

## Licence Dispensation

Get Approved sets out the approval conditions that approved contractors are required to comply with throughout their approval. This includes complying with all guidance issued in relation to the ACS regime, including the use of licence dispensation.

This document provides guidance on the use of licence dispensation, and replaces that previously contained within:

- the ACS Terms & Conditions June 2012,
- approved contractor guidance G006 (Licence dispensation & licensed premises), G009 use of Licence Dispensation Notices(LDN's) when a licence has been revoked, G011 (LDN Changes to licence dispensation notices), G012 (process for issue of second or subsequent LDNs),
- assessing body guidance G021 (Licence dispensation training),
- exceptional circumstances policy for licence dispensation

## Introduction

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. In certain circumstances an approved contractor may deploy licensable individuals, front-line and non front-line (including directors), whose licence application is being processed by us but before the necessary licence has been issued. This is termed 'Licence Dispensation' and the associated authorisation is termed a 'Licence Dispensation Notice' or 'LDN'.

The scheme ensures that the potential risk to public safety which licence dispensation presents is kept to an acceptable level by:

- 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 pre-employment screening of employees, temporary staff and contractors during the recruitment process. Licence dispensation is not an automatic right of approved contractors and its use must be authorised by us
- Controlling its use where licence dispensation is given - the use of an LDN is limited by the requirements of the Private Security Industry Act 2001 (the PSIA 2001) i.e. to only those sectors for which approval has been given, to staff that have a licence application pending and to a small proportion of total staff. LDNs cannot be used when the deployment of security operatives involves the sole charge of children or vulnerable adults.

- 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.

Further to the requirement to control use of LDNs, the Secretary of State (Direction under Section 2(1) of the PSIA 2001 published by the Home Office February 2006) directed 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 is 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 LDNs 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%.

Section 4 of the Private Security Industry Act sets out exemptions from the individual licensing requirement. Section 4(4) notes that an individual will not be found guilty of an offence where an approved contractor employs them and we have given notice to that company that it is authorised to use staff with applications pending. It should be noted that this section does not set out the criteria for a licence dispensation notice, it merely sets out when an individual will not be liable for a criminal offence.

### Guidance - General

1. Licence dispensation may only be used when we have given authorisation to the approved contractor in writing and this authorisation is recorded on our register of approved contractors.
2. Licence dispensation may only be used in respect of activities (licensable sectors) for which the contractor is approved, as recorded on our register of approved contractors.
3. An approved contractor that does not wish to make use of licence dispensation must make a written declaration to this effect to us. Contractors that are approved but elect not to use the LDN facility will be recorded on the register of approved contractors as not authorised to deploy staff under LDNs.
4. Approved contractors authorised by us to deploy staff under LDNs must have at least one member of staff successfully trained to manage or administer use of LDNs via an SIA

approved course (see para 32 SIA e-learning course). This training must be undertaken within 3 months of approval. The approved contractor is responsible for ensuring that this condition continues to be met if a trained member of staff leaves or is no longer involved with the management or administration of LDNs. The relevant individual must refresh their training at least every 3 years. This will be reviewed during each annual assessment.

5. Any member of staff deployed under an LDN must meet all of the following conditions:
  - 5.1. He or she has successfully completed all training and examinations required for the necessary SIA licence.
  - 5.2. He or she has applied for the necessary SIA licence and that licence application has been accepted for processing by us;
  - 5.3. He or she has been issued with a personal LDN conforming to the guidance and template provided by us (template available on our website)
  - 5.4. He or she can produce on request the personal LDN and proof of identity.
6. The approved contractor must maintain records of all staff given a personal LDN including the date issued and the date of expiry. These records must be retained for a period of 12 months following the date of expiry of the LDN and be made available to us or authorised assessment body on request.
7. A personal LDN has a maximum duration of 10 weeks. It is the responsibility of the employer to ensure that checks on the progress of any licence application are undertaken during this period.
8. An approved contractor may issue only one LDN without reference to us. Where a member of staff has transferred from another approved contractor and was previously deployed under a LDN, the old LDN is no longer valid.
9. Any member of staff operating under licence dispensation must be withdrawn immediately from licensable activity if their application is refused, rejected or withdrawn.
10. No member of staff who has been refused a licence, or had a licence revoked (except where revoked due to *right to work* issues) or suspended may be deployed under a LDN. Where a licence was revoked due to right to work, an approved contractor may issue an LDN to an individual who has re-applied for a licence provided that a request has been made to us and we have confirmed that an LDN may be issued.
11. No security operative working in sole charge of children or vulnerable adults (as defined within the regulations prescribed under section 15 of the Private Security Industry Act 2001) may be deployed under an LDN.

