



**IFA Submission to**

**The Department of Business, Enterprise and Innovation**

**on the review of the provisions to both**

**the Casual Trading Act 1995 and the Occasional Trading Act 1979**

**October 2018**

## Introduction

The Irish Farmers' Association (IFA) is the main representative body for farmers in Ireland with over 72,000 members. It is a largely voluntary structure and comprises of committees representing all of the major commodities, ranging from the main farming sectors of beef and dairy to the other sectors which include fruit, vegetables, pig meat, poultry, potatoes, mushrooms and the hardy nursery sector.

IFA welcomes the opportunity to make a submission to the review by the Department of Business, Enterprise and Innovation of the Casual Trading Act 1995 and the Occasional Trading Act 1979.

### **Question 1 Do you consider that the scope, definition and exemptions for casual trading in the Act are still fit for purpose or do they need up-dating? Please elaborate in your response.**

The roadside selling of Irish soft fruit and new season potatoes remains a very important part of the economic, cultural, tourist and social fabric in many parts of Ireland, most especially in the south east of the country. IFA strongly considers that the scope, definition and exemptions for casual trading in the Act are still fit for purpose and in general do not need to be changed.

On May 1<sup>st</sup> 2004, the then Tánaiste and Minister for Enterprise, Trade and Employment, Ms Mary Harney, exempted perishable fruits and vegetables from the scope of the Casual Trading Act 1995. In effect, this meant that Roadside sellers of fresh strawberries and other perishable fruit and vegetables (namely potatoes) would not need a licence to sell their produce during the summer months, following these changes in the casual trading regulations.

Prior to 2004, IFA had long campaigned for this exemption to be granted. The legislation which existed pre. 2004 was not suited to an activity which was concentrated in a specific period of the year. It also did not allow the exemptions to be implemented on a national basis but at the behest of local councils which was never practical.

Pursuant to the Casual Trading Act 1995 (Section 2 (3)) Regulations 2004 the period of the exemption is from May 1st to September 30th and is restricted to growers and their servants or agents. The fruits and vegetables which are permitted for sale are namely –

(I) Strawberries, raspberries, blueberries, gooseberries, blackberries, loganberries, tayberries and currants

And

(II) Potatoes having loose skins and which have been harvested prior to maturity.

The Irish soft fruit and potato sectors combined are worth €120 million per annum at farm gate to the Irish rural economy.

The roadside selling of these fresh produce lines makes up a significant proportion of these monies in relative terms at a local level. In addition, they provide smaller producers in particular, with the only outlet for their produce.

Many of these do not supply the larger dominant retailers, who in many cases have been responsible for the closure of smaller local shops which these growers had previously supplied. In addition, perishable produce is very dependent on factors such as the weather, with the result that surpluses can arise very quickly, and it is not always possible to sell this produce through normal retail channels.

Roadside sales give the consumer a chance to interact with local producers and provides them with the opportunity to buy soft fruit and potatoes at their optimum freshness. In fact, a Bord Bia<sup>1</sup> report reflects this fact with consumers perceiving that fruit purchased at roadside stalls and farmers' markets is the freshest, in-season, quality produce. They also believe that roadside stalls / farmers' markets are much closer to the land than a main retailer and that a more personal, human element exists which has a more vested interest in the provenance and production of the produce. The report also confirmed that consumers are more likely to purchase fruit from this channel when it is in season.

For the past eleven years Bord Bia and the Soft fruit growers have organised national strawberry week during the month of June which endeavours to promote the consumption of Irish Strawberries. The roadside selling of Irish strawberries also plays a pivotal role in promoting the general sales of Irish soft fruit and advertises the availability of Irish strawberries to the general public. Over the past three years Bord Bia in association with IFA have run a similar national campaign to promote the consumption of potatoes particularly the traditional new season Irish grown Queen variety and again roadside selling plays a major role in the promotion of this product.

The roadside selling of soft fruit and potatoes has become synonymous with the arrival of the Irish Summer in many regions of Ireland, particularly in the South East. Apart from its direct financial impact to rural areas, it also contributes massively from a tourism and cultural point of view to these areas. This fact was borne out in the Bord Bia report referred to above which states,

*“There is a strong emotional sentiment to the Irish strawberry season. They provoke nostalgic associations with family days out in summer or strawberries & cream on a summer's day. Consumers look forward to the strawberry season as they get to experience this happiness again and remind themselves of childhood memories”.*

This illustrates the cultural and traditional importance of roadside sales and if it was to disappear its loss would reverberate further than just the immediate financial loss of the fruit and vegetable sales to the producers involved.

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<sup>1</sup> *Understanding Consumer Perceptions of Irish Strawberries*, December 2016

**Question 2 Please provide observations on the current use and operation of the casual trading bye laws by local authorities?**

In general, IFA is of the view that Local Authorities operate the casual trading bye laws in a fair and reasonable manner when it comes to the selling of horticultural and agricultural produce. For instance, Waterford City and County Council adopted specific casual trading bye laws in 2017 which are a positive development as they specifically refer to the special exemption which soft fruit and new season potatoes have from the casual act in the bye laws. They also give guidelines on the products permitted to be traded in a so called "Farmers' Market" having regard to certain criteria.

