

Regulatory Impact Statement: Regulatory Regime for the new Alcohol Laws

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice.

It sets out the options for the regulatory regime required to give effect to the Sale and Supply of Alcohol Act 2012, due to fully commence on 18 December 2013.

One constraint on the analysis was the impact of the regulations supporting the definition of the principal business of a grocery store which was required by the Act. The preferred option uses sales revenue as the base measure. As sales revenue data of these stores is not available to us currently, the numbers of premises that might be affected, and how they might be affected under the sales revenue option, are not clear.

However, indications from discussions with stakeholders are that the regulations effectively target those premises that do not have the characteristics of a grocery store, implementing the intent of the legislation. The final numbers of premises affected will depend on the responses of individual owners.

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Introduction and scope

1. The Sale and Supply of Alcohol Act 2012 (the Act) was passed in December 2012 and will fully commence on 18 December 2013. At that time, the Sale of Liquor Act 1989 will be repealed. Prior to the full commencement of the new Act, new regulations are required to give effect to it.
2. The regulatory regime discussed in this RIS was developed with a key stakeholder group containing representatives of Police, Department of Internal Affairs, territorial authorities, and the Alcohol Regulatory and Licensing Agency (ARLA). Options were then amended following consultation and analysis of submissions.
3. This RIS does not cover the regulations for a new fees regime for alcohol licensing. The fees regime has been subject to a separate Cabinet process. It will be merged with this set of regulations for Cabinet Legislation Committee.
4. In some areas, regulations are not essential for the operation of the Act and are therefore optional. At present the majority of these regulations will not be progressed. The operation of the new law will be monitored and there will be the option of developing further regulations in the future if it is considered warranted. We consider it is important to allow the sector to have time to accommodate the changes inherent in the new alcohol law and to avoid over-regulation if at all possible.

Status quo and problem definition

5. These regulations arise either from requirements in the Act for a regulation, or where a regulation is considered necessary to ensure consistent and effective implementation of the legislation.
6. There is a mix of substantive and technical regulations, some of which are new, some are existing regulations that carry through to the new regime, and there are some problems with the old regulatory regime that needed to be fixed.
7. The regulations can be divided into three main categories:
 - 7.1. New substantive regulations to implement the alcohol regime
 - 7.2. Changes to resolve problems with, or improve, existing regulations
 - 7.3. New technical regulations to implement the alcohol regime.

Objectives

8. Some regulations will have specific objectives, which will be noted in the discussion of those regulations. However, the following objectives are common to all of the regulations:
 - 8.1. **Clarity and certainty** – people should be able to easily understand of the regulatory framework, their obligations under it, and the consequences of non-compliance
 - 8.2. **Balance and proportionality** – regulation and compliance costs should be proportionate to the risk; the regulations should find the right balance between certainty and flexibility
 - 8.3. **Effectiveness** – the regulations should be implementable and effective.

Feasible options

9. The majority of the regulations are specifically required by the Act prior to commencement.

10. A small number of regulations, such as the definitions of 'ready to eat' and 'snack' foods are optional. An alternative to regulations in this area would be to rely upon informal guidance and local decision making, or to wait for decisions from the Alcohol Regulatory and Licensing Agency and the Courts about appeals with respect to granting or non-granting of licences. This approach, however, would likely result in inconsistency and a lack of clarity around processes, creating uncertainty for licensees, managers and the public.

New substantive regulations to implement the alcohol regime

Overview

11. The five areas of regulation in this category are:
- 11.1. defining the 'principal business' of a grocery store
 - 11.2. the fees associated with infringement offences
 - 11.3. public notification of licence applications
 - 11.4. public notification of local alcohol policies
 - 11.5. remote sales – verification of age

Grocery Stores

Background

12. The Act clarifies the law on the types of stores eligible for an off-licence, to ensure dairies and 'convenience stores' can no longer sell alcohol. Under the Act a grocery store (a premises that is eligible for an off-licence) is one that meets the following three factors:
- 12.1. It has the characteristics commonly associated with a grocery store¹ AND
 - 12.2. it sells food products (as defined in the Act) and other household items AND
 - 12.3. its 'principal business' is the sale of food products.
13. The term 'principal business' is required to be defined by regulation. The definition needs to ensure that district licensing committees (DLCs)² have a clear formula for determining which premises are eligible for off-licences.

Options

14. Three options were considered in developing the definition of principal business.
- 14.1. Option one requires food products must exceed a specified figure as a percentage of the premises' gross annual sales revenue (excluding GST)
 - 14.2. Option two requires food products to be, proportionally, the largest single category of of a premises' gross sales revenue (excluding GST). The categories would be:
 - food products (already defined in the Act)
 - household items

¹ Based on case law determined through licensing authority and Court decisions

² DLCs will, from 18 December 2013, replace current district licensing agencies. They will be established by each territorial authority and will consider new and renewal applications for licences and manager's certificates. The committees can hold hearings on applications.

- alcohol
- tobacco
- convenience foods - being confectionary, 'ready-to-eat prepared food', 'snack food', or a drink (other than milk) sold in a container with a capacity of 1 litre or less.

14.3. Option three uses criteria such as the size of premises or the range of products on sale as determinants to develop the definition of principal business.

Options analysis

15. Option 3 was dismissed. The types of criteria considered in this option are too broad and imprecise to be useful for an assessment of 'principal business'. Previous legislation which was later withdrawn proposed that grocery stores should be 150m². At the time, there was considerable objection raised to using size as a criterion.

