

COMPETITION AUTHORITY

22 August 2002

REPORT ON THE IMPLEMENTATION OF THE CASUAL TRADING ACT, 1995

PURSUANT TO SECTION 11 OF THE COMPETITION ACT 1991

EXECUTIVE SUMMARY

This Study was undertaken by the Competition Authority, at the request of the Tánaiste and Minister for Enterprise, Trade and Employment, under Section 11 of the Competition Act, 1991, (as amended). Its purpose is to investigate how the Casual Trading Act, 1995 (“the Act”), has been implemented by local authorities, and to examine its effects on competition in local markets. The Study also examines whether measures employed by local authorities are necessary for the achievement of public interest objectives such as, among others in this context, public order and safety.

To help in its background research for the Study, the Authority commissioned market research consultants MRBI Ltd to conduct a data collection exercise and to survey those most affected by the Act. MRBI conducted a large-scale survey of casual traders and permanent businesses across the State, and several in-depth interviews with the Department of Enterprise, Trade and Employment, local authorities, Chambers of Commerce, the Gardaí, and casual traders and their representative organisations. The essence of MRBI’s findings is discussed in the body of this report.

The Act allowed for the devolution of the regulation of casual trading from a national to a local level. Chapter 2 outlines how the Act requires that local authorities make bye-laws governing casual trading, issue licences to trade, charge the fee they deem appropriate for such licences, and provide such facilities as they feel are needed. The right to challenge such bye-laws was also established in the Act, though no challenge is allowed on the level of the fees for the licence.

Chapter 3 examines casual trading in the State, emphasising that only 58 of the 88 local authorities have introduced bye-laws under the Act. Traders in possession of licences in these 58 authorities number approximately 1,350, while estimates of unlicensed and illegal traders vary widely. The most commonly traded goods are clothing, and fruit and vegetables, though in general the range of goods traded is quite substantial. MRBI found that licence fees varied greatly across local authorities, ranging from €13 up to €1,777 per annum. Given that some traders operate in more

than one local authority, the total fees they would pay could be greater than this. MRBI also conducted a pricing study that found limited variation in prices across different local authorities for fruit and vegetables, but that prices of other goods tended to be higher in areas with high licence fees.

Chapters 4 and 5 outline the views of the Department of Enterprise, Trade and Employment and local authorities. Many local authorities stated that the Act has provided them with the necessary control to manage casual trading more efficiently. It was also stated that the Act has, and will, put an end to many arguments over pitches and types of goods sold. Some local authorities felt that the Act was beneficial in that it enabled them to ensure that a variety of goods are traded, and to try to prevent too much direct competition with local businesses. All local authorities interviewed in-depth by MRBI felt that the Act would enable the elimination of illegal trading (that is, trading without a licence, where a licence is required). There was, however, some divergence in local authorities' attitudes towards casual trading in general. The vast majority of urban local authorities felt that casual trading was to be encouraged, as it added to the atmosphere of a town as well as attracting consumers who would also shop with the permanent businesses. A significant number of rural authorities felt that casual trading was to be discouraged, in that it had a negative effect on the area and on permanent businesses based there. Urban authorities also noted a high demand for licences, while rural authorities suggested the demand was low in their areas.

The views of casual traders themselves were sought and are summarised in Chapter 6. Licensed traders tended to feel that, if properly implemented, the Act would be of benefit, while unlicensed traders were more sceptical. All traders felt that they obtained relatively little from the local authorities, in terms of facilities and space, in return for their licence fees. They also were of the opinion that the Act was unfair in not allowing them to directly appeal the level of the licence fees charged. The Irish Organisation of Market and Street Traders, a representative organisation for traders, felt that the Act was frequently being used to unfairly discourage casual trading.

Chapters 7 and 8 give the views of permanent businesses and the Gardaí. Permanent businesses showed, on average, a low level of knowledge of the Act, and, when

asked, had mixed views on casual traders. Many urban businesses viewed casual trading as potentially complementary, but the majority of rural respondents, particularly those selling the same goods as casual traders, viewed them as being “unfair competition” inasmuch as they did not have to pay the same level of rates to the local authorities. The Gardaí had a high level of knowledge of the Act, and generally viewed it very positively. They believed that, if fully implemented, the Act would improve public order and safety, the main issue for Gardaí being the trading of unsafe illegal goods.

To summarise the views of those consulted: it seems that, with very few exceptions, stakeholders believe that if the Act was correctly and fully implemented, as was envisaged by the Department of Enterprise Trade and Employment, it would ultimately benefit casual traders, local businesses, public order and safety and consumers alike. The main areas where MRBI found that the Act was not being implemented as envisaged were: (a) one-third of local authorities have no bye-laws, and thus the Act has not been implemented at all in these areas - this also hinders the implementation of the Act in other areas; (b) licence fees are typically set without consulting casual traders and seemingly without regard to the level of facilities being provided; that is, they often appear to be set arbitrarily; (c) in some areas, the designated trading area is in a location which ignores the potentially beneficial spill-over effects, both to the public and to sellers, of placing casual traders near to the permanent businesses (in the case of event trading, the designation of a trading area is sometimes unmindful of public order and safety or disproportionately cautious); and, (d) pitch sizes are frequently too small for some casual traders’ stalls.

The legal and economic implications of these results are discussed in Chapter 10. Casual traders are arbitrageurs; they keep prices down in areas where they might otherwise be high, by reacting quickly to market changes and increasing the responsiveness of supply to demand peaks and changes. In this context, a failure to introduce bye-laws seems to limit this function, and is also a breach of the Act.

There is a lack of consistency in the implementation in the Act. A number of hypotheses are considered to explain the large variations in fees: differences in levels of facilities being provided, attempts by local authorities to efficiently allocate scarce

pitches and licences, the possibility that local authorities in some areas may be using fees to raise revenue. A policy of setting fees to maximise revenue would be regarded as unreasonable - it was not envisaged by the Act, and could constitute a barrier to entry and a distortion of competition.

The location of designated trading areas and pitch sizes, and their role in the local economy, are also examined. Providing small pitches in trading areas located far from the town centre is potentially a disproportionate response to ensuring public interest objectives. Another point considered is the rise in private trading - where markets are held on private land. The Act does not apply to such trading, and it is noted that unless the Act is appropriately applied throughout the State, casual trading itself may suffer, with attendant negative implications for local economies.

Chapter 11 sets out the Authority's recommendations arising out of the research and analysis conducted during the Study, and the reasoning behind the recommendations. The recommendations are listed below:

- R1. The 30 local authorities that have not yet introduced bye-laws under the Casual Trading Act, 1995, should do so without delay.
- R2. Local authorities should consult casual traders and other interested parties when introducing or amending bye-laws and making decisions under the Casual Trading Act, 1995.
- R3. Guidelines should be drawn up at a national level to direct local authorities in implementing the Casual Trading Act, 1995.
- R4. The determination of pitch sizes, set by local authorities under the Casual Trading Act, 1995, should not act as a barrier to entry for any type of trader; local authorities could designate a number of larger pitches for certain classes of trader.
- R5. Fee set under the Casual Trading Act, 1995, should be based solely on the administrative cost of issuing licences and any costs associated with providing facilities.

- R6. Section 6(4) of the Casual Trading Act, 1995, should be amended to read “...local authorities shall have regard to the facilities and services provided by it to persons engaged in casual trading”.
- R7. Licences issued under the Casual Trading Act, 1995, should be allocated on a historical basis or a first-come, first-served basis, with a waiting list operating for pitches that become free.
- R8. The possibility of mutual recognition of licences among the local authorities should be investigated so that an event trader might need to apply only once in full for a licence under the Casual Trading Act, 1995.
- R9. Local authorities should be required to make available to the public a list of its licence fees under the Casual Trading Act, 1995, together with a breakdown of the various costs leading to those calculations. This same information should be collated centrally.
- R10. The Casual Trading Act, 1995, should be amended to enable fees, and amendments to fees, to be challenged in the District Court with a provision to appeal to the Circuit Court, as are other aspects of bye-laws.

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CHAPTER 1

INTRODUCTION

- 1.1 Under Section 11 of the Competition Act, 1991, as amended, “(1) The Authority may, and at the request of the Minister, shall, study and analyse any practice or method of competition affecting the supply and distribution of goods or the provision of services and which, in the case of a request by the Minister, is specified in the request ... (2) The Authority shall, at the request of the Minister, report to the Minister the results of a study or analysis referred to in subsection (1).”
- 1.2 On 31 March 2000 the Tánaiste wrote to the Authority requesting it to undertake a study (“the Study”) under Section 11 of the Competition Act, 1991 (as amended) with the following terms of reference:

To undertake a study of the manner in which the provisions of the Casual Trading Act, 1995 have been implemented by local authorities with a view to assessing the impact of that legislation on competition in local markets and, in particular, whether the measures employed by local authorities can reasonably be regarded as necessary for and proportionate to the achievement of public interest objectives relating, for example, to public order and safety.

- 1.3 The Tánaiste’s letter mentioned a series of complaints made by casual traders regarding the operation of the Casual Trading Act, 1995 (“the Act”) by local authorities. The principal issues raised were:
- licence fees charged by local authorities varied very widely throughout the country, and could be very high;
 - no account was taken by local authorities of the practical difficulties of traders, e.g. size of stalls, parking of vans, etc;
 - local authority members could be faced with a conflict between their duties under the Acts and their private interests;

- local authorities saw casual traders as a nuisance rather than part of the commercial life of a town;
- casual traders who wished to move from area to area had to pay a fee in each local authority area where they wished to trade (there are 88 local authorities); and
- local authorities had been very reluctant to use their powers to exempt specified activities from the application of the Act within their own areas and this had impacted particularly severely on fruit and vegetable growers who had enjoyed a general exemption to engage in roadside sales under the 1980 Act.

1.4 Due to the high turnover of staff in the Competition Authority in 2000, work on the study was unavoidably delayed. In August 2001, after a process of requesting tenders, the Authority engaged market research consultants MRBI Ltd to conduct much of the initial research. In the course of its research, MRBI conducted in-depth interviews with:

- The Irish Organisation of Market and Street Traders (“IOMST”),
- The Department of Enterprise, Trade and Employment,
- 9 Local Authorities,
- 9 Chambers of Commerce,
- 12 Casual Traders,
- 1 Special Event Trader,
- 10 Garda Superintendents.

Through questionnaires, MRBI also gathered factual data and opinions from each of the 88 Local Authorities and from a representative sample of 326 casual traders and 154 local permanent businesses. MRBI delivered its final report to the Authority in December 2001. MRBI’s findings are summarised in Chapters 3 to 8.

- 1.5 The remainder of this report is laid out as follows: Chapters 2 to 8 describe various aspects of casual trading in the State while Chapters 9 and 10 provide legal and economic analysis of the pertinent issues and make recommendations based on this analysis. Chapter 2 summarises the Casual Trading Act, 1995 - its structure, contents and purpose. A factual description of casual trading in the State is provided in Chapter 3. Chapters 4 to 8 outline the views of, and information obtained from, each stakeholder group that has an interest in the regulation of casual trading: the Department of Enterprise, Trade and Employment, local authorities, casual traders, permanent businesses and the Gardaí. All quotes in these chapters are taken directly from in-depth interviews with each stakeholder group. Legal and economic analysis of the Act and its implementation is provided in Chapter 9 and conclusions are drawn in regard to the terms of reference of this study. Chapter 10 makes recommendations on the basis of the research and analysis presented in previous chapters.
- 1.6 The Authority wishes to express its gratitude to all parties who gave interviews, completed questionnaires and provided information.

CHAPTER 2

THE CASUAL TRADING ACT, 1995

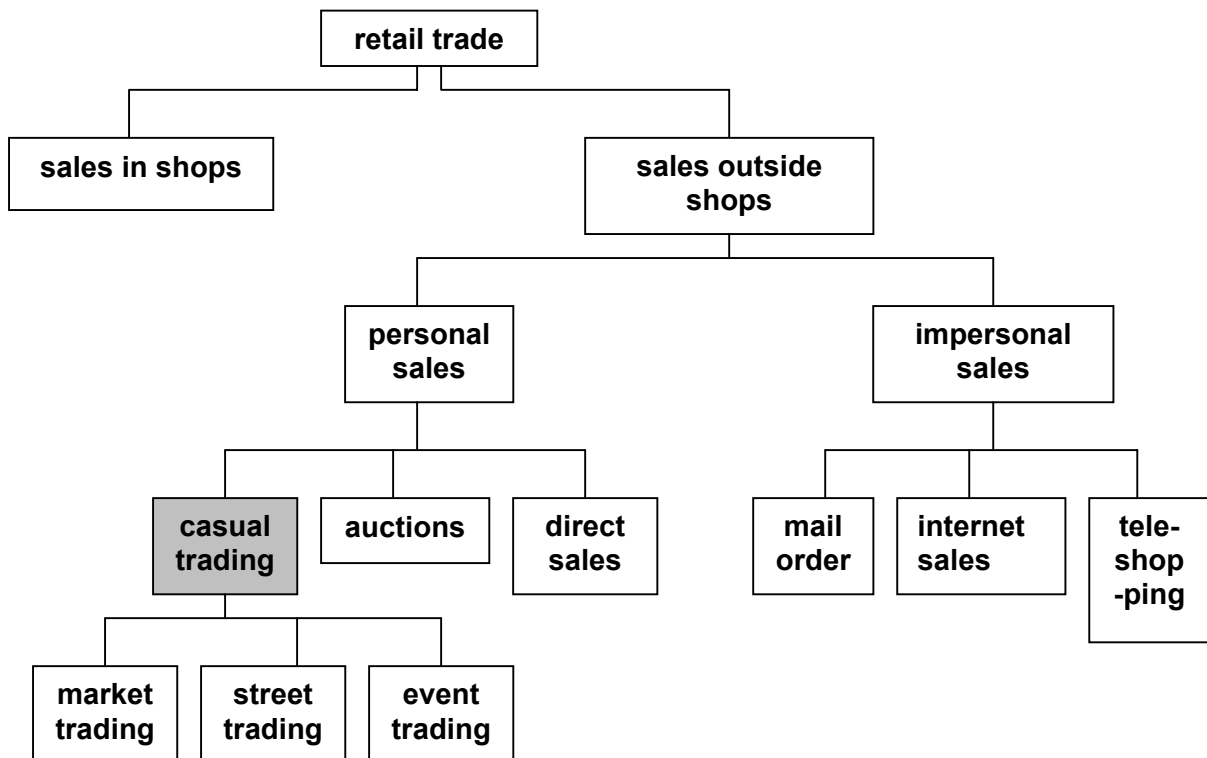
Background

What is Casual Trading?

