

PRIVATE SECURITY INDUSTRY ACT 2001

EXPLANATORY NOTES

COMMENTARY

Section 1: The Security Industry Authority

13. *Subsection (1)* establishes the Security Industry Authority. *Subsection (2)* defines the functions of the Authority. These are:
- to license individuals and to approve companies;
 - to keep under general review the private security industry and the operation of the legislative framework;
 - to monitor the activities and effectiveness of those working in the industry;
 - to conduct inspections;
 - to set and approve standards of conduct, training and supervision within the industry; and
 - to make recommendations to improve standards.
14. *Subsection (3)* empowers the Authority to do those things it considers necessary or helpful in discharging its functions. *Subsection (4)* permits the Authority to make proposals to the Secretary of State to modify any provision contained in this Act, and to undertake, arrange or support research relating to the provision of security services. *Subsection (5)* ensures that the Authority is not a Crown body. *Subsection (6)* introduces Schedule 1, which gives details of the Authority's constitution and powers.

Schedule 1

15. This Schedule contains detailed provisions about the constitution of the Security Industry Authority, including
- membership (appointment, tenure and remuneration) (*paragraphs 1-5*);
 - employment of staff (*paragraphs 6-7*);
 - its ability to establish committees (*paragraph 8*);
 - delegation of the Authority's functions to committees and staff (*paragraph 9*);
 - the conduct of the Authority's proceedings (*paragraphs 10-11*);
 - the seal of the Authority and use of the Authority's documents as evidence (*paragraphs 12 and 13*);
 - financial matters (payments to the Authority, accounts and auditing (*paragraphs 14-16*); and
 - the Authority's production of an annual report, which the Secretary of State is to lay before Parliament (*paragraph 17*).

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16. *Paragraphs 18 to 23* extend to the Authority the provisions of legislation relating to public records, the Parliamentary Commissioner, the payment of pensions, disqualification for election to Parliament or the Northern Ireland Assembly and freedom of information. *Paragraph 24* provides definitions of the terms used in Schedule 1.

Section 2: Directions by the Secretary of State

17. The Authority must comply with directions which the Secretary of State gives it (*subsection (1)*) and must provide any information that the Secretary of State requests (*subsection (3)*). The Secretary of State must consult the Authority before giving it any directions (*subsection (2)*).

Sections 3 –6 relate to the requirements for individuals to have a licence to work in designated sectors of the private security industry.

Section 3: Conduct prohibited without a licence

18. *Subsection (1)* creates the offence of engaging in conduct for which a licence is required (“licensable conduct”) when not in possession of an appropriate licence. The penalty for the offence - as set out in *subsection (6)*– is, on conviction in a magistrates’ court, up to six months’ imprisonment or a fine up to £5,000, or both. *Subsection (2)* and *Schedule 2* together spell out what constitutes licensable conduct. *Subsection (3)* defines “designated activities” of a security operative as those designated by the Secretary of State, who can designate different activities in relation to different types of licensable conduct.

19. The following categories of people will need to have licences:

- security contractors, directors of security companies and partners of security firms;
- employees of security contractors, security companies and security firms;
- agency operatives, whether they are directors or partners of the agency, employees of the agency or individuals who work for the agency on a contract basis;
- employees who manage or supervise security operatives supplied under contract by a security contractor, a security company or a security firm or by an agency;
- agency-supplied managers or supervisors of security operatives supplied under contract;
- directors of security companies and partners of security firms who do not themselves carry out designated activities;
- in-house door supervisors and wheelclaspers and their employers, managers and supervisors;
- others who wheelclamp vehicles on private land against a release fee.

20. *Subsection (4)* indicates that persons employed in companies using security services supplied under a contract for service are not themselves subject to regulation by virtue of their assuming management or supervisory responsibilities in relation to those security staff.

Schedule 2

21. This Schedule (which is given effect by *section 3(5)*) describes the activities that are subject to control under the Act. Part I relates to the controlled activities of security operatives. Part II provides for additional controls in relation to door supervisors and wheelclaspers.

