



# Comhairle Contae Chill Dara

## Kildare County Council

### CASUAL TRADING SELECTION POLICY KILDARE COUNTY COUNCIL

This policy was approved by Kildare County Council at the Full Council meeting of 31<sup>st</sup> May 2021.

#### 1.0 Legislative basis for Casual Trading Selection Policy and Casual Trading Bye Laws

Part 3, Chapter 1 of the [European Union \(Provision of Services\) Regulations 2010](#) (the 2010 Regulations) sets out general requirements for competent authorities in the State responsible for administering an authorisation scheme relating to a service activity.

The [European Union \(Casual Trading Act 1995\) Regulations 2018](#) amends the Casual Trading Act 1995 (the Act), defining legal terms associated with casual trading, in the context of bye laws made under the Act, as follows:

- A competent authority is defined as a local authority.
- An authorisation is a casual trading licence, that may be issued by a local authority.

Casual Trading Licences are issued in accordance with Casual Trading Bye Laws.

[Part 1 to Schedule 14a of the Local Government Reform Act 2014](#) sets out reserve functions to be carried out at Municipal District level.

Item 31 of this Schedule sets out that the statutory power related to the making of bye-laws regarding control, regulation, supervision and administration of casual trading is under [Section 6 of the Casual Trading Act 1995](#)

The making of Casual Trading Bye Laws therefore occurs by elected members at Municipal District level. In practical terms the Casual Trading Bye Laws set the requirements associated with operating a casual trading licence, where granted.

The 2010 Regulations set out the requirement for each local authority to publish the high-level criteria that govern decisions made under the Casual Trading Bye Laws regarding licence applications. Article 15 (2) of these regulations requires that such criteria shall be:

- (a) non-discriminatory,*
- (b) justified by an overriding reason relating to the public interest,*
- (c) proportionate to that public interest objective,*
- (d) clear and unambiguous,*
- (e) objective,*
- (f) made public in advance, and*
- (g) transparent and accessible.*

Section 6 of the Act empowers the elected members of the Municipal District to act in the public interest to make Casual Trading Bye Laws that include the designation of public land within its functional area (to which the public have access as of right or any land occupied by and in the functional area of the authority) as a place where casual trading, subject to licence, may be carried on.

The elected members also have the power to further specify the maximum area that may be occupied in a casual trading area by a person engaged in casual trading.

These areas are known respectively, as designated trading areas and trading pitches.

Arising from this, the provisions of the 2010 Regulations require that where the availability of such trading licences is limited, for example by available designated space, that the local authority shall apply selection procedures.

It is a requirement of Article 17 of the 2010 Regulations that selection procedures provide potential applicants for licences with a guarantee of impartiality and transparency, including adequate publicity about the launch, conduct and completion of the selection procedures.

To further facilitate applicants the Council will prepare and publicise an applicant's guide to casual trading, including information on bye laws, application processes, decision making processes, ongoing compliance and enforcement activity, requirements accompanying licenced casual trading and other useful information.

## **2.0 Casual Trading Selection Policy.**

### **2.1 Publicity regarding selection process.**

To ensure a transparent and impartial process in accepting and determining licence applications made under the Casual Trading Bye Laws, Kildare County Council shall on an ongoing basis advertise on its website, social media channels and annually in local newspapers, the existence of Casual Trading Bye Laws, the Casual Trading Selection Policy and a Casual Trading Applicant's Guide;

2.2 The following sections set out the selection criteria for the determination of applications for casual trading licences, in accordance with the 2010 regulations. Such licences must operate, where granted, *under the terms of the Casual Trading Bye Laws* applicable in the relevant Municipal District.

2.2.1. The following is a list of factors in the public interest, which, where demonstrated, will be considered in support of the allocation of casual trading licenses.

