

*These notes refer to the Licensing of Pavement Cafés Act (Northern Ireland) 2014 (c.9) which received Royal Assent on 12 May 2014*

# Licensing of Pavement Cafés Act (Northern Ireland) 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule*

The Schedule contains amendments to other legislation as a consequence of the introduction of the Act.

Paragraph 1 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.

Paragraph 2 inserts a new Part 5A into the Licensing (Northern Ireland) Order 1996 (the Licensing Order) 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 76C provides that the pavement café area associated with certain categories of premises which may be granted a licence under Article 5 of the Licensing Order is to be treated as part of such premises for the following purposes:- the hours for licence holders permitting consumption of intoxicating liquor and for customers consuming intoxicating liquor; 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. These premises are a pub, 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. 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, there is a similar prohibition on selling alcohol in the off sales section for consumption on 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 guest house in which the business of a restaurant is carried on, a restaurant, or a refreshment room in public transport premises where that area is used exclusively or mainly for the consumption of intoxicating liquor. However 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 an offence for any person who has purchased intoxicating liquor 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 if such consumption takes place with the knowledge or consent of the licence holder or any servant or agent.

Paragraph 3 amends Section 2 of the Street Trading (NI) Act 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 the licence holder's business and relates to supplying food or drink to customers for consumption on the pavement café area), is excluded from the need to obtain a street trading licence.

Paragraphs 4 and 5 amend Article 70 and Article 72 of the Criminal Justice (NI) Order 2008 to provide an exemption for certain pavement cafés from the restrictions on alcohol consumption in designated areas.