Part I

General

22. *Paragraph 1(1)* links the provisions in the main part of the Act to the activities listed below. *Paragraph 1(2)* allows the Secretary of State, by order, to add activities to, or exclude them from, Schedule 2. Under *Paragraph 1(3)* such orders would be subject to affirmative resolution.

Manned guarding

23. *Paragraph 2(1)* defines the activities covered as guarding premises against unauthorised access or occupation, outbreaks of disorder or damage; guarding property against destruction, damage or theft; and guarding one or more persons against assault. *Paragraph 2(2)* ensures that the definition of guarding premises includes door supervisors. *Paragraph 2(3)* provides that references to guarding include providing a physical presence, or carrying out patrols or surveillance to deter something happening or report what has happened. *Paragraph 2(4)* excludes persons solely checking tickets, invitations or passes. *Paragraph 2(5)* excludes persons who are not security operatives or ticket collectors, but whose work nevertheless involves a degree of maintaining order and discipline in a group. *Paragraph 2(6)* excludes persons who temporarily undertake any manned guarding activities in response to a sudden or unexpected occurrence.

Immobilisation of vehicles (wheelclamping)

24. *Paragraph 3(1)* defines the activity as immobilising a vehicle with an immobilising device. *Paragraph 3(2)* restricts the application to immobilisation performed in order to stop the removal of the vehicle by a person entitled to remove it. *Paragraph 3(3)* excludes vehicles parked on public highways which are covered by the provisions of the Road Traffic Act 1988.

Private investigators

25. *Paragraph 4(1)* defines the activities covered as surveillance, inquiries or investigations carried out for the purpose of obtaining information about a person or about a person's activities or whereabouts. Under *Paragraph 4(2)-(10)* the following activities are excluded:
- market research activities;
 - activities exclusively concerned with a credit check;
 - the professional activities of practising solicitors and barristers;
 - the professional activities of practising accountants
 - the professional activities of journalists and broadcasters;
 - activities relating to reference to registers which are open to the public; registers or records to which a person has a right of access; and published works;
 - activities carried out with the knowledge or consent of the subject of the investigation;
 - activities of a person which are incidental to those of a security operative.

Security consultants

26. *Paragraph 5(1)* defines the activities covered as giving advice about security precautions in relation to a person or property or the acquisition of services involving a security operative. *Paragraph 5(2)* excludes persons who provide legal or financial

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advice. *Paragraph 5(3)* excludes persons who are members of relevant accountancy bodies, as defined in Section 25. *Paragraph 5(4)* excludes persons who provide training.

Keyholders

27. *Paragraph 6(1)* defines the activities covered as keeping custody of, or controlling access to, any key or similar device for operating any lock. *Paragraph 6(2)* excludes those involved in the sale of premises or property. *Paragraph 6(3)* excludes the activities of a person which are incidental to those of a security operative. *Paragraph 6(4)* defines a lock.

Part II

General

28. *Paragraph 7(1)* explains that references earlier in the Act to “activities subject to additional controls” are to be read as applying to the activities covered in Part II. *Paragraph 7(2)* allows the Secretary of State, by order, to add activities to, or exclude activities from, this Part of Schedule 2. Under *Paragraph 7(3)* such orders would be subject to affirmative resolution.

Door supervisors etc for public houses, clubs and comparable venues

29. *Paragraph 8(1)* defines the activities covered by this paragraph as the activities of manned guards when performed in relation to licensed premises when the premises are open to the public. *Paragraph 8(2)* defines licensed premises for the purposes of this Part, and *paragraph 8(3)* defines the exclusions from that definition. *Paragraph 8(4) and (5)* describes when licensed premises are considered to be open to the public, and what is meant by occasions on which they are used.
30. *Paragraph 9* specifies wheelclamping as the second type of security activity to be subject to the “additional controls”