2.1 The Act 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*”. Auctions, door-to-door selling and sales for charitable purposes are exempt. The Act does not cover trading on private land, e.g. fairs at racecourses, car boot sales on private property.

2.2 Casual trading forms part of the State’s overall retail trade. Figure 1 below indicates the position of casual trading in the structure of retail trade in Ireland. 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 fruit at the side of a road (“street trading”).

Figure 1 - Structure of Retail Trade



The Purpose of the Act

2.3 The purpose of the Act was to decentralise to local authorities the control and regulation of casual trading. Before the Act came in to force, licences were issued for the entire country, by the Department of Enterprise, Trade and Employment, and the licence fee was fixed at €241¹. There also existed local permits, which carried fees of up to €38. The list of exemptions went beyond auctions, door-to-door selling and sales for charitable purposes, to include certain goods such as fruit/vegetables and newspapers.

The Main Provisions of the Act

Casual Trading Licences

2.4 The Act specified that local authorities shall issue casual trading licences and that it is an offence to engage in casual trading in the State without such a licence. A local authority may specify where and on what days a licence for the area applies, to what class of goods the licence applies, and the licence may contain any further conditions the local authority wishes to include. A local authority may grant more than one licence to a person in respect of casual trading in different casual trading areas or at different specified places in a casual trading area.

2.5 To obtain a licence, a written application and a fee (if any) must be submitted to the relevant local authority. A licence can be revoked at any time if any of its conditions is contravened. A licence can be refused to someone who has been convicted of an offence relating to the importation, possession or sale of goods or if the applicant fails to provide all the information requested in the application. A licence lasts for up to twelve months and must be displayed at place of trading.

Bye-laws

2.6 The Act specified that local authorities shall make bye-laws in relation to the control, regulation, supervision and administration of casual trading as soon as

¹ All money amounts throughout this Report are expressed in euro, except where the context requires otherwise.

possible after the passing of the Act. Bye-laws may include designation of casual trading areas, maximum area which can be occupied by one trader, regulation of access, fixing of fees, trading place, provision for disabled people and enforcement rules. The local authorities may also add to the classes of selling excluded from the definition of casual trading. The bye-laws may also provide for the fixing of different fees in respect of licences for different circumstances and for different classes of persons.

Challenging Bye-laws

2.7 The system under the Act for challenging proposed bye-laws has been a source of confusion. When a local authority announces its decision to make bye-laws under the Act, it must give at least one month for inspection of the proposed bye-laws. After this one month period (it can of course be longer than one month) there is a period of two weeks for people to submit “comments” to the local authority. After this period (i.e. at least one month and two weeks), if a person is aggrieved by the proposed bye-laws, (s)he has 21 days to appeal to the District Court. There is provision to appeal from the District Court to the Circuit Court. However, as local authorities are not obliged to take traders’ comments into account when making bye-laws, the traders have taken to appealing proposed bye-laws and not submitting comments. Appealing bye-laws is expensive; for example, in Limerick, casual traders currently have a legal fees debt of around €19,500.²

2.8 The fee setting power of local authorities is subject to a different regime from the other elements which might comprise the bye-laws. Licence fees are fixed by bye-laws made by the local authority under the Act. To change the licence fees would require an amendment of the bye-laws. A remarkable feature of the Act is that, although it requires publication of bye-laws made under the Act, allows the making of submissions in regard to them and permits them to be appealed to the District Court, it excludes from this procedure a bye-law setting a licence fee. The only way to challenge such a fee would be by way of judicial review, and the same would apply to any amendment of the fee. If a local authority, in fixing

² Source: IOMST.

the fee, fixed a fee that no reasonable authority could fix, it would be likely to be struck down on judicial review. Similarly, if in the course of its fee-fixing procedures it had been motivated by bias, or had taken into account matters which it ought not to have taken into account, the bye-law would be capable of being struck down on judicial review.

Market Rights

2.9 In some local authority areas there exist areas of land with a “market right” attached to them. These areas tend to be traditional markets/fairs where casual trading has been carried out for many decades and the right to do so is protected by law. The 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.³ Under the Act, the local authority may then extinguish any market right owned by it - once it has provided alternative corresponding facilities in the same vicinity as the market or fair to which the right relates. 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. The Court may prohibit the extinguishment, or authorise it subject to conditions, if it is of the opinion that the extinguishment would constitute an undue interference with the facilities enjoyed by the public in relation to the market right, notwithstanding the alternative facilities provided by the local authority.

2.10 In Bantry in Co. Cork, the local authority sought to relocate casual traders from their traditional market place in the town centre, which has a market right attached to it that is owned by the local authority, to an area of reclaimed land outside the town. This has been challenged by casual traders in Court and they were recently granted an interlocutory injunction, allowing them to trade in the original market area. The Court found that the local authority had not followed the correct procedures required to extinguish a market right.

³ Section 7.

Enforcement

- 2.11 To enforce the bye-laws, any authorised officer of the local authority or a member of the Garda Síochána may inspect any place they believe casual trading is being carried on, require the trader to produce their licence, ask to see any documents etc. relating to the trading. If the person does not comply with these requirements, they can be told to remove themselves and their goods or be arrested. If they are arrested, the goods may be confiscated and sold or otherwise disposed of.
- 2.12 Each local authority is required to keep a register of licence holders.
- 2.13 A person who commits an offence under the Act can be prosecuted summarily or on indictment. The penalties upon conviction are primarily monetary (from €63 to over €12,000), although there is also provision for a maximum of 6 months imprisonment upon conviction on indictment.

CHAPTER 3

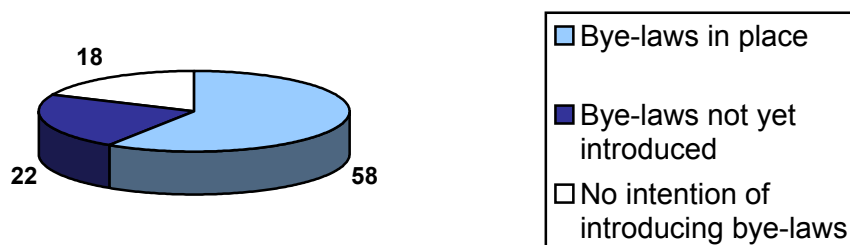
CASUAL TRADING IN IRELAND

Existing Bye-laws

3.1 Of the 88 local authorities in the State, only 58 have introduced bye-laws under the Act (Figure 2).⁴ The majority of the local authorities with bye-laws have taken them from a standard document contained in the Act, rather than tailor bye-laws for their own area. The bye-laws cover issues such as:

- goods that may be traded,
- designated trading area and trading times,
- licence fees,
- requirement on food traders to have a licence from a health authority,
- insurance requirements,
- parking of vehicles,
- requirement on traders to display licence numbers,
- licences not transferable,
- requirement on traders to have stalls approved by Local Authority and moved after trading,
- obligation to obey directions of appointed officers and Gardaí.

Figure 2 - Introduction of Casual Trading Bye-laws by 88 Local Authorities



⁴ For a complete list of local authorities without bye-laws, and their reasons for not introducing them, see Appendices B and C.

Number of Casual Traders

- 3.2 In many local authority areas, therefore, a licence is not required for casual trading because there exist no bye-laws in relation to casual trading in the area.⁵ Traders in these areas are thus categorised as *unlicensed* casual traders. *Illegal* casual trading occurs where casual traders trade without a licence in a local authority area where a licence is required. Some casual traders sell illegal goods such as counterfeit designer label clothing. For the sake of clarity, this will be referred to as *trading of illegal goods* throughout the report.
- 3.3 Figures on the number of casual traders in Ireland are difficult to establish, as many traders operate in more than one local authority area, one-third of the local authority areas do not require a licence and therefore do not keep records of casual traders in the area, and there are also illegal casual traders. Estimates supplied by the local authorities suggest that there are 1,354 *licensed* casual traders in the State. The number of *unlicensed* and *illegal* casual traders in the State is more difficult to quantify as, by definition, these traders do not appear on any register. MRBI's research suggests that the figure lies between 1,500 and 15,000 traders; this includes annual, seasonal and special event traders.

Description of Traders

- 3.4 Friday and Saturday are the main days for casual trading in the State and the most commonly traded goods are clothing (27% of traders surveyed), fruit and vegetables (18% of traders surveyed), and flowers (12% of traders surveyed). Household wares, jewellery, souvenirs, electrical goods and confectionery are also commonly traded goods (see Appendix A for full list).
- 3.5 Ninety percent of casual traders trade all year round, while the remaining ten percent trade during the summer months only or at special events. There has been a rise in the amount of illegal casual trading and trading of illegal goods at certain times of the year - for example, the period around Halloween when fireworks are illegally traded.

⁵ Nine of the local authorities that do have bye-laws in place do not require traders to have a licence for the area - for various reasons.

- 3.6 53% of *licensed* casual traders in the State fall in the 35-54 age category, 31% are over the age of 55 and 15% are aged 18-34. The ratio of male traders to female traders is 50/50 overall for the State, but there is a large skew in Dublin where 90% of casual traders are female.⁶

Licence Fees

- 3.7 The cost of a licence varies widely across local authorities. For example, Offaly UDC charges a fee of €127 per annum to trade one day a week, whereas to trade in Castleblaney UDC one day a week a casual trader must pay a fee of €1,320 per annum.⁷ Similarly, to trade seven days per week costs €444 per annum in Dun Laoghaire/Rathdown but €1270 per annum in County Kilkenny. (See Appendix D for a complete list.)
- 3.8 Traders in rural areas often must work in a number of local authority areas in order to work enough days a week to make a living. Indeed, over one third of traders surveyed operate in more than one local authority area. The combined fees of the licences for each authority is often significantly greater than the fees for a full-week licence in an urban area. For example, if one wished to trade in Mayo, one could likely pay upwards of €2,539 in combined licence fees per annum for the week.⁸ This is a great deal more than the €127-€470 p.a. payable to trade flowers Monday to Saturday in Dublin city.⁹
- 3.9 Over half of the respondents to MRBI's survey of casual traders noted that, in addition to licence fees, they must pay some other cost in order to trade, such as, insurance, parking fees and/or health board licence fees.

⁶ Source: Survey of all 88 local authorities by MRBI for the Authority.

⁷ Castleblaney has just one casual trader, according to the local authority.

⁸ One may trade in Ballina on Mondays only, at a cost of €952 p.a., in Castlebar one day a week at a cost of €952 p.a. plus €127 p.a. for each additional day, and in Westport one day a week at a cost of €32 weekly plus €19 a week for each additional day.

⁹ The variation in the Dublin licence fees reflects the location of one's trading pitch. Licence fees for trading "jewellery, fashion accessories, souvenirs, crafts" in Dublin are often higher at €666 p.a.

Relationship with Local Authorities

- 3.10 Casual trading in Dublin is unique, in that it is highly organised and there is open dialogue and consultation between the local authority and casual traders. Dublin Corporation has a detailed schedule of licence fees for each product or group of products, for each designated trading area within their local authority area. The Corporation has two full-time staff responsible for managing casual trading in the city. In other local authority areas, MRBI often had difficulty in identifying or locating the person responsible for casual trading. Casual trading in one local authority area was supervised by the traffic warden.
- 3.11 Over one third of local authorities have records of complaints made by casual traders. The main complaints received are in relation to the size of the pitches provided, the location and size of designated trading areas provided, fee increases, and lack of facilities.

Pricing

- 3.12 MRBI conducted a pricing survey of goods sold by both casual traders and local permanent businesses. A total of 326 casual traders and 154 local permanent businesses were surveyed. As each merchant sold only one or two categories of goods surveyed, the sample size of the pricing survey within each category is relatively small, thus it is difficult to rely explicitly on the results. The results of the survey indicate some patterns in the prices of goods sold by casual traders.
- 3.13 There is little or no variation in the prices of fruit and vegetables according to whether the seller is an area where casual trading licence fees are high, low or non-existent, or whether the seller is a casual trader or a permanent business. The level of licence fees appears to have no influence on fruit and vegetable prices.
- 3.14 The prices of other goods, however, do tend to show *some* systematic variation according to the level of licence fees. Casual traders' prices tend to be higher in areas with high licence fees than those of their counterparts in areas with low licence fees. Permanent businesses' prices only showed systematic variation

according to licence fees in the flowers and clothing categories. For flowers, MRBI's results show permanent businesses' prices tend to be higher in areas where casual traders pay low licence fees than the corresponding prices charged by permanent businesses in areas where casual traders pay high licence fees. For clothing, MRBI's results show permanent businesses' prices tend to be higher in areas where casual traders pay low licence fees, and higher again in areas without bye-laws.

