



Department for

**Social  
Development**

[www.dsdni.gov.uk](http://www.dsdni.gov.uk)

# **Business Improvement Districts and Licensing of Pavement Cafés**

## **Consultation Paper**

**(December) 2010**

# **Business Improvement Districts and Licensing of Pavement Cafés**

This consultation document seeks views on the Department's proposals for Business Improvement Districts and Licensing of Pavement Cafés

Comments should be sent by (28 February 2011) to

Bebhinn Ni Bhriain  
(See para 48 for contact details)

## Introduction

- I. The purpose of this consultation document is to seek views on the Department's proposals for primary legislation in two separate but complementary areas: Business Improvement Districts and licensing of pavement cafés. Both initiatives are aimed at the local business community and will prove useful in supporting town centres to recover from the current economic downturn. In addition to improving the commercial environment it is expected that these proposals will bring wider benefits and help make our town centres more attractive, safer, cleaner and more enjoyable for all.
  
- II. The Department's proposals for the introduction of Business Improvement District (BID) legislation are set out in Part 1 of the consultation document. Proposals for the licensing of pavement cafés are covered in Part 2. Part 3 summarises the impact assessments undertaken by the Department and gives details of how to respond to the consultation.

## **PART 1:**

# **BUSINESS IMPROVEMENT DISTRICTS**

2. A Business Improvement District (BID) allows businesses within a defined area to vote for collective investment in specific additional services in order to improve the commercial environment within that area. Additional services or projects are funded by a local business levy and all businesses within a potential BID have the opportunity to vote on proposals before the levy is imposed. Proposals are developed by local business-led partnerships, usually in co-operation with the local council. The BID levy offers a sustainable source of finance to fund additional services or projects required by the local business community.
3. The concept originated in America where it has been used to enhance the local economy of many previously run-down areas. Probably the most well know BID is in Times Square. This was established in 1992 by a coalition of city government and local businesses to improve the quality of commerce by making the area clean, safe and friendly. BIDs have since been introduced in England and Wales, (through the Local Government Act 2003); in Scotland (through the Planning etc (Scotland) Act 2006); and the Republic of Ireland (through the Local Government (Business Improvement Districts) Act 2006. The BID model is very flexible and can be applied at different levels of scale and ambition to support a wide range of additional services.
4. Minister Alex Atwood announced his intention to introduce BID legislation in June 2010. The Social Development Committee previously recommended the establishment of BID legislation following its recent inquiry into town centre regeneration. The Department has also received representations in support of BIDs from a number of political representatives, local councils and relevant member organisations such as the Association of Town Centre Management and the British Retail Consortium.

5. This consultation seeks views on how Business Improvement Districts (BIDs) can best be implemented in Northern Ireland. The Department's proposals for primary legislation are presented, along with information on where secondary legislation will be required. Specific questions are included to guide readers in their responses to the consultation.
6. The proposals take account of legislation and practice in other jurisdictions. The Department is aiming to create consistency with BID operation in Great Britain and the Republic of Ireland while drawing on lessons learned elsewhere. In developing proposals the Department has worked with the Department of the Environment and the Department for Finance and Personnel, who also have a key interest in this area of policy.

## Principles

7. The Department is proposing to adopt the same principles for its BID legislation as those which underpin the Scottish model:
  - BIDs should be a **partnership** between the public and private sector;
  - BIDs should provide the financial and management **structure** to take forward projects of benefit to local businesses and communities;
  - Projects should provide services **additional** to the agreed baseline local council services;
  - A BID should be **agreed** by both local businesses and the local council before it can go ahead;
  - Once a BID has been agreed to by the majority of businesses, all businesses which are part of the BID should be required to pay the agreed **levy**;
  - Projects should address a **specific** local concern and deliver specific, measureable benefits;

- Any legislation should be **flexible** enough to allow the development of local solutions
8. Applying these principles to the legislation should ensure that local businesses and local authorities can work in partnership to address local concerns and ensure also that there is an equitable funding mechanism, with contributions from all businesses that stand to benefit from the scheme.

