definition was widely drawn so as to include any business supplying food or drink to the public. Councils will make decisions on a case by case basis.
- The definition allows a range of business premises to apply for a licence. For example a pub, restaurant / café, large retail outlet with a café area, or coffee kiosk licensed under the Street Trading Act 2001.
- The Department believes that the statutory requirements and costs associated with making an application would discourage hairdressers etc from applying for a licence.
- The Department furthermore understands that a business supplying food or drink to the public should already be registered with a district council for that purpose.

Alcohol Consumption at a Pavement Café

The Department wishes to clarify issues surrounding alcohol consumption at a pavement café following queries raised by Members.

- The Bill allows alcohol to be consumed in a pavement café in certain circumstances.
- Where a premises with a Pub licence applies for a pavement café licence, a council must consult the Police before the grant of the licence.
- A council can then decide to:
 - (a) grant the pavement café licence and permit alcohol consumption;
 - (b) grant a pavement café licence, but insert an alcohol prohibition condition, or;
 - (c) refuse the application altogether.
- A council can place an alcohol prohibition condition on any pavement café licence.

- Where the premises has a liquor licence, the Bill extends the requirements of the Licensing Order 1996 to the pavement café area.
- The Bill does not extend the provisions in the Licensing Order with respect to late opening hours – so the sale of alcohol to customers in a pavement café will have to stop at normal closing time.
- A council will have the final say on the opening hours of any pavement café. For example, a council could decide that all pavement cafés in a particular street have to be removed by 8pm.

Drinking In Public (DIP) Byelaws

- At present, the curtilage of licensed premises are exempt from the drinking in public byelaws.
- If a council decides to grant a pavement café licence to such premises the current exemption will extend to the pavement café area.
- A council may chose not to allow ‘licensed’ pavement cafés to operate in drinking in public areas. However, this could effectively rule out alcohol consumption at pavement cafés in many town and city centres.
- The Bill provisions on drinking in public are of a technical nature so as to avoid the need for Councils to make new byelaws to cater for ‘licensed’ pavement café areas.

Fixed Penalties

Several stakeholders suggested that a fixed penalty scheme could ensure effective enforcement where licence conditions have been breached.

- In order for fixed penalties to be introduced for a specific breach of conditions, the Bill would need to create an associated criminal offence.
- The Department considers the use of fixed penalties to be inappropriate and heavy-handed for the enforcement of pavement cafés.
- Generally speaking, fixed penalty schemes aim to control low-level nuisance and annoyance. This Bill on the other hand aims to promote pavement cafés within a robust regulatory framework.
- The Department considers that suspension or revocation (in most cases after formal warnings have been given) is the most effective way of ensuring a licence holder operates within the licence conditions. A business is unlikely to want to jeopardise the operation of its pavement café as it is an additional commercial opportunity of the business.

Safeguards for Disabled People

IMTAC and Guide Dogs NI seek clarification on the Bill with regards to the protection of the rights of disabled people and other pedestrians.

- The Bill will place a previously unregulated activity on a solid legal platform.
- The Department considers that the statutory consultation with DRD Roads Service on all new applications will provide the relevant advice for councils with respect to issues impacting on pedestrians, suitable location and appropriate footpath widths.
- When required, the Bill allows a council to consult applications with anyone it considers appropriate – this could be groups representing the interests of disabled people.
- Guidance will highlight to councils that pavement cafés should be enclosed by means of barriers to ensure the safe passage of other users of the public area.

- All furniture licensed (including menu boards) will be required to be within the enclosed pavement café area.

Guidance

Several stakeholders seek clarification on the guidance the Department will issue to councils to assist with implementation of the Bill. It has been suggested that this should have a statutory basis.

- Best practice and legislative guidance is due to be issued to councils to assist in the implementation of the Bill. This guidance will make clear that the needs of pedestrians must be the primary consideration when assessing applications.
- Non-statutory guidance issued by DSD would have to be taken seriously by councils. Non-compliance by councils would be challengeable in the courts. As such, there is no compelling reason to amend the Bill to add a statutory power to issue guidance.
- The Bill allows a council to place on a licence any reasonable conditions it sees fit, and guidance will detail a wide range of such potential conditions.
- It is likely that councils will place conditions relating to the operating hours of a pavement café – For example, a council could set operating times from 10am to 8pm, Monday to Saturday.

Time for Application to be Processed

During an earlier briefing, Members suggested there could be a delay on application decisions when councils consult with DRD Roads Service.

- The EU Services Directive requires an application to be processed within a reasonable time which is fixed and made public in advance.
- A council may extend this period once for a limited period. If no decision has been made at the end of this period, a pavement café licence is deemed to be granted.
- From research on pavement cafés in GB, a period of up to 3 months is allowed to decide on an application.
- It should be noted that Councils are required to consult Roads Service on street trading applications. The Department have been informed that this process works well, and there have been no substantial delays.

Letter to Chair SDC - Departmental Amendments



Department for
**Social
Development**
www.dsdsni.gov.uk

From the Minister

**5th Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB**

Fax: (028) 9082 9548
e-mail: private.office@dsdni.gov.uk

Tel: (028) 9082 9034

Our ref: SUB/1020/2013

From: Nelson McCausland MLA
Minister for Social Development

Date: 12 November 2013

To: Chair, Social Development Committee

LICENSING OF PAVEMENT CAFÉS BILL – PROPOSED AMENDMENTS DURING COMMITTEE STAGE

- 1 I am writing to advise you of my intention to table a small number of amendments at Consideration Stage of the Licensing of Pavement Cafes Bill and also to provide you with the proposed text for these amendments for inclusion in your final report on the Bill.

Amendments to be proposed at Consideration Stage

- 2 The proposed amendments are set out below. You will wish to note that the amendments to clause 14 and clause 19 are being brought forward to address concerns expressed by some Committee Members about the circumstances under which a licence may be revoked or suspended by a council.

Market rights [clause 1(2)(b) and clause 30]

- 3 The effect of these provisions is to exclude from the licensing scheme, areas where historic rights to hold a market or fair exist. The proposed amendment clarifies that the exclusion applies where a person actually has a right to hold a market, whether or not it is actually taking place.



INVESTORS
IN PEOPLE

Together, tackling disadvantage, building communities

- 4 *Revocation in respect of a breach of any licence condition [clause 14(1)(d)]*
There was some concern expressed by Committee Members that the power for a council to revoke a licence could be exercised for just a single breach of a licence condition. In order to address this specific concern the proposed amendment means a council will only be able to revoke or suspend a licence for 'persistent' breaches of the licence conditions. In practice, we expect councils will in most situations adopt a 'three strikes and you're out policy' and the severity of breaches will determine whether the licence should be suspended or revoked.
- 5 *Notice of revocation etc [clause 19]*
Members had more general concerns about the wide-ranging nature of the powers of a council to revoke or suspend a licence. I am, therefore, proposing to amend the Bill to require a council to give the licence holder advance notice of its intentions in this regard and to allow for representations to be made before a final decision is taken. This provision will apply where a council intends to revoke or suspend a licence or make a compulsory variation to the licence. This procedure may prevent a formal appeal later to a court under clause 21, but more importantly, provide transparency in the decision-making process and ensure that a council is in full possession of the facts before a decision is finally made.
- 6 *Appeals against a council's decision about the duration of a licence [clause 21]*
Clause 21 provides for an appeal to a Magistrate's court in respect of a wide range of licensing decisions taken by a council. The proposed amendment will extend the right of appeal to a decision to limit the duration of a licence under clause 5.
- 7 *Amendment of new Article 76C of Licensing Order [Schedule – paragraph 2]*
The Schedule to the Bill details amendments to be made to other legislation, including the Licensing (Northern Ireland) Order 1996 which regulates the sale and consumption of alcohol. Paragraph 2 of the Schedule to the Bill inserts new Articles in the Licensing Order so that certain other provisions of that Order will apply to pavement café areas associated with licensed premises. The technical amendment of paragraph 2 of the Schedule to the Bill is necessary to ensure that for the purposes of the provisions of the Licensing Order relating to closure of licensed premises, licensed premises of certain kinds (for example a bar) are to be regarded as "open" if a person enters either the premises or a pavement café area associated with the premises and consumes or buys food or alcohol.
- 8 *Amendment of section 2 of Street Trading Act 2001 (activities that are not street trading – Schedule, paragraph 3)*
Paragraph 3 of the Schedule amends the Street Trading Act 2001 to exclude an authorised pavement cafe from the need to obtain a street trading licence. However, the amendment tightens up the wording to prevent inappropriate trading in a pavement cafe area.
- 9 **Other issues raised by the Committee**
During the recent informal clause by clause scrutiny the Committee asked the Department to consider a number of policy issues. These are addressed below.