3.15 These patterns are analysed in Chapter 9.

CHAPTER 4

DEPARTMENT OF ENTERPRISE, TRADE AND EMPLOYMENT

4.1 Before the Act actually commenced in May 1996, casual trading operated under a dual system whereby traders had to have a licence from the Department of Enterprise, Trade and Employment (the “Department”) and also, where required, a local permit issued by a local authority. Under a procedure similar to the provisions of the 1995 Act, local authorities could designate casual trading areas in their functional areas if they so wished. Few local authorities designated casual trading areas or issued permits and, as a result, a centralised system emerged. According to the Department, it was considered by many to be a cumbersome operation but it also had the attribute of being uniform throughout the State.

4.2 Feedback from traders to the Department, since the coming into force of the Act, highlighted the following concerns in relation to the local authorities’ implementation of the Act:

- Lack of knowledge of the content of the Act among some local authorities.
- Lack of interest in casual trading; no introduction of bye-laws in some areas.
- A wide disparity of fees.
- A fear that high fees are sometimes being used to keep casual trading out of certain areas or as an income generating fund.
- Casual traders have no right to appeal fees.
- Some local authorities relocated casual traders to inappropriate areas.

It was also noted that many local authorities might suffer from conflicts of interest, since elected councillors may also have local business interests.

4.3 After the Act came into force, many local authorities asked the Department’s advice on how certain various provisions in the Act (usually in relation to

making bye-laws) were to be implemented. As local authorities began to make and implement their bye-laws, traders began to contact the Department for similar advice on whether local authorities were correctly implementing the Act. The Department, in turn, sometimes sought the advice of the Attorney General's office on these matters. This advice mainly related to the definition of "goods" in the Act, the power of local authorities in relation to market rights, and controlling casual trading outside designated trading areas.¹⁰

4.4 One issue particularly noted by MRBI was the failure by one-third of local authorities to make bye-laws under the Act. As the making of such bye-laws is a reserved function of the local authority, the Department does not consider that any real purpose is served in trying to persuade local authorities to make bye-laws. There have been few complaints to the Department on this issue. The Department feels that the reason for this might be due to a belief that traders cannot be prosecuted in areas where bye-laws do not exist.

4.5 Overall, the Department would hope to see casual trading in all areas of the country being operated to high standards.

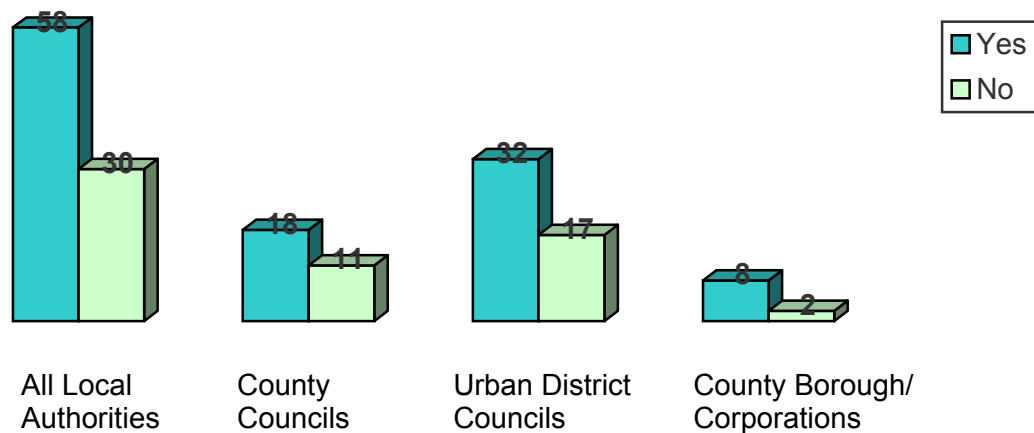
¹⁰ One issue raised by a local authority, and later the subject of complaints by casual traders, is the issue of challenging bye-laws. Some local authorities believe that the time period for submitting comments begins at the same time as the time period for making appeals. Partly in response to this, the traders have taken to appealing proposed bye-laws and not submitting comments. The Department sought the advice of the Attorney General on this matter. The Attorney General has determined that this is not the case, and the relevant time periods are indeed consecutive.

CHAPTER 5

LOCAL AUTHORITIES

- 5.1 Of the 88 local authorities in the State, only 58 have introduced bye-laws under the Act. Of the remaining 30 local authorities, at least 18 do not intend to introduce bye-laws as they believe there is no demand for such laws in their area or they do not wish to encourage casual trading.¹¹

Figure 3 - Where Casual Trading Bye-laws Exist



- 5.2 MRBI surveyed all 88 local authorities and conducted in-depth interviews with a representative sample of nine local authorities. The overall attitude among local authorities to casual trading is mixed. MRBI found that the majority of local authorities believe casual trading is important to a town and adds to the atmosphere and sense of community in an area - this is especially true of the local authorities with well-organised, well-controlled markets.

¹¹ For a complete list of local authorities without bye-laws, and their reasons for not introducing them, see Appendices B and C.

“...[casual traders are] part of the culture and they attract customers who shop in local shops as well as the market.”

(an urban local authority)

“Local businesses do not want traders to go. They bring in tourists and are part of the town.”

(an urban local authority)

Implementing the Act

5.4 MRBI found the level of awareness of the Act among the nine local authorities interviewed in-depth to be relatively high. Enthusiasm and knowledge was highest among urban local authorities. The overall feeling among the interviewees was that casual trading within a particular area should be controlled by the local authority in that area. The belief was that individuals within local authorities would be much better informed than a central body as to what was happening in their local community and what issues might exist in relation to casual trading.

“...by bringing it to a local level it is giving us the opportunity to solve the problems that are there and we are aware of local people’s concerns.”

(a local authority)

5.5 Some local authorities stated, however, that they found the legislation to be somewhat ‘cumbersome’, in that it was difficult to interpret, and also very much open to misinterpretation.

5.6 There exists some contact between local authorities and many stated that they have been in contact with other local authorities as to the implementation of bye-laws and to obtain advice on various aspects of casual trading, such as legal issues in their areas, reactions of casual traders to bye-laws, etc.

“...in putting the bye-laws together there was a lot of liasing and a lot of cooperation...but we still would like to know more on how others are getting on and how trade is going.”

(a local authority)

- 5.7 A number of local authorities also stated that, while they do have bye-laws in place, they are only beginning to realise that these bye-laws are not necessarily sufficient. Some local authorities stated that a need does exist for them to alter or expand existing bye-laws – for example, to include the right of authorities to prohibit trading if it is in the national interest e.g. foot and mouth disease control.

Perceived Benefits of the Act

- 5.8 In welcoming the Act, many local authorities stated that the Act has provided them with the necessary control to manage casual traders more efficiently. It was also stated that the Act has, and will, put an end to many of the arguments over pitches and types of goods sold. Licences state the location of the trader’s pitch and what they can sell.
- 5.9 Another benefit of the Act claimed by some local authorities was that they could now begin to ensure that a variety of goods are traded, and try to prevent too much direct competition with local businesses.

“one of the main things we are trying to do now ... is to increase the types of goods being sold, we have too much clothing at present so we won’t be issuing any more licences for clothing.”

(a local authority)

The rationale for this interference in market forces is not clear. In general, the products being sold by casual traders should be determined by the demands of consumers and the availability of supplies. It would be interesting to know whether the same local authorities apply this rationale to the mix of permanent businesses in their area. This issue is discussed further in Chapter 9.

Urban versus Rural

- 5.10 In Dublin, casual trading is extremely well organised, and some referred to it as being completely different to trading in other parts of the country. Staff in Dublin Corporation are in contact with traders daily, and there is always at least one member of staff available to traders 7 days a week. Also in Dublin, representative groups have been formed by traders to attend meetings which are held regularly to up-date them on issues that may be of concern to them.
- 5.11 In other cities, such as Limerick and Cork, a high level of organisation is also in place. Within these corporations, there is an individual responsible for casual trading, and there is a high level of interaction between the casual traders and the corporations. In Limerick, however, some tension does exist between Limerick Corporation and casual traders. A court case was taken by the casual traders regarding the proposed bye-laws and the Court found in favour of the Corporation. The Corporation is therefore only just implementing bye-laws for its area and beginning to issue licences. Limerick Corporation states that it intends to invite casual traders to partake in meetings and be involved as much as possible.
- 5.12 In rural areas, while it plays an important part in the community, casual trading is conducted on a smaller scale. Many local authorities in these areas stated that casual trading is not a priority in their area and, while there may be someone responsible for casual traders in the area, it is only a (minor) part of their job. Some local authorities stated that they had limited involvement and interest in casual trading.

“I don’t think that there’s ... that great an extent of trading going on in the county as I far as I can tell ... we get some enquiries but not an awful lot.”

(a rural local authority)

“ In all honesty we actively discourage casual trading in our area.”

(a rural local authority)

- 5.13 A number of rural local authorities also stated that, due to legal action, they were only now really beginning to implement bye-laws and take definite control of casual trading in their areas.¹²

“It was on hold because almost immediately an individual challenged the bye-laws in the courts and it went through the whole court system....it was a very lengthy process.”

(a local authority)

Illegal Trading

- 5.14 In areas where bye-laws have been implemented, local authorities stated that illegal trading (that is, trading without a licence, where a licence is required) has been greatly reduced. Under the Act, all casual traders are required to display their licences at all times when trading. Legal casual traders actually work together with the authorities to stamp out illegal trading and are interested in maintaining standards which have been set. All local authorities interviewed in-depth by MRBI felt that the Act would enable the elimination of illegal trading.

“Illegal trading is frowned upon by casual traders with licences and illegal traders are reported very quickly.”

(a local authority)

- 5.15 The local authorities interviewed noted that the Gardaí cannot really play a significant role in casual trading until bye-laws are in place. At present, where bye-laws do not exist, Gardaí can only move traders if they are obstructing public footpaths or causing traffic congestion. If there are no bye-laws in place, traders cannot be accused of breaking them.

- 5.16 In Dublin, Gardaí have played a lesser role since the Act was introduced. Illegal trading has been reduced and Gardaí are becoming more familiar with traders around the city. If a new face appears, the Gardaí may ask to see their licence. Also, with casual trading being managed properly and in a more

¹² Wicklow, Ennis.

controlled manner, Gardaí have less complaints to deal with, and therefore need to be less involved.

Demand for Licences

5.17 In main urban areas such as Dublin, Cork, Limerick and to a lesser extent Navan, the demand for casual trading licences is very high. Local authorities in these areas claimed that they simply are unable to meet demand. Many local authorities also believe that fees charged in these areas (or that will be charged in Limerick) are too low.¹³

5.18 The same demand for licences does not exist in some rural areas, however. Most of the casual traders have worked in the area for a considerable time and it is something which is very much a tradition within their own families.

“...there’s no problem on the availability of licences at the moment at all...the interest just doesn’t seem to be there.”

(a rural local authority)

Summary

5.19 MRBI found that the majority of the nine local authorities interviewed feel casual trading is important to a town and adds to the atmosphere and sense of community in an area - this is especially true of those in areas with well-organised, well-controlled markets.

“Some local business people have stalls on the market themselves.”

(an urban local authority)

MRBI also found, however, only limited enthusiasm for casual trading in many rural areas and UDCs, where the local authorities provide minimum facilities and do not seem keen to maintain the facilities. In some cases casual trading is actively discouraged. The one downside to casual trading voiced by many County Councils and UDCs was that casual traders in their area are selling a limited variety of goods. The local authorities like to see a mix of products being traded, rather than one particular type of product, because they

¹³ Casual traders disagreed strongly with this statement.

believe that a lot of casual trading of a particular product that is also sold by similar businesses in the area could have a negative effect on those businesses. For example, if the majority of casual traders in an area sell clothing, a local clothing shop faces much more competition than it would if more of those traders sold flowers, fruit or souvenirs etc. Grocery stores selling fruit and vegetables seem to be the most frequent complainants in this regard.

5.20 The Act was welcomed by all nine local authorities interviewed in-depth. The main benefits highlighted were:

- a. It brings control of casual trading to a local level so that responsibility lies with those who are familiar with the area.
- b. It provides a more organised casual trading structure than existed previously, by allocating specific areas for trading and giving each trader a designated pitch from which to trade. This prevents the obstruction of public footpaths and of traffic.
- c. The collection of revenue through licence fees can be used to maintain the trading area and contribute towards the general upkeep of the town.

CHAPTER 6

CASUAL TRADERS

The Sample

6.1 MRBI interviewed 12 casual traders and one “event trader”, in-depth, in order to gain an understanding of the problems faced by casual traders and their views of the Act and its implementation. Following this, MRBI surveyed 326 casual traders in a variety of local authority areas; i.e. in county council areas, urban districts and rural areas, in areas with bye-laws and areas without. 62% of the casual traders surveyed have been trading for over 5 years, i.e. have experience of the market both before and after the Act came into force. Two-thirds of those surveyed are licensed traders and one-third are unlicensed. Licensed traders seem to know more about the Act and the bye-laws in the areas they trade in than their unlicensed counterparts (see Figure 4 below). In general, detailed knowledge of the Act was low (Figure 5).