### **Examples of BID services**

9. Most BIDs in GB and ROI are currently in town centres, although the principle can also be applied in other places, e.g. industrial estates. BIDs operate in a self-defined business area, which can be as large as a town or as small as a street. Common examples of BID initiatives are: extra safety and security; cleansing and environmental measures; improved promotion of the area; improved events; greater advocacy on key issues or even collective bargaining for the procurement of shared services. Scotland is exploring the potential of single sector BIDs and tourism and visitor BIDs.

### **Illustrations of benefit**

10. The UK BIDs Advisory Service from the Association of Town Centre Management has identified a number of the benefits that BIDs can offer to a range of stakeholders. Some of these benefits are set out below:

#### **Benefits: Everyone/ The Community**

- Produces economic well being and economic growth in area
- Attracts inward investment
- Gives competitive advantage
- Produces social well being / improves quality of life

- Develops partnership between private & public sector
- Encourages corporate social responsibility
- Provides sustainable investment for ongoing capital projects/services
- Creates a positive sense of place and enhanced feeling of safety and well-being - provides community pride

### **Benefits: Businesses/ The Occupier**

- Increases footfall
- Increases consumer spend and sales - can lead to increase in profits
- Reduces costs (crime reduction, joint activities, e.g. promotions/marketing)
- Is flexible to address the issues of individual sectors
- Gives businesses a local voice
- Creates more appealing environment for employees
- Fair to smaller businesses
- Fair system, those that invest, benefit - no freeloading
- Can decide and vote for action before making the investment

### **Benefits: Local Councils**

- Harnesses private sector management/organisational drive and skills
- Promotes greater understanding of the role of the local council
- Provides new, sustainable investment and doesn't detract from other resources
- Has commercial support



## **Benefits: The Landlord**

- Assists capital value growth
- Increases rental values of property and area
- Increases an area's desirability and attracts occupiers
- Increase in trade which affects turnover based rents (some retail)
- Could help properties away from main footfall areas
- Good PR for company locally and regionally
- Forges positive links with council

## **Elements of success**

11. The following section draws on experience from the UK and Ireland to identify areas of best practice which contribute to a successful BID:
12. **Good groundwork** – a scoping study needs to be carried out which identifies baseline services, identifies local issues, gauges support and begins to define the BID area. The BID area should be defined carefully, it is not necessarily a question of identifying the largest area and maximising potential levy income, instead it is important to identify an area with common issues to be addressed and a reasonable chance of a yes vote at ballot.
13. **Management** – Good management capacity is crucial given the demands and long term commitment needed to establish and maintain a BID. A BID partnership should draw on existing partnership structures where possible. A Steering group should be established which has a majority business membership and is chaired by a respected private sector representative with the time available to lobby and influence on behalf of the BID. The local council (both officers and members) should also be represented as they are an important source of local information and support.

14. **Developing the Business Case** - A solid business case is critical in winning support for a BID. A good business case will make a clear link between the proposed levy and the services/projects which it will pay for. There should be clear evidence of additionality and the levy should be presented as an investment, with specific associated benefits. There should be plans for assessing and monitoring benefits. Any other additional sources of funding which would supplement the levy should also be described in the business case.
15. **Notification and Engagement** with business community - Businesses within the proposed BID area should be notified at an early stage of plans to develop a BID and should be engaged in the process of developing BID proposals and the business case. One-to-one consultations are recommended and business to business representations are the most effective. This can then be supplemented by, for example, newsletters, website or local press or radio. Effective engagement and communication is essential to secure interest in and support for BID proposals.

### **Role of Councils**

16. Local councils play an important facilitating role and also have a number of legal responsibilities:
- Provision of key information to BID partnerships (ratings information and baseline service information) to assist with the development of BID proposals and calculation of the levy
  - Organisation of formal BID ballots
  - Collection and enforcement of BID levy

### **Role of DSD**

17. It is proposed that the Department will fulfil a central guidance and oversight role, with responsibility for monitoring the implementation of

BIDs, development of written guidance and provision of support to BID partnerships and local councils.

**Consultation question** – Are the respective roles of local councils and the Department considered appropriate?

### **Timetable for developing a BID**

18. BIDs Scotland advises that providing all goes well, a good project team should be able to have an operational BID in place within 14-18 months. If an appropriate partnership and management structure is not already in place then additional time must be factored in to establish this.

