

Tacit Authorisation and ELMS

Service sector licences/permits generally fall into one of the following four categories:

1. Registrations and Notifications

- These are formalities where there is no concept of “approval” beyond checking that the applicant has completed their application correctly (eg: checking that they have supplied reasonable answers to questions or paid the correct fee).
- These should always be set as ‘Tacit consent applied = “Yes”’. Payment only services will also be set as “Yes” for similar reasons.

2. Consent Period set by Statute

- These are formalities where the decision period is set by statute and applicants will be granted their licence unless some objection is made and/or the application is incomplete (eg: the Licensing Act 2003 in England and Wales).
- These should always be set as ‘Tacit consent applied = “Yes”’.
- The list of services covered in this way is available on the ELMS portal at <http://elmsportal.businesslink.gov.uk/media/127> under “Fixed TC”.

PLEASE NOTE: Exceptions to where the Consent Period is set by Statute:

- We have excluded the Civic Government (Scotland) Act and Scottish Houses of Multiple Occupancy from this list as legislation sets a tacit consent period of six months and one year respectively.
- If Scottish authorities wish to offer a shorter target completion period, then they are welcome to do so; there are two ways to do this:
 - a) Set target completion period shorter and set the PSC to say tacit consent applied = “NO” (as long as it is made clear that tacit consent will apply after the statutory period)
 - b) Set tacit consent applied = “YES” and then set the period equal to, or less than, the statutory period.
- Another exception is minor variations under the Licensing Act 2003. The processing period for these is only 15 days and tacit consent is set as “NO” based on advice from DCMS. This is to reduce the risk of applicants using this form to apply for a major variation which has a 28 day period and it slipping through unnoticed.

3. Other Formalities that are IN Scope of the Services Directive

- For all remaining services that are in scope of the Services Directive, whether tacit consent applies or not is based on Overriding Reasons Relating to Public Interest (ORRPI).
- The starting point is that tacit consent does apply, but tests are applied under ORRPI. These are ones where you may wish to differ from the default provided – in either direction – for which you must be able to provide a justification.
- Some authorities have provided justifications in Email 3 such as “difficult to supply a vet” or “needs the approval of council members.” In such cases, whilst your ELMS formalities will be configured to set Tacit Consent Applied = “NO”, these are

justifications based on administrative convenience rather than ORRPI and are highly unlikely to stand up under challenge and you may therefore wish to reconsider your decision.

4. Formalities that are OUT of Scope of the Services Directive

- Finally, some online forms are offered for services that have subsequently been deemed as out of scope. In these cases, unless the relevant statute includes tacit consent, the ELMS service will set tacit consent applied to “NO”. This will be controlled centrally and authorities will need to redeploy.

How do I ensure that I have the right set of tacit consents for my authority on ELMS?

- If you have not yet completed “Email 3” (Task 8), you must do so immediately.
- If you have already replied to “Email 3” (Task 8) and you want to submit a change, you can resubmit - you need only list what you would like to change. From Monday 1st February, this will be via self service on the ELMS portal at: <http://elmsportal.businesslink.gov.uk/authority/tasks/9>.
- Note: BIS processes “Email 3” (Task 8) responses once a week and it takes five working days to process your data requests. If these are correct, they are loaded onto the live system each weekend. If you supply data to us by Friday of week one, it will therefore be loaded onto the system on the weekend of week two.
- When configuring your formalities, **please ensure that the target processing period is changed from 0 – otherwise it means approval is immediate!!**

Benchmarking

- A report is currently in preparation for LACORS that will show tacit consent settings, including whether it applies or not, and the time period.
- This report will update the material currently existing on the Services Directive [Community of Practice](#) site. This will allow for benchmarking with the majority of authorities as ELMS is rolled out.