	Option 1	Option 2
Description³	Food products must exceed a specified percentage of the premises' gross annual sales revenue – set at 35% after initial consultation	Food products to be, proportionally, the largest single category of of a premises' gross sales revenue.
Impacts	Straight forward approach, so less compliance costs for businesses Some premises currently able to sell alcohol will no longer be able to do so Impact would vary considerably on percentage threshold chosen	More complex than option 1 and may impose slightly higher compliance costs on businesses
Clarity and certainty	Gives certainty lacking under current legislations	Gives certainty lacking under current legislations
Balance and proportionality	Less certainty on whether dairies get licences, mitigating intent of Act	More certainty that dairies will not get licences, supporting intent of Act
Effectiveness	Category breakdown is less fine-grained and, therefore, less accurate. The appropriate level to set for food is a matter for debate. Sale of food may not be the principal business even if food products exceed the assigned threshold, unless the threshold is set at 50%.Our discussions with industry indicate that such a level would affect most grocery stores.	It is likely to be an accurate reflection of the nature of a business Method used commonly overseas to measure principal business ⁴ Dairies would not be eligible to sell alcohol under this approach supporting the intent of the Act
Stakeholder support	Supported by a minority of submitters	Was supported by a clear majority of submitters (29 of 33) including the grocery chain representing over 50% of grocery stores

³ Options one and two are illustrated further in Appendix A.

⁴ For example, taxation departments at state and federal level in the United States.

16. Options one and two both use sales revenue data to define 'principal business'. The revenue from LOTTO, Instant Kiwi and similar games will be excluded from revenue figure. These sales are made on an agency basis and are transacted at a separate terminal hosted by the Lotteries Commission with the proceeds belonging to the Commission. Including these figures in the analysis artificially skews the data.
17. Both options also would require:
 - 17.1. evidence of audited actual sales revenue for the year of trade prior to a renewal, or estimated sale revenue to be proven at the point of application
 - 17.2. a straight forward definition of 'ready-to-eat prepared food' and 'snack food'.

Further impact analysis

18. Both option one and option two would mean that some premises currently selling alcohol will no longer be able to do so unless they change the nature of their business to meet all the determinants of a grocery store. Of the 4,179 off-licenses as at August 2013, 575 or 14 percent are currently classified as grocery stores; this includes premises that will not meet the grocery store off-licensing criteria under the new regime of option two. More would meet the criteria under option one.
19. As sales revenue data of these stores is not available to us currently, the proportions that might be affected, and how differently they might be affected under the two sales revenue options, are not clear. However, indications from discussions with stakeholders are that the regulations effectively target those premises that do not have the characteristics of a grocery store, implementing the intent of the legislation. For premises that are affected, their options are to:
 - 19.1. change their business model to become eligible for an off-licence
 - 19.2. stock more of other or new products
 - 19.3. reduce the volume of their trade, with potential impacts for employment
 - 19.4. wind down their business, but potentially invest elsewhere.

Preferred option

20. All options to implement the intent of the Act with respect to defining grocery stores have employment and economic impacts, alongside anticipated social, crime and health benefits.
21. Within this environment, option two is preferred because it more clearly and accurately measures 'principal business' based on sales revenue data in a way that is practical, emulates overseas approaches, and is supported by a majority of effected stakeholders. It also makes it clear that food is the primary sales item which option one does not.

Infringement Offences – Fees

22. There are ten infringement offences under the legislation; some of which are new. The Act allows regulations to be made prescribing fees payable in respect of an infringement offence. These must not exceed \$1,000. Regulations will provide clarity and consistency in the application of these provisions, for both the enforcement agencies who can give infringement notices (Police and licensing inspectors) and those who commit an infringement offence (the public, managers, and licensees).
23. Three of the nine infringement offences under the Act, and the infringement offence under the Local Government Act, had already had fees agreed by Government in 2010 (Cab Min (10) 28/8).

- 24. The level of the remainder of the proposed fees were developed from the starting point of the \$250 fee for the breach of an alcohol control bylaw, which was based on the average penalty (\$245) issued by the Courts for similar offending.
- 25. Following the public consultation process it is proposed to set the fees for offences as follows:

	Infringement Offence	Section of Act	Fee agreed by Cabinet in 2010	Proposed Fee
1	Buying of alcohol by people under purchase age	243		\$250
2	Minors in restricted areas or supervised areas	244		\$250
3	Permitting minors to be in restricted or supervised areas	245		\$250
4	Manager intoxicated on duty	250	\$200	\$500
5	Employee intoxicated on duty	251	\$200	\$500
6	Sales of spirit in vessel exceeding 500 ml	254		\$250
7	Offences relating to evidence of age documents	257	\$200	\$250
8	A breach of section 214(3): name of manager on duty to be displayed	258(1)(b)		\$250
9	Failure to comply with certain requirements and restrictions imposed by or under this Act	259		\$250
10	Breach of an alcohol control bylaw	239A	\$250	\$250

- 26. To ensure balance and proportionality the criteria used to develop the final proposals were:
 - 26.1. the need for the level of fee to be high enough to act as a disincentive for particular behaviours
 - 26.2. the balance between the levels of the fees, associated compliance cost and the level of harm from each offence
 - 26.3. the penalty in the Act if the offender was proceeded against through the Court
 - 26.4. the need for more technical infringements to be accompanied by a lower fee than more serious infringements
 - 26.5. who can commit the offence, assessing their ability to pay, and their level of responsibility (outlined in more detail in the following section).