Further information about BIDs can be found at the following sources:

[www.ukbids.org](http://www.ukbids.org)

[www.bids-scotland.com](http://www.bids-scotland.com)

[www.brc.org.uk/retailbids/policy.htm](http://www.brc.org.uk/retailbids/policy.htm)

## Legislative Framework

19. This section describes the areas to be covered by the proposed primary legislation. Although the operation of BIDs relies on rating information **it is important to note that the current rating system in Northern Ireland is entirely independent from the operation of BIDs** and will not be affected by these proposals.
20. The proposals will allow a **local council to make arrangements for BIDs** in a defined area (which may cover part or all of a local council area or allow for joint working between councils)
21. **BID revenue account** – A local council will be responsible for the collection and enforcement of the BID levy. They must establish a ring-fenced BID revenue account which is then passed straight to the BID partnership.
22. **BID proposals must be formally compiled and put to a vote** via an official ballot. Regulations will be made governing the detail of the development of BID proposals, covering such areas as: who may draw up proposals, consultation on proposals, what should be included in BID proposals, and other procedures to be followed.

**Consultation question:** Most of the detailed regulation of BIDs will be covered by secondary legislation and will therefore be the subject of another consultation. However, we would be interested to hear at this stage about the degree of prescription which stakeholders feel should be applied to the procedures for this element of the BID process, i.e. the development of proposals, consultation on proposals etc.

23. **Entitlement to vote in a ballot** – It is proposed that entitlement to vote (and therefore liability to pay the levy) should be restricted to non-domestic ratepayers. If a premises is occupied by a tenant then this

will exclude the property owner from voting in the ballot and equally will exempt them from paying the BID levy, if the ballot is successful. Scotland is the only jurisdiction in the UK and Ireland which has statutory provision for the inclusion of landlords in the BID process although in practice they are encouraged to become involved on a voluntary basis and often make voluntary financial contributions to the BID fund.

24. Formally involving property owners in the BID process introduces additional administrative complexity and would require safeguards to be put in place to ensure that landlords do not just pass on the costs through increased rents, which would result in tenants paying twice. In addition to being simpler to administer, restricting involvement to tenants or owner/occupiers also means that those actually running the local businesses have the most say in which services they wish to see funded and how much of a levy they are content to pay.

**Consultation question:** Do you agree with the proposal not to require landlords to become involved in the operation of BIDs?

25. **Approval in ballot** – The interests of large and small businesses are protected by a voting system which requires a simple majority in both votes cast and rateable value of votes cast in order to be successful. Effectively this means that neither a large number of small businesses nor a small number of large businesses can carry the vote on their own. BID proposers in a given area may specify that they wish to set a higher threshold for approval

**Consultation Question:** Is it reasonable to frame the voting system in terms of votes cast, rather than eligible votes? Should a minimum turnout be specified in order to validate a ballot?

26. **Power of veto** - It is proposed that a local council should be able to veto BID proposals in certain exceptional circumstances e.g. if it considers that the proposals conflict significantly with existing council policy or if they are likely to impose a disproportionate financial burden.
27. **Appeal against veto** - It is proposed that in the event of a council exercising its veto the BID proposers should be able to appeal to the Department
28. **Duration of BID arrangements** – It is proposed that BIDs should operate for a maximum timeframe of five years, after which BID proposals must be resubmitted to a ballot.

### **Secondary Legislation**

29. This consultation should be understood as the beginning of a process. Following agreement on primary legislation proposals the Department will undertake the development of secondary legislation which will cover much of the detailed regulation of BIDs operation. This will be informed by the comments from stakeholders on this stage of the consultation and will also be subject to a separate consultation exercise.

### **Areas of local discretion**

30. There are a number of important elements of BID operation which will not be subject to legislation as the Department considers they should be decided locally, depending on individual circumstances. These areas include:
  - The scope of the BID – i.e. the focus of the additional services or projects which a BID proposes to provide. This will depend on the

baseline services which exist in an area and the particular issues which the local business community wishes to tackle;