Section 4: Exemptions from licensing requirement

31. *Subsection (1)* allows the Secretary of State to make regulations exempting people from the requirement to have a licence in certain circumstances. The circumstances arise when a person engaged in security activities is, in the judgement of the Secretary of State, already subject to vetting arrangements which are equivalent to those introduced by this legislation. In such circumstances it is unnecessary for them to be subject also to the proposed new licensing requirements. *Subsection (2)* enables the Secretary of State to delegate to the Authority the power to decide that equivalent vetting arrangements apply in respect of employers. *Subsection (3)* requires these other vetting arrangements to satisfy the Secretary of State that they offer equivalent protection to the public.
32. *Subsection (4)* establishes that no offence under Section 3 (which defines those security activities for which a personal licence will be required) is committed by someone who has a pending application for a licence to operate as a director, partner or employee in the security industry if the company of which he is a director, the firm of which he is a partner or his employer has been registered under Section 14 as an approved supplier of security services and is authorised by the Authority temporarily to engage someone in such circumstances. *Subsection (5)* extends this facility to agency staff.

Section 5: Offence of using unlicensed security operative

33. *Subsection (1)* creates an offence of employing an unlicensed person to carry out security activities for which a licence is required. *Subsection (2)* provides two lines of defence. Under the first, it is a defence to show that the accused neither knew, nor had reasonable grounds to suspect, that the operative did not have a licence. Under the second, it is a defence to show that the accused took all reasonable steps

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to ensure that the operative would not engage in activities for which he did not hold a licence. *Subsection (3)* allows for a defence in the case of services supplied by a person exempted from the need for a licence under Section 4. *Subsection (4)* sets out the penalties for an offence under this Section.

Section 6: Offence of using unlicensed wheelclampers

34. *Subsection (1)* makes it an offence for an occupier of land to permit an unlicensed person to carry out on that land wheelclamping activities for which a licence is required. *Subsections (2) to (4)* make similar provisions in respect of defences and penalties to those in subsections (2) to (4) of Section 5.

Sections 7 - 13 relate to the licensing functions of the Authority

Section 7: Licensing criteria

35. *Subsection (1)* requires the Authority to prepare and publish the criteria that it will apply in reaching decisions on granting, modifying or revoking licences. *Subsection (2)* allows the Authority to revise the criteria as and when necessary and requires that any revised criteria be published. The criteria, and any revisions of them, must be approved by the Secretary of State under *subsection (5)*.
36. *Subsection (3)* requires that the criteria ensure that applicants are fit and proper persons to be engaged in licensable security activities, and may also specify the skills required to perform such activities or relate to other criteria determined by the Authority. *Subsection (4)* permits the Authority to apply different criteria to different areas of the industry, and to apply different criteria to the initial issue and to the renewal of a licence. *Subsection (6)* requires the Authority to publish its criteria and any revisions to them in a way that it judges will bring them to the attention of those affected.

Section 8: Licences to engage in licensable conduct

37. *Subsection (1)* permits the Authority to issue licences. *Subsection (2)* requires licence applications to be in a form and to supply such information as regulations may require. *Subsection (3)* requires the Authority to apply the criteria applicable by virtue of Section 7 when deciding whether or not to grant a licence.
38. *Subsection (4)* permits the Authority to refuse to grant a licence until satisfied about the identity of the applicant; until any additional information requested of the applicant has been provided; and until any further enquiries undertaken by the Authority have been completed. *Subsection (5)* requires licences to be in the form, to contain information and to be subject to such conditions as may be prescribed by regulations. *Subsection (6)* permits the Authority to attach additional conditions to licences above and beyond those which are prescribed in regulations.
39. *Subsection (7)* requires applicants for licences to pay the Authority a fee of an amount prescribed by the Secretary of State. *Subsection (8)* makes a licence normally valid for a period of three years and enables the Secretary of State to specify different validity periods by order.

Section 9: Licence conditions

40. *Subsection (1)* spells out some of the types of conditions that can be prescribed by the Secretary of State in regulations under section 8(5). These relate to training, registration and insurance; the manner in which activities are to be carried out; the production and display of the licence; information that the licensee is to provide to the Authority from time to time. The Secretary of State may prescribe any other conditions he thinks fit.
41. *Subsection (2)* permits conditions to include obligations for the licensee to meet requirements or directions stipulated by the Authority. *Subsection (3)* makes clear that

references in *subsection (1)* to “licensees” include persons themselves engaging in door supervisor or wheelclamping activity, as well as their employers. *Subsection (4)* creates an offence of contravening the conditions of a licence. The penalty for the offence is, on conviction in a magistrates’ court, up to 6 months imprisonment or a fine not exceeding level 5 on the standard scale, or both. *Subsection (5)* provides a defence of due diligence.