- Restrictive nature of certain provisions*
- 10 Some members expressed concern that certain provisions of the Bill, for example those relating to grant / revocation, or licence conditions, may be viewed as either too restrictive or open to exploitation by councils. As indicated above, I am proposing two amendments to deal with the concerns about powers of a council to revoke or suspend a licence.
- 11 My officials have explained that the licensing scheme incorporated in the Bill is subject to the provisions of the EU Services Directive which seeks to promote the internal market by removing unnecessary barriers to the free movement of trade. The Provision of Services Regulations 2009 (PSR) transposed the Directive into UK law. I would draw the Committee's attention to Regulation 15(8) of PSR which requires any "withdrawal of an authorisation" (which the revocation of a pavement café licence would amount to) to be "fully reasoned". So a council has to fully explain its reasons for a revocation and, of course, there would be a right of appeal against revocation under clause 21(3). The same test would apply to a decision of a council to refuse a licence, under clause 4(2), the grounds for which mirror those for revocation.
- 12 There was mention of including a specific provision requiring a council to "act reasonably" when exercising its powers to revoke under clause 14(1)(d) (as it stands in the Bill at present). However, expressly requiring this would imply that a council does not need to act reasonably when exercising its other functions under the Bill, or, indeed its functions under other legislation. This would obviously be a very undesirable implication. The requirements of councils in respect of their obligations generally under the EU Services Directive will be dealt with in guidance to be prepared by my Department.
- Limiting time for consultation on licensing applications [clause 4(10)]*
- 13 There was a suggestion that provision should be included to limit the time for consultation with relevant agencies or organisations on licensing application. The EU Services Directive requires an application to be processed within a reasonable time which is fixed and to be made public in advance. If no decision has been made at the end of this period, the licence is deemed to be granted.
- 14 It should also be noted that Clause 10(5) of the Bill allows for a period of 28 days for representations to be made on an application. Councils currently consult Roads Service on applications for a street trading licence. I understand this process is working well with no significant delays. As such I would question the need to amend the Bill. However, this is another area that would be important to address in the guidance for councils and I am grateful to the Committee for highlighting this issue.
- Duration of licences [clause 5]*
- 15 As presently drafted, the Bill provides that a licence shall, if no period is specified, remain valid indefinitely. Some members thought it would be important for the Bill to specify a time limit for the duration of a licence. The terminology used in this clause is common to other licensing systems and has been adopted by the

Department in order to meet the requirements of the EU Services Directive. However, there is nothing to prevent a council from limiting the duration of a licence, if it has good reason. Indeed, clause 7 of the Bill recognises that there will be circumstances where this is necessary, by providing for renewal of the licence.

Public liability [clause 6(3)(e)]

- 16 The Bill allows councils to specify insurance requirements including public liability insurance. It has been suggested it should be mandatory for a prospective licence holder to take out public liability insurance. The relevant provision is widely drawn and was included in the Bill at the request of local government who were keen to have a discretionary power to require an applicant to have suitable insurance cover and indemnities in place. The Department is not aware of any statutory requirement for pub, restaurant or cafe owners to take out public liability insurance in respect of their business operations. While it is expected councils will invoke this provision it would seem somewhat excessive for the Bill to be more prescriptive in this respect.

- 17 It is worth mentioning that a council could ask to be notified about matters affecting the licence-holder's insurance, or require the council to be sent details of the insurance cover. There is never going to be a cast-iron guarantee that such conditions of a licence will be adhered to, but there are sanctions available if they are breached, including revocation of the licence.

Continuance of pavement cafe licence on appeal and compensation issues [clause 21]

- 18 The Committee asked why the Bill did not provide for the continuance of a pavement cafe licence pending an appeal to a court against revocation. The Department's policy perspective on this is that the circumstances in which a council is likely to revoke a licence would be over concerns about public safety, disorder or where the licence holder has shown complete disregard for the terms of a licence. As such it would not be in the public interest to provide for the continuance of the licence while a licence holder is pursuing an appeal. Additionally, as the pavement cafe is regarded as an extension of an existing business a decision to revoke the pavement cafe licence would have limited impact commercially. However, the amendment I am proposing under clause 19 (to allow a period for representations to be made to the council) should go some way towards addressing concerns about loss of income during a formal appeal when the pavement cafe has to remain closed.

Grant of temporary licence

- 19 The Committee enquired why no provision had been made for the grant of a temporary licence, for example for a street festival. Quite simply, this is because it not expected that there will be many applications for a temporary licence. We doubt whether a business would invest the necessary time and expense in going through the licensing process for short term use of a pavement area. Also, if a business had an expectation that an application would, in principle, be granted one would question why a council should limit its duration in such a way. On the other hand, a council may take the view that it would wish to discourage the proliferation of pavement cafes during such festivals, given the likely increase in

footfall which could give rise to public safety concerns. There is also a risk that making provision for the grant of a temporary licence, perhaps at short notice, could compromise the licensing objectives.

Safeguards for disabled pedestrians

- 20 There is one final point I would wish to comment on by way of providing reassurance to the Committee. This is in relation to the protection of the rights of disabled people and other pedestrians. At present the operation of pavement cafes is currently unregulated and so provides few safeguards for pedestrians. The statutory licensing scheme itself will change this and put the control and management of pavement cafes on a firm legislative footing. An important safeguard will be the requirement for councils to consult Roads Service on individual applications. Roads Service is best placed to provide advice on pavement cafe locations, impacts on pedestrians, and suitable footpath widths. Councils will also have the power to remove furniture at unlicensed pavement cafes.
- 21 DSD guidance will place particular emphasis on putting the needs of pedestrians, including those with disabilities and mobility needs, at the heart of the licensing regime. The guidance will have to be taken seriously by councils.

EU Services Directive

- 22 As indicated above, the licensing scheme incorporated in the Bill is caught by the provisions of the EU Services Directive. The Committee will wish to note that the Bill is currently going through the EU Notification Procedure.

Conclusion

- 23 I attach a copy of the text of the draft amendments for information. These amendments do not alter the policy intent in any significant way and therefore Executive agreement is not required. I would ask the Committee to note both the amended wording and my intentions. I look forward to seeing the Committee's report on the Bill.

Nelson McCausland

NELSON MCCAUSLAND MLA
Minister for Social Development

Enc: Licensing of Pavement Cafes Bill: draft amendments at 11 November 2013

Consolidated list of amendments dated 11 November

Licensing of Pavement Cafés Bill
Amendments to be moved at Consideration Stage
By the Minister for Social Development

Clause 1, Page 1, Line 10

After 'market' insert 'area'

Clause 14, Page 11, Line 26

Leave out from 'any' to 'with' and insert 'the licence holder has persistently failed to comply with any condition of the licence'

Clause 19, Page 13, Line 23

Leave out subsection (1) and insert -

'(1) Before deciding to revoke, suspend or make a compulsory variation of a pavement café licence, a council must (subject to subsection (1D)) notify the licence holder in writing of its proposal to revoke, suspend or vary the licence.

