



Department for
**Social
Development**

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Licensing of Pavement Cafés

Summary of responses to consultation

September 2011

1. Introduction

This document summarises responses to a consultation on a proposal for a statutory licensing scheme for the regulation of pavement cafés.

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. In response to representations made to various Ministers, DSD launched a consultation exercise seeking views on proposals for the introduction of primary legislation to regulate this activity.

The initiative is aimed at the local business community and would apply to the proprietors of relevant businesses such as cafés, restaurants, hotels and pubs who propose to provide a designated outdoor area furnished with tables and chairs for the benefit of their customers. 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.

2. Conducting the consultation exercise

The consultation was launched on 1 December 2010 (in conjunction with a proposal relating to Business Improvement Districts) and closed over 12 weeks later on 28 February 2011. The consultation document was published on the Department's website and responses were invited by post, fax and email. A notice advertising the consultation was also placed in the Belfast Telegraph, Irish News and Newsletter.

The proposals and questions on **Licensing of Pavement Cafés** attracted a total of 45 responses. 24 of these (53%) were from organisations, 20 (45%) from local councils and 1 from a political party. 41 (91%) of the respondents made specific comments relating to the proposals while four (9%) respondents had no comment to make. A list of all respondents is attached at **Annex A**.

3. Consultation responses and DSD view

The consultation paper asked for general comments on the proposal to provide district councils with a power to regulate pavement cafés in their areas. It also asked specifically for comments on the following:

- whether the power should be mainly enabling, allowing each district council to design an appropriate licensing scheme;
- whether a council may opt **not** to permit pavement cafés in their area or if there should be a presumption that no consent will be unreasonably withheld;
- whether new offences / penalties and powers of inspection are required, beyond those currently available to relevant public authorities; and
- whether any existing regulations require to be examined and perhaps modified to accommodate pavement cafés.

i) The proposal to provide district councils with a power to regulate pavement cafés in their areas.

Few respondents made general comments regarding this matter, with many suggesting conditions which councils should impose when considering applications.

One respondent, a council, said introducing a new licensing regime purely for the regulation of pavement cafés is excessive and would place an additional burden on district councils and local business. This respondent considers the Street Trading Act (NI) 2001 to be a suitable vehicle for licensing of pavement cafés. This piece of legislation is currently implemented by local councils.

DSD response

It is the view of the Department that the introduction of a statutory licensing scheme, administered by local councils, will have a positive effect on town and city centres across Northern Ireland and will make a real difference in attracting visitors and tourists.

ii) Whether the power should be mainly enabling, allowing each district council to design an appropriate licensing scheme.

32 respondents (71%) made comments specifically relating to this issue, 16 organisations, 15 councils and 1 political party.

Of the 32 respondents, 30 (94%) were in favour of the proposal and 2 (6%) were against.

Of the 30 in favour, 15 were organisations, 14 were councils and 1 was a political party. 12 of the 30 (7 councils and 5 organisations) welcomed the idea of best practice guidance being developed.

One organisation and one council were against the proposal. The council believes that the Roads Service should undertake the function and the organisation believes that 26 individual schemes would make management more complex and add additional unnecessary cost.

DSD response

Given the overwhelming support for the proposal to allow each district council to design individual licensing schemes, the Department intends to proceed with the proposal.

iii) Whether a Council may opt not to permit pavement cafés or if there should be a presumption that no consent will be unreasonably withheld.

20 respondents (44%) (10 councils and 10 organisations) made comments specifically relating to this issue.

Of the 20 respondents, 4 (20%) believe that a council may opt not to permit pavement cafés and 16 (80%) believed that there should be a presumption that no consent be unreasonably withheld.

All 4 of the respondents who believe councils should have the option to not permit pavement cafés in their area were councils.

Of the 16 respondents who believe no consent should be unreasonably withheld, 10 were organisations and 6 were councils. Two respondents, both councils, believe that allowing a council to opt not to permit pavement cafés could lead to legal challenges in the context of the Human Rights Act and the EC Services Directive.

DSD response

The Department believes that, along with the majority of respondents who commented on the proposal, that there should be a general presumption that no consent should be unreasonably withheld. Although councils will be permitted to reject applications for specified reasons, it will not be possible for councils to place a blanket ban on areas within each council area, or a council area as a whole.

iv) Whether new offences / penalties and powers of inspection are required, beyond those currently available to relevant public authorities.

