

EXPLANATORY MEMORANDUM TO
THE PRIVATE SECURITY INDUSTRY ACT 2001 (AMENDMENTS TO
SCHEDULE 2) ORDER 2006

2006 No.1831

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2006 amends Part 1 of Schedule 2 to the Private Security Industry Act 2001 (“the 2001 Act”) to add or remove activities from activities liable to control under the Act as follows:

(a) the activities of several groups of persons who work for the prison service, immigration service, the police, the British Transport Police, the Civil Nuclear Constabulary and harbour authorities are removed from the scope of the manned guarding provisions and, in certain cases, from the vehicle immobilisation and removal activities;

(b) the activities of certain bailiffs and of persons who remove abandoned vehicles on behalf of the police and local authorities are removed from the scope of vehicle removal activities and, in certain cases, from the vehicle immobilisation activities; and

(c) the activities of removing a clamp from a vehicle, returning a vehicle which has been removed or restricted and charging for either of those activities are added to the scope of the vehicle immobilisation and removal activities where they are carried out in connection with the clamping or removal of that vehicle in circumstances where a charge is going to be imposed.

2.2 This Order also amends Part 2 of Schedule 2 to the 2001 Act to provide that:

(a) manned guarding activities on certain licensed premises are only subject to “additional controls” (essentially the licensing of in-house staff as well as contractors) when undertaken at a time when alcohol is being supplied or when entertainment is being provided; and

(b) activities involving only the use of CCTV are not subject to additional controls.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The 2001 Act included powers for the creation of the SIA as the regulator of the private security industry.

4.2 The sectors (licensable activities) within the private security industry that are or will be subject to regulation by the SIA are door supervisors, vehicle immobilisers (including the removal and restriction of vehicles), manned guards, keyholders, security consultants and private investigators.

4.3 The SIA commenced the regulation of door supervisors on a geographical basis from March 2004, and this was completed by April 2005. The requirement to hold an SIA licence to undertake vehicle immobiliser activities commenced in May 2005. The manned guarding sector (which comprises the categories of security guards, cash and valuables in transit, close protection and public space surveillance CCTV operators) and the keyholder sector, have been required to hold a licence from 20 March 2006 by virtue of the Private Security Industry Act 2001 (Designated Activities) Order 2006. The smaller groups of private investigators and security consultants are not yet required to be licensed.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Home Office Parliamentary Under-Secretary of State, Vernon Coaker, has made the following statement regarding human rights:

“In my view the provisions of the Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2006 are compatible with the Convention rights.”

7. Policy background

7.1 The 2001 Act was brought in to regulate the private security industry in England and Wales. The industry has grown substantially in recent years and its work has changed from a largely passive role into one with far greater and more active contact with the public. Previously there had been little or no self-regulation and standards across all sectors of the industry varied widely. The 2001 Act was passed to protect and reassure the public by excluding criminal elements, creating a voluntary accreditation scheme for firms, and raising standards in the industry.

7.2 On 20 March 2006 it became an offence to work as a manned guard without an SIA licence. A designation order, The Private Security Industry Act 2001 (Designated Activities) (Amendment) Order 2006 (S.I. 2006/824), came into force on that date to remove certain groups from the requirement to be licensed. This included several groups of persons who work under contract for the prison service, immigration service, and the police. All those groups are covered by the current Order. The EM for the Designation Order explained that it was being laid because work on an affirmative Order under the powers now being used took longer than expected and ran out of time, and the date on which licensing became mandatory could not itself be deferred until the Order was ready, without the greatest inconvenience to the security industry.

7.3 The Home Office explained in the earlier EM that it considers the decision to remove these persons from the licensing requirement to be one that would benefit from scrutiny by both Houses. This Affirmative Order has been drafted to honour that commitment.

7.4 This Order also covers a number of additional activities.

7.5 This Order is necessary to amend Schedule 2 to ensure the activities listed in paragraph 2.1 (a) above are not required to be licensed. This includes all the groups of persons who work under contract for the prison service, immigration service and the police who are already covered by The Private Security Industry Act 2001 (Designated Activities) (Amendment) Order 2006 (S.I. 2006/824). The groups covered by that Order are acting in a highly secure environment and all have undergone criminal records bureau or criminal records office checks before they are able to work. Many are trained to requirements approved by the Secretary of State.

7.6 Since that Order was made, further consultation has taken place and revealed that there are other activities which also need to be removed from the scope of paragraph 2 of Schedule 2 to the 2001 Act. The activities of additional groups of persons who work for the police (including Police Community Support Officers), the British Transport Police, the Civil Nuclear Constabulary and harbour authorities have now also been removed from the scope of that provision. Some of these groups also undertake vehicle immobilisation and removal activities and therefore their activities are also removed from the scope of paragraphs 3 and 3A of Schedule 2 to the 2001 Act.

7.7 The groups of persons covered by this Order who work for the police (including Police Community Support Officers), the British Transport Police, the Civil Nuclear Constabulary and the harbour authorities all have to undergo criminal records bureau checks before they are able to work. There is in practice no material difference between the screening and training that they receive and that of police officer colleagues who are not within the scope of the Act.

7.8 The Order also ensures the activities listed in paragraph 2.1 (b) are not required to be licensed, to make clear that bailiffs who immobilise or remove vehicles and those who remove abandoned vehicles on behalf of local authorities or the police are not undertaking licensable activity. Those removing abandoned vehicles on behalf of local authorities or the police rarely undertake licensable activity because in the vast majority of cases no charge is made to return the vehicle to its owner. This amendment will mean that these groups are no longer working illegally in the rare circumstances where a vehicle removed by these groups was not genuinely abandoned, the owner seeks to re-claim it and the contractor makes a charge to recover his costs.

7.9 The Order also adds to paragraphs 3 and 3A of Schedule 2 to the 2001 Act the activities listed in 2.1(c) to close a loophole in the requirement to be licensed in the vehicle immobilisation sector. The Act currently only covers the activity of attaching a wheel clamp or restricting / removing a vehicle which is elsewhere than on a public road. The amendment will make clear that those people who, in connection with such vehicle immobilisation or removal, remove a clamp, return a vehicle or charge for either of those activities do also need to be licensed.

7.10 This Order limits the requirement of certain door supervisors to be licensed to when alcohol is being sold or entertainment is taking place, because it is accepted that this is a particular problem at premises where alcohol and entertainment are only provided on a few occasions throughout a year. It means that on other occasions, persons will not be undertaking manned guarding activities that are subject to additional controls, so will not need to be licensed as door supervisors.

7.11 Finally, the Order also removes CCTV activities from those activities subject to additional controls, so that those who undertake CCTV activity in relation to licensed premises would not also require a SIA Door Supervisor licence unless they were also undertaking manned guarding activities.

8. Impact

8.1 A Regulatory Impact Assessment was carried out before the licensing of the door supervisor, vehicle immobilisation and manned guarding sectors. No separate Regulatory Impact Assessment has been carried out for this instrument.

8.2 The impact on the public and private sector is minimal. So far as we are aware none of those affected by this amending order have acquired licences.

9. Contact

John Cairncross at the Home Office Tel: [0207 035 0227 or e-mail: john.cairncross@homeoffice.gsi.gov.uk] can answer any queries regarding this Order.