

Implementation Guide

Changes to the Sale and Supply of Alcohol Act 2012

7 September 2023

Changes have been made to the licensing process in the Sale and Supply of Alcohol Act 2012. The changes make it easier for communities to have a say in how alcohol is regulated in their area. This guide provides information about the changes.

Overview

Decisions about the way alcohol is sold in New Zealand are mostly made at a local level. The Ministry of Justice administers the Sale and Supply of Alcohol Act 2012 (the Act), and local councils implement it, with input from New Zealand Police and Te Whatu Ora.

Alcohol licensing has a direct impact on communities, including on health, wellbeing, safety, amenity and good order, as well as having economic implications. The Act provides a range of settings to enable communities to influence alcohol licensing decisions in their neighbourhood, according to its character and circumstance, and its experience with alcohol-related harm.

The Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 (the Amendment Act) makes it easier for communities to have a say in alcohol regulation in their area, by making targeted changes to the alcohol licensing process in the Act.

There are two sets of changes.

Changes in force from 31 August 2023

The first set of changes, which are now in force:

- remove the ability for people to appeal provisional local alcohol policies (LAPs) to the Alcohol Regulatory and Licensing Authority (ARLA)
- enable district licensing committees (DLCs) and ARLA to decline to renew a licence if the licence would be inconsistent with conditions on location or licence density in the relevant LAP, and
- allow any person to object to licence applications, whether as an individual or a representative of a group or an organisation, with narrow exceptions for trade competitors and their surrogates.

Changes in force from 30 May 2024

The second set of changes are to the way licensing hearings are run. These changes come into effect from 30 May 2024.

Changes relating to LAPs

People can no longer appeal provisional LAPs to ARLA

Under the new rules people can no longer appeal provisional LAPs to ARLA.¹ The process to develop a LAP is now much simpler.

The public can still be involved in the development or review of a LAP through their local council's special consultative procedure, which councils use to develop a LAP.

How the changes apply to LAPs at different stages of development

From 31 August 2023:

The old rules apply if someone has made an appeal against any element of the LAP.²

The new rules apply to all other LAPs at the different stages of development.

The old rules allow councils to discontinue the development of a LAP at any time before the LAP is adopted. Councils can restart the process of developing a LAP by drafting another LAP to consult on. If a council restarts this process, the new rules apply.

The new rules allow councils to discontinue and then recommence the development of a LAP. Councils must undertake consultation as if developing a new LAP unless consultation was completed fewer than six years before the LAP was discontinued.

There are diagrams on the next page showing the steps local councils must take to develop and adopt a LAP under the old rules, compared with the new rules.

¹ **New rules** mean the alcohol licensing process in the Act after the changes.

DLCs can decline licence renewal applications if they would be inconsistent with the relevant LAP

The changes to the Act give DLCs discretion to decline a licence renewal application if the licence would be inconsistent with any of the following elements of the relevant LAP (set out in section 77(1)(a) to (d) of the Act):

- (a) location of licensed premises by reference to broad areas
- (b) location of licensed premises by reference to their proximity to particular kinds of premises
- (c) location of licensed premises by reference to their proximity to particular kinds of facilities
- (d) whether further licences (or particular kinds of licences) should be issued for premises in the area, or any part of it.

This may include, for example, if there are too many alcohol retailers in an area, or if the retailers are too close to a park or recreational facility, depending on what the relevant LAP says.

The relevant LAP will be one factor DLCs consider when deciding a renewal application. Other factors include the suitability of the applicant, and the systems, staff and training they have in place to comply with the law.

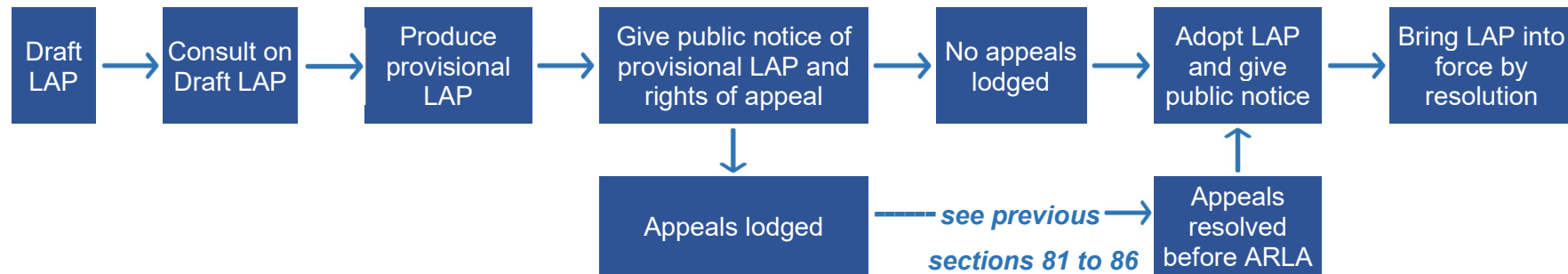
As was the case under the old rules, the new rules allow DLCs to impose conditions on licences so they are consistent with LAPs.

