

REGULATION OF THE PRIVATE SECURITY INDUSTRY IN SCOTLAND REGULATORY IMPACT ASSESSMENT

1. INTRODUCTION

1.1 This Regulatory Impact Assessment (RIA) supports amendments to the Private Security Industry Act 2001 that will introduce regulation of the private security industry in Scotland by extending the remit of the Security Industry Authority (SIA) to include Scotland. These measures will ensure consistent regulation across the United Kingdom and will address concerns about criminal activity within the private security industry in Scotland. The proposals were foreshadowed by the consultation paper “*Regulation of the Private Security Industry in Scotland: A Consultation Document*”, published in September 2001.

1.2 It is intended that all groups regulated by the SIA in England and Wales will be regulated in Scotland apart from wheel clampers, as wheel clamping is a criminal offence in Scotland. The amendments will also introduce regulation of defence precognition officers (a system which operates only in Scotland), through a licensing scheme operated by the SIA.

1.3 The first part of this RIA sets out the objectives, background and risk assessment for introducing regulation in Scotland. It goes on to set out the objectives, background and risk assessment for the introduction of regulation of defence precognition officers before setting out the options considered and outlining the overall costs of regulation including precognition officers.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

Regulating the Private Security Industry in Scotland

The Objectives

2.1 Regulation in Scotland is intended to protect the rights and safety of the public by reducing criminality in the private security industry and to enable the public to have confidence in the quality of service and reliability of the private security industry. Consistent regulation across the United Kingdom will also enable companies to operate on an equal footing on both sides of the border.

The Background

2.2 The private security industry in Scotland has grown substantially in recent years and is now a significant employer. Most individuals and companies operating in the sector are legitimate and provide a high quality of service. However this rapid growth and the lack of any over-arching regulatory provisions have provided opportunities for some unscrupulous companies to exploit the potential for profit at the expense of the quality of service. There is a general concern that individuals working in this sector should be properly accredited so that businesses and the public can be reassured about their status, professional standing and personal integrity.

Risk Assessment

2.3 The Executive is committed to making Scottish communities safer. The regulation of the private security industry will play a part in working towards this objective, particularly as the numbers employed in the industry have increased. The public needs to be satisfied with the integrity and expertise of those working in this sector and that companies are reputable. Lack of regulation carries a risk that public trust and confidence will be undermined.

2.4 Data on offending is not collected by occupation. However, to give a likely estimate of the scale of the problem the Regulatory Impact Appraisal produced to support the introduction of regulation in England and Wales stated as follows: “*ACPO evidence to the Home Affairs Select Committee extrapolated from figures collected in Lancashire in 1993/4 gave an estimate of 2,600 offences a year (in England and Wales) by private security employees (not just manned guards).*” Given the relative size of Scotland compared to England and Wales it is reasonable to suppose, on the basis of these figures, that around 260 offences were committed annually in Scotland by individuals working in the private security industry during the early 1990s. Since that time the industry has grown significantly, for example, between 1998 and 2001 the Gross Value Added (turnover less costs) of the industry in Scotland doubled from £118 million to £235 million and indications are that this trend continues. This would indicate a possible doubling in the estimate of the number of offences committed to around 500. The Home Office Regulatory Impact Appraisal also states “*A recent Home Office study of door supervisors showed direct or indirect involvement in Drug offences and individuals working in the industry with a background of serious criminal offences.*”

2.5 Representations have been made to Scottish Executive Ministers by MSP’s and members of the public and there have been calls in the media for the introduction of regulation of the private security industry.

Regulating Precognition Officers

The Objectives

2.6 Regulation of defence precognition officers, excluding Advocates and Solicitors and those employed by the Crown, will protect the interests of all witnesses, particularly those who are young or vulnerable and the introduction of pre-employment vetting and training will result in higher standards.

The Background

2.7 Precognition officers provide defence solicitors in Scotland with an account of what a witness’s evidence might be should a case proceed to trial. They are either directly employed or contracted by solicitors to carry out this function. Precognition officers are currently unregulated. Research commissioned by the Scottish Executive in 1998 on the work of precognition officers in Criminal Cases found that: vetting was

informal and sporadic and that no criminal record checks were carried out; precognition officers received little if any training; and there was concern about the way in which they dealt with vulnerable witnesses. Concern was also expressed in the Chhokar Report and the Child Witness Support Implementation Group about the way that defence precognition officers deal with vulnerable witnesses, sometimes arriving at victims' and witnesses' homes unannounced and behaving insensitively.