- a) public health considerations;
- b) protection of the environment;
- c) preservation of cultural heritage;
- d) health and safety of the public and of employees or self-employed persons;
- e) social policy objectives;
- f) supporting sustainable planning and development objectives related to the character of towns and villages;
- g) the diversity of products available within a designated trading area

2.2.2 Where the licence application demonstrably meets some or all of the criteria set out in 2.2.1, the allocation of a licence will thereafter be based on a supply and demand selection process.

2.2.3. Applications may only be considered for trading in the areas designated under the relevant casual trading bye-laws. Applications may be refused on the grounds that there is no available space in the areas designated, under the relevant casual trading bye-laws.

2.2.4 Applications that are incomplete and/or do not enclose the licence application fee shall not be considered.

2.2.5 Where two valid/fully completed applications meeting the criteria under 2.2.1 are under consideration for a licence for a designated trading area, the first received application shall be determined first and a licence awarded, if meeting the criteria at 2.2.1.

2.2.6 In exceptional circumstances, the allocation process shall not exclude allocation by lottery, when deemed necessary, where, two valid/fully completed applications both meeting the criteria at 2.2.1 are received at the same time.

See Schedule 1 for Lottery Process.

2.2.7 Allocation of trading pitches:

- a) Licences applications may be made to trade in a designated trading area, not on a specified or desired trading pitch.
- b) Where a licence is granted, decisions to allocate a trader to a specific trading pitch shall be based on factors including:
  - i. the health and safety of the public and of employees or self-employed persons, including general public health considerations;
  - ii the proper operation of the trading area, including the clustering of complementary traders within a designated trading area and the desire to avoid empty trading pitches.

The Council shall not permit an appeal against a decision to allocate *a trading pitch* to a licenced trader. Appeals against a decision related to *a licence application* are possible, see 2.2.10.

2.2.8 Prior licence holders within the County or any other County shall not be automatically granted a licence upon application and should not have an expectation that they or a person associated with them shall receive this outcome based upon their prior casual trading. Due recognition will be given to previous traders, but previous traders will not receive preferential consideration of new licence applications by virtue of their history of trading alone.

2.2.9 The allocation of licenses shall not be based upon the following and applicants shall not be required to include evidence of the following in making an application:

- a) proof of the existence of an economic need or market demand,
- b) an assessment of the potential or current economic effects of the activity, or
- c) an assessment of the appropriateness of the activity in relation to economic planning objectives

In terms of determining the goods to be traded, the Casual Trading Bye Law and the decision of the executive regarding individual licence applications made thereunder, shall ensure that applications to trade goods that best match the public interest objectives in this Policy, shall be preferred.

#### 2.2.10 Appeal process

An applicant may appeal a decision in relation to their licence/licence application, such as refusal or revocation.

This must state the grounds of appeal and be made in writing to Kildare County Council, Senior Executive Officer, Corporate Services Department, Áras Chill Dara, Devoy Park, Naas, Co Kildare, W91 X77F, to be received within 28 days from issue of notice of the decision.

A decision on the appeal shall issue within 21 days from receipt of the appeal.

An appeal decision shall set out written reasons for the decision.

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### **Schedule 1: Lottery process**

In the extreme circumstance where two separate trading applications for the same trading pitch are received at the same time, both of which are valid applications meeting the selection criteria of the Casual Trading Selection Policy, the following process shall apply to determine the award of a licence:

- A lottery shall take place to determine the award of the licence;
- A video recording of the lottery draw shall be maintained as evidence of it having been fairly conducted;
- The names of the applicants shall be written and placed in a receptacle which obscures the identity of the applicants from the person conducting the draw;
- The names shall be placed by a supervisor within the Corporate Services Department who is not an authorised decision maker regarding a casual trading licence application;
- A name shall be drawn by another supervisor within the Corporate Services Department who is not an authorised decision maker regarding a casual trading licence application;
- The first drawn applicant shall be awarded the licence and this decision recorded in writing by executive order awarding the licence.

**End.**