

Off Licence Applications; Matters Relating to Grocery Stores

Sale and Supply of Alcohol Act 2012 and Sale and Supply of Alcohol Regulations 2013

The new Act restricts the kinds of premises that can have an Off Licence. Dairies and convenience stores are not permitted to have an off licence. Grocery stores that mainly sell food products may have an off licence. The Act and the new Regulations contain definitions of a grocery store, and a method for working out whether the principal business is the sale of food products.

Sale and Supply of Alcohol Act 2012

Section 32 Kinds of premises for which off-licences may be issued

(1) An off-licence may be issued only—

- (e) for premises that (in the opinion of the licensing authority or licensing committee concerned) are a supermarket with a floor area of at least 1 000 m² (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or
- (f) for premises that (in the opinion of the licensing authority or licensing committee concerned) are a grocery store

Section 33 Determining whether premises are grocery store

(1) In this section,—

food product—

- (a) does not include—
 - (i) alcohol, confectionery, ready-to-eat prepared food, or snack food; or
 - (ii) a drink (other than milk) sold in a container with a capacity of 1 litre or less; but
- (b) includes delicatessen items that are not ready-to-eat prepared food or snack food

grocery store means a shop that—

- (a) has the characteristics normally associated with shops of the kind commonly thought of as grocery shops; and
- (b) comprises premises where—
 - (i) a range of food products and other household items is sold; but
 - (ii) the principal business carried on is or will be the sale of food products

ready-to-eat prepared food—

- (a) includes food for the time being declared by regulations under this Act to be ready-to-eat prepared food; and
- (b) does not include food for the time being declared by regulations under this Act not to be ready-to-eat prepared food

snack food—

- (a) includes food for the time being declared by regulations under this Act to be snack food;
and
 - (b) does not include food for the time being declared by regulations under this Act not to be snack food.
- (2) In forming for the purposes of this Act an opinion on whether any premises are a grocery store, the licensing authority or a licensing committee—
- (a) must have regard to—
 - (i) the size, layout, and appearance of the premises; and
 - (ii) a statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and
 - (iii) the number, range, and kinds of items on sale (or expected to be on sale) on the premises; and
 - (b) may have regard to any other matters it thinks relevant; and
 - (c) may determine that the premises do not have the characteristics normally associated with a shop of the kind commonly thought of as a grocery shop by virtue of characteristics that the premises and the items on sale there lack or will lack, characteristics that the premises and the items on sale there have or will have, or a combination of both.
- (3) Paragraph (a) of the definition in subsection (1) of **food product** is for the avoidance of doubt only, and does not extend the generality of the term

The Sale and Supply of Alcohol Regulations 2013 contain a method which must be used to show that the principal business carried on is or will be the sale of food products

Regulation 6 Ascertaining principal business carried on on premises (existing business)

- (1) For the purposes of the definition of principal business in section 5(1) of the Act, the principal business carried on on any premises to which subclause (2) applies must be ascertained by—
 - (a) deducting from the gross sales revenue of the business being carried on on the premises for a period of 12 months ending no more than 90 days before the time at which the application for the issue or renewal of an off-licence for the premises is made—
 - (i) GST; and
 - (ii) all revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and
 - (b) then assigning the remainder of that revenue to the following categories (with as much precision as is reasonably practicable in the circumstances):
 - (i) the sale of food products:

- (ii) the sale of alcohol:
- (iii) the sale of tobacco:
- (iv) the sale of convenience foods:
- (v) other sources of revenue; and
- (c) then,—
 - (i) if more of that remainder has been assigned to one category than any other, treating as the principal business carried on on the premises the sale of goods of the kind concerned (or, in the case of other sources of revenue, the activities generating the revenue):
 - (ii) if equal amounts of that remainder (being higher than those assigned to other categories) have been assigned to 2 or more categories, treating as the principal business carried on on the premises the sale of goods other than food products.
- (2) This subclause applies to premises where, as at the time at which the application for the issue or renewal of an off-licence for the premises is made,—
 - (a) business has been carried on for 12 months or more; and
 - (b) the business being carried on has been substantially unchanged for at least 12 months before that time.