**Question 3 Please provide observations on the current casual trading licence application process?**

As an organisation we are most familiar with roadside sales which are exempt from applying for a casual trading licence. More of our members would be involved in the sale of more general fresh produce and artisan agricultural products in farmers' markets and to the best of our knowledge we are currently unaware of any issues in relation to the casual trading licence application process.

**Question 4 Please provide observations on the current enforcement or non-compliance with the casual trading licensing bye laws?**

IFA has come across a small number of rogue traders who are abusing the exemptions and bye laws in relation to the Casual Trading Act. It is our opinion that more could be done by the local authorities to control these individuals who are neither growers or servants / agent of growers. We have also come across instances where some roadside traders have been selling other fresh produce lines and / or products which are not exempted under the act.

Under the amending regulation to the Casual Trading Act 1995 (Section 2 (3)) Regulations 2004 it specifically states the following:

*(a) "grower" means the producer of the product concerned specified in that paragraph;*

*(b) the following condition is specified in relation to subparagraph (ii) of that paragraph, namely that the servant or agent, on being requested to do so by an authorised officer appointed under section 10 of the Act acting in the exercise of the powers conferred by that section or a member of the Garda Síochána, shall produce to him or her documentary evidence to show that he or she is the servant or agent of the grower of the produce which he or she is selling.*

Under the Registration of Potato Growers and Potato Packers Act 1984, all new potatoes being sold on roadside stalls should have a traceable grower number. In addition, all food business operators who undertake primary production are required to register with the Department of Agriculture, Food and the Marine (DAFM) under the EU Food Hygiene legislation, i.e. Regulation (EC) No 853/2004, following which they will receive a unique Horticulture Food Register (HFR) identification number.

IFA believes that all local authorities, if they have not already done so, should appoint authorised officers for the purposes of implementing the casual trading act along with its specific exemptions. These officers should liaise closely with the DAFM to ensure that the law is being upheld in relation to bone fide growers, traceability etc.

IFA is in favour of increasing the enforcement of non-compliance issues within the remit of the Casual Trading Act and bye laws, as to do otherwise could risk undermining the whole sector.

**Question 5 Please provide observations on the operation and regulation of “Farmers’ Markets” in line with the current casual trading legislation?**

While IFA has no major issue with the operation and regulation of Farmers’ Markets we feel that some of the operators are not engaging in the original spirit and tradition of these types of markets. Most consumers would assume that these markets are selling local produce where it is practical and seasonally available. However, it is our experience that in some areas this is not the case and does not involve either a local or an Irish primary producer. It is the view of the IFA that this could be perceived as misleading the consumer.

IFA would be in favour of the considerations which Waterford County Council have included in their Casual Trading bye laws 2017<sup>2</sup> in relation to the operation of farmers’ markets.

**Question 6 Please provide observations on the co-existence of ‘markets’ with historical market rights alongside casual trading legislation and bye laws by relevant local authorities and how any challenges arising from the interplay of the two can be reconciled?**

Where there are historical market rights in relevant local authority areas, these should coexist if at all possible along with the casual trading legislation and bye laws.

**Question 7 Please provide views on enabling consumers to make a complaint against a casual trader and what would be the most appropriate way to provide for this in the legislation?**

Consumers should be able to make a complaint against a casual trader through the authorised person dealing with casual trading within the relevant local authority.

**Question 8 Please provide views on the publication of “Traders’ Registers”?**

IFA would see no need for a publication of a traders register once there was an authorised person within the local authorities who would be familiar with all traders operating legally within their area.

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<sup>2</sup> Adopted Casual Trading (Control and Designation) Bye Laws 2017

**Question 9 Please provide views on the current level of penalties having regard to the period of time that has elapsed since the legislation was enacted?**

IFA would consider that there has not been a sufficient imposition of penalties on traders who have been found to be in breach of the Casual Trading Act

**Question 10 Please provide observations on whether there is a continued need for legislation to regulate occasional trading and if so what format do you consider it should take?**

IFA has no knowledge of instances where our members are involved in occasional trading and therefore have currently no view on this issue.

**Question 11 Do you consider that the scope, definition and exemptions for occasional trading in the Act are still fit for purpose or do they require up-dating? Please elaborate in your response.**

According to the Occasional Trading Act, “the *selling of agricultural or horticultural produce (including livestock) by the producer thereof or his servants or agents acting as such*”, are not included in the definition for the purposes of occasional trading and as such we have no reason to believe that this should be changed.”

**Question 12 What are your observations on the current occasional trading permit application process?**

The IFA has no experience of this application process and therefore have no observations to report.

**Question 13 Please provide observations on how occasional trading might be better enforced?**

If it is not already done so, it should be enforced similar to the casual trading Act i.e. by the local authorities and An Garda Siochana

**Question 14 What are your views on devolving responsibility for occasional trading to the local authorities**

See answer to Question 13 above.

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