Risk Assessment

2.8 The role of precognition officers allows them access to, amongst others, children and vulnerable witnesses. The research conducted by the Scottish Executive in 1998 highlighted that "...none of the solicitors interviewed carried out a criminal record check on prospective precognition officers. Only a minority of them interviewed applicants before selecting them. No other forms of assessment were used except word of mouth recommendations. A small minority of solicitors provided training, which was generally 'on the job'". The licensing of precognition officers will require that they have undertaken the appropriate training and that they meet the criminality criteria in order that they are better equipped to deal with victims and vulnerable witnesses and to reduce the ability for unsuitable persons to obtain work in this sensitive area. This will increase protection levels for all witnesses. It will also raise public confidence in the system and ensure a minimum level of competence at entry into the profession.

3. THE OPTIONS

3.1.1 Four options were identified and considered

Option 1 - do nothing but, through self-regulation, encourage companies and individuals to adhere to a voluntary code of practice.

Option 2 – introduce a mandatory licensing scheme, under the powers in the Civic Government (Scotland) Act 1982 requiring companies and/or individuals working in the industry to obtain a licence from the local authority.

Option 3 –establish a separate SIA for Scotland that would operate independently from the SIA in England and Wales but otherwise would have the same functions and, wherever possible, operate the same standards and practices.

Option 4 – extend the remit of the SIA for England and Wales to cover Scotland.

BENEFITS

3.2 Overall benefits of regulation are a reduction in offences by private security owners, managers and operatives and an overall increase in the quality of service provided. This will promote public confidence in the industry as well as protecting the public. Licensing will ensure that known criminals cannot be involved in the private security industry. The private security industry is also likely to benefit if the police and the public have confidence in the people who are employed. SIA

licensing of precognition officers will prevent people with criminal records setting themselves up as such and ensure a minimum level of competence at entry.

3.3 **Option 1** would have no benefit, apart from there being no cost to the industry or its workers. Lack of regulation might allow offending to increase as the private security industry takes on a greater role and could encourage unscrupulous individuals south of the border to avoid regulation by setting up business in Scotland. Whilst voluntary self regulation may give the public some measure of confidence in the legitimate sector, the more unscrupulous side would not take part and therefore the cost would be borne by those who decided to take part. This approach might also stifle cross border competition as companies on either side of the border would not be operating on an equal footing. In terms of precognition officers, this option would represent no change to the current position, a situation which has been widely accepted as being unsatisfactory.

3.4 **Option 2** would place a requirement on local authorities to license individuals wishing to operate within the private security industry and would build on existing practice as some local authorities already operate local licensing schemes for door supervisors. However, this approach would only work if all local authorities participated or were willing to provide a service for other authorities locally. Whilst it may be possible to require local authorities to operate a regulation scheme, this system would be unwieldy and security industry personnel may need to hold multiple licences dependent on how many authority areas they worked in. It would also be difficult to ensure consistency of standards across the country. Consultation revealed that only a minority of local authorities supported the idea of local licensing.

3.5 **Option 3** would bring benefits of consistent regulation across Scotland but these would not be as significant as those to be obtained from consistent UK regulation. This would require the establishment of a new Scottish agency to administer the regulation of the security industry in Scotland. This would be costly and would effectively be a duplicate of the Authority operating in England and Wales resulting in higher costs being passed onto the security industry in Scotland.

3.6 **Option 4** would bring consistent regulation on both sides of the border and specifically consistency in terms of number of licences, licence conditions, training standards and costs, keeping duplication and bureaucracy to a minimum. This approach would ensure that business across the UK could operate on an equal footing and that individuals would require only one licence no matter where they worked. There would also be better and more consistent enforcement. Although precognition officers exist only in Scotland, there are clear advantages in terms of economies of scale and reduced bureaucracy of including precognition officers as part of a wider regulatory regime rather than establishing bespoke regulation for them.