Figure 4 - Number of Years Trading by Casual Traders

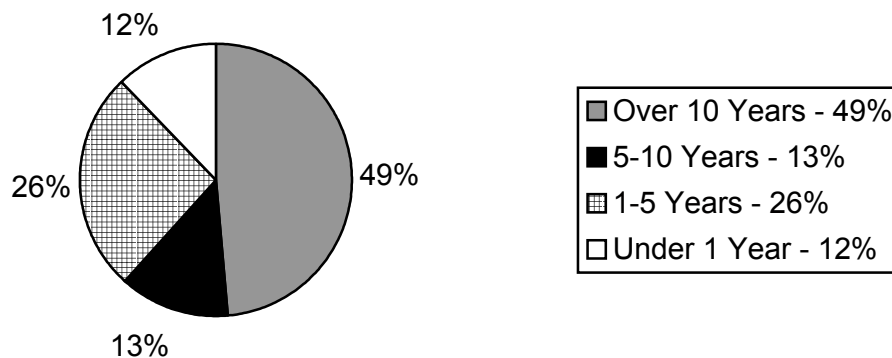


Figure 5 - Casual Traders' Knowledge of the Act/ Local Authority Bye-laws

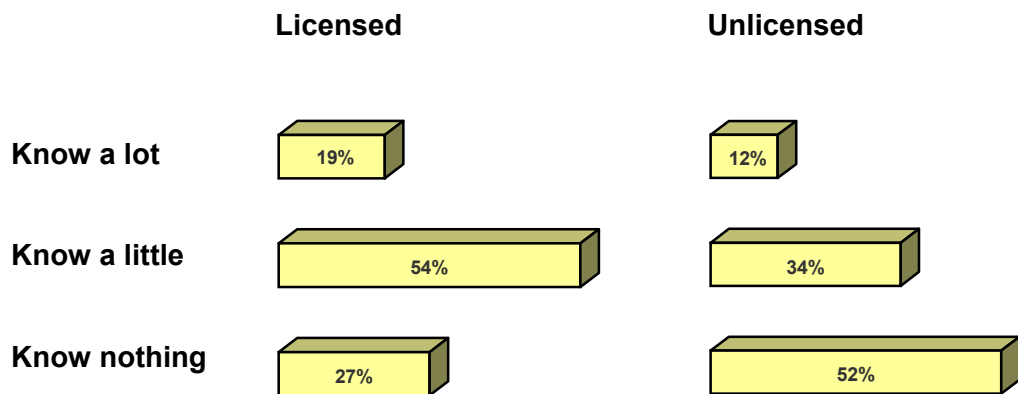
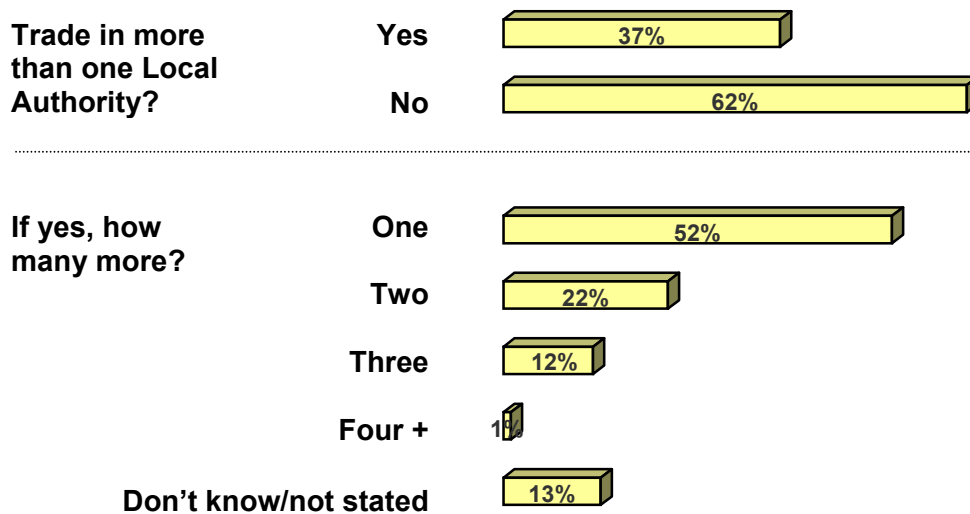


Figure 6 - Number of Local Authority Areas Traded In



6.2 Of the casual traders surveyed, 37% trade in more than one local authority area (see Figure 6 above). One quarter have ceased trading in a local authority area in the past five years, i.e. since the Act was introduced. The main reason given (55% of respondents) was that the market was closed during the foot and mouth outbreak in early 2001; a few respondents (4%) had ceased trading

because they didn't have a licence for the area (and didn't believe that it was worth paying for a licence for that area). The other reasons given relate mainly to the local authority's management of the market:

<i>"cars parked in allocated pitches"</i>	10%
<i>"pitch size too small to trade in"</i>	5%
<i>"facilities removed by local authorities"</i>	5%
<i>"market unsafe to trade in"</i>	4%
<i>"market was closed down"</i>	4%
<i>"local authority reduced the number of trading days"</i>	4%
<i>"market not profitable enough to continue trading in"</i>	4%

- 6.3 Only 4% of traders who ceased trading in a particular market did so because the *"market [was] not profitable enough to continue trading in"*. Thus, leaving aside the effects of the foot and mouth disease issue in 2001 on casual trading markets, almost 10% of traders interviewed ceased trading in a local authority area in the past five years directly in response to local authorities' management of casual trading, as compared with the 1% of traders who ceased trading in a local authority area because it was no longer profitable.
- 6.4 In general, casual traders believe that the Act, and the associated shift of power to local authorities, has had a negative impact on casual trading. There is, in their view, no coherent structure to the way local authorities regulate casual trading. Some local authorities have bye-laws in place and adhere to them, others have bye-laws and yet don't enforce them. Many local authorities have no bye-laws and have not attempted any implementation since the Act came into force. Traders feel that most local authorities with bye-laws collect fees annually and have little else to do with traders during the rest of the year.

“Nobody really enforces [the bye-laws], unless there’s something really obvious like somebody blocking off a road ... but basically they just don’t want to know.”

(a casual trader)

Fees

- 6.5 Casual traders’ main concerns regarding fees are that they differ greatly from area to area and may be raised unilaterally by the local authorities. Lack of opportunity to appeal the fees is also a major concern.

Designated Trading Area

- 6.6 In general, casual traders believe that the provision of a designated trading area helps to regulate the market and provides structure. In some instances, however, a local authority has tried to move casual trading out of the town centre; the traders feel that this is unfair and is a result of the Act giving the local authority too much authority over casual trading.¹⁴

Pitch Size and Allocation

- 6.7 Some positive aspects of the Act cited by casual traders were that, where bye-laws have been introduced, licensed traders are now guaranteed their allocated pitch and that the Act offers them protection by preventing unlicensed traders from setting up a pitch without permission. Some traders feel that pitch sizes are inappropriate, however, in that there is not enough room for them to trade.

Facilities

- 6.8 Many casual traders (47% of respondents) stated that the facilities provided by some of the local authorities are inadequate and not properly managed. They lack basic facilities such as toilets, and public safety is an issue among many traders.

¹⁴ In Bantry, Co. Cork, the local authority wishes to move the designated trading area out of town to an area of reclaimed land. This situation is the subject of an on-going legal dispute.

“...the market [is not closed off], cars are allowed to drive up through the market, it’s a real danger to children.”

(a casual trader)

Some Dublin street traders stated that designated trading areas are being left to deteriorate and very little effort is being made by local authorities to sustain the tradition of casual trading in Irish cities.

- 6.9 The Irish Organisation of Market and Street Traders (IOMST) would like to see the Act amended to read “...local authorities *shall* have regard to the facilities and services...”, thus obliging the local authorities to set their licence fees at levels that reflect the facilities they provide and vice versa.

Communication with Local Authority

- 6.10 With the exception of Dublin, there seems to be a lack of communication between local authorities and casual traders. 58% of *unlicensed* traders surveyed have no contact with the local authority and 56% of *licensed* traders surveyed are in contact with the authority less than every 6 months. In particular, traders feel aggrieved that they are not included or represented when bye-laws are being drawn up. If complaints are made or if traders look for support, they feel that often the local authority will listen attentively but take no action.

“They talk to you but then they do nothing about it, that’s the general situation in most markets.”

(a casual trader)

Event Trading

- 6.11 Event trading is casual trading at a once-off event such as a concert, festival or sports match. Event traders typically fall into two categories: those selling fast food and/or confectionery (event caterers) and those selling event-related merchandise. The event-catering company interviewed by MRBI expressed the view that event-catering traders are not adequately provided for by local

authorities, nor by the Act.¹⁵ The location of pitches was cited as particularly bad, in that they are either not designated with due regard for public safety and as a result the Gardaí have to move the event catering traders on, or they are so far away from the event location as to be worthless. The company feels that there should be separate status and separate (bye-) laws for event trading; it recommends that a central body should issue an annual licence to event traders, who then pay the local authority a fee per day for trading at a particular event. Overall, the company feels that the Act has had only negative effects on event trading - fees have increased, licences have been decentralised, pitch sizes reduced, and the trading locations are unsuitable.

Summary

6.12 The casual traders surveyed differ in their overall opinion of whether the Act is good or bad for casual trading on the whole, though unlicensed traders tend to be more negative than licensed traders. Market traders feel that it is unfair to expect them to pay each individual local authority for a licence and receive very little in return for their money in terms of facilities, organisation, location, space and communication. IOMST feels the Act unfairly discourages casual trading. It stated that if the fees were reasonable, the location of pitches central enough and traders were provided with sufficient space, traders would have no problem whatsoever with the Act. Most of the traders that MRBI interviewed *in-depth* stated that they would not mind paying the high fees if the market was well managed and attractive to the public, but that these conditions do not currently exist.

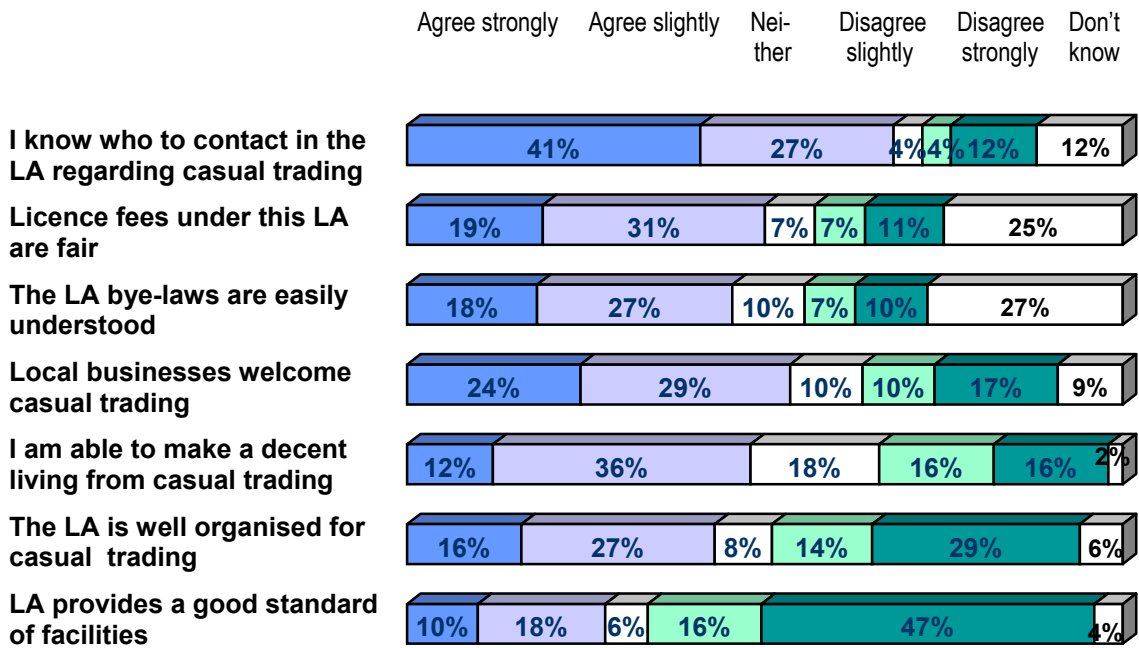
“I don’t think people actually would mind paying once they were being provided with proper facilities and adequate space to trade.”

(a casual trader)

6.13 Almost half the traders surveyed believe that local permanent businesses welcome casual trading in their area (see Figure 7 below).

¹⁵ MRBI found this company to be very knowledgeable in regard to the Act.

Figure 7 - Casual Traders' Image of the Local Authority ("LA")



CHAPTER 7

PERMANENT BUSINESSES

Chambers of Commerce

- 7.1 MRBI found that the level of awareness and knowledge of the Act varied greatly throughout the nine Chambers of Commerce interviewed. In general, there was a much higher level of awareness and knowledge among Chambers in cities than those in rural areas. The main reason identified by interviewees for their limited knowledge was that casual trading was not a major issue for them and thus they had no need for in-depth knowledge of the Act.

“From the Chamber’s perspective [casual trading] wouldn’t appear to be a big issue... it is an issue for a small subset who are involved in retailing fresh fruit and vegetables but outside of that it’s not.”