Assessment of offender’s ability to pay and level of responsibility

- 27. The proposals take into account young peoples’ limited financial resources, potential non-payment, subsequent escalation, and potential additional costs for the young person and the criminal justice system. If an unpaid fee is lodged with the Court it immediately incurs a \$30 filing fee and there is a potential \$102 enforcement fee. Subsequent debt recovery action is possible against an individual with unpaid fees, which may lead to a conviction. This is not the intention of infringement notices.
- 28. If the level of fees is set too high and alleged offenders appeal or refuse to pay (which may particularly be the case for young people), additional compliance costs will also be borne by the Police and the licensing and Justice systems.
- 29. The fees already approved by Cabinet relate to serious offences and yet their agreed fees fall below all other fees, including the average penalty set by the Courts. A higher

penalty for these is desirable in order to act as a deterrent and to better reflect the culpability of offenders. This is particularly the case for the fees relating to managers and employees being intoxicated on duty. These people have a special duty of care and should be fully competent when complying with the Act.

Public Notice Requirements - Licence Applications

30. The Act requires that everyone applying for a new or renewed on-license, off-license, or club licence must publicly notify that application.
31. Options relate to both *the method of* public notification and to *how many times* notifications are required.

Options and analysis – method of public notification

	Option 1	Option 2	Option 3
Description	A newspaper that circulates in the locality of the premises (Status Quo) sales revenue	Territorial authorities website page dedicated to public notifications of licence applications	Allow each territorial authority to decide whether it prefers to use one or other option, or both
Impacts	Imposes high costs on applicants for a licence, of all types, as newspapers are expensive to advertise in. ⁵	Significantly lower compliance costs for applicants Set up and ongoing maintenance cost for the territorial authority	Set up and ongoing maintenance cost for the territorial authority Potentially significantly lower compliance costs for applicants
Clarity and certainty	Traditional method of community reach and regulation would be familiar	New method of notification, but still a simple regulation	Slightly more complex, but still would be a simple regulation to understand
Effectiveness	Misses reaching some sections of the population as fewer people now read daily newspapers	Misses reaching some sections of the population without internet access, or who are not specifically searching for the information	Potentially much wider coverage if both methods used.
Balance and proportionality			Enables a local community to effectively determine the best approach for it
Risks			Could lead to lack of consistency nationwide, with cheaper applications for some districts – this already occurs with most local fees and charges.

⁵ A typical renewal notice is 12cm long and the cost of publication would range from about \$160 in regional or local papers to \$350 to \$550 (GST incl.) in a major daily newspaper. (Costs drawn from the websites of the New Zealand Herald, Dominion Post, and Hutt News on 20 August 2013).

32. Option three is recommended as it has the advantages, and limits the majority of the disadvantages, of options one and two. It also enables local communities have the ability to choose notification methods that most suit local conditions.

Options and analysis – number of public notifications

	Option 1	Option 2
Description	Two notices required (Status Quo)	Link the number of public notifications to the degree of risk of the premises ⁶
Impacts	Imposes compliance burden on all applicants for a licence	Lower compliance burden and costs for applicants for a licence with an assessed lower risk of alcohol related harm
Clarity and certainty	Regulation is familiar and simple.	Slightly more complex, but still would be a simple regulation to understand
Effectiveness	Wider reach and limits potential for people missing a single notice.	Slightly less effective as a single notice may be missed
Balance and proportionality	All applicants treated equally.	Flexibility, and rewards applicants with an assessed lower risk of alcohol related harm
Risks	Compliance burden may affect some low risk premises such as winery door sales which may in turn have an economic impact in some areas.	A single notice may be missed, limiting local community opportunity to object. A notice will still be placed at the location and the premises in the lower risk category are those with low community impact from alcohol harm, and would rarely be objected to.

33. Option two is recommended. Reducing compliance burden for those licensed premises considered low risk is an underpinning principal of the licence fees regime and rewards compliance with the Act.

34. If low and very low risk organisations are only be required to notify once, compliance costs will reduce for organisations such as wineries (there are just over 400), clubs with under 1000 members (there are about 1500 local clubs), theatres, cinemas, BYO restaurants, and restaurants that operate only table service of alcohol. All other premises that fall into the medium, high or very high categories will continue to be required to make two notifications.

Public Notice Requirements - Local Alcohol Policies

35. The Act allows territorial authorities (TAs) to create local alcohol policies (LAPs) in consultation with their communities if they choose to do so. LAPs are a defined set of decisions about the sale and supply of alcohol in the TA's geographical area.

⁶ The risk rating of a premises would be determined by the risk framework developed as part of the new fees regime under the new Act (included as Appendix B to this document) and agreed to in Cab Min (13) 31/6

- 36. The new Act requires regulations for how TAs must give public notice of a provisional LAP, how TAs must give public notice of the adoption of a LAP and how TAs publish the adopted LAP.
- 37. This is a new area of regulation and proposals for consultation were developed with the key stakeholder group. The key considerations in forming the proposals were potential compliance burden on the TAs, public access or awareness of the information, ease of compliance and transparency for the appeal process.
- 38. As with public notice of licence applications, options relate to both *the method of* public notification and to *how many times* notifications are required

Options and analysis – method of public notification

	Option 1	Option 2	Option 3	Option 4
Description	A newspaper that circulates in the territorial authority	Territorial authorities website page	Combination of option 1 and 2	Alternative methods, such as social media, radio, and social services
Impacts	Advertising cost to TAs	Lesser costs as websites in place	Costs as per options 1 and 2	Potentially increased costs
Clarity and certainty	Traditional method of community reach and regulation would be familiar	New method of notification, but still a simple regulation	Slightly more complex, but still would be a simple regulation to understand	Significantly more complex
Effectiveness	Misses reaching some sections of the population as fewer people now read daily newspapers	Misses reaching some sections of the population without internet access, or who are not specifically searching for the information	Much wider coverage.	Wider coverage, but not much beyond option 3.
Balance and proportionality			Balances the importance of public notification for the community against the risk of using only one medium	Increased costs not warranted for the limited increase in community reach beyond option 3

- 39. Other options such as notification of all parties that submitted on a draft LAP as part of the public notice requirement, and notification sent to all licensees were rejected due to the significant compliance costs.
- 40. Option three is preferred as it has the widest community reach, without significant extra costs for the TAs.