- Partners in the BID – A board is often set up for the management of a BID. The composition of the board will depend on local circumstances but could include representatives from local businesses, landlords, local council, the voluntary and community sector, town centre managers etc;
- Coverage of the BID – i.e. the geographical boundary of the BID. This will be determined in part by the extent of support for BIDs in different areas and the commonality of the issues identified by local businesses;
- Duration of the BID – it is proposed to specify that BIDs should run for a maximum of five years before they need to be renewed. However, others may involve short-term improvement projects and may have a much shorter natural life-span;
- Funding of the BID – A local BID partnership will decide the scope and coverage of a BID and then calculate costs. They will decide how much funding should be raised through a levy and how much can be raised through e.g. voluntary landlord contributions or grants;
- Rate of the levy – the local BID partnership will decide the amount of the BID levy (calculated as a % of rateable value). Questions about whether all businesses should pay the same or whether there should be more expected from certain sectors or size of business or whether there should be reductions or exemptions for certain others will be a matter for local discretion. These questions will be clearly addressed in the business case accompanying BID proposals put forward for ballot.

31. The Department may develop guidance in these areas to help disseminate best practice and provide support for aspiring BID partnerships.

**Consultation question** – Is this a reasonable balance between areas to be covered by legislation and those which will be left to local discretion?

**Consultation question** –What degree of guidance and support would be welcome from the Department?



## **PART 2:**

# **LICENSING OF PAVEMENT CAFÉS**

## **Introduction**

32. 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, the Department is seeking views on a suitable licensing scheme to regulate this activity. The scheme would apply to the proprietors of relevant businesses such as cafés, restaurants, hotels and pubs who propose to provide a designated out-door area furnished with tables and chairs for the benefit of their customers.

## **Background**

33. Pavement cafés are common in many cities and towns across the UK and Ireland despite the limitations of the weather. In Great Britain, 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 an liquor licence). The relevant legislation in England and Wales is the Highways Act 1980. In the Republic of Ireland, 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 pavements 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.

34. The Department has carried out a thorough appraisal of the impact of pavement cafés in Northern Ireland, which included a literature review, a series of interviews with town centre managers and a survey of businesses. The appraisal noted 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. All town centre managers and development officers who were interviewed were keen to see a café culture developed in their area and the majority of businesses replying to the survey were also in favour of such an initiative. However, the appraisal concluded that a common, clear and transparent legislative framework is required to enable a café culture to develop. The Executive Summary of the Report is attached at **Annex A** and the full document is available on the Department's website

[http://www.dsdni.gov.uk/analytical\\_services\\_unit\\_-\\_appraisal\\_report\\_of\\_cafe\\_culture\\_-\\_part\\_1.doc](http://www.dsdni.gov.uk/analytical_services_unit_-_appraisal_report_of_cafe_culture_-_part_1.doc)

[http://www.dsdni.gov.uk/analytical\\_services\\_unit\\_-\\_appraisal\\_report\\_of\\_cafe\\_culture\\_-\\_part\\_2.doc](http://www.dsdni.gov.uk/analytical_services_unit_-_appraisal_report_of_cafe_culture_-_part_2.doc)

### **Who should regulate Pavement Cafés?**

35. In GB and ROI local authorities are responsible for developing policy and criteria against which applications for pavement cafés are assessed and for ultimately giving the necessary permission. District councils in Northern Ireland currently regulate street trading in their areas and have a range of relevant environmental health and wider responsibilities. They are considered to be the most appropriate authority to discharge this function.

### **Who may apply and where can pavement cafés be located?**

36. There are no restrictions on who could apply. However, this policy is specifically directed at owners and managers of cafés, coffee shops, tea rooms, snack bars, restaurants, hotels and pubs who may be considering placing tables and chairs outside their premises in the spirit of pavement café culture. In order to protect the ethos of the

scheme it is expected that councils will require applicants who have a liquor licence to make a food menu available to their customers. Councils will also wish to take steps to ensure that pavement cafés do not simply become ‘smoking zones’. The size of a pavement café would need to be proportionate to the interior dimensions of the premises. Premises operating a ‘takeaway’ facility only would be unsuitable for use as a pavement café as they lack the necessary catering and other facilities for staff and customers.

37. The most suitable locations for creating a pavement café are the pedestrianised areas of towns and cities with good footfall. However, the location, size and layout of the proposed pavement café would very much depend on the characteristics of the site and the space available. The pavement café would generally occupy an area adjoining and visible from the existing premises but it is expected that councils would wish to examine each application on its own merits. It would be the responsibility of the applicant to resolve whether the placing of tables and chairs on the pavement requires planning consent or any other relevant statutory approval. The overriding premise is that the needs of users of the pavement are paramount and shall not be compromised to the extent that they cannot follow their natural route.

