

Licensing of Pavement Cafés Act (Northern Ireland) 2014



Interim Guidance for Businesses during Covid-19 Pandemic

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Foreword

1. Under the provisions of the Licensing of Pavement Cafés Act (Northern Ireland) 2014, district councils may grant Pavement Café Licences on such terms and conditions and subject to such restrictions as may be reasonably specified in the licence.
2. In specifying any terms, conditions or restrictions in a licence, district councils shall have regard to the guidelines which have been prepared by the Department for Communities (the Department) to assist district councils with the implementation of the statutory licensing scheme. These guidelines highlight the key legislative responsibilities of district councils including the conditions under which pavement café areas should operate.
3. The Department's guidance document is available on their website, as follows:
<https://www.communities-ni.gov.uk/topics/dsd-law-and-legislation/social-law>.
4. Additionally district councils, through the Licensing Forum Northern Ireland (LFNI), have produced this supplementary guidance to assist with the administrative procedures associated with the Act and to promote consistency of approach across Northern Ireland. Given challenges presented on account of the Covid-19 pandemic, Antrim and Newtownabbey Borough Council has adapted this guidance prepared by the Northern Ireland Licensing Forum, as an interim step to facilitate the hospitality sector to prepare for reopening in a safe and effective manner. However, it is not intended that this guidance should be treated as a complete and authoritative statement of the law which is contained only in the Act and Regulations made under it.
5. A district council may modify or dispense with such aspects of this guidance as it thinks appropriate and adopt it for use within their own council area.

Definitions

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

Introduction

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

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

Legislation

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

Purpose of this guidance

This guidance document has been prepared by Officers of the Licensing Forum Northern Ireland and adapted for use by Antrim and Newtownabbey Borough Council to help business owners make an application for a Pavement Café Licence during the Covid-19 pandemic.

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

Business operators must ensure they are familiar with Government legislation and guidance relating to Covid-19 and adhere to all requirements relevant in their workplaces, to ensure the health and safety of their staff and customers, this includes social distancing measures.

What is a Pavement Café Licence?

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

Who may apply?

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

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

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

- Pedestrian and vehicular access;
- Size and layout;

- Likely disturbance to other businesses or residents; • Furniture design;
- Safety issues.

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

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

Hours of operation

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

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

What enforcement powers do the Council have?

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

Unlicensed pavement cafés

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

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

Suspension/Compulsory variation of a licence

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

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

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

Revocation of licence

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

Notice of revocation, suspension or compulsory variation

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

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

Making an Application

Before submitting an application, you should read this guide thoroughly to check whether your proposal meets all of the required criteria. You are advised to contact Antrim and Newtownabbey Borough Council to discuss your proposals PRIOR to submitting your application to help clarify any issues relating to your application. A pavement café licence can be applied for on the pavement café application form (Appendix 2) and will last for one year as an interim measure during the Covid-19 pandemic. Antrim and Newtownabbey Borough Council agreed to absorb administrative costs in relation to pavement café licence applications and set a zero fee. Renewal of a pavement café licence will be subject to an assessment of previous compliance with licence conditions and continued suitability for the purpose. All applications for a pavement café should include the following:

Location plan

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

Proposed Café plan

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

Details of the furniture

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

Other information

- **Public liability insurance** cover with minimum indemnity of £5m will be required and show that your cover includes provision of a pavement café on a public footpath.
- Evidence of **planning permission** where appropriate.

Public notice

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

Consultation

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

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

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

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

Can my licence application be refused?

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

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

If your application is refused by the Council you will be informed of that.

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

How long will it take to process my application?

Antrim and Newtownabbey Borough Council advise you should allow a minimum of 28 days from the date of receipt of a valid application to enable it to be processed. This is to allow full and proper consultation in line with Departmental Guidelines, site visits and consideration of any objections or other input from consultees.

