

GLA 26/7.4

How Licensing Applies to Businesses with Common Governance

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BOARD PAPER REFERENCE – GLA 26/7.4 – How Licensing Applies to Businesses with Common Governance

Issue

1. This paper outlines how licensing currently applies to businesses with common governance as well as the proposed new approach.

Recommendation

2. The Board is invited to note this paper.

Background

Current Situation

3. Connected companies have been allowed to be covered by one licence (for example, parent companies and subsidiaries), provided all relevant people are named on the licence and they can demonstrate common governance across all the businesses. This approach was developed following the request of a parent business that wanted a licence to cover a group of companies.
4. Common governance has generally taken to mean consistent policies and procedures across each business. The current common governance approach means separate legal entities can be covered by one licence.
5. Seven licences are estimated to have been issued to cover multiple businesses. However, there may be some licences which cover multiple entities but the situation has never been disclosed to the GLA nor otherwise come to light.
6. The Gangmasters (Licensing) Act 2004 seems to anticipate issuing licences to single companies. Section 20(1) says "A licence under this Act may be granted to a body corporate". However, s20(2) says "A licence granted to a body corporate authorises activities carried on by the body through such persons representing, or acting on behalf of, the body as are named or otherwise specified in the licence". The "acting on behalf of" provides the ability to issue licences for companies and their subsidiaries.
7. The major drawback with the current approach is the confusion it creates, especially:
 - The circumstances when one licence can be issued to multiple businesses are not clear, particularly the level of evidence a labour provider must provide to satisfy the "common governance" test.
 - One licence covering multiple businesses also confuses who should be prosecuted should any offence be committed (for example if the licence holder used another unlicensed labour provider to source workers).

- OGD checks and Application Inspections may not have been conducted for some of the businesses operating under an “umbrella” licence.

New Approach

8. The Authority intends to adopt the position of one licence per separate legal entity. This is much clearer and seems to be in keeping with the intention of the Act.
9. With limited companies, the licences should be registered in the company name. In terms of branches and divisions, they will be part of the same business so will be covered by the same licence unless the company decides to individually licence separate branches. Any subsidiary companies should be licensed in their own right.
10. In terms of franchises, a franchise is not a legal entity in itself. It is effectively a contract between a brand holder (the franchisor) and another person (the franchisee). The franchisee can be any type of legal entity (company, sole trader, partnership etc). If the franchisee is a separate legal entity then will need to be licensed individually.

Implementation

11. With immediate effect, the GLA will not consider any new applications for licences covering multiple businesses. All known existing multiple businesses operating under one licence will be informed individually. A more general message will be included in a dedicated GLA Brief.
12. For existing licence holders, this change will take effect from 1 September 2010. Existing multiple businesses covered by one licence will be expected to move to separate licences by 1 March 2011, 6 months after 1 September, or their first renewal date after 1 September 2010 (whichever is soonest). That will give the businesses affected sufficient time to consider what is best for themselves. For example, they may choose to restructure to include all licensable activities under one legal entity as an alternative to getting each individual company separately licensed.
13. If the existing licence holder decided to move all licensable activity to just one business, the licence would be allowed to be renewed in that business’s name and details, even if the licence was originally granted to the parent company.
14. If the existing licence holder decided to individually licence each business currently covered by one licence, each entity would be expected to apply for a licence in the normal manner, including paying the usual licence and application inspection fees. The businesses affected should apply for a licence in good time before their renewal date. The business which first applied for a licence would be able to renew in the normal way for that single entity.