



**An Roinn Gnó,
Fiontar agus Nuálaíochta**
Department of Business,
Enterprise and Innovation

Public Consultation on the Casual Trading Act 1995 and the Occasional Trading Act 1979

August 2018

1. Introduction

The Department of Business, Enterprise and Innovation as part of its ongoing consumer policy agenda is reviewing the provisions of both the Casual Trading Act 1995 and the Occasional Trading Act 1979. Both pieces of legislation have been on the statute book now for a number of years and given the changes in retail and trading environments and developments in digital commerce over the years, it is considered that it is an opportune time to re-examine both pieces of legislation to ensure that they are still fit for purpose.

Coinciding with the announcement of this consultation process, the Minister for Business, Enterprise and Innovation has signed Regulations on 1st August 2018 entitled the European Union (Casual Trading Act 1995) Regulations 2018 (S.I. No. 308 of 2018) which come into effect on the 1st January 2019.

These Regulations align the Casual Trading Act 1995 with certain provisions of the EU Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. These provisions relate to:

- selection procedures used by local authorities in issuing licences;
- the issue of charges and fees, and
- the duration of casual trading licences.

Links to the Services Directive, the European Union (Provision of Services) Regulations 2010 (S.I. No. 533 of 2010) and the European Union (Casual Trading Act 1995) Regulations 2018 (S.I. No. 308 of 2018) as follows:

eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0123.

www.irishstatutebook.ie/eli/2010/si/533/made/en/print.

www.dbei.gov.ie/en/Legislation/Legislation-Files/SI-No-308-of-2018.pdf.

2. Public consultation

As part of this review process, the Department is seeking submissions from interested parties - local, regulatory and representative authorities, consumers, casual and occasional traders and anyone engaged in or with an interest in trading in public and private areas.

A summary of both pieces of legislation and current issues arising is set out in the following pages with questions posed on specific topics which respondents are asked to comment on. While questions have been included to assist the review, respondents are free to include in their submissions any other issues/comments relevant to the Casual Trading Act 1995 and the Occasional Trading Act 1979 which they wish to raise as part of this consultation process.

Any queries in relation to the consultation can be directed to the Competition and Consumer Policy Section of the Department at the following contact points:

Aedín Doyle at 01- 6312652 (or at Aedin.Doyle@dbei.gov.ie)
Paul Brennan at 01-6312612 (or at Paul.Brennan@dbei.gov.ie).

3. Submissions

Respondents are requested to make their submissions **by e-mail to conspol@dbei.gov.ie**.

The closing date for receipt of submissions is close of business, **Wednesday 31st October 2018**.

When making your submission please provide the name of the individual, firm or organisation making the submission; contact details and briefly describe your interest in this subject matter.

4. Publication of Submissions

The Department may make public on its website all submissions received under this consultation.

However, should you submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive. The Department will consult with you regarding such information before making any decision to disclose it.

5. Relevant provisions of Freedom of Information Act 2014

Attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should it be considered that any information provided by a respondent is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with interested parties making submissions regarding information identified by them as sensitive before making a decision on any Freedom of Information request.

6. General Data Protection Regulation

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data.

The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose Limitation;
- Data minimisation;
- Accuracy;
- Storage Limitation;
- Integrity and confidentiality, and
- Accountability.

The Department of Business, Enterprise and Innovation is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018.

Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Act 2018.

Casual Trading Act 1995

General Provisions

The Casual Trading Act, 1995 is the successor to the Casual Trading Act, 1980 and its purpose is to provide for a control and regulatory system for people trading in public places.

Links to the legislation, accompanying S.I.s and Guidance Note are as follows:

www.irishstatutebook.ie/eli/1995/act/19/enacted/en/html.

www.dbei.gov.ie/en/Legislation/Legislation-Files/Guidelines-for-Local-Authorities-for-the-carrying-out-of-their-Functions-under-the-Casual-Trading-Act-19951.pdf.

Casual trading is defined in Section 2 of the Act as:

“selling goods at a place (including a public road) to which the public has access as of right or at any other place that is a casual trading area.”

Casual trading includes trading stalls at daily/weekly public markets (“market trading”), trading at once-off or annual events such as concerts and festivals (“event trading”), and on-street trading e.g. selling certain fruit/vegetables and other products at the side of a road (“street trading”).