Options and analysis – number of public notifications

	Option 1	Option 2
Description	Two notices required	Single notice required
Impacts	Advertising cost to TAs	Lesser costs to TAs
Clarity and certainty	Regulation is familiar and simple.	Regulation is familiar and simple
Effectiveness	Wider reach and limits potential for people missing a single notice.	Slightly less effective as a single notice may be missed
Balance and proportionality	Balances the importance of public notification for the community against the risk of using only one notice.	Balances the importance of public notification for the community against the risk of using only one medium
Risks		A single notice may be missed, limiting local community opportunity to appeal the provisional LAP or awareness that the LAP has been adopted

- 41. Option one is preferred due to the need for full public awareness and consultation due to the significant implications of the LAP coming into force for licensees and for consumers of alcohol.
- 42. The content of the public notices proposed for the regulations specify the information to be included as detailed in Appendix C.

Publication of the adopted LAP

- 43. The proposed regulations will also require the publication of the whole of the final adopted policies on council websites, in public libraries, and available to view from their principal public offices.

Remote Sales – Verification of Age

- 44. To date, the law has been silent on obligations on remote sellers (eg internet and phone sales). Remote sellers will be required to take reasonable steps to verify that the buyer of alcohol through remote means (or recipient if a different person) is not under the purchase age. Regulations can specify examples of procedures that constitute ‘reasonable steps’. If remote sellers follow those examples, they will meet the ‘reasonable steps’ test. Remote sellers may, however, decide to introduce other procedures that they consider to be reasonable steps.

Options

- 45. Three options have been considered for what constitutes reasonable steps for verification of age when selling remotely.
 - 45.1. Option one would require purchasers to declare that they are over the purchase age twice, either through a tick boxes (for internet and catalogue sales) or verbally (for telephone orders).
 - 45.2. Option 2 would require that, along with the declaration of age, remote sellers would be required to use some other method of proving the age of the buyer such as RealMe, or the use of another document which would require validation of age.

45.3. Option 3 focuses on who receives the alcohol and would require the courier to verify purchasers age at point of delivery

46. A further method considered, and dismissed, was whether age could be assumed where a credit or debit card is used when purchasing. Today, however, credit and debit cards can be obtained by those under age 18. Debit cards are becoming increasingly popular for internet purchases by young people. Websites are unable to differentiate between debit and credit cards.

	Option 1	Option 2	Option 3
Description	Remote sellers would require purchasers to declare that they (or the recipient) are over the purchase age either through a tick box (for internet and catalogue sales) or verbally (for telephone orders).	Along with the declaration of age, remote sellers would be required to ask remote buyers to provide a copy of an evidence of age document, or require the use of an IT system, similar to the i-govt database, that would ensure that purchasers are 18 years or over	Along with the declaration of age, remote sellers would be required to ensure that couriers etc seek identification on delivery.
Impacts	Straight forward approach, and already in common use - few compliance costs to business	Complex and would impose higher compliance costs on businesses Costs of systems that would have to be established and maintained Compliance burden to purchasers, requiring scanning and provision of documents There are limited technological solutions for the establishment of an age verification IT system	More complex and may impose slightly higher compliance costs on businesses Requiring couriers to verify age goes beyond the scope of the new Act and places remote sellers at risk from vicarious liability It defeats the practicality of internet purchasing for many users who have the alcohol delivered to their homes while they are not there, for reasons of convenience
Clarity and certainty	Clear simple regulation, but is limited by effectiveness	Complex regulation that is limited by effectiveness	Slightly complex regulation that is supported by effectiveness
Balance and proportionality	There is a lack of evidence of the harm caused by remote sales, or that proof of age would be a deterrent	There is a lack of evidence of the harm caused by remote sales, or that proof of age would be a deterrent	There is a lack of evidence of the harm caused by remote sales, or that proof of age would be a deterrent
Balance and proportionality continued	The time delay between ordering alcohol remotely and the product arriving, as well as hours of delivery between 6am and 11pm, will already limit impulse drinking	The time delay between ordering alcohol remotely and the product arriving, as well as hours of delivery between 6am and 11pm, will already limit impulse drinking Regulations could be viewed as excessive to the risk	The time delay between ordering alcohol remotely and the product arriving, as well as hours of delivery between 6am and 11pm, will already limit impulse drinking Regulations could be viewed as excessive to the risk

	Option 1	Option 2	Option 3
Effectiveness	Any remote proof of age procedure is limited by the fact that the declaration cannot be verified against the actual person making it.	<p>Adds complexity that may act as a deterrent for some underage remote purchase of alcohol</p> <p>Any remote proof of age procedure is limited by the fact that the declaration cannot be verified against the actual person making it.</p>	Is the most effective option and could help reduce non-compliance with the law
Risks		Privacy concerns about collection of personal information and how it is stored and used	Puts a requirement on organisations not consulted as part of the development of the alcohol laws

Preferred option

47. Option one is recommended. In the context of lack of objective evidence of the harm from remote sales, technological limitations, privacy concerns, and potential compliance impacts upon stakeholders, regulating for examples of proof of age may not be helpful at the present time.
48. This may be one area to be revisited following advances in technology and in privacy settings over time with a wider consultation process.

Changes to resolve problems with, or improve, existing regulations

Overview

49. The three areas of regulation in this category are:
- 49.1. manager's certificates
 - 49.2. timing of application for the '18+ Card' evidence of age document
 - 49.3. licensing and community trusts.