(1A) A notification under subsection (1) must state—

- (a) the grounds for the proposed revocation, suspension or variation; and
- (b) that representations in writing relating to the proposal may be made by the licence holder to the council until the end of a period specified in the notification.

(1B) Any period specified under subsection (1A)(b) must be at least 21 days beginning with the date of the notification unless the council considers that there are particular circumstances which make a shorter period necessary in the public interest.

(1C) In deciding whether to revoke, suspend or make the compulsory variation of the licence the council must take into account any representations made by the licence holder within the period specified under subsection (1A)(b).

(1D) If it considers that there are particular circumstances which make it necessary to do so in the public interest, a council may decide whether to revoke, suspend or make a compulsory variation of a pavement café licence even though no notification has been given under subsection (1).

(1E) Where a council decides to revoke, suspend or make a compulsory variation of a pavement café licence, the council must give notice in writing to the licence holder of the revocation, suspension or compulsory variation.'

Clause 19, Page 13, Line 25

Leave out 'this section' and insert 'subsection (1E)'

Clause 19, Page 13, Line 30

Leave out from 'this section' to 'the notice' in line 31 and insert 'subsection (1E) may provide for the revocation, suspension or variation to take effect on the date when that notice'

Clause 19, Page 13, Line 36

At end insert—

‘(4A) A notice under subsection (1E) may be withdrawn at any time before the revocation, suspension or variation takes effect.’

Clause 19, Page 13, Line 37

Leave out ‘a council has suspended a pavement café licence, it’ and insert ‘a suspension of a pavement café licence has taken effect, the council’

Clause 19, Page 13, Line 41

Leave out ‘(4)’ and insert ‘(4A)’

Clause 21, Page 14, Line 37

At end insert—

‘(2A) Where a pavement café licence is granted or renewed and a period is specified under section 5(5)(a) in the licence, the licence holder may appeal against the council’s decision to specify that period.’

Clause 30, Page 18

Leave out lines 30 to 32 and insert—

‘ “market area” means a place where a person has a right (exercisable at particular times) to hold a market or fair; and in this definition “right” means a right acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of a statutory provision;’

Schedule, Page 22, Line 9

Leave out ‘Article 69J(2)’ and insert ‘in Article 69J(2), the reference to the premises’

Schedule, Page 23

Leave out lines 32 to 39 and insert—

‘ “(f) where a pavement café licence is in force, trading carried out in the area covered by the licence, if the trading—

- (i) takes place at a time when that area has temporary furniture on it that under the terms of the licence is permitted to be there at that time;
- (ii) is done in the course of a business which is carried on by the licence holder at the premises specified in the licence;
- (iii) relates to the supply of food or drink in or from those premises for consumption on that area; and
- (iv) does not involve a contravention of the conditions of the licence.”. ’

Clause 19 as amended

Clause 19 Notice of revocation, suspension or compulsory variation [as amended 11 November]

**.—(1) Before deciding to revoke, suspend or make a compulsory variation of a pavement café licence, a council must (subject to subsection (1D)) notify the licence holder in writing of its proposal to revoke, suspend or vary the licence.*

(1A) A notification under subsection (1) must state—

- (a) the grounds for the proposed revocation, suspension or variation; and*
- (b) that representations in writing relating to the proposal may be made by the licence holder to the council until the end of a period specified in the notification.*

(1B) Any period specified under subsection (1A)(b) must be at least 21 days beginning with the date of the notification unless the council considers that there are particular circumstances which make a shorter period necessary in the public interest.

(1C) In deciding whether to revoke, suspend or make the compulsory variation of the licence the council must take into account any representations made by the licence holder within the period specified under subsection (1A)(b).

(1D) If it considers that there are particular circumstances which make it necessary to do so in the public interest, a council may decide whether to revoke, suspend or make a compulsory variation of a pavement café licence even though no notification has been given under subsection (1).

(1E) Where a council decides to revoke, suspend or make a compulsory variation of a pavement café licence, the council must give notice in writing to the licence holder of the revocation, suspension or compulsory variation.

(2) A notice under subsection (1E) must—

- (a) state when the revocation, suspension or variation takes effect;*
- (b) in the case of suspension, state when the suspension ends;*
- (c) state the grounds for the revocation, suspension or variation; and*
- (d) include notice of the licence holder's right under section {j23} (appeals).*

(3) A notice under subsection (1E) may provide for the revocation, suspension or variation to take effect on the date when that notice is served on the licence holder, but only where the council considers that there are particular circumstances which make this necessary in the public interest.

(4) In any other case, the notice must give the licence holder such notice of the revocation, suspension or variation as the council considers reasonable in all the circumstances.

(4A) A notice under subsection (1E) may be withdrawn at any time before the revocation, suspension or variation takes effect.

(5) Where a suspension of a pavement café licence has taken effect, the council may—

- (a) extend the suspension on one or more occasions;*
- (b) revoke the suspension by notice in writing to the person whose licence was suspended.*

(6) Subsections (1) to (4A) apply to an extension of a suspension as they apply to a suspension.

(7) Any reference in this section to compulsory variation of a pavement café licence is to variation of a pavement café licence under any of sections {j32} to {j15}.

SDC Amendments 13 Nov

Dr Kevin Pelan
Clerk, Committee for Social Development
Room 412
Parliament Buildings
BELFAST
BT4 3XX



Level 4, Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast BT7 2JB
028) 90829510 Network: 38510

Your Ref:
Our Ref: SUB/1020/2013

19 November 2013

Dear Kevin

PAVEMENT CAFES BILL – CONSOLIDATED LIST OF AMENDMENTS

The Minister wrote to the Chair of the Social Development Committee on 12 November enclosing the 'Consolidated list of Amendments' which he intends to move at Consideration Stage of the Licensing of Pavement Cafes Bill.

Our lawyers have since reviewed the list and have made two superficial amendments to Clause 19 as follows:

(1C) substitute the word 'proposed' for 'compulsory.'

(1E) remove the second reference to the word 'compulsory.'

I am attaching for completeness the revised draft of the amendments (dated 13 November).

Gary McAlorum and I will be at the meeting on Thursday 21 November to assist the Committee in its clause by clause scrutiny.

If you wish to discuss detailed arrangements for Thursday, please contact me.

Yours sincerely



Liam Quinn
Head of Social Policy Unit

DSD draft amendments 13 Nov

Consolidated list of amendments dated 13 November

Licensing of Pavement Cafés Bill
Amendments to be moved at Consideration Stage
By the Minister for Social Development

Clause 1, Page 1, Line 10

After ‘market’ insert ‘area’

Clause 14, Page 11, Line 26

Leave out from ‘any’ to ‘with’ and insert ‘the licence holder has persistently failed to comply with any condition of the licence’

Clause 19, Page 13, Line 23

Leave out subsection (1) and insert -

‘(1) Before deciding to revoke, suspend or make a compulsory variation of a pavement café licence, a council must (subject to subsection (1D)) notify the licence holder in writing of its proposal to revoke, suspend or vary the licence.

(1A) A notification under subsection (1) must state—

- (a) the grounds for the proposed revocation, suspension or variation; and
- (b) that representations in writing relating to the proposal may be made by the licence holder to the council until the end of a period specified in the notification.

(1B) Any period specified under subsection (1A)(b) must be at least 21 days beginning with the date of the notification unless the council considers that there are particular circumstances which make a shorter period necessary in the public interest.

(1C) In deciding whether to revoke, suspend or make the proposed variation of the licence the council must take into account any representations made by the licence holder within the period specified under subsection (1A)(b).

(1D) If it considers that there are particular circumstances which make it necessary to do so in the public interest, a council may decide whether to revoke, suspend or make a compulsory variation of a pavement café licence even though no notification has been given under subsection (1).

