

**Guide to the Licensing of Pavement Cafés Act (Northern Ireland)
2014 [Working draft only 30 June 2015]**

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Introduction, background and overview of Act

Introduction

These guidelines have been prepared by the Department for Social Development (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 following, 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 at:

http://ec.europa.eu/internal_market/services/docs/servicesdir/guides/hann.pdf

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. 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.

This document may be accessed on the Department for Social Development website at:

[this is a working draft only not yet finalised for publication]

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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 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 by The Stationary Office (TSO) [.....DN: To be updated when work on regulations is completed.]

Overview of Act

Sections 1 and 2 deal with 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 allows the Department to make an administrative order to bring the statutory licensing scheme into operation. **[This order will be made by the Department following liaison with district councils as to their readiness to begin receiving**

applications. Secondary legislation is currently being drafted by way of regulations on the form of a pavement café licence and matters to be notified by a council to the person responsible for keeping the register under licensing law. The Department may produce supplementary guidance, or amend the existing guidance, after the secondary legislation is finalised and in the light of experience gained by district councils in the course of scheme implementation. [To be updated later]

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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. Any proposal to establish a pavement café on private land would be a matter best dealt with through the planning system. Potential applicants should be advised to contact the planning office of the relevant district council for advice and guidance on the possible submission of applications for planning permission and other consents. 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.

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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 an 'Instruction Manuals or Codes of Conduct' for management of the premises.

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Section 3 - Application for licence

General

- 3.1 Section 3 provides details of how a qualifying business may apply to the local council for a pavement café licence. Applicants must attach a plan showing the location and dimensions of the proposed pavement 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 person who carries on, or proposes to carry on a business (in or from premises) involved 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 Regional Development'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; and
 - 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. A TransportNI official should be present at the site meeting whenever practicable.
- 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 must be maintained at all times.
- 4.11 As a guide, the 'interim' Memorandum of Understanding agreed between TransportNI and Belfast City Centre Memorandum, highlights 1.5m of a minimum footpath width. The report, 'Inclusive Mobility' recommends that 2m is the ideal minimum footpath width, to allow 2 wheelchairs to pass each other comfortably. Where this is not possible, 1.5m or 1m is the absolute minimum.^a The presence of tables and chairs should never discourage pedestrians from using the pavement.

^a Inclusive Mobility, Department for Transport (GB) 2005
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3695/inclusive-mobility.pdf

4.12 Unless considered inappropriate or impracticable, the pavement café area should be enclosed. The extent of enclosure may depend on size and location; the existence of adjacent parking bays would also be a determining factor in this respect. Barriers of the 'post and chain' type should be discouraged as they are potentially hazardous to pedestrians. Portable, sturdy barriers with a top rail are recommended.

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 The relevant council considers and determines planning applications for local and major development proposals in accordance with legislation, planning policy, supplementary planning guidance and other relevant material considerations. While it is unlikely that a pavement café established under the Act will need formal planning approval, such permission may be required depending upon the nature and scale of the proposal. Other consents, such as Consent to Display an Advertisement and Listed Building Consent, may also be required. The Act does not make explicit provision in relation to the use of awnings, canopies, blinds, etc to be attached to the premises, or means of advertising at pavement cafés. Planning permission and other consents may be required in such circumstances.

Pavement cafe 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 for Finance and Personnel 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-minimus 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.

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 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. **[Working draft of regulation “The Licensing of Pavement Cafés (Form of Licence) Regulations (Northern Ireland) XXXX” attached at Annex A.]**

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.

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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 will 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. A council may wish to make it a requirement that the licence and approved plan be displayed on the associated premises.

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.

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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, any of the grounds in Section 4(2) apply to the new area to be granted.

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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 a 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 make public in advance (on the website, or in another form considered reasonable by a council).

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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 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_Judgment.pdf

[May require to be updated later]

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; and
- the licence holder has –
 - in connection with any application, made a statement he 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 there the pavement café area is split into more than one site a council may still chose 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.

