

APPENDIX 2



Security Industry Authority

ENFORCEMENT

What to expect from the SIA

August 2018

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Introduction

For regulation to be effective and trusted, it is vital that appropriate action is taken against those who no longer meet our criteria or who break the law. Therefore, anyone facing enforcement action should know what to expect from the Security Industry Authority (SIA). We are also required under the Private Security Industry Act (PSIA) 2001, to give guidance about how those authorised under the Act exercise power of entry. This leaflet sets out to meet both these requirements.

If we suspect an offence has been committed, prosecution is not our only option; we aim to encourage compliance with the law in the first instance and will do all we can to help people meet their obligations. However, in appropriate cases we have the will and capability to prosecute offenders, and to seek the confiscation of assets that have been obtained as a result of criminal activity.

We are committed to the principles set out in the Legislative and Regulatory Reform Act (2006) and to the Regulators' Code, a statutory code of practice for regulators. This means our activities are targeted only where action is needed and in a way that is transparent, accountable, proportional and consistent.

About the SIA

The SIA is the organisation responsible for regulating the private security industry in the United Kingdom by the compulsory licensing of individuals undertaking designated activities. We also manage the voluntary Approved Contractor Scheme (ACS).

SIA regulation currently covers manned guarding (including security guarding, door supervision, close protection, cash and valuables in transit, and public space surveillance using CCTV), key holding and vehicle immobilising.¹

Why have I been given this leaflet?

If you are subject to compliance enquiries or facing action by the SIA because you are suspected of committing an offence or a breach of ACS terms and conditions, then you should read this leaflet. It will explain what SIA Investigations and Compliance Officers (and those authorised with the power of entry and inspection under section 19 of the PSIA 2001), can and cannot do and the manner in which they should conduct themselves.²

This leaflet also explains your responsibilities and rights when encountering SIA action.

What offence(s) could I have committed?

If you are regulated by the SIA (as described in section 3 and Schedule 2 of the PSIA 2001) or you are an approved contractor, then you should be aware of the following offences created by the Act:

- Engaging in licensable conduct without a licence – section 3 (1)
- Contravening licence conditions – section 9 (4)
- Obstructing SIA officials or those with delegated authority – section 19 (5) (a)
- Failing to provide information required by the SIA – section 19 (5) (b)

¹ Northern Ireland only.

² SIA Investigations and Compliance Officers includes anyone deployed by the SIA to carry out investigations.

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- Using unlicensed security operatives – section 5 (1)
- Using unlicensed wheel clampers – section 6 (1) (Northern Ireland only)
- Falsely claiming approved contractor status – section 16 (2)

To see the full text of the Act or a summary go to:
www.sia.homeoffice.gov.uk/the-act

Whether or not you are regulated by the SIA, you should be aware of the following offences:

- Making false statements to the SIA – section 22 (1)
- In England, Wales and Northern Ireland you may be liable under sections 44-46 of the Serious Crime Act 2007 (SCA 2007), for the offence of encouraging or assisting an offence. The SCA 2007 has three offences:
 - offence (SCA 2007) section 44 – intentionally encouraging or assisting an offence
 - offence (SCA 2007) section 45 – encouraging or assisting an offence, believing it will be committed
 - offence (SCA 2007) section 46 – encouraging or assisting offences, believing one or more will be committed.
- In England and Wales you may be liable under section 44(1) of the Magistrates' Court Act 1980, or section 8 Accessories and Abettors Act 1861 for an offence of aiding, abetting, counselling or procuring an offence.
- In Scotland, where an offence has allegedly been committed, it is open to the Procurator Fiscal to advance a charge under the common law of 'art and part' liability. Section 293 (1) of the Criminal Procedure (Scotland) Act 1995, makes it clear that 'art and part' liability is applicable (in principle) in relation to statutory offences, such as those contained within the PSIA 2001.
- As an alternative to art and part liability, section 293 (2) of the Criminal Procedure (Scotland) Act 1995, also creates the separate offence of aiding, abetting, counselling, procuring or inciting the commission of a statutory offence.

