

CRIME AND SECURITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Private security industry

Section 42: Extension of licensing scheme

189. [Section 42](#) amends the Private Security Industry Act 2001 (“the 2001 Act”).
190. The 2001 Act makes provision for the licensing of individuals carrying out security industry activities. The licensing is the responsibility of the Security Industry Authority (“the SIA”). It is an offence under the 2001 Act for an unlicensed *individual* to engage in any activity for which a licence is required, or to supply an unlicensed individual to engage in such activities. In the case of vehicle immobilisers it is an offence for an occupier of premises to permit an unlicensed individual to engage in vehicle immobilisation on the premises.
191. [Section 42](#) provides for *businesses* to be licensed by the SIA. At the outset, businesses carrying out vehicle immobilisation activities will require a licence. The purpose is to regulate the activities of such businesses (and particularly, in relation to vehicle immobilisation, such matters as release fees and warning signs).
192. [Section 42](#) inserts new sections 4A and 4B into the 2001 Act.
193. The new section 4A of the 2001 Act introduces a licence requirement in relation to businesses carrying vehicle immobilisation or restriction and removal of vehicles (see subsection (2)(a) and (b)). The Secretary of State may designate other security activities in the future which will require business licensing if they are activities listed in Schedule 2 to the 2001 Act (see subsection (2)(c)). New section 4A creates an offence of engaging in an activity licensable under the section without a licence (see subsection (1)).
194. Subsection (3) of new section 4A deals with the application of the section to Scotland and requires Scottish Ministers exercising functions of the Secretary of State under new section 4A to consult the Secretary of State.
195. Subsections (4) to (7) limit the business licence requirement to those responsible for control of, or decisions of, businesses carrying out the licensable activity. This includes sub-contractors, except where the sub-contractor is an individual. Individuals acting as sub-contractors or under the employment or direction of another would not require a business licence (but they would continue to require an individual’s licence).
196. Subsection (8) provides penalties for the offences in new section 4A, of up to 12 months’ imprisonment or a fine not exceeding the statutory maximum, or both, on summary conviction; and on indictment of imprisonment up to five years or an unlimited fine, or both.
197. New section 4B sets out exemptions to the requirement for businesses to be licensed under new section 4A. Subsections (1) and (2) enable the Secretary of State to prescribe

in regulations the circumstances in which a person need not be licensed where suitable alternative arrangements apply.

198. *Subsection (3)* of section 42 amends section 6 of the 2001 Act (offence of using unlicensed wheel-clampers) to make it an offence for a land-owner to allow an unlicensed business to carry out wheel-clamping on his land. Section 6 of the 2001 Act provides the same penalties for offences under that section as those set out in new section 4A(8).
199. *Subsection (4)* amends section 9 of the 2001 Act, which makes provision about the conditions that may be included in a licence under the Act. The amendments will mean that the new business licences may include a condition that the licensee is a member of a body or scheme nominated by the SIA.
200. *Subsection (5)* amends section 19 of the 2001 Act, which sets out the powers of entry and inspection which enable the SIA to inspect premises and documents for the purposes of checking compliance with the Act. These amendments extend these powers to premises on which it appears that activities requiring a business licence are being carried out.
201. *Subsections (6) and (7)* insert a new subsection into section 23 of the 2001 Act to deal with the prosecution and punishment of offences committed by unincorporated associations. As explained above, new criminal offences are being created in respect of business licences, and it is anticipated that many licensees will be unincorporated associations.
202. *Subsection (8)* introduces Schedule 1 to the Act which makes amendments to the 2001 Act which are consequential upon new sections 4A and 4B. In particular, paragraph 15 of the Schedule inserts a new section 23A into the 2001 Act making procedural provision in relation to offences by unincorporated associations.

Section 43: Extension of approval scheme

203. **Section 43** amends the 2001 Act to extend the SIA's Approved Contractor Scheme (to be known as the "Approval Scheme"), provided under section 15 of the 2001 Act, to enable in-house private security services to apply for approved status.
204. The SIA is required under section 14 of the 2001 Act to establish and maintain a register of approved providers of security industry services. The register has to contain particulars of every person who is approved under arrangements which the SIA has to make under section 15 of the 2001 Act. Section 15 provides that approvals must be subject to certain conditions.
205. The SIA carries out its obligations under sections 14 and 15 of the 2001 Act by way of its Approved Contractor Scheme. This is a voluntary scheme, which has been developed in consultation with representatives from the private security industry, under which security providers who satisfactorily meet the agreed standards can obtain approved status. Approved status carries benefits for those contractors who hold it. The amendments made to sections 14 and 15 by section 43 enable approved status to be available to businesses which have in-house security arrangements and wish, for example, to establish their quality. As the scheme will no longer apply only to contractors, it is to be renamed the 'Approval Scheme'.

Section 44: Charges for vehicle release: appeals

206. **Section 44** amends the 2001 Act to provide an independent avenue of appeal for motorists in respect of release fees imposed by businesses carrying out wheel clamping and related activities. Under the amendments to the 2001 Act made by section 44 of the Act such businesses will be regulated and will require a licence, issued by the Security Industry Authority, in order to carry out these activities.

*These notes refer to the Crime and Security Act 2010
(c.17) which received Royal Assent on 8 April 2010*

207. **Section 44** inserts new section 22A into the 2001 Act. Subsection (1) of section 22A requires the Secretary of State to make regulations for the purpose set out in subsection (2), namely for a person who would otherwise be entitled to remove a vehicle which has been immobilised or towed away, to appeal against the fee charged for release of the vehicle.
208. Subsections (3) and (4) provide for grounds of appeal to be specified in regulations. Subsections (5) and (6) provide for the regulations to specify the individual or body which would consider the appeal (whether that is one established under the regulations or an existing one). Subsection (7) sets out a number of areas of the appeal system for which the regulations may provide, including procedural matters, appeal fees, payments which the parties to an appeal may be required to make, payment of costs, enforcement of appeal decisions, and an offence of making false representations which concern a material particular.
209. There is power for regulations to make provision as to costs of adjudications in two different ways. Subsection (7)(f) enables payment of one party's costs in relation to the adjudication by the other and of the costs of the adjudication.
210. There is also a specific power in subsection (7)(g) to require respondents to pay a charge, when an appeal against them is successful, in respect of the costs of adjudications generally.
211. Subsection (8) enables the regulations to authorise the adjudicator or tribunal to require the payments provided for by subsection (7)(e), (f) and (g) to be made as part of the adjudication.