



Comhairle Ceantair  
**Lár Uladh**  
**Mid Ulster**  
District Council

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

## **Guidance for Applicants**

# CONTENTS

<b>Section</b>	<b>Page</b>
Definitions	3
Introduction	4
Legislation	4
Purpose of this guidance	4
What is a Pavement Café Licence?	4
Who may apply?	5
Is the area you want to use suitable for a Pavement Café?	5
Hours of operation	5
Making an application	5
Documentation required to accompany an application	6
Public Notice	7
Consultation Process	7
How long will it take to process my application?	7
What if there are concerns with my application?	7
Can my licence application be refused?	8
Insurance Cover	8
Duration of Pavement Café Licence	8
Changes to the Licence (Variation)	8
Transfer of a Licence	8
Licence Fee	8
What enforcement powers do the Council have?	9
<b>Appendix 1: Suitability criteria for a Pavement Café Licence</b>	<b>10</b>
<b>Appendix 2: Application Form</b>	<b>14</b>
<b>Appendix 3: Notice of Application</b>	<b>16</b>
<b>Appendix 4: Examples of Pavement Café plans</b>	<b>18</b>

## **Definitions**

<b>Furniture</b>	Includes tables, chairs, umbrellas, barriers, heaters, menu boards, etc. which must be of a temporary nature and can be removed within 20 minutes.
<b>Licensed area</b>	A public area as defined on a plan approved by the Council as a pavement café.
<b>Licensed period</b>	The hours and days approved by Council when the licensed area can be used as a pavement café.
<b>Licensee</b>	Shall include their nominee in their absence.
<b>Licensing Order</b>	The Licensing (Northern Ireland) Order 1996.
<b>Pavement Café Licence</b>	The permission given by Council to allow placement of temporary furniture on a specified public area for customers to consume food or drink supplied from the licence holder's premises.
<b>Public area</b>	A place in the open air, to which the public has access, as of right and which is not a market area.
<b>Public nuisance</b>	Noise disturbance or other nuisance caused to residents or neighbouring businesses.

## Introduction

Pavement cafés are becoming a familiar sight across the UK and Ireland. They can help develop a local café culture, which in turn can have a positive effect on urban environments, promote town and city centres, contribute to the general well-being of communities and appeal to tourists.

Tourism is a key driver for economic growth in Northern Ireland offering business opportunities to create jobs and generate wealth. Visitor attitude surveys undertaken by the Northern Ireland Tourist Board have highlighted the attractiveness of a vibrant café culture, especially for short breaks where shopping, good food and evening entertainment are high on the agenda. Well-regulated pavement cafes can contribute to an excellent visitor experience, enhance the attractiveness of a local area and encourage visitors to stay longer and spend more.

## Legislation

Mid Ulster District Council has the power to regulate and licence pavement cafés as set out in the *Licensing of Pavement Cafés Act (Northern Ireland) 2014* and the associated Regulations.

The legislation and further guidance can be found on the Department for Communities website at <https://www.communities-ni.gov.uk/topics/dsd-law-and-legislation/social-law>

Additional advice or guidance can be obtained by contacting the Council's Environmental Health Service by email to [environmentalhealth@midulstercouncil.org](mailto:environmentalhealth@midulstercouncil.org) or by telephoning 03000 132 132.

## Purpose of this guidance

This guidance document has been prepared to help those intending to make an application for a Pavement Café Licence. It also details the factors that may be taken into account when the decision to grant or refuse a pavement café licence is being considered.

Please note that this document is for guidance only and is not intended to be a definitive interpretation of the legislation.

## What is a Pavement Café Licence?

A Pavement Café Licence ('a licence') authorises a person who carries on a business involving the supply of food or drink (in or from premises) to place temporary furniture (tables, chairs, etc.) on a public area for use by customers.

This includes cafés, restaurants, pubs, retail outlets providing refreshments, takeaways, supermarkets with a deli counter, etc.

**Note:** A licensed pavement café area will remain a public place for the purpose of public order and for environmental or other legislation.

## Who may apply?

Any person or persons who carry on a business (in or from a premises), involving the supply of food or drink to the public, may apply for a Pavement Café Licence.

## Is the area you want to use suitable for a pavement café?

This guidance document offers advice on what Council will consider appropriate for a Pavement Café Licence.

The suitability criteria required for a Pavement Café Licence is outlined in Appendix 1 and includes consideration of the following:

- Pedestrian and vehicular access;
- Size and layout;
- Likely disturbance to other businesses or residents;
- Furniture design;
- Safety issues.

In general, the pavement café area will need to be set-up immediately adjacent to the premises. However, a licence for a remote café may be granted where:

- The proposed café does not interfere with both vehicular and pedestrian traffic flow;

And

- The licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.

## Hours of operation

The Council will determine the hours and days of use for the pavement café area having regard to the location, likely disturbance to local residents, street cleansing or other businesses and representations from interested parties.

Licences will normally be granted for a set period between 8.00 am and 11.00 pm and will be reflective of the normal operating hours of the business. If the premises are licensed under the Licensing Order a licence will not be issued beyond 11.00pm, regardless of any additional operating hours that may apply to the premises.

## Making an Application

Before submitting an application you should read this guide thoroughly to check whether your proposal meets all of the required criteria. You are advised to contact the Council to discuss your proposals **PRIOR** to submitting your application. This may help to minimise time wasted and expenditure on applications which may later be refused.

**All applications for a pavement café licence must be accompanied by the following:**

- **Location plan**

A plan must be provided to a scale not less than 1:2500 (preferably ordnance survey) showing the proposed pavement café marked in red and the adjoining streets and properties.

- **Proposed Café plan**

A plan must be provided to a scale of not less than 1:100 of the proposed pavement café area, the streetscape and all utilities and services including lampposts, bollards, fire hydrants, manholes, cycle stands, litter bins and any other items of street furniture located within the immediate vicinity. The dimensions of the proposed pavement café area must also be shown. Please see Appendix 4 for examples of pavement café plans.

- **Details of the furniture**

Provide details of the number, materials and types of chairs, tables, umbrellas, etc., to be provided in the café. (Manufacturers details of the furniture or photographs of the existing furniture would be an advantage).

- **A copy of your alcohol licence (if appropriate)**

If alcohol is to be served for consumption within the pavement café area, please provide a copy of your alcohol licence.

- **Public liability insurance**

If your application is successful, a copy of the public liability insurance certificate (minimum indemnity of £5m) showing that your cover includes the provision of a pavement café on a public footpath must be provided.

- **Planning permission (where appropriate)**

Evidence of planning permission should be provided, where appropriate.

- **Management Control Plan (for Remote cafés)**

If the pavement café is to be located away from the main premises or patrons and staff need to cross a public road to reach the café, then a management control plan must be provided.

- **Signed Declaration regarding Public Notice**

A copy of the public notice and the associated signed certification form regarding same should be returned to the Environmental Health Service at one of the Council's local offices after the 28 day period.

More information on the requirement to display a public notice can be found below.

## **Public Notice**

Applicants are required to affix a public notice (Appendix 3) to the premises on the day the application is made to the Council. The notice must be positioned so as to be visible to the public for 28 days.

Interested parties can make representations to the Council in respect of an application. In addition, Council will make the application details available to be viewed by the public until the end of the period allowed for representations.

Applicants must complete the declaration on the application form stating that the required notice has been erected and that they will maintain it in place for 28 days from the date of application.

## **Consultation Process**

It is recommended that businesses discuss their proposals with adjacent property occupiers to inform them of the application.

When assessing an application, Council will also consult with the following agencies:

- Department for Infrastructure's Roads Service (DfI Roads); and
- The Police Service for Northern Ireland where the premises is licensed to sell alcohol;
- Any other Council Department, organisations or individuals as appropriate.

## **How long will it take to process my application?**

Council will aim to provide you with a determination within 4 to 6 weeks from the date of receipt of a completed application, which includes all the required plans and associated documentation for the licence proposal. This is to allow full and proper consultation in line with Departmental Guidelines, site visits and input from consultees. In the event of written representations and objections being received it may however, take up to 12 weeks for a final determination and ratification to be made by Committee and Council.

If there are objections to the granting of the licence, then it may be necessary for the above time period to be extended to consider those objections.

## **What if there are concerns with my application?**

Applications are considered on a case-by-case basis, and any objections received by Council will form part of the considerations by Council to grant or vary a licence.

If an applicant's proposal fails to meet the suitability criteria, then they will be notified and may be advised on any amendments which could enable a better fit with the criteria.

## **Can my licence application be refused?**

Yes. Each application will be considered on its own merits. However it may not always be possible to accommodate pavement cafés in all locations due to factors such as visual impact, width restrictions, obstructions or very heavy pedestrian flow.

As an alternative to refusing an application the Council may suggest changes to your proposal to make the proposal acceptable, for example by amending the size and shape of the licensed area.

Should an application be refused the applicant may appeal the decision to the Magistrates' Court within 21 days of being notified of the Council's decision.

Licence holders may also appeal a decision to suspend or revoke a licence or vary the area and conditions of a Pavement Café Licence (as an alternative to revocation), or to limit the duration of a licence.

## **Insurance Cover**

Applicants will be required to hold £5 million public liability insurance cover. This insurance cover will need to include the operation of a pavement café on the public footpath at all times when the pavement café is operating. Evidence of this insurance cover must be provided when you are notified that your application has been successful, or at any time upon request from an authorised officer.

## **Duration of Pavement Café Licence**

Once granted, a pavement café licence is valid for one year from the date of issue and an application to renew it must be made on an annual basis thereafter.

## **Changes to the Licence (Variation)**

Any proposed changes to the licence such as the size of the licenced area or the proposed operating times must be notified and agreed in writing with the Council.

## **Transfer of a Licence**

The transfer of a pavement café licence to another licence holder is not permitted.

## **Licence Fee**

There is currently no fee for all applications for the grant, renewal or variation of a pavement café licence. The fee structure for pavement café licensing will be reviewed by Council on an annual basis.

## **What enforcement powers do the Council have?**

Failure to obtain an appropriate licence or a failure to comply with the conditions attached to a licence may result in enforcement action being instigated against the 'responsible' person in line with Mid Ulster District Council's enforcement policy.

The 'responsible person' includes the person(s) carrying on the business and any other person(s) concerned in the management of the premises. Licence holders will be subject to unannounced monitoring visits in relation to their pavement café licence particularly throughout the first year of operation.

- **Unlicensed pavement cafés**

It is an offence to place furniture to be used for the consumption of food and drink on a public area without a Pavement Café Licence. This offence may be liable to a fine of up to £1,000 on summary conviction.

Council may also seize and remove any furniture placed on the pavement without a licence and may recover the costs reasonably incurred in removing and storing this furniture.

- **Suspension/Compulsory variation of a licence**

The Council may suspend a Pavement Café Licence when maintenance of street utilities is required or road works are scheduled. The licence can also be suspended for a breach of licence conditions, making false statements or failure to pay any fee due to the Council without good reason. During any period of suspension, the Pavement Café Licence is invalid and the Council may remove any furniture placed in the public area during the period of suspension.

The Council may also compulsorily vary a licence where part of an area has become unsuitable or its continued use is likely to result in interference or inconvenience to persons or vehicles in the vicinity or public order concerns.

The Council will consult with PSNI before varying a licence on public order grounds.

- **Revocation of licence**

A Pavement Café Licence may be revoked following breaches of licence conditions, where the licensed area is no longer suitable for temporary furniture, or where there is undue interference or inconvenience to persons or vehicles in the vicinity or public order concerns. The Council will consult with PSNI before revoking a licence on public order grounds.

- **Notice of revocation, suspension or compulsory variation**

If the Council proposes to revoke, suspend or vary the Pavement Café Licence conditions, the licence holder will be given 21 days' notice unless it is considered that such action needs to be taken immediately in the public interest.

An applicant can make representations to persuade Council not to revoke, vary or suspend the licence, within a specified period of 21 days of receipt of notification of Council's intention to do this.

## Appendix 1: Suitability Criteria for a Pavement Café Licence

### 1. Design

The applicant must demonstrate that the pavement café will make a positive contribution to the street scene and is in keeping with the surrounding area and other buildings and public realm. Simple robust designs will be preferred and excessive or elaborate detail or signage should be avoided unless clearly justified. Applicants should also demonstrate commitment to the care and/or refurbishment of the external appearance of the building in which the business is housed, to ensure that the appearance of the street scene will be maintained and, where necessary, enhanced.

Street café proposals should not hinder reasonable use of the footpath, cause nuisance to adjacent frontages, or interfere with apparatus or access to apparatus within the footpath.

To this end the applicant shall comply with all statutory requirements and obtain all necessary permissions before making a licence application.

### 2. Size and layout

Each application will be considered on its own merits on a site by site basis, taking account of the characteristics of the site, the space available, the proposed layout of the café area and the current guidance or advice on social distancing requirements.

The pavement café will also need to be designed in such a way as not to compromise access where applicable. Any pavement café design/plan should be compliant with the requirements of the *Disability Discrimination Act 1995* (DDA) as amended.

In general the outdoor seating area should:

- Avoid conflict with the principal lines of pedestrian movement
- Avoid conflict between customers going in and out of the pavement café, passing pedestrians and neighbouring premises.
- Facilitate adherence to the current social distancing requirements / advice.
- Ideally be confined to the frontage of its own premises with close integration of internal and external activities however this does not preclude a remote location.
- Allow 10 metres clearance at road junctions / vehicular access for visibility.
- Where street space is available a minimum clearance width of 2 metres between the edge of the licensed site and the kerbside should be allowed. Where this is not possible because of physical constraints a minimum of 1.5 metres clear width should be provided.

The area to be used must take into account other needs in the immediate vicinity (e.g. kerbside parking, loading bays, bus stops, emergency vehicle access, emergency exits, street cleaning machines, and pedestrian crossings).

Where an application contains a proposal to establish a pavement café abutting neighbouring premises, the Council would advise that the applicant should discuss their proposal with the owners or occupiers of the adjoining premises before an application is made.

The limits of the approved café area will be agreed as part of the application process and it is important that no obstructions such as tables, chairs, portable advertising boards, planters or barriers are placed outside this approved area or left on the pavement or any part of the licensed area outside approved hours. A copy of the Pavement Café Licence (including approved plan) should be available on the premises for inspection on request.

When considering a new application Council must consult with DfI Roads before arriving at a decision. Such consultation will ensure that any possible implications for vehicular traffic or pedestrians, public safety issues, and environmental impacts are properly taken into account. For examples of pavement café layouts please refer to Appendix 4.

### **3. Boundaries**

When in use, the pavement café area should ideally be enclosed, by way of adequate screening, to demarcate the licensed area and contain the tables and chairs, in order to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians. Un-screened areas present higher risks, particularly for those people who use a walking stick or canes.

Barriers of the 'post and chain' type are not permitted as they are potentially hazardous to pedestrians. Portable, sturdy barriers with a top rail are recommended. Bases should not cause an obstruction or tripping hazard to pedestrians.

DfI Roads advise that screening should not however be placed in areas where it is likely to block visibility splays, e.g. at junctions.

The enclosure shall be removed both outside the licensed period and when the pavement café is not operating within the licensed period. The materials should, therefore, be lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked into or overturned by a sudden gust of wind.

The design of the barrier should complement the character of the surrounding area and may be required to be of a specific design in order to maintain continuity along the street frontage. The colours and materials used for the enclosure should ensure that it is not visually dominant in longer views but will allow key elements to stand out against the background in close up.

Well maintained planters can be particularly attractive and can be appropriately used as part of the means of enclosure, but must be positioned within the licensed area. In certain circumstances, it may be possible to utilise existing street railings, planters and bins as a suitable means of enclosure.

## **4. Furniture**

The furniture must be of high quality design and suitable for outdoor commercial use. Poor quality furniture will not be permitted.

The use of parasols, along with their locations, materials and colours must be specified as part of the design and must be positioned so that their extent is contained within the boundary to ensure they do not present a danger to any user of the pavement café or any other pedestrians.

Limited advertising may be permitted on areas of the pavement café arrangement; however applicants are advised to consult with Mid Ulster District Council's Planning Service for guidance. Proposed details should be provided with the application.

All furniture items, e.g. menu boards, signs and portable gas heaters need to be approved as part of the licensed area and details must be included in the application. The use of 'A' frame advertising boards will be discouraged, especially near to licensed areas as they can create an obstruction.

Where heating is to be provided, this must be of a type suitable for outdoor use and shall be placed within the licensed area. If patio style liquid petroleum gas (LPG) heaters are to be used, they must be adequately secured upright, be fitted with a flame failure device and be maintained in an efficient working order.

All furniture must be of a temporary nature that can be removed within 20 minutes at the end of the permitted period or when access to the area is required by any statutory body or in the event of an emergency. Details of where furniture is to be stored after the licensed period must be given in the application.

If the main premises operate for longer than the licensed period the applicant should give consideration where furniture is to be stored, this should be made clear within the application.

## **5. Environmental implications and other requirements**

It will be the responsibility of the pavement café operator to keep the area clean and free of litter, during licensed/operational hours and after the conclusion of business each day. This will include the cleaning of spillages onto the pavement.

Proprietors must promote a safe, clean and generally welcoming environment in the pavement café area. The conduct of customers using the outdoor seating area will also be the responsibility of the operator.

All food premises must be registered with the Council's Environmental Health Department.

The Pavement Café Licence does not imply an exclusive right to the area and others have rights over it for events, maintenance, repairs, etc.

No amplified music or loudspeaker equipment shall be used in the pavement café area.

Proprietors should give consideration to dividing their outside café area into smoking and non-smoking sections, with each section clearly marked.

## 6. Safety and Control

It is the responsibility of the applicant to ensure that the pavement café and equipment used comply with all appropriate legislation in relation to food safety, health and safety and alcohol sales requirements. Applicants are reminded of their duties under *the Health and Safety at Work (Northern Ireland) Order 1978 and the associated regulations*, to carry out a risk assessment of the area and activities covered by the pavement café.

Applicants proposing to licence a pavement café which is remote from their main premises or where there is a need to cross a public road to reach the café area must provide a management plan for the pavement café and a proposal as to how the café will be controlled and supervised.

Individual pavement café operators will be responsible for securing full and proper insurance cover.

## 7. Other statutory requirements

Possible planning and rates impacts should be considered before making an application

- **Planning Service**

Depending on the circumstances of a proposed pavement café on a public area, a planning application may be required if development is to be undertaken. Anyone considering the establishment of a pavement café is advised to contact Mid Ulster District Council's Planning Service for advice and guidance on whether an application for planning permission is required or not.

- **Rates liability on grant of licence**

The Department of Finance has advised that for the vast majority of cases a marginal, seasonal increase in seating of a temporary nature under the terms of the Pavement Café Licence would be regarded as 'de-minimus' in rating terms and would not warrant a change in Net Annual Value (NAV). However, where the type of arrangement is assessed or evidenced that it adds to the rental value of the premises an adjustment to the NAV may be warranted. Each case will be considered on its merits and prospective applicants who have any concerns should consult with the District Valuer of the Land and Property Services before they make an application for a licence.

## 8. Consumption of Alcohol

If an applicant currently has an alcohol licence, Council may decide to grant a condition allowing the consumption (but not sale) of alcohol in the pavement café area, however, this will be subject to a full and thorough consultation with the PSNI.

If an applicant has an "off-licence only" business, the consumption of alcohol will **not** be permitted in your pavement café area.

Council may, at any time place “an alcohol condition” on a pavement café licence requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture in the area covered by the licence.

**Note** Only premises licensed as a public house, a hotel, a restaurant or a guest house with a restaurant under the Licensing Order will be permitted to have their licensed area for the consumption of alcohol extended to include the pavement café area.

## Appendix 2: Application Form

MUDC/LC/FOR/042/02



Comhairle Ceantair  
**Lár Uladh**  
**Mid Ulster**  
District Council

### Application for a Pavement Café Licence

I / We hereby make application to Mid Ulster District Council under the provisions of the Pavement Cafés Act (Northern Ireland) 2014 for the:

ABOUT THE LICENCE					
Type of Licence (tick one box)	Grant of new licence <input type="checkbox"/>		Renewal <input type="checkbox"/>		Variation <input type="checkbox"/>
Full Name of Applicant					
Address:					
	Postcode:		Tel:		
DoB:	Email:				
Designation: Owner / Director / Manager - or otherwise state					
PREMISES DETAILS					
Type of premises:					
Name of premises:					
Address:					
	Postcode:		Tel:		
OPERATING DETAILS - Proposed days and hours of operation of the Pavement Café					
Day	Hours of use		Day	Hours of use	
	From	To		From	To
Monday			Friday		
Tuesday			Saturday		
Wednesday			Sunday		
Thursday					
LICENSING DETAILS					
Is alcohol to be consumed within the curtilage of the Pavement Café?					YES / NO
Are the premises licensed under the Licensing (NI) Order 1996?					YES / NO
Public House <input type="checkbox"/>	Off Sales <input type="checkbox"/>	Restaurant <input type="checkbox"/>	Hotel <input type="checkbox"/>	Guest house with restaurant <input type="checkbox"/>	
PROPOSAL DETAILS:					
Total width of footpath: _____ m			Is the area within 10 metres of a road junction?		YES / NO
Dimensions of pavement café area:			_____m X _____m = _____ m <sup>2</sup>		
Total number of tables:			Total number of chairs:		
Barrier Height:			Barriers Tap Rails:		YES / NO

SITE DETAILS – (see guidance document)	
Provide an area Location Plan, scale 1:1250, depicting location of Pavement Café and sufficient surrounding area with infrastructure.	Enclosed / To Follow
Provide a proposed Site Plan, scale not less than 1:100, depicting the street space occupied, size and type of barriers, number and type of tables and chairs, and any other pavement café furniture.	Enclosed / To Follow
Please state where the Pavement Café furniture will be stored when the premises is closed for business.	

DECLARATION
<ul style="list-style-type: none"> <li><i>I confirm that I wish to apply for a Pavement Café Licence for the development as described within this application.</i></li> <li><i>I confirm that I have placed the appropriate notice in a prominent place at or near the premises that it can easily be read by the public, and that the notice shall be displayed for 28 days from the date of this application.</i></li> <li><i>Data Protection Act 2018 and General Data Protection Regulation: I acknowledge that the personal information provided on this form will be processed and held by Mid Ulster District Council and its agents in connection with their statutory duties for the purpose of consulting on and determining my pavement café licence application. I acknowledge that MUDC will keep all personal data safe and secure and that any information provided may need to be shared, where it is permitted by law, with other agencies or organisations, such as Inland Revenue, etc. I also understand that Mid Ulster District Council's privacy notice can be viewed online at <a href="http://www.midulstercouncil.org">www.midulstercouncil.org</a></i></li> </ul> <p><i>I declare that I have read and understood the above statements and that all the above information contained in this application is correct to the best of my knowledge.</i></p> <p>Signed _____ Date: _____</p> <p>In connection with this application, if you provide any information which you know to be false, you shall be guilty of an offence and liable on conviction to a maximum fine of £1000.</p>

**Please return your completed form, together with the required documentation to one of the local offices listed below.**

Cookstown Office, Burn Road, Cookstown, BT80 8DT  
Dungannon Office, Circular Road, Dungannon, BT71 6DT  
Magherafelt Office, Ballyronan Road, Magherafelt, BT45 6EN

Telephone 03000 132 132  
[environmentalhealth@midulstercouncil.org](mailto:environmentalhealth@midulstercouncil.org)  
[www.midulstercouncil.org](http://www.midulstercouncil.org)

## CHECKLIST

Application form - signed and dated.	
Location plan - to a scale of 1:1250 showing sufficient area around the proposed pavement café to enable consideration of all related issues.	
Site plan - to a scale of not less than 1:100 showing access points, building lines, boundaries, kerbs, table and chair arrangement, bins, lighting, trees, other items.	
Details of the furniture - including photographs/manufacturers details.	
Management Control Plan – if required for a 'remote' café area.	
Evidence of Public liability insurance.	
Planning permission - if appropriate.	
Notice of Application Fixed to Premises to be forwarded once 28 day period expires.	
Fee – currently a fee is not required.	

## Appendix 3: Notice of Application

MUDC/LC/043/02

# PUBLIC NOTICE



Comhairle Ceantair  
**Lár Uladh**  
**Mid Ulster**  
District Council

### Licensing of Pavement Cafés Act (Northern Ireland) 2014

## APPLICATION FOR A PAVEMENT CAFÉ LICENCE

### NOTICE IS HEREBY GIVEN THAT

(Name of applicant): \_\_\_\_\_

(Address of applicant): \_\_\_\_\_

\_\_\_\_\_

has applied to Mid Ulster District Council for a Pavement Café Licence at:

(Name and address of premises) \_\_\_\_\_

\_\_\_\_\_

A copy of the application may be inspected free of charge at the addresses below.

Persons wishing to make representation to the Council regarding the proposals must make representations in writing specifying the grounds of the objection, the name and address of the person making it and it must be signed by them or their agent.

Any objection relating to the application **must** be made within **28 days** of the date of this Notice to the Environmental Health Service at one of the addresses below.

Cookstown Office, Burn Road, Cookstown, BT71 6DT  
Dungannon Office, Circular Road, Dungannon, BT45 6EN  
Magherafelt Office, Ballyronan Road, Magherafelt, BT80 8DT

It should be noted that where an objection is made after the 28 day time period referred to, but before a final decision is taken on the application, it is appropriate for the Council to consider it, if there is sufficient reason why the objection was not made within the stated time period.