7 Ascertaining principal business carried on on premises (new business)

- (1) For the purposes of the definition of principal business in section 5(1) of the Act, the principal business carried on on any premises to which subclause (2) applies must be ascertained by—
 - (a) deducting from the likely gross sales revenue of the business to be carried on on the premises for the 12 months after the time at which the application for the issue or renewal of an off-licence for the premises is made—
 - (i) GST; and
 - (ii) all likely revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and
 - (b) then assigning the remainder of that likely revenue to the following categories (with as much precision as is reasonably practicable in the circumstances):
 - (i) the sale of food products:
 - (ii) the sale of alcohol:
 - (iii) the sale of tobacco:
 - (iv) the sale of convenience foods:
 - (v) other sources of revenue; and
 - (c) then,—
 - (i) if more of that remainder has been assigned to one category than any other, treating as the principal business to be carried on on the premises the sale of goods of the

kind concerned (or, in the case of other sources of revenue, the activities generating the revenue):

- (ii) if equal amounts of that remainder (being higher than those assigned to other categories) have been assigned to 2 or more categories, treating as the principal business to be carried on on the premises the sale of goods other than food products.
- (2) This subclause applies to premises where, as at the time at which the application for the issue or renewal of an off-licence for the premises is made,—
- (a) business has been carried on for less than 12 months; or
 - (b) the business being carried on has changed materially during the 12 months before that time.

8 Certain food declared to be ready-to-eat prepared food

- (1) Food is **ready-to-eat prepared food** if it has been so cooked or prepared that it can be eaten immediately as a meal, part of a meal, or a substitute for a meal—
- (a) in the form in which it is sold; and
 - (b) without further preparation (for example, assembly, heating, or thawing).
- (2) Food of the following descriptions is ready-to-eat prepared food:
- (a) a sandwich (whether hot or cold, and whether open or closed):
 - (b) food (whether hot or cold) that,—
 - (i) instead of a slice or slices of bread, uses some other container, covering, or base (such as a pancake, pocket, roll, taco shell, tortilla, or wrap) for its contents or topping; but
 - (ii) is otherwise analogous to a sandwich or open sandwich:
 - (c) a pizza, pizza slice, pizza sub, or pizza pocket:
 - (d) food analogous to a pizza, pizza slice, pizza sub, or pizza pocket:
 - (e) fish and chips or similar food:
 - (f) a hamburger, hot dog, or similar food:
 - (g) food of the kind commonly referred to as a pie (whether meat, vegetable, or fruit):
 - (h) a pastie, samosa, or similar food (whether meat, vegetable, or fruit):
 - (i) a sausage roll or similar food.
- (3) Subclause (2) does not limit the generality of subclause (1).
- (4) Regulation 9 overrides subclauses (1) and (2).

9 Certain food declared not to be ready-to-eat prepared food

- (1) Food of the following descriptions is not ready-to-eat prepared food:
- (a) unprocessed raw fruit or vegetables:

- (b) food intended to be used as a component of a home-prepared meal (for example, cooked chicken, fresh pasta, or pasta or simmer sauce):
 - (c) a mixture (whatever its ingredients) of the kind commonly referred to as a salad:
 - (d) a beverage (other than alcohol or plain milk) sold in a multi-pack of single-serve containers with an aggregate volume of 1 litre or more:
 - (e) packaged biscuits (or similar items):
 - (f) a full-sized cake:
 - (g) delicatessen items such as antipasti, cold sliced meat, smoked chicken, or smoked fish:
 - (h) multi-packs of items of food or drink of a kind often included in school lunches:
 - (i) dried fruit:
 - (j) unfilled bread, bread rolls, or buns:
 - (k) spreads:
 - (l) condiments, pickles, relishes, and similar food.
- (2) For the purposes of subclause (1)(a), fruit or vegetables are not processed by reason only of being peeled, sliced, or both.

