



An Roinn Fiontar, Trádála agus Fostaíochta
Department of Enterprise, Trade and Employment

CASUAL TRADING LEGISLATION AND THE SERVICES DIRECTIVE (DIRECTIVE 2006/123/EC)

IMPORTANT NOTICE REGARDING THE IMPLICATIONS OF THE DIRECTIVE ON CASUAL TRADING BYE LAWS

THE DIRECTIVE COMES INTO FORCE ON 28TH DECEMBER 2009

The Department of Enterprise, Trade and Employment is responsible for the policy on trading in public places. The relevant legislation is the Casual Trading Act, 1995. All local authorities have been sent a copy of the Directive and asked to comment on the screening process led by the Department. The screening process has now been completed. For those local authorities who did not participate in the screening process, it is essential that they make preparations for the successful implementation of the Directive. The screening process is there to enable Member States to justify their authorisation systems. The purpose of this note is to inform local authorities of their obligations under the Directive.

This note represents the Department's understanding of what local authorities need to do arising from the Directive.

Each local authority is a competent authority for the purpose of the Directive and it is the responsibility of each local authority to ensure that they are conforming to the provisions of the Directive.

This note does not purport to deal with every aspect of the Directive. The note is based on those provisions of the Directive which appear to the Department to be most relevant to casual trading. The note takes the order of the Articles in the Directive. Note on terminology-this Note uses the terms "traders" and "customers" instead of the respective terms "provider" and "recipient" as used in Art. 4 (definitions) of the Directive. However the detailed

definitions in the Directive apply. The Department will be nominated as the “Point of Single Contact” (PSC) in Art. 6.

1. The Directive gives certain rights to traders and customers in relation to information. The responsibility of the local authority will be to provide the information outlined in Art. 7. The practical impact of this provision is that local authorities will have to provide all the information required to the point of single contact for casual trading. This would best be done by way of a web link from each of the local authorities to the point of single contact.
2. All procedures and formalities relating to the application for casual trading licences must be capable of being accessed electronically. This includes the payment of the fee (Art. 8). Therefore local authorities who do not accept payment of fees or the processing of applications for licences electronically will have to be prepared for traders who insist on exercising their rights under this provision.
3. Local authorities must publish the criteria on which their casual trading bye laws are made. The criteria are referred to in Art. 10 (2). Note that Art. 10 (2) (f) & (g) say that the criteria must be made public in advance and be transparent and accessible. Local authorities should consider whether these criteria should be available on their websites.
4. The licence must be issued as soon as all the conditions have been met (i. e. once the form has been correctly completed and the fee paid and any other conditions met) [Art. 10 (5)].
5. If a local authority refuses to grant a licence it must give a “fully reasoned” explanation and any such refusal or withdrawal of a licence must be open to appeal in the courts [Art. 10 (6)].
6. Art. 11 states that an authorisation granted to a trader shall not be for a limited period. There are exceptions to this. For those local authorities who do not designate casual trading areas it is a safe assumption that the conditions in Art. 11 (1) apply. Therefore section 4 (8) of the Act would not apply in this case.
7. Art. 12 is concerned with a situation where authorisations are limited. Most local authorities designate casual trading areas which limit trading to specific places and make it illegal to trade outside those specified places. These circumstances would suggest that the circumstances in Art. 12 apply. Therefore local authorities should assume that casual trading licences in these circumstances can only be issued for a limited period [i. e. the period in section 4 (8)] and cannot be subject to automatic renewal. Local authorities should ensure that they have selection processes in place which fulfil the conditions in Art. 12.

8. In cases with a limitation on licences local authorities cannot have a selection system whereby licences are automatically renewed [Art. 12 (2)]. Where licences are limited local authorities will have to formulate a selection process which conforms to Art. 10 (2).
9. Authorisation procedures and formalities must be clear and made public in advance. Local authorities would be advised to have all information in relation to casual trading on their websites [Art. 13 (1)].
10. The fees to be charged for licences must be “reasonable and proportionate” [Art 13 (2)]. Only the administrative costs associated with the application can be charged in fees.
11. Local authorities must process applications within a reasonable period of time. Local authorities have to decide on and publish this period of time. The period of time can be extended once for a limited period (the extension must be justified by the complexity of the case). If the local authority has not responded within the initial period or the extended period the licence is deemed to have been granted [Art. 13 (3) & (4)].
12. All applications for licences must be acknowledged as quickly as possible. The acknowledgement must refer to the time period referred to in par. 10 above and refer to any redress system [Art. 13 (5)].
13. Local authorities cannot use factors such as proof that an economic need exists for the product, the effect of the sale of the product on others or whether it is appropriate to the economic planning objectives to decide on an application for a licence [Art. 14 (5)]. There is an exception for planning requirements which do not pursue economic aims. This means that any argument that traders will have an adverse effect on existing shops can no longer be relied upon by local authorities.
14. Some local authorities delegate the decision on who will trade in a particular market and other decisions to the traders themselves. This is usually done by the local authority either directly or indirectly delegating this function to the traders or a representative group of traders. This practice is now prohibited. In future any such decisions can only be made by the local authority [Art. 14 (7)].
15. Under the Directive [Art. 22] there is an extensive list of information which the trader must make available to the customer. Local authorities must ensure that this information is made available. Art. 22 (2) sets out how and under what circumstances the trader provides the information to the customer. Under Art. 22 (4) the

local authority must ensure that the information required of the trader is made available or communicated in a clear and unambiguous manner. It also states that the information must be made available before the conclusion of the contract. Given the nature of casual trading it is suggested that the information be either displayed by the trader at or on the stall.

16. Local authorities may ensure that traders have professional liability insurance (i. e. public liability insurance). However there are limitations on competence in this area. Recital 99 states that local authorities can no longer stipulate the level of cover which traders must have. Further local authorities can only insist on traders having public liability insurance if there is “a direct and particular risk to the health or safety of the recipient or a third person” [Art. 23 (1)]. In each case where a local authority determines that a trader should have public liability insurance they should justify this requirement by detailing the risks they consider need to be insured against.
17. Local authorities must keep the traders contacts details so that customers can make complaints if they so wish. Local authorities must ensure that traders respond to any complaints and have to make their best effort to find a satisfactory solution [Art. 27 (1)].
18. Local authorities have to take measures to ensure that traders comply with the information requirements of the Directive [Art. 27 (2)]. One way of ensuring that is achieved is to make these provisions a condition [see section 4 (3) (a), (b) & (c) of the Act] of the granting of a licence. If the trader does not comply with these conditions an offence is committed.

Competition & Consumer Policy Section
Department of Enterprise, Trade and Employment
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