

GLA19/8.3 Backdating Licences

June 2008

BOARD PAPER REFERENCE – GLA19/8.3 – Backdating Licences

Issue

1. To consider the introduction of the backdating of licences.

Recommendations

2. To test the appetite for this policy through public consultation in the Autumn on the proposed fees for 2009/10.

Background

3. At its meeting on 22 January 2008, the Board approved in principle (paper GLA 17/6.1) to introduce a system for applicants who have traded illegally whereby the start date of a licence could be backdated to the point of time the illegal trading commenced (limited to the previous 12 months for ease of implementation).
4. The Board requested a further paper on how the proposal would work in practice, as well more information on how labour users who had used unlicensed gangmasters would be treated. This paper was deferred at the April 2008 Board meeting because of the concerns raised about the proposals.

Argument

5. The GLA has discussed this issue with DEFRA lawyers who have expressed some concerns about the merit of this policy. They are concerned about the fit with the Enforcement policy and the scope for legal challenge. The possible issues that could result in legal challenge are:
 - There is no power to impose a fine (or other penalty) for illegal trading within the Rules as they refer to the application fee
 - There is no obvious right of appeal which would fit this process as this scenario was not envisaged when the regulations were drawn up
 - Evidentially it may be difficult to establish when unlicensed trading took place. In those cases where it is established that the LP knowingly traded then the public interest grounds would indicate that the decision to prosecute should be made.
6. There are three options for the Board to consider:
 - Do nothing
 - Introduce the policy without making the changes and risk legal challenge
 - Test the appetite for this policy through public consultation in the Autumn on the proposed fees for 2009/10.

7. When deciding which option to accept the Board should take account of the following factors:
 - The GLA has estimated that there will be 150 new businesses coming forward for licensing in 2008/09 of which a proportion may be trading illegally
 - If 10% are trading illegally then we will only be dealing with 15 cases which will not provide the revenue envisaged by the ALP i.e. probably less than £50k. It is unlikely that a business will willingly come forward for licensing if it is already trading so the majority of businesses will genuinely be new to the sector. The GLA has limited evidence of new businesses already trading who have come forward for licensing.
 - Enforcement action would send a stronger message to the LP/LU community and drive up licensing if we continue our name and shame policy.
8. If the Board decides not to pursue this policy then there is the risk that the GLA may be criticised for licensing businesses who have been trading illegally. This is a reputational risk that needs to be balanced against the high levels of media coverage which the GLA has achieved. The GLA needs to be seen to be dealing with the rogues by the Industry. So far this message seems to be getting out, as evidenced by the fact that the retailers and labour users are keen to work with the GLA. The risk is low and would allow the GLA to concentrate its efforts on the rogues as unlicensed trading does not necessarily mean that workers are being exploited. The only cost implication would be that the GLA would not be increasing its revenue.
9. The second option would be more risky for the GLA as it could expose us to legal challenge. This would be time consuming and could have an impact on the reputation of the GLA if the Authority was deemed to be acting *ultra vires*. And, the cost of a legal challenge could be greater than the actual revenue raised by this policy. This is a high risk option as it could lead to resources being diverted from compliance and enforcement activity to fund any legal challenge.
10. If the Board are keen to adopt this policy then option 3 would offer the lowest risk for the GLA. Backdating has never been tested with the industry and so there would be merit in putting this policy out for public consultation. If there was an appetite for the policy then the GLA could look at making the necessary changes to the regulations. However, this needs to be considered alongside the potential revenue that could be raised, as this would not be a cost neutral exercise. If the Board adopts this option, it is unlikely that this policy could be implemented during 2008/09 as the Licensing Rules and the Appeals regulations would need to be amended. The GLA would propose to include this in the work on fees for 2009/10 and so consult in the Autumn of 2008.