Managers Certificates

Licence Controller Qualification

50. Managers of premises selling alcohol need to understand and comply with alcohol-related laws. Minimum standards for these managers, reflected in the achievement of a qualification, are required to be prescribed in regulations. This prescribed qualification known as the Licence Controller Qualification (LCQ).
51. The LCQ is a current prerequisite for applications for a manager's certificate. It was proposed in the discussion document that this approach be continued in the new regulations. The qualification is nationally recognised and sets a consistent benchmark for all managers to achieve.
52. Some concerns have been raised as to the level of the standards themselves. After discussion with education sector agencies, the Ministry of Justice determined that the design of the LCQ is the responsibility of the education sector based on the requirements of the justice sector. The only changes required to the LCQ are to update it to reflect the new legislation.

Transitional provisions

53. Upon renewal of manager’s certificate, existing managers, who already have an LCQ, will need to prove that they understand their responsibilities under the Act. This will enable DLCs to be assured that they meet the qualifications requirements prescribed in relation to the Act. Regulating in this area is optional and the following options were considered.

53.1. Option one proposes that no regulations are made in this area. Each individual territorial authority/ district licensing committee would set their own approach to how a manager proves understanding of the responsibilities.

53.2. Option two proposes that no regulations are made in this area but a test would be developed by the relevant industry training organisation and that industry be encouraged to adopt the test as the national standard.

Option three, outlined in the consultation document, proposed that regulations would specify that a manager proves their understanding of their responsibilities through sitting a short ‘bridging’ test about the new laws. This test would be developed by the relevant industry training organisation

	Option 1	Option 2	Option 3
Description	No regulations	No regulations – support for a centrally developed test	Mandatory, centrally developed, bridging test
Impacts	Costs to TAs Unknown costs for managers as a variety of tests and courses could be used	Unknown costs for managers as a variety of tests and courses could be used	Compliance costs are likely to be minimal The industry training organisation that sets the standards for the LCQ intends to design this test and provide it online for free; it will also make it available to training providers and TAs for their provision.
Clarity and certainty	No regulation, so possible confusion as to requirements	No regulation, so possible confusion as to requirements	Regulation makes requirements clear and provides certainty for managers
Effectiveness	No national consistency	Potentially no national consistency - managers might need to comply with different requirements as they move around the country.	National consistency. Sector confidence that managers are familiar with the new legislation.

54. There are no obvious disadvantages or significant risks to a mandatory bridging test. Submissions were generally in favour of this approach, 21 of 23 submissions supported the proposal.

Preferred option

55. Option three, as consulted, is preferred to ensure consistency for all stakeholders and a higher level of surety that managers understand their obligations for compliance with the new alcohol laws.

Evidence of Age Documents – The ‘18+ Card’

56. Currently, applicants for an 18+ Card need to already be 18 years of age at the time when they apply. Hospitality NZ advised that they received numerous, time-consuming, calls and complaints from people who are waiting for a card to be issued (approximately a three to four week process).
57. The consultation document proposed a regulation that would allow young people to apply for an 18+ Card in the month leading up to their 18th birthday, so that they will have the Card shortly after their 18th birthday. Seven submissions supported this proposal, one was opposed. Hospitality New Zealand has assured the Ministry of Justice that no card will be issued until the person actually has turned 18 years of age.
58. We intend to propose this change. This approach will allow young people to be able to identify themselves as soon as possible as being of legal purchase age. It will not impose any additional compliance costs.

Licensing and Community Trusts

59. Trusts are an alternative to the private sector dominating the sale of alcohol in an area. Licensing trusts have the right to establish and operate on- and off-licences in their district. Community trusts are former licensing trusts that have decided to reconstitute as a community trust allowing them to operate in industries other than alcohol and hospitality.
60. Very little is changing with respect to trust regulations. We propose to model the regulations needed under the new alcohol laws on previous regulations, with necessary changes to align them with the Act and update section references.

Competition Polls

61. The privileges of licensing trusts can be challenged by way of a ‘competition poll’. This is a referendum that the licensing trust is obliged to call if requested by at least 15 percent of the electors in the district. Through this legal mechanism, the community has the ability to decide whether it wants the licensing trust to continue to have monopoly trading rights.
62. Currently the names, addresses and occupations of all the petitioners are required to be given directly to the trust. The trust then sends the petition and notice to ARLA for appointment of a scrutineer to peruse the request and advise the trust. One submitter pointed out that there is a conflict of interest inherent in this approach - the trust which is being challenged is also the organisation which initially administers the poll.
63. Direct consultation was undertaken with both the submitter and the New Zealand Licensing Trust Association and a solution was suggested that both parties and ARLA have accepted.
64. Regulations will specify that a petition on a competition poll will now be submitted directly to ARLA for administration, but that at the same time:
 - 64.1. a notice of the petition be submitted to the effected trust as soon as practicable
 - 64.2. a copy of the petition be provided to the affected trust as soon as the validity of the petition has been established.

Technical regulations

Overview

65. The six areas of regulation in this category are:
 - 65.1. specification of evidence of age documents
 - 65.2. forms required for the operation of the licensing system
 - 65.3. notification of licensing decisions to the Alcohol Regulatory and Licensing Authority
 - 65.4. licensee obligations to record specified information about their managers
 - 65.5. appealing a provisional local alcohol policy
 - 65.6. remote sales – provision of licensing information

Evidence of Age Documents

66. Regulations are needed to specify what documents constitute approved evidence of age documents for the purposes of the Act. It is proposed that no change be made to the current evidence of age documents. These are:
 - 66.1. a New Zealand passport
 - 66.2. a overseas passport
 - 66.3. a driver licence issued under the Land transport Act 1998
 - 66.4. a document of the type described in regulations issued by Hospitality New Zealand, commonly known as the '18+ Card'.
67. Retaining the status quo was supported by 15 of the 20 submitters on this topic and is supported by the New Zealand Police.
68. The current suite of approved evidence of age documents are considered effective due to their common use/ familiarity and that the majority of people have the ability to obtain these documents with ease.