(1E) Where a council decides to revoke, suspend or make a compulsory variation of a pavement café licence, the council must give notice in writing to the licence holder of the revocation, suspension or variation.’

Clause 19, Page 13, Line 25

Leave out ‘this section’ and insert ‘subsection (1E)’

Clause 19, Page 13, Line 30

Consolidated list of amendments dated 13 November

Leave out from ‘this section’ to ‘the notice’ in line 31 and insert ‘subsection (1E) may provide for the revocation, suspension or variation to take effect on the date when that notice’

Clause 19, Page 13, Line 36

At end insert—

‘(4A) A notice under subsection (1E) may be withdrawn at any time before the revocation, suspension or variation takes effect.’

Clause 19, Page 13, Line 37

Leave out ‘a council has suspended a pavement café licence, it’ and insert ‘a suspension of a pavement café licence has taken effect, the council’

Clause 19, Page 13, Line 41

Leave out ‘(4)’ and insert ‘(4A)’

Clause 21, Page 14, Line 37

At end insert—

‘(2A) Where a pavement café licence is granted or renewed and a period is specified under section 5(5)(a) in the licence, the licence holder may appeal against the council’s decision to specify that period.’

Clause 30, Page 18

Leave out lines 30 to 32 and insert—

‘ “market area” means a place where a person has a right (exercisable at particular times) to hold a market or fair; and in this definition “right” means a right acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of a statutory provision;’

Schedule, Page 22, Line 9

Leave out ‘Article 69J(2)’ and insert ‘in Article 69J(2), the reference to the premises’

Schedule, Page 23

Leave out lines 32 to 39 and insert—

‘ “(f) where a pavement café licence is in force, trading carried out in the area covered by the licence, if the trading—

(i) takes place at a time when that area has temporary furniture on it that under the terms of the licence is permitted to be there at that time;

Consolidated list of amendments dated 13 November

- (ii) is done in the course of a business which is carried on by the licence holder at the premises specified in the licence;
- (iii) relates to the supply of food or drink in or from those premises for consumption on that area; and
- (iv) does not involve a contravention of the conditions of the licence.” ’



Northern Ireland
Assembly

Appendix 5

Research Paper



Northern Ireland
Assembly

Research and Information Service Bill Paper

24 July 2013

NIAR 462-13

Eleanor Murphy

Licensing of Pavement Cafés Bill

The Licensing of Pavement Cafés Bill was introduced to the Assembly by the Minister for Social Development on 17 June 2013. This paper provides an overview of the Bill and the Department's pavement café appraisal exercise. This paper also looks briefly at the issue of café culture and explores some of the benefits which may be derived from the cultivation of a café culture in Northern Ireland. Although there has been significant support for a pavement café statutory framework for Northern Ireland, the paper also explores some of the concerns raised in relation to pavement café regulation.

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Key Points

- Unlike other parts of the UK and the Republic of Ireland, in Northern Ireland the provision of tables and chairs on pavements is prohibited under the Roads (Northern Ireland) Order 1993 (which relates to the intentional or negligent obstruction of free passage along a road). However, despite issues around legality, a policy of ‘toleration’ has been applied to those cafés, restaurants, hotels and pubs in Northern Ireland that provide a “sitting out” area under the condition that they do not restrict the free flow of pedestrians or vehicles.
- The purpose of the Licensing of Pavement Cafés Bill is to regulate pavement cafés by introducing a statutory licensing scheme. The Bill is an enabling Bill which will provide local councils with the discretion to design their own scheme which suits their local circumstances. Such schemes will, for example, set out specific standards in relation to the design and layout of the pavement café area; standards in the quality of street furniture; disabled access; and, cleaning and maintenance.
- The Bill consists of 32 clauses and one Schedule setting out provisions in relation, for example, to the definition of a ‘pavement café’; fines in relation to operating a pavement café without a licence; grounds for refusal to grant a licence; the conditions of a licence; the renewal, variation, revocation and suspension of licences; fixed notices to be displayed in order to provide the public with the opportunity to object before a licence is granted; fees; power to prohibit the sale of alcohol in the pavement café area; and, council powers of entry and inspection.
- The Department for Social Development launched a public pavement café consultation in October 2010 and carried out a comprehensive appraisal exercise consisting of a literature review; a business survey distributed to cafés, hotels, bars and restaurants; interviews with town centre managers; and a series of site visits to a number of locations across Northern Ireland to view examples of existing café culture. The public consultation and appraisal exercise clearly demonstrated that there was overwhelming support for a licensing scheme and for the further development of a local café culture.
- Although not a panacea, pavement cafés have an important role to play in the regeneration of local town and city centres which have been significantly affected by current economic circumstances. If regulated and promoted effectively, the growth in pavement café culture in Northern Ireland has the potential to assist in generating tourism and in growing and promoting the night-time economy.
- Although there is overwhelming support for a licensing scheme, a number of concerns have been expressed in relation to pavement cafés. For example, the lack of uniformity given that local councils can design their own licensing schemes; concerns about street cleanliness and anti-social behaviour; ensuring that the pavement cafés are suitable for the built environment in which it is located; ensuring that licence fees are set at an affordable level and that there is transparency in how fees are calculated; ensuring that pavement cafés do not impact negatively on people with disabilities (e.g. people with visual impairments); and ensuring that there is a balance between enjoyment of smokers and non-smokers using the pavement café area.
- It can be argued that a balanced pavement café framework and the encouragement of a thriving café culture cannot be seen in isolation to other key developments such as environment and public realm schemes, town centre masterplans, the creation of Business Improvement Districts; support for town and city centre businesses; and, continued improvement to the transport and roads infrastructure.

Contents

Key Points

Introduction

The Growth of Café Culture in Northern Ireland

The DSD Pavement Café Appraisal Exercise

Literature Review

Business Survey

Public Consultation

Overview of the Bill

Some Issues raised by MLAs and other consultees

Conclusion

1 Introduction

The Licensing of Pavement Cafés Bill was introduced to the Assembly by the Minister for Social Development on 17 June 2013 and went through Second Stage on 25 June 2013. In Northern Ireland the provision of tables and chairs on pavements is currently prohibited under the Roads (Northern Ireland) Order 1993, which states, for example, “*Any person who, without lawful authority or reasonable excuse, in any way intentionally or negligently obstructs the free passage along a road shall be guilty of an offence*”. In addition to this, there are likely to be planning issues relating to any permanent or semi-permanent structures associated with pavement cafés¹.

Yet despite this, pavement cafés and facilities for “sitting out” in cafés, restaurants, hotels and pubs are now a common feature in many towns and cities across Northern Ireland and a “café culture” and night-time economy are evolving rapidly in line with consumer and business demand. At present, Roads Service generally ‘tolerates’ pavement cafés provided that they do not restrict the free flow of pedestrians or vehicles and do not compromise public safety². As an intermediate measure, there has been steps taken to informally regulate ‘sitting out’ areas. Belfast City Centre Management, for example, has developed a Café Culture ‘Memorandum of Understanding’ with businesses in order to promote good practice in the management of ‘sitting out’ areas and over 50 businesses have signed up³.

The purpose of the Licensing of Pavement Cafés Bill is to regulate pavement cafés by introducing a statutory licensing scheme. The Bill is an enabling Bill which will provide district councils with the discretion to design a scheme that suits their particular locality. This is in line with similar legislation in Great Britain, the Republic of Ireland and many European cities where it is common practice for local authorities to regulate and set standards specifying, for example, the design and layout of the pavement café area; the quality of street furniture; disabled access; and cleaning and maintenance.

The Bill defines a ‘pavement café licence’ as “*a licence authorizing the licence holder to place on a public area (identified by the licence) temporary furniture for use for the consumption of food or drink supplied, in the course of a business carried on by the licence holder, in or from premises specified in the licence*”⁴. Businesses likely to apply for a pavement café licence include, for example, cafés, restaurants, hotels and pubs.

