

David Rae
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Your Ref

Our Ref

29 April 2005



Dear David

ALCOHOL SALES UNDER THE LICENSING ACT 2003

You wrote on 18 February to the Minister for Sport and Tourism about the interpretation by some licensing authorities that the sale of alcohol can only take place under the 2003 Act when is a Personal Licence Holder on the premises. You were concerned about the implications of such as requirement on convenience store retailers. I have been asked to reply.

This matter raises the question of the meaning of section 19(3) of the Licensing Act 2003 (the 2003 Act) and the requirement of authorisation in that sub-section of the Act.

As you know, the 2003 Act devolves the administration of licensing to individual licensing authorities and the enforcement of offences to licensing authorities, the police and in certain circumstances, to trading standards officers. It is therefore for them to interpret the 2003 Act in the first instance on the basis of their own legal advice. The Department for Culture, Media and Sport is not empowered by the 2003 Act to direct that licensing authorities or other bodies should adopt particular interpretations. Where decisions are challenged or prosecutions brought, it will ultimately be for the courts to decide what the terms of the 2003 Act mean in any given context.

However, it may be of assistance to set out this department's view of this particular section of the 2003 Act. Section 19(3) of the 2003 Act states that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. As you mention, the Guidance issued by the Secretary of State under section 182 of the 2003 Act sets out at paragraph 7.67 the reasons why this does not mean that a personal licence holder must be present on the premises at all times when alcohol is sold or that a separate authorisation must be given for



each sale of alcohol. We do not therefore consider that "authorisation" implies direct supervision of each sale of alcohol by a personal licence holder.

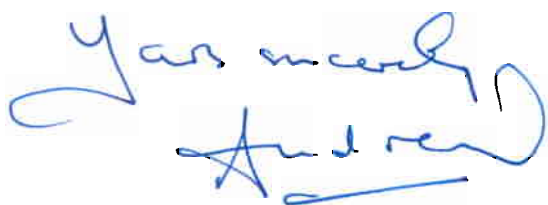
It may be that licensing authorities are concerned about how sales can be authorised in circumstances where the personal licence holder is absent for longer periods, such as a holiday. In our view it is not possible to state categorically how the requirement of authorisation is satisfied as the facts and circumstances in each case will differ. Whether or not an authorisation has been given within the meaning of Act or whether the frequency or length of absence meant that the personal licence holder could not, in fact, have authorised the sale would, ultimately, be a matter for a court to determine on the evidence before it when the issue arose.

Nevertheless, it seems reasonable to expect that the courts would require the authorisation to be meaningful and properly carried out and not simply an abdication of responsibility. In our view, the following factors might be relevant in considering whether there was real authorisation :

- the person(s) authorised to sell alcohol should be clearly identified;
- the authorisation should have specified the acts which may be carried out by the person being authorised;
- there should be an overt act of authorisation, for example, a specific oral or written statement given to the individual(s) being authorised; and
- there should be in place sensible arrangements for monitoring by the personal licence holder of the activity authorised by him or her on a reasonably regular basis.

We do not consider these arrangements to be unduly onerous or burdensome I hope this is helpful.

I am copying this letter to members of the Department's Advisory Group as continuing concerns around this issue were raised at its last meeting. I have also written in similar terms to several licensing authorities who have raised this issue with us.



ANDREW CUNNINGHAM
Head of Alcohol and Entertainment Licensing Policy