(Applicant's Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

**This site notice must be displayed for the whole of the period of 28 days in a prominent place at or near the premises so that it can be conveniently read by the public.**

**On the completion of 28 days the applicant must complete and return this form, along with the notice.**

I \_\_\_\_\_ (*applicant*) hereby certify that for a period of at least 28 days ending on \_\_\_\_\_, I displayed this site notice in a prominent place at or near the premises so that it could conveniently be read by the public.

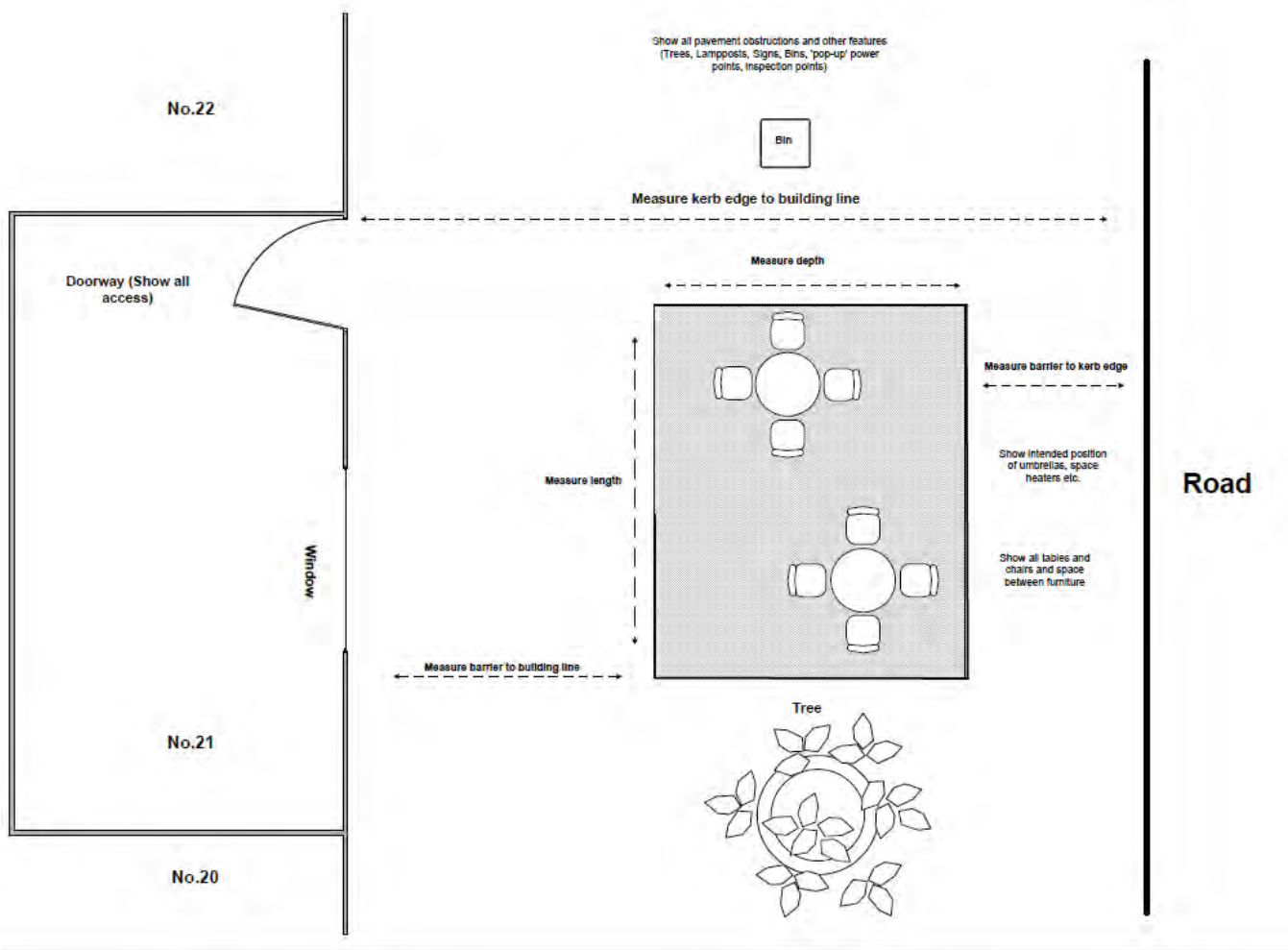
(*Applicant's Signature*): \_\_\_\_\_

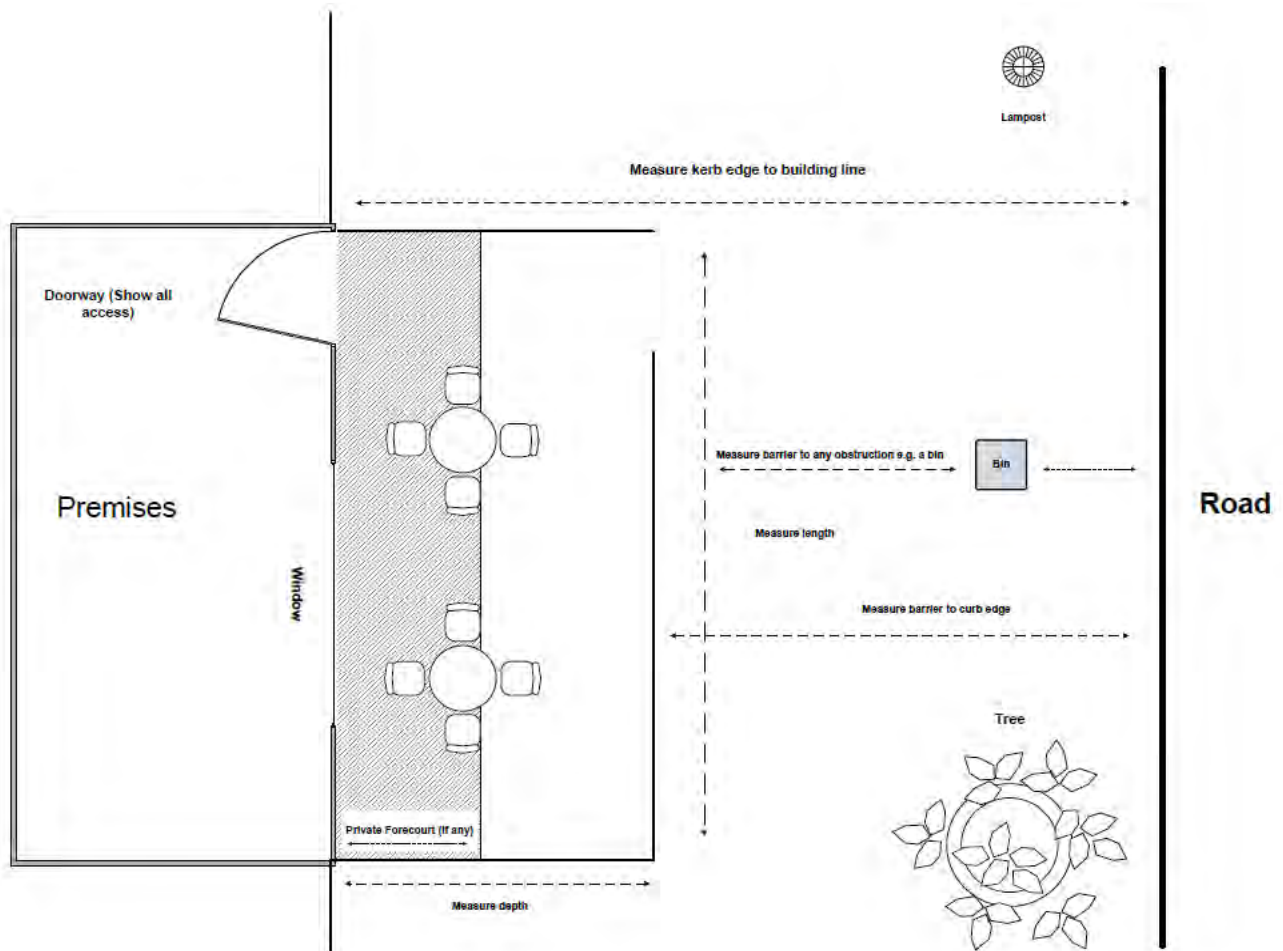
(*Date*): \_\_\_\_\_

Completed forms should be sent to one of the following addresses:

Cookstown Office, Burn Road, Cookstown, BT71 6DT  
Dungannon Office, Circular Road, Dungannon, BT45 6EN  
Magherafelt Office, Ballyronan Road, Magherafelt, BT80 8DT

# Appendix 4 – Examples of Pavement Café Plans







## Application for a Pavement Café Licence

I / We hereby make application to Mid Ulster District Council under the provisions of the Pavement Cafés Act (Northern Ireland) 2014 for the:

ABOUT THE LICENCE					
Type of Licence (tick one box)	Grant of new licence <input type="checkbox"/>	Renewal <input type="checkbox"/>	Variation <input type="checkbox"/>		
Full Name of Applicant					
Address:					
	Postcode:	Tel:			
DoB:	Email:				
Designation: Owner / Director / Manager - or otherwise state					
PREMISES DETAILS					
Type of premises:					
Name of premises:					
Address:					
	Postcode:	Tel:			
OPERATING DETAILS - Proposed days and hours of operation of the Pavement Café					
Day	Hours of use		Day	Hours of use	
	From	To		From	To
Monday			Friday		
Tuesday			Saturday		
Wednesday			Sunday		
Thursday					
LICENSING DETAILS					
Is alcohol to be consumed within the curtilage of the Pavement Café?				YES / NO	
Are the premises licensed under the Licensing (NI) Order 1996?				YES / NO	
Public House <input type="checkbox"/>	Off Sales <input type="checkbox"/>	Restaurant <input type="checkbox"/>	Hotel <input type="checkbox"/>	Guest house with restaurant <input type="checkbox"/>	
PROPOSAL DETAILS:					
Total width of footpath: _____ m			Is the area within 10 metres of a road junction?		YES / NO
Dimensions of pavement café area:			_____ m X _____ m = _____ m <sup>2</sup>		
Total number of tables:			Total number of chairs:		
Barrier Height:			Barriers Tap Rails:		YES / NO

SITE DETAILS – (see guidance document)	
Provide an area Location Plan, scale 1:1250, depicting location of Pavement Café and sufficient surrounding area with infrastructure.	Enclosed / To Follow
Provide a proposed Site Plan, scale not less than 1:100, depicting the street space occupied, size and type of barriers, number and type of tables and chairs, and any other pavement café furniture.	Enclosed / To Follow
Please state where the Pavement Café furniture will be stored when the premises is closed for business.	

DECLARATION
<ul style="list-style-type: none"> <li><i>I confirm that I wish to apply for a Pavement Café Licence for the development as described within this application.</i></li> <li><i>I confirm that I have placed the appropriate notice in a prominent place at or near the premises that it can easily be read by the public, and that the notice shall be displayed for 28 days from the date of this application.</i></li> <li><i>Data Protection Act 2018 and General Data Protection Regulation: I acknowledge that the personal information provided on this form will be processed and held by Mid Ulster District Council and its agents in connection with their statutory duties for the purpose of consulting on and determining my pavement café licence application. I acknowledge that MUDC will keep all personal data safe and secure and that any information provided may need to be shared, where it is permitted by law, with other agencies or organisations, such as Inland Revenue, etc. I also understand that Mid Ulster District Council's privacy notice can be viewed online at <a href="http://www.midulstercouncil.org">www.midulstercouncil.org</a></i></li> </ul> <p><i>I declare that I have read and understood the above statements and that all the above information contained in this application is correct to the best of my knowledge.</i></p> <p>Signed _____ Date: _____</p> <p>In connection with this application, if you provide any information which you know to be false, you shall be guilty of an offence and liable on conviction to a maximum fine of £1000.</p>

**Please return your completed form, together with the required documentation to one of the local offices listed below.**

Cookstown Office, Burn Road, Cookstown, BT80 8DT  
Dungannon Office, Circular Road, Dungannon, BT71 6DT  
Magherafelt Office, Ballyronan Road, Magherafelt, BT45 6EN

Telephone 03000 132 132  
[environmentalhealth@midulstercouncil.org](mailto:environmentalhealth@midulstercouncil.org)  
[www.midulstercouncil.org](http://www.midulstercouncil.org)

## CHECKLIST

Application form - signed and dated.	
Location plan - to a scale of 1:1250 showing sufficient area around the proposed pavement café to enable consideration of all related issues.	
Site plan - to a scale of not less than 1:100 showing access points, building lines, boundaries, kerbs, table and chair arrangement, bins, lighting, trees, other items.	
Details of the furniture - including photographs/manufacturers details.	
Management Control Plan – if required for a 'remote' café area.	
Evidence of Public liability insurance.	
Planning permission - if appropriate.	
Notice of Application Fixed to Premises to be forwarded once 28 day period expires.	
Fee – currently a fee is not required.	

# PUBLIC NOTICE



Comhairle Ceantair  
**Lár Uladh**  
**Mid Ulster**  
District Council

## Licensing of Pavement Cafés Act (Northern Ireland) 2014

### APPLICATION FOR A PAVEMENT CAFÉ LICENCE

NOTICE IS HEREBY GIVEN THAT

(Name of applicant): \_\_\_\_\_

(Address of applicant): \_\_\_\_\_

\_\_\_\_\_

has applied to Mid Ulster District Council for a Pavement Café Licence at:

(Name and address of premises) \_\_\_\_\_

\_\_\_\_\_

A copy of the application may be inspected free of charge at the addresses below.

Persons wishing to make representation to the Council regarding the proposals must make representations in writing specifying the grounds of the objection, the name and address of the person making it and it must be signed by them or their agent.

Any objection relating to the application **must** be made within **28 days** of the date of this Notice to the Environmental Health Service at one of the addresses below.

Cookstown Office, Burn Road, Cookstown, BT71 6DT  
Dungannon Office, Circular Road, Dungannon, BT45 6EN  
Magherafelt Office, Ballyronan Road, Magherafelt, BT80 8DT

It should be noted that where an objection is made after the 28 day time period referred to, but before a final decision is taken on the application, it is appropriate for the Council to consider it, if there is sufficient reason why the objection was not made within the stated time period.

(Applicant's Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

**This site notice must be displayed for the whole of the period of 28 days in a prominent place at or near the premises so that it can be conveniently read by the public.**

**On the completion of 28 days the applicant must complete and return this form, along with the notice.**

I \_\_\_\_\_ (*applicant*) hereby certify that for a period of at least 28 days ending on \_\_\_\_\_, I displayed this site notice in a prominent place at or near the premises so that it could conveniently be read by the public.

(*Applicant's Signature*): \_\_\_\_\_

(*Date*): \_\_\_\_\_

Completed forms should be sent to one of the following addresses:

Cookstown Office, Burn Road, Cookstown, BT71 6DT

Dungannon Office, Circular Road, Dungannon, BT45 6EN

Magherafelt Office, Ballyronan Road, Magherafelt, BT80 8DT



# **Guidelines to the Licensing of Pavement Cafés Act (Northern Ireland) 2014**

**July 2019**

## **Guidelines to the Licensing of Pavement Cafés Act (Northern Ireland) 2014**

<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
Introduction, Background and Overview of Act	1
<b><u>Requirements for a pavement café Licence:</u></b>	
<b>Section 1</b> – Meaning of ‘Pavement Café’ Licence and other key terms	5
<b>Section 2</b> – Offence of placing furniture on public area without a pavement café licence	8
<b><u>Application for Licence:</u></b>	
<b>Section 3</b> – Application for licence	10
<b>Section 4</b> – Grant or refusal of licence	12
<b>Section 5</b> – Form, duration etc. of licence	18
<b>Section 6</b> – Conditions of licence	20
<b><u>Renewal:</u></b>	
<b>Section 7</b> – Renewal of licence	22
<b><u>Variation on application of licence holder:</u></b>	
<b>Section 8</b> – Variation of Section 6(3) conditions or of area covered by licence	24
<b>Section 9</b> – Variation by removal of alcohol prohibition	26
<b><u>Applications: General Provision:</u></b>	
<b>Section 10</b> – Applications: general provision	27
<b>Section 11</b> – Notice of application to be displayed	30
<b>Section 12</b> – Fees	31
<b><u>Change in persons carrying on business:</u></b>	
<b>Section 13</b> – Change in persons carrying on business	33

## **Revocation, suspension and compulsory variation:**

<b>Section 14</b> – Revocation of licence	34
<b>Section 15</b> – Suspension of licence	36
<b>Section 16</b> – Compulsory variation of Section 6(3) conditions	38
<b>Section 17</b> – Compulsory variation: prohibition of alcohol	39
<b>Section 18</b> – Compulsory variation of area covered by licence	40
<b>Section 19</b> – Notice of revocation, suspension of compulsory variation	42

## **Matters to be recorded in register:**

<b>Section 20</b> – Matters to be recorded in register under Licensing Order	44
--	----

## **Appeals:**

<b>Section 21</b> – Appeals	45
-----------------------------	----

## **Powers of entry, removal etc.:**

<b>Section 22</b> – Powers of entry and inspection	47
<b>Section 23</b> – Power to remove unlicensed furniture	48
<b>Section 24</b> – Offence of obstruction	49

## **Supplementary:**

<b>Section 25</b> – Service of notice and documents	50
<b>Section 26</b> – Power to make further provision	51
<b>Section 27</b> – Regulations	52
<b>Section 28</b> – Consequential amendments	53
<b>Section 29</b> – Byelaws	54
<b>Section 30</b> – Definitions	55
<b>Section 31</b> – Short title	56
<b>Section 32</b> – Commencement	57

<b>Schedule – Amendments to other legislation</b>	<b>58</b>
<b>Annex A - Guidance for Applicants - Northern Ireland Licensing Forum</b>	<b>61</b>

## **Introduction, background and overview of Act**

### **Introduction**

These guidelines have been prepared by the Department for Communities (the Department) to assist district councils with the implementation of the statutory licensing scheme contained in the Licensing of Pavement Cafés Act (NI) 2014 (“the Act”). The Act balances the need for robust regulation with the necessary flexibility for councils to respond to local circumstances.

The guidelines highlight the key legislative responsibilities of district councils, the criteria to be met, and procedures to be followed, when dealing with applications and the conditions under which pavement café areas should operate. The licensing scheme is subject to the Provision of Services Regulations 2009 (PSR 2009), which transposed into UK law Directive 2006/123/EC of the European Parliament (“the EU Services Directive”) on services in the internal market. District councils will need to be satisfied that their procedural rules or other requirements under the licensing scheme comply with PSR 2009. The guidelines address certain issues in this respect which may be of assistance to councils. Councils may find it helpful to refer to the [Handbook on the Implementation of the Services Directive](#) available on the European Commission’s website.

The Act prohibits the operation of a pavement café except under licence granted by a district council. Applications will be considered from owners of cafés, restaurants, pubs or other premises selling food or drink to the public. Councils will be able to impose a range of licence conditions, charge a reasonable fee and may vary, suspend or revoke the licence in certain circumstances. The Act provides councils with a power to remove facilities at unlicensed pavement cafés and several new offences are being created to aid enforcement.

A number of important safeguards have been included in the licensing regime to ensure that authorised pavement cafés will be safe, well managed and sensitive to the needs of street users and the surrounding area. While the operation of pavement cafés can provide commercial opportunities for local businesses, district

councils must ensure that the needs of pedestrians and other street users are not detrimentally affected.

It is the responsibility of each district council to design an appropriate pavement café licensing regime for their area within the boundaries of the relevant legislation. Councils may wish to use these guidelines as a basis for preparing their own operational guidance. In addition, the Licensing Forum Northern Ireland has produced a 'Guidance for Applicants' document to assist those intending to make an application for a pavement café licence. A copy of this guidance can be seen at Annex A. Although it is hoped that the guidelines will prove useful they should not be treated as a complete and authoritative statement of the law which is contained only in the Act and Regulations made under it.

For information on obtaining these guidelines in large print, Braille format or in another language, please contact:

**Social Policy Unit  
Level 8, Causeway Exchange  
1-7 Bedford Street  
Belfast  
BT2 7EG**

**Telephone: 02890 823140**  
**Email: [social.policy@communities-ni.gov.uk](mailto:social.policy@communities-ni.gov.uk)**

These guidelines are also available to download from the Department's website

<https://www.communities-ni.gov.uk/topics/dsd-law-and-legislation/social-law>

## **Background**

Pavement cafés are becoming a familiar sight across the UK and Ireland. They can help develop a local café culture, which in turn can have a positive effect on urban environments, promote town and city centres, contribute to the general well-being of communities and appeal to tourists.

Tourism is a key driver for economic growth in Northern Ireland offering business opportunities to create jobs and generate wealth. Visitor attitude surveys undertaken by the Northern Ireland Tourist Board have highlighted the attractiveness of a vibrant café culture, especially for short breaks where shopping, good food and evening entertainment are high on the agenda. Well regulated pavement cafés can contribute to an excellent visitor experience, enhance the attractiveness of a local area and encourage visitors to stay longer and spend more.

In both Great Britain and the Republic of Ireland, café, restaurant and pub owners may apply to their local council for permission to place tables and chairs on the pavement outside their premises. However, in Northern Ireland the provision of tables and chairs on the pavement is prohibited under the Roads (NI) Order 1993. TransportNI has taken a pragmatic approach to the setting-up of pavement cafés, but this is regarded as an interim arrangement, pending introduction of a formal licensing scheme.

The Department 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 concluded that a common, clear and transparent legislative framework was required to enable a pavement café culture to develop. A public consultation was carried out during 2011 to gauge opinion on a proposal to regulate pavement cafés and introduce a licensing scheme administered by local councils. There was a very positive response to the consultation with the majority of respondents calling for councils to be given both licensing and enforcement powers. A Bill, incorporating a statutory licensing scheme, to be administered solely by district councils, was introduced into the NI Assembly in June 2013 and received Royal Assent in May 2014.

The statutory licensing scheme contained in the Act follows the model used in the Street Trading Act (NI) 2001; however there are a number of significant differences between the two schemes. The Act contains 32 sections and one Schedule. A brief overview is set out below. Copies of the Act, Explanatory Notes and associated Regulations are on sale at The Stationary Office (TSO) Parliamentary Press, Mandela Way, London SE1 5SS.

### **Overview of Act**

Sections 1 and 2 set out the general requirement to obtain a pavement café licence. Sections 3 to 12 set out the application procedures for the grant, renewal, and variation of a licence. Section 13 sets out the procedure when there are multiple licence holders and there is a change of a business partner. Sections 14 to 19 deal with revocation, suspension and compulsory variation of a licence. Section 20 makes provision for certain matters to be recorded in the register under liquor licensing law. Section 21 specifies the circumstances in which appeals can be made against a decision of a district council. Sections 22 to 24 give district councils powers of entry, removal etc for the purpose of enforcing the provisions of the Act. Supplementary matters are set out in Sections 25 to 32. The Schedule contains amendments to other legislation as a consequence of the introduction of the Act. The Act and the associated regulations came into operation on 1 October 2016.

## **Section 1 - Meaning of “pavement café licence” and other key terms**

### **General**

- 1.1 Section 1 provides a definition of a ‘pavement café licence’, what the licence authorises and other key terms for the purpose of the Act. It is important to make clear a pavement café 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.

### **What does a pavement café licence authorise?**

- 1.2 Subsection (1) provides that a pavement café licence authorises a person who carries on a business involving the supply of food or drink (in or from premises) to place furniture (tables, chairs etc) on a public area for use by customers. A pavement café licence cannot be regarded as a substitute for any other licence or consent that may be required by statute or otherwise. For example, a pavement café associated with a mobile kiosk may be licensed under the Act and the kiosk itself may be licensed under the Street Trading Act (NI) 2001.
- 1.3 Councils will wish to note that in general the pavement café area will need to be set-up immediately adjacent to the premises. However, a licence for a remote café may be considered where:
- the proposed café does not interfere with both vehicular and pedestrian traffic flow; and
  - the licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.

### **Licensable area**

- 1.4 Sub-sections (2) to (7) are interpretative sections which clarify terms used to describe the nature of the licence. Subsection (2) makes clear that a ‘public area’ is a place in the open air to which the public has access, without payment, ‘as of right’. However, a ‘public area’ which has been acquired or

established as a 'market' is excluded. The same exemption applies to street trading.

- 1.5 The Street Trading Act (NI) 2001 has a broader definition of the licensable area which allows councils to control pitches established on open 'private' land close to a road. However, while a pavement café licence can be granted which would authorise interference with public rights over land it would not authorise interference with private rights, or afford any immunity against actions in respect of that interference. Anyone considering the establishment of a pavement café on private land is advised to contact the planning office of the relevant council for planning advice and guidance. In regard to this, full details of a proposed pavement café, may be required by the council planning office. That said, it is possible that pavement café furniture can potentially be placed on land that is both privately owned and public land. A practical example is where a café owner wishes to extend their café into a public area beyond the boundary of their site. In such circumstances a council could licence the public area.
- 1.6 Subsection (3) describes what 'furniture' is – tables, chairs, umbrellas to facilitate use by customers (this would exclude facilities used for the purpose of serving customers such as a till, bar, deli counter). All furniture, including menu boards associated with the pavement café area, must be placed within the licensed area. Café furniture should be appropriate to the locality and be of good quality. Ideally, the colour and design of furniture should provide a contrast with the background to take account of the needs of those with a visual impairment.
- 1.7 Subsections (4) and (5) place 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 (within 20 minutes). This definition highlights the temporary nature of a licensed pavement café, and the '20 minute' time limit adds meaning to the definition of what temporary furniture actually is and how quickly the furniture should be able to be removed. While it is expected that councils will require the furniture to be taken in after each day's trading, the Act

only requires that the furniture be capable of being removed within 20 minutes. It should be noted that Section 6 (Conditions of licence) provides a power to impose conditions to ensure the provision of adequate storage facilities when the pavement café is not in operation.