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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; and
 - 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 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 chose 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.

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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 this 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.

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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.

[Working draft of regulation “The Licensing of Pavement Cafés (Register of Licences) Regulations (Northern Ireland) XXXX” attached at Annex B.]

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:

- on renewal the licence conditions or public area is varied [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]; and
- a council compulsorily varies the conditions or public area, or imposes an alcohol prohibition [Sections 16, 17, 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; and
- 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 an exhaustive 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. One exception is where an occasional licence has been granted under the 1996 Order. 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 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.

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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 Social Development 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 VA is inserted into the Licensing (Northern Ireland) Order 1996. Consequently, the provisions of the Licensing Order regarding opening hours, drinking up time, offences and penalties etc, will apply to relevant pavement café areas. However, councils will be able to curtail opening hours at the pavement café and impose an alcohol prohibition if there are concerns about disorder.

The Criminal Justice (NI) Order 2008 is amended to provide an exemption for certain pavement cafés from the restrictions on alcohol consumption in designated areas. Technical amendments are made to the Roads (Northern Ireland) Order 1993 and the Street Trading 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 or his 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.

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 STATUTORY RULES OF NORTHERN IRELAND

XXXX No. xx**LICENSING OF PAVEMENT CAFÉS**
**The Licensing of Pavement Cafés (Form of Licence) Regulations
 (Northern Ireland) XXXX**

Made - - - - - XXXX
Coming into operation - - - - - XXXX

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 5(1) of the Licensing of Pavement Cafés Act (Northern Ireland) 2014^(a) and now vested in it^(b).

Citation and commencement

1. These Regulations may be cited as the Licensing of Pavement Cafés (Form of Licence) Regulations (Northern Ireland) 2015 and shall come into operation on xxxx.

Form of licence for pavement cafés

2. A pavement café licence shall be in the form set out in the Schedule.

Sealed with the Official Seal of the Department for Social Development on xxxx

(L.S.)

A senior officer of the Department for Social Development

^(a) S.I.2014 c. 9 (NI)

^(b) See Article 8(b) of and Part 11 of Schedule 6 to the Department's (Transfer and Assignment of Functions) Order (Northern Ireland) (S.R. 1999 No. 481)

The Licensing of Pavement Cafés Act (Northern Ireland) 2014

Form of Licence

.....Council

Part 1

The above council, in exercise of its powers under sections 4, 5 and 6 of the Licensing of Pavement Cafés Act (Northern Ireland) 2014 (referred to in this licence as “the 2014 Act”) grants to:

.....
(enter full name of licence holder(s))

this pavement café licence authorising the licence holder(s) to place on the public area(s) identified in the attached plan, temporary furniture for use for the consumption of food or drink supplied in the course of a business carried on by the licence holder(s), in or from:

.....
(enter name and address of premises)

This licence is subject to the conditions set out in Part II; and Parts III and IV where applicable.

This licence shall remain valid indefinitely/be valid for the periodto.....*

Dated thisday of.....20.....

Signature

Delete whichever is inapplicable

Part II

Standard condition subject to which licence is granted

The licence holder must not place temporary furniture for use as mentioned in Part I of the licence in any public area other than the area(s) identified in the attached plan.

Part III

Alcohol condition

In exercise of the powers conferred by section 6(2) of the 2014 Act the council specifies the following alcohol condition:

.....
.....

Part IV

Other conditions

In exercise of the powers conferred by section 6(3) of the 2014 Act the council specifies the following further condition(s):

.....
.....

Dated thisday of.....20.....

Signature

Part V

Variation on application

In exercise of the powers conferred by section 8(4) of the 2014 Act the council varies the licence condition(s) as follows:

.....
.....

In exercise of the powers conferred by section 8(5) of the 2014 Act the council varies the area covered by the licence as shown in the attached plan.

