

Licensing of Pavement Cafés Bill

[AS INTRODUCED]

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A

B I L L

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.

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.—(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
5 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—

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

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

- 15 (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.

20 (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.

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”)— 5

(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, 10

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”— 15

(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. 20

(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. 25

(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. 30

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. 35

(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. 40

(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.

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)).

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.

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—

- 5 (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—

- 15 (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;
- 20 (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;
- 25 (g) requiring the surrender of any other pavement café licence in respect of the premises.

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).

35 (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.

40 (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; 5
 - (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. 10
- (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. 15
- (10) In this section “alcohol condition” has the same meaning as in section 17.

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— 20
- (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. 25
- (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— 30
- (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. 35
- (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. 40

(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.

5 (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 (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.

Variation by removal of alcohol prohibition

9.—(1) This section applies where—

- 15 (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
- 20 (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.

25 (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
- 30 (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
- 35 (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.

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. 5
- (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. 10
- (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. 15
- (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. 20
- (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. 25
- (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). 30
- (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. 35

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— 40

(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

5 (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—

10 (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;

15 (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.

Fees

12.—(1) A council may charge fees—

20 (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—

25 (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.

30 (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.

35 (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;

40 (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). 5

(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. 10

(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— 15

- (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. 20

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; 25
- (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. 30

(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 35
- (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. 40

(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;
- 5 (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.

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—

- 15 (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;
- 20 (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;
- 25 (d) that any condition of the licence has not been complied with; 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—

- 30 (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.

35 Suspension of licence

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

- 40 (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. 5

(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; 10

(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. 15

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 20

(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). 25

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. 30

(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 35

(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.

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—

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

10

(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—

15 (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.

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Notice of revocation, suspension or compulsory variation

19.—(1) Notice of any revocation, suspension or compulsory variation of a pavement café licence must be given in writing to the licence holder.

25 (2) A notice under this section 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 right under section 21 (appeals).

30 (3) A notice under this section may provide for the revocation, suspension or variation to take effect on the date when the 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.

(4) 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.

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(5) Where a council has suspended a pavement café licence, it 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.

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(6) Subsections (1) to (4) apply to an extension of a suspension as they apply to a suspension.

(7) 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.

Matters to be recorded in register

Matters to be recorded in register under Licensing Order

- 20.**—(1) Regulations may make provision— 5
- (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— 10
 - (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— 15
- (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— 20
- “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. 25

Appeals

Appeals

- 21.**—(1) Where an application for— 30
- (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. 35
- (3) 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), 40

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

(5) 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.

10 (6) 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).

(7) 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.

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)—

- 20 (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;
- 25 (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;
- 30 (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.

35 (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.

Power to remove unlicensed furniture

40 **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. 5
- (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 10
 - (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. 15
- (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, 20
- 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.

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. 25
- (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.

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. 30 35
- (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 40

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

5 (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.

10 **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.

15 (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.

Regulations

20 **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.

Consequential amendments

25 **28.** The statutory provisions set out in the Schedule to this Act have effect subject to the consequential amendments specified in that Schedule.

Byelaws

30 **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;
- 35 (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;
 - 40 (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; 5
 - (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. 10
- (5) In subsection (1) the reference to intoxicating liquor includes any liquor of a similar nature which falls within the byelaw.

Definitions 15

- 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; 20
 - “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); 25
 - “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” means a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of any statutory provision; 30
 - “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); 35
 - “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); 40
 - “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;

5 “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”—

10 (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);

15 “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.

20 (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.

25 (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.

30 **Short title**

31. This Act may be cited as the Licensing of Pavement Cafés Act (Northern Ireland) 2013.

Commencement

35 **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

CONSEQUENTIAL AMENDMENTS

Roads (Northern Ireland) Order 1993 (NI 15)

1. In Article 71(2) of the Roads (Northern Ireland) Order 1993 (offence of erecting structure on road), after paragraph (b) insert— 5

“(ba) in pursuance of a pavement café licence under the Licensing of Pavement Cafés Act (Northern Ireland) 2013; or”.

Licensing (Northern Ireland) Order 1996 (NI 22)

2. After Part 5 of the Licensing Order insert—

“PART 5A 10

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) 2013, on the plan in a pavement café licence which is in force; and 15

(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. 20

(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) 2013— 25

“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 30

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— 35

(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

5 (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.

10 (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.

15 (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,

20 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.

25 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);

30 (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

35 (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.

40 (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);

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	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;
	Article 69J(2);
	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
- 5 (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—
- 10 (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.
- 15

Off-licence: penalty for consumption on pavement café area

76E.—(1) This Article applies where—

- (a) a pavement café area is associated with premises for which a licence is in force; and
- 20 (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.
- 25 (3) Those provisions are—
Article 57(1)(a);
Article 82(3) and (4).”.

Street Trading Act (Northern Ireland) 2001 (c. 8)

3.—(1) Section 2 of the Street Trading Act (Northern Ireland) 2001 (activities which are not street trading) is amended as follows.

30

(2) In subsection (1), after paragraph (e) insert—

“(f) where a pavement café licence is in force, any trading carried out in the area covered by the licence, if—

- (i) the trading is done in the course of a business involving the supply of food or drink to members of the public, or of a section of the public, which is carried on by the licence holder at the premises specified in the licence; and
- 35 (ii) the trading does not involve a contravention of the conditions of the licence.”.

40 (3) After subsection (4) insert—

“(5) Expressions used in paragraph (f) of subsection (1) and in the Licensing of Pavement Cafés Act (Northern Ireland) 2013 have the same meaning in that paragraph as in that Act.”.

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Criminal Justice (Northern Ireland) Order 2008 (NI 1)

4.—(1) Article 70 of the Criminal Justice (Northern Ireland) Order 2008 (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— 5
“(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) 2013 on the plan in a pavement café licence which is in force; 10

(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— 15

(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; 20

(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; 25

(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.”. 30

5.—(1) Article 72 of that Order (interpretation of Articles 68 to 71) is amended as follows.

(2) In the definition of “intoxicating liquor”, “licensed premises” and “occasional licence”— 35

(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) 2013;” 40