19 respondents (42%) (11 councils and 8 organisations) made comments specifically relating to this issue.

Of the 19 respondents, 18 (95%) believed that councils should be provided with a suite of enforcement powers to allow them to suitably regulate the activity including issuing fixed penalties, initiating court proceedings and inspection powers. One (5%) respondent, an organisation, believes that no additional measures would be required.

Suggestions for what a suite of enforcement powers should include ranged from issuing fixed penalties to temporary closure and ultimately complete revocation of a licence.

Four of these respondents specified that a clear line of demarcation between Roads Service and councils on enforcement responsibilities would be necessary under any new licensing regime.

DSD response

Given the views expressed by the majority of councils and concerns recently raised by Roads Service, that the powers contained in the Roads (NI) Order 1993 may not

be sufficient to address all situations, it is now the Department's view that along with the power to regulate pavement cafés, councils should be provided with the necessary suite of enforcement and prosecution powers.

v) Whether any existing regulations require to be examined and perhaps modified to accommodate pavement cafés.

25 respondents (56%) made comments specifically relating to this issue, 14 councils and 11 organisations.

Street Trading Act (NI) 2001 - 6 councils and 3 organisations
Roads (NI) Order 1993 - 4 councils and 1 organisation
Licensing (NI) Order 1996 - 13 councils and 7 organisations
Planning (NI) Order 1991 - 1 council and 2 organisations
Fire Safety Regulations (NI) 2010 - 1 council
Clean Neighbourhood and Environment Bill – 1 council
Pollution Control and Local Government (NI) Order 1978 – 1 council
Local Government Miscellaneous Provisions (NI) Order 1985 – 1 council
Registration of Clubs (NI) Order 1996 – 1 council
Smoking (NI) Order 2006 – 3 councils and 3 organisations
Drinking in Public Bye-laws - 11 councils and 4 organisations

Respondents also suggested that the following areas be considered.

Health & Safety – hygiene and noise – 3 councils and 1 organisation
Environmental Health – 1 organisation
Litter – 1 council and 1 organisation
Anti-social behaviour – 1 council and 1 organisation
Pest Control – 1 council
Food Safety – 1 council

DSD response

These regulations will be carefully assessed for compatibility with the proposed licensing scheme and any necessary modifications made.

4. Way forward

We would like to thank all who responded to the consultation. The responses received will help and have helped inform the decision making process with regard to the introduction of a statutory licensing scheme for pavement cafés. The consultation showed that there was a very positive response generally to the proposal to introduce a statutory licensing scheme for pavement cafés. However,

one of the assumptions made in the consultation – that Roads Service should undertake the enforcement of the scheme – will no longer be pursued. The Minister has therefore decided to give both licensing and enforcement powers to district councils. Officials will continue to undertake detailed work on design of the statutory licensing scheme, including the development of a full suite of enforcement and prosecution powers for district councils. Primary legislation will be drafted in due course.

ANNEX A

List of Respondents to pavement cafes consultation exercise

Organisations (24)	Local Councils (20)	Political Party (1)
Alliance Boots (no comment)	Antrim (against scheme)	Alliance
Armagh City Centre Management	Ards	
Association of Town Centre Management	Armagh	
Ballymena Town Centre Development Co	Ballymena	
Bangor & Holywood Town Centres Ltd	Ballymoney	
Belfast Chamber of Trade and Commerce	Banbridge (no comment)	
Belfast City Centre Management	Belfast	
British Retail Consortium (no comment)	Castlereagh	
Confederation of British Industry (NI)	Coleraine	
Coleraine Town Partnership Ltd	Cookstown	
Dungannon Regeneration Partnership	Craigavon	
Federation of Small Businesses	Derry	
Guide Dogs for the Blind Association	Down	
Imtac	Fermanagh	
Larne Traders Forum	Lisburn	
Northern Ireland Tourist Board	Magherafelt	
Northern Ireland Drinks Industry Group	Moyle	
Northern Ireland Federation of Housing Associations	Newry & Mourne	
Northern Ireland Housing Executive	Newtownabbey	
Northern Ireland Judicial Appointments Commission (no comment)	North Down	
PSNI		
Pubs of Ulster		
Roe Valley Chamber of Commerce		
Royal National Institute for the Blind		

Officials also held meetings prior to and during the consultation period with, the Association of Town Centre Management (15/12/10), the Small Business Association (10/02/11) and Craigavon Borough Council (28/2/11).