10 Certain food declared to be snack food

- (1) Food is **snack food** if—
- (a) it is so cooked or prepared that it can be eaten immediately; and
 - (b) (whether or not it can form, or sometimes forms, part of a meal) it is food of a kind usually consumed between meals; and
 - (c) it is usually sold—
 - (i) in small quantities (in the case of food sold by volume or weight); or
 - (ii) as small items (in the case of food sold as individual items).
- (2) Food of the following descriptions is snack food:
- (a) potato chips, crisps, sticks or straws, and similar food made of ingredients other than potatoes (for example, corn):
 - (b) pretzels and similar food:
 - (c) bacon crackling, pork crackling, and similar food:
 - (d) prawn chips and similar food:
 - (e) if sold as individual items with a volume of less than 1 litre, blocks, cakes, or similar items, made of ice-cream or ice-cream substitute:
 - (f) ice-creams, and similar items made of ice-cream substitute:
 - (g) ice-blocks and similar items:

- (h) food that is, or consists mostly of, bars, biscuits, cones, cookies, crackers, wafers, or similar items that—
 - (i) weigh less than 60g; and
 - (ii) are sold as individual items:
- (i) processed or treated seeds or nuts (or mixtures of seeds and nuts) presented in quantities of less than 60g:
- (j) popcorn.
- (3) Subclause (2) does not limit the generality of subclause (1).
- (4) Food declared by regulation 9(1)(f) not to be ready-to-eat prepared food can still be snack food by virtue of subclause (1).
- (5) Regulation 11 overrides subclauses (1) and (2).

11 Certain food declared not to be snack food

- (1) Food of the following descriptions is not snack food:
 - (a) unprocessed raw fruit or vegetables:
 - (b) multi-packs of items of food or drink of a kind often included in school lunches.
- (2) For the purposes of subclause (1)(a), fruit or vegetables are not processed by reason only of being peeled, sliced, or both.

12 Requirements for statements of annual sales revenue (existing businesses)

- (1) In the case of premises to which subclause (2) applies, the statement of annual sales revenue to which, by virtue of section 33(2)(a)(ii) of the Act, the licensing authority or a licensing committee must have regard in determining for the purposes of the Act whether any premises are a grocery store must contain—
 - (a) a statement of the gross sales revenue (excluding GST) for the 12 months ending no more than 90 days before the time at which the application for the issue or renewal of an off-licence for the premises is made of the business being carried on on the premises, after deduction of all revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and
 - (b) a statement assigning the remainder of that revenue to the following categories:
 - (i) the sale of food products:
 - (ii) the sale of alcohol:
 - (iii) the sale of tobacco:
 - (iv) the sale of convenience foods:
 - (v) other revenue; and
 - (c) a statement from a chartered accountant verifying the figures given as correct according to prepared accounts.

- (2) This subclause applies to premises where, as at the time at which an application for the issue or renewal of an off-licence for the premises is made,—
 - (a) business has been carried on for 12 months or more; and
 - (b) the business being carried on has not changed materially for at least 12 months before that

13 Requirements for statements of annual sales revenue (new businesses)

- (1) In the case of premises to which subclause (2) applies, the statement of annual sales revenue to which, by virtue of section 33(2)(a)(ii) of the Act, the licensing authority or a licensing committee must have regard in determining for the purposes of the Act whether any premises are a grocery store must contain—
 - (a) a statement of the projected gross sales revenue of the business to be carried on on the premises for the period of 12 months after the time at which the application for the issue or renewal of an off-licence for the premises is made—
 - (i) excluding GST; and
 - (ii) after deduction of all projected revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and
 - (b) a statement assigning the remainder of that projected revenue to the following categories:
 - (i) the sale of food products:
 - (ii) the sale of alcohol:
 - (iii) the sale of tobacco:
 - (iv) the sale of convenience foods:
 - (v) other sources of revenue.
 - (2) This subclause applies to premises where, as at the time at which an application for the issue or renewal of an off-licence for the premises is made,—
 - (a) business has been carried on for less than 12 months; or
 - (b) the business being carried on has changed materially during the 12 months before that time.
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