### **Licensing conditions and enforcement**

38. In line with the approach in GB and ROI it is intended to introduce legislation allowing each district council to design a licensing scheme which best suits its needs. The legislation would give councils the authority to grant a licence to any person, set conditions, charge a reasonable fee and take action for failure to comply with the terms of the licence. It would place a duty on councils to publish a notice and consult with relevant interests, for example the Roads Service and the Planning Service, before arriving at a decision on any application.

However, there would be a general presumption that no consent would be unreasonably withheld. Consent would not be granted for a licence to carry on an activity which falls beyond the spirit of the pavement café culture. Councils would have the power to require applicants to possess appropriate public liability insurance. It would be open to each council to decide which locations are suitable for development as a pavement café and specify design and layout requirements. Councils would be able to specify the licensing period and vary, suspend or revoke the licence. They would be able to impose detailed licensing conditions such as restrictions on the hours of operation and measures to ensure the area is kept clean and free of litter during licensing hours.

39. In terms of enforcement, the Roads (NI) Order 1993 makes it unlawful to cause obstruction to an adopted surface and Roads Service can therefore enforce the unlawful occupation of the surface if the activity restricts the free flow of pedestrians or vehicles, or compromises public safety. It is considered that these powers could be invoked where a council revokes an existing licence or where a pavement café is operating without a licence. It is not therefore intended to introduce any specific offences in relation to pavement cafés that have been licensed by the council. The Department would be grateful for views on this and whether specific powers of inspection should be required, beyond those currently available to district councils.
40. Licensees will be required to keep the surface area within the licensed area free from damage and must permit all statutory authorities to gain access at anytime, in order to maintain and alter their plant and equipment, if necessary. Licensees will not be permitted to use the licensed areas for the purpose of displaying any form of advertising. Temporary structures must be 'fit-for-purpose' and must be properly weighted so as to avoid displacement during inclement weather and be of a material nature that would not cause incidental injury to the

public. No permanent structures are to be erected within the public footway within the licensed area, during the entire period of the licence.

### **Impact on existing regulations**

41. The development of pavement cafés may be constrained by existing regulations such as the drinking in public bye-laws, alcohol licensing and smoking law and planning and environmental health regulations. The Department will make a detailed assessment of the impact in due course. As part of this consultation the Department wishes to identify existing regulations that may need to be examined and perhaps modified to accommodate pavement cafés.

**Consultation Questions:** The Department would welcome comments generally on the proposal to provide district councils with a power to regulate pavement cafés in their areas. The Department would also be grateful for views as to whether:

- the power should be mainly enabling, allowing each district council to design an appropriate licensing scheme;
- 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;
- new offences / penalties and powers of inspection are required, beyond those currently available to relevant public authorities; and if
- any existing regulations require to be examined and perhaps modified to accommodate pavement cafés.

## **PART THREE:**

### **Human Rights**

42. The Department believes that the proposals are compatible with the Human Rights Act 1998.

### **Equality**

43. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposals will not lead to discriminatory or negative differential impact on any of the section 75 groups. A copy of the screening form can be viewed on the Department's website [www.dsdni.gov.uk/index/consultations](http://www.dsdni.gov.uk/index/consultations)

### **Regulatory Impact**

44. The Department has conducted a preliminary regulatory impact assessment (see Annex B) and concluded that the proposals will not have a disproportionate impact on businesses, charities, social economy enterprises or the voluntary sector.

### **Freedom of Information**

45. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read Annex C on the confidentiality of consultations. It gives guidance on the legal position about any information given by you in response to this consultation.

## Alternative formats

46. This consultation document and other Departmental publications may be made available in alternative formats upon request.

## Consultation

### How to respond

47. The consultation period opens on 01 December 2010 and will run for 12 weeks. Responses should be with the Department no later than 28 February 2011.

## Contact details

48. Postal responses to this consultation should be forwarded to the Department for Social Development at the address below. Faxed or emailed responses will also be accepted.