2 The Growth of Café Culture in Northern Ireland

Pavement cafés and the growth of a café culture in Northern Ireland cannot be seen in isolation to other developments such as environmental improvement schemes and public realm programmes (e.g. the Belfast Streets Ahead programme); town centre masterplans; the Living over the Shops initiative; Neighbourhood Renewal; Business Improvement Districts; and initiatives such as the “Backin’ Belfast” campaign. Additionally it should be viewed within the context policy frameworks such as the Urban Regeneration and Community Development Policy Framework; the report of the DSD High Street Renewal Taskforce; the draft Tourism Strategy for Northern Ireland; and council tourism strategies, to name but a few.

Tourism is a significant component of the Northern Ireland economy, for example, it is estimated that in 2012 there were around 3.97 million overnight visitors to Northern Ireland

-
- 1 Department for Social Development (2010) Business Improvement Districts and Licensing of Pavement Cafés Consultation Paper, p18. www.dsdni.gov.uk/ds1_10_308812__final_version_consultation_document_on_business_improvement_districts_and_licensing_of_pavement_cafes.pdf
 - 2 Licensing of Pavement Cafés Bill: Explanatory and Financial Memorandum. www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/niabill-24-11-15-Licensing-of-Pavement-Cafes-EFM.pdf
 - 3 Belfast City Centre Management. Café Culture Memorandum of Understanding. www.belfastcentre.com/projects/cafe-culture/
 - 4 The Licensing of Pavement Cafés Bill
-

who spent approximately £683 million on tourism activities⁵. The Quarterly Employment Survey (at December 2012) estimates that the tourism and leisure industries accounts for 8% of jobs in Northern Ireland (54,270)⁶. Research suggests that Northern Ireland has one of the fastest growing night-time economies in the UK⁷. Pavement café culture is an important part of the night-time (as well as the day-time) economy, and tourism in general, in many cities and towns throughout the UK, Republic of Ireland, Europe and North America.

If regulated and promoted effectively, a growth in pavement café culture will impact positively on towns and cities across Northern Ireland. The decline of Northern Ireland high streets is well documented. The Northern Ireland Independent Retail Trade Association's report "Town Centre First" highlighted the significant levels of shop vacancy rates and the closure of small independent shops⁸. Although it is not a panacea, a pavement café culture may go some way to assisting in attracting consumers back into town centres thus assisting in the town centre regeneration. There is clear consumer demand for pavement cafés amongst both locals and tourists. A pavement café culture projects a sense of normality and a cosmopolitan atmosphere it also reflects the bringing together of divided communities in a shared and neutral space.

Cities such as London have a long established café culture, but there has been a significant growth and/or interest in pavement cafés in other cities such as Dublin and Edinburgh. It is suggested that in Dublin a continental café culture is rapidly developing and is arguably infringing on traditional pub life, as one news article describes this transformation constitutes *"the foam on a pint of stout...being replaced by the froth of a cappuccino"*⁹. Other cities within the UK are also keen to tap into the benefits derived from a café culture. Edinburgh's Princes Street, for example, could soon undergo a transformation into a prime location for a café culture. This is part of Edinburgh City Council's strategy to address the challenging economic conditions and decrease in the footfall in the city centre by enhancing both the retail environment and night time economy. New guidelines are being put out for consultation to allow 25 of the smaller retail units in Princes Street to transform into food and beverage outlets. Key to the move will be the widening of pavements by around two metres in some areas to accommodate the plans¹⁰.

Similar to proposed developments in Edinburgh, improvements to the built environment in towns and cities across Northern Ireland will be one of the key components that will nurture a local café culture (for example, the widening of pavements or the creation of pedestrian only zones where appropriate). As the Department for Social Development's Pavement Café appraisal exercise clearly demonstrates there is significant demand and support for the continued development of a local café culture.

3 The DSD Pavement Café Appraisal Exercise

The Department for Social Development launched a public consultation on the Licensing of Pavement Cafés (which also sought views on Business Improvement Districts) on 10 October 2010. This was following calls from stakeholders seeking an introduction of a statutory scheme in response to the growing number of pavement cafés in Northern Ireland. In addition to the consultation there was a literature review; a survey of businesses; a series of meetings with town centre managers; and, site visits to a number of locations across Northern Ireland

5 NISRA. Northern Ireland Tourism Statistics 2012 (published July 2013), p8.

6 NISRA. Northern Ireland Tourism Statistics 2012 (published July 2013), p26.

7 Research by TBR Observatory quoted in The Independent "While you were sleeping ...somewhere hard at work". 15 April 2012.

8 NIIRTA (2012) Town Centre First: 50 solutions for reinventing retail in tomorrow's town centres.

9 The Telegraph. Café culture taking over in Dublin. 2 October 2006.

10 The Scotsman. 'Café culture coming to Edinburgh Princes Street'. 24 July 2013.

to view physical examples of existing café culture¹¹. The outcome of this appraisal was the conclusion that a *“common, clear and transparent legislative framework is required to enable a café culture to develop”*¹².

Provided below is a brief synopsis of the findings of some of the strands of the Department’s appraisal. The following information has largely been extracted from DSD’s “A Review of Café Culture in Northern Ireland”.

Literature Review¹³

The literature review highlighted that local authorities in GB and RoI administer and enforce the pavement café licensing framework and that whilst licensing procedures across the UK are relatively standard there is some variation from council to council on issues such as opening hours and licencing fees.

Fees ranged from around £150 per annum (in Tameside) to £1,000 in Taunton Deane Borough Council, some councils also charged an annual renewal fee (which was often lower than the initial licensing fee). Some local authorities based charges on the size of the area the pavement café covered. Wigan Council, for example, charged £250 if the area was less than 10m² and £400 if the area is larger than this (however these licenses covered a two year period). In the City of Westminster the fee was dependent up the number of chairs in a café, licenses covered the period up until 7pm with an additional charge applicable for each hour past that time. In the Republic of Ireland fees are based upon charge per table with a standard charge of €125 per table based on a one year licence.

The various pavement café licensing schemes had common features e.g.

- A specified distance between the curb and the licensed area.
- There must be an unobstructed corridor from the curb to the door of the premises.
- The pavement café area needs to be enclosed to enable pedestrians to distinguish the area, particularly for the visually impaired.
- All furniture and equipment should be of a high quality (councils discourage the use of cheap plastic garden furniture) and must be removed and stored off-street at the end of operating hours.
- Businesses must have mandatory indemnity insurance.
- There must be appropriate toilet facilities to cope with the potential increase in trade.
- Obligations in relation to the cleaning, maintenance, noise nuisance and other forms of anti-social behaviour.
- Before the granting of a licence, councils must consult with other relevant statutory authorities and require the applicant to place a notice in the window of their premises outlining the intention to operate an outside seating area. The purpose of this is to provide an opportunity for other businesses to raise any issues they may have in relation to the application.

The literature review also highlights that pavement café opening hours varied across local authorities with some licenses, for example, operating up to 7pm, 9pm and 11pm.

11 Department for Social Development (2010) Business Improvement Districts and Licensing of Pavement Cafés Consultation Paper, pp18-19.

12 Department for Social Development (2010) Business Improvement Districts and Licensing of Pavement Cafés Consultation Paper, p19.

13 Information in the literature review extracted from DSD’s “A Review of Café Culture in Northern Ireland” www.dsdni.gov.uk/asu-cafeculture-sml.pdf

A full copy of the DSD/NISRA Literature Review is available to download here¹⁴.

Both the literature review and the various pavement café licensing schemes and guidelines in other jurisdictions will be valuable sources of information for local councils in Northern Ireland seeking to develop their own schemes.