## **Section 2 - Offence of placing furniture on public area without pavement café licence**

### **General**

- 2.1 Section 2 creates an offence of placing furniture, for use for the consumption of food or drink, on a public area without a pavement café licence. This section 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.

### **Details**

- 2.2 Subsection (1) provides that an offence is committed, if at any time while a business involving the supply of food or drink (in or from premises) is being carried on, a 'responsible person' places furniture (for use for the consumption of food or drink) on a public area.
- 2.3 However, subsection (2) provides that no offence is committed if the furniture is temporary and the person carrying on the business holds a pavement café licence in respect of the associated premises.
- 2.4 Subsections (3) and (4) clarify the meaning of 'responsible person' for the purpose of establishing who has committed the offence. They make clear that an offence may be committed by either the person (or persons) carrying on the business or any person concerned in the management of the premises, or both.
- 2.5 Subsection (5) makes clear that an offence is committed even if the furniture was placed on a public area prior to commencement of the Act.
- 2.6 Subsection (6) provides that a person guilty of the offence is liable on summary conviction to a fine of up to £1,000 (level 3 on the standard scale). The pavement café offences are on a par with those for street trading.

2.7 Subsection (7) makes it a defence for the person charged to prove that they took all reasonable precautions and exercised due diligence to avoid commission of the offence. This is a common provision for offences of this nature. The effect is that the responsible person can escape liability for the offence only where they can prove that steps were taken to avoid commission of the offence, for example through the issue of 'Instruction Manuals' or 'Codes of Conduct' for management of the premises.

## **Section 3 - Application for licence**

### **General**

- 3.1 Section 3 provides details of how a 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 café area (or areas) associated with the premises. Multiple applications are not permitted. This section should be read in conjunction with Section 10 (General provision) and Section 11 (Notice to be displayed).

### **Who may apply?**

- 3.2 Subsections (1) and (2) provide that a person who carries on, or proposes to carry on a business (in or from premises) involving the supply of food or drink to the public, may apply for a licence. Premises eligible to apply range from cafés, restaurants and pubs, to retail outlets providing refreshments, takeaways and supermarkets with a deli counter.
- 3.3 Subsection (3) makes clear that only one set of premises may be specified in each application. Therefore, a retail chain could not submit a multiple application covering a range of outlets.

### **Requirement to prepare plan of area**

- 3.4 Subsection (4) requires the applicant to submit a plan showing the location and dimensions of the proposed pavement café area(s) and to meet any other requirements specified by the district council. The plan should show the relationship between the pavement café area and the streetscape, for example, the proposed pedestrian corridor and existing street furniture in the immediate vicinity. Therefore a council may require the production of a definitive plan, drawn-to-scale, which includes details of the following:
- all utilities/services, including lampposts, bollards, fire hydrants, manholes, cycle stands, litter bins and other items of street furniture located within the immediate vicinity; and

- dimensions of the proposed pavement café area and the dimensions and location of the tables, chairs or other items of furniture to be located within the area.
- 3.5 It is possible that the pavement café area associated with each premises may be split into two or more areas.
- 3.6 Subsection (5) clarifies that an application must be sent to the district council where the premises are situated.
- 3.7 Subsection (6) draws the attention of prospective applicants to the need to have regard to the provisions of Section 10 (General provision) and Section 11 (Notice to be displayed).
- 3.8 Subsection (7) clarifies that ‘a relevant business’ means ‘a business involving the supply of food or drink to members of the public’, or of a section of the public.

## **Section 4 - Grant or refusal of licence**

### **General**

- 4.1. Section 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 with the Department for Infrastructure's TransportNI 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.
- 4.2 The likely adverse impacts on individuals or vehicles will need to be considered very carefully, particularly in relation to disabled people, older people and others with mobility needs including all pram and wheelchair users. 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.

### **Grounds for refusal**

- 4.3 Subsections (1) and (2) require a council to grant a pavement café licence unless one of the following grounds for refusal applies:
- the proposed pavement café area is unsuitable for that purpose;
  - the use of that area as a pavement café would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity, or in disorder;
  - the applicant has made, in connection with an application, a statement they knew to be false, or failed to fix a notice to the premises specified in the application, or has had a pavement café licence revoked for reasons within the applicant's control.
- 4.4 These powers are widely drawn to enable a council to take into account any factor it considers reasonable. However, a council cannot simply introduce a blanket ban on pavement cafés in its district. That said, a council may decide

that a particular street or local area is unsuitable for the occupation of pavement cafés. For example, there is a better prospect of multiple pavement cafés being permitted in a pedestrianised area as opposed to a busy high street. A council will however need to be able to justify any decision to exclude an area from the licensing scheme.

- 4.5 Subsection (3) applies where it is proposed to ‘split’ the pavement café area. A council will be able to refuse an application should the grounds in Section 4(2)(a) or (b) apply to one or more areas.

#### **Consultation with TransportNI on pedestrian access and other issues**

- 4.6 Subsection (4) places a duty on the district council, when considering a new application, to consult with TransportNI before arriving at a decision. Such consultation will ensure that any possible implications for vehicular traffic or pedestrians, public safety issues, and environmental impacts are properly taken into account.
- 4.7 The creation of a statutory licensing scheme is regarded as a very positive step in terms of safeguarding the interests of pedestrians, particularly disabled people, older people and those with mobility needs including all pram and wheelchair users. During the passage of the primary legislation concerns were expressed about the impact of unregulated pavement cafés on the mobility needs of the disabled. Assurances were given that these guidelines would place strong emphasis on placing the needs of all pedestrians at the heart of the licensing regime. Although TransportNI is considered best placed to advise councils on access issues, councils must have due regard to all current disability discrimination legislation when deliberating on pavement café licence applications.
- 4.8 The Act does not specify minimum standards in terms of the size, layout or design of a pavement café. District councils are best placed to make these decisions on a site by site basis, taking account of the characteristics of the site, the space available and the proposed layout of the café area. The views of TransportNI in this respect will be an important consideration. The

pavement café will also need to be designed in such a way as not to compromise access for vehicles for business or other purposes. Councils should ensure that any pavement café design/plan be Disability Discrimination Act 1995 compliant.

- 4.9 The Department considers it may be beneficial for a council official and a prospective applicant to have a preliminary discussion before a formal application is submitted. An initial site meeting may help the prospective applicant better understand the council's licensing requirements and whether a proposal is likely to be problematic in terms of size, location or layout or other local factors. This may save time and avoid the expense involved in working up an application that has little prospect of being approved. Although TransportNI will endeavour to attend site meetings during the pavement café application process, more straight forward applications should be pursued through correspondence.
- 4.10 Each application should be evaluated on its own merits. To a large extent the potential for establishment of a pavement café will very much depend on the type of premises and the facilities available, the existing streetscape, traffic volume and level of footfall, proximity to crossings, bus stops and taxi ranks. The needs of other users of the highway will be the paramount consideration. Councils must ensure that a clear pedestrian route is maintained at all times.
- 4.11 TransportNI advise that they take their guidance regarding preferred footway widths from ***The Design Manual for Roads and Bridges – TA 90/05 – The Geometric Design of Pedestrian, Cycle and Equestrian Routes.***<sup>a</sup> As a result, they state the minimum width of a footway should be 2.0m and that this may be reduced to an absolute minimum of 1.5m in constrained environments. A width of 1.0m should only be allowed if there are single point obstructions, for example a litter bin or street lighting column. TransportNI also advise that any reduced footway widths should be restricted to 6.0m in length.

---

<sup>a</sup> The Geometric Design of Pedestrian, Cycle and Equestrian Routes  
[www.standardsforhighways.co.uk/.../dmrb/vol6/section3/ta9005](http://www.standardsforhighways.co.uk/.../dmrb/vol6/section3/ta9005)

- 4.12 A pavement café area should always be enclosed by way of adequate screening, where practicable, with the extent of enclosure depending on size and location. Barriers of the ‘post and chain’ type should be discouraged at all times as they are potentially hazardous to pedestrians. Portable, sturdy barriers with a top rail should be recommended. The main purpose of any pavement café screening should be to provide a clear demarcation between pedestrians and cafés and to enhance health & safety regarding obstructions, tripping hazards and to provide a clear indicator for the visually impaired. However, TransportNI advise that screening should not be placed in areas where it is likely to block visibility splays (sight lines) such as at junctions.

#### **Consultation with PSNI**

- 4.13 Subsection (4) also places a duty on the district council, when considering a new application associated with a public house, to consult with the PSNI, before arriving at a decision.

#### **Consultation with others**

- 4.14 Subsection (5) allows a council to consult any other organisations or individuals in connection with an application.

#### **Consideration of planning issues**

- 4.15 Councils consider and determine planning applications for local and major development proposals in accordance with legislation, planning policy, supplementary planning guidance and other relevant material considerations. Depending on the circumstances of a proposed pavement café on a public area, a planning application may be required if development is to be undertaken. Anyone considering the establishment of a pavement café is advised to contact the planning office of the relevant council for advice and guidance on whether an application for planning permission is required or not. To this end, the council planning office may request from a potential applicant, full details of a proposed pavement café, including drawings identifying the site, proposed layout and means of enclosure, as well as providing details of proposals such as alteration works, canopies, blinds, awnings and details of proposed advertisements/signage. Other consents, such as Consent to

Display an Advertisement and Listed Building Consent may also be required and, if so, an application in each appropriate case should be submitted to the planning office of the relevant council.

#### **Pavement café abutting other premises**

- 4.16 Where an application contains a proposal to establish a pavement café abutting neighbouring premises, councils may wish to consider making it a requirement for the applicant to obtain the written consent of the owner or operator of the adjoining premises. Councils will have the final say as to whether a licence should be granted and will need to be able to justify all licensing decisions.

#### **Rates liability on grant of licence**

- 4.17 The Department of Finance has advised that for the vast majority of cases a marginal, seasonal increase in seating of a temporary nature under the terms of the licence would be regarded as de-minimis in rating terms and would not warrant a change in Net Annual Value (NAV). Where the type of arrangement goes beyond the marginal, seasonal or temporary arrangement and it is assessed or evidenced that it adds to the rental value of the premises, an adjustment to the NAV may be warranted. Each case will be judged on its merits and will be the decision of the District Valuer. Councils will wish to refer prospective applicants, who have concerns in this respect, to the District Valuer, Land and Property Services.
- 4.18 Subsection (6) provides that a council must take into account any representations made within the period allowed for representations before deciding on an application. The period allowed for representations is 28 days beginning with the first working day after the date when the application is received [Section 10(5)].

#### **The Disability Discrimination Act 1995 and Equality Legislation**

- 4.19 Section 75 of the Northern Ireland Act 1998 states that councils must have due regard as to the equality of opportunity in the exercise of their functions. It is

important to note that all public bodies have a duty under the Disability Discrimination Order 2006 to promote the participation of people in public life.

4.20 Councils should have regard to an applicant's adherence to the Disability Discrimination Act 1995 (DDA) in the pavement café licence application process. The DDA requires all businesses to make '*reasonable adjustments*' in relation to access to premises and services by the disabled and that the reasonable adjustment duty in relation to goods, facilities or services is 'anticipatory' in nature and owed to the public at large.

Examples to which the duty applies within the DDA are:

- access to and use of any place which members of the public are permitted to enter; and
- facilities for entertainment, recreation or refreshment.

Councils should also be mindful that under Section 49A of the Disability Discrimination Act 1995 public authorities, when carrying out their functions must have due regard to the need to:

- promote positive attitudes towards disabled people; and
- encourage participation by disabled people in public life.

## **Section 5 - Form, duration etc of licence**

### **General**

- 5.1 Section 5 gives the Department a power to prescribe the form of a pavement café licence and district councils the power to vary the pavement café area applied for and decide how long a licence should last.

### **Regulations**

- 5.2 Subsections (1) and (2) provide a regulation making power for the Department to prescribe the form of a pavement café licence. *The Licensing of Pavement Cafés (Form of Licence) Regulations (Northern Ireland) 2016* and associated explanatory memorandum can be accessed at <http://www.legislation.gov.uk/nisr/2016/132/contents/made>. The licence must specify the holder of the licence and the premises to which it relates and be accompanied by a plan showing the location and dimensions of the pavement café area.

### **Variation of area**

- 5.3 Subsection (3) provides a council with a degree of discretion to vary the area covered by the pavement café proposed in the original application, rather than simply reject the application. However, after variation, at least 75% of the authorised area must fall within the area proposed in the original application. Any proposal to make more substantial changes to the pavement café area would require a fresh application, thereby giving interested parties an opportunity to make representations.
- 5.4 Subsection (4) allows a council to licence one or more public areas, if proposed in the application.

### **Duration of licence**

- 5.5 Subsections (5) and (6) give a council the discretion to decide how long it wants a licence to remain valid. A council can also decide whether licences should all terminate (and hence fall for renewal) on a common date. The

default position is that all pavement café licences are to be granted for an indefinite period unless a council has specified a period in the licence. If a council limits the duration of a licence it will need to be able to justify this. The PSR 2009 also provides for circumstances where multiple applications are submitted in respect of a specific area. In such circumstances, authorisations should be set for an appropriate limited period, and may not be open to automatic renewal nor confer any other advantage on the provider whose authorisation has just expired. To not grant time-limited licences in these circumstances would be against competition policy.

- 5.6 Subsection (7) allows a licence holder to surrender the licence at which point it will become invalid.

## **Section 6 - Conditions of licence**

### **General**

- 6.1 Section 6 provides the power for a council to impose conditions on a pavement café 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 café 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.

### **Standard conditions**

- 6.2 Subsection (1) requires a pavement café licence to specify that temporary furniture must not be placed on any public area other than the area covered in the licence.
- 6.3 Subsection (2)(a) requires the inclusion of a prohibition on the consumption of alcohol at a pavement café, where the associated premises are licensed for off-sales only. This is to prevent alcohol purchased in the off-sales from being consumed in the pavement café area. Subsection (2)(b) allows a council to include an alcohol prohibition in any other pavement café licence, if it is satisfied that consumption of alcohol in the area covered by the licence would be likely to result in disorder.

### **Further conditions**

- 6.4 Subsection (3) gives a council discretion to specify further conditions as it considers reasonable, including conditions relating to the design and layout of the pavement café area, operating times, arrangements for the storage of furniture and the payment of fees. Councils have the discretion to waive fees or impose a nominal charge. The licence holder may also be required to notify the council about matters specified in licence, for example material changes to

the associated premises such as the grant of a liquor licence, and to surrender any earlier pavement café licence associated with the premises.

- 6.5 Councils may wish to include a range of conditions to promote a safe, clean and generally welcoming environment in the pavement café area. To avoid the pavement café from becoming little more than a smoking area, councils may wish to make it a requirement that patrons be seated. Councils will wish to be assured that licence holders have suitable public liability insurance in place and could require the policy to be made available for inspection on request.
- 6.6 In most instances it would be appropriate to impose a condition requiring tables and chairs to be removed after each day's trading. This would facilitate councils and utilities in terms of inspection/repairs, cleaning, weed spraying, access etc. Councils will also need to be satisfied that adequate storage facilities are available.

## **Section 7 - Renewal of licence**

### **General**

7.1 Section 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 Section 4(4). On renewal, a council may vary the licence by:

- varying any conditions on the licence;
- specifying any new conditions;
- making a variation of the area; or by
- adding or removing an alcohol condition.

### **Renewal applications**

7.2 Subsection (1) allows a licence holder to apply for a renewal of a licence. This assumes that a council has decided not to grant the original licence for an indefinite period.

7.3 Subsection (2) requires a licence holder to follow the same procedure as for new applications (Section 10 and Section 11).

7.4 Subsection (3) requires a council to renew the licence unless one of the grounds in Section 4(2) applies.

### **Consultation with statutory authorities**

7.5 Subsection (4) allows a council to consult any organisations or individuals in connection with an application. Consultation with the statutory authorities mentioned in Section 4(4) on renewals is not obligatory. However, TransportNI would welcome the opportunity to comment on any proposal to renew a licence. It is expected that council officials will be in regular contact with relevant TransportNI operational staff about pavement café issues. Therefore, any concerns about the continued use of an area for this purpose should already have been identified, and taken into account by the council, in advance of renewal. As a matter of good practice, councils should give TransportNI

advance notice of renewals, to facilitate comment. There is no statutory requirement to consult with the PSNI on renewals and such action would only be necessary if there were concerns about public order.

- 7.6 Subsection (5) provides that a council must take into account any representations made within the period allowed for representations before deciding on an application. The period allowed for representations is 28 days beginning with the first working day after the date when the application is received [Section 10(5)].

#### **Licence duration and general conditions on renewal**

- 7.7 Subsection (6) makes clear that any decision as to the form, duration and conditions of a licence (Section 5 and Section 6) should be taken in the same way as for initial grant.
- 7.8 Subsection (7) permits a council to make certain variations to the licence on renewal. A council may vary the licence conditions, specify new conditions, vary the area of the licence, insert an alcohol condition or remove an existing alcohol condition.
- 7.9 Subsection (8) allows a council to vary the area covered by a licence or the licence conditions, or specify new conditions, whether or not such an application has been made.
- 7.10 Subsection (9) sets out the procedure for dealing with an application to have an alcohol condition removed at the time of renewal. In such circumstances a council will be required to have regard to Section 9 which includes a requirement to consult the police.
- 7.11 Subsection (10) makes clear that an 'alcohol condition' has the same meaning as in Section 17, that is, a condition requiring the licence holder not to permit persons to consume alcohol on the area covered by the licence.

## **Section 8 - Variation of Section 6(3) conditions or of area covered by licence**

### **General**

- 8.1 Section 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 Section 4(4).

### **Nature of variation**

- 8.2 Subsections (1) and (2) allow a licence holder to apply for a variation of either the conditions of a pavement café licence [specified in Section 6(3)] or the area covered by the licence.

### **How applications are to be made**

- 8.3 Subsection (3) provides that the variation procedure will broadly follow that for new applications [Section 10 and Section 11]. However, a council will not be obliged to consult the statutory authorities mentioned in Section 4(4).
- 8.4 Subsection (4) sets out the options available to a council when considering an application for a variation of licence conditions. A council may make the variation applied for, vary other existing conditions and/or impose new conditions, or simply refuse the application.
- 8.5 Subsection (5) provides that a council must grant an application for variation of an area unless one of the grounds in Section 4(2) applies.
- 8.6 Subsection (6) allows a council to consult any other organisations or individuals in connection with an application.
- 8.7 Subsection (7) provides that a council must take into account any representations made within the period allowed for representations before deciding on an application. The period allowed for representations is 28 days

beginning with the first working day after the date when the application is received [Section 10(5)].

- 8.8 Subsection (8) clarifies that a council can also remove any conditions when considering a variation.
- 8.9 Subsection (9) limits the extent to which an area may be varied to 75% of the authorised area. A council will not be able to vary the area applied for but must either grant or refuse the application in accordance with Section 8(5).
- 8.10 Subsection (10) clarifies that where variation of an area is to occur, all of the grounds in Section 4(2) apply to the new area to be granted.

## **Section 9 - Variation by removal of alcohol prohibition**

### **General**

- 9.1 Section 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.

### **Nature of variation**

- 9.2 Subsections (1) and (2) allow a licence holder to apply to the council to have an alcohol prohibition, imposed under Section (2)(b), removed. This section does not apply where the associated premises is an off-sales.

### **How applications are to be made**

- 9.3 Subsection (3) makes clear that the procedure for new applications [Section 10 and Section 11] broadly applies.
- 9.4 Subsection (4) allows a council to either remove the prohibition, or if it is satisfied that its removal is likely to result in disorder, refuse the application.
- 9.5 Subsection (5)(a) requires the council to consult with the police before deciding on such an application. Subsection (5)(b) allows a council to consult any other organisations or individuals in connection with an application.
- 9.6 Subsection (6) provides that a council must take into account any representations made within the period allowed for representations before deciding on an application. The period allowed for representations is 28 days beginning with the first working day after the date when the application is received [Section 10(5)].

## **Section 10 - Applications: general provision**

### **General**

- 10.1 Section 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. The penalty on summary conviction is a fine of up to £1,000.

### **Nature of applications**

- 10.2 Subsection (1) provides that 'an application' means an application for the grant or renewal of a pavement café licence, or variation of a licence under Section 8 (conditions/area) or Section 9 (alcohol prohibition).

### **How applications are made**

- 10.3 Subsection (2) requires an application to be made in writing and in such form, and at such time, as a council decides. A council may require a fee to be paid on application in accordance with Section 12.
- 10.4 Subsection (3) requires the applicant to confirm that the notice required by Section 11 has been fixed to the associated premises. The council can request additional information in connection with the application.
- 10.5 Subsections (4) and (5) require the council to make the application available to be viewed and publicise the fact that representations may be made within 28 days.
- 10.6 Subsection (6) allows a council to request further information or the production of documents (for example a liquor licence) in support of an application.

10.7 Subsection (7) requires a council, if it refuses an application, to state the grounds for refusal and advise the applicant of the appeal rights under Section 21.

10.8 Subsection (8) 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 (level 3 on the standard scale). The pavement café offences are on a par with those for street trading.

### **Provision of Services Regulations 2009**

10.9 As noted earlier, district councils will need to be satisfied that their procedural rules or other requirements under the licensing scheme comply with the Provision of Services Regulations 2009. These requirements include, but are not limited to, the following:

- *Length of time to process an application*
  - a council must publish the length of time expected to process an application and make this time period public in advance (e.g. on their website);
  - this time period can be extended once for a specified period, but a council must notify the applicant of this extension and the reasons for it;
  - if a council fails to process the application either within the initial time period set or after the extended period, a pavement café licence is deemed to be granted.
- *Acknowledgement of application*
  - all applications for a pavement café licence are to be acknowledged as quickly as possible;
  - this acknowledgement letter must refer to the time period for processing the application;
  - the letter should state that the licence is deemed to be granted if this period (or an extended time period) has expired.
- *Make application procedures public in advance*

- the particular authorisation procedures of a council must be made public in advance (on the website, or in another form considered reasonable by a council).

## **Section 11 - Notice of application to be displayed**

### **General**

- 11.1 Section 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.

### **Nature of application**

- 11.2 Subsection (1) provides that 'an application' means an application for the grant or renewal of a pavement café licence, or variation of a licence under Section 8 (conditions/area) or Section 9 (alcohol prohibition).
- 11.3 Subsection (2) requires the applicant to fix a notice to the premises on the day the application is sent to the council. The notice must be positioned so as to be visible and legible to the public until the end of the 28 day period allowed for representations. The notice period begins on the first working day after the date of the application is received by a council.
- 11.4 Subsection (3) allows a council to specify the form of the notice and sets out the range of information that should be included in the notice.

## **Section 12 - Fees**

### **General**

- 12.1 Section 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. Section 12 does not specify a fee structure. Councils can determine the time and way in which fees are to be paid.

### **Circumstances in which a fee may be charged**

- 12.2 Subsection (1) allows a council to charge a fee for the grant or renewal of a pavement café or for its variation under Section 8 (conditions/area) or Section 9 (removal of alcohol prohibition).

### **Level of fee**

- 12.3 Subsections (2) and (3) allow a council to charge fees which will enable it to offset the cost of administering the pavement cafés licensing scheme. Councils have discretion to charge a reduced fee or waive all charges. The licensing scheme cannot be used as a general revenue raiser.

### **Procedure following the setting of fees**

- 12.4 Subsections (4) to (12) place a requirement on a council to publicise the fees it intends to charge and make available the details of how these were calculated. Councils may decide to publish such information on their website or by other means. There will be a 28 day period for representations to be made.
- 12.5 If a council refuses an application for the grant, renewal or variation of a pavement café licence, it must refund any fee less any costs necessarily incurred in arriving at a decision. A refund must be given if a licence is revoked due to circumstances beyond the control of the licence holder. The amount to be refunded should take into account the period in which the licence has been in force and costs incurred in relation to grant or renewal. Councils have discretion to make refunds in any other circumstances.

### **Recovery of enforcement costs - court ruling**

- 12.6 Councils will be aware of various court proceedings in relation to Timothy Martin Hemming and others v Westminster City Council (the effect of the EU Services Directive on the level of fees councils may set in relation to licensing of sex shops). The Supreme Court overturned the earlier Court of Appeal decision to the extent that it held that Article 13(2) of Directive 2006/123/EC deals only with authorisation procedures and fees relating to applications for permission to access or exercise a service activity, such as operating a sex shop. It does not prevent the imposition on those who receive licences of proportionate charges to fund the cost of administering and enforcing the licensing regime. A link to the Supreme Court decision and associated press release is attached for information.

[https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2013\\_0146\\_PressSummary.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0146_PressSummary.pdf)

[https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2013\\_0146\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0146_Judgment.pdf)

## **Section 13 - Change in persons carrying on business**

### **General**

- 13.1 Section 13 makes provision for changes to persons carrying on a business involving a partnership.

### **Circumstances in which licence can remain in force**

- 13.2 Subsections (1) and (2) provide that where a licence refers to a business partnership and a partner dies or withdraws from the business, the licence may remain in force, with any remaining person(s) named in the licence treated as the licence holder.
- 13.3 Subsections (3) and (4) provide that if there is an addition to the partnership the new partner will be given the authority to place furniture on the area (similar to employees), but will not be deemed a licence holder of the current licence.
- 13.4 Subsection (5) makes clear that a pavement café licence may not be transferred from one person to another.