**Post:** Bébhinn Ni Bhriain  
Urban Regeneration Strategy Directorate  
3<sup>rd</sup> Floor, Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
BELFAST, BT7 2JB

**E-mail:** [social.policy@dsdni.gov.uk](mailto:social.policy@dsdni.gov.uk)

**Telephone:** 028 908 29367

**Fax:** 028 908 29386

**Text phone:** 0800 232 1715



## **List of Consultees**

49. A list of those who have received copies of the consultation and those who are being consulted informally is attached at Annex D. If you think that there are any other organisations or individuals who are likely to have an interest in this consultation, please let us know their contact details.

50. Please indicate in your response whether the views you are expressing are your own individual views or those of the organisation you represent.

## **Summary of responses**

51. Following the close of the consultation, Departmental officials will analyse the responses received and publish a response within three months of the closing date for submission of responses.

**REVIEW OF CAFÉ CULTURE - EXECUTIVE SUMMARY**

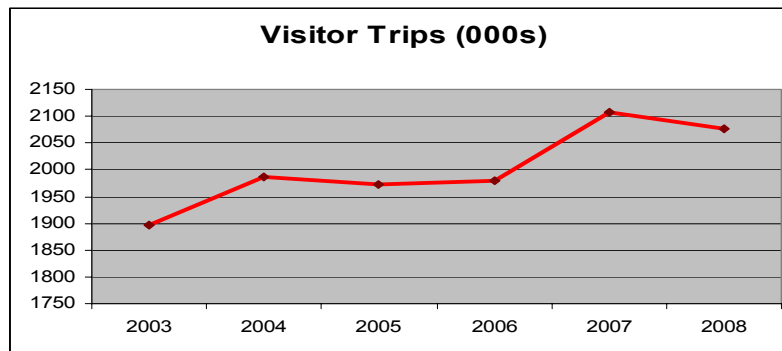
- i. An appraisal of café culture in Northern Ireland is being carried out by Social Policy Unit (SPU), within the Department for Social Development (DSD). This report is mainly concerned with pavement cafes and the contribution they can make to the development of a café culture. The team has been tasked with assessing Northern Ireland’s existing café culture, highlight current issues and to make recommendations to the Minister.

Analytical Services Unit (ASU) were asked to complete the statistical/research element of the appraisal on behalf of SPU.

- ii. The appraisal took place over several stages, all of which are presented in this report. A project plan was established and can be seen in the Annexes. The appraisal included a literature review, a series of interviews with town centre managers and development officers in towns and cities and a survey of businesses across Northern Ireland. The meetings with town centre managers and development officers allowed statisticians from ASU to establish the settlements which had established, emerging and no café culture. This resulted in towns being classified as follows:

<b>Existing Café Culture</b>	Belfast
	Coleraine
	Holywood
	Portstewart
<b>Emerging Café Culture</b>	Newry
	Ballymena
	Armagh
	Lisburn
	Newcastle
	Newry
	Warrenpoint
<b>No Café Culture</b>	Enniskillen
	Ballymoney
	Antrim
	Ballycastle
	Downpatrick
	Dungannon
	Larne
	Limavady
	Londonderry
	Lurgan
	Portadown
	Strabane

- iii. Site visits were made to a sample of these towns to identify and photograph physical examples of existing café culture and any issues which may be a barrier to preventing café culture.
- iv. Café culture is considered as having a positive effect on urban environments and contributes to life within the public realm and outdoor spaces. It is recognised by various stakeholders that pavement cafes are positive for an area but current legislation is not conducive to a café culture in Northern Ireland. A section of this paper, part of the literature review element, looks at the legislation in Northern Ireland and in others areas of the UK in more detail.
- v. With tourism increasing in Northern Ireland and café culture being associated with a more European, progressive society, an appraisal of pavement café legislation could help Northern Ireland's image improve further. Visitor numbers have been increasing over the past few years, as shown on the graph below and revenue from tourism has climbed 40% between 2003 and 2008.



- vi. For the purposes of the appraisal, café culture is defined as pavement cafes, that is, the placement of tables and chairs on the footpath or other such area at the front of a business premises (with or without an alcohol licence), for use by customers of that business.

The main findings of the work of ASU were that café culture is seen as a positive element to modern urban areas. This was expressed by businesses, town centre managers and development officers across Northern Ireland. However, current legislation is confusing and needs overhauled. This requires joined up working and consensus from a variety of departments and agencies to succeed. The introduction of effective licensing could provide a new revenue stream.