(a rural Chamber of Commerce)

Urban Chambers

- 7.2 The Dublin, Cork and Limerick Chambers were very knowledgeable about the Act and feel that it will be of great benefit to casual trading. Their attitude to casual trading is that it contributes greatly to the character of a city and attracts people into the city, though some feel that casual trading should be moved off the busy main retail streets as the streets are congested enough with shoppers. The urban chambers view the control of casual trading as an important aspect of casual trading, in particular they like to see the traders contributing to the maintenance and upkeep of a city and having rules and regulations to abide by.

- 7.3 The Limerick Chamber of Commerce would like to work with casual traders in promoting casual trading and the “milk market” operated by the Chamber of Commerce, as an attraction to Limerick.

Rural Chambers

- 7.4 In rural areas, the Chambers of Commerce were aware of the existence of the Act but had limited knowledge of what it contained and the various roles and

responsibilities set out therein. The main reason identified by interviewees for their limited knowledge was that casual trading was not a big issue for them and so they had no need to know more about the Act. In most areas, the Chambers welcome casual trading because it attracts shoppers into the town; it is believed that this in turn leads to an increase in business for retailers, as shoppers will go into permanent traders' shops while they are in the area. In other words, the Chambers view the casual traders as complementary to local permanent businesses. Many rural Chambers stated that placing casual traders in a designated trading area on the periphery of a town attracts people away from the town centre and local businesses then lose out on any spill-over business.¹⁶ They did, however, highlight that casual trading in a town centre should be in a designated trading area and not on the footpaths directly outside shop doors, as this causes obstruction to the customers trying to enter and leave the local shops. All of the rural Chambers interviewed feel strongly that casual traders should have to adhere to certain rules and regulations.

- 7.5 Some rural permanent businesses do not welcome casual traders, as they feel that they face direct competition from such traders, many of whom do not contribute to the upkeep of the town. These businesses are mainly fruit and vegetable shops or florists, who face direct competition from many casual traders selling similar products.

Complaints

- 7.6 The main complaints received by Chambers of Commerce regarding casual trading relate to the obstruction of a public footpath/traffic/shop entrance, litter, and direct competition to local business without having to pay anything towards the maintenance of the town.
- 7.7 The Dublin Chamber of Commerce stated that very little conflict arises between casual traders and local businesses, unless a trader sets up a stall outside a shop selling the same merchandise or blocks entry to a shopping entrance. Local business people may object more if business begins to slow.

¹⁶ MRBI noted that, interestingly, the local authorities in these areas hold the opposite view.

The Act

- 7.8 The overall feeling in the various Chambers of Commerce, urban and rural, is that casual trading adds to the atmosphere of a town or city, but should be regulated.

“...it is in fact a very distinctive attraction to a city and attracts people in”

(an urban Chamber of Commerce)

They believe that, though the Act may initially discourage casual traders, once the Act is properly implemented casual trading will continue to be very popular in many towns and cities. Overall, the Chambers believe the Act will make trading fairer from a retailer’s perspective, as casual traders will contribute to the up-keep of towns/cities and be restricted to working in designated areas. The major change that Chambers of Commerce would like to see is an increase in the level of communication between local authorities and Chambers of Commerce.

Local Businesses

The Sample

- 7.9 MRBI surveyed 154 permanent businesses in the same local authority areas in which they surveyed casual traders - in county council areas, urban districts and rural areas, in areas with bye-laws and areas without. 63% of the local businesses surveyed have been trading for over 5 years, i.e. have experience of working alongside casual traders both before and after the Act came into force, and yet 78% stated that they know nothing about the Act.¹⁷ MRBI mainly surveyed local businesses that sell at least one of the products sold by casual traders in Ireland (see Appendix A for a complete comparison). The main products traded by the local businesses are clothing, fruit and vegetables, flowers, fast food, electrical and household goods, jewellery, confectionery and souvenirs.

¹⁷ This figure is lower for Dublin, at 63%.

Figure 8 - Number of Years Trading by Local Businesses

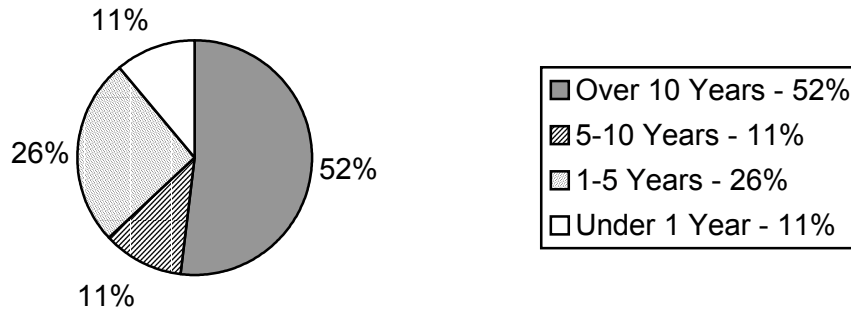
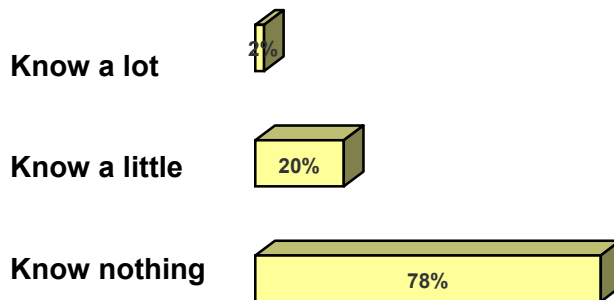


Figure 9 - Local Businesses' Knowledge of the Act/ Local Authority Bye-laws



The Act

7.10 The local businesses surveyed differ in their overall opinion of whether the Act is good or bad for casual trading on the whole. 68% said that they have no opinion or that the Act is neither good nor bad for casual trading - probably because they know so little about the Act. In general though, they tended towards a positive view of casual trading in their area.

7.11 The main benefit of casual trading cited by the local businesses surveyed was that they attract customers to the area. The main drawback cited was that

traders can block a street and take business away from local businesses. The main positive aspect of the Act cited by the local businesses surveyed was that it brought control to casual trading. Some businesses highlighted that the Act was useful where it prevented illegal trading.

Contact with Local Authorities

7.12 87% of local businesses surveyed have had no contact with the local authority in the past five years, in regard to casual trading. The few who have made complaints to their local authority stated that the nature of their complaint was that a trader was causing an obstruction, littering the area, or selling goods in competition with local businesses. There were also some complaints that casual traders should have to compete on the same terms as permanent businesses. The majority of complainants were very unhappy with the local authority's treatment of their complaint, mainly because they felt that the local authority did not act on it.

CHAPTER 8

GARDAÍ

The Sample

8.1 MRBI interviewed Garda Superintendents in 10 local authority areas, to gain a fuller picture of the impact of the Act on public order and safety. The Garda areas selected for interview were those with bye-laws and those without, areas with a history of problems and areas without, and in both urban and rural areas.

Overall Impression of Casual Trading

8.2 With the marked exception of Balbriggan, where trading ceased six or seven years ago, the Gardaí's overall impression of (legal) casual trading is that it adds atmosphere and character to a town/area, is welcomed by the public and most local businesses, and causes little or no trouble for the local Gardaí.¹⁸

Gardaí in most areas welcome legal casual traders who are trading in a designated trading area, have been trading there for years, and cause no trouble for the Gardaí. The level of involvement Gardaí have with the casual traders is minimal, consisting mainly of patrolling designated trading areas as part of their normal foot-patrol, and occasionally checking traders' licences. Often the traders themselves ensure that any new trader in an area has a valid licence and report the trader if they don't. Overall, the main involvement Gardaí have with casual traders is when they are operating illegally or trading illegal goods.

8.3 The main problems Gardaí have with *illegal* traders is that they trade wherever suits them and are often selling stolen, counterfeit or unsafe goods. Illegal trading occurs mainly in urban areas or large towns and the majority of illegal traders trade at once-off events such as concerts and sporting events. Gardaí

¹⁸ In Balbriggan, the local Gardaí are happy that there is no casual trading, as they believe that such trading attracts trouble to an area, creating problems for the Gardaí such as public disorder and trading of stolen goods.

in Kilkenny and Navan were particularly concerned with this issue, and it was suggested that the local authority in Navan should allocate a designated trading area for event trading during concerts in Slane. The Gardaí are mainly concerned with the impact of these illegal traders on public safety – in particular, the safety of generators used to cook food and of certain goods sold e.g. luminous items for night-time festivals.

- 8.4 The majority of the Gardaí interviewed stated that they receive very few complaints from the public or local businesses regarding legal casual traders and the few complaints they receive are commonly in relation to traffic obstruction. Where they receive complaints about illegal casual trading, it is usually from local businesses.

The Act and its Implementation

- 8.5 A high level of awareness of the Act existed among all the Garda Superintendents interviewed. All feel that the Act was a positive step and that casual trading is something which should be controlled at a local level. The benefits of the Act highlighted by the Gardaí were the allocation of designated trading areas and the issuing of a particular licence to use each area. Most casual trading in designated trading areas is well-structured, organised and largely self-regulated. Where the Act has not been fully implemented, these benefits have not been maximised.
- 8.6 Some Gardaí have noticed a lack of enthusiasm among local authorities in relation to casual trading and sometimes a lack of communication between the local authority and the Gardaí. For example, the local authority may provide an exemption to some casual traders, allowing them to trade outside the designated trading area, and the Gardaí only find this out when they attempt to prosecute the trader.
- 8.7 Gardaí in Kildare town, in Drogheda (both of which have no bye-laws) and in Ennis highlighted the fact that trading has been carried out in these towns for years, is very much self-regulated, and causes little or no problems for Gardaí.

At the same time, a certain reluctance to get involved does seem to exist among the local authorities in these areas.

- 8.8 In relation to public order and safety, the majority of Gardaí interviewed believe that the Act provides for improvements if properly implemented and controlled. In particular, the designated trading areas help the Gardaí to eliminate any disorder or traffic disruption that may otherwise arise. The big problems in relation to public order and safety lie, in the Gardaí's opinion, with illegal traders. Local authorities have little involvement with illegal traders, and so control of illegal trading is left solely to the Gardaí, where the main problems are with safety of goods sold.

Trends in Casual Trading

- 8.9 The Gardaí pointed out that private markets/car boot sales are becoming increasingly popular as an alternative to casual trading, particularly in rural areas. Traders pay an entry price to private landowners to trade on his/her land, where there is plenty of space provided for both parking and stalls. As these markets are on private land, the Casual Trading Act, 1995 does not apply. Thus, traders at such events are not required to have a casual trading licence and the Gardaí cannot exercise the same powers they have in designated casual trading areas. These private markets are generally very large and attract the public in huge volumes. Some of the Gardaí see private markets replacing casual trading in many rural towns in the future.
- 8.10 In Dublin, casual trading is very well organised and the Gardaí work along side the local authority in controlling casual trading. The majority of Gardaí stated that for casual trading to have a future in Ireland, local authorities must take an active role in implementing the Act, controlling casual trading and communicating with both traders and Gardaí. The Gardaí's main concern and responsibility lies with the public's safety and so any illegal trading which places the public at risk in any way will be controlled by the Gardaí.

CHAPTER 9

LEGAL AND ECONOMIC ANALYSIS

Terms of Reference

- 9.1 With regard to the terms of reference of this Study, there are two questions to be answered. First, what has been the impact on competition in local markets of the manner in which the provisions of the Casual Trading Act, 1995, have been implemented by local authorities? Second, can the measures employed by local authorities reasonably be regarded as necessary for, and proportionate to, the achievement of public interest objectives?
- 9.2 Preceding chapters have outlined various interested parties' views on casual trading in Ireland, the impact of the 1995 Act and the manner of its implementation. This Chapter presents an analysis of the contribution of casual trading to Ireland's economy and seeks to answer the questions posed by the terms of reference by addressing, in turn, each of the measures available to the local authorities under the Act: bye-laws, fees, classes of licences, designation of trading areas, pitch sizes.

The Role of Casual Trading in the Economy

- 9.3 Casual traders play a key role in trade. They are arbitrageurs¹⁹, keeping prices down and encouraging price convergence among different areas in Ireland. As they trade mostly at marginal cost, i.e. with very few fixed overheads and low profit margins, they can react quickly to market changes, in a way that that does not increase costs. Casual traders increase the responsiveness of supply to demand peaks and changes and reduce the (transport) costs to consumers of switching to another merchant. As such, they make a positive contribution to consumer welfare, to competition and to the economy, at both local and national level.

¹⁹ Arbitrageurs buy products in a particular (geographic) market where the prevailing market price is low and sell them in another (geographic) market where the prevailing market price is high.