## **Section 14 - Revocation of licence**

### **General**

- 14.1 Section 14 sets out the circumstances in which a district council may revoke a pavement café licence. This can be for disciplinary reasons, for example, following breaches of the licence conditions, or due to circumstances beyond the control of the licence holder, due to permanent changes in site topography. Section 15 provides for suspension in certain circumstances. Councils may wish to introduce a '3 strikes and you're out' policy to breaches of the licence conditions, with the nature of non-compliance determining whether the licence should be revoked, or suspended for a limited period. Councils should consult with the PSNI before revoking a licence on public order grounds.

### **Circumstances in which revocation may be considered**

- 14.2 Subsection (1) allows a council to revoke a pavement café licence at any time if it is satisfied that:
- the licensed area (or part thereof) has become, or is going to become, unsuitable for that purpose;
  - continuing to use all, or any part of the public area, for that purpose would cause undue interference or inconvenience to persons or vehicles in the vicinity, or be likely to result in disorder; or
  - the licence holder has –
    - in connection with any application, made a statement he/she knew to be false, or failed to fix a notice to the premises specified in the application;
    - persistently failed to comply with any condition of a licence;
    - failed to pay any fee (without good reason) to the council.
- 14.3 Subsection (2) clarifies that where the pavement café area is split into more than one site a council may still choose to revoke the licence if only one site is considered unsuitable for continuing use under subsection (1)(a) or (1)(b). A council could alternatively vary the area under Section 18.

## **Procedures**

- 14.4 The procedures that a district council must follow in carrying out the revocation process are set out in Section 19.

## **Section 15 - Suspension of licence**

### **General**

15.1 Section 15 sets out the circumstances in which a district council may suspend a pavement café licence. A council could suspend a licence when utilities maintenance is required or road works are scheduled. The licence could also be suspended for disciplinary reasons. During any period of suspension, the pavement café licence would be invalid. Therefore, a council could remove any furniture placed in the public area during a period of suspension and prosecute for operating an unlicensed pavement café.

### **Circumstances in which suspension may be considered**

15.2 Subsection (1) allows a council to suspend a pavement café licence if:

- the licensed area (or part thereof) is, or is going to become, temporarily unsuitable for that purpose; or
- continuing to use all, or any part of the public area, for that purpose would, temporarily, cause undue interference or inconvenience to persons or vehicles in the vicinity, or be likely to result in disorder.

15.3 Subsection (2) allows a council to suspend a licence (as an alternative to revoking it under Section 14) if the licence holder has made false a statement in connection with any application, or failed to fix a notice to the premises specified in the application, or has persistently failed to comply with any condition of a licence, or failed to pay any fee (without good reason) to the council.

15.4 Subsection (3) makes clear that if a licence is suspended and a person continues to place furniture on the public area he/she will be committing an offence under Section 2 (placing furniture without a licence).

15.5 Subsection (4) provides that the licence will remain valid for the purpose of surrender, renewal or variation, requirement to give notice about fees and powers of entry and inspection.

15.6 Subsection (5) applies where a pavement café area is split into more than one site. A council may choose to suspend the licence even if only one site is considered temporarily unsuitable for continuing use.

### **Procedures**

15.7 The procedures that a district council must follow in carrying out the suspension process are set out in Section 19.

## **Section 16 - Compulsory variation of Section 6(3) conditions**

### **General**

- 16.1 Section 16 allows a council to vary any conditions attached to a pavement café licence where there has been a material change in circumstances.

### **Circumstances in which compulsory variation may be considered**

- 16.2 Subsection (1) allows a council to vary conditions imposed under Section 6(3) and to add new conditions.
- 16.3 Subsection (2) provides that a council may make a variation only where there has been a material change in circumstances. This may happen if, for example, the associated premises obtain a liquor licence and a council considers it necessary, on police advice, to restrict opening hours.

### **Procedures**

- 16.4 The procedures that a district council must follow in carrying out the compulsory variation process are set out in Section 19.

## **Section 17 - Compulsory variation: prohibition of alcohol**

### **General**

- 17.1 Section 17 allows a council, at any time, to impose a condition prohibiting the consumption of alcohol at a pavement café.

### **What an alcohol condition means**

- 17.2 Subsection (1) allows a council, at any time, to vary a pavement café licence which does not have an alcohol condition by including such a condition, subject to the terms of subsection (3).
- 17.3 Subsection (2) clarifies that 'an alcohol condition' means a condition requiring the licence holder not to permit the consumption of alcohol in the public area.
- 17.4 Subsection (3) provides that prohibition may be imposed where the associated premises (for example a supermarket) obtains an off-sales licence, or the council is satisfied that consumption of alcohol in the pavement café area is likely to result in disorder. The council would need to consult the local police if there were public order concerns.

### **Procedures**

- 17.5 The procedures that a district council must follow in carrying out the compulsory variation process are set out in Section 19.

## **Section 18 - Compulsory variation of area covered by licence**

### **General**

- 18.1 Section 18 allows a council to vary the area covered by a pavement café 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.

### **Circumstances in which compulsory variation may be considered**

- 18.2 Subsection (1) allows a council to vary the area covered by a pavement café licence if it has become (or is going to become) unsuitable for use as a pavement café or continued use for this purpose is likely to result in undue interference or inconvenience to persons or vehicles in the vicinity, or in disorder.
- 18.3 Subsection (2) makes it clear that variation should only be considered as alternative to revocation.
- 18.4 Subsection (3) provides that where the pavement café is split into two or more separate areas any part may cease to be covered by the licence. However, it should be noted that variation of the area will be subject to the limits imposed by Section 8(9); that is after the variation at least 75% of the original area is retained. A more substantial change to the 'footprint' would require the licence to be surrendered and a new application made. This would protect the integrity of the application process by giving neighbours or regular users of the pavement in the vicinity, an opportunity to comment on the suitability of the revised plan.
- 18.5 Also, if it makes a variation of the area, the council may, in accordance with Section 16 (material change in circumstances) vary existing licence conditions imposed under Section 6(3), or specify new conditions.

## **Procedures**

- 18.6 The procedures that a district council must follow in carrying out the compulsory variation process are set out in Section 19.

## **Section 19 - Notice of revocation, suspension or compulsory variation**

### **General**

- 19.1 Section 19 sets out the administrative steps that a council must take when it intends to revoke, suspend or compulsorily vary a pavement café licence. It must notify the licence holder of its intention in this regard and state the grounds for the proposed revocation, suspension or variation. The licence holder will have an opportunity to make representations to the council within a specified period, before a final decision is taken. In most instances this period will be at least 21 days. If considered necessary in the public interest a council may decide to revoke, suspend or vary a licence even though no notification has been given.

### **Notification procedure**

- 19.2 Subsection (1) provides that before deciding to revoke, suspend or make a compulsory variation, a council must notify the licence holder in writing. This may be done electronically under Section 25.
- 19.3 Subsection (2) requires the notice to state the grounds for revocation etc, and that representations, in writing, may be made to the council until the end of a period specified in the notification. This will provide transparency in the decision-making process and ensure that a council is in full possession of the facts, before making final decisions.
- 19.4 Subsection (3) provides for a notification period of 21 days, unless there are particular circumstances which make a shorter period necessary in the public interest, for example where a utility requires access to the café area to carry out urgent repairs.
- 19.5 Subsection (4) makes clear that a council must take into account any representations properly made.
- 19.6 Subsection (5) allows a council to revoke etc a licence without notice if there are circumstances that make it necessary to do so in the public interest.

### **Notification of decision**

- 19.7 Subsection (6) requires a council to give the licence holder notice, in writing, if it decides to revoke etc the licence.
- 19.8 Subsection (7) sets out what must be included in the notice issued under subsection (6).
- 19.9 Subsection (8) provides for the decision to revoke etc to take effect on the date the notice is served, if there are particular circumstances which make this necessary in the public interest. Otherwise, subsection (9) requires a 'reasonable' period of notice to be given.
- 19.10 Subsection (10) allows a notice given under subsection (6) to be withdrawn at any time before it takes effect.
- 19.11 Subsection (11) allows a council to repeatedly extend a period of suspension, for example if street repairs are taking longer than expected. There is also a power for a council to revoke a period of suspension, for example if work is completed early.
- 19.12 Subsection (12) makes clear that if a council intends to extend a period of suspension, it must follow the administrative steps as for the original suspension.
- 19.13 Subsection (13) makes clear that this section applies to compulsory variation under Section 16 (licence conditions), Section 17 (alcohol prohibition imposed) or Section 18 (area varied). Therefore, a council would not be required to give notice if the licence holder applied for a variation of a licence.

## **Section 20 - Matters to be recorded in register under Licensing Order**

### **General**

- 20.1 Section 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. This will provide legal clarity and aid enforcement of the licensing law by the police.

### **Power to make regulations**

- 20.2 Subsection (1) gives the Department the power to make regulations requiring a district council to notify the court about pavement café licences associated with premises licensed under the Licensing (NI) Order 1996. It is important that the court is notified as the pavement café area will be treated as part of the licensed premises for the purpose of the licensing law, in accordance with paragraph 2 of the Schedule.
- 20.3 Subsection (1)(b) allows the Department to specify documents that must be sent to the court, for example the licence and plan showing the layout of the area. Subsection (1)(c) gives the Department the power to specify in regulations what the court must do when it receives a notification. The court will be required to note the addition of a pavement café, associated with the premises, in the licensing register and keep any documents sent by the council.
- 20.4 Subsection (2) allows the Department to specify details of entries to be made in the licensing register and the type of documents that must be kept. *The Licensing of Pavement Cafés (Register of Licences) Regulations (Northern Ireland) 2016* and associated explanatory memorandum can be accessed at <http://www.legislation.gov.uk/nisr/2016/127/made>
- 20.5 Subsection (3) formally defines several terms for the purpose of this section.

## **Section 21 - Appeals**

### **General**

21.1 Section 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), or to limit the duration of a licence.

### **Circumstances in which there is a right of appeal**

21.2 Subsection (1) allows an appeal to be made against a refusal to grant or renew a licence, to vary either the area or conditions of the licence (Section 8), or to remove an alcohol prohibition imposed under Section 9.

21.3 Subsection (2) provides that where a licence is to be granted an appeal may be made against any alcohol prohibition [Section 6(2)(b)] or other conditions imposed under Section 6(2)(3). An appeal can also be made against a decision to vary the area proposed in the application [Section 5(3)].

21.4 Subsection (3) provides for an appeal where a council decides to limit the duration of a licence under Section 5(5)(a).

21.5 Subsection (4) allows the holder of a licence to lodge an appeal in other circumstances, as follows:

- Where, on renewal, the licence is renewed subject to a variation under Section 7(7);
- a council makes a variation to the licence conditions, in addition to that applied for under Section 8(4)(b);
- the licence is revoked [Section 14] or suspended [Section 15]; or

- a council compulsorily varies the conditions or public area, or imposes an alcohol prohibition [Sections 16, 17 and 18].

21.6 Subsection (5) provides for an appeal where a council extends a period of suspension.

### **Procedures**

21.7 Subsection (6) provides that all appeals shall be to a Magistrate's court. It should be noted that decisions taken by a council may continue to have full effect notwithstanding the lodging of a formal appeal. For example, where a council has decided to revoke a licence, it can require the pavement café area to remain closed while the appeal is being pursued.

21.8 Subsection (7) limits the period for lodging an appeal to 21 days from the date a council issues the notice of refusal.

21.9 Subsection (8) allows the court to make an order which the council must abide by. The order must fall within the scope of the council's powers under the Act.

## **Section 22 - Powers of entry and inspection**

### **General**

22.1 Section 22 enables a person authorised by a district council to enter and inspect premises, to which a pavement café licence or application relates, for certain purposes. These are:

- to determine whether an initial application, renewal, or variation should be granted, and what conditions should be specified;
- to determine if a condition specified in the licence is being or has been complied with; or
- to determine if a licence should be revoked, suspended or varied.

### **Powers of entry/inspection**

22.2 Subsection (1) provides that an officer (authorised by a council for the purposes of the Act) may at any reasonable time enter and inspect premises to which a pavement café licence relates. The officer may also inspect items of furniture or other objects placed on the public area. Other objects may include for example gas heaters, umbrellas etc.

22.3 Subsection (2) explains the purpose for which the powers are to be exercised. That is to determine whether an application (including a renewal or variation) should be granted and what conditions should be imposed. An officer may also use the powers to ascertain whether the licence conditions are being complied with or to determine whether the licence should be revoked, suspended or varied.

22.4 Subsection (3) requires an authorised officer to carry identification.

22.5 Subsection (4) precludes an authorised officer from entering a dwelling.

## **Section 23 - Power to remove unlicensed furniture**

### **General**

- 23.1 Section 23 gives a district council the power to remove furniture from unlicensed pavement cafés. The power does not extend to premises where a pavement café licence is operative. It places a duty on the council to notify the owner. A council may recover the cost of removing and storing the furniture and, if not claimed within three months, may dispose of it.

### **Circumstances in which furniture may be removed**

- 23.2 Subsection (1) allows a council to remove unlicensed 'temporary furniture'.
- 23.3 Subsection (2) provides that 'temporary furniture' is unlicensed if it is placed on a public area in the course of a business involved in the supply of food or drink and the associated premises does not hold a pavement café licence. Both criteria must be fulfilled before a council can remove the furniture. It should be noted that TransportNI has powers to remove items of furniture, being used for other purposes, which are causing an obstruction.
- 23.4 Subsection (3) places a duty on the council to notify the person responsible (if known) as to how the furniture may be recovered and allows the council to recover the cost of removing and storing the furniture.
- 23.5 Subsection (4) provides that the person who placed the furniture on the public area must pay any charges before the items are returned.
- 23.6 Subsection (5) allows a council to dispose of the furniture if it remains unclaimed after three months. While we are aware that councils in GB may act more quickly we believe three months is a reasonable period (there is a legal precedent for adopting such an approach under 'The Unauthorised Encampments (NI) Order 2005').

## **Section 24 - Offence of obstruction**

### **General**

- 24.1 Section 24 creates an offence of intentionally obstructing an authorised officer exercising the powers to enter and inspect premises or to remove unlicensed furniture. The penalty on summary conviction is a fine of up to £1,000.

### **Nature of offence**

- 24.2 Subsection (1) creates an offence of obstructing an authorised officer in the exercise of powers under Section 21 to enter and inspect premises, or to remove unlicensed furniture under Section 23. An authorised officer means any person authorised by a council for the purposes of the Act.
- 24.3 Subsection (2) provides that a person guilty of the offence is liable on summary conviction to a fine of up to £1,000 (level 3 on the standard scale). The pavement café offences are on a par with those for street trading.

## **Section 25 - Service of notices and documents**

### **General**

- 25.1 Section 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.

### **How notices and documents may be served**

- 25.2 Subsection (1) provides that any notice or document that is served on or given to any person, can be sent by electronic communication, where an electronic address has been given. This is without prejudice to Section 24(2) of the Interpretation Act (NI) 1954 which sets out the arrangements for serving documents where none is specified in the relevant enactment.
- 25.3 Subsection (2) sets out the conditions for serving documents and notices electronically. This can be done where the document or notice is capable of being accessed by the recipient, is legible and is in a sufficiently permanent format.
- 25.4 Subsection (3) provides that any application received in electronic format can be processed by a council in that way, unless the applicant asks the council to communicate in printed form.
- 25.5 Subsection (4) provides a definition of electronic communication which is borrowed from the Electronic Communications Act (NI) 2001. There 'electronic communication' is defined as 'a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of an electronic communications network, or by other means but while in electronic form'.

## **Section 26 - Power to make further provision**

### **General**

- 26.1 Section 26 allows the Department to make consequential and transitional provisions where necessary for the purpose of implementing the Act. This can be regarded as standard for an Act of this nature.

### **Nature of regulation making powers**

- 26.2 Subsection (1) gives the Department the power to make regulations in order to give full effect to any provision in the Act. The regulations may be of supplementary, incidental, consequential or transitional nature. Regulation making powers will allow the Department to deal simply and effectively with any legal impediments to the legislative intention, for example where an old, obscure or overlooked statutory provision relevant to the licensing scheme is subsequently identified.
- 26.3 Subsection (2) clarifies that the regulations may amend any statutory provision. Section 27(2) provides that any such regulations may not be made unless approved by the Assembly under the 'draft affirmative procedure'.

## **Section 27 - Regulations**

### **General**

- 27.1 Section 27 provides that regulations made under the Act 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.

### **Assembly procedure**

- 27.2 Subsection (1) provides that regulations made under the Act will be subject to negative resolution procedure in the Assembly. However, subsection (2) requires that any regulations made under Section 26(2) that amend any statutory provision will be subject to the 'draft affirmative procedure'. This means the regulations must be approved at a plenary session of the Assembly.

## **Section 28 - Consequential amendments**

### **General**

- 28.1 Section 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 standard for an Act of this nature.

### **Nature of consequential amendments**

- 28.2 Section 28 gives legal effect to the various provisions set out in the Schedule, subject to the consequential amendments specified in the Schedule. The Schedule contains amendments to the Roads (NI) Order 1993, the Licensing (NI) Order 1996, the Street Trading Act (NI) 2001 and the Criminal Justice (NI) Order 2008. These amendments are described in the narrative to the Schedule.

## **Section 29 - Byelaws**

### **General**

29.1 Section 29 provides an exemption for certain pavement cafés from the restrictions on drinking in designated areas. People consuming alcohol at these pavement cafés would otherwise be committing an offence. This provision has been included so as to avoid the need for councils to make new byelaws should they decide to authorise pavement cafés to operate in designated areas.

### **Extent of exemption**

29.2 Subsection (1) exempts 'a relevant pavement café area' from the restrictions on drinking in areas designated by district councils.

29.3 Subsection (2) defines this area as that shown in the pavement café plan required under Section 5 and which for the time being has permitted furniture on it. The premises associated with the pavement café area must be either a pub, hotel, restaurant, guesthouse (with a restaurant open to the public), or a refreshment room in a public transport premises, licensed under the Licensing (NI) Order 1996. Additionally, the pavement café area must not be subject to an alcohol condition imposed by the council.

29.4 Subsections (3), (4) and (5) clarify the meaning of certain terms for the purpose of this section. In particular, subsection (4) explains that an alcohol condition means a condition requiring a pavement café licence holder not to permit the consumption of alcohol in the public area.

29.5 It should be noted that the Schedule provides a similar exemption for areas that may be designated by councils under the Criminal Justice (NI) Order 2008.

## **Section 30 - Definitions**

### **General**

- 30.1 Section 30 clarifies important terms used in the Act. Where a definition has not been provided, the word or phrase should be given its everyday meaning, unless defined in the Interpretation Act 1954.

### **Definitions**

- 30.2 Subsection (1) provides a list of definitions for key words and phrases used throughout the Act.
- 30.3 Subsection (2) clarifies that for the purpose of consumption of alcohol at pavement cafés the associated premises are licensed premises only where a licence has been granted under the Licensing (NI) Order 1996. This does not however apply where the licence is an occasional licence. By their very nature occasional licences are provided for one-off events where the sale of alcohol would not otherwise be permitted, as such it would be impracticable for a council to complete the authorisation procedure associated with an application for a pavement café licence.
- 30.4 Subsection (3) clarifies that while a council may only grant a pavement café licence to a business involved in the supply of food or drink this need not be the main business activity. For example, a clothing retailer with a café or a supermarket with a deli counter would be eligible to apply for a pavement café licence.
- 30.5 Subsection (4) clarifies that any stall, moveable structure, vehicle or vessel with a pavement café will be treated as the associated premises for licensing purposes.
- 30.6 Subsection (5) provides that where any portable structure with a licensed pavement café is relocated it will be necessary for a new application to be made, as the licence is site specific.

## **Section 31 - Short title**

### **General**

- 31.1 Section 31 gives this legislation its short title which is the 'Licensing of Pavement Cafés Act (Northern Ireland) 2014'.

### **Title**

- 31.2 Section 31 provides that this piece of legislation will be known as the Licensing of Pavement Cafés Act (Northern Ireland) 2014. The incorporation of the word 'Licensing' was considered important as it accurately describes the Act's purpose which is to introduce a statutory licensing scheme for pavement cafés. It is acknowledged that the use of this word adds 'liquor licensing' connotations to the legislation which might lead to some confusion as to the Act's primary function.

## **Section 32 - Commencement**

### **General**

- 32.1 Section 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.

### **How Act will be commenced**

- 32.2 Subsection (1) provides that the main provisions of the Act will come into effect on such day or days as the Department may by order appoint. An exception is made in relation to Sections 30, 31 and 32 which will come into effect on Royal Assent for technical reasons. Order making powers are administrative in nature and not subject to Assembly control. It will fall to the Minister for Communities to decide the timescale for commencement following liaison with district councils as to their readiness to begin receiving applications.
- 32.3 Subsection (2) allows the Department to include transitional provisions in the order so as to facilitate a smooth transition from the present unregulated activity to a fully regulated licensing regime. This could include the phased introduction of certain provisions.

## **Schedule - Amendments to other legislation**

### **General**

1. The Schedule contains amendments to other primary legislation as a consequence of the introduction of the Act. A new Part 5A 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 Act (NI) 2001 so that a pavement café licensed by a council can operate lawfully.

### **Roads (NI) Order 1993**

2. Paragraph 1 of the Schedule amends Article 71 (2) of the Roads (NI) Order 1993 in order that a pavement café licensed by a council, to operate on a road, can do so lawfully.

### **Licensing (NI) Order 1996**

3. Paragraph 2 of the Schedule inserts a new Part 5A into the Licensing (Northern Ireland) Order 1996 which introduces new Articles 76A to 76E. A licence is granted under Article 5 of the Licensing Order to certain categories of premises to sell intoxicating liquor for consumption on or off the premises. The Licensing Order does not expressly state where a sale of intoxicating liquor takes place. Therefore the common law is relied on and such a sale is considered to take place at the location where the intoxicating liquor is appropriated to the contract, that is, the bar in the relevant premises. Consequently, Part 5A extends the area where alcohol may be consumed to include a pavement café area associated with certain categories of licensed premises but does not extend the area where intoxicating liquor can be sold.

Article 76A provides definitions for certain expressions used in new Part 5A in relation to pavement café areas.

Article 76B provides that for certain purposes a pavement café area, associated with certain categories of premises which may be granted a liquor licence under Article 5 of the Licensing Order, is to be treated as part of such premises. This ensures that a hotel, a guest house in which the business of a restaurant is carried on, a restaurant, or a refreshment room in public transport premises, which would otherwise be prohibited from selling intoxicating liquor for consumption off the premises, is permitted to sell intoxicating liquor for consumption in the pavement café area associated with the premises. This relaxation applies where the pavement café licence does not contain a condition prohibiting the consumption of alcohol in the pavement café area. Article 5 premises excluded are a conference centre, higher education institution, a seaman's canteen, indoor arena, places of public entertainment, on the basis that these premises are for paying patrons.

Article 76C provides that the pavement café area associated with relevant premises licensed under Article 5 of the Licensing Order will be subject to the licensing law. The relevant premises are a pub, a hotel, a restaurant, a guest house in which the business of a restaurant is carried on, or a refreshment room in public transport premises. The licensing law will apply to the pavement café area in terms of opening hours, drinking up time following the end of the permitted opening hours, drink promotions, sale or permitting the sale of alcohol to young people under 18 years of age, preservation of order and legal proceedings. It should be noted that where the relevant premises has a late licence, this permission will not extend to the pavement café area. This provision applies where the pavement café licence does not contain a condition prohibiting the consumption of alcohol in the pavement café area. In particular it ensures that where an off-sales section of a pub is not allowed to sell alcohol for consumption on the premises a similar prohibition applies to a pavement café area associated with the premises.

Article 76D provides that young persons under 18 years of age are not allowed in a pavement café area associated with a pub, a hotel, a restaurant, a guest

house in which the business of a restaurant is carried on, or a refreshment room in public transport premises where that area is used exclusively or mainly for the consumption of alcohol. A children's certificate in force for any part of the above premises will be treated as applying to the associated pavement café area. Following a complaint made under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981, a court may revoke a children's certificate relating to a pavement café area associated with any of the above mentioned premises.

Article 76E provides that it is a level 3 offence on the standard scale (£1,000) for any person who has purchased alcohol in an off-licence premises (which includes supermarkets) to consume it in the pavement café area associated with such premises. It is also an offence for a licence holder if such consumption takes place with his/hers or his/hers servant's or agent's knowledge or consent.

#### **Street Trading Act (NI) 2001**

4. Paragraph 3 of the Schedule amends Section 2 of the Street Trading Act (Northern Ireland) 2001 to ensure that activity engaged in by a pavement café licence holder in the area covered by the pavement café licence (if this is done in the course of a business supplying food or drink to the public), is excluded from the need to obtain a street trading licence.

#### **Criminal Justice (NI) Order 2008**

5. Paragraphs 4 and 5 of the Schedule amend Articles 70 and 72 of the Criminal Justice (Northern Ireland) Order 2008 to provide an exemption for certain pavement cafés from the restrictions on alcohol consumption in designated areas. The exemption applies to any pavement café area associated with a pub, hotel, restaurant, guesthouse (with a restaurant open to the public), or a refreshment room in a public transport premises, licensed under the Licensing (Northern Ireland) Order 1996. Additionally, the pavement café area must not be subject to an alcohol condition imposed by the council.