Business Sectors Affected

3.7 **Option 1** would have an effect on those companies who were operating to voluntary high standards. Rogue companies would be able to undercut legitimate companies. **Options 2, 3 and 4** would affect all sectors of the private security

industry. Licensing would be rolled out to the industry over time so the point at which licensing would begin would differ for each sector within the industry.

3.8 Figures from the Labour Force Survey and the Inter Departmental Business Register along with information provided by the British Security Industry Association for the UK as a whole, suggest that there are in the region of 30,000 people working in the industry in Scotland from about 500 firms. In 2001, the Gross Value Added (turnover less costs) of the industry in Scotland was £235 million (GVA for the UK for 2001 was £3.234 Bn).

Issues of Equity and Fairness

3.9 There will be compliance costs associated with regulation; both for companies and individuals, but these will affect the whole of the private security industry equally. No one area of the industry will be subject to a more or less rigorous regulatory regime than another.

3.10 It is not considered necessary to require precognition officers employed by the Crown to be subject to an additional level of scrutiny. The role of crown precognition officers is simply to prepare cases and they do not meet witnesses in their own homes. Furthermore, as Crown employees they are subject to pre-employment vetting already and are accountable to the Lord Advocate.

4. COSTS

Costs for a Typical Business

4.1 **Option 1** may have some non-compulsory costs for business but these would depend on who was responsible for drawing up the code of practice. Under **options 2, 3 and 4** the recurring costs to businesses would be those of checking the licence of the job applicant (assumed to be obtained at the applicant's expense and therefore not a direct cost to the business, para 4.4 outlines the expected costs of a licence) and recording that this has been done e.g. by placing a photocopy of the licence in the successful candidate's personnel record. It should take no more than five minutes to check and copy the licence and to make and collect files, etc. Labour costs have been based on £15.87 per hour (ONS Compliance Cost Schedule 2004; clerical workers hourly rate). An average figure for photocopying a single sheet of paper (including all related costs) is three pence. The total cost of checking would be on average £1.35, for a notional company employing 100 guards a year this implies a recurring cost of £135 per year. However, recent evidence from England and Wales suggests that licensing may drive down costs to business because it can reduce the rate of staff turnover thereby reducing associated recruitment costs. There is also an un-quantifiable cost for a company that comes if they are able to field the same staff on a contract (rather than constantly introducing new faces due to staff turnover) which in turn can aid their ability to obtain and keep contracts. It is expected that there will be some increase to wage costs in the short term as a result of a reduced labour market in some sectors due to failed applications for licenses. In the longer term wage costs could also expect to increase to reflect demonstrably higher standards of competency integrity. These costs would be passed on by companies to the

customer, although it can be expected that this would bring with it a commensurate increase in the quality and reliability of services provided.

4.2 Businesses may also wish to take part in the voluntary “Inspected Companies” scheme. For those companies who already submit themselves to a self-regulatory regime there should be no additional costs. For those companies who are not currently inspected annual costs would be in the region of £1,000-£2,000 per year and increase depending on the size of the company and the exact scheme under which the company wishes to be inspected. The recurring costs are likely to be passed on to companies or individuals purchasing security services.

Total Compliance cost assessment

4.3 **Option 1** would have no cost. Under **options 2, 3 and 4**, Companies will have to verify all operatives’ compliance with the new licence requirements. With implementation of licenses for different groups being phased in, the transitional cost will be spread over a period of years. We estimate that around 10,000 private security personnel need to be checked annually with total recurring costs estimated to be in the region of £13,500 pa across the industry. (Under options 2 and 3 companies operating on both sides of the border would also have the costs of obtaining a licence from the SIA.) There will also be a cost in terms of the Inspected Companies Scheme; we have estimated that approximately 50% of companies will choose voluntary inspection which will cost a total of approximately £500,000.