- 9.4 Casual traders help to keep consumer prices low in a number of ways. First, in the short run, they may deal with exploitative price increases due to anticipated increases in demand. For example, in anticipation of an annual event such as a festival, local businesses might temporarily increase their prices for the duration of the festival to capitalise on the temporary influx of consumers. Event traders travel around the country from festival to festival, concert to concert, providing a temporary increase in the supply of catering services, event souvenirs, etc. to meet the additional demand. Thus, the prices of goods and services traded during the festival remain at or close to their pre-event levels, the quantities traded increase, and no consumers are priced out of the market. Second, if demand for a particular product is growing, casual traders can increase their supply of that product at the same time as permanent businesses expand their supply, thus preventing or reducing bottlenecks and keeping prices low. Third, as arbitrageurs, casual traders encourage greater similarity of prices between different local markets, through their mobility, thus contributing to greater market integration. This is particularly important for local economies, which are sparsely populated, and/or far from urban centres whereby customers would have to pay for the associated transport costs.
- 9.5 Casual traders are likely to be the most responsive source of supply to demand changes because their fixed costs are, absent the licence fees, not location- or time-specific. That is, their fixed costs all relate to assets such as vehicles and catering equipment which are not tied to a particular location or time period (whereas, for example, a building lease has a fixed location and time period). Also, all irrecoverable costs (“sunk costs”) are low as a proportion of total costs. Thus, casual traders can respond quickly to changes in consumer demand, without incurring large fixed or sunk costs.
- 9.6 In areas where casual trading is a weekly or monthly affair, it is likely that such trading satisfies a peak in demand for the products traded. This peak in demand could also be created and sustained by the knowledge that the market is there once a week. That is, if consumers know that there is a market every

Tuesday, they may postpone some of their purchases until that day, in order to purchase from a particular trader or particular products, thus creating a peak in demand on Tuesday.

- 9.7 Casual trading markets can benefit the local and regional economy (a) by bringing (often regionally-produced) goods near to the shopping public and (b) by generating direct and indirect employment. Markets are intensive in the creation of employment, when compared with other commercial forms such as supermarkets. They also promote entrepreneurship as they provide a relatively low cost avenue for testing a new product or entering an existing retail product market.

Failure to Introduce Bye-laws

- 9.8 Section 6(1) of the Casual Trading Act, 1995 states:

“A local authority shall, as soon as may be after the commencement of this Act, make bye-laws in relation to the control, regulation, supervision and administration of casual trading in its functional area.”

The use of the word *shall*, as opposed to *may*, in Section 6(1) of the Act, is an unambiguous expression of the intent of the Oireachtas. It places a clear obligation on local authorities to make the requisite bye-laws for their area, and to do so in an expeditious manner. In delegating administrative and regulatory powers from a central authority (as was previously the case under the Casual Trading Act, 1980) to separate local authorities, the Oireachtas clearly intended that those powers and functions would be properly utilised. In furtherance of this point, the Long Title of the 1995 Act states that it is “*an Act to provide for the control and regulation of casual trading and to provide for connected matters*”.

- 9.9 In short, local authorities do not have the option of electing not to introduce bye-laws, and their failure to introduce bye-laws in a timely fashion is in

breach of the provisions of the Act, though the consequences of such a breach are not set out anywhere in the Act.

9.10 Some reasons have been given by certain local authorities as to why they have not introduced bye-laws. Some stated that there are no casual traders in the area to regulate or, where there are, they are so few in number, or appear so rarely, that there is no need for bye-laws in the area. Other areas without bye-laws, however, are large market towns, e.g. Kildare town and Drogheda. It is also conceivable, of course, that the local authorities in question believe that other laws suffice. For example, Section 9 of the Criminal Justice (Public Order) Act, 1994, prohibits any person from wilfully preventing or interrupting the free passage of any person or vehicle in any public place, subject to summary conviction. Provisions of the Road Traffic Acts, 1961-1995, the Litter Act, 1982 and the Health and Safety Regulations may also apply to casual traders. Nevertheless, the duty imposed by the Casual Trading Act, 1995, remains.

9.11 The failure of one-third of local authorities to implement bye-laws effectively ensured that the Act has had no effect on competition in local markets in the local authorities' functional areas, as it has not been implemented in those areas. The lack of a designated trading area also makes it harder for the Gardaí to control illegal casual trading and improve public order and safety.

Penalties for Failure to Perform Functions

9.12 Local Authorities are regulated by the Local Government Acts, beginning in 1925. Up until the most recent Act (the Local Government Act, 2001) none of the Acts appear to contain any sanctions for non-performance of functions. The 2001 Act provides that the Minister (for the Environment) may remove from office all the members of a local authority, in cases of failure, refusal or wilful neglect to perform functions. However, this could only happen following an official enquiry by the Minister into the matter, or where a Court had made an order directing the authority to perform a function.

9.13 Section 7(1) of the Local Government Act, 1991, permits a local authority, in performing its functions, to have regard to such matters as available resources and the need to maintain existing services. However Section 7(2) of the 1991 Act continues that a “*local authority shall perform those functions which it is required by law to perform and this section shall not be construed as affecting any such requirement.*” It is again made apparent that local authorities are duty-bound to perform the functions lawfully assigned to them (however there is no mention in the 1991 Act of the penalties for not doing so).

Variation in Fee Levels

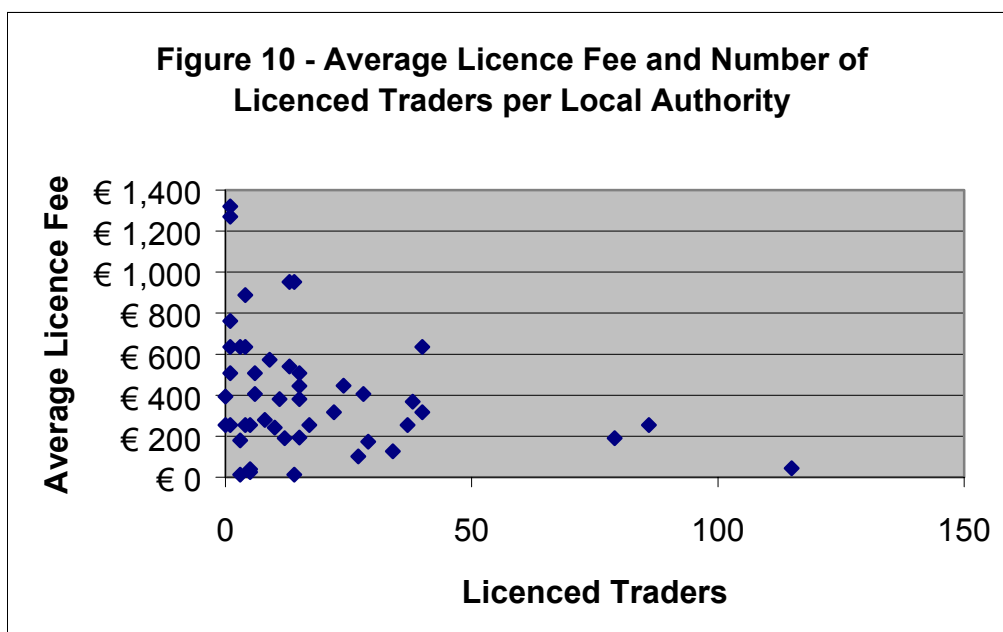
Relationship to Number of Traders

9.14 MRBI found that casual trading licence fees vary hugely from local authority to local authority, from €13 up to €1,777. Large differences in licence fees across local authorities, and especially where fees are very high, can create mobility problems for traders. If traders are restricted in their movements from market to market, local temporal peaks in demand may go unsatisfied.

9.15 Figure 10 below²⁰ shows a scatter diagram of the average licence fee and number of licensed casual traders for each local authority area where fees exist (and where the number of traders was provided).²¹ The scatter diagram suggests that there is no definitive relationship between the average licence fee charged by a local authority and the number of licensed casual traders in that area. This is not surprising, as a number of factors contribute to this relationship.

²⁰ The figure for Dublin is excluded from this chart as the number of traders (451) is such a huge outlier that it makes the full pictorial representation difficult to view in this document.

²¹ See Appendix D for a complete list of the licence fees, number of casual traders, and number of trading days for each local authority.



9.16 The higher the licence fee charged by the local authority, the less attractive it is to the traders and so areas with high licence fees tend to have lower numbers of licensed traders, and vice versa, i.e. a negative relationship exists. Demand for casual trading licences in an area depends on a number of factors apart from the fee charged in that area. These include the area's population density (number of potential customers), the average income/wealth of the local population, facilities provided by the local authority, and licence fees in other areas. If there is low demand for casual trading licences in an area, e.g. because of low population density in the area, the local authority will have an incentive to keep the licence fee low to encourage casual traders into the area. Similarly, if demand for casual trading licences in an area is high, e.g. because it is a well-run market that attracts many customers, a local authority will have an incentive to increase the licence fee (until the number of applicants matches the number of pitches in the area), i.e. there also exists a positive relationship.

9.17 An overriding influence on the relationship between an area's licence fees and the number of traders, is the fact that the number of pitches, and thus the number of licences available, is in general limited in each local authority area. In local authority areas where the demand from casual traders for licences far exceeds supply, marginal increases in the fee level will not reduce the number

of licensed traders in the area until the fee becomes relatively high. Similarly, if a local authority decides to limit the number of pitches in its area to one or two traders, no reduction in the licence fee will cause an increase in the number of licensed traders in that area. Currently, the demand from casual traders for licences in the main urban areas such as Dublin, Cork and Limerick exceeds supply; the opposite is the case in some rural areas.

Effect on Consumer Prices

- 9.18 The results of MRBI's pricing survey of goods sold by both casual traders and local permanent businesses indicate some patterns in the relationship between licence fees and consumer prices. Given the relatively small sample size, across a wide range of goods, it is, however, difficult to rely on their results explicitly.
- 9.19 There is little or no variation in the prices of fruit and vegetables according to whether the seller is an area where casual trading licence fees are high, low or non-existent, or whether the seller is a casual trader or a permanent business. The level of licence fees appears to have no influence on fruit and vegetable prices. This is probably because fruit and vegetables are homogeneous, repeat-purchase, low-cost goods and these factors are likely to have a significant converging influence on the differences in the prices of these goods across different seller types. Also, the consumer is able to determine the quality of fruit and vegetables, to a large extent, by simply examining them, i.e. before consuming them.
- 9.20 The prices of other goods, however, do tend to show *some* systematic variation according to the level of licence fees. Casual traders' prices tend to be higher in areas with high licence fees than those of their counterparts in areas with low licence fees; where the casual trader's costs are higher/lower (s)he is likely to charge higher/lower prices, to maximise his/her profits. Of course, it is also likely that higher licence fees lead to fewer casual traders in an area and thus less competition for the incumbent traders who are then able to charge higher prices.

- 9.21 Permanent businesses' prices only showed systematic variation per licence fee in the flowers and clothing categories. For flowers, MRBI's results show that permanent businesses' prices tend to be higher in areas where casual traders pay low licence fees than the corresponding prices charged by permanent businesses in areas where casual traders pay high licence fees. For clothing, MRBI's results show that permanent businesses' prices tend to be higher in areas where casual traders pay low licence fees, and higher again in areas without bye-laws. Thus there appears to be a negative relationship between casual trading licence fees and the prices of flowers and clothes sold by permanent traders in the local area.
- 9.22 This seems counter-intuitive at first. Permanent businesses are likely to take account of the prices charged by casual traders selling similar products, as they are to some extent substitutes. Thus, one would expect that where casual trading fees are lower, and thus casual trading prices are lower (as indicated above), the permanent businesses' prices would be lower. It is possible, however, that where casual traders pay lower fees (and charge lower prices), permanent businesses prefer to distinguish their products from casual traders' products by stocking higher quality products and charging higher prices (which may also signal the higher quality). The small sample size of respondents selling these particular goods makes it difficult to infer too much from this result. Nevertheless, as the result relates to flowers and clothes only, it is easy to see how this could be the case. Florists tend to stock a wider range of flowers than casual traders and also provide the value-added service of arranging bouquets of flowers. Clothing shops also stock a range and variety of clothing items, often seen as complementary to one another, and provide mirrors, changing facilities and after-sales service.

Methods for Setting Fees

- 9.23 There are a number of possible reasons for the huge differences in licence fees across local authorities (see Figure 10 above). First, different local authorities provide different (levels of) facilities in their designated trading areas. Thus, even if the fees charged to traders were 100% related to the cost of providing

facilities, they would vary across local authority areas. Furthermore, even if all local authorities provided the same facilities, to the same standard, the costs incurred by each local authority for the facilities they provide are likely to differ according to local market conditions. For example, many local authorities have privatised waste management in their area; litter collection in a designated casual trading area is likely to be a facility provided by the local authority, and the cost of providing this will depend on each local authority's contract with the waste management company in their area. As waste collection charges vary from (local authority) area to area, the corresponding fees charged would also vary from area to area.²² Thus, if licence fees were fixed solely on the basis of costs incurred by the local authority when providing facilities for trading areas, one would expect to see some variation in fees across local authority areas. Such a cost-based method of fee-setting would also be a proportionate response to the objective of good regulation, when combined with some method of allocating the licences among applicants e.g. first-come, first-served. There does not, however, appear to be any direct link between the variation in fees and the different trading conditions across local authorities; some local authorities seem to charge very high fees for a low level of facilities.

- 9.24 A second possible method of fee-setting that could be leading to this variation is efficient allocation of the licences by the local authorities through fee variation. Once a local authority has designated certain areas for casual trading and the pitch size within each area is determined, the number of casual trading licences available from that local authority, i.e. the supply of licences, effectively becomes a fixed number. The demand for casual trading licences in an area depends on a number of factors such as: population density, average income, location of designated trading area (if any), facilities provided, and the licence fee for the area. One method of ensuring an efficient allocation of the licences is for the local authority to raise and lower the fee level until the

²² *The Irish Independent*, 2 June 2002, found "massive variations" in household waste charges, with some households paying €200 more per annum for refuse collection than those in neighbouring counties.

demand for licences exactly matches the supply of pitches in the area - a demand-based method. As the factors affecting demand for licences vary across local authority areas, as do the number of pitches and the facilities provided by each local authority, the demand for and supply of licences will differ across local authority areas at every fee level. Thus each local authority area has its own equilibrium licence fee level and this would explain the wide variation in fees across local authorities. This method for setting fees would also be a proportionate response to the objective of good regulation; it ensures an efficient allocation of pitches to those who value them most.