- In Scotland, common law offences of incitement of, or conspiracy to undertake conduct which if carried through would amount to an offence, could be applicable in principle.

If convicted, or otherwise held accountable of any of the offences listed in this section, you will be liable to the same punishment as prescribed under the PSIA 2001 rather than any other provision. The SIA will consider wider criminal offending which impacts upon the regulatory regime.

Am I responsible for what goes on in my company/on my premises?

Security Company

Yes. Where an offence is committed under the PSIA 2001 by a company or a Scottish partnership, and is committed with the consent or connivance of, or is attributable to, any neglect on the part of a director, manager, company secretary (or any other similar role), or partner, then that person, as well as the company or Scottish partnership, is guilty of the offence and can be punished accordingly.

Customers and employees of security companies

Yes. Consumers represent an important link in the chain of criminality – without customers being willing to flout the rules and accept the supply of unlicensed security operatives, there would be no market for them in the first place. The SIA also recognises employees of security companies, who may not be at a level to make decisions for the company, can also be responsible for offences being committed by others. We may consider if such customers and employees are liable for alleged offences as described in this leaflet under the heading *What offence(s) could I have committed* on page 4.

Enforcement responses for offences under the PSIA 2001

The SIA is an intelligence-led organisation, conducting enquiries into alleged offences in line with the National Intelligence Model.

We have a range of options for non-compliance that fall short of criminal proceedings but can be effective in securing compliance quickly and avoiding costly formal proceedings. Our intelligence processes prioritise our activity on the level of risk

presented, which determines how the suspected offending will be dealt with.

For lower risk allegations, we may contact you via email or telephone, whilst higher priority cases will normally involve a face to face meeting. The most severe cases of non-compliance will be dealt with via an SIA prosecution.

What mitigating factors will the SIA take into account when assessing which enforcement response is appropriate

The SIA expects compliance with the law at all times.

If we find an individual or a company that is non-compliant, before deciding what action to take the following factors will, where appropriate, be taken into account:

- The level of risk to public safety.
- The progress made towards compliance with the law e.g. licence application submitted, removal of the ACS mark.
- Whether an individual already holds a licence for other licensable sectors.
- The scale and duration of non-compliance and level of any commercial advantage gained.
- The current licensing processing times.
- The availability of training to achieve the qualification for licensing.
- Previous encounters with, or warnings given by the SIA or another agency.
- Where there are circumstances in which Parliament has indicated a firm intention to exempt, or exclude, from licensing.
- Links to wider criminality.
- The regulator's duty to have regard for business and economic growth.
- Any other factor that we think is relevant in the circumstances.

The weight given to any of these factors will be dependent on the particular case.

Companies and individuals should be aware that:

- They remain liable to prosecution for any offence committed.
- Insurance cover of both the security suppliers and the security customer could be compromised if unlicensed operatives are being used.
- Non-compliance with the licensing requirements could jeopardise a future application for a licence or accreditation under the Approved Contractor Scheme.

Sanctions and disposal of offences

Non-Statutory Disposals

Whilst these enforcement options have no statutory basis, they are a result of the SIA's power to prosecute offences which is the ultimate sanction that can be applied. The following options can be used against individuals, companies, and sometimes both:

- **SIA advice**
Short of a formal warning, the SIA can advise individuals or businesses of steps required to cease offending, and check to ensure this has been followed.
- **SIA verbal warnings**
These are recorded and may be taken into account in future enforcement decisions or as non-conviction information in a licence decision.
- **SIA written warnings**
These are issued where an offence under the PSIA 2001 has been detected. A written warning may be taken into account in future enforcement decisions or as non-conviction information in a licence decision.
- **Improvement notices**
These are non-statutory sanctions in breach of offences, under the PSIA 2001. It sets out the improvements required and is discharged when we are satisfied the improvements have been made.