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



## **Guidance for Applicants**



## CONTENTS

Section	Page
Foreword	3
Definitions	4
Introduction	5
Legislation	5
Purpose of this guidance	5
What is a Pavement Café Licence?	5
Who may apply?	6
Is the area you want to use suitable for a Pavement Café?	6
Hours of operation	6
What enforcement powers do the Council have?	7
Making an application	8
Public notice	9
Consultation	9
Can my licence application be refused?	9
How long will it take to process my application?	10
<b>Appendix 1:</b> Suitability criteria for a Pavement Café Licence	11
<b>Appendix 2:</b> Sample Application Form	16
<b>Appendix 3:</b> Notice of Application	20
<b>Appendix 4:</b> Examples of Pavement Café plans	21

## Foreword

1. Under the provisions of the Licensing of Pavement Cafés Act (Northern Ireland) 2014, district councils may grant Pavement Café Licences on such terms and conditions and subject to such restrictions as may be reasonably specified in the licence.
2. In specifying any terms, conditions or restrictions in a licence, district councils shall have regard to the guidelines which have been prepared by the Department for Communities (the Department) to assist district councils with the implementation of the statutory licensing scheme. These guidelines highlight the key legislative responsibilities of district councils including the conditions under which pavement café areas should operate.
3. The Department's guidance document is available on their website, as follows:  
<https://www.communities-ni.gov.uk/topics/dsd-law-and-legislation/social-law>.
4. Additionally district councils, through the Licensing Forum Northern Ireland (LFNI), have produced this supplementary guidance to assist with the administrative procedures associated with the Act and to promote consistency of approach across Northern Ireland. However, it is not intended that this guidance should be treated as a complete and authoritative statement of the law which is contained only in the Act and Regulations made under it.
5. A district council may modify or dispense with such aspects of this guidance as it thinks appropriate and adopt it for use within their own council area.

## **Definitions**

<b>Furniture</b>	Includes tables, chairs, umbrellas, barriers, heaters, menu boards, etc. which must be of a temporary nature and can be removed within 20 minutes.
<b>Licensed area</b>	A public area as defined on a plan approved by the Council as a pavement café.
<b>Licensed period</b>	The hours and days approved by Council when the licensed area can be used as a pavement café.
<b>Licensee</b>	Shall include their nominee in their absence.
<b>Licensing Order</b>	The Licensing (Northern Ireland) Order 1996.
<b>Pavement Café Licence</b>	The permission given by Council to allow placement of temporary furniture on a specified public area for customers to consume food or drink supplied from the licence holder's premises.
<b>Public area</b>	A place in the open air, to which the public has access, as of right and which is not a market area.
<b>Public nuisance</b>	Noise disturbance or other nuisance caused to residents or neighbouring businesses.

## **Introduction**

Pavement cafés are becoming a familiar sight across the UK and Ireland. They can help develop a local café culture, which in turn can have a positive effect on urban environments, promote town and city centres, contribute to the general well-being of communities and appeal to tourists.

Tourism is a key driver for economic growth in Northern Ireland offering business opportunities to create jobs and generate wealth. Visitor attitude surveys undertaken by the Northern Ireland Tourist Board have highlighted the attractiveness of a vibrant café culture, especially for short breaks where shopping, good food and evening entertainment are high on the agenda. Well-regulated pavement cafes can contribute to an excellent visitor experience, enhance the attractiveness of a local area and encourage visitors to stay longer and spend more.

## **Legislation**

The power to licence pavement cafés is contained in the Licensing of Pavement Cafés Act (Northern Ireland) 2014 and associated Regulations. Further advice or guidance in relation to the legislation can be found on the Department for Communities website at <https://www.communities-ni.gov.uk/topics/dsd-law-and-legislation/social-law> or by contacting your local council.

## **Purpose of this guidance**

This guidance document has been prepared by Officers of the Licensing Forum Northern Ireland to help those intending to make an application for a Pavement Café Licence and to assist with consistency of approach and administration by district councils.

Please note that this document is for guidance only and is not intended to be a definitive interpretation of the legislation.

## **What is a Pavement Café Licence?**

A Pavement Café Licence ('a licence') authorises a person who carries on a business involving the supply of food or drink (in or from premises) to place furniture (tables, chairs, etc.) on a public area for use by customers. This includes cafés, restaurants, pubs, retail outlets providing refreshments, takeaways, supermarkets with a deli counter, etc.

## **Who may apply?**

Any person or persons who carry on a business (in or from a premises), involving the supply of food or drink to the public, may apply for a Pavement Café Licence.

## **Is the area you want to use suitable for a pavement café?**

This guidance document offers advice on what a Council will consider appropriate for a Pavement Café Licence. Appendix 1 outlines suitability criteria required for a Pavement Café Licence, including:

- Pedestrian and vehicular access;
- Size and layout;
- Likely disturbance to other businesses or residents;
- Furniture design;
- Safety issues.

In general, the pavement café area will need to be set-up immediately adjacent to the premises. However, a licence for a remote café may be granted where:

- The proposed café does not interfere with both vehicular and pedestrian traffic flow; and
- The licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.

## **Hours of operation**

A Council will set the hours and days of use for the pavement café area having regard to the location, likely disturbance to local residents or other businesses and representations from interested parties.

Licences will normally be granted for a set period between 8.00 am and 11.00 pm and will be reflective of the normal operating hours of the business. If the premises are licensed under the Licensing Order a licence will not be issued beyond 11.30pm, regardless of any additional operating hours that may apply to the premises.

## **What enforcement powers do the Council have?**

Failure to obtain an appropriate licence or failure to comply with the conditions attached to a licence may result in enforcement action being instigated.

### **Unlicensed pavement cafés**

It is an offence to place furniture (for the use for the consumption of food and drink) on a public area without a Pavement Café Licence. This offence may be liable to a fine of up to £1,000 on summary conviction.

A Council may also remove any furniture placed on the pavement without a licence and may recover the costs reasonably incurred in removing and storing this furniture.

### **Suspension/Compulsory variation of a licence**

A Council may suspend a Pavement Café Licence when maintenance of street utilities is required or road works are scheduled. The licence can also be suspended for a breach of licence conditions, making false statements or failure to pay any fee due to the Council without good reason. During any period of suspension the Pavement Café Licence is invalid and a Council may remove any furniture placed in the public area during the period of suspension.

A Council may also vary a licence where part of an area has become unsuitable or its continued use is likely to result in interference or inconvenience to persons or vehicles in the vicinity or public order concerns.

A Council will consult with PSNI before varying a licence on public order grounds.

### **Revocation of licence**

A Pavement Café Licence may be revoked following breaches of licence conditions, where the licensed area is no longer suitable for temporary furniture, or where there is undue interference or inconvenience to persons or vehicles in the vicinity or public order concerns or where the licence holder has failed to pay their fees. A Council will consult with PSNI before revoking a licence on public order grounds.

### **Notice of revocation, suspension or compulsory variation**

If a Council proposes to revoke, suspend or vary Pavement Café Licence conditions you will be given 21 days' notice unless it is considered that such action needs to be taken immediately in the public interest.

An applicant can make representation to the Council to persuade the Council not to revoke, vary or suspend the licence, within a specified period of 21 days of receipt of notification of council's intention to do this.

## **Making an Application**

Before submitting an application you should read this guide thoroughly to check whether your proposal meets all of the required criteria. You are advised to contact your Council to discuss your proposals PRIOR to submitting your application. This may help to minimise time wasted and expenditure on fees for applications which may later be refused.

### **Licence Fee**

All applications for the grant, renewal or variation of a Pavement Café Licence must be accompanied by the relevant fee determined by the Council. A schedule of fees is available along with the application form and will also be published on the Council's website.

### **Location plan**

A plan must be provided to a scale not less than 1:2500 (preferably ordnance survey) showing the proposed pavement café marked in red and the adjoining streets and properties

### **Proposed Café plan**

A plan must be provided to a scale of not less than 1:100 of the proposed pavement café area, the streetscape and all utilities and services including lampposts, bollards, fire hydrants, manholes, cycle stands, litter bins and any other items of street furniture located within the immediate vicinity. The dimensions of the proposed pavement café area must also be shown. Please see Appendix 4 for examples of pavement café plans.

### **Details of the furniture**

Provide details of the number, materials and types of chairs, tables, umbrellas, etc., to be provided in the café. (Manufacturers details of the furniture or photographs of the existing furniture would be an advantage).

### **Other information**

- **Public liability insurance** cover with minimum indemnity of £5m will be required.
- Evidence of **planning permission** where appropriate.

## **Public notice**

Applicants are required to affix a public notice to the premises on the day the application is made to the Council. The notice must be positioned so as to be visible to the public for 28 days. Interested parties can make representations to the Council in respect of an application. In addition, a Council will make the application details available to be viewed by the public on its website until the end of the period allowed for representations. You must complete the declaration on the application form stating that you have erected the required notice and that you will maintain it in place for 28 days from the date of application. Please see Appendix 3 for the public notice template.

## **Consultation**

It is recommended that businesses discuss their proposals with adjacent property occupiers to inform them of the application.

When assessing an application, a Council will also consult with the following agencies:

- Transport NI; and
- The Police Service for Northern Ireland where the premises is licensed to sell alcohol;
- Any other Council Department, organisations or individuals as appropriate.

Depending on the nature of the application, a Council may also consult with such others as it deems necessary.

## **Can my licence application be refused?**

Yes. Each application will be considered on its own merits. However it may not always be possible to accommodate pavement cafés in all locations due to factors such as visual impact, width restrictions, obstructions or very heavy pedestrian flow.

As an alternative to refusing an application a Council may suggest changes to your proposal to make the proposal acceptable, for example by amending the size and shape of the licensed area.

If your application is refused by the Council you will be informed of that decision and you will be refunded the application fee, less any administrative costs.

Should an application be refused the applicant may appeal the decision to the Magistrates' Court within 21 days of being notified of the Council's decision. Licence holders may also appeal a decision to suspend or revoke a licence or vary the area and conditions of a Pavement Café Licence (as an alternative to revocation), or to limit the duration of a licence.

### **How long will it take to process my application?**

A Council will aim to provide you with a determination within ..... weeks\* from the date of receipt of a completed application including all the required plans and licence proposal. This is to allow full and proper consultation in line with Departmental Guidelines, site visits and consideration of any objections or other input from consultees.

*\* Each council will determine an appropriate timescale for this process.*

## **Appendix 1: Suitability Criteria for a Pavement Café Licence**

### **1. Design**

The applicant must demonstrate that the pavement café will make a positive contribution to the street scene and is in keeping with the surrounding area and other buildings and public realm. Simple robust designs will be preferred and excessive or elaborate detail or signage should be avoided unless clearly justified. Applicants should also demonstrate commitment to the care and/or refurbishment of the external appearance of the building in which the business is housed, to ensure that the appearance of the street scene will be maintained and, where necessary, enhanced.

Street café proposals should not hinder reasonable use of the footpath, cause nuisance to adjacent frontages, or interfere with apparatus or access to apparatus within the footpath. To this end the applicant shall comply with all statutory requirements and obtain all necessary permissions before making a licence application.

### **2. Size and layout**

The Act does not specify minimum standards in terms of the size, layout or design of a pavement café. Each application will be considered on its own merits on a site by site basis, taking account of the characteristics of the site, the space available and the proposed layout of the café area. The pavement café will also need to be designed in such a way as not to compromise access where applicable. Any pavement café design/plan should be compliant with the requirements of the Disability Discrimination Act 1995.

In general the outdoor seating area should:

- Avoid conflict with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs including pram and wheelchair users.
- Avoid conflict between customers going in and out of the pavement café, passing pedestrians and neighbouring premises.
- Ideally be confined to the frontage of its own premises with close integration of internal and external activities however this does not preclude a remote location.

The area to be used must take into account other needs in the immediate vicinity (e.g. kerbside parking, loading bays, bus stops, emergency vehicle access, emergency exits, street cleaning machines, and pedestrian crossings).

Where an application contains a proposal to establish a pavement café abutting neighbouring premises, the Council would advise that the applicant should discuss their proposal with the owners or occupiers of the adjoining premises before an application is made.

The limits of the approved café area will be agreed as part of the application process and it is important that no obstructions such as tables, chairs, portable advertising boards, planters or barriers are placed outside this approved area or left on the pavement or any part of the licensed area outside approved hours. A copy of the Pavement Café Licence (including approved plan) should be available on the premises for inspection on request.

When considering a new application a Council must consult with TransportNI before arriving at a decision. Such consultation will ensure that any possible implications for vehicular traffic or pedestrians, public safety issues, and environmental impacts are properly taken into account.

It is the intention of LFNI to work closely with TransportNI to draw up technical guidelines which will assist with consistency of interpretation across Northern Ireland of the factors to consider for the layout and design of a pavement café and in particular to take account of other pavement and road users.

For examples of pavement café layouts please refer to Appendix 4.

### **3. Boundaries**

When in use, the pavement café area should ideally be enclosed, by way of adequate screening, to define the licensed area and contain the tables and chairs, in order to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians. Portable, sturdy barriers with a top rail are recommended. Bases should not cause an obstruction or tripping hazard to pedestrians.

The enclosure shall be removed both outside the licensed period and when the pavement café is not operating within the licensed period. The materials should, therefore, be lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked into or overturned by a sudden gust of wind.

The design of the barrier should complement the character of the surrounding area and may be required to be of a specific design in order to maintain continuity along the street frontage. The colours and materials used for the enclosure should ensure that it is not visually dominant in longer views but will allow key elements to stand out against the background in close up.

Well maintained planters can be particularly attractive and can be appropriately used as part of the means of enclosure, but must be positioned within the licensed area. In certain circumstances, it may be possible to utilise existing street railings, planters and bins as a suitable means of enclosure.

#### **4. Furniture**

The furniture must be of a reasonable quality design and suitable for outdoor commercial use. Poor quality furniture will not be permitted.

The use of parasols, along with their locations, materials and colours must be specified as part of the design and must be positioned so that their extent is contained within the boundary to ensure they do not present a danger to any user of the pavement café or any other pedestrians.

Limited advertising may be permitted on areas of the pavement café arrangement; however applicants are advised to consult with their respective planning office for guidance. Proposed details should be provided with the application.

All furniture items, e.g. menu boards, signs and portable gas heaters need to be approved as part of the licensed area and details must be included in the application. Where heating is to be provided, this must be of a type suitable for outdoor use and shall be placed within the licensed area. If patio style liquid petroleum gas (LPG) heaters are to be used, they must be adequately secured upright, be fitted with a flame failure device and be maintained in an efficient working order.

All furniture must be of a temporary nature that can be removed within 20 minutes at the end of the permitted period or when access to the area is required by any statutory body or in the event of an emergency.

If the main premises operate for longer than the licensed period the applicant should give consideration where furniture is to be stored, this should be made clear within the application.

#### **5. Environmental implications and other requirements**

It will be the responsibility of the pavement café operator to keep the area clean and free of litter, during licensed/operational hours and after the conclusion of business each day. The conduct of customers using the outdoor seating area will also be the responsibility of the operator.

All food premises should be registered with the Council.

The Pavement Café Licence does not imply an exclusive right to the area and others have rights over it for events, maintenance, repairs, etc.

No amplified music or loudspeaker equipment shall be used in the pavement café area.

Proprietors must promote a safe, clean and generally welcoming environment in the pavement café area. Councils may make it a requirement that patrons using the area are seated at the furniture provided.

Proprietors should give consideration to dividing their outside café area into smoking and non-smoking sections, with each section clearly marked.

## **6. Safety and Control**

It is the responsibility of the applicant to ensure that the pavement café and equipment used comply with all appropriate legislation in relation to food safety, health and safety and alcohol sales requirements.

Applicants are reminded of their duties, to carry out a risk assessment, under the Health and Safety at Work (NI) Order 1978 as they relate to the area and activities covered by the pavement café.

Applicants proposing to licence a pavement café which is remote from their main premises or where they need to cross a public pavement to reach the café area must be able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.

Individual pavement café operators will be responsible for securing full and proper insurance cover.

## **7. Other statutory requirements**

You should also consider any possible Planning and Rates impacts before making your application.

### **Planning Service**

Depending on the circumstances of a proposed pavement café on a public area, a planning application may be required if development is to be undertaken. Anyone considering the establishment of a pavement café is advised to contact the planning office of the relevant council for advice and guidance on whether an application for planning permission is required or not.

### **Rates liability on grant of licence**

The Department of Finance has advised that for the vast majority of cases a marginal, seasonal increase in seating of a temporary nature under the terms of the Pavement Café Licence would not warrant a change in Net Annual Value (NAV). However, where the type of arrangement is assessed or evidenced that it adds to the rental value of the premises an adjustment to the NAV may be warranted. Each case will be considered on its merits and prospective applicants who have any concerns should consult with the District Valuer of the Land and Property Services.

## **8. Consumption of Alcohol**

Alcohol **may** be consumed (but not sold) in a pavement café area unless:

- The business is an 'off sales' as defined under Article 5(1) (b) of the Licensing Order (an off-licence); or
- The Council is satisfied that permitting persons to consume intoxicating liquor in a pavement café would be likely to result in disorder; or
- The premises are not licensed under the Licensing Order (see note below) and are located within an area designated under the bye-laws prohibiting the consumption of intoxicating liquor in designated places.

### **Note**

Only premises licensed as a public house, a hotel, a restaurant or a guest house with a restaurant under the Licensing Order will be permitted to have their licensed area for the consumption of alcohol extended to include the pavement café area.

## Appendix 2 – Sample Application Form

### APPLICATION FOR A PAVEMENT CAFÉ LICENCE

I / We hereby make application to ----- Council under the provisions of the Pavement Cafés Act (Northern Ireland) 2014 for the:

**Pavement Café Application type** - *tick as appropriate*

**Grant**

**Renewal**

**Variation**

#### **Applicant details**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ BT \_\_\_\_\_ Tel: \_\_\_\_\_

Email: \_\_\_\_\_ D o B: \_\_\_\_\_

Designation: Owner / Director / Manager - or otherwise state \_\_\_\_\_

#### **Premises details**

Type of premises: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ BT: \_\_\_\_\_ Tel: \_\_\_\_\_

**Operating details** - Proposed days and hours of operation of the Pavement Café

--

**Licensing details**

Is alcohol to be consumed in the curtilage of the Pavement Café?								YES	NO
Are the premises licensed under the Licensing (NI) Order 1996?								YES	NO
Public House		Off Sales		Restaurant		Hotel		Guest house with restaurant	

**Proposal details:**

Total width of footpath: _____ m			
Is the area within 10 metres of a road junction?		YES	NO
Dimensions of pavement café area: _____ m			
Total number of tables: _____			

Total number of chairs: _____			
Barrier Height: _____	Barriers	YES	NO
	Tap Rails:		

**Site details** – (see guidance document)

Provide an area Location Plan, scale 1:1250, depicting location of Pavement Café and sufficient surrounding area with infrastructure.		Here Enclosed	To Follow
Provide a proposed Site Plan, scale not less than 1:100, depicting the street space occupied, size and type of barriers, number and type of tables and chairs, and any other pavement café furniture.		Here Enclosed	To Follow
Please state where the Pavement Café furniture will be stored when the premises is closed for business.	State		
I confirm that I wish to apply for a Pavement Café Licence for the development as described within this application.		Tick	
I confirm that that the information provided in this application is correct.		Tick	
I confirm that I have placed the appropriate notice in a prominent place at or near the premises that it can easily be read by the public, and that the notice shall be displayed for 28 days from the date of this application.		Tick	

**Applicant signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## CHECKLIST

	<b>Application form</b> - signed and dated.
	<b>Location plan</b> - to a scale of 1:1250 showing sufficient area around the proposed pavement café to enable consideration of all related issues.
	<b>Site plan</b> - to a scale of not less than 1:100 showing access points, building lines, boundaries, kerbs, table and chair arrangement, bins, lighting, trees, other items.
	<b>Details of the furniture</b> - including photographs/manufacturers details.
	<b>Risk Assessments</b>
	<b>Fee</b>
	<b>Public liability insurance</b>
	<b>Planning permission</b> - if appropriate.
	<b>Notice of Application Fixed to Premises</b>

## Appendix 3 – Notice of Application

<> COUNCIL

### Licensing of Pavement Cafés Act (Northern Ireland) 2014

#### PUBLIC NOTICE

#### APPLICATION FOR A PAVEMENT CAFÉ LICENCE

#### NOTICE IS HEREBY GIVEN THAT

(Name of applicant) \_\_\_\_\_

(Address of applicant) \_\_\_\_\_

Has applied to <> Council for a Pavement Café Licence at

(Name and address of premises) \_\_\_\_\_

\_\_\_\_\_

Any objection relating to the application should be made within 28 days of the date of this Notice.

The objection should be addressed to <>.

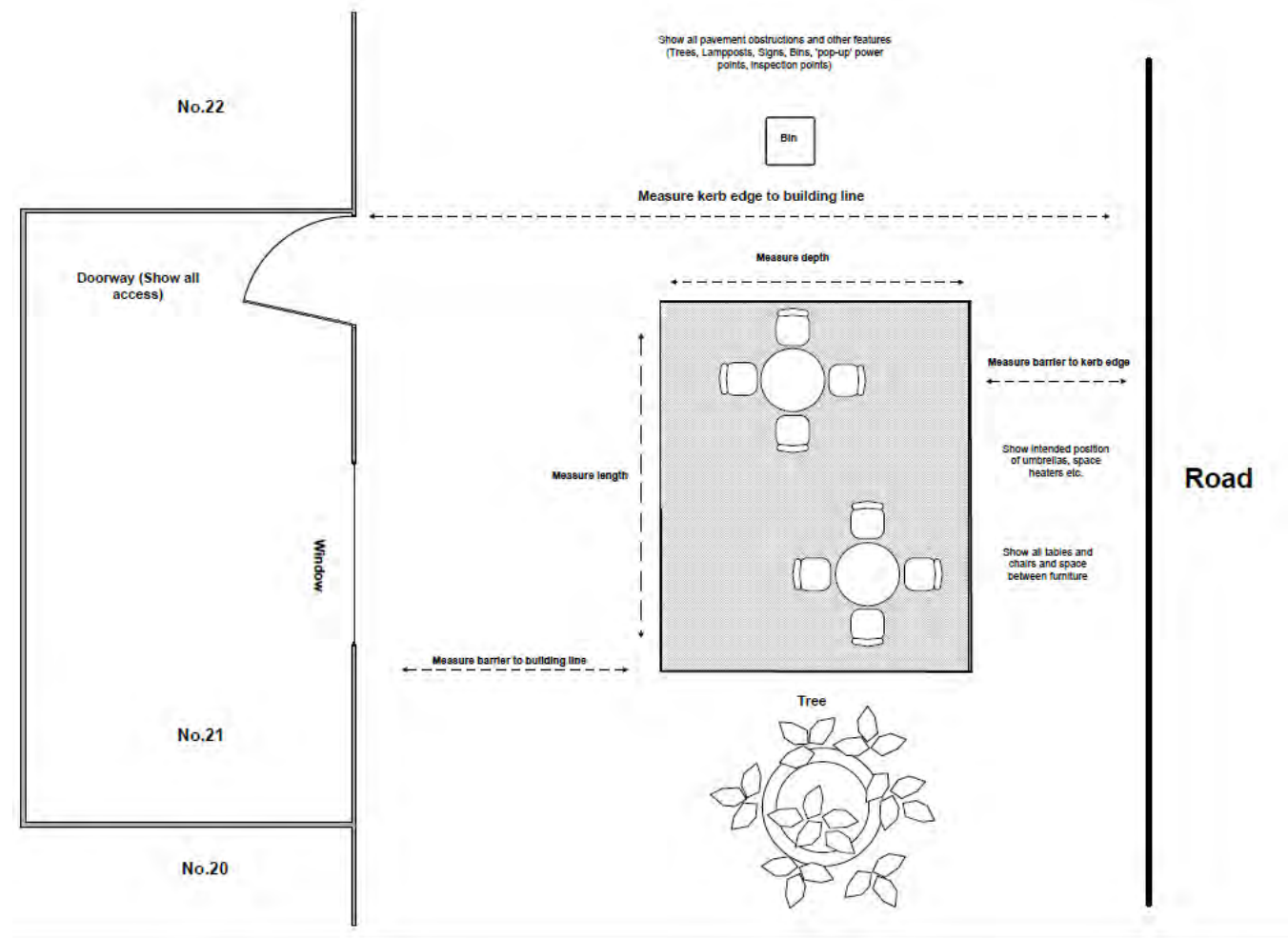
Any objection must be in writing and must specify the grounds of the objection, the name and address of the person making it and must be signed by them or their agent.

