

**Reprint  
as at 1 July 2013**



**Local Government (Alcohol  
Reform) Amendment Act 2012**

Public Act    2012 No 121  
Date of assent    18 December 2012  
Commencement    see section 2

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Department of Internal Affairs.**

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Local Government (Alcohol Reform) Amendment Act 2012.
- 2 Commencement**  
This Act comes into force on the day 12 months after the date on which it receives the Royal assent.
- 3 Principal Act**  
This Act amends the Local Government Act 2002 (the **principal Act**).
- 4 New sections 147 to 147C substituted**  
Section 147 is repealed and the following sections are substituted:

**“147 Power to make bylaws for alcohol control purposes**

“(1) In this section,—

“**alcohol** has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

“**licensed premises** has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

“**public place**—

“(a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but

“(b) does not include licensed premises.

“(2) A territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following:

“(a) the consumption of alcohol in public places:

“(b) the bringing of alcohol into public places:

“(c) the possession of alcohol in public places.

“(3) In conjunction with a bylaw under subsection (2), a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.

“(4) A bylaw under this section does not prohibit, regulate, or control, in the case of alcohol in an unopened container,—

“(a) the transport of the alcohol from licensed premises next to a public place, if—

“(i) it was lawfully bought on those premises for consumption off those premises; and

“(ii) it is promptly removed from the public place; or

“(b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place; or

“(c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to,

- a resident of the premises or his or her bona fide visitors;  
or
- “(d) the transport of the alcohol from premises next to a public place to a place outside the public place if—
    - “(i) the transport is undertaken by a resident of those premises; and
    - “(ii) the alcohol is promptly removed from the public place.
- “(5) Subsections (2) and (3) do not limit section 145.

**“147A Criteria for making or continuing bylaws**

- “(1) Before making a bylaw under section 147, a territorial authority—
- “(a) must be satisfied that it can be justified as a reasonable limitation on people’s rights and freedoms; and
  - “(b) except in the case of a bylaw that will apply temporarily for a large scale event, must also be satisfied that—
    - “(i) there is evidence that the area to which the bylaw is intended to apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and
    - “(ii) the bylaw is appropriate and proportionate in the light of that crime or disorder.
- “(2) Before deciding that a bylaw under section 147 should continue without amendment, a territorial authority must be satisfied that the level of crime or disorder experienced before the bylaw was made (being crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area concerned) is likely to return to the area to which the bylaw is intended to apply if the bylaw does not continue.
- “(3) Before making under section 147 a bylaw that is intended to replace an expiring bylaw and is to the same effect (or to substantially the same effect) as the expiring bylaw, a territorial authority must be satisfied that—
- “(a) the bylaw can be justified as a reasonable limitation on people’s rights and freedoms; and
  - “(b) a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in

- the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and
- “(c) the bylaw is appropriate and proportionate in the light of that likely crime or disorder.
- “(4) Subsection (1) does not apply to a bylaw of a kind described in subsection (3).

**“147B Criteria for making resolutions relating to bylaws**

Before making under section 151 a resolution relating to a bylaw under section 147, a territorial authority must be satisfied that—

- “(a) there is evidence that the area to which the bylaw applies (or will apply by virtue of the resolution) has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and
- “(b) the bylaw, as applied by the resolution,—
- “(i) is appropriate and proportionate in the light of the evidence; and
- “(ii) can be justified as a reasonable limitation on people’s rights and freedoms.

**“147C Signage for areas in which bylaws for alcohol control purposes apply**

Regulations under section 259 may do any or all of the following:

- “(a) require territorial authorities to erect and maintain signs indicating the existence or boundaries of areas in their districts in which a bylaw under section 147 applies:
- “(b) describe the required placement of the signs required to be erected and maintained:
- “(c) prescribe particular forms for particular kinds of sign required to be erected and maintained (including, without limitation, content, size, lettering, symbols, and colouring).”

- 5 New sections 169 and 169A and new heading substituted**  
Section 169 is repealed and the following sections and heading are substituted:
- “169 Powers of arrest, search, and seizure in relation to alcohol bans**
- “(1) In this section and in sections 169A and 170,—  
“**alcohol** has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012  
“**alcohol ban** means a bylaw made under section 147  
“**offence** means a breach of an alcohol ban  
“**restricted place** means a public place (within the meaning of section 147(1)) in respect of which an alcohol ban is in force.
- “(2) A constable may, without warrant,—  
“(a) for the purpose of ascertaining whether alcohol is present, search—  
“(i) a container (for example, a bag, case, package, or parcel) in the possession of a person who is in, or entering, a restricted place; or  
“(ii) a vehicle that is in, or is entering, a restricted place:  
“(b) seize and remove any alcohol (and its container) that is in a restricted place in breach of an alcohol ban:  
“(c) arrest any person whom the constable finds committing an offence:  
“(d) arrest any person who has refused to comply with a request by a constable—  
“(i) to leave a restricted place; or  
“(ii) to surrender to a constable any alcohol that, in breach of an alcohol ban is in the person’s possession.
- “(3) Alcohol or a container seized under subsection (2)(b) is forfeited to the Crown if the person from whom the alcohol or container is seized pays the infringement fee.