Licensing System - Forms

69. The licensing system needs updating to reflect changes in the new Act. The intent is to make the procedures for applying for or renewing licences more user-friendly and to reduce compliance burdens. Retaining the full current suite of forms unchanged (the status quo) was discounted, as the current forms do not give effect to the Act.
70. The information required on these forms was developed with the key stakeholder group and is a merger of some current information requirements and some additional information required by the Act.
71. The forms aim to provide clarity and certainty to all stakeholders by containing reference to all the information required to accompany the application or renewal request. This approach would reduce compliance burdens on both the applicant and those processing the application as it would reduce requests for more information.
72. Following feedback from 42 submitters changes were made to some aspects of the original proposal; all of which aim to balance the integrity of the licensing system and the level of compliance of licensees and the requirements of the district licensing committees. These are:

Regulatory Objective	Change
Increasing balance and proportionality through reducing compliance burden on applicants	<p>A floor plan will only be required in the event of a new application or the first renewal under the new Act, or where the floor plan has changed since the last application</p> <p>A photo of the principal entrance and the location map will no longer be required as they add little value; an inspector will likely visit the site</p> <p>Certificates of fitness for a vehicle and certificates of airworthiness are removed as they are not necessary for the licensing process</p>
Increasing effectiveness of application processing and risk assessment by regulators	<p>Under special licences the 'nature of the event' section will require information on the targeted age of attendees as well as the estimated number of attendees. This will allow local level determination of the level of risk and size of the event</p> <p>A question added about where and how the free water will be available and, for locations or events without access to mains water supply, the potability of the water</p> <p>More detailed information on the proposed promotion of food, water and low-alcohol beverages</p>

73. A range of more technical forms are required for the practical application of the new Act and are currently in use under the old Act. There are no changes proposed to those forms, except for updating them for the Act, as they are still fit for purpose and have a high degree of familiarity.

Licensing System – Notification of DLC Decisions to ARLA

74. Regulations are required to specify the information to be forwarded by the district licensing committees to ARLA and the timing of this information. This information relates to licences and managers' certificates and is a new requirement. A list of potential information was developed in conjunction with ARLA and was included in the public consultation document.

75. Based on submissions, only three minor and technical revisions have been made to improve the standard of the information.

Licensee Obligations

76. Under section 232(1) of the Act, licensees are required to keep a record (in a form that is readable or retrievable) of certain information about each manager, acting manager, or temporary manager appointed for the premises. The required information that is to be kept must be prescribed by regulations.

77. This is a new area of regulation and a list of required information was developed with key enforcement stakeholders prior to public consultation. The proposals meet the requirements of the Act and of enforcement agencies. Appendix D outlines the information that was proposed in the consultation document to be recorded.

78. While there is a compliance burden upon licensees, the information should be readily available from employment records. Information is not retrospective, so on 18 December

2013 only information on current managers and future temporary and acting manager needs to be held. There are limited privacy concerns as this information is already held by licensees and it is not proposed that the information be taken off site.

Appealing a Provisional LAP

79. As the ability to appeal an LAP is new, there is no system through which people can appeal to ARLA about the content of the LAPs, and there are no fees set for this type of appeal. The following proposal was developed with the stakeholder group, with specific reference to the needs of ARLA who will hear the appeals.
80. The regulations would require appellants to provide the following information to ARLA in a notice of appeal:
 - 80.1. their full legal name, address for service, contact phone numbers, email address (if available)
 - 80.2. a copy of the appellant's submission on the draft LAP (Police and Medical Officers of Health have automatic statutory right to appeal but will need to provide a copy of their submission on the draft LAP if one was made)
 - 80.3. the specific element of the LAP that is being appealed and grounds for appeal.
81. Regulations would require appellants to send a copy of the notice of appeal to the relevant territorial authorities at the same time that the appellant notifies ARLA. ARLA will provide guidance about this appeal process.
82. The regulations will also require the prescribed fee to accompany the notice of appeal. This fee has been set by Cabinet as part of its separate consideration of the new fees regime for alcohol licensing (CAB Min (13) [TBC].

Remote Sales – Provision of Licensing Information

83. To date, the law has been silent on the display or provision of information and on obligations in the remote sales domain. Those who sell alcohol remotely (such as over the internet) are now required under section 59 of the Act to provide licensing information as specified in regulations.
84. This is a new area of regulation. Proposals for consultation were developed with the key stakeholder group prior to public consultation. Key considerations in forming the information requirements were potential compliance burdens (cost and technological considerations) and the amount of information required for sellers of alcohol through more traditional methods.
85. It is proposed that the regulations would require remote sellers to display following information:
 - 85.1. on their websites and in their catalogues and, in the case of telephone orders, on the receipt will be the licensee name, licence number and its expiry date
 - 85.2. their licence, displayed in a prominent place on their websites.
86. Whilst this could potentially be an impost on small boutique type organisations, we consider that the information requirements are minimal, the information is readily available to the licensee, and advances in technology have made website design and modification easy to do and relatively cheap.

