



Security Industry Authority

Approved Contractor Scheme
Exceptional Circumstances Policy
For Licensing Dispensation

Background

A key benefit of the Approved Contractor Scheme (ACS) is to enable companies to operate more efficiently by deploying staff waiting to receive a licence. The Scheme ensures that the potential risk to public safety which licensing dispensation presents is kept to an acceptable level by:

1. Permitting its use only through the ACS approval process - the ACS approval criteria are designed to identify responsible companies who demonstrate compliance with the law and adoption of good operational practice, including vetting of employees during the recruitment process. Licensing dispensation is not an automatic right of Approved Contractors and its use must be authorised by the SIA¹.
2. Controlling its use where licensing dispensation is given - the use of a licence dispensation notice (LDN) is limited by the requirements of the Private Security Industry Act 2001 (the PSIA 2001) i.e. to only those sectors for which approved status has been given to a company, to employees that have a licence application pending and to a small proportion of total staff. LDN cannot be used on assignments that involve sole charge of children or vulnerable adults.
3. Ensuring appropriate sanctions are in place to prevent misuse – it is recognised that ACS approval and licence dispensation create flexibility for the industry which offer significant benefits. Licence dispensation or ACS approval may be withdrawn in the event of their misuse.

¹ Refer to section 4(4)(e) of the PSIA 2001

Further to the requirement to control use of LDN, the Secretary of State has directed² that:

“The minimum percentage of staff in any body which has been approved under section 15 of the 2001 Act that is in possession of a licence issued under section 8 of the Act will be 85%. Discretion can be exercised by the Authority in exceptional circumstances and will be subject to a time-scaled plan to bring the situation into line.”

The Ministerial submission supporting the Direction outlines the rationale for the licence level for Approved Contractors and how LDNs would operate. It is made clear in the submission that the scope of issuing LDNs would be restricted to 15% (the normal operating level requires a minimum of 85% licensed staff) unless the prior agreement of the SIA was given (which will only be in exceptional circumstances) and that this agreement would be subject to a time-scaled plan to bring the level of LDN back to normal operating levels. The submission provides (at Annex C of that document) unavoidable transfer of a contract with unlicensed staff as one such example of exceptional circumstances.

The submission also identifies the factors considered in setting the level at 15%:

- the level was accepted as ‘about right’ through the RIA consultation process³;
- analysis of staff turnover levels presented by the industry through consultation;
- to set a sufficiently high target to ensure action from the industry in readiness for 20 March;
- to allow some flexibility (with regards to new contracts and potential for processing delays); and
- to ensure the LDN advantage is available for very small approved companies.

² Direction under Section 2(1) of the PSIA 2001 published by the Home Office February 2006

³ 40% of respondents consider the level to be right, 20% too low and 40% too high.

Application of ‘exceptional circumstances’

The SIA recognises that exceptional circumstances may arise from time to time where it will be necessary to temporarily increase the levels of licensing dispensation beyond the 15% maximum permitted under the Direction. This document establishes criteria for decision making in those cases.

The key drivers behind the criteria are that:

- the purposes for which an increased threshold can be given are properly defined;
- the Ministerial intent of the Direction is preserved;
- the intent of and the purposes behind the PSIA 2001 are maintained;
- the risks associated with deployment under LDN are minimised;
- there is uniformity and consistency of application and thinking which is transparent for applicants; and
- legal compliance with the PSIA, and other legal requirements, is maintained.

Eligibility criteria that must be met are:

1. The company applying must be ACS approved for the relevant sector(s);
2. A time-scaled plan for bringing the situation under control must be submitted with the application⁴; and
3. The circumstances must be exceptional.

To date, a number of exceptional circumstances scenarios have been identified, however this list is not intended to be exhaustive as exceptional circumstances by nature are not fully predeterminative.

⁴ where the exceptional circumstance is as a result of licence processing which is subject to factors outside the control of the approved contractor, a submission detailing the date each unlicensed operative submitted an SIA application, the date it was deemed accepted by the SIA and the projected date the licence will be issued will be deemed an acceptable time-scaled plan.

It is also acknowledged that more than one exceptional circumstance may apply at any one time, and any decision should therefore consider whether a cumulative effect applies to any temporary LDN level authorised.

The scenarios identified are:

- Transfer (or new recruitment) of large numbers of unlicensed staff – any application on this basis will have to make a case that the 15% allowance already permitted through the ACS which was intended to give Approved Contractors a level of flexibility to cover circumstances common to the industry, such as staff turnover and transfers of contracts, is not sufficient for the exceptional nature of the circumstance(s) being applied for. Further once it becomes an established regulated industry, the need for licensing dispensation on this basis is likely to diminish substantially. Other considerations which may make the situation exceptional include a contract being outsourced (e.g. moving from in-house to contract based staff) and the requirement to satisfy a newly awarded contract with newly recruited staff.
- Licence processing delays – which are likely to be unique to the transitional period while the industry moves to a regulated environment, and will usually apply on a sector wide basis to those who are now required by law to be licensed.

Each application for exceptional circumstances will be assessed on a case-by-case basis having regard to the applicant's particular circumstances. By their very nature, exceptional circumstances will be unpredictable. A case will need to be made as to how the Approved Contractor meets the eligibility criteria, including why the application should be considered exceptional, and how the exceptional circumstances criteria outlined below have been met, particularly having regard to the 15% discretionary LDN level already permitted under the scheme. It is also

acknowledged that the SIA may identify its own exceptional circumstances under this policy.

