

Sale of liquor in a supermarket under section 30 of the *Liquor Act 2007*



Section 30 of the *Liquor Act 2007* (Act) imposes certain requirements about the operation of a liquor sales area when a packaged liquor licence is exercised by a business whose primary purpose is not the sale of liquor for consumption away from the premises. The types of businesses to which section 30 applies include but are not limited to a supermarket business.

This Guideline applies to supermarkets that have a retail floor area of more than 240 square metres, and provides additional policy guidance as to the requirements of section 30 when applications under the Act in relation to these supermarkets are considered.

This additional guidance is considered appropriate having regard to the changing business models of supermarkets in recent years, including various degrees of physical and visual integration, seen in an increasing number of supermarkets, of the liquor sales area with the rest of the supermarket.

The statutory objects and considerations of the Act, as set out in section 3 of the Act, have also been taken into consideration in the development of this Guideline.

The legislation

Section 30 of the Act provides as follows:

30. Liquor sales area required if bottle shop is part of another business activity

- (1) *If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (the liquor sales area) that is adequately separated from those parts of the premises in which other activities are carried out.*

- (2) *The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.*

How section 30 applies to supermarkets

1. The “licensed premises” of a supermarket, for the purpose of section 30 of the Act, will generally be defined as the entire supermarket premises which incorporates a smaller “liquor sales area”.
2. An application under the Act in relation to a supermarket must be accompanied by a plan that sets out the boundaries for both the licensed premises and the liquor sales area.
3. A packaged liquor department adjoining a supermarket is a liquor sales area for the purpose of section 30 if that department can be entered into from within the supermarket, and products taken from the supermarket can be paid for in that department.
4. “The sale or supply of liquor” has an expansive meaning because of the definition of “sell” which includes offer, agree or attempt to sell, expose, send, forward or deliver for sale, cause or permit to be sold or offered for sale.
5. Each sale or supply of liquor must take place in the liquor sales area.
6. The “principal activity” of the liquor sales area must be the sale or supply of liquor, and is assessed by considering the principal activity in the entire liquor sales area.
7. A checkout within the liquor sales area can be used as a “mixed-use” checkout to sell liquor and other supermarket products, if such use does not change the principal activity of the liquor sales area.

8. In considering the principal activity of a liquor sales area, the Authority may have regard to any one or a combination of the following factors in the context of the individual circumstances of each premises:
 - a) The number and location of mixed-use checkouts in the liquor sales area. For example, if there is only one mixed-use checkout in the liquor sales area and that checkout is used as a mixed-use checkout, it will generally be accepted that the principal activity in the liquor sales area is the sale or supply of liquor.
 - b) The total number of checkouts in the supermarket and the availability, at all times, of checkouts at which liquor items cannot be sold (i.e. checkouts that can only be used to sell non-liquor items).
 - c) The size and scale of the liquor sales area.
 - d) The size and scale of the supermarket and the proportion taken up by the liquor sales area.
 - e) The frequency at which each mixed-use checkout is used. For example, if there are two mixed-use checkouts in the liquor sales area and the second checkout is only used on an “overflow” basis to meet peak time demands, it will generally be accepted that the principal activity in the liquor sales area is the sale or supply of liquor.
 - f) The proportion of non-liquor products sold at the mixed-use checkouts in terms of volume and/or revenue. For example, if the overall proportion of liquor products sold in the liquor sales area is 75 percent or higher, it will generally be accepted that the principal activity in the liquor sales area is the sale or supply of liquor. This example represents a “safe harbour” provision, rather than a prescribed threshold or implied expectation in respect of the proportion of liquor products sold in a liquor sales area.
 - g) Any other factors the Authority considers relevant to the determination of the principal activity in the liquor sales area of a particular licensed premises.
9. A mixed-use checkout within the liquor sales area must be closed and not used for any sale, including the sale of other supermarket products, outside the permitted trading hours of the licensed premises.
10. The liquor sales area must be adequately separated from the rest of the supermarket. “Adequately separated” will be determined as a question of fact in each application, and will require some physical separation and a clear visual boundary between the liquor sales area and the supermarket area. Measures such as signage and forms of demarcation must be sufficient to ensure that persons attending or walking past a liquor sales area, including any checkouts within the liquor sales area, would reasonably be expected to be alerted to the fact that it is a separate area of the supermarket used for the sale and supply of liquor.
11. Liquor in the liquor sales area must not be visible to persons entering or shopping in the supermarket other than by looking through the entrance to the liquor sales area, or when liquor products are being paid for at a checkout in the liquor sales area. Visibility of liquor from outside the supermarket is not subject to this requirement.
12. Any walls and/or barriers used to separate the liquor sales area must be opaque to a minimum height of 1.8 metres. This requirement does not apply if the relevant wall or barrier is not visible from the trading floor or entrance of the supermarket.
13. Applicants must specify on a plan accompanying the application which walls or barriers are proposed to be made opaque. Upon approving the application, the Authority may specify on the plan which walls or barriers are to be made opaque.
14. Those parts of the liquor sales area in which liquor is displayed must be capable of being locked and secured outside the permitted trading hours of the licensed premises so that access cannot be gained from the supermarket.

Offences relating to minors in supermarkets

15. Section 123 of the Act makes it an offence for a minor to enter or remain in a liquor sales area of a supermarket unless the minor is in the company of a responsible adult. The provision provides circumstances where a minor does not commit this offence and provides a defence.
16. Section 124 of the Act makes a licensee guilty of an offence if a minor enters or remains in a liquor sales area of a supermarket unless the minor is in the company of a responsible adult and unless the minor is immediately removed. The provision provides circumstances where a licensee does not commit this offence and provides a defence.

Review of this Guideline

17. The Authority may review the operation of this Guideline from time to time and may update the Guideline as and when considered appropriate.

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