*“Matters of proof in relation to bylaws  
prohibiting alcohol in public place*

**“169A Proving substance is alcohol in relation to alleged breach of alcohol ban**

- “(1) In this section, **labelled trade container** means a container that is of a type sold in the ordinary course of trade, and is labelled to the effect that it contains 1.15% or more ethanol.
- “(2) This subsection applies to a substance in respect of which a breach of alcohol ban is alleged to have been committed if the substance was in a container at the time the offence is alleged to have been committed, and—
- “(a) the container was a labelled trade container; or
  - “(b) the container was not a labelled trade container but appeared to contain alcohol, and when it was opened the substance smelled like alcohol; or
  - “(c) the defendant has at any time made to a constable an admission to the effect that the substance was alcohol.
- “(3) If, in any proceedings for a breach of alcohol ban, it is proved that subsection (2) applies to the substance in respect of which the breach is alleged to have been committed, the substance must be presumed to be alcohol unless the defendant—
- “(a) proves that it was not; or
  - “(b) has given notice in writing at least 20 working days before the hearing that he or she disputes that the substance was alcohol.”

**6 New sections 239 and 239A substituted**

Section 239 is repealed and the following sections are substituted:

**“239 Offences in respect of breaches of bylaws (other than alcohol bans)**

Every person commits an offence and is liable on conviction to the penalty set out in section 242(4) or (5) (as the case may be), who breaches a bylaw made under Part 8 (other than a bylaw made under section 147).

**“239A Breaches of alcohol bans**

- “(1) Section 21 of the Summary Proceedings Act 1957 applies to a breach of a bylaw made under section 147 as if—
- “(a) the breach were an infringement offence within the meaning of that Act; and
  - “(b) the person who has committed the breach has committed the offence; and
  - “(c) the references in subsection (9) of that section to a defendant’s being found guilty of, or pleading guilty to, an infringement offence for which an infringement notice has been issued were references to the person’s being found to have committed, or admitting to having committed, the breach;—
- and Part 3 and section 208 of that Act apply accordingly.
- “(2) Proceedings in respect of a breach of a bylaw made under section 147 cannot be commenced by filing a charging document under section 14 of the Criminal Procedure Act 2011.
- “(3) Subsection (2) overrides subsection (1) and section 21(1)(a) of the Summary Proceedings Act 1957.”

Section 6: amended, on 1 July 2013, pursuant to section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**7 New sections 243 and 244 substituted**

Sections 243 and 244 are repealed and the following sections substituted:

**“243 Interpretation**

- “(1) In this subpart,—
- “**alcohol ban** means a bylaw made under section 147
  - “**enforcement officer**, in relation to an alcohol ban, means a constable
  - “**infringement fee**,—
    - “(a) in relation to an infringement offence specified as such by regulations under section 259(a), means the amount prescribed by regulations under section 259(b) as the infringement fee for the offence; and
    - “(b) in relation to a breach of an alcohol ban, means the amount prescribed by regulations under section 259(b) as the infringement fee for the breach



“**infringement offence**—

“(a) means an offence specified as such by regulations under section 259(a); and

“(b) includes a breach of an alcohol ban.

“(2) The definition in subsection (1) of **enforcement officer** overrides the definition of that term in section 5.

“**244 Proceedings for infringement offences**

“(1) A person who is alleged to have committed an infringement offence specified as such by regulations under section 259(a) may either—

“(a) be proceeded against under the Criminal Procedure Act 2011; or

“(b) be served with an infringement notice under section 245.

“(2) A person who is alleged to have committed a breach of an alcohol ban—

“(a) may be served with an infringement notice under section 245; and

“(b) must not be proceeded against under the Criminal Procedure Act 2011.”

Section 7: amended, on 1 July 2013, pursuant to section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**8 Issue of infringement notices**

Section 245 is amended by repealing subsection (2) and substituting the following subsections:

“(2) An infringement notice not relating to a breach of an alcohol ban may be served—

“(a) by an enforcement officer (not necessarily the person who issued the notice) personally delivering it (or a copy of it) to the person alleged to have committed the infringement offence concerned; or

“(b) by post addressed to that person’s last known place of residence or business.

“(2A) An infringement notice relating to a breach of an alcohol ban may be served—

“(a) by a constable personally delivering it to the person alleged to have committed the breach; or

“(b) by a constable personally delivering it, at a time after the person alleged to have committed the breach has been arrested for committing it, to the person; or

“(c) by post addressed to the last known place of residence or business of the person alleged to have committed the breach.”

#### **9 New section 245A inserted**

The following section is inserted after section 245:

##### **“245A Constables may require certain information**

A constable who believes on reasonable grounds that a person is committing or has committed an infringement offence may direct the person to give the constable his or her name, address, and date of birth.”

#### *Transitional provisions*

#### **10 References in bylaws to liquor**

Every reference to liquor in a bylaw under section 147(2) made before the commencement of this Act has effect as a reference to alcohol within the meaning of section 147(1).

#### **11 Existing bylaws to expire**

Unless earlier revoked, a bylaw under section 147(2) made before the commencement of this section expires 5 years after the commencement of this Act.

#### **12 Processing of certain proposals for bylaws**

If before the commencement of this Act proposals for a bylaw under section 147(2) have been released for public consultation,—

(a) the bylaw may be made as if section 4 had not been enacted; but

(b) it expires 5 years after it is made.

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## **Notes**

### **1 *General***

This is a reprint of the Local Government (Alcohol Reform) Amendment Act 2012. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Criminal Procedure Act 2011 (2011 No 81): section 413

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