Some Examples of Pavement Café Scheme Guidelines in other Jurisdictions

Chorley Council 'Pavement Café Design and Licence Guide' - <http://chorley.gov.uk/Documents/Licensing/Pavement%20Cafe%20Design%20%20Licence%20Guide%20v1.pdf>

Newcastle City Council 'Pavement Cafés: A Guide to their operation in Newcastle upon Tyne' - www.newcastle.gov.uk/wwwfileroot/legacy/regen/phep/NewPavementCafeGuidefeb10.pdf

City of Westminster 'Guidelines for the placing of tables and chairs on the Highway' - www3.westminster.gov.uk/spgs/publications/tables%20and%20chairs.pdf

Business Survey

The survey took place in April/May 2010 with a questionnaire posted to 954 cafés, restaurants, bars and hotels across Northern Ireland. There were 122 completed questionnaires returned, the majority of businesses that responded were cafés. Of the 122 businesses 53 (43.4%) provided pavement café facilities and 69 (56.6%) did not.

In summary the survey revealed:

- There was confusion amongst business as to the legislation and planning regulations regarding the provision of pavement café facilities.
- Those businesses that did provide pavement café facilities did so response to the smoking ban and also to increase business revenue. Some also stated that such facilities were provided to improve the local atmosphere; to appeal to tourists; to provide a more continental feel; to respond to customer demand; and to make the most of improvements to the public realm.
- Whilst some businesses provided facilities all year round other provision was weather driven rather than tourist season driven.
- Of those businesses that provided facilities, around half only provided tables and chairs, however, some also provided enclosed barriers/fences, umbrellas and overhead awnings.
- For those business in the survey not currently providing pavement café facilities (i.e. 69 businesses) 64% stated that they would consider offering such facilities with 36% completely ruling out offering facilities (these were mainly pubs and restaurants).

The survey's qualitative analysis revealed the perceived **benefits** of pavement cafés, i.e.:

- Many respondents believed that pavement cafés offered a range of benefits – creating a cosmopolitan atmosphere/promoting a 'feel good' factor; increased footfall; and were attractive to tourists/increased tourism.
- Street furniture could be aesthetically pleasing particularly in favourable weather.
- Pavement cafés promoted increased cleanliness of the outdoor environment.
- However, the survey also revealed some **concerns/issues**, i.e.:
- Litter, theft and having to deal with anti-social customers.
- Non-customers using the facilities provided.

- That the built environment/public realm could be unsuitable for business need e.g. narrow footpaths.
- Concern over the ambiguity around who was actually responsible for pavement cafés (DRD or councils?).
- Some business against the idea of pavement cafés believed that a café culture would not work as Northern Ireland has a pub culture.
- The majority of respondents were in favour of promoting a café culture but felt that more assistance needed to be provided to develop the sector.

A full copy of the DSD/NISRA Business Survey is available to download [here](#).

Public Consultation

The Department for Social Development published a summary of responses to its consultation on a statutory licensing scheme for the regulation of Pavement Cafes in September 2011. There were a total of 45 responses to the consultation from various organisations; local councils and a political party. DSD responses to the comments made in the consultation were as follows:

- The introduction of a statutory licensing scheme, administered by local councils, will have a positive effect on town and city centres in Northern Ireland and will make a real difference in attracting visitors.
- Given the overwhelming support for the proposal to allow each district council to design individual licensing schemes, the Department intended to proceed with the proposal for statutory licensing.
- In response to views from the vast majority of respondents, there should be a general presumption that no consent for a scheme should be unreasonably withheld by a council. Councils will be permitted to reject applications for specified reasons but it will not be possible for councils to place blanket bans on pavement cafés.
- Given the views expressed by the majority of councils that responded, councils should be provided with a suite of enforcement and prosecution powers in order to regulate pavement cafés.

The vast majority of respondents to the consultation were positive and supportive of a statutory licensing scheme. However, there were a number of concerns or points for clarification raised by a minority of respondents:

- One council and one organisation were against the proposal for statutory licensing, the council felt that 26 individual council schemes would make the management of pavement cafes more complex and add to unnecessary costs.
- Four councils felt that councils should be provided with the option not to permit pavement cafés in their area, although the vast majority of respondents felt that permission should not be unreasonably withheld.

4 Overview of the Bill

The Licensing of Pavement Cafés Bill¹⁵ consists of 32 clauses and one Schedule. This section of the paper provides a brief overview of some of the Bill's main clauses and includes information providing some context as to how licensing schemes operate in other

15

See <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2012-2013/niabill-24-11-15-licensing-of-pavement-cafes-bill.pdf>

jurisdictions. Further detailed information on the Bill can be found in the Bill's Explanatory and Financial Memorandum¹⁶.

| Clauses | Brief Overview | General Comments ¹⁷ |
|---|--|---|
| Clause 1 Definition of a 'pavement café' and associated pavement café furniture | Provides a definition of 'pavement café' licence and 'public area' and places a duty on the licence holder to ensure that furniture placed in a licensed area is of a temporary nature and can be removed swiftly. 'Furniture' includes items such as tables and chairs, umbrellas, barriers, heaters etc. 'Temporary' means that a person must be able to remove all furniture in 20 mins and the furniture must be removed to a non-public area. | The removal and temporary nature of furniture is a common/standard feature of statutory licensing schemes in other jurisdictions as it is important for councils to discharge other duties e.g. street cleansing, in response to the need for emergency access. |
| Clause 2 Offence of placing furniture on a public area without a licence | Makes it an offence to place furniture (for the use of consumption of food and drink) on a public area without a pavement café licence. This offence can be committed by the 'a person carrying on the business' or any other person concerned in the management of the business, the offence is liable to a fine of up to £1,000 on summary conviction. A person can avoid being charged with an offence if they can prove they took all reasonable precautions and exercised 'due diligence' to avoid committing the offence. | Fines are also a standard feature of pavement café licensing schemes in other jurisdictions. Belfast City Council has suggested that consideration be given to introducing a provision enabling a fixed penalty notice to be issued as an alternative to prosecution ¹⁸ . As standard practice many councils in GB to issue verbal and written warnings before embarking on prosecution proceedings. A number of licensing schemes in other jurisdictions make clear that enforcement action should be proportionate to the offences committed. Many councils prioritise enforcement action on activities that comprise health and safety. Resources tend to be particularly targeted at tackling persistent offenders. |

¹⁶ See www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/niabill-24-11-15-Licensing-of-Pavement-Cafes-EFM.pdf

¹⁷ These types of issues are likely to be addressed in the various licensing scheme guidance devised by local councils rather than detailed in the Bill (given the Bill is an enabling Bill).

¹⁸ Belfast City Council Response to the Licensing of Pavement Cafés Consultation.