While these responses do not result in criminal convictions, they can have an effect on you or your business. For example, if you have been given SIA

warnings for working without a licence, this may affect whether or not you are granted a licence at a later stage. Similarly, if your company is subject to an improvement notice for non-compliance, this may affect the company's inclusion in the Approved Contractor Scheme.

Revoking your licence

We will revoke your licence when it is found that you have not have met, or no longer meet, the criteria for the grant of a licence. This revocation is permanent and cannot be undone after we have made a final decision, although an appeal can be made as outlined in the next section. Your licence may be revoked for a number of reasons – for example, you have received a conviction, caution or warning for a relevant offence, or our ongoing checks have determined that you no longer have the right to work in the UK. Please see our publication “Get Licensed” for a full list of when your licence may be revoked.

Suspending your licence

The SIA is given the power under the PSIA 2001 to suspend licences. If your licence is suspended you will not be able to work legally in an area regulated by us unless that suspension is lifted. Licence suspensions have immediate effect. We will consider suspension only where we are reasonably satisfied that a clear threat to public safety could exist if we do not suspend the licence. This usually means that a serious offence has allegedly taken place, where the licence holder has been charged and bailed. We will suspend a licence in other circumstances if it is in the public interest to do so. Please see our publication *Get Licensed* for further information.

If your licence is suspended, it will remain suspended until the matter is resolved -for example, we have revoked your licence or the matter that you have been charged with has been heard and you were found not guilty. All suspensions are monitored and reviewed every 90 days. The SIA can suspend a licence and at the same time initiate the revocation process for that licence.

ACS Sanctions

The SIA can take action when an approved contractor is in breach of ACS terms and conditions, which cover eligibility criteria, the ACS standard, and specific requirements such as those concerned with the deployment of staff under licence dispensation and the use of the ACS mark.

Our publication *ACS Sanctions Framework* summarises the actions we will take in certain situations and may be downloaded from the ACS publications page www.sia.homeoffice.gov.uk/acs-sanctions

Where non-conformance is identified either through intelligence gathering or during an ACS assessment, an improvement need may be raised. The contractor

- is required to provide an action plan within five working days, setting out how they intend to address the non-conformance
- is required to take action to address the non-conformance • may be subject to a re-visit by an independent assessing body.

Where a number of improvement needs are identified, or individual improvement needs concern non-compliance with the law, then more serious sanctions, including the withdrawal of approval may be considered.

However, we try to work with the contractor to obtain conformance whenever possible, without undermining the credibility of the Approved Contactor Scheme.

Prosecution

Where we consider enforcement actions short of prosecution are not appropriate, the case can be referred for formal investigation. This means the investigation will be undertaken by the SIA with a view to prosecution, or in partnership with other law enforcement agencies. Although prosecution (or, in Scotland, referral to the Procurator Fiscal) is not our only option, when we suspect offences under the Act have been committed you can be prosecuted in the criminal courts. These offences can be committed by both individuals and companies and can result in high penalties including confiscation of assets, fines and imprisonment. Where the SIA considers that wider criminal offending affects the integrity of the regulatory scheme, such offences may be considered.

Our website provides information on the cases prosecuted by the SIA – www.sia.homeoffice.gov.uk/prosecutions

The penalties on conviction for each of the offences under the PSIA 2001 are:

Offence	Penalty
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Engaging in licensable conduct without a licence – section 3 (1) Contravening licence conditions – section 9 (4) Obstructing SIA officials or those with delegated authority – section 19 (5) (a) Failure to provide information to the SIA – section 19 (5) (b) Making false statements to the SIA – section 22(1)	Upon summary conviction at a Magistrates' Court, Sheriff Court or District Court, a maximum penalty of six months imprisonment and/or an unlimited fine
Using unlicensed persons in licensable conduct – section 5 (1)	Upon summary conviction at a Magistrates' Court, Sheriff Court or District Court, a maximum penalty of six months imprisonment and/or an unlimited fine
Using unlicensed vehicle immobilisers – section 6 (1)	Upon summary conviction at a Magistrates' Court, Sheriff Court or District Court, a maximum penalty of six months imprisonment and/or an unlimited fine
Falsely claiming approved contractor status – section 16 (2)	Upon summary conviction at a Magistrates' Court, Sheriff Court or District Court, an unlimited fine