Summary of conclusions from options analysis

Category	Issue	Options	Preferred Option
Substantive	Principal business of grocery stores	1 – Food sales meeting a specified percentage of sales	
		2 – food as biggest contributing category of sales	<input checked="" type="checkbox"/>
		3 – size of premises	
Substantive	Infringement fees	Single set of fees based on key criteria	
Substantive	Public notice of licence applications – method	1 - Newspaper	
		2 - Website	
		3 – Combination options 1 and 2	<input checked="" type="checkbox"/>
Substantive	Public notice of licence applications – number	1 – Two notifications	
		2 – Link notifications requirements to risk of business	<input checked="" type="checkbox"/>
Substantive	Public notice of local alcohol policies – method	1 – Newspaper	
		2 - Website	
		3 – Combination options 1 and 2	<input checked="" type="checkbox"/>
		4 – Alternative methods	
Substantive	Public notice of local alcohol policies – number	1 – Two notifications	<input checked="" type="checkbox"/>
		2 – One notification	
Substantive	Remote sales – verification of age	1 – Declaration of age	<input checked="" type="checkbox"/>
		2.1 – Declaration of age plus verification through provision of ID	
		2.2 – Declaration of age plus verification through IT system	
		2.3 – Declaration of age plus verification through ID on delivery	
Improvements	Managers certificates – transitional test	1 – No regulation	
		2 – No regulation, support for a centrally developed test	
		3 – Regulate a mandatory centrally developed test	<input checked="" type="checkbox"/>
Improvements	Evidence of age documents – the 18 + card	Process improvement allowing application prior to 18 th birthday	
Improvements	Licensing and community trusts	Process improvement for conduct of a competition poll	

Category	Issue	Options	Preferred Option
Technical	Evidence of age documents	1 – Status Quo	<input checked="" type="checkbox"/>
		2 – Addition of new documents	
Technical	Licensing system - forms	Forms based on key criteria and modified following consultation	
Technical	Licensing system – notification of DLC decisions to ARLA	Required information based on ARLA requirements and modified following consultation	
Technical	Licensee obligations	Required information based on key criteria and regulatory requirements	
Technical	Appealing a provisional LAP	Required information based on ARLA requirements	
Technical	Remote sales – provision of licensing information	Required information based on key criteria and regulatory requirements	

Consultation

87. In July 2013, the Ministry of Justice publicly released a consultation document *Regulations to give effect to the new alcohol laws*. This document contained options for achieving the objectives of the new regulatory regime.
88. A total of 56 submission were received, broken down as follows:
- territorial authorities Including licensing inspectors – 21 submissions
 - district health boards – 9 submissions
 - hospitality stakeholders (individuals and representative bodies) – 6 submissions
 - retail stakeholders (individuals and representative bodies) – 7 submissions
 - other⁷ – 13 submissions.
89. The public consultation lasted four weeks and included three public meetings (in Auckland, Wellington and Christchurch). Forty-seven people attended the public meetings, and representation ranged from local government, district health boards, hospitality and retail stakeholders, and industry groups.
90. A webinar, run through the New Zealand Society of Local Government Managers was also held. The webinar was open to the general public but directed more towards local authorities. 31 Councils and 1 industry organisation signed on to the webinar and it is estimated that approximately 70 people attended.
91. Specific meetings or direct consultation were undertaken with key industry stakeholders, including Hospitality New Zealand, Clubs New Zealand, Foodstuffs New Zealand, The New Zealand Association of Dairies Groceries and Small Businesses, Progressive

⁷ Includes community groups, clubs, wineries, training organisations, and crown entities.

Enterprises, the New Zealand Licensing Trust Association, and ServiceIQ (the alcohol industry training standards organisation).

92. The New Zealand Police, the Department of Internal Affairs, the Health Promotion Agency, and the New Zealand Institute of Liquor Licensing Inspectors were consulted or had direct input into the development of these regulations.
93. Most of the proposals for the alcohol regulations have been modified as a result of submissions received. Key feedback from the consultation process, and any changes to proposals, are outlined in the analysis of each regulation area throughout this RIS.

Implementation

94. Subject to Cabinet approval, these regulations will come into effect on the 18th of December 2013, in line with the Sale and Supply of Alcohol Act 2012.
95. These regulations will replace the Sale of Liquor regulations 1990.
96. Guidance material will be provided to TAs and Local Government New Zealand, and is expected to be published on their websites for general and licensee information.
97. Guidance material and other information will be available on the Ministry of Justice website in the form of factsheets. The Ministry also has an alcohol enquiries email that has been used to support TAs.
98. There have been a number of opportunities for stakeholder to contribute to the design of the alcohol reforms through the drafting of the Bill (now Act) and the design of the regulations.
99. There is a risk that some organisations will not have sufficient time to implement all the ICT support requirements of the new licensing system. The Ministry of Justice is working to mitigate the risk by providing downloadable copies of all the forms on its website to assist organisations in their implementation processes.
100. Some transitional provisions exist in the Act. The two that relate directly to the new regulations are:
 - 100.1. premises that do not meet the new definitions of a grocery store will not get a licence renewal - there will be a transitional period granted to these premises, allowing them to prepare for the cancellation or change their business model to become a grocery store
 - 100.2. existing managers who have a Licence Controller Qualification will need to prove that they understand their responsibilities under the new Act, within a one year grace period of the expiry of their current certificate - this will be achieved through the recommended transitional or 'bridging' certificate.

Monitoring, Evaluation and Review

101. The Act does not include a formal evaluation or review process for its regulatory regime outside the fees area. However the operation of the law will be monitored and there will be opportunities in the future to refine regulations, or introduce optional ones not proceeded with, if it becomes necessary.
102. Indications that the regulations are working well, or need to be refined, will be from stakeholder feedback, ARLA and Court decisions, the numbers of enforcement actions, and evidence of changes in levels of alcohol harm in the community.

