

Alcohol licensing infosheet

Discretionary conditions and undertakings

What is a discretionary condition?

Section 117 of the Sale and Supply of Alcohol Act (SSAA) allows the DLC or ARLA to issue a licence subject to any reasonable conditions that are not inconsistent with SSAA. These are called discretionary conditions.

You can request the DLC or ARLA place discretionary conditions on a licence. The Court of Appeal has remarked on the broad nature of the s117 conditions in SSAA as follows: "First, the new power to impose conditions in s117 is broad. While such a condition must be reasonable and not inconsistent with the Act, the generality of the power is not limited or affected by any other provision in the Act" (in *J & C Vaudrey Limited v Canterbury Medical Officer of Health* [2016] NZCA 539 at [68]). Therefore, s117 conditions can be a powerful tool to tailor licence conditions to the particular premises at hand.

Relevant conditions for an off-licence could be:

- no single can or bottle sales of RTDs
- no single sales of cans or bottles of ordinary commercial beer products, with the exception of the more expensive craft beer
- no pallets of alcohol to be displayed in the floor area of the shop
- no sales of legal high type products

- appropriate signs concerning the nearby alcohol ban areas and other matters
- for special deals and/or promotions, no sandwich board advertising outside the premises and only one such sign inside the window visible from outside.¹

However, this section cannot be relied on to impose conditions that would be inconsistent with a provision of the Act or a compulsory condition.

Relevant conditions for an on-licence could be:

- no party buses (if party buses are a concern)
- compliance with an alcohol management plan
- price at which drinks are to be sold
- restrictions on the sale of certain types of alcohol
- restrictions on certain types of promotion of alcohol.

¹ Re SRS Ghuman & Sons Ltd DLC Nelson 50/OFF/010/2014

It is important to have conditions written into the licence as there may be other agencies monitoring the premises and they need to know what conditions the premises is subject to. Staff and duty managers must also be aware of any conditions on the licence. Further, a record of any s117 conditions on the licence itself assists in any enforcement action required.

What is an undertaking?

An undertaking is a written promise offered as security for the performance of a particular act required in a legal action eg, a licensee makes a promise (or undertaking) not to make single sales of RTDs.

Undertakings arose because the previous legislation (Sale of Liquor Act 1989) restricted the scope of discretionary conditions.

There is no provision for undertakings within SSAA

SSAA made wider provision for general conditions, largely removing the need for undertakings. What were previously offered as undertakings should now be imposed as conditions on the licence. This affords greater powers to the Police and Inspector to monitor and enforce compliance with licence conditions.

An undertaking may be appropriate in a small number of cases eg, where a licensee agrees to remove some signs from their premises within an agreed period of time or before issue of a licence.

If an applicant or licensee suggests an undertaking, you should first consider whether it ought more properly to be a condition of the licence (which will generally be a lot simpler to formally record and enforce).

New provisions have been made for infringement offences in order to avoid the sole possible consequence for breach being the loss of licence.

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For more information visit alcohol.org.nz