

<b>Report on</b>	MUDC response to Evaluation Exercise on The Pavement Cafés Act (NI) 2014
<b>Reporting Officer</b>	Fiona McClements
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<b>Is this report restricted for confidential business?</b>	Yes	
If 'Yes', confirm below the exempt information category relied upon	No	x

<b>1.0</b>	<b>Purpose of Report</b>
1.1	To agree a response to the Department of Communities (DfC) evaluation exercise on the Pavement café legislation on behalf of MUDC.
<b>2.0</b>	<b>Background</b>
2.1	<p>As members will be aware from previous committee reports, the Licensing of Pavement Cafés Act (NI) 2014, which introduces a statutory licensing scheme for the regulation of pavement cafes by district Councils, came into effect on 1<sup>st</sup> October 2016. The scheme facilitates the controlled expansion of suitable premises such as cafes, restaurants and pubs in support of the creation of a vibrant daytime and evening economy and for the general wellbeing of communities. The scheme allows Councils to:</p> <ul style="list-style-type: none"> <li>• Authorise a person carrying on a business involving the supply of food and drink to place tables, chairs etc. in a public place;</li> <li>• Require the applicant to fix a notice to the premises and submit a plan of the proposed pavement café area;</li> <li>• Impose conditions on the licence;</li> <li>• Vary, suspend or revoke the licence;</li> <li>• Charge a reasonable fee (although a zero fee was agreed within MUDC; and</li> <li>• Take enforcement action including the removal of facilities in certain circumstances.</li> </ul> <p>As the legislation has been in operation for one year, DfC's Social Policy Unit has decided to carry out an evaluation exercise with the 11 district councils regarding the legislation and its implementation. All Chief Executive Department's across Northern Ireland received a letter (dated 4 October 2017) to this end with an attached questionnaire for completion in order to assist DfC in assessing how councils are implementing the Act. The deadline for submission of completed questionnaires is to be no later than 8 January 2018.</p>

<b>3.0</b>	<b>Main Report</b>
3.1	<p>The evaluation exercise asks for feedback via twelve questions on the following areas of implementation:</p> <ul style="list-style-type: none"> <li>• Stakeholder engagement</li> <li>• Development and content of Council guidance</li> <li>• Extent of application grant and refusals</li> <li>• Arrangements for the publicising of applications and representations</li> <li>• Fee structures</li> <li>• Powers of entry and seizure information</li> <li>• Other issues regarding implementation.</li> </ul>
3.2	A draft response is appended for consideration and agreement. Key issues to inform discussion include:
3.3	No pavement café licence applications have been received to date by MUDC therefore the response to questionnaire questions 3, 4, 5, 6, 10 and 11 do not apply.
3.4	Scoping exercises conducted across the MUDC district determined the number of expected pavement café applications is likely to be between 10 and 15.
3.5	<p><u>MUDC Guidance on Pavement Café Licensing</u></p> <p>The draft MUDC guidance produced by the Environmental Health Service is consistent with guidance prepared by the Licensing Forum for Northern Ireland (LFNI). The document also mirrors the DfC guidance on the implementation of pavement café licensing. The MUDC guidance remains in draft form as it is incomplete, awaiting technical guidelines from DfI – Roads as this information is critical to the assessment of individual licence applications by officers. Inclusion of DfI Roads’ technical information in MUDC guidance will ensure that there is a consistent application of interpretation regarding the factors relating to pavement café layout, design, and issues that may affect other pavement users such as those with disabilities.</p>
3.6	<p><u>Concerns of disability action groups</u></p> <p>The lack of progress in relation to the granting of licences is primarily due to ongoing pressure from lobby groups for disabled people who have raised concerns that guidance produced to date does not go far enough to prevent pavement cafes from causing further obstruction to pavement users; particularly those with disabilities.</p> <p>DfC has already been made aware that Local Government representatives, including legacy Councils (LGA, IoL and LFNI), raised concerns with the Committee for Social Development in October 2013, prior to the introduction of the legislation, about the need to ensure disabled access issues were carefully addressed. This was also a key concern for MLA’s arising from the discussions at the Committee and separate representations were also made to the Committee on the issue by various disability groups at that time.</p> <p>As councils are required to consult with Transport NI (now DfI – Roads) when considering an application for a Pavement Café Licence their advice is crucial to ensure that any implications for pedestrians and public safety issues are properly taken into account.</p> <p>The guidance provided by the Department in respect of minimum footway widths has been the subject of significant concern for disabled groups. This has resulted in them making representations to DfI – Roads, the Licensing Forum NI and to all councils individually.</p>