In exercise of the powers conferred by section 9(4)(a) of the 2014 Act the council removes the alcohol condition set out in Part III with effect from.....(date).

Dated thisday of.....20.....

Signature

Part VI

Compulsory variation

In exercise of the powers conferred by section 16 of the 2014 Act the council varies the licence condition(s) as follows:

.....
.....
In exercise of the powers conferred by section 17 of the 2014 Act the council specifies the following alcohol condition:

.....
.....
In exercise of the powers conferred by section 18 of the 2014 Act the council varies the area(s) covered by the licence as shown in the attached plan.

Dated thisday of.....20.....

Signature

Part VII

Renewal of licence

This licence is renewed under section 7(7) of the 2014 Act and, subject to the conditions set out out in Part II; and Parts III and IV where applicable.

This licence shall remain valid indefinitely/be valid for the period*..... to

Dated thisday of.....20.....

Signature

Delete whichever is inappropriate

EXPLANATORY NOTE
(This note is not part of the Regulations)

These regulations prescribe the form of a pavement café licence which is issued by a district council and authorises 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.

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 STATUTORY RULES OF NORTHERN IRELAND

XXXX No. xx

LICENSING OF PAVEMENT CAFÉS
**The Licensing of Pavement Cafés (Register of Licences) Regulations
(Northern Ireland) XXXX**

Made - - - - - XXXX
Coming into operation - - - - - XXXX

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 20 of the Licensing of Pavement Cafés Act (Northern Ireland) 2014^(c) and now vested in it^(d).

Citation and commencement

3. These Regulations may be cited as the Licensing of Pavement Cafés (Register of Licences) Regulations (Northern Ireland) 2015 and come into operation on xxxx.

Matters to be notified

4. A district council must notify the person responsible for keeping the licensing register of matters as set out in Schedule 1.

Documents to be sent

5. A district council must send the person responsible for keeping the licensing register copies of documents as set out in Schedule 2.

(a) 2014 c. 9 (NI)

^(d) See Article 8(b) of and Part 11 of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) (S.R. 1999 No. 481);

^(c) S.R. 1997 No. 75 as amended by S.R. 2004 No. 427 and S.R. 2012 No. 23

Matters to be recorded

6. The person responsible for keeping the licensing register must record particulars of matters relating to a relevant pavement café licence as set out in Schedule 1. These particulars of matters must be recorded in column 6A of the Schedule to The Licensing (Register of Licences) Regulations (Northern Ireland) 1997(c).

Documents to be kept

7. The person responsible for keeping the licensing register must keep all documents as set out in Schedule 2.

Sealed with the Official Seal of the Department for Social Development on xxxx

(L.S.)

A senior officer of the Department for Social Development

1. The grant of a relevant pavement café licence.
2. The renewal of a relevant pavement café licence.
3. The revocation of a relevant pavement café licence.
4. The suspension of a relevant pavement café licence.
5. An alcohol condition attached to a relevant pavement cafe licence.
6. The surrender of a relevant pavement café licence.

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1. A copy of a relevant pavement café licence, including the plan showing the location and dimensions of the public area to which it relates.
2. A copy of any amended plan relating to a subsisting relevant pavement café licence.
3. A copy of a subsisting relevant pavement café licence which has had an alcohol condition inserted or removed.
4. A copy of a relevant pavement café licence renewal.
5. A copy of a relevant pavement café licence revocation notice.
6. A copy of a relevant pavement café licence suspension notice.
7. A copy of a relevant pavement café licence surrender notice.

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EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations set out the matters a district council must notify, and the documents it must send, to the person responsible for maintaining the Register of Licences under Article 34 of the Licensing (Northern Ireland) Order 1996 (licences permitting premises to sell intoxicating liquor by retail to the public) in relation to a relevant pavement café licence. It also sets out the matters the person responsible for maintaining the Register of Licences must record in the register and the documents that must be kept.

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