

LICENSING INVESTIGATION IN THE PRIVATE SECTOR

In the United Kingdom And the Republic of Ireland

PART A. UNITED KINGDOM

- 1 This first part of the paper provides a detailed outline on the road to the current state of regulating investigation in the private sector in the United Kingdom.
- 2 To help understand some of the issues that drive accountable Professional Investigators to lobby in favour of a meaningful, fair and enforceable licensing regime, which is the policy of the Association of British Investigators (ABI), one has to consider the key characteristics that sets a professional apart from the elements that have traditionally given the activities a bad reputation. In this respect on the request of The Home Office a paper was prepared by the ABI on 21st November 2013¹.
- 3 On 12th May 2001 the Private Security Industry Act 2001² received Royal assent. This created a mandate for the creation of The Security Industry Authority (SIA), as the regulating body under The Home Office, to issue individual licenses to the wider security industry and create a voluntary Approved Contractors Scheme. Investigation in the private sector (PI) was included but has yet to be implemented.
- 4 The vision for the SIA was described at the time by The Home Office as:
- 4.1 Enhanced protection of the public through increased public trust and confidence in the private security industry by reducing criminality, setting and maintaining standards of probity, and improving the professionalism of all who work in the industry,
 - 4.2 Businesses in the private security industry improving their standards through the creation of a framework for developing, promoting and spreading best practice,
 - 4.3 Contribution to The Home Office extended police family policy by encouraging and supporting further engagement of the private security industry
 - 4.4 Recognition by all our stakeholders, of the SIA as a model of good practice.

¹ <http://www.theabi.org.uk/assets/uploads/Policies%20and%20Guidance/Characteristics%20of%20a%20Professional%20Investigator%202013.pdf>

² <http://www.legislation.gov.uk/ukpga/2001/12/contents>

5 One of the key elements to the Act for all sectors of the industry was that it is the activity, which is regulated, not the job title. Thus each sector is defined under the Act. The definition for PI is given in the Act as³:

- 5.1 to any surveillance, inquiries or investigations that are carried out for the purpose of:
- obtaining information about a particular person or about the activities or whereabouts of a particular person; or
 - obtaining information about the circumstances in which or means by which property has been lost or damaged

6 At present the following activities and people are excluded from licensing:

- 6.1 Activities exclusively 'in-house', i.e. not in connection to any contract for services,
- 6.2 Crown servants including members of the police or armed forces or HM Government intelligence services,
- 6.3 Activities exclusively for the purposes of market research,
- 6.4 Activities exclusively for the purpose of determining whether a particular person is creditworthy,
- 6.5 Solicitors or barristers carrying out private investigation activities for the purpose of any legal practice (either as a sole practitioner, as part of a firm, or as a lawyer employed by a company/organisation),
- 6.6 Accountants who are members of certain professional bodies, who are carrying out activities for the purpose of any accountancy practice (either as a sole practitioner, as part of a firm, or as an accountant employed by a company/organisation),
- 6.7 Activities relating to obtaining information exclusively with a view to its publication,
- 6.8 Activities involving:
- Registers or other records open to public inspection (even if you pay a fee to access the records [e.g. electoral registers]),
 - Registers or other records which are kept by the person by whom or on whose behalf the activities are carried out or to which that person has a rights of access (e.g. you are a genealogist),
- 6.9 Published work,
- 6.10 Activities carried out with the knowledge or consent of:
- The person about whom, or about whose activities or whereabouts, information is sought; or

³ <http://www.legislation.gov.uk/ukpga/2001/12/schedule/2/paragraph/4>

- Every person whose interest in any property has been affected by the loss or damage about which information is sought,
- 6.11 Activities, which are incidental to any non-security job. *Incidental means when an individual reacts to an unforeseen event that is not part of their defined activity. Determining whether an activity is incidental or not will be dependent on the circumstances of the particular case*⁴.
- 7 The Home Office launched a Partial Regulatory Impact Assessment Consultation paper on 01st August 2007⁵. This set out four options:
- Option One - Do nothing
 - Option Two - Implement an alternative such as a voluntary code of practice
 - Option Three - Implement licensing based on identity and a criminality test
 - Option Four - Implement Option Three with a test of competency.
- 8 The results were published in May 2008, which in brief, favoured implementing PI licensing to include a test of competency (Option 4)⁶.
- 9 The implementation process then stalled due probably to a lack of political will and forthcoming elections, which led to a change of Government. It was not until in 2011 when a series of media scandals, which hit the headlines, persuaded the Prime Minister to intervene and address the matter in a Parliamentary announcement.
- 10 Following a number of high profile newspaper cases two Government sponsored Inquiries were commissioned in 2011, (1) The Leveson Inquiry, chaired by Lord Justice Leveson, and (2) The Parliamentary Home Affairs Select Committee, chaired by The Right Hon Keith Vaz MP (PHASC). The Inquiries were predominantly concerned with the practices and culture within the media (journalism); however, the PI sector was also considered in some detail, particularly by the PHASC. Both Inquiries found in favour of PI licensing with the PHASC making a number of recommendations in its Report dated 07th July 2012⁷ specifically addressing the issues that surfaced during its Inquiry.
- 11 The next stage in the process did not emerge until 31st July 2013 when the Home Secretary's response to the PHASC recommendations were