3.7	<p>Council representatives have however been working with DfI – Roads to seek the completion of technical guidelines.</p> <p>A number of meetings have been held with disabled groups, including Imtac and Guide Dogs, to consider their views. Both DfI and the LFNI were also recently invited to appear before the All Party Group on Visual Impairment at the Assembly as they were concerned guidance available did not give due regard to many of the issues raised by disability organisations. In light of the concerns from the disability groups there has been concern about processing applications in the absence of definitive guidance from DfI – Roads</p> <p><u>Planning Permission</u></p> <p>There has been no formal agreement reached across the 11 Councils with respect to the requirement for planning permission for pavement cafes. It is expected that MUDC's planning department will take a pragmatic approach to this matter on a case-by-case basis. All potential applicants will be advised to ensure that they discuss the need for planning control with the relevant department in advance of submitting an application.</p>
<b>4.0</b>	<b>Other Considerations</b>
4.1	<p><b><u>Financial &amp; Human Resources Implications</u></b></p> <p>Financial: N/A</p> <p>Human: N/A</p>
4.2	<p><b><u>Equality and Good Relations Implications</u></b></p> <p>N/A</p>
4.3	<p><b><u>Risk Management Implications</u></b></p> <p>N/A</p>
<b>5.0</b>	<b>Recommendation</b>
5.1	That members agree the content of the draft response to DfC on pavement café licensing.
<b>6.0</b>	<b>Documents Attached &amp; References</b>
6.1	Letter from DfC Social Policy Unit to Chief Executive
6.2	Draft of completed Evaluation Questionnaire



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4 October 2017

## **EVALUATION OF THE LICENSING OF PAVEMENT CAFÉS ACT (NORTHERN IRELAND) 2014**

As you may be aware, the Licensing of Pavement Cafés Act (Northern Ireland) 2014 (the Act) has now been in operation for one year.

I am writing to advise you that the Department has determined that now is an appropriate time to carry out an evaluation exercise with the 11 district councils regarding the legislation and its implementation.

Answering the attached questionnaire will assist the Department in assessing how the Act is being implemented by councils. It is therefore essential that all district councils answer all the questions fully and return them to the address above by 8 January 2018.

Thank you for your co-operation in this important matter.

Yours sincerely

**Liam Quinn**

**Head of Social Policy Unit**

**DRAFT RESPONSE**

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document title]

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## **DRAFT RESPONSE**

### **The Licensing of Pavement Cafés Act (Northern Ireland) 2014** ***Questionnaire***

#### **Name & Address of District Council:**

<b>Mid Ulster District Council</b>		
<b>Cookstown Office</b>	<b>Dungannon Office</b>	<b>Magherafelt Office</b>
Burn Road	Circular Road	Ballyronan Road
Cookstown	Dungannon	Magherafelt
BT80 8DT	BT71 6DT	BT45 6EN
<b>Telephone: 03000 132 132</b>		

#### **District Council's e-mail address:**

info@midulstercouncil.org

#### **Name of Chief Executive & Contact Details:**

Name: **Mr Anthony Tohill**

Address: Mid Ulster District Council – write to any local office above

Email: [chief.executive@midulstercouncil.org](mailto:chief.executive@midulstercouncil.org)

Telephone: 03000 132 132

## DRAFT RESPONSE

### Implementation of the legislation:

1. Are all stakeholders in your council area aware of the new Licensing of Pavement Cafés Act (Northern Ireland) 2014 and its implications? **What has your council done to ensure stakeholders are aware of their responsibilities under the new legislation?**

Although no formal consultation exercises have been undertaken with MUDC stakeholders, scoping exercises have been undertaken across the district to ascertain where relevant premises are located. Any discussions with relevant stakeholders have been informal as MUDC guidance material on pavement cafes has not yet been released due to a significant delay by road service in releasing essential technical guidance.

The issue of pavement café licensing has however been discussed at Council committee and the agreed zero fee structure has been widely publicised in the press.

2. Has your council produced any guidance regarding pavement café legislation in order to assist stakeholders in your area? **If so, how has this been publicised and shared with stakeholders?**

MUDC draft guidance mirrors the Licensing Forum for Northern Ireland's (LFNI) guidance that was drafted in line with DfC guidance and in light of comments received during the extensive consultation undertaken by officers from across Northern Ireland on behalf of the LFNI. As mentioned in the previous response to number 1, the MUDC guide has not yet been finalised as it is awaiting technical information from DfI roads in order to complete it. Additionally the final guide will require equality screening.

### Granting & refusing of licences:

3. How many pavement café licences has your council issued since 1 October 2016?

None

## DRAFT RESPONSE

4. How many pavement café licences has your council refused since 1 October 2016 and if so, which part(s) of section 4 of the Act referred when refusing any licences?

None

### Applications – General Provisions:

5. The legislation states that on receipt of a pavement café licence application councils must make the application available to be viewed by the public until the end of the 28 days allowed for representations and publicise that any representations regarding the application may be made in writing to the relevant council until the end of the 28 days. **Please give details on how your council carries this out.**

Not Applicable - MUDC have not been in receipt of any applications.