Section 10: Revocation and modification of licences

42. *Subsection (1)* empowers the Authority to modify, revoke or suspend a licence, or any conditions attaching to it. *Subsection (2)* requires the Authority to observe the criteria in force under Section 7, when considering whether any such action would be appropriate. *Subsection (3)* permits the Authority to suspend a licence for a specified period of time.

Section 11: Appeals in licensing matters

43. *Subsection (1)* provides an avenue of appeal to the appropriate magistrates’ court against a decision of the Authority to refuse to grant a licence, a decision to modify or revoke a licence or a decision to impose conditions upon the grant of a licence. Either the Authority or the original appellant may bring a further appeal to the Crown Court against the decision of the magistrates’ court (*subsection (4)*). The appropriate magistrates’ court in which any appeal is to be launched is, by virtue of *subsection (3)*, the court for the petty sessions area for the address in respect of which the appellant is or would be recorded in the register of licence holders created by Section 12. Appeals must be brought within 21 days of notification of the Authority’s decision (*subsection (2)*), and the courts must (by virtue of *subsection (5)*) decide the appeal on the basis of the criteria applied by virtue of Section 7. *Subsection (6)* provides that, where a licence renewal is refused or a licence is revoked, the licence shall nonetheless remain in force for specified periods of time relating to the lodging, deciding and effect of the appeals processes.

Section 12: Register of licences

44. *Subsection (1)* requires the Authority to establish and maintain a register of individual licensees, which contains the information specified in *subsections (2) and (3)*. *Subsection (4)* requires the Authority to make the register open to public inspection and to make arrangements for publicity to be given to the revocation or modification of a licence so that it will reach interested persons. *Subsection (5)* allows the Authority to charge a fee for access to or copies of the register.

Section 13: Licensing at local authority level

45. *Subsections (1) and (2)* enable the Secretary of State to provide for local authorities to carry out the Authority’s functions relating to the granting, modification and revocation of licences for door supervisors. *Subsection (3)* allows the Secretary of State to impose conditions and requirements on local authorities and to issue directions; to permit any of the functions delegated to a local authority to be carried out concurrently by the Authority; and to provide for local authorities to retain any fees paid to them by applicants for licences. *Subsection (4)* applies the provisions of Section 11 (appeals in licensing matters) to licensing at local authority level, so that the same appeals processes will be available from decisions of local authorities as will exist against decisions of the Authority.
46. *Subsection (5)* permits the Secretary of State to repeal or modify any local schemes of registration of private security staff that may be in force when the Act comes into force or when any delegation of the Authority’s functions takes place under *subsection (1)*. *Subsection (6)* requires the Secretary of State to consult the Authority before making any arrangement to transfer any of its functions to local authorities.
47. *Subsection (7)* defines what this section means by the term “local authority”.

Sections 14 - 18: Approved contractors

48. **These sections establish a voluntary system of inspection of providers of security services, under which those which satisfactorily meet the agreed standards may be registered as approved, and may advertise themselves as such.**

Section 14: Register of approved contractors

49. *Subsection (1)* requires the Authority to establish and maintain a register of approved providers of security services. *Subsections (2) and (3)* require the Authority to ensure it contains details of all those who are approved. *Subsection (4)* requires the Authority to make the register open to public inspection and to arrange for publicity to be given to the revocation or modification of a licence so that it will reach interested persons. *Subsection (5)* allows the Authority to charge a fee for access to, or copies of, the register.