| Clauses | Brief Overview | General Comments |
|--|---|--|
| <p>Clause 3</p> <p>Requirement to provide a plan showing location and dimension of proposed pavement café</p> | <p>Sets out the procedures for applying to the local council for a pavement café licence. This clause is applicable to businesses in which food or drink is (or will be) supplied from the premises.</p> <p>The application must include a plan which (a) shows the location and dimensions of the public area in which the applicant wishes to place the temporary furniture and, (b) must include any other requirements that the council may specify.</p> | <p>Many licensing schemes in GB also require applicants to provide a plan of the pavement café area showing details such as access points, boundaries, curbs, the siting of tables, elevation of barriers and enclosures, position of outdoor electrical circuits, details of additional lighting. Many require scale drawings of the site plan. Some also require the application to be accompanied with details of the furniture, barriers and heating appliances to be used (with manufacturer's brochures if possible).</p> <p>In the US there are quite stringent rules on the use of heaters. In New York City, for example, businesses planning to use a natural gas (not propane) heater in the enclosed 'sidewalk' café must receive approvals from the Fire Department and Department of Buildings to install and operate the heater¹⁹.</p> <p>In terms of other requirements that councils may specify – these may include health and safety risk assessments, proof of public liability insurance; evidence of any planning permission (if appropriate); a Management Plan detailing how the licensee intends to deal with anti-social behaviour.</p> |
| <p>Clause 4</p> <p>Grounds for refusal to grant a licence</p> | <p>Places an onus on the council not to unreasonably withhold pavement café licences. The clause does, however, outline a number of grounds in which a council may refuse a licence – e.g. if the proposed pavement café area is unsuitable for that purpose; if the placing of furniture would cause undue interference and inconvenience to pedestrians or vehicles in that area; if the applicant makes a statement in their application which they know to be false; if the applicant fails to fix a notice to the premises re the application; if the applicant has been granted a licence before which has been revoked for reasons that were in the applicants control.</p> <p>This clause also places the onus on a council to consult with other agencies before deciding on an application – e.g. DRD; PSNI (where the premises has a pub licence); and/or any other person it deems appropriate (e.g. Planning Service).</p> | <p>Again these are standard grounds for refusal of licences in other jurisdictions. In some areas in the USA licences can be refused if the 'sidewalk café' has any other outstanding fees/debts owed to the city/town council or any other relevant statutory body (even if they are not relevant to the pavement café licence).</p> |

| Clauses | Brief Overview | General Comments |
|---|--|--|
| <p>Clause 5 Form and duration of a licence</p> | <p>Provides the Department for Social Development to make regulations setting out the form of a pavement café licence – this must specify the holder of the licence, the premises to which it relates and any other matters which may be prescribed. The form must be accompanied by a plan showing the location and dimensions of the proposed pavement café area.</p> <p>The clause provides each council with some flexibility to vary the proposed pavement café area.</p> <p>It also provides the council with discretion as to how long a pavement café licence may be valid.</p> | <p>The Department's literature review revealed that most licences in GB are valid for one year, the majority operating from the day they are granted but with some operating on a financial year basis. Some councils issue two-year licences.</p> |
| <p>Clause 6 Conditions of a licence</p> | <p>Provides for the conditions of a licence i.e. temporary pavement café furniture should not be placed on public areas other than that specified in the licence; a prohibition on the consumption of alcohol at a pavement café where the associated premises is licenced for off-sales only; a council may prohibit the consumption of alcohol at a pavement café if it feels it would result in disorder.</p> <p>This clause also provides the council with discretion to specify other reasonable conditions – e.g. limiting the number and size of tables and chairs; limiting the number of days or times that they pavement café is not permitted to operate; arrangements for insurance and indemnities.</p> | <p>'Other reasonable' conditions imposed by some councils in GB include – specifying that wheelie bins, refuse sacks or other unsightly items should not be kept on the public highway; all litter within the licensed areas must be cleared as soon as possible; the area should be swept regularly and washed at the end of each day; licences should be available for inspection at any time by relevant officers (e.g. police, council officers).</p> <p>DSD have made clear that street furniture must be of a high quality (not of cheap plastic). In some areas of the US, conditions of a sidewalk café specify that food and beverages must not be served in or on any paper or plastic product of any kind²⁰.</p> <p>In the US certain other conditions are attached to a granting of a licence e.g. there must be no outdoor cooking (although in some states this is permitted if passed by environmental health), prohibition of the use and installation of speakers or other amplified sound equipment²¹.</p> |

20 Village of Mamaroneck, NY. Side walk Café Regulations.
http://ecode360.com/7711557#/.7711602?&_suid=137456703112108907134710948347

21 Seattle Department of Transportation. Sidewalk Café Regulations.
www.seattle.gov/transportation/stuse_sidewalkcafe_app2.htm

| Clauses | Brief Overview | General Comments |
|---|--|---|
| <p>Clauses 7, 8, 14 and 15</p> <p>The renewal, variation, revocation and suspension of a licence</p> | <p>A council must grant a renewal of a licence unless it feels that it should refuse the application on the grounds outlined in Clause 4. Before deciding on an application for renewal the council may consult relevant persons and the council must take into consideration any representations made to it in relation to the application. When renewing a licence the council may vary that licence (e.g. specifying new conditions, removing an alcohol condition).</p> <p>A person holding a pavement café may apply to the council for a variation (e.g. in terms of the licensing conditions or a variation of the area covered by the licence). The council has the power to vary the conditions as requested, impose new conditions or refuse the application. The council may consult persons it considers appropriate.</p> <p>A council can, at any time, revoke a licence if the pavement café area is (or is going to become unsuitable); if the licence is likely to result in undue interference or inconvenience to person or vehicles in the vicinity; or if it is likely to result in disorder. The licence can also be revoked if the licence holder made a knowingly false statement in their application, failed to pay any fee due to council in respect of the licence or failed to comply with any condition of the licence.</p> <p>A licence can be suspended by the council at any time on similar grounds outlined above. The clause also allows a licence to be suspended for the purposes of utilities maintenance, road works etc.</p> | <p>Again rules governing the renewal, variation, revocations and suspension of a licence are similar to local authority licensing schemes in GB.</p> <p>A number of city/town councils in North America place a time-limited ban pavement cafés operating according to the scale of the offence (e.g. a one year ban for a significant number of anti-social behaviour incidents requiring police presence)²².</p> |

22

For example, City of Windsor (Ontario, Canada) Sidewalk Café Handbook. www.citywindsor.ca/residents/planning/Urban-Design-and-Community-Development/Windsor-SEEN-Urban-Design-Agenda/Documents/Sidewalk%20Cafe%20Handbook%20Amended%20May%202013-CH1-11.pdf

| Clauses | Brief Overview | General Comments |
|---|---|--|
| <p>Clause 10</p> <p>The format and process for application forms</p> | <p>Concerns the form format and process for application forms for the granting of new or variation of a licence. The application form must – be made in writing and in a way specified by the council; be accompanied by a fee (if the council decides a fee is payable); must confirm that the applicant has fixed a notice to the premises (see clause 12); and contain the information and accompanying documents required by the council.</p> <p>When a council receives an application it must – make the application available for the public to view and publicise that representations relating to the application can be made in writing.</p> <p>The council can require the applicant to provide further information or documents it feels necessary.</p> <p>If an application is refused a council must inform the applicant in writing and inform the applicant of the appeals process.</p> <p>If a person makes a knowingly false statement in their application they can be liable on summary conviction to a fine of up to £1,000.</p> | <p>Some illustrative examples of pavement café licensing applications forms:</p> <p>Wirral Borough Council www.wirral.gov.uk/downloads/2619</p> <p>Reading Borough Council http://www.reading.gov.uk/businesses/Licensing/street-pavement-cafe-licence/</p> |
| <p>Clause 11</p> <p>Fixed notice of application to be displayed</p> | <p>Where an applicant is made for the granting, renewal or variation of a licence the applicant must on the day the application is made place a fixed notice to the premises. The notice must be one specified by the council and must visible and legible to the public from outside the premises. The notice should remain in place until the end of a 28 day period (to allow representations to be made to the council).</p> | <p>Fixed notices and an opportunity for stakeholders to raise concerns around a potential pavement café licence are standard practice in GB, Europe and North America.</p> |

