

"That Cork County Council would encourage all roadside traders to observe the requirements of SI 191 of 2004 with regard to the selling of strawberries, raspberries, blueberries, gooseberries, blackberries, loganberries, tayberries, currants and new potatoes during May to September inclusive. Equally, that Cork County Council would encourage the selling of a greater range of fruit and vegetable produce than those specified in the Regulations in designated market areas and in accordance with a Casual Trading Licence. All opportunities for genuine growers to maximise the sale of their produce are welcome insofar as they do not place rate-paying shopkeepers at unfair disadvantage."

The principal piece of casual trading legislation is the Casual Trading Act 1995. This was amended by SI 191 of 2004 to grant an exemption from a casual trading licence to a grower or any person acting on behalf of a grower selling berries (specifically the berries listed in the motion) and new potatoes on the side of the road between May and September inclusive.

All local authorities are obliged to make casual trading bye-laws under Section 6 of the Act. And under Section 4, these bye-laws may include additional classes of trading to add to the exemptions in Section 2.

Cork County Council drew up draft bye-laws in 2000 but when they were to be enforced, they were legally challenged by the traders in Bantry. The traders succeeded in securing an injunction against their implementation.

It dragged on through the courts over several years and during that time, the Council's legal advice was that they should not implement the bye-laws in any other part of the county while the Bantry situation was ongoing. So no casual trading licences were issued anywhere in Cork in the interim.

Last year, agreement was reached in Bantry. New bye-laws were successfully introduced on a pilot basis. Now that this resolution has been reached, revised bye-laws for the county are being drafted based on the Bantry bye-laws.

The bye-laws for Bantry echo the exemptions that are in the 1995 Act, as amended by the 2004 regulation. So the selling of berries and potatoes as specified above will be exempt in Cork between May and September by bye-law also.

That is fine, but many of the roadside traders are selling carrots, juices, jams and other goods that are outside of the specified berries and new potatoes. In 2006 the Minister for Enterprise, Trade and Environment issued guidelines for casual trading clearly outlining that although there may be an impression that all agricultural and horticultural produce are exempt from requiring a trading licence, this is indeed not the case. The guidelines encourage the direct selling of fruits and vegetables of all sorts, but in a Farmers Market.

If we as a County Council want to increase the range of exempted produce which is sold on the side of the road, we can, through the bye-laws under Section 2(4) of the Casual Trading Act 1995. But if we do, then it is not jolly hard on the traders who pay to sell through the Farmers Markets or even more so, those who pay rates, wages and the other expenses associated with running a shop?

There is another issue which is also of concern. How does one ensure that it really is the grower or an agent of the grower who is selling? Because if it is not, that is really unfair again to those who are operating properly under licence or who are trying their best to run their own shop.

And what about welfare facilities? Those exempt from the casual trading laws appear to have the County Council's blessing to sit on the side of the road all day long without any welfare facilities other than the ditch. Nobody really minds out in the middle of the countryside. But in the largely urban areas where there genuinely isn't a ditch, lots of people mind.

There is a balance to be struck between promoting casual trading and protecting permanent retailers. There is a view that successful market days/farmers markets generate activity that benefits everyone. The casual trading bye-laws are to come before us in the Chamber. But by the time they come to us, they will be drafted. Casual trading is an aspect of economic activity in every municipal district throughout the entire county and I believe, in the interests of fairness to everyone, it is an issue we should consider now rather than after the bye-laws are drafted.

So I have reviewed some of the casual trading bye-laws made available by various local authorities around the country: Louth, Wicklow, Clare, South Dublin County Council, Dun Laoghaire-Rathdown County Council, Sligo, Kerry, Donegal and Wexford. Most of them do not require casual trading licences for ice-cream vans, the sale of newspapers and, in the case of Donegal, for hot food vans. But the only local authorities in this list who consider the selling of fruit on the side of the road as described by Maurice Manning to be exempt are Wicklow and Wexford. This is potentially understandable because of course the South East has a particular strength in market gardening.

I gather this was raised in the Council Chamber in June 2011 by Cllr Pat Burton. At the time, the newspaper reports indicate that the County Manager said he would seek legal advice on the matter and report back to the councillors. Unfortunately I can't find anything more reliable than the newspaper report – the minutes of that meeting or any successive meetings at which the County Manager might have reported his findings would be better.