12. The proportion of staff that can be deployed under an LDN must not exceed the maximum percentage allowed unless prior written authorisation from us has been given. Please refer to our exceptional circumstances policy for licence dispensation.
13. Misuse of an LDN, whether as an approved contractor or otherwise, may result in the refusal of future applications for ACS approval, the withdrawal of the licence dispensation facility, and/or the withdrawal of ACS approval as deemed appropriate by us.
14. If an approved contractor is found to have misused licence dispensation and subsequent investigations establish that the misuse was due in part or in whole to a lack of knowledge, we may require the company to attend refresher training and either restrict or withdraw the use of LDNs until such training has been completed. At our discretion, those authorising LDNs (e.g. directors) as well as LDN administrators may be required to retrain.
15. In the event that an ACS approval is modified or restricted by us, e.g. through changes to the approved sectors or through withdrawal of an LDN, the approved contractor must comply with the specific requirements advised by us at the time of modification or restriction.

### Licence Dispensation and Licensed Premises

16. Section 21 of the Licensing Act 2003 provides Local Authorities with the option of including a mandatory condition in a premises licence, that door supervisors must be licensed by us. Because of the specific way the 2003 Act is worded, this created an unintended consequence that where the condition is imposed it is not possible for an ACS company to deploy operatives using licence dispensation. An amendment to Section 21 has since been implemented through the Violent Crime Reduction Act 2006. This amendment re-directs Section 21 to the appropriate part of the Private Security Act 2001, so allowing individuals to work on an LDN under new premises licences. However, this amendment does not affect premises licences issued before the amendment took effect in November 2006. The holder of an existing premises licence must make an application to their Local Authority to have their licence varied.

### Issuing an LDN

17. Except where you are making applications on behalf of your staff using the Licence Assist or Licence Management services (in which case you will have access to check the status via the individual's online account), you must obtain alternative evidence from your staff that their application has moved to the 'checks in progress' stage before issuing an LDN.

You may choose one of the following as suitable evidence:

- 17.1. A forwarded copy of the email notification received by the individual titled “Your application is complete and will now be processed”;
- 17.2. A screenshot of the notification in the individual’s online account titled “Your application is complete and will now be processed”;
- 17.3. A screenshot of the application in the individual’s online account showing the “checks in progress” status; or
- 17.4. In the case of applicants who we have agreed may apply on a paper form, a copy of the letter received by the individual titled “Your application is complete and will now be processed”.

You are required to keep this evidence on file.

18. An individual whose application has not moved into “checks in progress” cannot work with an LDN.

### Working on an LDN

19. We receive occasional reports that individuals are operating unlawfully because their licence is not on display, but on investigation, it is found that the individual is correctly working with an LDN. For this reason, staff deployed with an LDN should display an ACS lapel pin at all times whilst deployed on licensable duties. The pin provides a visible signal that an individual is working for an approved contractor and may not simply be working unlicensed.
20. Exceptions to the requirement are:
  - 20.1. if local health and safety rules prohibit the wearing of jewellery/pins
  - 20.2. if a company identity card is on display that includes the ACS accreditation mark
  - 20.3. in cases where anonymity is required e.g. a close protection officer, store detective
  - 20.4. in other circumstances, only with our agreement
21. Staff working under licence dispensation should continue to carry on their person their individual licence dispensation notice and their company identification.

22. Additional ACS lapel pins can be requested with the additional goods order form available on our website. There is no charge for any pins required due to normal staff turnover.

### Use of licence dispensation when a licence has been revoked

23. No member of staff who has had a licence revoked may be deployed with a licence dispensation notice. However, we will allow the use of an LDN provided **all** of the specific circumstances below apply:

23.1. It has been established that the individual's previous licence was revoked because we were not satisfied that he or she, had the right to work in the UK. Correspondence from us to the individual will confirm this.

23.2. The individual has not had a licence revoked, suspended or refused for any other reason.

23.3. The individual has submitted a fresh licence application as specified on the SIA web site.

23.4. A request for the individual to work under licensing dispensation has been submitted to us (with the subject line: 'Right to Work Check') through your online business account.

23.5. We have given authorisation to you to deploy the individual under an LDN.

23.6. All other terms & conditions for use of an LDN are met.

24. Authorisation to deploy an individual under licence dispensation in these circumstances will only be given when the right to work check associated with the new licence application has been completed to our satisfaction. This check will take at least 10 working days after the application is received and may take considerably longer depending on the complexity of the case.

### Issuing Second or Subsequent LDNs

25. We only permit an approved contractor to issue one licence dispensation notice for a maximum of 10 weeks without reference to us. After that time, if the individual has still not been licensed, you can make a request to us for authorisation to issue a subsequent licence dispensation notice. You should follow the procedure below:

25.1. If an individual has not been issued a licence within 7 days of expiry of their LDN (normally 9 weeks from issue) you should submit a request through your

online business account, using the 'Request for LDN check' form available on our website.