Grocery Stores – Defining Principal Business

Descriptions of option one and two

Option one

- Option one requires that food products (as defined in the Act) must exceed a specified percentage of the premises' gross annual sales revenue (excluding GST).
- The hypothetical examples below illustrate the implications of various percentage thresholds for option one. Stores one to three are considered typical of a dairy / convenience store. Stores four and five are typical of grocery stores.

Store	% of turnover by basic category (actual for existing stores and predicted for establishing)				Eligible?		
	Food products	Household items	Alcohol	Other	35% threshold	40% threshold	50% threshold
1	30	10	10	50	No	No	No
2	15	8	11	66	No	No	No
3	20	10	15	55	No	No	No
4	45	14	15	26	Yes	Yes	No
5	50	12	14	24	Yes	Yes	Yes

Option two

- Options two requires food products to be, proportionally, the largest single category of of a premise's gross sales revenue (excluding GST). While a grocery store has to sell food products and other household items, the categories below identify those groupings which are commonly sold by groceries which do not fit into the two main categories but contribute significantly to the overall revenue.
- The implications of option two are demonstrated below for the same hypothetical stores as option one.

Store	% of turnover by regulated category (actual for existing stores and predicted for establishing)					Eligible?
	Food products	Household Items	Alcohol	Tobacco	Convenience Foods	
1	30	10	10	10	40	No
2	15	8	11	15	51	No
3	20	10	15	10	45	No
4	45	14	15	5	21	Yes

5	50	12	14	5	19	Yes
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Appendix B

Licensed Premises Risk Framework

Agreed in Cab Min (13) 31/6

Table 1: Risk weightings

Type of licensed premise	Weighting	Latest alcohol sales time	Weighting	Number of enforcements in the last 18 months	Weighting
Liquor store, Supermarket, Grocery off-licence	15	On-licences & clubs before 2:01am; Off-licences before 10:01pm	0	None	0
Night clubs, Taverns, Adult premises, "Class 1" restaurants	15	On-licences and clubs 2:01am-3:01am; Off-licences 10:01pm and later	3	1	10
Off-licence in a Tavern	10	On-licences & clubs – all other closing times	5	2 or more	20
Hotels, Function centres, "Class 1" clubs, "Class 2" restaurants, Universities, and Polytechnics	10				
Remote sales, "Class 2" clubs, "Class 3" restaurants, Other	5				
Theatres/ cinemas, Wine cellar doors, BYO restaurants, "Class 3" clubs	2				

Table 2: Risk categories by weightings

Total weighting	Cost/risk & fees category
0-2	Very low
3-5	Low
6-15	Medium
16-25	High
26 plus	Very high

Definitions

- Class 1 restaurants – restaurants with a significant separate bar area and which operate that bar at least one night a week in the nature of a tavern, such as serving alcohol without meals to tables situated in the bar area.
- Class 2 restaurants – restaurants that do not fit class 1 or class 3 definitions.
- Class 3 restaurants – restaurants that only serve alcohol to the table and do not have a separate bar area.
- Class 1 clubs – clubs which, in the opinion of the TA, are large clubs (with 1,000 or more members of drinking age) and operate in the nature of a tavern.
- Class 2 clubs – clubs which do not fit class 1 or class 3 definitions.
- Class 3 clubs - clubs which, in the opinion of the TA, are small clubs (with up to 250 members of drinking age) and which operate a bar for 50 hours or less per week.

- Enforcement – has the same meaning as a “Holding” under section 288 of the Act.

Content of public notification of local alcohol policies

Notices about provisional policies should -

- briefly explain the aspects of the sale of alcohol that the policy will alter
- specify the last day that an appeal against the provisional policy can be lodged
- clarify that only people who submitted on the draft policy can appeal the provisional policy (except for the Police and Medical Officers of Health, who have an automatic statutory right to appeal)
- specify how to send the appeal to ARLA and where in the territorial authority to send a copy of the appeal
- state where people can view, download and obtain copies of the provisional policy

Notices about final local alcohol policies, should –

- explain that the policy has been adopted and has therefore ceased to be provisional
- include information about when the policy will come into force or where people can go to find out when the policy has come into force
- briefly explain what the policy will do once in force
- state where the public can access a copy of the final policy.

Appendix D

Information required to be recorded by licensees on managers

Manager Type	List if information to be recorded
Manager	<ul style="list-style-type: none"> • full legal name • date of birth • gender • managers' certificate number and expiry date • date of appointment as a manager for the premises • date that employment as manager terminated • as required by section 231, the date that the licensee notified the relevant district licensing committee and the Police of the appointment, cancellation or termination of the manager • dated evidence of the notification(s) made under section 231.
Acting manager	<ul style="list-style-type: none"> • full legal name • date of birth • gender • for each period that someone serves as an acting manager, the date of appointment and the date that the appointment ceased • the reason for the appointment as acting manager (including the name of the manager whose absence the appointment was intended to cover) • as required by section 231, the date that the licensee notified the relevant district licensing committee and the Police of the appointment, cancellation or termination of the acting manager (except where a section 231(3) applies) • dated evidence of the notification(s) made under section 231.
Temporary manager	<ul style="list-style-type: none"> • full legal name • date of birth • gender • date of appointment • date that application for a manager's certificate was made • the reason for the appointment as temporary manager (including the name of the certificate-holding manager who has been dismissed or who has resigned) • as required by section 231, the date that the licensee notified the relevant district licensing committee and Police of the appointment, cancellation or termination of the temporary manager (except where a section 231(3) applies) • dated evidence of any notification(s) made under section 231.