| Clauses | Brief Overview | General Comments |
|--|---|---|
| Clause 12 Fees | Concerns the payment of fees. A council is permitted to charge fees for the granting, renewal or variation of a licence. The council is permitted to determine the fees chargeable. However, the fees must only cover reasonable administrative or other costs related to the council's functions under the Act. Before determining or altering fees, the council must give licence holders notice and publicise the proposed fees by any means if feels appropriate. The notice and publicity must provide a statement demonstrating how the proposed fees were calculated. | In some US States in addition to the standard fee, local authorities require that an additional refundable deposit is retained until the expiration of the permit as security for compliance with regulations. The deposit can be retained or partly retained for expenses occurred by the local authority for failure of the permit owner to adhere to the regulations ²³ . |
| Clause 17 Power of council to prohibit the sale of alcohol in pavement café area | This provides the council with the power to include a prohibition of the sale of alcohol in the licensing conditions (e.g. if the council feels the supply of alcohol in the pavement café area is likely to result in disorder). Clause 20 also gives the Department power to make regulations requiring that particulars of pavement café licenses associated with those premises licensed under the Licensing (NI) Order 1996, to be recorded in the licensing register. | This is similar to rules enforced by local authorities in GB prohibiting the sale of alcohol in certain circumstances. In a number of US States alcoholic beverages must be served in glasses or plastic cups which clearly identifies the retail food establishment from which alcoholic beverage was purchased ²⁴ . |
| Clause 22 Powers of entry and inspection | Provides the power for an 'authorised officer' (i.e. authorised by the district council) to enter and inspect premises (e.g. to inspect furniture, to assess whether the granting, renewal or variation of a licence is suitable, to ascertain if whether the conditions of a licence are being complied with). Under clause 24 a person obstructing an "authorised officer" from carrying out their duties relating to entering and inspecting a premises can be fined up to £1,000. | Standard practice in pavement and sidewalk café licensing schemes. In some US States local authorities provide an easy reference 'inspection checklists' to assist licence holders with the types issues the inspectors look for to help avoid violations ²⁵ . The frequency of inspections varies, in Philadelphia, for example, the Street Department conduct monthly inspections to ensure that there is compliance with licensing regulations ²⁶ . In other cases inspections are carried out on an ad hoc, or risk-based basis, or as a result of a complaint. |

23 Village of Mamaroneck, NY. Side walk Café Regulations.

24 See City of Chicago. Department of Business Affairs. Rules and Regulations for Sidewalk Cafés. www.cityofchicago.org/dam/city/depts/bacp/rulesandregs/RulesRegsForSidewalkCafes.pdf

25 See New York City Department of Consumer Affairs. Inspection Checklist: Sidewalk Café. www.nyc.gov/html/dca/downloads/pdf/SidewalkCafe.pdf

26 Roxborough Review. Street Department to increase sidewalk café inspections. 1 May 2013. www.montgomerynews.com/articles/2013/05/01/roxborough_review/news/doc517fe4a84a259454370007.txt

| Clauses | Brief Overview | General Comments |
|--|---|---|
| Clause 23 Power to remove furniture from the pavement café area of an unlicensed premises | Provides the council with a power to remove furniture from unlicensed pavement cafés and recover the cost of removing and storing the furniture. The council can dispose of, or sell, the furniture if not claimed by the 'responsible' person within three months. Under clause 24 a person obstructing an "authorised officer" from carrying out their duties in respect of this clause can be fined up to £1,000. | This is standard practice in pavement and sidewalk café licensing schemes in other jurisdictions. |

5 Some issues raised by MLAs and other consultees

The Department for Social Development's consultation clearly demonstrated that there was overwhelming support for statutory licensing of pavement cafés. There was positive support for the Bill at the Second Stage in the Assembly on the 25 June, including support from the Committee for Social Development on the principles of the Bill. The Committee noted the important role of pavement cafés in town centre regeneration²⁷. However, the Deputy Chair highlighted a number of concerns that the Committee had raised in its initial deliberations on the Bill, i.e.

- The **definition of a 'public area'** – some members queried whether some café owners could set up a business some distance from the café (e.g. in a public square or park). The Committee was, however, informed that councils will be provided with discretion in the granting of licenses to determine whether the public area is suitable, or not suitable, for a pavement café.
- The Committee noted that a council could refuse a licence if the applicant **had a previous licence revoked**. The Committee expressed concern that this could potentially result in the indefinite refusal of a licence. However, it did welcome the provision in the Bill for an appeals mechanism.
- The Committee also queried the **potential costs of a licence** given that the current 'toleration' policy does not incur any cost. However, the Committee was assured by Departmental officials that costs would be set at a level that would allow a council to recoup its administration costs. The Committee also welcomed that the Bill provided transparency in that councils would be required to publicise their fees, including details of how they are calculated. The issue of setting fees at an affordable level was raised by other Members during the course of the debate.
- The Committee also raised concerns regarded the **potential implications for people with disabilities**, particularly those with visual impairments. The Committee believed that it was important that groups that represent people with disabilities are consulted²⁸.

A number of Members also raised other issues, i.e.:

- That there should be consideration to balancing the rights of smokers and non-smokers using the pavement cafés area. The Minister stated that he would encourage councils and café owners to take steps to create non-smoking areas.
- How the added tax regime could impact on the serving of food in pavement cafés.
- Ensuring that there is appropriate access for families including prams.

²⁷ Northern Ireland Assembly Official Report. 25 June 2013.

²⁸ Northern Ireland Assembly Official Report. 25 June 2013.

- Ensuring that pavement cafés do not obstruct parts of the pavement that have been designated as cycle paths.

The Department's consultation also highlighted that a number of consultees were concerned about the impact of pavement cafés on litter and anti-social behaviour. One council in particular felt that a statutory licensing scheme would lack uniformity with 26 individual councils designing their own schemes. However, it is important to reiterate that the majority of respondents to the consultation were in favour of a statutory licensing framework.

6 Conclusion

Research carried out on behalf of the Department for Social Development indicates that there is already an existing café culture in a number of locations within Northern Ireland i.e. – Belfast, Holywood, Coleraine, and Portstewart. There is also an emerging café culture in Newry, Ballymena, Armagh, Lisburn, Newcastle, and Warrenpoint²⁹.

It is clear that Northern Ireland town and city centres, like many other town and city centres throughout the UK, are struggling in the context of current economic circumstances. It is worth reiterating that although it is not a panacea, balanced regulation of pavement cafés and the encouragement of a thriving café culture may go some way in attracting consumers back into these areas. However, this can only be achieved in tandem with progress with other related developments, for example, environmental and public realm programmes; the establishment of successful Business Improvement Districts; continued improvements to the transport and roads infrastructure; and improved parking facilities in towns and city centres.

Café culture generates significant benefits in towns and cities across Europe, North America and the UK. Some areas have even promoted annual festivals dedicated solely to promoting a café culture (e.g. the Chorlton's 3 day Coffee Fest in Manchester)³⁰. Coffee is now big business and a café culture is indicative of a 'mature' society. A balanced regulatory framework for pavement cafés in Northern Ireland can be viewed as a positive step in generating both economic and societal benefits.

29 DSD Consultation on Business Improvement Districts and Pavement Cafés.

30 Manchester Confidential. 'Chorlton Coffee Festival: Wake up and smell the suburb'. 25 April 2013. – For further information on the festival see www.chorltoncoffeefestival.com/



Northern Ireland
Assembly

Appendix 6

List of Witnesses

List of Witnesses

| | |
|---------------------|---|
| Mr Trevor Martin | Belfast City Council |
| Mr Liam Quinn | Department for Social Development |
| Mr Gary McAlorum | Department for Social Development |
| Mr David Irvine | Department for Social Development |
| Mr Andrew Murdock | Guide Dogs NI |
| Ms Elaine Orwin | Guide Dogs NI |
| Mr Michael Lorimer | Inclusive Mobility and Transport Advisory Committee |
| Mr David Mann | Inclusive Mobility and Transport Advisory Committee |
| Mr James Cunningham | Institute of Licensing |
| Mr Stephen Hewitt | Licensing Forum |
| Mr Glyn Roberts | Northern Ireland Independent Retail Trade Association |
| Mr Derek McCallan | Northern Ireland Local Government Association |
| Mr Colin Neil | Pubs of Ulster |



Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

£22.00

Printed in Northern Ireland by The Stationery Office Limited
© Copyright Northern Ireland Assembly Commission 2013

ISBN 978-0-339-60503-9