Other costs

1.4 Under **options 2, 3 and 4** individuals would be required to obtain a licence before entering the security industry. It has not been possible to estimate the costs of licences under **option 2** because local authorities would be entitled to recover their administrative costs from licence fees so that these would be set to provide for self-financing and may therefore result in differing charges at local level. It is reasonable to suppose however, that licence fees would be higher than under options 3 or 4 because economies of scale would not be realised. Individuals may also be required to obtain more than one licence if they were operating in more than one local authority area. Under **options 3 and 4** a charge would be made by the regulating authority for the licence and this is intended to be set at such a rate to allow the SIA to be self financing. In order not to disadvantage Scottish business under Option 3 the licence fee in Scotland would need to be set at the same level as the SIA licence. This might require an on-going subsidy from the Executive (see para 4.6). The SIA fee is currently set at £190 for a three year licence, although it is forecast that this will increase to £195 for 2005/06 and £200 for 2006/07. Employers would be able to reimburse individuals for the cost of their licences but this would be voluntary as the licence is the responsibility of the individual and not the employer. Assuming that individuals pay for their own licences, under **options 3 and 4** total nationwide costs to individuals would be £5,700,000. However, the licences are tax deductible; for employees paying tax at the basic rate this is worth £41.80, so the net cost of the licence will be £148.20, implying costs to individuals in the region of £4,446,000. In addition individuals would need to self fund the training required to qualify for a SIA licence. The cost will vary depending on the type of qualifications the individual

already has. However for an individual with no existing qualifications the cost is likely to be between £250 - £350. In England this is subject to a training grant of £102 paid by the Learning Skills Council. We will work to attract a similar grant for Scottish Courses. Assuming the same costs and subsidies as in England, the total cost of a three year licence to the individual, including training, will be in the region of £400.

4.5 **Option 2** could minimise the additional costs involved in establishing a system for regulating the private security industry by building upon the administrative systems already in existence within local authorities for licensing other business areas. However, there would be costs in developing national standards. It has not been possible to estimate the additional costs that would fall on local authorities because different administrative arrangements exist throughout the country. Local authorities are entitled to recover their administrative costs from licence fees so that these would be set to provide for self-financing and may therefore result in different charges at local level.

1.6 **Option 3** would have significant other costs. There would be a substantial set up cost including acquisition of premises, equipment, recruitment and training of staff. It is estimated that in the region of 30,000 people are currently employed in the private security industry in Scotland. If licenses are to run for 3 years and to be phased in, the annual volume is likely to be between 10,000 and 15,000 licenses once the regime is fully implemented. This takes account of staff churn and renewals. The cost of initial set up of the SIA in England and Wales was £23.1 million. Whilst it is not anticipated that the cost would be as great in Scotland, some costs, for example, the acquisition of premises and a computer based licensing registration system would require considerable initial outlay, potentially of around £5m.

1.7 As indicated above the cost of a licence will be in the region of £200. With introduction of licensing being phased in the annual running costs of the SIA are expected to be around £26m On the basis that it would be significantly more expensive on a case by case basis to run a service dealing with around 10% of the volume of the SIA we would anticipate annual running costs for a Scottish Authority would be in the region of £3 million in year one giving a cost of around £300 a licence. Given the costs involved it is unlikely that the Scottish Authority would be unable to break even from licenses alone if licence fees were to be set at the same level as in England. An on-going subsidy of around £1m a year from the Executive would potentially be required to cover this shortfall

1.8 **Option 4** would involve “buying into” the proposed Private Security Industry Authority in England and Wales. Both Parliaments would have to agree to proceed in this way. We expect the licensing regime to be self financing through receipts from licenses, however we accept that there will be an initial period where there may be a requirement to provide a contribution to the SIA for set-up costs associated with the extension of the remit to Scotland. Given that we envisage that the licensing regime will be the same and extending licensing to Scotland is likely to increase SIA volumes by around 10% it is unlikely that these costs will be significant. The costs would be met centrally from within the Scottish Vote.

5. CONSULTATION WITH SMALL BUSINESS

5.1 We conducted a specific consultation exercise involving small businesses operating in Scotland. A number of companies were identified through the Scottish Security Association and a questionnaire was sent to a number of small businesses. Five companies responded. They all supported regulation and licensing of the private security industry. Positive benefits were seen as including, ridding the industry of ‘cowboy’ and criminal operators, improving standards, increasing the professionalism of operatives and companies generally. Companies acknowledged that there would be a cost in terms of administration.

6. COMPETITION ASSESSMENT

6.1 This legislation will apply to all companies and individuals operating in the regulated sectors, therefore, nobody will be particularly disadvantaged by its introduction. Indeed, failure to extend the remit of the SIA to Scotland could be disadvantageous to the Scottish security industry by creating an uneven playing field in terms of licensing regimes applied north and south of the border particularly for those companies who operate on both sides of the border.