9.25 Currently, the demand from casual traders for licences in the main urban areas such as Dublin, Cork and Limerick greatly exceeds supply; the opposite is the case in some rural areas. It is likely that some local authorities may be setting casual trading licence fees at levels exactly covering the cost of providing the corresponding facilities and the administrative costs of issuing the licence, a “cost-based method”, while other local authorities may be attempting to match supply and demand for licences through varying the fee levels, a “demand-based method”. Though both of these methods have their merits, the lack of consistency of method across all local authorities would further add to the resulting variation in fees. The main difference between these methods is that a local authority using a cost-based method would not collect any of the market value, or economic “rents”, associated with the licence, whereas a demand-based method of fee-setting would collect rents.

9.26 Other possible reasons for the variation in fee levels have been suggested to the Authority. It has been claimed that some local authorities fix the fees at excessively high levels in order to maximise their annual budget or to discourage casual trading in their area altogether. This would not be in the interest of good regulation. The Casual Trading Act, 1995, is a clear recognition of the existence of casual traders within the State and their right to trade, subject to proper regulatory control. A local authority that charged excessively high fees would create a barrier to entry to a market, in this case restricting casual trading. The local permanent businesses and the few traders

that pay the high licence fees would therefore have more market power than they would have if fees were set appropriately, and thus could charge higher prices to consumers in the local area. Furthermore, excessively high fees would distort competition in local markets by pushing demand for casual trading licences towards areas with reasonable fees and well-organised markets and away from areas that wish to discourage casual traders.

Controlling Categories of Products Sold

- 9.27 A local authority's bye-laws may provide for the fixing of different fees in respect of licences for different circumstances and for different classes of persons. Certain local authorities issue different licences for persons selling different categories of products, and charge different fees for each licence type. Some even specify the number of licences available for each class of product. In most cases this is due to the local authority's desire to have a variety of products sold at markets in its functional area, to increase the attractiveness of the market to consumers and/or to negate the impact of competition on permanent businesses selling directly competing products.
- 9.28 It is not clear that this direct intervention into the competitive conditions of the local market is warranted. At the very least, it should only be undertaken in direct response to objective measures of consumer demand such as consumer surveys. If consumers prefer to have, for example, more flowers being traded at a market, traders will apply in greater numbers for a casual trading licence to sell flowers. Similarly, if there are more jewellery traders than is necessary to meet demand, the least efficient and/or least popular jewellery traders will go out of business and no longer apply for licences. Thus, the market will naturally tend towards the mix of products that is actually preferred by consumers (as opposed to someone's prediction of consumer preferences). Furthermore, if consumers prefer to buy certain products from casual traders than from a local permanent business, the local business should not be protected from such competition by limiting the number of rivals it has to compete with.

9.29 Also, as casual traders are generally a more responsive form of supply to demand changes, having local authorities deciding how much of a particular good should be supplied at a given point in time is likely to stifle this responsiveness.

9.30 In conclusion, while the Act may have provided for the issuing of different types of licence within each local authority, it is not clear that this measure was introduced so that local authorities could influence the mix of products being sold. Furthermore, it is likely to have a more negative than positive impact on local competition and consumers.

Designated Trading Areas

Effect on Local Markets

9.31 A Dutch study of the significance of street markets for Dutch town centres found that the location of the market is of decisive importance for the success of a market.²³ Casual trading markets can act as an independent magnet for consumers (including those from outside the local area) who may then make further purchases from permanent traders. Permanent businesses in the immediate vicinity of a casual trading market are most likely to benefit from the market's presence; this applies especially to permanent businesses selling goods and services not available from casual traders. Shops in the periphery of a casual trading market, however, may suffer a negative effect from the market because these shops are not located in the flow of passers-by generated by the market. Also, permanent businesses selling essentially the same products as the market traders (e.g. fruit and vegetables) are unlikely to benefit from the presence of the market.

9.32 Evidence and opinions gathered as part of the (qualitative) research of this study indicate that many permanent businesses in Ireland view casual trading as complementary to their businesses and as a tourist attraction.

²³ *"The Value of the Street Market."* EIM, Centre for Research, The Hague, September 1994.

“...[casual traders are] part of the culture and they attract customers who shop in local shops as well as the market.”

(an urban local authority)

Some businesses have even been unhappy with certain local authorities' decisions to move a designated trading area out of a town centre. The exceptions to this pattern have mainly been grocery stores selling fruit and vegetables.

Meeting Public Interest Objectives

9.33 Moving casual traders to a designated trading area and requiring them to display their licence seems to have had a positive effect on public order and safety, by reducing traffic and footpath obstruction, and by reducing illegal trading and the trading of unsafe illegal goods. However, locating casual traders away from a town centre may, in some cases, be a disproportionate measure by a local authority.

Pitch Sizes

9.34 Since the introduction of the Act, casual traders have complained that the pitch sizes determined by some local authorities are too small for them to trade in. This could have anti-competitive effects on the local market as it could act as a barrier to entry for certain types of trader, e.g. caterers with large vans. Also, it is not clear that pitches need to be of a particular size or dimension for public order and safety reasons.

Conclusions

9.35 There has been no consistency in the implementation of the Act across local authorities. Where certain local authorities have not implemented, in any way, the Casual Trading Act, 1995, i.e. have not introduced bye-laws, the Act has had no impact on competition in local markets, on public order and safety, or on the regulation of casual trading generally in those areas. Where the Act has been implemented, the impact on competition in local markets and the

achievement of public interest objectives does seem to depend on the manner in which the local authorities implemented the provisions of the Act. If some local authority is setting licence fees arbitrarily high, this could be distorting competition in the relevant local market, and would be a disproportionate measure. Local authorities attempting to influence the mix of products being sold (e.g. by limiting the number of licences available for a certain class of good or service), without at least an objective assessment of consumers' preferences, are likely to have had a more negative than positive impact on local competition and consumers. Areas that have designated casual trading areas and require licences, have benefited from improved public order and safety.

- 9.36 Apart from the local authorities that employed no measures to regulate casual trading, the majority of local authorities seem to have been proportionate in their efforts to achieve public interest objectives. Potential disproportionate measures include: locating designated casual trading areas far from the town centre, and regulating pitch sizes to be disproportionately small. In the case of event trading, the designation of a trading area is sometimes unmindful of public order and safety or disproportionately cautious.
- 9.37 Overall, where local authorities have taken an active interest in managing casual trading so that it adds to the atmosphere and economic development of their area, relations between the traders, Gardaí, and local permanent businesses are good and casual trading is viewed positively in the area. The Act has had some effect on public order and safety, mainly by reducing traffic obstruction and reducing illegal casual trading in areas where bye-laws have been implemented.

The Future of Casual Trading

- 9.38 The point raised by the Gardaí - that private markets are becoming increasingly popular in Ireland - is an important one. If local authorities neglect their duties by failing to implement bye-laws or if they apply the Act disproportionately, there is likely to be a rise in the number of private markets

in these areas, where traders are provided with adequate facilities at a 'fair' price. As the Act does not apply to private land and private markets, those local authorities will no longer be in a position to regulate casual trading in their area. As a result, local businesses may suffer if the private market is not positioned so that shoppers also visit permanent businesses. Thus, the long-term effect of poor implementation of the Act by some local authorities is likely to be the demise of casual trading and a negative impact on the local economies of these areas.

CHAPTER 10

RECOMMENDATIONS

- 10.1 In general, for markets to function effectively, they require certain minimum rules. Casual traders are charged a licence fee and controlled, primarily so that casual trading is appropriately catered for, while basic standards in regard to public order and safety are ensured. A secondary concern is the regulation of the supply and demand for casual trading in each local authority area and in the State. The principle of subsidiarity suggests that the regulation of a market should be as 'local' as possible, i.e. decisions should be taken as close as possible to those most directly concerned, since such decisions are likely to be based on better local information than those taken at a more central level.
- 10.2 Indeed, this was the basis for the Act, and the Act has improved the regulation of casual trading where markets are well-managed. Accordingly, it seems appropriate that the Act continues and local authorities retain control over regulating certain features of casual trading. With the exception of the event trader interviewed, it seems that all stakeholders believe that, if the Act were correctly and fully implemented, as was envisaged by the Department of Enterprise Trade and Employment, it would ultimately benefit casual traders, local businesses, public order and safety and consumers alike. Apart from a few recommended changes to the Act, outlined below, the Authority concurs with this view. Thus the Authority's recommendations below, regarding the current system of regulation of casual trading, mainly relate to the manner in which the Act is being implemented. The recommendations fall under four categories: implementation, consultation, consistency and transparency.

Implementation

- 10.3 The most obvious failure in the manner in which the Act has been implemented, is the non-introduction of bye-laws by one-third of the local authorities charged with the responsibility of implementing the Act. This failure impinges on the efforts of other local authorities, is contrary to the

intent of the Oireachtas and the duties of the local authorities and is a breach of the provisions of the Act. The Authority's first recommendation, therefore, is that all local authorities that have not yet introduced bye-laws for their functional area, as listed in Appendix B, do so without delay.

R1: The 30 local authorities that have not yet introduced bye-laws under the Casual Trading Act, 1995, should do so without delay.

Consultation

10.4 Consultation with casual traders, and other interested parties, at the early stages of making bye-laws and of making decisions under the bye-laws, such as relocating a trading area, would ultimately have a very positive influence on the regulation of casual trading and the local authorities' relationship with casual traders. If the local economy is to benefit optimally from a well-managed market, then the local authority concerned must take the interests of the market and the market traders into account in its policy. Consultation is a hallmark of better regulation and would help to negate the incidence of costly legal battles.

R2: Local authorities should consult casual traders and other interested parties when introducing or amending bye-laws and making decisions under the Casual Trading Act, 1995.

Consistency

Guidelines

10.5 If they are to continue to have a regulatory role, local authorities should have clearly defined guidelines to follow and these should be drawn up at a national level by a central authority, such as a government department, in consultation with traders, local authorities, Gardaí and Chambers of Commerce. Guidelines for those given the task of designing and implementing regulations are part of the ethos of better regulation and widely used in other countries

(such as the UK²⁴) by central government and local authorities. In this case, guidelines might cover issues such as:

- Types of licences to be issued (a menu or just one type),
- Exempting classes of goods,
- Objective criteria for setting fees and allocating licences,
- Objective criteria for location of designated trading areas,
- Method for determining facilities,
- Appropriate pitch sizes,
- Treatment of excess demand for licences,
- Role of the Gardaí/interaction with other regulations,
- Consultation with representatives of casual traders,
- Clear contact person within each local authority,

though this is not an exhaustive list.

<p>R3: Guidelines should be drawn up at a national level to direct local authorities in implementing the Casual Trading Act, 1995.</p>

Designated Trading Areas and Pitch Sizes

10.6 The size and location of designated trading areas should reflect the demands of consumers and the demand for casual trading licences in the area. The above process of consultation, leading to guidelines, would ensure that arguments over pitch sizes are at least aired and considered. If pitch sizes are too small for many traders to operate in, this acts as a barrier to entry for those traders. If, on the other hand, the local authorities set the pitch size equal to that of the largest casual trading stall, the number of pitches in any designated area would

²⁴ *Planning Policy Guidance Notes* - www.planning.odpm.gov.uk/ppg/index.htm

be reduced and this would be an inefficient use of the land. It is therefore likely that the guidelines should encompass two (or more) appropriate pitch sizes - one large, one regular. The local authorities could then decide the number of pitches of each size in their functional area, according to objective criteria, and issue different licences for each size.

R4: The determination of pitch sizes, set by local authorities under the Casual Trading Act, 1995, should not act as a barrier to entry for any type of trader; local authorities could designate a number of larger pitches for certain classes of trader.

Fee-setting and Allocation of Licences

10.7 There are many possible methods for setting fees and allocating licences, more than one of which would be a proportionate response by a local authority to the objective of good regulation. It is clear from the Act that the Oireachtas intended granting discretion to local authorities in regard to the setting of fees, and that should remain the case. Possible methods of ensuring that correct fee levels are set and that the pitches are efficiently allocated include:

- a. Auction each type of licence.
- b. Raise and lower the fee for each licence type every year, depending on the demand for each licence type the previous year. Allocate licences on a historical basis or a first-come, first-served basis.
- c. Base fee charges solely on the administrative cost of issuing licences and any costs associated with providing facilities, perhaps including the opportunity cost of income forfeited by the local authority for not being able to use the area for other purposes (e.g. parking). Allocate licences on a historical basis or a first-come, first-served basis.

10.8 Option a, auctioning the licences, would ensure that the licences go to those traders who value them most. Thus it is an efficient method of allocation. A further efficiency associated with this method is that the traders also pay a fee equal to their valuation of the licence. The local authority is thus able to

efficiently collect all of the value or “rent” associated with the licences and the local market for casual trading. One obvious practical drawback of this system is that it may be costly and time consuming for the local authority to implement, and possibly for the traders too. This is partly because the Act allows licences to be of a duration no longer than twelve months; the maximum duration of licences specified in the Act would need to be amended to, say, three years for a system of auctioning licences to be cost efficient. A system of three-year licences could stifle the responsive nature of casual trading (assuming licences are not tradable), however, and thus may not be a favourable system either.