Section 15: Arrangements for the grant of approvals

50. *Subsection (1)* requires the Authority to make arrangements for granting approvals to providers of security services who seek such approval. *Subsection (2)* requires the scheme to ensure that:
- Approval can be granted for some or all of the services offered by the supplier;
 - Approval is granted only if the conditions of *subsection (3)* have been met;
 - Approval can be granted on certain conditions;
 - An individual can refuse approval if it is different from the terms sought;
 - There is a system for handling complaints which the approved contractor's own complaints procedures do not dispose of;
 - Approval will cease after three years or after such a period as the Secretary of State may have specified by order;
 - The approval can be modified or withdrawn.
51. *Subsection (3)* sets out the conditions that must be met before an approval is granted. The Authority should be satisfied that the person seeking approval meets and will comply with requirements laid down by the Secretary of State and the Authority and is otherwise a fit and proper person for approval as a supplier of security services. *Subsection (4)* enables certain of the conditions to be framed by reference to expert opinion.
52. *Subsection (5)* expands on the further requirements which may be imposed by conditions in the approval. They are requirements
- to provide information as specified;
 - that may be framed by reference to expert opinion.
53. *Subsection (6)* requires that the conditions that are imposed on any approval for the supply of information or the maintenance of complaints / disputes procedures must be restricted to conditions that are relevant to the matters mentioned in *subsection (3)*. *Subsection (7)* permits the Authority to enforce any requirement that is made on any applicant for approval to provide information. *Subsection (8)* allows the Authority to charge fees.

Section 16: Right to use approved status

54. *Subsection (1)* allows the Authority to approve the way in which contractors registered under section 14 may advertise themselves as approved. (In practice, it is expected that they will be able to show a designated mark or logo on their stationery, in their advertising, etc.) *Subsection (2)* makes it an offence to claim approved status when this has not been awarded, or to misrepresent the terms under which it has been awarded. *Subsection (3)* sets out the penalty for the offence created by *subsection (2)*. The penalty is, on conviction in a magistrates' court, a fine not exceeding the statutory maximum or, on conviction on indictment, a fine. *Subsection (4)* ensures that a person cannot evade the offence by holding himself out as approved without claiming to be on the register.

Section 17: Imposition of requirements for approval

55. *Subsection (1)* empowers the Secretary of State to provide, by regulations, that only approved contractors may provide specified security services. This might be done in relation to any specified activities. Regulations made under this subsection would thereby turn the voluntary approved suppliers scheme into a compulsory one.
56. *Subsection (2)* makes it an offence to contravene any prohibition imposed by regulations under *subsection (1)*. The effect of this is that, if the voluntary approved contractors scheme is ever made compulsory, it will be an offence to provide specified security services without being an approved contractor. *Subsection (3)* makes it an offence for a person who has approved contractor status to contravene any conditions attached to the approval. The penalty is set out in *subsection (4)*.
57. *Subsection (5)* allows the Secretary of State, under the compulsory scheme, to build into individual approvals conditions about the handling of complaints against the relevant firm, and more generally relating to the arrangements relating to the introduction of the compulsory scheme.

Section 18: Appeals relating to approval

58. *Subsection (1)* provides an avenue of appeal to the appropriate magistrates' court against a decision of the Authority to refuse to grant approved contractor status, a decision to modify or withdraw approved contractor status or a decision to include conditions as part of an approval. Either the Authority or the original appellant may bring a further appeal to the Crown Court against the decision of the magistrates' court (*subsection (4)*). The appropriate magistrates' court in which any appeal is to be launched is, by virtue of *subsection (3)*, the court for the petty sessions area for the address in respect of which the appellant is or would be recorded in the register of approved contractors created by Section 14. Appeals must be brought within 21 days of notification of the Authority's decision (*subsection (2)*). *Subsection (5)* provides that, where renewal of approved contractor status is refused or approval is withdrawn, the approval shall nonetheless remain in force for specified periods of time relating to the lodging, deciding and effect of the appeals processes.

Sections 19 - 22 relate to the Authority's powers of entry and inspection, and to its ability to demand the production of information.

Section 19: Powers of entry and inspection

59. *Subsection (1)* enables a person who is authorised by the Authority to enter premises owned or occupied by a regulated person (as defined by *subsection(8)*), other than premises occupied exclusively for residential purposes as a private dwelling. *Subsection (2)* requires the regulated person to produce documents or information in connection with matters which are subject to regulation under the Act, i.e. licensable conduct,

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the provision of security services, and any conditions attaching to approved contractor status under a compulsory scheme.