Appendix 1: Suitability Criteria for a Pavement Café Licence

1. Design

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

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

2. Size and layout

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

In general, the outdoor seating area should:

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

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

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

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

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

It is the intention of LFNI to work closely with DFI Roads to draw up technical guidelines which will assist with consistency of interpretation across Northern Ireland of the factors to consider for the layout and design of a pavement café and in particular to take account of other pavement and road users. Antrim and Newtownabbey Borough Council shall take cognisance of additional guidance provided.

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

3. Boundaries

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

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

The design of the barrier should complement the character of the surrounding area and may be required to be of a specific design in order to maintain continuity along the street frontage. The colours and materials used for the enclosure should ensure

that it is not visually dominant in longer views but will allow key elements to stand out against the background in close up.

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

4. Furniture

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

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

Limited advertising may be permitted on areas of the pavement café arrangement; however, applicants are advised to consult with Councils Planning Section for further information by email at planning@antrimandnewtownabbey.gov.uk or by phone on 0300 123 6677. Proposed details should be provided with the application.

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

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

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

5. Environmental implications and other requirements

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

All food premises should be registered with the Council.

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

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

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

Licensees may wish to consider for the convenience of their patrons dividing their licenced pavement cafe area into smoking and non-smoking sections with each clearly marked. Licensees are reminded they must comply with smoke free legislation. If you are unsure of these requirements contact the Council's Tobacco Control Officer by email at envhealth@antrimandnewtownabbey.gov.uk.

6. Safety and Control

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

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

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

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

7. Other statutory requirements

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

Planning

Planning permission is not normally required for a pavement café with temporary street furniture, however it should be noted that the use of more permanent fixtures may require planning permission. For further information, please contact the Council's Planning Section by email at planning@antrimandnewtownabbey.gov.uk or by phone on 0300 123 6677.

Rates liability on grant of licence

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

8. Consumption of Alcohol

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

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

Note

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

Appendix 2

ANTRIM AND NEWTOWNABBEY BOROUGH COUNCIL **APPLICATION FOR A PAVEMENT CAFÉ LICENCE**

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

Pavement Café Application type - *tick as appropriate*

Grant

Renewal

Variation

Applicant details

Name: _____

Address: _____

_____ BT _____ Tel: _____

Email: _____ D o B: _____

Designation: Owner / Director / Manager - or otherwise state _____

Premises details

Type of premises: _____

Name: _____

Address: _____

_____ BT: _____ Tel: _____

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

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Licensing details

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

Proposal details:

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

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

Site details – (see guidance document)

Provide an area Location Plan, scale 1:1250, depicting location of Pavement Café and sufficient surrounding area with infrastructure.	Here Enclosed	To Follow
Provide a proposed Site Plan, scale not less than 1:100, depicting the street space occupied, size and type of barriers, number and type of tables and chairs, and any other pavement café furniture.	Here Enclosed	To Follow
Please state where the Pavement Café furniture will be stored when the premises is closed for business.	State	
I confirm that I wish to apply for a Pavement Café Licence for the development as described within this application.	Tick	
I confirm that that the information provided in this application is correct.	Tick	

I confirm that I have placed the appropriate notice in a prominent place at or near the premises that it can easily be read by the public, and that the notice shall be displayed for 28 days from the date of this application.	Tick
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Applicant signature: _____

Date: _____

CHECKLIST

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

Appendix 3

ANTRIM AND NEWTOWNABBEY COUNCIL

Licensing of Pavement Cafés Act (Northern Ireland) 2014

PUBLIC NOTICE

APPLICATION FOR A PAVEMENT CAFÉ LICENCE

NOTICE IS HEREBY GIVEN THAT

(Name of applicant) _____

(Address of applicant) _____

Has applied to Antrim and Newtownabbey Borough Council for a Pavement Café Licence
at

(Name and address of premises) _____

Any objection relating to the application should be made within 28 days of the date of this Notice. The objection should be addressed to **Environmental Health, Antrim and Newtownabbey Borough Council, Mossley Mill, Carnmoney Road North, Newtownabbey, BT36 5QA.**

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

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

(Applicant's Signature) _____ (Date) _____

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

Appendix 4 – Examples of Pavement Café Plans