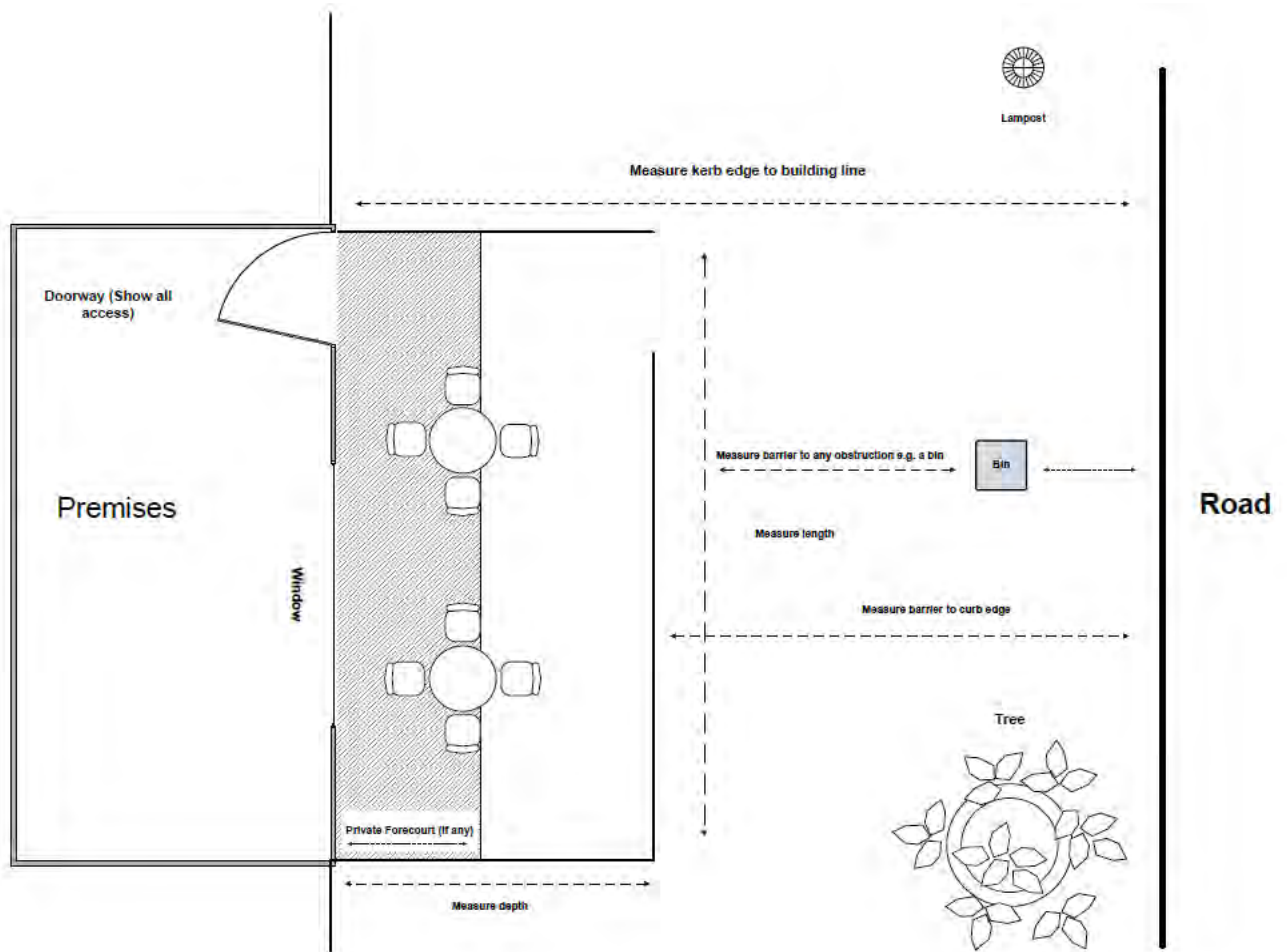
It should be noted that where an objection is made after the 28 day time period referred to, but before a final decision is taken on the application, it is appropriate for the Council to consider it, if there is sufficient reason why the objection was not made within the stated time period.

(Applicant's Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

**This site notice must be displayed for the whole of the period of 28 days in a prominent place at or near the premises so that it can be conveniently read by the public.**

Appendix 4 – Examples of Pavement Café Plans







### **Introduction**

Mid Ulster District Council has a statutory duty to screen its policies, procedures, practices/decisions. This Policy Screening Form and Report assists Council Departments to consider the likely equality and good relations impacts of the aforementioned, if any, placed upon our ratepayers, citizens, service users, staff and visitors to the district.

### **Section 1 – Policy scoping**

This asks the Policy Author to provide details on the policy, procedure, practice and/or decision being screened and what available evidence you have gathered to help make an assessment of the likely impact on equality of opportunity and good relations. Reference to policy within this document refers to either of the aforementioned (policy, procedure, practice, and/ or decision).

### **Section 2 – Screening questions**

This asks about the extent of the likely impact of the policy on groups of people within each of the Section 75 categories. Details of the groups consulted and the level of assessment of the likely impact. This includes consideration of multiple identity and issues.

### **Section 3 – Screening decision**

This guides the Council to reach a screening decision as to whether or not there is a need to carry out an equality impact assessment (EQIA), or introduce measures to mitigate the likely impact, or the introduction of an alternative policy to better promote equality of opportunity.

### **Section 4 – Monitoring**

This provides guidance to the Council on monitoring for adverse impact and broader monitoring.

### **Section 5 – Approval and authorisation**

This verifies the Council's approval of a screening decision by a senior manager responsible for the policy.

### **Appendix A          Screening Process**

# DRAFT SCREENING REPORT

## Section 1 Policy Scoping & Information

The first stage of the screening process involves scoping the policy under consideration which sets the context and confirms the aims and objectives for the policy being screened. Scoping the policy helps to identify constraints as well as opportunities and will help the policy author to work through the screening process on a step by step basis.

<b>1. Policy Name</b>		
Licensing of Pavement Cafés Act (Northern Ireland) 2014 – Guidance for Applicants		
<b>2. Is this an existing, revised or a new policy?</b>		
New policy for Mid Ulster District Council		
<b>3. What is it trying to achieve? (aims/outcomes)</b>		
<p>The aim of this new guidance is to ensure that the Council's Environmental Health Service implement its pavement café licensing regime in a manner that is fair and equitable to all sectors of the community who may be affected by such applications being granted.</p> <p>This will be achieved by the following:</p> <ul style="list-style-type: none"><li>• Providing applicants with the appropriate advice and guidance on the application process and legal requirements;</li><li>• Providing applicants with the appropriate advice and guidance on the suitability criteria for a pavement café licence, which includes but is not restricted to:<ul style="list-style-type: none"><li>○ advice on the size and layout,</li><li>○ boundaries,</li><li>○ type of furniture,</li><li>○ Environmental implications and other requirements</li><li>○ Safety and control</li><li>○ Consumption of alcohol</li><li>○ Management of above</li></ul></li></ul> <p>And</p> <ul style="list-style-type: none"><li>• By consistency of approach from officers who are processing applications for pavement café licences and the enforcement of same.</li></ul>		
<b>4. Are there any Section 75 categories which might be expected to benefit from the intended policy?</b>	Yes	
	No	x

## ***DRAFT SCREENING REPORT***

<b>6. Who initiated or wrote the policy?</b>
The 'Health and Safety, Public Safety & Licensing' section of the Environmental Health Service.
<b>7. Who owns and who implements the policy?</b>
Mid Ulster District Council's Environmental Health Service.

## **DRAFT SCREENING REPORT**

### **Implementation factors**

		Yes	No
Are there any factors which could contribute to/ detract from intended aim/ outcome of the policy?			
<ul style="list-style-type: none"> <li>If yes, are they financial?</li> </ul>			X
<ul style="list-style-type: none"> <li>If yes, are they legislative?</li> </ul>		X	
<ul style="list-style-type: none"> <li>If yes, Please specify</li> </ul>	<p><b>Financial: n/a</b></p> <p><b>Legislative:</b></p> <ul style="list-style-type: none"> <li>Any future potential amendments to the Pavement Café Act (NI) 2014 which may be made by the NI Assembly. For example, in light of the Covid-19 situation and the business communities desire to kick start the hospitality industry by increasing the number of outdoor seating areas where food and drink may be consumed in response to public desire.</li> <li>Difficulties in undertaking appropriate statutory consultations due to time constraints and pressures on other agencies' resources which outside the control of council.</li> </ul>		
<ul style="list-style-type: none"> <li>Other, Please specify</li> </ul>			

### **Stakeholders**

The internal and external (actual or potential) that the policy will be impacted upon

	Yes	No
Staff	x	
Service Users	x	
Other public sector organisations	x	
Voluntary/community/ trade unions	x	
Other, please specify		

### **Others policies with a bearing on this policy**

Policies	Owners
MUDC Enforcement Policy	Director of Public Health & Infrastructure.

## **DRAFT SCREENING REPORT**

### **Available evidence**

Information and available evidence (qualitative and quantitative) gathered to inform the policy under each of the Section 75 groups as identified within the Northern Ireland Act 1998.

Section 75 category	Details of evidence/information																																				
Religious belief	<p>63.77% of the population were brought up in the Catholic religion and 33.46% belong or were brought up in a Protestant and Other Christian (including Christian related) religion. Other religions comprised 690 (0.5%) and None 3,153 (2.28%) of the population (Source: 2011 Census).</p> <table><tr><th>Religion or Religion brought up in</th><th>No.</th><th>%</th></tr><tr><td>Catholic</td><td>88,375</td><td>63.77</td></tr><tr><td>Protestant and Other Christian (including Christian related)</td><td>46,372</td><td>33.46</td></tr><tr><td>Other religions</td><td>690</td><td>0.5</td></tr><tr><td>None</td><td>3,153</td><td>2.28</td></tr><tr><td>Total</td><td>138,590</td><td>100</td></tr></table>	Religion or Religion brought up in	No.	%	Catholic	88,375	63.77	Protestant and Other Christian (including Christian related)	46,372	33.46	Other religions	690	0.5	None	3,153	2.28	Total	138,590	100																		
Religion or Religion brought up in	No.	%																																			
Catholic	88,375	63.77																																			
Protestant and Other Christian (including Christian related)	46,372	33.46																																			
Other religions	690	0.5																																			
None	3,153	2.28																																			
Total	138,590	100																																			
Political opinion	<p>Political party representation can be used as an approximate barometer of political opinion of people within Mid Ulster council area. The most recent local government/ council election in 2014 the percentage 1<sup>st</sup> preference vote share for each of the political party/ independents is detailed bellowed along with representation (seats) on Council (Source: NISRA):</p> <table><tr><th>Party</th><th>Votes</th><th>Percentage</th><th>Council Seats</th></tr><tr><td>SF</td><td>22,587</td><td>41.0%</td><td>18</td></tr><tr><td>DUP</td><td>9,723</td><td>17.6%</td><td>8</td></tr><tr><td>UUP</td><td>9,573</td><td>17.4%</td><td>7</td></tr><tr><td>SDLP</td><td>7,600</td><td>13.8%</td><td>6</td></tr><tr><td>Independent</td><td>2,689</td><td>4.9%</td><td>1</td></tr><tr><td>TUV</td><td>2,380</td><td>4.3%</td><td>0</td></tr><tr><td>Alliance</td><td>250</td><td>0.6%</td><td>0</td></tr><tr><td>UKIP</td><td>195</td><td>0.4%</td><td>0</td></tr></table>	Party	Votes	Percentage	Council Seats	SF	22,587	41.0%	18	DUP	9,723	17.6%	8	UUP	9,573	17.4%	7	SDLP	7,600	13.8%	6	Independent	2,689	4.9%	1	TUV	2,380	4.3%	0	Alliance	250	0.6%	0	UKIP	195	0.4%	0
Party	Votes	Percentage	Council Seats																																		
SF	22,587	41.0%	18																																		
DUP	9,723	17.6%	8																																		
UUP	9,573	17.4%	7																																		
SDLP	7,600	13.8%	6																																		
Independent	2,689	4.9%	1																																		
TUV	2,380	4.3%	0																																		
Alliance	250	0.6%	0																																		
UKIP	195	0.4%	0																																		
Racial group	<p>According to the 2011 Census the overwhelming majority of the population 136,485 (98.48%) were classified as ‘white’. Within this total will be migrant communities, such as Polish, Lithuanian and so forth. Statistics indicate that the number of people in Mid Ulster Local Government District (LGD) born outside Northern Ireland is:</p> <table><tr><th>Place of Birth</th><th>No.</th></tr><tr><td>Great Britain</td><td>4,053</td></tr><tr><td>Republic of Ireland</td><td>2,250</td></tr></table>	Place of Birth	No.	Great Britain	4,053	Republic of Ireland	2,250																														
Place of Birth	No.																																				
Great Britain	4,053																																				
Republic of Ireland	2,250																																				

## **DRAFT SCREENING REPORT**

	EU Countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia)	6,795																												
	Other	2,280																												
	The minority ethnic language profile within the area can serve as a possible indicator of the Black & Minority Ethnic (BME) community profile within the district. The composition of language groups in Mid Ulster LGD area is also noted from the 2011 census by NISRA as:																													
	<table><tr><th>Main Languages of residents in Mid Ulster Council area</th><th>No.</th></tr><tr><td>English</td><td>125,715</td></tr><tr><td>Polish</td><td>2,008</td></tr><tr><td>Lithuanian</td><td>2,039</td></tr><tr><td>Portuguese</td><td>903</td></tr><tr><td>Irish (Gaelic)</td><td>404</td></tr><tr><td>Slovak</td><td>477</td></tr><tr><td>Russian</td><td>297</td></tr><tr><td>Latvia</td><td>261</td></tr><tr><td>Hungarian</td><td>117</td></tr><tr><td>Chinese</td><td>64</td></tr><tr><td>Tagalog/Filipino</td><td>38</td></tr><tr><td>Malaysian</td><td>33</td></tr><tr><td>Other</td><td>922</td></tr></table>		Main Languages of residents in Mid Ulster Council area	No.	English	125,715	Polish	2,008	Lithuanian	2,039	Portuguese	903	Irish (Gaelic)	404	Slovak	477	Russian	297	Latvia	261	Hungarian	117	Chinese	64	Tagalog/Filipino	38	Malaysian	33	Other	922
Main Languages of residents in Mid Ulster Council area	No.																													
English	125,715																													
Polish	2,008																													
Lithuanian	2,039																													
Portuguese	903																													
Irish (Gaelic)	404																													
Slovak	477																													
Russian	297																													
Latvia	261																													
Hungarian	117																													
Chinese	64																													
Tagalog/Filipino	38																													
Malaysian	33																													
Other	922																													
Age	The age profile of Mid Ulster Local Government District area as at 2015 (Source, NISRA)																													
	<table><tr><th></th><th>Mid Ulster</th><th>Northern Ireland</th></tr><tr><td>Total Population</td><td>144,002</td><td>1,851,621</td></tr><tr><td>0-15 years</td><td>33,123</td><td>385,200</td></tr><tr><td>16-39 years</td><td>47,646</td><td>583,116</td></tr><tr><td>40-64 years</td><td>43,621</td><td>591,481</td></tr><tr><td>65+ years</td><td>19,612</td><td>291,824</td></tr><tr><td>Population Change % (2005-2015)</td><td>15.3%</td><td>7.2%</td></tr></table>			Mid Ulster	Northern Ireland	Total Population	144,002	1,851,621	0-15 years	33,123	385,200	16-39 years	47,646	583,116	40-64 years	43,621	591,481	65+ years	19,612	291,824	Population Change % (2005-2015)	15.3%	7.2%							
	Mid Ulster	Northern Ireland																												
Total Population	144,002	1,851,621																												
0-15 years	33,123	385,200																												
16-39 years	47,646	583,116																												
40-64 years	43,621	591,481																												
65+ years	19,612	291,824																												
Population Change % (2005-2015)	15.3%	7.2%																												

## DRAFT SCREENING REPORT

Marital status	The below table sets out the marital status profile for Mid Ulster District Council area as extracted from results of the 2011 Census				
		Mid Ulster		Northern Ireland	
		No.	%	No	%
	Single (never married or never registered a same sex civil partnership) (Aged 16+)	38,353	35.97	517,393	36.14
	Married (Aged 16+)	54,192	50.82	680,831	47.56
	In a registered same sex civil partnership (Aged 16+)	62	0.06	1,243	0.09
	Separated (but is still legally married or still legally in a same sex civil partnership) (Aged 16+)	3,369	3.16	56,911	3.98
	Divorced or formerly in a same sex civil partnership which is now legally dissolved (Aged 16+)	4,139	3.88	78,074	5.45
	Widowed or surviving partner from a same sex civil partnership (Aged 16+)	6,523	6.12	97,088	6.78

Sexual orientation	No specific statistics are available from the 2011 government census for this Category and there are therefore no official statistics available in relation to persons of different sexual orientation. However, the Integrated Household Survey would include between 3% and 4% would be either gay, lesbian and/or bisexual. However, due to the nature of ‘disclosure’ in this area, umbrella organisations often state that the figure may be closer to 10%.							
	Region	Heterosexual / Straight	Gay/ Lesbian	Bisexual	Gay/ Lesbian/ Bisexual	Other	Don't know /refuse	No response
	England	92.54%	1.10%	0.51%	1.61%	0.33%	4.07%	1.45%
	Wales	93.93%	1.04%	0.48%	1.52%	0.45%	2.99%	1.11%
	Scotland	94.65%	0.82%	0.33%	1.14%	0.26%	2.59%	1.37%
	N Ireland	93.00%	0.64%	0.96%	1.60%	0.26%	3.98%	1.17%
	Total	92.80%	1.06%	0.51%	1.57%	0.32%	3.89%	1.42%
	Research also conducted by the HM Treasury shows that between 5%-7% of the UK population identify themselves as gay, lesbian, bisexual or ‘trans’ (transsexual, transgendered and transvestite) (LGBT).							

## DRAFT SCREENING REPORT

Men & women generally	<p>The gender profile of Mid Ulster LGD is detailed as;</p> <table><tr><th></th><th colspan="2">Mid Ulster</th><th colspan="2">Northern Ireland</th></tr><tr><th></th><th>No.</th><th>%</th><th>No.</th><th>%</th></tr><tr><td>Male</td><td>72,958</td><td>50.2</td><td>887,323</td><td>49.00</td></tr><tr><td>Female</td><td>72,431</td><td>49.8</td><td>923,540</td><td>51.00</td></tr></table>		Mid Ulster		Northern Ireland			No.	%	No.	%	Male	72,958	50.2	887,323	49.00	Female	72,431	49.8	923,540	51.00					
	Mid Ulster		Northern Ireland																							
	No.	%	No.	%																						
Male	72,958	50.2	887,323	49.00																						
Female	72,431	49.8	923,540	51.00																						
Disability	<p>According to the 2011 NISRA census statistics 19.39% of people had a long-term health problem or disability that limited their day-to-day activities whilst 80.43% of people within the district stated their general health was either good or very good</p> <table><tr><th></th><th colspan="2">Mid Ulster</th><th colspan="2">Northern Ireland</th></tr><tr><th></th><th>No.</th><th>%</th><th>No.</th><th>%</th></tr><tr><td>Disability / long term health</td><td>26,870</td><td>19.39</td><td>374,646</td><td>20.69</td></tr><tr><td>No disability / long term health problem</td><td>111,720</td><td>80.61</td><td>1,436,217</td><td>79.31</td></tr></table> <p>In Northern Ireland the profile of persons with a disability has been reported by Disability Action as;</p> <ul style="list-style-type: none"><li>• More than 1 in 5 or 21% of the population have a disability</li><li>• 1 in 7 people have some form of hearing loss</li><li>• 5,000 persons use sign language - British Sign Language and/or Irish Sign Language</li><li>• There are 57,000 blind persons or persons with significant impairment</li><li>• 52,000 persons with learning difficulties</li></ul>		Mid Ulster		Northern Ireland			No.	%	No.	%	Disability / long term health	26,870	19.39	374,646	20.69	No disability / long term health problem	111,720	80.61	1,436,217	79.31					
	Mid Ulster		Northern Ireland																							
	No.	%	No.	%																						
Disability / long term health	26,870	19.39	374,646	20.69																						
No disability / long term health problem	111,720	80.61	1,436,217	79.31																						
Dependants	<p>Persons with dependents may be people who have personal responsibility for the care of a child (or children), a person with a disability, and/ or a dependent older person. The below table provides a summary with respect Mid Ulster LGD.</p> <table><tr><th></th><th colspan="2">Mid Ulster</th><th colspan="2">Northern Ireland</th></tr><tr><th></th><th>No.</th><th>%</th><th>No.</th><th>%</th></tr><tr><td>Households with dependent children</td><td>18,626</td><td>38.99</td><td>238,094</td><td>33.86</td></tr><tr><td>Lone parent households with dependents</td><td>3,485</td><td>7.30</td><td>63,921</td><td>9.09</td></tr><tr><td>People providing unpaid care</td><td>12,821</td><td>10.69</td><td>231,980</td><td>11.82</td></tr></table> <p>Of the households in Mid Ulster Local Government District with dependent children, they can be summarised as;</p> <ul style="list-style-type: none"><li>• 7,407 families in households have 1 dependent child</li><li>• 6,394 families in households with two dependent children</li><li>• 5,014 families in households with three dependent children</li></ul> <p>There are 37,306 dependent children within families.</p>		Mid Ulster		Northern Ireland			No.	%	No.	%	Households with dependent children	18,626	38.99	238,094	33.86	Lone parent households with dependents	3,485	7.30	63,921	9.09	People providing unpaid care	12,821	10.69	231,980	11.82
	Mid Ulster		Northern Ireland																							
	No.	%	No.	%																						
Households with dependent children	18,626	38.99	238,094	33.86																						
Lone parent households with dependents	3,485	7.30	63,921	9.09																						
People providing unpaid care	12,821	10.69	231,980	11.82																						

## ***DRAFT SCREENING REPORT***

### **Needs, experiences and priorities**

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories

<b>Section 75 category</b>	<b>Details of needs/experiences/priorities</b>
Religious belief	None in relation to this policy.
Political opinion	None in relation to this policy.
Racial group	None in relation to this policy.
Age	<p>There is likely to be a minor impact on older people from the implementation of the pavement café licensing regime across the District, particularly those with mobility or visual impairment.</p> <ul style="list-style-type: none"><li>• Barriers / adequate screening should prevent pavement café customers from obstructing the pavement, which sometimes makes elderly and / or younger people feel uncomfortable when trying to pass.</li><li>• In most cases the transfer of food and / or drink to the outside area will be advised to be through the use of table service for those older people and others who find it difficult to carry cups, trays etc.</li></ul>
Marital status	None in relation to this policy.
Sexual orientation	None in relation to this policy.
Men and women generally	None in relation to this policy.
Disability	There is likely to be a minor impact on those members of the community who have a disability, particularly those with mobility issues or visual impairment.

## **DRAFT SCREENING REPORT**

	<ul style="list-style-type: none"><li>• Well-designed screening will aid the visually impaired to navigate safely around the pavement café areas. However, it is acknowledged that poorly designed barriers could be a trip hazard for the visually impaired and others.</li><li>• Specifying a minimum width for public access will ensure that wheelchair users (and those with prams) can negotiate the pavements safely.</li><li>• Specifying that tables and chairs should be sufficiently spaces to enable wheelchair / highchair / pram access will ensure that the sitting out areas can be used by all.</li><li>• Licence holders will be required to remove tables, chairs and other associated structures from the public area after trading hours</li></ul>
Dependants	<p>There is likely to be a minor impact on those members of the community with dependants. Those likely to be affected are those with young children in prams and those who have dependants that suffer from a physiological impairment.</p> <ul style="list-style-type: none"><li>• Specifying a minimum width for public access will ensure that those with prams can negotiate the pavements safely.</li><li>• Specifying that tables and chairs should be sufficiently spaces to enable wheelchair / highchair / pram access will ensure that the sitting out areas can be used by all.</li></ul>

### **Section 2 – Screening Questions**

In making a decision as to carry out an Equality Impact Assessment (EQIA), the Council should consider its answers to the questions 1- 3 detailed below.

If the Council's conclusion is **none** in respect of all of the Section 75 equality of opportunity categories, then the Council may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity, the Council should give details of the reasons for the decision taken.

If the Council's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

## ***DRAFT SCREENING REPORT***

If the Council's conclusion is **minor** in respect of one or more of the Section 75 equality categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity.

### **In favour of a 'major' impact**

- a) The policy is significant in terms of its strategic importance;
- b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- c) Potential equality impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;
- e) The policy is likely to be challenged by way of judicial review;
- f) The policy is significant in terms of expenditure.

### **In favour of 'minor' impact**

- a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) By amending the policy there are better opportunities to better promote equality of opportunity.

### **In favour of none**

- a) The policy has no relevance to equality of opportunity.
- b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity for people within the equality categories.

## ***DRAFT SCREENING REPORT***

### **Screening questions**

<b>1. What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories (minor/ major/ none)</b>		
<b>Section 75 category</b>	<b>Details of policy impact</b>	<b>Level of impact? minor/major/none</b>
Religious belief	This policy will be implemented on an equal basis	None
Political opinion	This policy will be implemented on an equal basis	None
Racial group	This policy will be implemented on an equal basis	None
Age	There is likely to be a minor impact on older people from the implementation of the pavement café licensing regime across the District, particularly those with mobility or visual impairment	Minor (negative)
Marital status	This policy will be implemented on an equal basis	None
Sexual orientation	This policy will be implemented on an equal basis	None
Men and women generally	This policy will be implemented on an equal basis	None
Disability	There is likely to be a minor impact on those members of the community who have a	Minor (negative)

## ***DRAFT SCREENING REPORT***

	<p>disability, particularly those with mobility issues or visual impairment.</p> <ul style="list-style-type: none"><li>• Well-designed screening will aid the visually impaired to navigate safely around the pavement café areas. However, it is acknowledged that poorly designed barriers could be a trip hazard for the visually impaired and others.</li><li>• Specifying a minimum width for public access will ensure that wheelchair users (and those with prams) can negotiate the pavements safely.</li><li>• Specifying that tables and chairs should be sufficiently spaces to enable wheelchair / highchair / pram access will ensure that the sitting out areas can be used by all.</li><li>• Licence holders will be required to remove tables, chairs and other associated structures from the public area after trading hours</li></ul>	
Dependants	<p>There is likely to be a minor impact on those members of the community with dependants. Those likely to be affected are those with young children in prams and those who have dependants that suffer from a physiological impairment.</p> <ul style="list-style-type: none"><li>• Specifying a minimum width for public access will ensure that those with prams can negotiate the pavements safely.</li><li>• Specifying that tables and chairs should be sufficiently spaces to enable wheelchair / highchair / pram access will ensure that the sitting out areas can be used by all.</li></ul>	Minor (negative)

## **DRAFT SCREENING REPORT**

<b>2. Are there opportunities to better promote equality of opportunity for people within Section 75 equality categories? (Yes/ No)</b>		
Section 75 category	If <b>Yes</b> , provide details	If <b>No</b> , provide reasons
Religious belief		<b>No</b>
Political opinion		<b>No</b>
Racial group		<b>No</b>
Age		<b>No</b>
Marital status		<b>No</b>
Sexual orientation		<b>No</b>
Men and women generally		<b>No</b>
Disability		<b>No</b>
Dependants		<b>No</b>

<b>3. Are there opportunities without prejudice, to the equality of opportunity duty, to better promote good relations between Section 75 equality categories, through tackling prejudice and/ or promoting understanding? (Yes/ No)</b>		
	No	x
	Yes	
If yes, please detail the opportunities below:		

If yes is concluded to Question 3, then the policy will be referred to the Council's Good Relations Working Group for consideration. The Group will consider the

## **DRAFT SCREENING REPORT**

potential opportunities and assess if and how the overall impact of a decision/policy can better promote good relations.