### Appeals:

6. Has your council received any appeals against refusing pavement café licences since 1 October 2016? **If so, what were the grounds for these appeals and were they successful?**

Not Applicable



## DRAFT RESPONSE

### Notice of application to be displayed:

7. The legislation states that pavement café licence applicants must fix a notice on the premises as stated on licence which is visible and legible to the public until the end of the 28 day period allowed for representations. **Have you advised stakeholders regarding this in your own guidance?**

As previously mentioned the MUDC guidance remains in draft, the document advises stakeholders of this requirement.

### Fees:

8. Has your council decided to charge a fee for a pavement café licence to cover administrative costs? **If so, please provide details of the charging system which has been agreed.**

Not Applicable – Mid Ulster District Council agreed ZERO fees for pavement café licensing.

### Fees:

9. Does your council publicise the fee it intends to charge and how this is calculated? How does your council carry this out?

MUDC's Council committee proposed a zero fee structure in relation to pavement café licensing. The proposed fee structure was then advertised in the local press (seven papers) in line with MUDC Council policy, prior to its ratification at a meeting of the full Council.

## **DRAFT RESPONSE**

### **Powers of entry and inspection:**

10. Has any council official had to enter premises when evidence gathering during the decision making process of a pavement café licence application?

Not Applicable – no applications received to date.
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### **Powers to remove unlicensed furniture:**

11. Has your council had to remove any unlicensed furniture from a public area in the course of a business, for use for the consumption of food or drink in the course of that business?

Not Applicable – MUDC has not issued any pavement café licences to date.
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### **General:**

12. Is there any other information you would like to add regarding the implementation of the Licensing of Pavement Cafés Act (Northern Ireland) 2014?

### Concerns of disability action groups

The lack of progress in relation to the granting of licences is primarily due to ongoing pressure from lobby groups for disabled people who have raised concerns that guidance produced to date does not go far enough to prevent pavement cafes from causing further obstruction to pavement users; particularly those with disabilities.

As DfC will be aware Local Government representatives, including legacy Councils (LGA, IoL and LFNI), raised concerns with the Committee for Social Development in October 2013, prior to the introduction of the legislation, about the need to ensure disabled access issues were carefully addressed. This was also a key concern for MLA's arising from the discussions at the Committee and it is my understanding that separate representations were also made to the Committee on the issue by various disability groups at that time.

As councils are required to consult with Transport NI (now DfI – Roads) when considering an application for a Pavement Café Licence their advice is crucial to ensure that any implications for pedestrians and public safety issues are properly taken into account.

The guidance provided by the Department (see section 4.11 of “The Licensing of Pavement Cafes Act (NI) 2014, Department for Communities, Guidelines”) in respect of minimum footway widths has been the subject of significant concern for disabled groups. This has resulted in them making representations to DfI – Roads, the Licensing Forum NI and to all councils individually.

As referred to in the Licensing Forum “Guidance for applicants” Councils have been working with DfI – Roads to seek the completion of technical guidelines. Such guidance will assist with consistency of interpretation regarding the factors to consider for the layout and design of a pavement café and, in particular, to take account of other pavement users. Consequently, a number of meetings have been held with disabled groups, including Imtac and Guide Dogs, to consider their views. Both DfI and the Licensing Forum were also recently invited to appear before the All Party Group on Visual Impairment at the Assembly as they were concerned guidance available did not give due regard to many of the issues raised by disability organisations.

Councils have been concerned about processing applications in the absence of definitive guidance from DfI – Roads and, in light of the concerns of the disability groups, are all the more aware of compliance with Disability Discrimination Act 1995 requirements.

### Planning permission

Despite efforts by Heads of Planning and the Licensing Forum NI to resolve the matter there has been no agreement reached across the 11 Councils regarding the requirement for planning permission for pavement cafes. Whilst some have taken a pragmatic approach, there have been those who believe that a strict interpretation of the legislation means that a planning application is required. Designating pavement cafés as permitted development from the outset of the process would have not only avoided confusion but also minimised additional financial burden on perspective applicants.

### Operational issues

Given that MUDC has not yet issued any licences in it is unfortunate we are unable to respond to a number of the questions posed in the questionnaire. However, once the DfI – Roads guidance has been finalised we will be in a position to commence processing pavement café licence applications and may then identify matters relating to decision making and enforcement that the Department may wish to consider. One concern that we envisage is the interpretation/application of what constitutes a public

area, a matter that has already been highlighted through the LFNI and remains the subject of ongoing debate.

#### Key learning point from the implementation of the Act

At the Committee for Social Development, Local Government officers made strong representations that the development of model technical and managerial guidance, drawn up by the Department in conjunction with key stakeholders, would provide the necessary basis to assist in the effective implementation of the legislation. There is no doubt that such an approach would have pre-empted many of the issues that have proved an impediment to councils in this process and such an approach would have assisted in issues being addressed prior to the introduction of the legislation.