

CASUAL TRADING ACT, 1995

EXPLANATORY MEMORANDUM

The purpose of this memorandum is to outline in layman's language the main provisions of the Act. It is not a legal interpretation of the Act, which may be purchased at the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2.

Section 1 - Interpretation: provides definitions for terms recurring in the text of the Act.

Section 2 - Casual Trading: defines “casual trading” as “selling goods at a place (including a public road) to which the public have access as of right or at any other place that is a casual trading area” and specifies (sub-section (2)) three exemptions from the scope of regulation under the Act as follows:

- selling by a licensed auctioneer;
- door-to-door selling,
- selling in aid of a charity or for some purpose from which no private profit is made e.g. famine-relief organisations, hospitals, organisations that help the poor, churches, mission societies, schools, sports clubs.

Sub-section (3) enables the Minister for Enterprise and Employment, by regulations, to amend (whether by the addition, deletion or alteration) the classes of selling which are exempted under sub-section (2) while sub-section (4) empowers local authorities, under bye-laws, to add to the classes of selling exempted under sub-section (2).

Section 3 - Restriction on casual trading: prohibits casual trading unless carried out by a person who holds a casual trading license and contains limitations (sub-section (2)(a)) on such casual trading. Sub-section (2)(b) provides that the restriction on a casual trader effected by sub-section (2)(a) shall not apply, during the currency of a casual trading license issued by the Minister for Enterprise and Employment under the 1980 Casual Trading Act, to that casual trader in respect of a local authority which has not designated a casual trading area under the 1980 Act.

Section 4 - Casual trading licenses: provides that a local authority shall, subject to certain specified provisions, grant a casual trading license to an applicant who pays the fee (if any) fixed under section 6 and fulfills certain conditions, including the supply of an RSI/Tax Reference number by virtue of an amendment to the Act by the Finance Act,

1996. The licensing system enables a local authority to either issue a general licence without territorial limitation in its own jurisdiction, or to confine it to casual trading areas (designated areas) or to issue licenses for special events.

Conditions may be attached to a license and the license may be revoked if they are not observed. Furthermore, it is an offence to fail to comply with the conditions. Local authorities are empowered to refuse to grant a license or to revoke a license when a person commits offences connected with casual trading or connected with the importation, sale or possession of goods, when the holder of a license. Sub-section (9) provides that the application form for a casual trading license shall be in a form prescribed by the Minister.

Local authorities are obliged to inform the Minister for Social Welfare and the Revenue Commissioners when a license is issued.

Section 5 - Display of casual trading licenses: provides for the display of casual trading license number at place of trading.

Section 6 - Bye-laws: gives general powers and flexibility to a local authority to make bye-laws relating to the control, regulation, supervision and administration of casual trading in its functional area, including bye-laws relating to the designation of casual trading areas, the maximum area to be occupied by a person in a casual trading area, the regulation of access to casual trading areas, the fixing of fees, the provision of trading places for disabled persons and enforcement. It also provides for the procedure to be followed by a local authority in the making of bye-laws, and for appeals.

Section 7 - Acquisition and extinguishment of market rights: provides that a local authority may acquire any market right or fair in its functional area by agreement or compulsorily. Provisions of the Local Government (No. 2) Act, 1960 and the Housing Act, 1966 shall apply in relation to a market right in respect of a market or fair as they apply in relation to land. It also provides that a right to hold a market or fair remaining unexercised for a period of not less than 10 years after the commencement of the Act will be extinguished.

Section 8 - Powers of local authorities in relation to market rights owned by them: provides that a local authority may carry on, manage and regulate a market or fair; may extinguish and make alternative provision for a market or fair owned by it. Provision is made for appeals against a local authority's decision to extinguish or make alternative provision for a market or fair.

Section 9 - Prohibition of false information and alteration of licenses: provides that it shall be an offence to give false information to a local authority in relation to a license; to alter or use a license with intent to deceive; or to forge a license.

Section 10 - Powers of authorised officers and Garda Siochana: provides for the appointment of authorised officers and specifies their powers.

Section 11 - Further powers of Garda Siochana: provides that the Gardai may arrest without warrant a person who contravenes the Act and may seize and detain any goods he is selling or has in his possession for sale.

Section 12 - Disposal of goods seized by Garda Siochana: provides for the disposal of goods seized by the Gardai under Section 11.

Section 13 - Registers of licences: provides that a local authority shall maintain a register of licences containing such particulars as the Minister considers appropriate and specifies to the authority. The Register may be kept in electronic form.

Section 14 - Penalties: provides for penalties and streamlines the jurisdiction of the Courts in relation to offences.

Section 15 - Laying of regulations: provides that regulations made under the Act shall be laid before each House of the Oireachtas.

Section 16 - Amendment of Occasional Trading Act, 1979: Amends the Occasional Trading Act, 1979.

Section 17 - Repeal and transitional provision: provides for the repeal of the Casual Trading Act, 1980 and makes appropriate transitional provisions.

Section 18 - Short title and commencement: contains the short title of the Act and makes provision for commencement of the Act.