Under section 2(2) of the Act, auctions, door-to-door selling, sales for charitable purposes and selling by a grower of certain soft fruits (strawberries, raspberries, blueberries, gooseberries, blackberries, loganberries, tayberries and currants) and certain vegetables (potatoes) during the period 1 May to 30 September are exempt.

Question 1

Do you consider that the scope, definition and exemptions for casual trading in the Act are still fit for purpose or do they need up-dating? Please elaborate in your response.

Bye-laws

The Act devolves the regulation of casual trading from a national level to the local authorities and the 1995 Act requires that local authorities make bye-laws governing casual trading. These bye laws can be used by local authorities to designate casual trading areas, set the size of pitches, set the fees for licences etc. The Act is enforced by authorised officers appointed by local authorities and by An Garda Síochána.

Local authorities should note that the new European Union (Casual Trading Act 1995) Regulations 2018 (S.I. No. 308 of 2018) provides for the following changes to apply to casual trading applications and licences as and from the **1st January 2019**.

Licence Fee

In order to align the Act with the Services Directive, Regulation 5 of the European Union (Casual Trading Act 1995) Regulations 2018 (S.I. No. 308 of 2018) amends section 6 of the Act to provide that fees for casual trading licences shall be reasonable and proportionate and only reflect the cost of administering the scheme and should not exceed that cost. The cost of fees is now distinguishable in the Act from other charges in respect of facilities and services provided by local authorities.

Duration of Casual Trading Licence

In order to align the Act with the Services Directive, Regulation 3 of the European Union (Casual Trading Act 1995) Regulations 2018 (S.I. No. 308 of 2018) amends section 4(8) of the Act to provide for licences to be issued for an unlimited period and to prohibit automatic renewal.

Question 2

Please provide observations on the current use and operation of the casual trading bye laws by local authorities?

Question 3

Please provide observations on the current casual trading licence application process?

Question 4

Please provide observations on the current enforcement or non-compliance with the casual trading licensing bye laws?

“Farmers’ Markets”

There has been a recent rise in popularity of markets selling farm produce and organic products. The Department would be interested in hearing if the current casual trading legislation best serves the development of this new form of commerce. “Farmers’ Markets” would be classified as “market trading” for the purposes of casual trading legislation.

Question 5

Please provide observations on the operation and regulation of “Farmers’ Markets” in line with the current casual trading legislation?

Market Rights

Some areas of land have a "market right" attached to them where casual trading has been carried out for many decades/centuries and the right to do so is recognised by law. The law of markets and fairs relates to the entitlement of persons or bodies to conduct a periodic market subject to the terms set out in the legal instrument which confers the right in the first place. That right is typically conferred by a historic royal charter or by statute. It is well established, as a matter of common law, that parties have a right to trade at such markets subject again to the terms of the instrument creating the market right. However, despite their ancient historical lineage, "franchise markets" remain largely operational today. It is also of note that the Supreme Court found that a "casual trading area" created under the 1995 Act does not automatically amount to a market, properly so called.

Section 7 of the Casual Trading Act provides that a local authority may acquire any market right in respect of a market or fair in its functional area by agreement or compulsorily under certain conditions including the provision of corresponding alternative facilities. The local authority must publish notice of its proposal to extinguish a market right and a person who is aggrieved by such a proposal may appeal to the District Court against the extinguishment.

Question 6

Please provide observations on the co-existence of 'markets' with historical market rights alongside casual trading legislation and bye laws by relevant local authorities and how any challenges arising from the interplay of the two can be reconciled?

Customer Complaints

While the Act is currently silent in relation to the capacity of the consumer to make a complaint or resolve a dispute with a trader, the provision of a complaints facility is specifically provided for in Article 27 of the Services Directive and associated Regulation 23 (S.I. No. 533 of 2010).

The only form of redress currently available in this connection is a challenge to the content of the bye laws. The Department's advice acknowledges this possibility in its guidance note: "Otherwise ordinary judicial remedies appear to be available to include access to the High Court and judicial review in the case of actions by a local authority".

Another issue arising is whether local authorities' "Traders' Registers" could or should be made public so as to provide the relevant information to a consumer who has issues with a trader. Under the Services Directive and the European Union (Provision of Services) Regulations 2010 (S.I. No. 533 of 2010), a trader is obliged to provide contact details for the consumer in the event of a dispute.