⁴ The wording in italics may prove significant, in particular "unforeseen". The wording is taken from the Partial Regulatory Impact Assessment consultation but is not included in the law (amendments to The Private Security Industry Act 2001)

⁵ http://www.i-k-d.com/downloads/IKD/Regulation_of_Security_Indu1.pdf

⁶ http://www.sia.homeoffice.gov.uk/Documents/impact-assessments/pi_pa_options.pdf

⁷ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/100/100.pdf>

contained in a Command Paper⁸ paving the way for the implementation of PI licensing. The key points to note were:

- 11.1 The SIA in its new business led format will regulate the PI licensing.
- 11.2 License to investigate will be granted to applicants who:
 - Confirm their identity
 - Pass the SIA criminality test
 - Prove the right to work
 - Have sufficient training and hold the approved qualification⁹
 - Are HM Revenue & Customs clear
- 11.3 The role out date for licensing will be in the autumn 2014 and the “Offence” date is likely to be April 2015.
- 12 In line with all other security industry sectors it is anticipated regulation of operatives will be complimented by the SIA Business Licensing regime. For PI this will be based on British Standard Institution code of practice for the provision of investigative services, published September 2013 (BS102000)¹⁰.
- 13 The shift towards Business Licensing followed the change in Government and the desire to deregulate generally. The Business Licensing policy decision was described in The Home Office publication of November 2012 “Consultation on a future regulatory regime for the private security industry” as follows:

“This consultation is seeking views on the Government’s preferred option for reforming how the private security industry is regulated. Under the proposal outlined in this document there would be a phased transition to a business regulation regime and a significant change to how individuals are licensed to work within the industry. The changes proposed would achieve a reduction in the regulatory cost and burden on the private security industry as a whole”.
- 14 The responses to that consultation were published in September 2013¹¹
- 15 Whilst the Home Secretary’s announcement on 31st July 2013 and the Command Paper gives a political intent by the current Government,

⁸ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/100/100.pdf>

⁹ The qualification is expected to be Level 3 Award for Professional Investigators (QCF) see for example

<http://www.theabi.org.uk/assets/uploads/Academy/IQ%20L3%20Professional%20Investigators%20specification.pdf>

¹⁰ <http://shop.bsigroup.com/ProductDetail/?pid=00000000030271051>

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236758/Response_regulatory_regime_for_private_security_industry.pdf

which were endorsed in the House of Lords in March 2014, as at the date hereof, no announcement has been made which formally commits the Government to implement PI Individual Licensing or Business Licensing for any sector of the security industry. Supported by the fact the then Home Secretary made the announcement on 31st July 2013, it was generally anticipated that PI licensing and Business Licensing would be signed off by the Minister in time to meet the timeframe given in the announcement but this has passed and the licensing of the whole security industry is once again under review in 2016.

16 In regard to the review the SIA statement in January 2016¹² includes the following: -

“...the scope and appropriateness for us taking on additional functions including those that may already be provided by other organisations, or functions that could further enhance our role in the future. These will include business licensing and the licensing of private investigations.”

The results of the review will be presented to Government Ministers to consider the recommendations. If the Ministers so agree then it will be a matter of finding a legislative slot to bring about the changes. What those recommendations are will not be clear until such time as a Report is published by the Home Office, which may happen even before the Ministers have responded. However, the SIA’s annual Stakeholders’ Conference, which is usually held in the Autumn, conspicuously did not take place in 2016.

17 In April 2010 the SIA published a detailed guide on the licensing regime for the security industry including a guide on the criminality test¹³. These guides predate the Business Licensing thinking but are nonetheless still valid in 2016.

18 At such time that the Government makes any further announcement details will appear on the SIA web site <http://www.sia.homeoffice.gov.uk>.

¹² <http://www.sia.homeoffice.gov.uk/Pages/about-news.aspx?newsid=538>

¹³ http://www.sia.homeoffice.gov.uk/Documents/licensing/sia_get_licensed.pdf

PART B. REPUBLIC OF IRELAND

19 The Private Security Authority¹⁴ (PSA), which was established pursuant to the Private Security Services Acts 2004 and 2011, is the statutory body with responsibility for licensing and regulating the private security industry in Ireland.

