

Decision Sessions – Cabinet Member for Homes & Safer Communities and Transport

Report of the Assistant Director of Housing & Community Safety

EU Service Directive – Tacit Authorisation

Summary

1. The purpose of this report is to advise the Cabinet Members of the Council's obligation to comply with the EU Service Directive (the Directive), in relation to the requirements of tacit authorisation.

Background

2. For the purpose of the Directive, a competent authority is a body that regulates specific activities related to service provision, or which is responsible for authorisation and/or other formalities (registers, licences, permits) with which a business must comply in order to establish and carry out business in the UK whether it is a large business, a small or medium sized enterprise or a sole trader.
3. The Directive creates significant new opportunities for UK business. It provides for the opening up of the international market in services through the removal of unjustifiable barriers to service providers and the introductions of measures designed to create more jobs and facilitate the cross-border provision of services. It aims to make it easier for businesses to set up in other EU countries and to provide services across national borders on a temporary or permanent basis.
4. The Directive requires Member States to incorporate its provision into their domestic legislation. The Provision of Services Regulations 2009 (the Regulations) transposes the Directive into UK legislation.
5. Local authorities are required to ensure that : -
 - Businesses have on-line access to information about what permits, licences, registrations are required to set up a business in their area;

- Businesses are able to submit an on-line application to the Council for a permit, licence, authorisation, etc.
 - Businesses can use an electronic means of paying any fees that are required to accompany their applications.
6. The Directive assumes that all permissions, licenses and consents affected will have a pre-published determination period, where an application is not determined within this timeframe it is granted by default. This is known as 'tacit authorisation'. There is a mechanism whereby a permission, licence or consent can have 'tacit authorisation' disapplied if there is an overriding reason to do so in the public interest.
 7. Determination periods are published on the council website and stated on application forms or guidance issued. These periods are detailed in Annex 1.

Scope of the Directive

8. The Directive applies to a wide variety of service activities, whether provided to business or to consumers.
9. Many services which are licensed, consented, permitted or registered by the Council are covered by the Directive. The services affected are quite wide ranging, they include:-
 - Premises for civil ceremonies
 - Cooling towers notifications
 - Dog breeding establishments
 - Sex establishments
 - Permission to run a business on a pavement
 - Skip operators
 - Houses in multiple occupation
 - Entertainment premises
 - Street collections
 - Premise licences and club premise certificates
10. Article 2(2) of the Directive lists some important exclusions from its scope. It is important to note that the Directive applies to all services apart from those specifically excluded. The exclusions are: -
 - Non-economic services of general interest;

- Financial services, such as banking, credit, insurance, occupational or personal pensions, securities, investment funds, payments and investment advice;
- Electronic communications services and networks, and associated facilities and services;
- Services in the field of transport, including port services;
- Services of temporary work agencies;
- Healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;
- Audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;
- Gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;
- Activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;
- Social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;
- Private security services;
- Services provided by notaries and bailiffs, who are appointed by an official act of the government;

Action Points for Competent Authorities

11. The Directive places certain obligations on local authorities, these are:
 - Screening – there is a requirement to screen all licences, permits, authorisation schemes, administration practices to ensure they are non-discriminatory, necessary and proportionate.
 - Tacit authorisation – all applications must be processed in a reasonable timescale (which is fixed and made public). If they are not they will be deemed granted.
 - Fees must be proportionate to the effective cost of the procedure dealt with.

- Point of single contact – service providers must be able to access information about licences/permits on-line and apply on-line. There must also be an electronic means of payment.
12. The council current position regarding these obligations are:
- Screening - officers regularly review procedures and processes.
 - Tacit authorisation – will be in place once Cabinet Member approval is received.
 - Fees – officers review fees annually to make sure they are proportionate.
 - Point of single contact – a number of services can be complete and pay for on-line. The council are currently working towards improving this service by providing more online systems by a single point of contact.

Tacit Authorisation

13. The EU Service Directive requires that all licence applications and administrative procedures applicable to service providers must be processed within a reasonable time period, which is fixed and made public in advance. Where no statutory timescale exists the authority has discretion to determine a reasonable and appropriate timescale.
14. When a response to an application does not occur within the time period set the authorisation will be deemed to have been granted tacitly unless there are good policy reasons otherwise.
15. Mandatory timescales will run only from the time when all valid documentation has been submitted to the authority. In the case of incomplete applications, the authority must inform applicants as quickly as possible of the need to supply any additional documentation. In exceptional circumstances, the time period may be extended by the authority once but only if it can be justified by a sufficiently complex case.
16. It is acknowledged that tacit authorisation could lead to permissions, permits or licences being granted in default where the application has not been considered in the specified timeframe. Therefore, in the public interest, there may be certain types of matters where it is considered that tacit authorisation should not

apply. The legislation makes provision for exemptions to be made where there is an overriding reason of public interest.

17. It is therefore up to each local authority to decide in what circumstances tacit authorisation should not apply. This should be done on a case by case basis having due regard to the overriding public interest, and robust reasons should be given in relation to each proposed exemption.
18. Where possible the council always determines permissions, licences and consents within the determination period pre-published. On a small number of occasions having due regard to overriding public interest the council may not meet the determined timeframe, for example awaiting a response from the police or fire authority, all parties concerned being unable to attending meetings / hearings / committees to discuss/determine applications within the timeframe.
19. Members are requested to agree to the permissions, licences and consents where it is proposed that tacit authorisation should be disapplied for the overriding public interest outline at Annex 1.

Consultation

20. The implementation of the EU Service Directive is required by central government. This report relates to the councils delivery of this directive.

Options

21. Option 1: agree the list of permission, licences and consents where tacit authorisations should be disapplied as outlined in Annex 1.
22. Option 2: amend the list of permission, licences and consents where tacit authorisations should be disapplied.

Analysis

23. Tacit authorisation will apply to a number of permission, licences and consents issued by the authority, for example:
 - Cooling tower notifications
 - Car boot sales consents
 - Food premises registrations

- House to house collections permits
 - Market stall licences
 - Occasional street trading consents
 - Static / mobile street collections permits
 - Temporary event notices
24. Officers have identified a number of procedures where tacit authorisations should be disapplied for the overriding public interest factors.
25. The facility is in place for customers to apply and pay online for a number of permissions, licences and consents issued by the authority.

Implications

26. **Financial:** There are no financial implications associated with this report.
27. **Human Resources:** There are no Human Resources implications associated with this report.
28. **Equalities:** There are no Equalities implications associated with this report.
29. **Legal:** Failure to comply with the European Service Directive would leave the Council open to legal challenge within both the UK and European courts. Also, applicants could gain tacit authorisation under the Directive should the council fail to implement it correctly.
30. **Crime and Disorder:** There are no crime and disorder implications associated with this report.
31. **Information Technology (IT):** There are no IT implications associated with this report.
32. **Other:** There are no other implications associated with this report.

Risk Management

33. There are no known risks associated with this report.

Recommendations

34. That the Cabinet Member approves option 1.

Reason: It is a requirement of the EU Service Directive that councils have tacit authorisation in place.

Contact Details

Author:

Lesley Cooke
Licensing Manager
Phone: 551515

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director (Housing and
Community Safety)

**Report
Approved**



Date

Specialist Officer Implications: None
Wards Affected:

All

Background Papers:

The European Services Directive Guidance for Local Authorities
Guidance for Business on the Provisions of Service Regulations

Annexes

Annex 1: List of Procedures