Question 7

Please provide views on enabling consumers to make a complaint against a casual trader and what would be the most appropriate way to provide for this in the legislation?

Question 8

Please provide views on the publication of “Traders’ Registers”?

Fines

Section 14 of the Casual Trading Act 1995 sets out the penalties for a person found guilty of an offence under section 3 of the Act. These penalties have not been reviewed since the Act became law. The question of non-compliance with Casual Trading legislation may have a link to the issue of the size of fines and how they are enforced since the measure was enacted.

Question 9

Please provide views on the current level of penalties having regard to the period of time that has elapsed since the legislation was enacted?

Occasional Trading Act 1979

General Provisions

The purpose of the Occasional Trading Act, 1979 is to provide for a control and regulatory system for people involved in occasional trading.

Link to the legislation on the statute book is as follows:

www.irishstatutebook.ie/eli/1979/act/35/enacted/en/html

Occasional trading is defined in Section 2 of the Act as:

“selling goods by retail at a premises or place (not being a public road or other place to which the public have access as of right) of which the person so selling has been in occupation for a continuous period of less than three months ending on the date of such selling.”.

Section 2(2) of the Act provides that the following types of selling are not included in the definition for the purposes of occasional trading:

- selling by auction (other than by Dutch auction) by the holder of a licence or permit for the time being in force under the Auctioneers and House Agents Acts, 1947 to 1973,
- selling at a trade, commercial, agricultural or industrial fair or show that is held wholly or mainly for a purpose other than the selling of goods,
- selling of agricultural or horticultural produce (including livestock) by the producer thereof or his servants or agents acting as such,
- selling to a person at, or at a place adjacent to, the place where he resides or carries on business,
- selling by or on behalf of the State or a Minister of the Government,
- selling of ice-cream, sweets, chocolate confectionery, cooked foods (other than those cooked at the place of sale), fruit or non-alcoholic beverages from a tray, basket, barrow, trolley or other similar device at an event to which the public are admitted whether subject to or free of charge, or on the day on which, and at or in the immediate vicinity of the place at which, there takes place, such an event,
- selling of ice-cream (with or without wafers, biscuits or cornets), newspapers, periodicals, magazines or other printed matter or pious or religious objects,
- selling of fish,
- selling, the profits of which are used for charitable or other purposes from which no private profit is derived or intended to be derived, and
- selling of hand-crafted goods by the maker thereof or the spouse or child of such maker.

Current enforcement and application process

Under the current Act, occasional traders may only trade once they have been issued a permit by the Minister for Business, Enterprise and Innovation. The permit is specific to a certain place and date, and under the Act must be applied for at least 30 days in advance of the event. The permit number must be quoted in any media advertising the event and the permit itself must be displayed in a prominent place on the day of the event. A person guilty of an offence under the Act may face fines and imprisonment and the Act is enforced by authorised officers from the Competition and Consumer Protection Commission. The current fee for such a licence is €95.23.

The numbers of occasional trading permits issued over the last few years are as follows:

2010	32
2011	42
2012	27
2013	27
2014	12
2015	2
2016	2
2017	2

Policy considerations

It is evident from the above tabular statement, that the Department has received very few applications for occasional trading permits in recent years. This could signify a move away from such events (due to perhaps the increase in online trading practices) or maybe a certain lack of awareness by traders of the requirements of the 1979 Act.

Therefore, the Department is considering a range of options in relation to the issue e.g. whether there is any continued need for such an Act at all, whether responsibility for providing Occasional Trading Permits and the enforcement of the legislation might better be devolved to the local authorities who are familiar with their area, who would be aware of any occasional trading taking place and who are capable of local enforcement (as is the case with casual trading licences), or whether the current legal framework should remain.

Question 10

Please provide observations on whether there is a continued need for legislation to regulate occasional trading and if so what format do you consider it should take?

Notwithstanding the answer to Question 10:

Question 11

Do you consider that the scope, definition and exemptions for occasional trading in the Act are still fit for purpose or do they require up-dating? Please elaborate in your response.

Question 12

What are your observations on the current occasional trading permit application process?

Question 13

Please provide observations on how occasional trading might be better enforced?

Question 14

What are your views on devolving responsibility for occasional trading to the local authorities?

ENDS.