20 With amazing determination, whilst watching the Westminster Government procrastinate over implementing the statutory regulation for investigation, in the Republic of Ireland (RoI) licensing was extended to contractors in the 'Private Investigator' sector during 2015 as part of the PSA programme to roll out licensing to the remaining sectors of the industry. The Minister for Justice duly announced on 29th May 2015 that the regulation would become law on 01st November 2015, with the following statement:

"The licensing of Private Investigators follows two years of development work by the Private Security Authority, including consultation with the industry. During that period, a number of successful prosecutions against Private Investigators have been achieved by the Office of the Data Protection Commissioner following investigation into the activities of Private Investigators. Some of the more undesirable activities and practices of the sector have been highlighted by these investigations and the need for regulation is evident. I am confident that the introduction of these Regulations will raise standards in the sector."

21 The requirements to gain a contractor's licence (which includes sole traders, partnerships and companies) consists of:

- 21.1 Pay the licence fee, which is every 2 years
- 21.2 Compliance with PSA standard
- 21.3 Criminal records check
- 21.4 Tax compliance

22 The term 'Contractors' is significant and is explained by the employee exemption 'Employees of licensed contractors do not require a licence nor do employees whose licensable activities are confined to his or her employers business. Private Investigators who solely work for a single PSA licensed Private Investigator are deemed to be similar to an

¹⁴ <https://www.psa.gov.ie>

- employee and do not require a licence.’
- 23 The PSA defines the licensable activity as a person who in the course of a business, trade or profession conducts investigations into matters on behalf of a client and includes a person who:
- 23.1 obtains or furnishes information in relation to the personal character, actions or occupation of a person,
 - 23.2 obtains or furnishes information in relation to the character or kind of business in which a person is engaged,
 - 23.3 searches for missing persons,
 - 23.4 obtains or furnishes information in relation to the loss or damage of property.
- 24 The activities are further explained as ‘Any contractor carrying out activities falling within the definition require a licence. Contractors who provide services as debt collectors, tracing agents, summons servers, loss assessors /adjusters, security consultants or other occupation where part of their activities fall within the definition will require a licence.
- 25 The following exemptions apply:
- 25.1 a person who undertakes technical surveillance counter measures,
 - 25.2 a person who provides information technology security measures,
 - 25.3 a person who has statutory powers to carry out investigations for their employer,
 - 25.4 a person who carries out workplace investigations with the consent or knowledge of the person under investigation and where the matters under investigation are subject to regulation under the enactments listed in Schedule 1 of the Workplace Relations Act 2015,
 - 25.5 store detectives in the normal course of their duties who hold a valid PSA Security Guard (Static) licence,
 - 25.6 law searchers conducting documentation searches,
 - 25.7 a person whose activities relate to accessing publicly available information,
 - 25.8 the professional activities of accountants, auditors, barristers, broadcasters, journalists and solicitors, but not their outsourced contractors,
- 26 The PSA standard¹⁵ has considerable similarity to the British Standards Institution code of practice for the provision of investigative services, (BS102000) dealt with above and covers the following:
- 26.1 Scope

¹⁵ [https://www.psa.gov.ie/en/PSA/PSA%20LICENSING%20REQUIREMENTS%20-%20PRIVATE%20INVESTIGATOR%20\(PSA%2042-2015\).pdf/Files/PSA%20LICENSING%20REQUIREMENTS%20-%20PRIVATE%20INVESTIGATOR%20\(PSA%2042-2015\).pdf](https://www.psa.gov.ie/en/PSA/PSA%20LICENSING%20REQUIREMENTS%20-%20PRIVATE%20INVESTIGATOR%20(PSA%2042-2015).pdf/Files/PSA%20LICENSING%20REQUIREMENTS%20-%20PRIVATE%20INVESTIGATOR%20(PSA%2042-2015).pdf)

- 26.2 Definitions
 - 26.3 Organisation
 - 26.4 Staffing
 - 26.5 Training
 - 26.6 Operations
 - 26.7 Compliance with PSA licensing
- 27 To practice investigations, as defined, in the RoI a contractor must hold a licence issued by the PSA, which publishes licence holders in its register¹⁶.
- 28 It is a criminal offence to practice or advertise as a PI without a licence or to engage someone to carryout the activities of a PI who does not hold a licence.

This paper was written by Tony Imossi, the head of the Secretariat at The Association of British Investigators. Tony has since the eve of The Private Security Industry Act 2001 led representations to The Home Office and the SIA and other stakeholders on the road to licensing investigations in the UK and gave written and oral evidence at both the Leveson Inquiry and the Parliamentary Home Affairs Select Committee^{17 18 19}.

www.theABI.org.uk

¹⁶ [https://www.psa.gov.ie/en/PSA/1A.-Register-of-Contractor-Licensees-\(AllSectors\).pdf/Files/1A.-Register-of-Contractor-Licensees-\(AllSectors\).pdf](https://www.psa.gov.ie/en/PSA/1A.-Register-of-Contractor-Licensees-(AllSectors).pdf/Files/1A.-Register-of-Contractor-Licensees-(AllSectors).pdf)

¹⁷ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/100/100we03.htm>

¹⁸ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/100/120207.htm>

¹⁹ <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/evidence/?witness=tony-imossi>