## **PARTIAL REGULATORY IMPACT ASSESSMENT**

### **Part 1 - Business Improvement Districts**

#### **Objective**

The objective of the proposals is to enable the introduction of statutory BIDs in Northern Ireland, allowing formal business-led partnerships to fund specific additional services in a defined area at least in part through an additional levy on non-domestic ratepayers.

#### **Background**

BIDs legislation is already in place in England, Wales, Scotland and the Republic of Ireland. The concept originated in America and experience has shown that the BID model has the potential to bring about an improved business environment and improved economic growth. Proposals for Northern Ireland BIDs have been informed by legislation and practice in other parts of the UK and Ireland.

#### **Risk Assessment**

Failure to introduce BIDs legislation would mean that those who wish to establish BIDs would have to rely on informal or voluntary financial arrangements. Experience has shown that this can be problematic and lead to difficulties in raising sufficient finance to support schemes.

#### **Options**

- Option 1 (Do Nothing) – BIDs in Northern Ireland would continue to be based on voluntary contributions, with no mechanism to require or enforce payment of a levy.
- Option 2 ('Light touch' legislation) – develop legislation which enables the introduction of statutory BIDs and provides a framework for regulation.

The Department would leave questions such as, for example, the rate of the levy and relative contribution of different businesses to local discretion while providing a framework of advice and guidance.

- Option 3 (More prescriptive legislation) – the Department would attempt to regulate more aspects of BID operation to place more emphasis on standardisation and central control rather than local discretion.

### **Preferred Option**

The Department's preferred option is option two above. It is considered that this offers the best balance between a statutory framework and local discretion for the business community to determine appropriate costs

### **Benefits and Compliance Costs**

The benefits of individual BID schemes are identified locally; each BID partnership makes an assessment of which specific additional services are required in an area and proposes a levy commensurate with the expected benefits. There are no compliance costs, as such, associated with the proposed legislation. The cost i.e. the levy, is only taken up by local rate payers if there is majority support for the BID proposals in an individual area. If rate payers are not satisfied that the benefits justify the cost then they can reject the BID proposals and the additional levy is not imposed.

### **Enforcement**

Local councils will be responsible for enforcing payment of the levy once rate payers have voted in favour of BID proposals.

### **Monitoring and Review**

The Department will be responsible for monitoring the implementation of BIDs and will consider the need for a formal review after five years of full operation.

**Consultation**

Proposals have been drafted in response to recommendations of the Social Development Committee and have taken account of BIDs legislation and practice in other jurisdictions and representation made to the Department from a number of key stakeholders. Proposals have been developed in consultation with DoE and DFP in recognition of the overlap with their areas of policy responsibility.

**Summary and Recommendation**

It is recommended that public consultation is carried out on the policy proposals based on option 2.

## **Part 2 - LICENSING SCHEME FOR THE REGULATION OF PAVEMENT CAFÉS**

### **The objective**

The objective behind this proposal is to introduce a statutory licensing scheme for the regulation of pavement cafés by district councils. This would enable the controlled expansion of specified premises in support of the creation of a vibrant daytime and evening economy and for the general well-being of communities. In line with the approach elsewhere it is intended to allow each district council to design a licensing scheme which best suits its needs.

### **Background**

Pavement cafés are common in many cities and towns across the UK despite the limitations of the weather. 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 of Ireland, 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. In response to representations made to Ministers, the Department is seeking views on a suitable licensing scheme to regulate this activity.

### **Risk assessment**

Failure to implement the proposals would mean continuing uncertainty for the hospitality industry and public authorities and would inhibit the controlled expansion of a pavement café culture. At present, Roads Service generally

tolerates tables and chairs placed on the public footpath outside restaurants, cafés and bars, in line with its own guidance. There are inherent risks for the safety of pedestrians and road users associated with this type of unregulated activity and Roads Service will take action in cases where it is considered that there is an occurrence of unreasonable obstruction of the public footway which compromises public safety, or where there is evidence of permanency. This is generally seen as a reasonable and pragmatic way forward in the interim but not as a permanent solution. In recent years there has been considerable investment in the streetscape of towns and city centres and a properly regulated pavement café culture would contribute to the development of the public realm. A pavement café culture can be expected to make a difference in terms of attracting visitors and tourists.