The form requires the following information about the applicant: full name, SIA licence application number, date of birth, home postcode, expiry date of existing LDN, sectors applied for.

26. We will check whether the necessary licence application is still being processed and will confirm eligibility for a new LDN by stating **YES** or **NO**. A **NO** decision will result if:
- 26.1. there is no application that we can trace
  - 26.2. there is no relevant qualification that we can trace (applies only to paper applications)
  - 26.3. the applicant has not complied with a request made by us in association with the application
  - 26.4. the application has been withdrawn
  - 26.5. the application has been refused
  - 26.6. the application is 'minded to refuse' on the basis of criminality or non-conviction information supplied by our enforcement partners
  - 26.7. the application (any type) is placed on hold pending criminality or non-conviction information supplied by our enforcement partners
27. For data protection reasons, when we make a decision in relation to a subsequent licence dispensation notice we will not provide the reason to you. We can only give more detailed information if the individual concerned gives their signed authority.
28. To ensure that we focus on priority cases please only request this check:
- 28.1. for issue of a second or subsequent LDN
  - 28.2. when the existing LDN will expire in one week or less
  - 28.3. after consulting the public register of licence holders to see if a licence has been issued
29. If you have requested a check for an individual but have not received a response from us before the existing LDN expires, you may go ahead and issue a further LDN. This must be withdrawn if we subsequently return a 'no' decision once our checks are complete.
30. LDNs issued by a previous approved contractor are not transferable (see note under general guidance above). If an individual was issued an LDN by their previous employer

and you now wish to deploy them under the licence dispensation process, you will need to issue them with a new LDN. In this scenario, the first LDN you issue to a transferred individual will count as their first LDN. You will not be required to check with us unless/until you need to issue a subsequent LDN.

### Examples

The following represent some of the different scenarios that may arise, and include the likely outcome to a request for a subsequent licence dispensation notice:

#### Example 1:

- a) A first time applicant or unlicensed person (e.g. may have previously held a licence that has now expired) at 'minded to refuse' stage

Or

- b) A first time applicant or unlicensed person whose application is 'on hold'

Or

- c) Where a licensed individual is at minded to revoke, or a renewal application is minded to refuse, and the individual makes an application for an additional licence in a different sector for which he is not currently licensed (during the appeal period of another application that is minded to revoke/refuse, or where a suspension is in force), then you should not issue a licence dispensation notice.

Note: In a-c of the above:

A first licence dispensation notice may have been issued (where the applicant has a pending application) in good faith by you at that time.

In a-c of the above, we will not authorise a request for a subsequent licence dispensation notice.

#### Example 2

A licensed individual who appeals, and whose licence expires during the appeal period where:

- a) a licensed individual is at minded to revoke

Or

- b) a renewal application is minded to refuse

And



- c) the previous licence expires during the appeal period:

Providing the individual has made a renewal application at the appropriate time and has submitted an appeal, except where there is a suspension in force, you could issue a licence dispensation notice up until we make our decision.

In this scenario, we may authorise a subsequent licence dispensation notice providing the individual still has an appeal in progress, and then only up until our decision.

### Note for employers:

If you have a contract of employment with an individual, then you must be mindful of your liabilities under employment law if you can no longer deploy the individual on licensable activities.

## Licence Dispensation Training Requirement and Assessment

31. There is a requirement for at least one member of staff within the organisation to complete our LDN course where you make use of or intend to make use of licence dispensation. Your ACS assessor will check that you comply with the requirement for at least one member of staff within the organisation to have completed our LDN training (an e-learning course including successfully completing a short test, and being issued with a certificate).
32. For initial assessments/first time applicants, you will have 3 months from the date of approval to comply with the LDN training requirement.
33. Following approval, at assessment, the assessor will verify:
  - 33.1. Whether you are using/intend to use licensing dispensation or not.
  - 33.2. If you use/intend to use licence dispensation, the name/s of the person/s trained.
  - 33.3. The authenticity of a certificate if this is unclear - this can be done by contacting us, as we hold a record of who has been trained and when.
  - 33.4. Whether you have refreshed your LDN training
34. If you do not use/intend to use licence dispensation, whether you have formally opted out or not, you should contact us; we will then confirm that we have withdrawn authorisation and that you are not authorised to deploy individuals without a licence.
35. The assessor will raise an improvement need even if you are not using LDNs, but have failed to formally 'opt out'.
36. The assessor will record all of the above in the assessment report.
37. Please note that the downloadable certificate from our e-learning package records the name of the individual as the name they originally registered with; it does not include a

date, and there is no expiry date. However, we can remotely monitor each learner's activity, and link this information to their company record.

### Application of exceptional circumstances

We recognise that exceptional circumstances may arise from time to time, where it may be necessary to temporarily allow an increase in the level of licence dispensation beyond the 15% maximum permitted.