### **Additional Considerations - Multiple identity**

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities? (*For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people*).

No – not applicable.

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

### **Section 3 – Screening Decision**

In light of answers provided to the questions within Section 3 select one of the following with regards the policy:

		Select One
1	Shall not be subject to an EQIA - <i>with no mitigating measures required</i>	
2	Shall not be subject to an EQIA - <i>mitigating measures/ alternative policies introduced</i>	X
3	Shall be subject to an EQIA	

If 1 or 2 above (i.e. not to be subject to an EQIA) please provide details of reasons why.

## ***DRAFT SCREENING REPORT***

If 2 above (i.e. not to subject to an EQIA) in what ways can adverse impacts attaching to the policy be mitigated or an alternative policy be introduced.

Given that minor negative has been identified for three groups (age, disability and dependants) mitigation measures will be put in place in order to limit the negative impact. Please see the mitigation section for details.

If 3 above (i.e. shall be subject to an EQIA), please provide details of the reasons.

### **Mitigation**

When it is concluded that the likely impact is 'minor' and an equality impact assessment is not to be conducted, you may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity?

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy:

Mitigation measures in relation to this policy will include the following:

- This policy will be monitored/re-evaluated three months from its approval by Council. This is to ensure any negative impacts can be resolved at an early juncture in its implementation.
- Further consultation with voluntary and statutory groups representative of people with sight loss and physical disabilities will be carried out (in a more focused way than is currently possible) once COVID-19 restrictions are eased.

## ***DRAFT SCREENING REPORT***

### **Timetabling and prioritising**

If the policy has been screened in for equality impact assessment, please answer the below to determine its priority for timetabling the equality impact assessment.

- **On a scale of 1-3 (1 being lowest priority and 3 being highest), assess the policy in terms of its priority for equality impact assessment.**

<b>Priority criterion</b>	<b>Rating (1-3)</b>
Effect on equality of opportunity	
Social need	
Effect on people's daily lives	
Relevance to a Council's functions	

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the Council in timetabling. Details of the Council's Equality Impact Assessment Timetable should be included in the Screening Reports.

- **Is the policy affected by timetables established by other relevant public authorities?**

Yes	
No	



### **Section 5 – Monitoring**

Effective monitoring will help identify any future adverse impact arising from the policy which may lead the Council to conduct an equality impact assessment, as well as help with future planning and policy development. Please detail proposed monitoring arrangements below:

Implementation of this guidance will be subject to ongoing monitoring and review as pavement café licence applications are received and processed on a case by case basis. As part of Council's mitigating measures this guidance will be formally reviewed three months from the date it is approved by Council.

## ***DRAFT SCREENING REPORT***

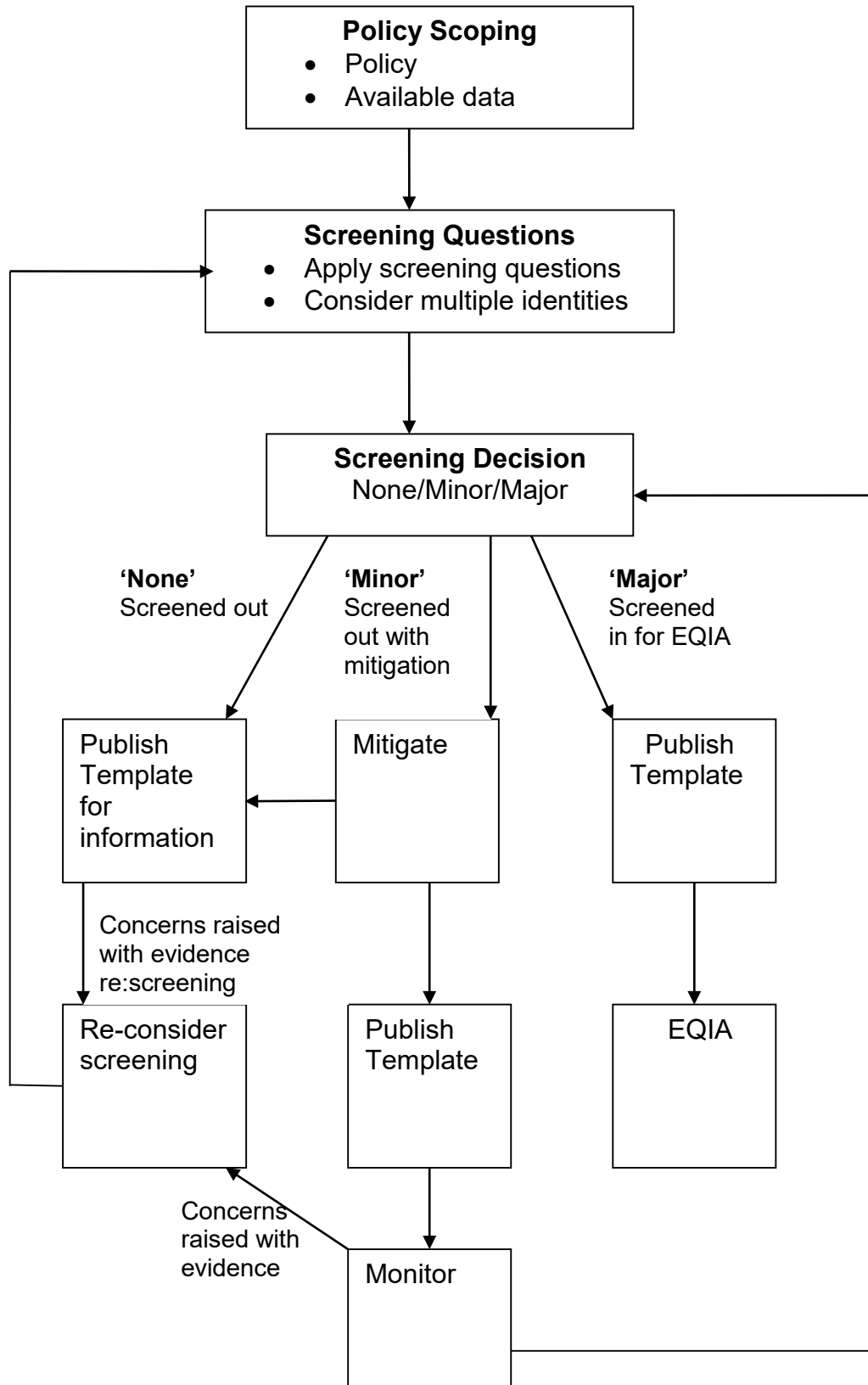
### **Section 6 – Approval and authorisation**

<b>Screened by:</b>	<b>Position/ Job Title</b>	<b>Date</b>
	Principal Environmental Health Officer (Health and safety, Public Safety & Licensing)	22.6.20
<b>Approved by:</b>	<b>Position/ Job Title</b>	<b>Date</b>
	Director of Public Health & Infrastructure	24/06/20

**Note:** A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy; made easily accessible on the council website as soon as possible following completion and be available on request.

# DRAFT SCREENING REPORT

## Appendix A Mid Ulster District Council Screening Process





## Licensing of Pavement Cafés Act (Northern Ireland) 2014

### 2014 CHAPTER 9

An Act to make provision for the regulation by district councils of the placing on public areas of furniture for use for the consumption of food or drink.  
[12th May 2014]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

#### *Requirement for pavement café licence*

#### **Meaning of “pavement café licence” and other key terms**

**1.—**(1) In this Act a “pavement café licence” means a licence authorising 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.

(2) In this Act “a public area” means a place in the open air—

- (a) to which the public has access, without payment, as of right; and
- (b) which is not in a market area.

(3) For the purposes of this Act, “furniture” means all or any of the following

- 
- (a) tables;

(b) chairs;

(c) umbrellas, barriers, heaters and other articles for facilitating the use, by persons consuming food or drink, of tables and chairs in a public area.

(4) 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.

(5) In subsection (4) “remove” means remove to a place which is not a public area.

(6) In this Act “supplied”, in relation to food or drink, means supplied to members of the public or of a section of the public.

(7) In this Act references to placing a thing are to placing it personally or by an employee or agent.

**Annotations:**

**Commencement Information**

**II** [S. 1](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Offence of placing furniture on public area without pavement café licence**

**2.—**(1) Subject to subsection (2), if at any time while a business involving the supply of food or drink in or from any premises to members of the public, or of a section of the public, is being carried on (“the time in question”)—

(a) furniture for use for the consumption of food or drink supplied in or from the premises is placed on a public area in the course of the business, or

(b) furniture for such use which has been placed on a public area in the course of the business remains on that public area,

each responsible person commits an offence.

(2) Subsection (1) does not apply if the furniture is temporary and, at the time in question, the person carrying on the business holds a pavement café licence in respect of the premises.

(3) For the purposes of subsection (1) each of the following is a “responsible person”—

(a) the person carrying on the business; and

(b) any other person concerned in the management of the premises who is responsible for the furniture being placed on, or (as the case may be) remaining on, the public area.

(4) Where the business is carried on by more than one person—

(a) the reference in subsection (2) to the person carrying on the business includes any of those persons; and

(b) the reference in subsection (3)(a) to the person carrying on the business is to each of those persons.

(5) Subsection (1)(b) applies whether the furniture was placed on the public area before or after the commencement of this section.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) It is a defence for a person charged with an offence under this section to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**Annotations:**

**Commencement Information**

**I2** [S. 2](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Application for licence*

**Application for licence**

**3.—**(1) A person who carries on, or proposes to carry on, a relevant business may apply to the relevant district council for a pavement café licence in respect of premises specified in the application.

(2) The premises specified must be premises in or from which food or drink is, or will be, supplied in the course of the business.

(3) Only one set of premises may be specified in the application, but this does not prevent a person from making two or more separate applications in respect of different sets of premises.

(4) The application must include a plan which—

(a) shows the location and dimensions of the public area (or each of the public areas) on which the applicant wishes to place temporary furniture for use for the consumption of food or drink supplied in or from the specified premises; and

(b) meets such other requirements as the council may specify.

(5) Any such area must be situated in the district of the relevant district council.

(6) Sections 10 and 11 apply in relation to an application under this section.

(7) In this section—

“a relevant business” means a business involving the supply of food or drink to members of the public, or of a section of the public;

“the relevant district council” means the council in whose district the premises specified in the application are situated.

**Annotations:****Commencement Information**

**I3** [S. 3](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Grant or refusal of licence**

**4.—**(1) A council must grant an application for a pavement café licence which is made to it in accordance with this Act unless it considers that it ought to refuse the application on one or more of the grounds set out in subsection (2).

(2) The council may refuse the application on any of the following grounds—

- (a) that all or any part of the public area where the applicant wishes to place temporary furniture for use for the consumption of food or drink is unsuitable for that purpose;
- (b) that placing 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 application would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity, or in disorder;
- (c) that, in connection with the application, the applicant made a statement which the applicant knew to be false in a material respect or failed to comply with section 11;
- (d) that the applicant has at any time been granted a pavement café licence by the council which was revoked, or could have been revoked, for reasons within the applicant's control.

(3) Where the applicant wishes to place temporary furniture for use for the consumption of food or drink on more than one public area—

- (a) subsection (2)(a) applies as if the reference to the public area were to any of the public areas; and
- (b) subsection (2)(b) applies as if the reference to that area were to those areas.

(4) Before deciding an application for a pavement café licence, a council—

- (a) must consult the Department for Regional Development as regards that department's functions with respect to roads and the regulation of road traffic; and
- (b) if the premises to which the application relates are premises licensed under the Licensing Order of a kind mentioned in Article 5(1)(a) of that Order, must (and in any other case may) consult the district commander for the police district in which the premises are situated.

(5) The council may consult such other persons as it considers appropriate.

(6) In deciding an application for a pavement café licence, the council must take into account any representations relating to the application which are made by any person to the council within the period allowed for representations (as defined by section 10(5)).

**Annotations:**

**Commencement Information**

**I4** [S. 4](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Form, duration etc. of licence**

**5.—**(1) A pavement café licence must be in the prescribed form and must—

- (a) specify the holder of the licence, the premises to which it relates, and such other matters as may be prescribed; and
- (b) include a plan showing the location and dimensions of the public area to which it relates.

(2) In this Act, in relation to a pavement café licence, “the area covered by the licence” means the area shown under subsection (1) on the plan in the licence.

(3) That area must be—

- (a) an area which was proposed under section 3(4) in the application for the licence; or
- (b) an area at least 75% of which falls within an area which was so proposed;

but this is subject to any power under the following provisions of this Act to vary the area covered by the licence.

(4) If more than one public area was proposed in the application for the licence, the licence may relate to one public area or more than one, and if it relates to more than one—

- (a) the plan included in the licence under subsection (1) must show the location and dimensions of each of the public areas to which the licence relates;
- (b) references in this Act to “the area covered by the licence” are to any of the areas shown on the plan in the licence; and
- (c) subsection (3) applies in relation to any such area.

(5) A pavement café licence shall (except where it is surrendered, revoked or suspended)—

- (a) remain valid for such period as is specified in the licence; or
- (b) if no period is specified in the licence, remain valid indefinitely.

(6) Subsection (5)(a) is subject to section 7 (renewal of licence).

(7) A licence holder may at any time surrender a pavement café licence to the council and the licence shall then cease to be valid.

**Annotations:****Commencement Information**

**I5** [S. 5](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Conditions of licence**

**6.—**(1) A pavement café licence must include a condition requiring temporary furniture not to be placed for use as mentioned in the licence on any public area other than the area covered by the licence.

(2) A condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on the area covered by the licence—

- (a) must be included in a pavement café licence if the premises specified in that licence are premises licensed under the Licensing Order of a kind mentioned in Article 5(1)(b) of that Order (off-licences); and
- (b) may be included in any other pavement café licence (whether or not the premises specified in that licence are licensed under the Licensing Order) if the council is satisfied that permitting persons to consume intoxicating liquor when using furniture on the area covered by the pavement café licence would be likely to result in disorder.

(3) A council may specify in a pavement café licence such other conditions as it considers reasonable, and those conditions may in particular include conditions—

- (a) limiting the furniture which may be placed on the area covered by the licence by reference to the kind, amount, size or nature of the furniture;
- (b) limiting the days or times when the furniture may be on that area;
- (c) for securing that adequate arrangements are made for storing the furniture when not on that area;
- (d) regulating the arrangements for payment to the council of fees imposed under section 12;
- (e) for securing that such insurances and indemnities as may be specified in the licence are put in place;
- (f) requiring the council to be notified of such matters as may be specified in the licence;
- (g) requiring the surrender of any other pavement café licence in respect of the premises.

**Annotations:**

**Commencement Information**

**I6** [S. 6](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Renewal*

**Renewal of licence**

7.—(1) A person who holds a pavement café licence in respect of any premises may apply to the council in whose district the premises are situated for renewal of the licence.

(2) Sections 10 and 11 apply in relation to an application under this section.

(3) A council must grant an application for renewal of a pavement café licence which is made to it in accordance with this Act unless it considers that it ought to refuse the application on one or more of the grounds set out in section 4(2).

(4) Before deciding an application for renewal of a pavement café licence the council may consult such persons as it considers appropriate.

(5) In deciding an application for renewal of a pavement café licence, the council must take into account any representations relating to the application which are made by any person to the council within the period allowed for representations.

(6) Sections 5 and 6 (form, duration and conditions of licence) apply to a pavement café licence as renewed as they apply to a pavement café licence as initially granted.

(7) When renewing a pavement café licence, a council may vary the licence—

- (a) by varying the conditions (if any) specified in the licence under section 6(3);
- (b) by specifying new conditions under section 6(3);
- (c) by making a variation (within the meaning given by section 8(9)) of the area covered by the licence;
- (d) by exercising any power that the council has under section 17 to insert an alcohol condition in the licence;
- (e) subject to subsection (9), by removing an alcohol condition from the licence.

(8) The licence may be varied under subsection (7)(a) to (c) whether or not an application has been made under section 8 and whether or not the council has power under any other provision of this Act to make the variation concerned.

(9) The licence may be varied under subsection (7)(e) only if an application under section 9 has been made and the council has decided in accordance with that section to remove the alcohol condition.

(10) In this section “alcohol condition” has the same meaning as in section 17.

**Annotations:**

**Commencement Information**

**I7** [S. 7](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Variation on application of licence holder*

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

**8.—(1)** A person who holds a pavement café licence in respect of any premises may apply to the council in whose district the premises are situated for—

- (a) a variation of the conditions, if any, specified in the licence under section 6(3); or
- (b) a variation of the area covered by the licence.

(2) The application must specify the variation that the applicant wishes to be made.

(3) Sections 10 and 11 apply in relation to an application under this section.

(4) Where an application for a variation of conditions specified in a pavement café licence under section 6(3) is made to a council in accordance with this Act, the council may—

- (a) make the variation applied for;
- (b) make such other variation of the conditions as it thinks fit (including by specifying conditions under section 6(3) that were not specified in the application); or
- (c) refuse the application.

(5) Where an application for a variation of the area covered by a pavement café licence is made to a council in accordance with this Act, the council must grant the application unless it considers that it ought to refuse the application on one or more of the grounds set out in section 4(2).

(6) Before deciding an application under this section the council may consult such persons as it considers appropriate.

(7) In deciding an application under this section, the council must take into account any representations relating to the application which are made by any person to the council within the period allowed for representations.

(8) Any reference in this Act to the variation of conditions specified in a licence under section 6(3) includes the removal of any such conditions.

(9) Any reference in this Act to a variation of the area covered by a pavement café licence is a reference to a variation of that area such that, after the variation, at least 75% of the area falls within the area as it was before the variation.

(10) In section 4(2)(a) as it applies for the purposes of subsection (5) above, the reference to the public area where the applicant wishes to place temporary furniture for use for the consumption of food or drink is to be read as a reference to the part of that area which is not already covered by the licence.

**Annotations:**

**Commencement Information**

**I8** [S. 8](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Variation by removal of alcohol prohibition**

**9.—(1)** This section applies where—

- (a) a person holds a pavement café licence in respect of any premises;
- (b) the pavement café licence includes a condition (“an alcohol condition”) requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on the area covered by the licence; and
- (c) the premises specified in the pavement café licence are not premises licensed under the Licensing Order of a kind mentioned in Article 5(1)(b) of that Order (off-licences).

(2) The holder of the pavement café licence may apply to the council in whose district the premises are situated for the pavement café licence to be varied by the removal of the alcohol condition.

(3) Sections 10 and 11 apply in relation to an application under this section.

(4) Where an application under this section is made to a council in accordance with this Act, the council may—

- (a) remove the alcohol condition; or
- (b) if it is satisfied that permitting persons to consume intoxicating liquor when using furniture on the area covered by the licence would be likely to result in disorder, refuse the application.

(5) Before deciding an application under this section the council—

- (a) must consult the district commander for the police district in which the premises are situated; and
- (b) may consult such other persons as it considers appropriate.

(6) In deciding an application under this section, the council must take into account any representations relating to the application which are made by any person to the council within the period allowed for representations.

**Annotations:**

**Commencement Information**

**I9** [S. 9](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Applications: general provision*

**Applications: general provision**

**10.—**(1) In this section “an application” means an application for the grant or renewal of a pavement café licence or for the variation of a pavement café licence under section 8 or 9.

(2) An application—

- (a) must be made in writing, and in such form and way and at such time as the council to which the application is made may specify; and
- (b) if the council so requires, must be accompanied by any fee (or such part as the council may determine of any fee) payable under section 12.

(3) An application must—

- (a) confirm that the notice required by section 11 has been fixed as required by that section, and the date on which this was done; and
- (b) contain such information, and be accompanied by such documents, as the council may reasonably require.

(4) 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.

(5) In this Act “the period allowed for representations”, in relation to an application, means 28 days beginning with the first working day after the date when the application is received by the council.

(6) The council may require the applicant to provide such further information or documents as it may consider necessary for dealing with the application.

(7) If it refuses an application, a council must give the applicant notice in writing of its decision and of—

- (a) the grounds for that decision; and

(b) the applicant's rights under section 21 (appeals).

(8) A person who, in connection with an application, makes a statement which is false in a material respect and does so knowing it to be false commits an offence.

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Annotations:**

**Commencement Information**

**I10** [S. 10](#) in operation at 1.10.2016 by [S.R. 2016/126, art. 2](#)

**Notice of application to be displayed**

**11.—**(1) This section applies where an application is made for the grant or renewal of a pavement café licence or for the variation of a pavement café licence under section 8 or 9.

(2) The applicant must ensure—

- (a) that, on the day when the application is sent to the council, 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; and
- (b) that the notice remains in position and so visible and legible until the end of the period allowed for representations.

(3) In this section “the required notice” means a notice, in such form as may be specified by the council to which the application is made, which—

- (a) states that an application for the grant, renewal or variation of a pavement café licence (as the case may be) has been made in relation to the premises;
- (b) specifies the date of the application;
- (c) indicates that the council will make the application available to be viewed by the public until the end of the period allowed for representations;
- (d) indicates how the application may be viewed;
- (e) indicates that representations relating to the application may be made in writing to the council until the end of that period; and
- (f) contains such other information as the council may specify.

**Annotations:**

**Commencement Information**

**I11** [S. 11](#) in operation at 1.10.2016 by [S.R. 2016/126, art. 2](#)

## **Fees**

- 12.—**(1) A council may charge fees—
- (a) for the grant or renewal of a pavement café licence;
  - (b) for a variation of a pavement café licence under section 8 or 9.
- (2) Any fees charged by a council under this section shall be such as the council may determine.
- (3) But fees charged by a council under this section may only be—
- (a) such fees as may be sufficient in the aggregate, taking one year with another, to cover any reasonable administrative or other costs in connection with the council's functions under this Act that are not otherwise recoverable; or
  - (b) such lower fees as the council may determine.
- (4) Before determining or altering any fees under this section the council must—
- (a) give notice of the proposed fees to licence holders affected by the proposal; and
  - (b) publicise the proposed fees by such means as it thinks appropriate.
- (5) The notice under subsection (4)(a) and publicity under subsection (4)(b) must indicate—
- (a) that a statement has been prepared showing how the proposed fees have been calculated;
  - (b) that the statement will be available to be viewed by the public until the end of a period specified in the notice and publicity, and how it may be viewed; and
  - (c) that representations relating to the proposed fees may be made in writing to the council until the end of that period.
- (6) The period specified under subsection (5)(b) must be at least 28 days beginning with the day after the date when the proposed fees are first publicised.
- (7) In reaching a decision about the determination or alteration of the fees, the council must take into account any representations made to it within the period specified under subsection (5)(b).
- (8) Where the council has reached its decision, it must—
- (a) give notice of the decision to licence holders affected by the decision; and
  - (b) publicise the decision by such means as it thinks appropriate.
- (9) The council may determine the time and way in which fees are to be paid.
- (10) Where a council refuses an application for the grant, renewal or variation of a pavement café licence, it must refund any fee paid less any costs necessarily incurred by the council in deciding the application.

(11) Where a pavement café licence is revoked under section 14(1)(a) or (b), the council must refund such part of any fee paid for the grant or renewal of the licence as appears to the council appropriate, having regard to—

- (a) the period for which the licence had been in force when revoked; and
- (b) any costs necessarily incurred by the council in deciding the application to grant or renew the licence.

(12) The council may refund, in such other circumstances as it considers appropriate, the whole or part of any fee.

**Annotations:**

**Commencement Information**

**I12** [S. 12](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Change in persons carrying on business*

**Change in persons carrying on business**

**13.—**(1) Subsection (2) applies where—

- (a) a pavement café licence was granted to two or more persons carrying on, or proposing to carry on, a qualifying business;
- (b) one or more of those persons has died or withdrawn from the business;
- (c) one or more of those persons (“the remaining person”) is still carrying on a qualifying business; and
- (d) the licence has not expired or been revoked or surrendered.

(2) The remaining person is to be treated as the holder of the licence.

(3) Subsection (4) applies where—

- (a) a pavement café licence was granted to a person or persons carrying on, or proposing to carry on, a qualifying business;
- (b) that person (or, if the licence was granted to two or more persons, any of them) is carrying on a qualifying business together with a person who is not a holder of the licence; and
- (c) the licence has not expired or been revoked or surrendered.

(4) The licence is to be taken to authorise the placing by the licence holder and that other person on the area covered by the licence of temporary furniture for use as mentioned in the licence.

(5) A pavement café licence may not be transferred from one person to another.

(6) But subsection (5) does not affect—

- (a) any power of a person to apply for a new pavement café licence in respect of premises for which a pavement café licence held by another person is in force;
- (b) the power of a licence holder to surrender a pavement café licence in respect of premises on the grant to another person of a new pavement café licence in respect of the premises.

(7) In this section “a qualifying business” means a business involving the supply of food or drink to members of the public, or of a section of the public, in or from the premises specified in the licence.