7. ENFORCEMENT AND SANCTIONS

7.1 The existing legislation provides for offences of employing someone as a security operative who is unlicensed, offering security services or operating as a security operative without being licensed, providing false information to obtain a licence, breach of terms or conditions of a licence and, if applicable, breach of regulations made under the primary legislation for individual sectors of the industry. All these offences (except offering security services without being licensed) are summary only with a maximum penalty of 6 months’ imprisonment or a fine of the statutory maximum or both. Offering security services without being licensed is subject to a maximum penalty of five years’ imprisonment on indictment or a fine or both. Enforcement is either by the police or by inspectors appointed by the SIA. These enforcement and sanction provisions will be extended to Scotland.

8. MONITORING AND REVIEW

8.1 It is intended to monitor the impact of the licensing system on the industry, offending rates and public confidence in conjunction with the police and the industry. The SIA is required to publish an Annual Report including statistics on the number of licences issued, refused and revoked. The need for licensing in particular sectors of the private security industry will be kept under review.

9. CONSULTATION

9.1 The Scottish Executive issued “*Regulating the private Security Industry in Scotland: A Consultation Document*” in September 2001. 72 responses were received. The clear message from that exercise was the need for regulation that protects the public whilst at the same time providing a sound framework for all those who work in the sector. Additionally, a specific consultation was conducted of small

business and this is discussed at paragraph 5. Other key points from the main consultation were:

- Option 1 (self-regulation through a voluntary code of practice) was comprehensively rejected.
- There was limited support for option 2 as there were potential problems of inconsistency across local authority areas, potential for local bias and issues about the suitability of using the Civic Government (Scotland) Act 1982. This option was therefore rejected.
- Under option 3 the need for cross-border recognition and compatibility between the two authorities was stressed.
- In support of option 4, regulatory consistency, administrative ease, economies of scale and minimisation of bureaucracy were cited.

9.2 A separate specific consultation was conducted on the proposal to include the regulation of defence precognition officers within the remit of the SIA. The consultation document was sent to 22 separate organisations including umbrella organisations, of which 13 responded. Again, there was clear support from respondents for the Scottish Executive's proposal to require precognition officers to obtain an SIA licence in order to operate as such.

10. SUMMARY AND RECOMMENDATION

	Option 3 Expected Costs	Option 4 Expected Costs	Option 3 Expected benefits	Option 4 Expected benefits
Business	i)Recurring costs of £1.35 for checking licences per employee plus £1,000 - £2,000 for voluntary Inspected Companies scheme ii)minimal non-recurring costs	i)Recurring costs of £1.35 for checking licences per employee plus £1,000 - £2,000 for voluntary Inspected Companies scheme ii)minimal non-recurring costs	Improvement in standards and general reduction in offending in the private security industry	Improvement in standards and general reduction in offending in the private security industry Single licence covering whole of UK
Charities	None	None	None	None
Citizens	For those applying for licences to work in the industry £148.20 (net) per licence plus training costs up to £350 every three years	For those applying for licences to work in the industry £148.20 per licence (this is a net cost after tax relief –gross cost is £190) plus training costs up to £350 every 3 years	Reduced offending and increased confidence.	Reduced offending and increased confidence. Single licensing regime covering whole of UK.
Government	Approx £1m per annum administration costs. Plus initial set up costs of £5m.	Contribution to start up costs of SIA directly attributable to Scotland ,likely to be low as main start up costs have already been incurred	Consistent regulation across Scotland, ownership by Scottish Ministers.	Consistent regulation and enforcement across UK, reduced implementation costs due to economies of scale, participation in existing scheme.

10.1 It is recommended that regulation of the private security industry in Scotland be achieved by extending the remit of the SIA to cover Scotland (option 4). Individuals will require to be licensed and there will be a voluntary inspected companies scheme. This single licensing regime will facilitate legitimate Scottish businesses that work both sides of the Border and is the most cost effective and the least bureaucratic approach. The substantial benefits of this option in terms of reduced offending, increased confidence in the security industry and a consistent approach across the UK are judged to outweigh the costs to business.

11. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed:



Date: 17 November 2004

Cathy Jamieson
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