What the changes to licence renewals mean for current licence holders

The changes are not retrospective. They only apply to applications for renewal as they arise following 31 August 2023. From that date, current licence holders will only be subject to the changes as they seek to renew their licence.

² **Old rules** mean the alcohol licensing process in the Act before the changes.

Steps local councils take to develop and adopt a LAP – *old rules*



Steps local councils take to develop and adopt a LAP – *new rules*



Changes relating to objecting

Anyone can object to an alcohol licence application

Any person can object to an application for a licence, variation of licence conditions, renewal of licence application, or special licence, whether as an individual or representative of a group or organisation. There are narrow exceptions for trade competitors and their surrogates (more information below).

This change accommodates people currently excluded from participating in licensing hearings who may not live in the area but spend time there due to family connections, living rurally, or having a particular connection to the area.

Objections still need to be based on the licensing criteria set out in the Act.

Trade competitors and their surrogates are restricted from objecting

Trade competitors cannot object if their objection is about trade. A trade competitor is a person holding an alcohol licence, regardless of whether they actually sell alcohol or where they sell it.

Surrogate trade competitors also cannot object. A surrogate is a person receiving, or is likely to receive, direct or indirect help from a trade competitor to object to an alcohol licensing application.

DLCs (or ARLA) need to determine if the prospective objector is a trade competitor or surrogate as part of their preparatory processes.

These provisions ensure the licensing process remains focused on the object of the Act – to ensure the safe and responsible sale, supply, and consumption of alcohol; and to minimise alcohol-related harm.

Objectors have 25 working days to object

The time for objectors to make an objection to an application has been extended from 15 to 25 working days. This gives people and groups more time to become aware of applications and submit objections.

Working days are weekdays, excluding public holidays, and excluding 20 December – 15 January. Mondays where a public holiday falls on a weekend and is 'Mondayised' are also excluded – for example, Waitangi Day or ANZAC Day.

Applicants may wish to build in a bit more time for the application process.

Changes to licensing hearings from May 2024

From 30 May 2024, DLCs and ARLA will be required to consider reasonable requests from parties to attend hearings remotely.

There will also be changes to how DLC hearings are run. Those changes will require that hearings:

- avoid unnecessary formality
- do not permit cross-examination, or the ability for parties to question other parties or their witnesses – DLCs will test evidence instead
- allow for tikanga to be incorporated into proceedings, and
- allow evidence to be received in te reo Māori.

The time before the changes come into effect means people can prepare. The Ministry of Justice will provide more information about these changes next year.

Further information online

Where to find the Act

You can access the Sale and Supply of Alcohol Act 2012 and the Sale and Supply of Alcohol Regulations 2013 on the New Zealand Legislation website:

- <https://www.legislation.govt.nz/act/public/2012/0120/latest/DLM3339333.html>
- <https://www.legislation.govt.nz/regulation/public/2013/0459/latest/DLM5736956.html>

What Parliament said about the changes

You can access information from the parliamentary process, including speeches from Members of Parliament, what public submissions said about the changes, and the Justice Committee's report on the Bill, here:

- <https://bills.parliament.nz/v/6/ac17d356-0181-4e8d-825a-ce0c681ebae5>

Where to find impact analysis

You can access the Ministry of Justice's Supplementary Analysis Report, which gives an impact assessment of the changes, here:

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>

Where to find Cabinet material

You can access Cabinet material relating to the changes on the Ministry of Justice website, here:

- <https://www.justice.govt.nz/assets/Documents/Publications/Sale-and-Supply-of-Alcohol-Community-Participation-Amendment-Bill.FINAL.pdf>