

CMS 15217/DC

Malcolm Moss MP
House of Commons
LONDON
SW1A 0AA



10 June 2005

Dear Malcolm

PREMISES AREA TO BE INCLUDED IN PLANS

During the debate on the Licensing Act 2003 in Westminster Hall on Wednesday 8 June, you asked for clarification on what areas of a premises must be included on the plans that accompany an application to convert to a premises licence. In particular, you asked whether areas that could be part of a premises, but not part of the licence, such as beer garden used for the consumption of alcohol, must be included on any plans of the premises.

The administration of the Licensing Act 2003 has been devolved to licensing authorities who must make their own judgments on such issues on the basis of their own legal advice. I cannot therefore direct them to adopt one position or the other; and where any licensing authority is challenged on a point of interpretation, it would ultimately be for the courts to decide. I am, however, willing to make clear what the policy intentions were on this question.

Paragraph 2(6), of Schedule 8 of the Licensing Act 2003, states that a number of relevant documents must accompany an application to convert to a premises licence during the first six months of the transitional period. This includes 'a plan in the specified form of the premises to which the relevant existing licence or licences relate.'

Plans that accompany an application for conversion must show the premises to which the relevant existing licence or licences relate. Any application for conversion of a premises licence, which includes areas not relating to the existing licence, would amount to a variation of that licence and must be treated accordingly. Applicants are therefore not obliged to include areas which do not relate to the existing licensable activities unless they wish to vary that licence.

It follows, therefore, that if an area, such as a beer garden, is part of the premises to which the existing licensable activities relate, it must be included in the plan of the premises to be converted. This will be a matter of fact.



It has been suggested that S.I. 2005/40 3(3)(e) requires that a plan must include areas on the premises which are used for consumption, whether or not they are part of the existing licence. This is wrong: only areas which relate to the existing licence have to be included in the application to convert. There is no authority to require areas not so related to be included on the plans. If a licensing authority is concerned about how to treat areas which are adjacent to the premises, such as a beer garden, which are used for the consumption of alcohol but which are outside the existing licensed area, my Department has no policy objection to these areas being described in section A3 of the conversion application form rather than being included in the plans of the premises submitted with it.

It may be, in certain cases, that the existing licence does not cover all the areas where licensable activities currently take place or are intended to take place after transition. This is a different issue that cannot be addressed through amending the plans for conversion. In such a case it would be appropriate for the applicant to apply for a variation.

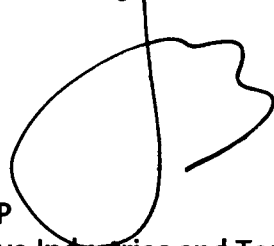
It has also been suggested that S.I. 2005/40 3(3)(a), means that beer gardens are covered as being within the 'boundary of the building'. For these purposes, building is not defined within the legislation and so the ordinary meaning would apply. We are of the view that this would not include an area such as a beer garden.

It has been asked what effect the above advice would have on S.I. 2005/42 25(a)(ii) and the A4 notice that must be read from the exterior of the premises. Again, the notice would be placed at the exterior of the premises (place) intended to be licensed. The requirements for advertising are intended to ensure that applications are advertised in a manner which is likely to bring the application to the attention of interested parties likely to be affected by it. The requirement to advertise the application in a local paper was included because Ministers considered that a notice on a premises alone may not in itself be sufficient to meet that aim. If, in time, there is evidence that the existing provisions are excessive or inadequate, the Government would consider amending the Regulations accordingly.

> I am copying this letter to members of the Government's High Level Group and the Licensing Act Advisory Group, as I know this has been an issue of equal concern to them.

I trust this is helpful

Yours ever

A handwritten signature in black ink, appearing to be 'James Purnell', written in a cursive style.

JAMES PURNELL MP
Minister for Creative Industries and Tourism