Each case will be considered on its merits, however the issues which the SIA will take into account in determining whether exceptional circumstances apply are:

Responsible behaviour

The conduct of the Approved Contractor will be taken into account and it must be able to demonstrate a pattern of responsible behaviour with regard to the principles of the ACS (including meeting the requirements of the ACS standard) such as compliance with any requests or conditions made by the SIA within a reasonable timescale.

Licensing action

The Approved Contractor is expected to have taken all reasonable action to have sufficient licensed staff to meet the normal operating level – for example once the Approved Contractor is aware of the possible exceptional circumstance(s), the time taken to submit the necessary licence applications to the SIA will be taken into account and may result in a refusal or reduction of the LDN sought if the timeframe is considered unacceptable in the circumstances of the case.

ACS integrity

The exceptional circumstance(s) must not call into question or be at odds with the integrity of the ACS or wider SIA aims and objectives – for example if the exceptional circumstance(s) may lead to an overall reduction of standards and/or professionalism in the industry or increases risks to public safety (such as proposing the use of a high proportion of unlicensed staff who have not yet passed the criminality criterion of SIA licensing), then this will be taken into account.

Unavoidable Circumstances and Minimising Reliance on LDNs

The exceptional circumstance(s) should be deemed by the SIA to be unavoidable – for example, the situation could have been avoided by earlier action which the SIA may or may not have brought to the attention of the Approved Contractor or other involved parties. Steps taken by the Approved Contractor or any other involved party to address, avoid, remedy and/or improve the situation will, where relevant, be taken into account. If the SIA considers the Approved Contractor or any involved party has significantly contributed to the position or there is evidence of planning to use LDN in advance of the circumstance(s) (that are submitted as being exceptional) arising this will also be taken into account. The Approved Contractor should also be able to show that best endeavours have been made to ensure that the need to rely on an LDN is minimised as much as possible.

Assessing this matter will include looking at the content of any agreements made between the Approved Contractor and a third party. The Approved Contractor is likely to be required to demonstrate evidence of commercial, operational and managerial independence from other involved parties to satisfy this criterion – for example, where both the transferring party and receiving party receive a commercial or financial benefit from the contract(s) or the transferring party retains an interest or some control (direct or indirect) following transfer, this is likely to be relevant to the assessment of whether or not the circumstances are exceptional.

Exclusions

The SIA will not usually accept as exceptional any circumstance(s) caused by business decisions or changes subject to normal commercial risks or which could have been avoided or foreseen. In assessing whether this may apply, the SIA will consider the intention behind the business decision or change. Further, although many applicants' circumstances may cause some degree of difficulty or hardship, such cases are unlikely to be able to fulfil the 'exceptional' criteria based on this factor alone.

Level of LDN

Where the SIA considers that exceptional circumstances do apply, in authorising the level of temporary LDN increase the SIA will also consider:

- the level of LDN granted in any previous decision(s);
- where the exceptional circumstance(s) are outside the control of the Approved Contractor (e.g. subject to an SIA-driven and managed action plan) and/or are unforeseen (e.g. changes to legislative requirements), the level of LDN authorised will be in keeping with that given to the industry sector(s) as a whole;
- the timescale proposed in the action plan – where this poses unacceptable risks then the application may be refused or modified;
- the scale of any proposal – the number and proportion of staff requiring LDN as a percentage of the total workforce of the Approved Contractor will be considered and in keeping with the Ministerial intention of licensing dispensation. It is envisaged that only in the rarest of circumstances will the proportion of total unlicensed staff deployed using LDN be able to exceed the proportion of SIA licensed staff. In these very rare circumstances, the unavoidable and unforeseen nature of the situation will be taken into account. The SIA will also consider the percentage increase in total staff numbers by the exceptional circumstance(s) (such as award of a new contract) and the Approved Contractors ability to demonstrate continued adherence to the ACS Standard;
- any cumulative effect (where more than one exceptional circumstance applies);
and
- the overriding objective to move towards normal operating LDN levels.

Making a Decision

The SIA will normally respond to requests for exceptional circumstances within five working days following receipt of all necessary documentation.

If the SIA agrees to the request, the Approved Contractor will be notified in writing of the temporary LDN increase and any conditions attached to that authorisation (for example, if applicable, which sectors and which contracts it applies to, and/or any further verification required). The authorisation will also specify an expiry date. Where licence dispensation is not required immediately (for example a new contract which takes effect in one month's time), the proposed timescale should be made clear in any application to the SIA. This will be taken into account when considering the expiry of the temporary LDN authorisation.

Where the SIA refuses a request in accordance with this policy, it will provide the reasons for doing so in writing.

Continuity Arrangements

Where:

- the SIA has previously made a decision to authorise a level of licence dispensation greater than the normal operating level of 15%;
- an Approved Contractor has issued LDNs to staff in accordance with that agreement; and
- any renewed request for an LDN increase now fails on the basis of these criteria,

then the SIA will acknowledge continuity of deployment for those affected staff. It is expected that any extended authorisation sought under these arrangements will need to demonstrate continuous movement towards the normal operating levels of LDN.

These continuity arrangements do not apply to staff not previously issued with an LDN. The SIA may use its discretion to consider other cases where a previous decision made no longer meets the exceptional circumstances criteria and this will be assessed on a case by case basis. This will only apply to arrangements sought to ensure continuity of a previous decision and will not apply to any new decision made from 1 July 2006.

Review and appeal

The exceptional circumstances criteria will be subject to annual review to ensure they continue to meet the objectives.

If an Approved Contractor is not satisfied with a decision under this policy they are able to seek a review of the decision by writing to:

LDN Internal Review
Approved Contractor Scheme
PO Box 49768
London
WC1V 6WY

Any review will be carried out by the Deputy Chief Executive of the SIA and will be handled in accordance with our published complaints handling procedures.