**Annotations:**

**Commencement Information**

**I13** [S. 13](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Revocation, suspension and compulsory variation*

**Revocation of licence**

**14.—**(1) A council may at any time revoke a pavement café licence if it is satisfied—

- (a) that all or any part of the public area where the licence permits the placing of temporary furniture for use for the consumption of food or drink has become, or is going to become, unsuitable for that purpose;
- (b) 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 would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity, or in disorder;
- (c) that the licence holder, in connection with an application for the grant, renewal or variation of the licence, made a statement which the applicant knew to be false in a material respect or failed to comply with section 11;
- (d) that the licence holder has persistently failed to comply with any condition of the licence; or
- (e) that the licence holder has, without reasonable explanation, failed to pay any fee due to the council under section 12.

(2) Where a pavement café licence permits the placing of temporary furniture on more than one public area—

- (a) subsection (1)(a) applies as if the reference to the public area were to any of the public areas; and
- (b) subsection (1)(b) applies as if the reference to that area were to those areas.

**Annotations:**

**Commencement Information**

**I14** [S. 14](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Suspension of licence**

**15.—**(1) A council may at any time suspend a pavement café licence if it is satisfied—

- (a) that all or any part of the public area where the licence permits the placing of temporary furniture for use for the consumption of food or drink has become, or is going to become, temporarily unsuitable for that purpose; or
- (b) that placing 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 would, temporarily, be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity or in disorder.

(2) A council may also suspend a pavement café licence at any time (as an alternative to revoking it) if it is satisfied that any of the grounds set out in section 14(1)(c) to (e) is met.

(3) While a pavement café licence is suspended the licence is to be treated for all purposes (and, in particular, for the purposes of section 2(2)) as not being a valid pavement café licence.

(4) But subsection (3) does not apply for the purposes of—

- (a) the provisions of this Act relating to the surrender, renewal or variation of pavement café licences;
- (b) any requirement in section 12 to give notice to licence holders;
- (c) section 22 (powers of entry and inspection).

(5) Subsection (2) of section 14 applies for the purposes of subsection (1) (a) and (b) above as it applies for the purposes of subsection (1)(a) and (b) of that section.

**Annotations:**

**Commencement Information**

**I15** [S. 15](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Compulsory variation of section 6(3) conditions**

**16.—**(1) A council may at any time vary a pavement café licence by—

- (a) varying the conditions (if any) specified in the licence under section 6(3);
- or

(b) specifying new conditions under section 6(3).

(2) But a council may make a variation under this section only if it considers that it ought to do so as a result of a material change in the circumstances on which the conditions specified in the licence under section 6(3) were based (or on the basis of which a particular condition was not so specified).

**Annotations:**

**Commencement Information**

**I16** [S. 16](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Compulsory variation: prohibition of alcohol**

**17.—**(1) A council may at any time vary a pavement café licence which does not include an alcohol condition by inserting such a condition, but this is subject to subsection (3).

(2) In this section “an alcohol condition” means a condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on the area covered by the licence.

(3) A council may insert such a condition only if—

- (a) the premises specified in the licence are premises licensed under the Licensing Order of a kind mentioned in Article 5(1)(b) of that Order (off-licences); or
- (b) the council is satisfied that permitting persons to consume intoxicating liquor when using furniture on the area covered by the licence would be likely to result in disorder.

**Annotations:**

**Commencement Information**

**I17** [S. 17](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Compulsory variation of area covered by licence**

**18.—**(1) This section applies if at any time a council is satisfied, as respects part of the public area where a pavement café licence permits the placing of temporary furniture for use for the consumption of food or drink—

- (a) that that part has become, or is going to become, unsuitable for that purpose; or
- (b) that continuing to place such furniture on that part for use for the consumption of food or drink supplied in or from the premises specified in

---

*Changes to legislation: There are currently no known outstanding effects for the Licensing of Pavement Cafés Act (Northern Ireland) 2014. (See end of Document for details)*

---

the licence would be likely to result in undue interference or inconvenience to persons or vehicles in the vicinity, or in disorder.

(2) Where this section applies, the council may (as an alternative to revoking the licence) make a variation of the area covered by the licence.

(3) Where a pavement café licence permits the placing of temporary furniture on more than one public area—

- (a) the reference in subsection (1) to part of the public area includes any of those public areas, or any part of any of those areas (and the references in subsection (1)(a) and (b) to “that part” are to be read accordingly); and
- (b) the power under subsection (2) to make a variation of the area covered by the licence includes power to vary the licence so that one or more of the areas covered by the licence (or any part or parts of them) cease to be covered by the licence.

**Annotations:**

**Commencement Information**

**I18** [S. 18](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Notice of revocation, suspension or compulsory variation**

**19.**—(1) Before deciding to revoke, suspend or make a compulsory variation of a pavement café licence, a council must (subject to subsection (5)) notify the licence holder in writing of its proposal to revoke, suspend or vary the licence.

(2) 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.

(3) Any period specified under subsection (2)(b) must be at least 21 days beginning with the date when the notification is sent unless the council considers that there are particular circumstances which make a shorter period necessary in the public interest.

(4) 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 (2)(b).

(5) 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).

(6) 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.

(7) A notice under subsection (6) 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 rights under section 21 (appeals).

(8) A notice under subsection (6) 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.

(9) 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.

(10) A notice under subsection (6) may be withdrawn at any time before the revocation, suspension or variation takes effect.

(11) 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.

(12) Subsections (1) to (10) apply to an extension of a suspension as they apply to a suspension.

(13) 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 16 to 18.

**Annotations:**

**Commencement Information**

**I19** [S. 19](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Matters to be recorded in register*

**Matters to be recorded in register under Licensing Order**

**20.—**(1) Regulations may make provision—

- (a) requiring a district council to notify prescribed matters relating to a relevant pavement café licence to the person responsible for keeping the licensing register;

- (b) requiring a district council to send prescribed documents to that person;
- (c) requiring that person—
  - (i) to record, in a prescribed part of that register, matters notified under the regulations; and
  - (ii) to keep prescribed documents sent under the regulations.
- (2) The regulations may include provision, in relation to—
  - (a) matters required by the regulations to be recorded in the register, or
  - (b) documents required by the regulations to be kept,which applies or corresponds to any provision of the Licensing Order relating to matters required by or under that Order to be recorded in the register or to any documents required by that Order to be kept.
- (3) In this section—
  - “the licensing register” means the register kept under Article 34 of the Licensing Order in which matters relating to the licence under that Order for the premises are recorded;
  - “a relevant pavement café licence” means a pavement café licence in respect of premises which are licensed under the Licensing Order.

**Annotations:**

**Commencement Information**

**I20** [S. 20](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Appeals*

**Appeals**

- 21.—**(1) Where an application for—
  - (a) the grant or renewal of a pavement café licence, or
  - (b) a variation of a pavement café licence under section 8 or 9,is refused, the person who made the application may appeal against the refusal.
- (2) Where a pavement café licence is granted, the licence holder may appeal—
  - (a) against any condition specified in the licence under section 6(2)(b) or (3); or
  - (b) if the area (or areas) shown in the plan in the licence are not the same as the area (or areas) proposed in the application, against the council's decision with regard to any such area.

(3) 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.

(4) Where a pavement café licence held by a person is—

- (a) renewed subject to a variation under section 7(7),
- (b) varied under section 8(4)(b),
- (c) revoked under section 14,
- (d) suspended under section 15, or
- (e) varied under any of sections 16 to 18,

that person may appeal against the variation, revocation or suspension.

(5) Where a suspension of a pavement café licence is extended under section 19, the person whose licence was suspended may appeal against the extension.

(6) Any appeal under this section must be made to a court of summary jurisdiction by notice under Part 7 of the Magistrates' Courts (Northern Ireland) Order 1981.

(7) An appeal under this section 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 (as the case may be).

(8) On an appeal under this section, a court of summary jurisdiction may make such order as it considers appropriate and the council must give effect to that order.

**Annotations:**

**Commencement Information**

**I21** [S. 21](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Powers of entry, removal, etc.*

**Powers of entry and inspection**

**22.—**(1) An authorised officer may at any reasonable time, in order to obtain information required by the council for a purpose mentioned in subsection (2)—

- (a) enter and inspect premises to which a pavement café licence relates, or to which an application for the grant, renewal or variation of such a licence relates;
- (b) inspect furniture placed on a public area for use for the consumption of food or drink supplied in or from any premises;
- (c) inspect any other object placed on a public area with such furniture.

- (2) The purposes referred to in subsection (1) are—
- (a) the purpose of determining whether an application for a pavement café licence or the renewal or variation of such a licence should be granted or what conditions should be specified in such a licence;
  - (b) the purpose of ascertaining whether a condition specified in a pavement café licence is being or has been complied with;
  - (c) the purpose of determining whether a pavement café licence should be revoked, suspended, or varied under any of sections 16 to 18.
- (3) An authorised officer exercising powers under this section must if required produce his or her authority.
- (4) Any power under this section to enter and inspect premises does not apply to any part of the premises used as a dwelling.

**Annotations:**

**Commencement Information**

**I22** S. 22 in operation at 1.10.2016 by S.R. 2016/126, art. 2

**Power to remove unlicensed furniture**

**23.—**(1) A council may cause any temporary furniture which is unlicensed to be removed from a public area and stored.

- (2) For the purposes of this section temporary furniture is “unlicensed” if—
- (a) it has been placed on a public area, in the course of a business, for use for the consumption of food or drink supplied in the course of that business in or from any premises; and
  - (b) the person carrying on the business does not hold (or, if more than one person carries on the business, none of those persons holds) a pavement café licence in respect of the premises.
- (3) Where any furniture is removed and stored under subsection (1), the council—
- (a) must, where the name and address of the person in the course of whose business the furniture was placed on the public area (“the responsible person”) is known, notify that person of the removal and storage and of how the furniture may be recovered; and
  - (b) may recover from the responsible person the costs reasonably incurred by the council in removing and storing the furniture.
- (4) Any charges incurred by a council in pursuance of subsection (1) shall be payable by the responsible person before the return of the furniture to that person.

(5) Where any furniture—

- (a) has been removed under subsection (1), and
- (b) has not been recovered by the responsible person within 3 months beginning with the date of its removal,

the council may take such steps as are reasonable to sell it or to dispose of it in such other way as the council thinks fit.

**Annotations:**

---

**Commencement Information**

**I23** [S. 23](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Offence of obstruction**

**24.—**(1) A person who intentionally obstructs an authorised officer acting in the exercise of powers under section 22 or 23 commits an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Annotations:**

---

**Commencement Information**

**I24** [S. 24](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*Supplementary*

**Service of notices and documents**

**25.—**(1) Without prejudice to section 24(2) of the Interpretation Act (Northern Ireland) 1954, any notice or other document required or authorised to be served on or sent or given to any person under this Act may be served, sent or given, in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition in subsection (2), to that person at that address.

(2) That condition is that the notice or other document is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference;

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser

extent than it would be if served or given by means of a notice or document in printed form.

(3) Where a person uses electronic communications to transmit any notice or other document for any purpose of this Act, that person shall be taken to have agreed, except where a contrary intention appears, to the use of such communications and that his or her address for that purpose is the address incorporated into, or otherwise logically associated with, the notice or document.

(4) In this section “electronic communication” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001.

**Annotations:**

**Commencement Information**

I25 [S. 25](#) in operation at 1.10.2016 by [S.R. 2016/126, art. 2](#)

**Power to make further provision**

**26.—**(1) The Department may by regulations make such supplementary, incidental, consequential or transitional provision as it considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) The provision which may be made under subsection (1) includes provision which amends or modifies any statutory provision (including this Act) or any document.

**Annotations:**

**Commencement Information**

I26 [S. 26](#) in operation at 1.10.2016 by [S.R. 2016/126, art. 2](#)

**Regulations**

**27.—**(1) Subject to subsection (2), regulations made under this Act are subject to negative resolution.

(2) Regulations which include provision under section 26(1) that amends any statutory provision may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

**Annotations:**

**Commencement Information**

I27 [S. 27](#) in operation at 1.10.2016 by [S.R. 2016/126, art. 2](#)

## Consequential amendments

**28.** The statutory provisions set out in the Schedule have effect subject to the consequential amendments specified in that Schedule.

### Annotations:

#### Commencement Information

**I28** S. 28 in operation at 1.10.2016 by S.R. 2016/126, art. 2

## Byelaws

**29.—**(1) Where, by creating an offence, a byelaw prohibits the consumption of intoxicating liquor in a particular place, the byelaw does not apply to any relevant pavement café area within that place.

(2) In this section “a relevant pavement café area” means a public area which

- (a) is an area shown under section 5 on the plan in a pavement café licence which is in force;
- (b) for the time being has temporary furniture on it that under the terms of that licence is permitted to be on that area at that time;
- (c) is associated with premises licensed under the Licensing Order which are
  - (i) premises of a kind mentioned in Article 5(1)(a) of the Licensing Order;
  - (ii) a hotel;
  - (iii) a guest house in which the business of a restaurant is carried on;
  - (iv) a restaurant; or
  - (v) a refreshment room in public transport premises; and
- (d) is not subject to an alcohol condition.

(3) For the purposes of subsection (2)(c)—

- (a) the area is “associated with” particular premises if those premises are the premises in respect of which the pavement café licence relating to the area was granted;
- (b) “hotel”, “guest house”, “restaurant”, and “public transport premises” have the same meanings as in the Licensing Order.

(4) For the purposes of subsection (2)(d), the area is “subject to an alcohol condition” if the pavement café licence relating to the area includes a condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on the area.

---

*Changes to legislation: There are currently no known outstanding effects for the Licensing of Pavement Cafés Act (Northern Ireland) 2014. (See end of Document for details)*

---

(5) In subsection (1) the reference to intoxicating liquor includes any liquor of a similar nature which falls within the byelaw.

**Annotations:**

**Commencement Information**

**I29** [S. 29](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Definitions**

**30.—(1)** In this Act—

“the area covered by the licence”, in relation to a pavement café licence, has the meaning given by section 5(2) or, where the licence relates to more than one public area, the meaning given by section 5(4)(b);

“authorised officer” means a person authorised by a council for the purposes of this Act;

“business” includes any business whether or not carried on for profit;

“council” means a district council;

“the Department” means the Department for Social Development;

“furniture” has the meaning given by section 1(3);

“intoxicating liquor” has the same meaning as in the Licensing Order;

“licensed under the Licensing Order”, in relation to premises, has the meaning given by subsection (2);

“the Licensing Order” means the Licensing (Northern Ireland) Order 1996;

“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;

“pavement café licence” has the meaning given by section 1(1);

“the period allowed for representations”, in relation to an application, has the meaning given by section 10(5);

“place”, when used as a verb, is to be read in accordance with section 1(7);

“premises” includes any place other than a public area, and any stall, moveable structure, vehicle or vessel;

“prescribed” means prescribed by regulations;

“public area” has the meaning given by section 1(2);

“regulations” means regulations made by the Department;

“sale of intoxicating liquor by retail” is to be read in accordance with Article 2(6) of the Licensing Order;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“supplied”, in relation to food and drink, is to be read in accordance with section 1(6);

“temporary”, in relation to furniture, is to be read in accordance with section 1(4) and (5);

“variation”—

(a) in relation to conditions specified in a licence under section 6(3), has the meaning given by section 8(8);

(b) in relation to the area covered by a pavement café licence, has the meaning given by section 8(9);

“working day” means a day which is not a Saturday, Sunday or public holiday.

(2) For the purposes of this Act, premises are “licensed under the Licensing Order” if they are premises in which the sale of intoxicating liquor by retail is authorised by a licence under the Licensing Order other than an occasional licence within the meaning of that Order.

(3) References in this Act to a business “involving” the supply of food or drink to members of the public, or of a section of the public, include a business where such supply of food and drink is ancillary to the principal activity of the business.

(4) A stall, moveable structure, vehicle or vessel in or from which food or drink is supplied is to be treated for the purposes of this Act as premises situated at the place where the stall, moveable structure, vehicle or vessel is when being used for the supply of food or drink.

(5) If a stall, moveable structure, vehicle or vessel is used for the supply of food or drink at more than one place, the premises which by virtue of subsection (4) are to be treated as situated at each such place are to be treated as separate premises.

### **Short title**

**31.** This Act may be cited as the Licensing of Pavement Cafés Act (Northern Ireland) 2014.

### **Commencement**

**32.—**(1) This Act, except sections 30 and 31 and this section, shall come into operation on such day or days as the Department may by order appoint.

(2) An order under this section may contain such transitional provisions as the Department thinks appropriate.

SCHEDULE

Section 28.

CONSEQUENTIAL AMENDMENTS

*The Roads (Northern Ireland) Order 1993 (NI 15)*

1. In Article 71(2) (offence of erecting structure on road), after paragraph (b) insert—

“(ba) in pursuance of a pavement café licence under the Licensing of Pavement Cafés Act (Northern Ireland) 2014; or”.

**Annotations:**

**Commencement Information**

**I30** [Sch. para. 1](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*The Licensing (Northern Ireland) Order 1996 (NI 22)*

2. After Part 5 insert—

**“PART 5A**

**PAVEMENT CAFE AREAS**

*Pavement café areas: definitions*

**76A.**—(1) In this Part, a “pavement café area” means a public area which

- (a) is an area shown, under section 5 of the Licensing of Pavement Cafés Act (Northern Ireland) 2014, on the plan in a pavement café licence which is in force; and
- (b) for the time being has temporary furniture on it that under the terms of the pavement café licence is permitted to be on that area at that time.

(2) For the purposes of this Part, a pavement café area is “associated with” particular premises if those premises are (or are part of) the premises in respect of which the pavement café licence relating to the pavement café area was granted.

(3) In this Part the following expressions have the same meaning as in the Licensing of Pavement Cafés Act (Northern Ireland) 2014—

“pavement café licence”;

“public area”;

“temporary furniture”.

*Sale for consumption on pavement café area not prohibited by Article 5(3)(b) or 51 in certain cases*

**76B.**—(1) This Article applies where—

- (a) a pavement café area is associated with premises for which a licence is in force;
- (b) those premises are—
  - (i) a hotel;
  - (ii) a guest house in which the business of a restaurant is carried on;
  - (iii) a restaurant; or
  - (iv) a refreshment room in public transport premises; and
- (c) the pavement café licence relating to the pavement café area does not include a condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on that area.

(2) For the purposes of the reference in Article 5(3)(b) to consumption off the premises, the pavement café area is to be treated as part of the premises.

(3) If the premises are a hotel, the pavement café area is also to be treated as part of the premises for the purposes of the references in Article 5(5)(b) to consumption off the premises and to a diner in the premises.

(4) If—

- (a) the premises are a restaurant, or a guest house in which the business of a restaurant is carried on, and
- (b) the business of the restaurant is carried on partly on the pavement café area,

the pavement café area is also to be treated for the purposes of Article 51(4)(a)(ii) (and, in the case of a guest house, Article 51(2)) as being a part of the restaurant.

*Pavement café area where consumption permitted: hours, conduct etc.*

**76C.**—(1) This Article applies where—

- (a) a pavement café area is associated with premises for which a licence is in force;
- (b) those premises are—
  - (i) premises of a kind mentioned in Article 5(1)(a);

---

*Changes to legislation: There are currently no known outstanding effects for the Licensing of Pavement Cafés Act (Northern Ireland) 2014. (See end of Document for details)*

---

- (ii) a hotel;
  - (iii) a guest house in which the business of a restaurant is carried on;
  - (iv) a restaurant; or
  - (v) a refreshment room in public transport premises; and
- (c) the pavement café licence relating to the pavement café area does not include a condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on that area.

(2) For the purposes of the provisions mentioned in paragraph (3), the pavement café area is to be treated as part of the licensed premises with which it is associated.

(3) Those provisions are—

Article 41(1)(a)(ii), (c) and (d);  
in Article 46—

- (a) any reference in paragraph (1)(a) to consumption in the premises;
- (b) the reference in paragraph (1)(b) to taking liquor from the premises;

Article 57A;

Article 60(1)(b) and (d)(i);

Articles 61 to 65;

in Article 69J(2), the reference to the premises;

Articles 73 and 74; and

Article 82.

(4) If the premises are of a kind mentioned in Article 5(1)(a), the pavement café area is also to be treated as part of the premises for the purposes of—

- (a) any reference in Article 43(2), 50(1) or 58(1)(a) to consumption off the premises or to consumption in the premises; and
- (b) where there is a condition under Article 43(2) in relation to the premises, any reference in that condition to consumption in the premises.

(5) If the premises are a hotel, the pavement café area is also to be treated as part of the premises for the purposes of the reference in Article 50(1) to consumption off the premises.

*Young persons prohibited from certain pavement café areas*

**76D.**—(1) This Article applies where—

- (a) Article 76C applies; and
- (b) the pavement café area is used exclusively or mainly for the consumption of intoxicating liquor.

(2) For the purposes of Article 58(1)(c) and (2) to (14) (young persons prohibited from certain premises), the pavement café area is to be treated—

- (a) as part of the licensed premises with which it is associated;
- (b) as if it were a part falling within Article 58(1)(c)(ii); and
- (c) accordingly, as being included in any reference in Article 58 to any part of the licensed premises as mentioned in paragraph (1) of that Article.

(3) If a children's certificate is in force in respect of any part of the premises with which the pavement café area is associated, then (subject to paragraph (4)) the pavement café area is also to be treated for the purposes of Article 58(5)(b) as if it were a part of the premises for which the children's certificate is in force.

(4) If a children's certificate is in force in respect of any part of the premises with which the pavement café area is associated—

- (a) the powers of a court of summary jurisdiction under Article 59(8) include power, on the application of the holder of the licence, to revoke the children's certificate so far as relating to the pavement café area; and
- (b) the powers of a court of summary jurisdiction under Article 59(9) include power to revoke the children's certificate so far as relating to the pavement café area if the court is satisfied, upon complaint made under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981—
  - (i) that the pavement café area does not constitute an environment in which it is suitable for a person under the age of 18 to be present; or
  - (ii) in the case of a complaint made as mentioned in Article 59(9)(b), that any condition specified in Article 59(2)(b) to (d) or in Article 58(5) is not being complied with in respect of the pavement café area.

*Off-licence: penalty for consumption on pavement café area*

**76E.**—(1) This Article applies where—

---

*Changes to legislation: There are currently no known outstanding effects for the Licensing of Pavement Cafés Act (Northern Ireland) 2014. (See end of Document for details)*

---

- (a) a pavement café area is associated with premises for which a licence is in force; and
  - (b) those premises are of a kind mentioned in Article 5(1)(b).
- (2) For the purposes of the provisions mentioned in paragraph (3), the pavement café area is to be treated as part of the licensed premises with which it is associated.
- (3) Those provisions are—  
Article 57(1)(a);  
Article 82(3) and (4).”.

**Annotations:**

**Commencement Information**

**I31** [Sch. para. 2](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*The Street Trading Act (Northern Ireland) 2001 (c. 8)*

- 3.—**(1) Section 2 (activities which are not street trading) is amended as follows.
- (2) In subsection (1), after paragraph (e) 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.”.

(3) After subsection (4) insert—

“(5) Expressions used in paragraph (f) of subsection (1) and in the Licensing of Pavement Cafés Act (Northern Ireland) 2014 have the same meaning in that paragraph as in that Act.”.

**Annotations:**

**Commencement Information**

**I32** [Sch. para. 3](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

*The Criminal Justice (Northern Ireland) Order 2008 (NI 1)*

4.—(1) Article 70 (designated public places) is amended as follows.

(2) In paragraph (2) (places that are not designated public places for the purposes of Articles 68 to 71 of that Order), after sub-paragraph (a) insert—

“(aa) a relevant pavement café area;”.

(3) After paragraph (6) insert—

“(7) In this Article “a relevant pavement café area” means a public area which—

(a) is an area shown under section 5 of the Licensing of Pavement Cafés Act (Northern Ireland) 2014 on the plan in a pavement café licence which is in force;

(b) for the time being has temporary furniture on it that under the terms of that licence is permitted to be on that area at that time;

(c) is associated with licensed premises which are—

(i) premises of a kind mentioned in Article 5(1)(a) of the Licensing (Northern Ireland) Order 1996;

(ii) a hotel;

(iii) a guest house in which the business of a restaurant is carried on;

(iv) a restaurant; or

(v) a refreshment room in public transport premises; and

(d) is not subject to an alcohol condition.

(8) For the purposes of paragraph (7)—

(a) the area is “associated with” particular premises if those premises are (or are part of) the premises in respect of which the pavement café licence relating to the area was granted;

(b) the area is “subject to an alcohol condition” if the pavement café licence relating to the area includes a condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on the area.”.

**Annotations:****Commencement Information**

I33 Sch. para. 4 in operation at 1.10.2016 by S.R. 2016/126, art. 2

5.—(1) Article 72 (interpretation of Articles 68 to 71) is amended as follows.

(2) In the definition of “intoxicating liquor”, “licensed premises” and “occasional licence”—

- (a) before “ “intoxicating liquor” insert “ “ guest house ”, “hotel”, ”;
- (b) for “and “occasional licence”” substitute “, “occasional licence”, “public transport premises” and “restaurant””.

(3) after that definition insert—

““pavement café licence”, “public area” and “temporary furniture” have the same meanings as in the Licensing of Pavement Cafés Act (Northern Ireland) 2014;”.

**Annotations:**

**Commencement Information**

**I34** [Sch. para. 5](#) in operation at 1.10.2016 by [S.R. 2016/126](#), [art. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Licensing of Pavement Cafés Act (Northern Ireland) 2014.