Our decision-making must take account of the following criteria:

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

38. The following criteria must be met by you:

- 38.1. ACS approved for the relevant sector(s);
- 38.2. A time-scaled plan for bringing the situation under control must be submitted with your exceptional circumstances application;
- and
- 38.3. The circumstances must be exceptional.

39. The most typical exceptional circumstance scenario identified is where there is a 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, such as staff turnover and transfers of contracts, is not sufficient for the exceptional nature of the circumstance(s) being applied for. 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.

40. We acknowledge 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.
41. 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 you meet the eligibility criteria (please refer to para 39, and 42-43), 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. We may identify other permitted exceptional circumstances over time.
42. Each case will be considered on its merits, however the issues we will take into account in determining whether exceptional circumstances apply are:
  - 42.1. Responsible behaviour: your conduct as an approved contractor will be taken into account and you 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 us within a reasonable timescale.
  - 42.2. Licensing action: you are expected to have taken all reasonable action to have sufficient licensed staff to meet the normal operating level. For example, once you are aware of the possible exceptional circumstance(s), the time taken to submit the necessary licence applications to us, 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.
  - 42.3. 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.
  - 42.4. Unavoidable circumstances and minimising reliance on LDNs: The exceptional circumstance(s) should be deemed by us to be unavoidable. For example, the situation could have been avoided by earlier action that we may or may not have brought to your attention or other involved parties. Steps taken by you or any other involved party, to address, avoid, remedy and/or improve the situation will, where relevant, be taken into account. If we consider that you 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) arising, this will also be taken into account. You 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 yourselves and a third party. You are 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.

### 43. Exclusions

We will not usually accept any circumstance(s) as exceptional if caused by your business decisions, or changes subject to normal commercial risks or that could have been avoided or foreseen. In assessing whether this may apply, we will consider the intention behind the business decision or change. 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.

### 44. Level of LDN

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

- 44.1. the level of LDN granted in any previous decision(s);
- 44.2. where the exceptional circumstance(s) are outside your control (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;
- 44.3. the timescale proposed in the action plan – where this poses unacceptable risks then the application may be refused or modified;
- 44.4. 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. We will also consider the percentage increase in total staff numbers by the exceptional circumstance(s) (such as award of a new contract) and your ability to demonstrate continued adherence to the ACS Standard;
- 44.5. any cumulative effect (where more than one exceptional circumstance applies)

and

44.6. the overriding objective to move towards normal operating LDN levels.

### Making a Decision

45. We will normally respond to requests for exceptional circumstances within five working days following receipt of all necessary documentation. If we agree to the request, we will notify you 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 us. This will be taken into account when considering the expiry of the temporary LDN authorisation.
46. Where we refuse a request in accordance with this guidance, we will provide the reasons for doing so (unless prevented from doing so through confidentiality agreements, or legislative obligations)

### Continuity Arrangements

47. Where:

47.1. We have previously made a decision to authorise a level of licence dispensation greater than the normal operating level of 15%;

47.2. you have issued LDNs to staff in accordance with that agreement;

and

47.3. any renewed request for an LDN increase now fails on the basis of these criteria,

then we 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.

48. These continuity arrangements do not apply to staff not previously issued with an LDN.

49. We may use our 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.

### Review

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

51. If an approved contractor is not satisfied with a decision under this guidance they are able to seek a review of the decision by contacting us.

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

## Glossary

Term	Meaning
ACS	Approved Contractor Scheme
Authorised Assessment Body	A conformity assessment body/certification body that is authorised by the SIA to conduct assessments, on its behalf, to verify that applicant organisations or approved contractors meet the requirements of the ACS Standard.
ACS Accreditation Mark	The combination of the SIA trademark/logo with the words Approved Contractor.
Applicant, Applicant company/business, Applicant organisation	A business, who is applying for approval, or the renewal or maintenance of their approval, as an ACS approved contractor
Approved Contractor	A business that has applied under the ACS and has been approved by the SIA
Authority, or SIA	Security Industry Authority
Eligibility Criteria	The criteria that must be met in order to make an application to be an approved contractor, and throughout the approval period.
Approval Conditions	The conditions that all approved contractors must comply with for the duration of approval.
Additional conditions	Additional conditions are specific to an applicant company. These additional conditions may be imposed at the time – at the point the approval is granted or during the approval period, and must be complied with for the duration of the approval or timeframe where specified.
Scheme	Approved Contractor Scheme operated by the SIA under Section 15 of the Private Security Industry Act 2001.
SIA website	The internet domain name <a href="http://www.sia.homeoffice.gov.uk">www.sia.homeoffice.gov.uk</a>
Standard (ACS)	The requirements set out in the Get Approved document,

	including the more detailed requirements set out in the ACS self-assessment workbook
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