60. *Subsection (3)* requires the person exercising powers of entry under *subsection (1)* to do so only at reasonable times. *Subsection (4)* imposes certain requirements upon the person exercising the right of inspection, relating to stating the purpose of the inspection, evidence of identity and authorisation, and making a record of the inspection and giving a copy of the record to any person on the premises at the time of the inspection, if requested to do so.
61. *Subsection (5)* makes it an offence:
- to obstruct a person exercising the power of entry under *subsection (1)*;
 - to fail without reasonable excuse to produce documents or information under *subsection (2)*; or
 - for a person exercising these powers to disclose information obtained in the process.
62. *Subsection (6)* allows a person exercising authority under *subsection (5)* to disclose information obtained under that authority only for the purposes of the Authority's carrying out its functions, or for any criminal proceedings. *Subsection (7)* sets out the penalty for an offence under this section.
63. *Subsection (8)* defines a regulated person as:
- a holder of a licence under the Act;
 - a non-licence holder engaging in licensable conduct;
 - an approved provider of security services under a compulsory approved contractor scheme, or
 - a non-approved provider of security services under a compulsory approved contractor scheme, ie someone who is thereby prohibited from providing security services.

Section 20: Guidance as to exercise of power of entry

64. *Subsection (1)* requires the Authority to prepare and publish guidance about the manner in which persons authorised with the power of entry and inspection under Section 19 should exercise it and the manner in which they should conduct themselves. *Subsections (2) and (3)* allow the Authority to revise the guidance from time to time, and require it to publish both the initial guidance and any revisions to it in a way which will bring it to the attention of those affected by it.

Section 21: Access to enhanced criminal record certificates

65. This section amends the Police Act 1997 to permit the Authority to obtain an enhanced criminal record certificate for anyone applying to it to be licensed as a door supervisor.

Section 22: False information

66. *Subsection (1)* makes it an offence for anyone knowingly or recklessly to make a false statement to the Authority, in connection with the exercise of its functions. *Subsection (2)* sets out the penalty.

Section 23: Criminal liability of directors etc

67. This provides a standard "director's liability" section, by which, if a body corporate is convicted of an offence, a director or senior officer, or anyone purporting to act in such

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a role, who is shown to have consented to, connived in, or been negligent in preventing that offence, is also liable to prosecution.

Section 24: Orders and regulations

68. This section contains provisions about subordinate legislation to be made under this Act. *Subsection (1)* defines “prescribed” as prescribed by regulations made by the Secretary of State, or determined in such a way and by such people as may be provided for in any such regulations. *Subsection (2)* requires the Secretary of State to make any orders or regulations by means of statutory instrument.
69. *Subsection (3)* specifies the negative resolution procedure for most statutory instruments under the Act. The exceptions are statutory instruments which aim to extend the scope of compulsory licensing of in-house security operatives beyond wheelclampers and door supervisors or which amend the scope of those sectors of the industry providing security services under contract, as defined in Schedule 2. These require affirmative resolution. *Subsection (4)* requires the Secretary of State to consult the Authority before making any orders or regulations. *Subsection (5)* allows the Secretary of State to make orders and regulations reflecting different provisions for different cases and containing any incidental provisions as he thinks fit.

Section 25: Interpretation

70. *Subsection (1)* provides definitions of the terms used in this Act. *Subsection (2)* provides that references to a member of a firm include those liable as a partner under s.14 of the Partnership Act 1890.

Section 26: Short title, commencement and extent

71. *Subsection (1)* provides the name of the Act. *Subsection (2)* provides for commencement by commencement order. *Subsection (3)* extends the Act to the United Kingdom for the purposes of the amendments made to the Police Act 1997 by Section 21 and the amendments made to the Superannuation Act 1972, the House of Commons Disqualification Act 1975 and Northern Ireland Assembly Disqualification Act 1975, the Public Records Act 1958; Parliamentary Commissioner Act 1967, and Freedom of Information Act 2000, that are contained in Schedule 1. Otherwise (*subsection 4*) the Act extends to England and Wales only.