## **Options**

Option 1 (*Do nothing*) – an option which will not bring clarity in terms of how pavement cafés may be regulated and a café culture successfully developed, or adequately reflect changing social attitudes and the expectations of customers. Doing nothing may unjustifiably penalise the business interests involved. There are also public health and safety interests which will not be addressed.

Option 2 (*Continue with the Roads Service 'Toleration Policy' in relation to pavement cafés*) - as for option 1 this is not considered a realistic option in the medium to longer term.

Option 3 (*Introduce a statutory licensing scheme to be administered by district councils*) – Option three above is the **preferred option**. The provision of tables and chairs outside restaurants, cafés and bars - largely to cater for smokers - is now widespread across Northern Ireland and is a significant issue for the Roads Service. The evidence shows that a common, clear and transparent legislative



framework is required to enable this activity to be properly developed and regulated in the interests of all.

If introduced, the legislation would give district councils the power to:

- grant a pavement café licence to any person who satisfy specified criteria;
- impose licensing conditions;
- charge a reasonable fee;
- require the applicant to possess appropriate public liability insurance; and
- take action for failure to comply with the terms of the permission.

Councils would be required to publish a notice and consult with relevant interests before arriving at a decision on any application, but there would be a general presumption that no consent would be unreasonably withheld. Consent would not be granted for a licence to carry on an activity which falls beyond the spirit of the pavement café culture.

### **Benefits and compliance costs**

Although the proposal is clearly of benefit to the commercial interests involved including small businesses, no information is currently available on which to quantify the benefits. Ultimately it will be a commercial decision for the proprietor having regard to the estimated cost of establishing the pavement café and the expected profit. If implemented, the proposal would also provide greater choice for consumers.

In terms of compliance costs, the district council would be entitled to charge a reasonable fee and may require an applicant to produce plans and drawings outlining the proposed development. The council would set standards in terms of the design quality of the street furniture and may require the applicant to make alterations to the premises, for example to provide additional toilet facilities for

customers. However no permanent structures are to be erected on the public footway within the licensed area, during the entire period of the licence. Similar licensing schemes have been introduced in other jurisdictions and there is no evidence that the compliance costs involved have restricted the development of a pavement café culture.

Comments would be welcome on any financial implications for business or other sectors with, if possible, estimates of costs, savings or additional revenue where appropriate.

### **Enforcement and sanctions**

The Roads (NI) Order 1993 makes it unlawful to cause obstruction to an adopted surface and Roads Service can therefore enforce the unlawful occupation of the surface if the activity restricts the free flow of pedestrians or vehicles, or compromises public safety. It is considered that these powers could be invoked where a council refuses to grant a pavement café licence or subsequently decides to revoke an existing licence. It is not therefore intended to introduce any specific offences in relation to pavement cafés. However, specific powers of inspection may be needed beyond those currently available to district councils.

### **Monitoring and review**

In line with best practice a monitoring exercise will be conducted 2 years after any new law has been fully implemented. The need for a formal review will be considered after 5 years of full operation.

### **Consultation**

This proposal has been drafted in response to representations made by Belfast City Council and others. The proposal has been developed in conjunction with the Roads Service (Department for Regional Development) and the Department of the Environment (NI).

An appraisal of the impact of pavement cafés in Northern Ireland has been carried out including a literature review, a series of interviews with town centre managers and a survey of businesses. The appraisal noted 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. All town centre managers and development officers who were interviewed were keen to see a café culture developed in their area and the majority of businesses replying to the survey were also in favour of this.

### **Summary and recommendation**

A do nothing stance is unrealistic and would have a negative impact on all parties involved. It is recommended that a public consultation be conducted on the proposal set out in **Option 3**.

## Confidentiality & Data Protection

- i. The Department will publish its response following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation. The Department will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.
- ii. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.
- iii. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
  - *the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with*

*the exercise of any of the Department's functions and it would not otherwise be provided;*

- *the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and*
- *acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner".*

**iv.** For further information about confidentiality of responses please contact the Information Commissioner's Office or see the website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). For further information about this particular consultation please contact the consulting Branch as above.

**List of consultees**