10.9 Adjusting the fee for each licence type every year, to reflect the demand for each licence type in the previous year (option b), would be a simple method of fee-setting which roughly approximates the efficient rent collection implied by an auction. Licences could then be allocated to applicants on a first-come, first-served basis or a historical basis. Whichever method of allocation is chosen, the local authority should revoke a licence if a licence holder does not use their pitch, and reissue the licence to the next person on the waiting list, to ensure that the allocation is fair and efficient.

10.10 There are, however, constraints on the discretion of local authorities to charge fees which reflect the demand for licences and thus the market value of the licences. The judgement in *Humphrey v Minister for the Environment* ([2001] 1 ILRM 241) (“the taxi case”) states that local authorities are not empowered to base a licence fee on the market value of a licence. Murphy J. opined that “*the imposition of a licence fee...where such a fee is related to the capital value of the subject of a licence is indeed in the nature of a tax. It is clearly not limited to the administration of a licence or to the regulation and control of same. It does not seem to have been in the contemplation of the legislature to delegate to the Minister such a right, let alone allow the Minister to delegate to a local authority. Indeed such a right is more properly reserved to the Oireachtas.*” Thus, if local authorities were to fix fees for casual trading licences according to their capital value, i.e. the demand for those licences, it

is possible, on the basis of the taxi case, that this would be found unlawful if judicially reviewed. In the light of this constraint, options a and b may not be legally sound.

10.11 Irrespective of the judicial position, the method recommended by the Authority is option c. Local authorities should base their fee charges solely on the administrative cost of issuing licences and any costs associated with providing facilities, perhaps including the opportunity cost of income forfeited by the local authority for not being able to use the area for other purposes (e.g. parking).²⁵ Setting the fees at levels that reflect the costs associated with the licence is less open to estimation errors (as in fee-setting based on estimates of demand), is cost-efficient, it is transparent, and is also more in-line with the local authorities' other functions related to allocating scarce resources. The licences should then be allocated (annually) on a historical basis or a first-come, first-served basis, with a waiting list operating for pitches that become free. Licences should be revoked if a licence holder does not use their pitch, and reissued to the next person on the waiting list. That is, it should be a condition of the licence that it is used, say for a certain minimum number of days in the year. Allocating the licences on this basis would ensure that they are likely to be allocated efficiently, that is to those who value them most. Setting the fees at levels that reflect the costs associated with the licence also means that the local authority does not collect any of the "rent" associated with the market value of the licence, rather these rents accrue to the traders, (who do not necessarily have to pay their full valuation of the licence). Some of these rents may, in the event, be passed onto the consumers. These measures would be strengthened by amending Section 6(4) of the Act to read "*...local authorities shall have regard to the facilities and services provided by it to persons engaged in casual trading*", thus *explicitly* obliging the local authorities to set casual trading licence fees at levels that reflect the facilities they provide.

²⁵ Costs to be included should be listed in the guidelines recommended above.

R5: Fees set under the Casual Trading Act, 1995, should be based solely on the administrative cost of issuing licences and any costs associated with providing facilities.

R6: Section 6(4) of the Casual Trading Act, 1995, should be amended to read "... local authorities shall have regard to the facilities and services provided by it to persons engaged in casual trading".

R7: Licences issued under the Casual Trading Act, 1995, should be allocated on a historical basis or a first-come, first-served basis, with a waiting list operating for pitches that become free.

10.12 Over the longer term, the local authority should increase and decrease the amount of land designated for casual trading, and thus the number of pitches, in response to consumer demand and supplier demand for casual trading in the area.

Event Trading

10.13 The event trading company's view, that the Act has had only negative effects on event trading, is understandable. Having to apply for a licence for each local authority area where they may wish to trade is time-consuming and inefficient if they trade throughout the country. It would be useful if a system of mutual recognition could be developed among the local authorities so that an event trader need only go through the full application process with one local authority each year.²⁶ When applying to trade at events in other areas, the event trader could then receive its event licence for the new area solely on the basis of availability and payment of the appropriate fee - as his/her first licence would already have been issued on the basis that the applicant had not been convicted of an offence relating to the importation, possession or sale of goods and the applicant provided all the information requested in the application.

²⁶ Such a system may require identical application forms/criteria across local authorities, or the designation of a primary local authority in each province, say, that would process the initial applications by event traders.

R8: The possibility of mutual recognition of licences among the local authorities should be investigated so that an event trader might need to apply only once in full for a licence under the Casual Trading Act, 1995.

Transparency

10.14 Each of the 88 local authorities should then be required to make available to the public a list of its licence fees, together with a breakdown of the various costs leading to those calculations. A central authority, such as a government department, could then keep a record of the fees charged by each local authority, and the corresponding costs incurred by the local authority. Indeed, detailed information on other aspects of casual trading in each local authority area (such as number of traders, products sold) could be collected centrally and stored in a central databank, accessible to all interested parties.

R9: Local authorities should be required to make available to the public a list of its licence fees under the Casual Trading Act, 1995, together with a breakdown of the various costs leading to those calculations. This same information should be collated centrally.

10.15 To ensure that fee setting is accountable and fair, a system of appeal should be put in place. The Authority recommends that the Act be amended to enable fees, and amendments to fees, to be challenged in the District Court, with a provision to appeal to the Circuit Court, as are other aspects of bye-laws. A record of the published fees and costs for each local authority and guidelines set by government, as suggested above, would be a useful guide to any arbitrator.

R10: The Casual Trading Act, 1995 should be amended to enable fees, and amendments to fees, to be challenged in the District Court, with a provision to appeal to the Circuit Court, as are other aspects of bye-laws.

Dr John Fingleton
Chairman

Mr Declan Purcell
Member

Ms Isolde Goggin
Member

Dr Paul Gorecki
Member

Mr Terry Calvani
Member

APPENDIX A

GOODS TRADED

Figures show percentage of traders surveyed that sell each product (category).

by Casual Traders	%	by Local Businesses	%
Clothing	27	Clothing	19
Fruit and Vegetables	18	Fruit and Vegetables	19
Flowers	12	Flowers	14
Household Wares	10	Household Wares	12
Jewellery	9	Jewellery	12
Souvenirs/Fragiles	7	Souvenirs/Fragiles	9
Electrical	4	Electrical	12
Confectionery	4	Confectionery	10
Toys	4	Toys	6
Shoes/Footwear	3	Shoes/Footwear	1
Tools/Hardware	2	Tools/Hardware	-
Musical	2	Musical	1
Plants/Shrubs/Trees	2	Plants/Shrubs/Trees	-
Bric-a-brac	2	Bric-a-brac	2
Catering	1	Catering	16
Fish	1	Fish	3
Deli	1	Deli	5
Books	1	Books	1
Ornaments	1	Ornaments	-
Car Accessories	1	Car Accessories	-
Newspapers	-	Newspapers	7
Meat (Butcher)	-	Meat (Butcher)	1

APPENDIX B

LOCAL AUTHORITIES WITHOUT BYE-LAWS

Corporations

Drogheda Corp.

Kilkenny Corp.

Co. Councils

Carlow Co. Council

Cavan Co. Council

Kildare Co. Council

Laois Co. Council

Leitrim Co. Council

Longford Co. Council

Louth Co. Council

Monaghan Co. Council

Roscommon Co. Council

Westmeath Co. Council

Mayo Co. Council

UDCs

Arklow UDC

Athlone UDC

Athy UDC

Castlebar UDC

Dungarvan UDC

Fermoy UDC

Kells UDC

Letterkenny UDC

Mallow UDC

Naas UDC

Nenagh UDC

Skibbereen UDC

Templemore UDC

Trim UDC

Wicklow UDC

Monaghan UDC (currently drafting)

New Ross UDC (currently drafting)

APPENDIX C

AREAS NOT INTENDING TO INTRODUCE BYE-LAWS

Of the 30 local authorities currently without bye-laws, listed above, 18 do not intend to introduce bye-laws at all.

Local Authority	Reason for Not Introducing Bye Laws
Carlow Co. Council	No response given.
Kilkenny Corp.	No problems with current situation.
Kildare Co. Council	No response given.
Laois Co. Council	No traders.
Longford Co. Council	No demand for licences (have draft bye-laws).
Monaghan Co. Council	No demand for licences.
Westmeath Co. Council	No problems with current situation.
Mayo Co. Council	Using Castlebar bye-laws.
Athlone UDC	Only 5 traders.
Athy UDC	No response given.
Dungarvan UDC	No problems with current situation (trade in car park once a month).
Fermoy UDC	No demand.
Kells UDC	No response given.
Naas UDC	No traders.
Skibbereen UDC	Do not want to encourage casual trading.
Templemore UDC	No demand for licences.
Trim UDC	No response given.
Wicklow UDC	No traders.

APPENDIX D

FEES, LICENSED TRADERS, TRADING DAYS

The fees charged by each local authority are per annum unless otherwise indicated. Where a local authority charges a range of licence fees, the actual fee paid by a trader typically varies according to the number of days per week covered by the licence and/or the type of goods sold by the trader. All fees are in euro²⁷.

The number of licensed traders given is sometimes an estimate by the local authority.

Local Authority	Fee Structure	No. of Trading Days per Week	No. of Traders
Clonmel Corp.	€762	3	1
Cork Corp.	€127-660		38
Dublin Corp.	€127-666	varies	451
Limerick Corp.	€317-634	1 or 7	don't know
Sligo Corp.	€380	2	not stated/don't know
Waterford Corp	€253	2	8
Wexford Corp.	€507	6	15
Cavan Co. Council	€476	1 or 3	20-25
Clare Co. Council	€253	3	86
Cork Co. Council	€253-761		not stated/don't know
Donegal Co. Council	€253	7	37
Dun Laoghaire/Rathdown Co. Council	€444 (events €63)	7	15
Fingal Co. Council	€127-253	7	4
Galway Co. Borough	€31-127	1 or 7	115
Galway Co. Council	€253-1015 (events €25-38)	1 - 7	40
Kerry Co. Council	€190	2	79
Kilkenny Co. Council	€507-1270	1 - 7	4
Limerick Co. Council	€253-349 (events €25-253)	1 - 7	17
Mayo Co. Council	€1269	1	not stated/don't know
Meath Co. Council	€380	4	11
Sligo Co. Council	€507		6
Sth.Dublin Co. Council	€13-380	7	27
Tipperary NR Co. Council	€25 per week		1
Tipperary SR Co. Council	€507	1	not stated/don't know
Waterford Co. Council	€1015 (€253 for summer)		6
Wexford Co. Council	€380 (events €63)	1	15
Ballina UDC	€952	1	14
Ballinasloe UDC	€406	1	28
Birr UDC	€393	1	None
Bray UDC	€13	7	3

²⁷ This data was collected in mid-2001, and was then designated in Irish Punts. The Authority has converted (and rounded) these amounts to euro for the purposes of this Report.

Local Authority	Fee Structure	No. of Trading Days per Week	No. of Traders
Buncrana UDC	€31-253	7	15
Bundoran UDC	€1269	7	not stated/don't know
Carlow UDC	€317 (events €253)		40
Castlebar UDC	€952-1714 (events €31)	1 - 7	not stated/don't know
Castleblaney UDC	€1320	1	1
Cavan UDC	€634	5	3
Clonakilty UDC	€253		None
Clonea UDC	€25		5
Clones UDC	€25-19 daily if fruit & veg	2	5
Cobh UDC	€253	7	5
Dundalk UDC	€127-952	½ - 7	13
Ennis UDC	€7- daily		not stated/don't know
Enniscorthy UDC	€190	1	12
Killarney UDC	€507 (events €63)	6	1
Kilrush UDC	€31-253 (events €25-63)	2	29
Kinsale UDC	€635	2	1
Listowel UDC	€13 (events €127)	1	14
Longford UDC	€1,269 (events €25)	5	4
Macroom UDC	€330-1777	1 or 4	24
Midleton UDC	€253 (events €25)		1
Navan UDC	€12 + €7 per day for cleaning	1	74
Offaly UDC	€127	1	34
Thurles UDC	€241	1	10
Tipperary UDC	€635-1,269	6	13
Tralee UDC	€426-609 (Rose of Tralee event €635-2,539)	4 or 2 (1 week)	9
Tullamore UDC	€457	1	not stated/don't know
Westport UDC	€31-50 (events €64)	1 or 7	5
Youghal UDC	€31-253	1 or 2	3
Kilkenny Corp.	none/not stated		None
Kildare Co. Council	none/not stated		15
Leitrim Co. Council	none/not stated		5
Roscommon Co. Council	none/not stated		15
Wicklow Co. Council	none/not stated		2
Carrickmacross UDC	none/not stated	2	36
Carrick-on-Suir UDC	none/not stated		5 or 6
Cashel UDC	“ “ (events €25)		None
Letterkenny UDC	none/not stated		27
Mallow UDC	none/not stated		30
Naas UDC	none/not stated		None
New Ross UDC	none/not stated		None
Skibbereen UDC	none/not stated		17
Templemore UDC	none/not stated		None

Source: MRBI's survey of local authorities.

Drogheda Corp., Carlow Co. Council, Laois Co. Council, Longford Co. Council, Louth Co. Council, Monaghan Co. Council, Westmeath Co. Council, Athlone UDC, Athy UDC, Dungarvan UDC, Fermoy UDC, Kells UDC, Monaghan UDC, Trim UDC, and Wicklow UDC did not provide information on fees or number of traders, though these local authorities have not yet made any bye-laws.