What factors will the SIA consider when taking a decision to prosecute or refer the case to the Procurator Fiscal in Scotland

There are two main tests applied in making this decision:

1. The SIA is satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.

2. The SIA considers it to be in the public interest to prosecute each suspect.

We also comply with the requirements of the various Codes for prosecutors in each of the jurisdictions as listed below:

England and Wales – the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985.

Scotland – the Crown Office and Procurator Fiscal Service Prosecution Code.

Northern Ireland – the Code issued pursuant to the statutory duty placed on the Public Prosecution Service by section 37 of the Justice (Northern Ireland) Act 2002.

Detention and arrest

We would only usually seek your arrest/detention by the police if you are subject to formal investigation.

SIA Investigations Officers do not have powers of arrest under the PSIA 2001, but there are circumstances when we may ask the police to support us. For instance, refusal to attend an audio recorded interview under caution at a police station without reasonable excuse is likely to be a circumstance where we would ask the police to consider arresting you.

SIA powers of entry and information gathering

Under section 19 (1) of the PSIA 2001, SIA Investigations Officers and those with written authority may enter any premises owned or occupied by a person appearing to be a regulated person under section 19 (8) of the PSIA 2001 - other than premises exclusively used for residential purposes.

Under section 19 (2) of the PSIA 2001, SIA Investigations Officers and those with written authority, may require anyone appearing to be a regulated person under section 19 (8) of the PSIA 2001 to produce their documents. These are the documents or other information relating to licensable conduct, or the provision of security industry services which that person may have undertaken. Investigations Officers may also require the production of documents or information relating to conditions on a licence (or in respect of an approval granted under section 15) in respect of that person. It is a statutory duty to comply with any of these requests for documentation or information.

Enforcement – What to expect from the SIA

When exercising powers under section 19 (1) of the PSIA 2001 to enter premises, SIA Investigations Officers and those with written authority will:

- state who they are and show their authorisation and evidence of their identity
- state that they are using their powers of entry under the powers conferred by the PSIA 2001
- state the purpose for which the power is being exercised
- act with regard for the Powers of Entry: Code of Practice (www.gov.uk/government/publications/powers-of-entry-code-of-practice) in England and Wales where it has jurisdiction, but also as appropriate in Scotland and Northern Ireland
- act in line with the Protection of Freedoms Act 2012
- make a record of the date and time of entry and the duration of the visit and conduct whilst there.

This information is recorded and a copy of this record is made available on request. Any person present at the time of a visit where these powers to gain entry have been exercised, may request the above information and/or a copy of the record.

In most cases, SIA Investigations Officers, or those with written authority, will give advance notice of any intention to visit. On occasion this may not be appropriate, so visits can be made without prior notification. The power of entry conferred by section 19(1) of the PSIA 2001 shall only be exercised at a reasonable hour – this varies depending on the nature of your business.

When exercising powers under section 19 (2) of the PSIA 2001 to request information, whether in person or by letter, an SIA Investigations Officers or those with written authority will:

- state that they are using their powers for making a formal request for information under the powers conferred by the Act, and
- state that failure to comply with any requirement of the request for information, without reasonable excuse, is an offence.

SIA Investigations Officers, or those with written authority, are required to act reasonably and fairly in seeking information from individuals and organisations that hold details necessary to SIA enquiries.

SIA Investigations Officers may take copies of documentation found on premises visited. Original documents will not be seized or removed by force but permission may be sought to remove them. Any original documents that are removed with consent, will be returned as soon as possible and a receipt given.

GDPR and the Data Protection Act 2018 will not be contravened by providing information requested by SIA investigators or those with written authority. Under Schedule 2 Part 1 Paragraph 5 of the Data Protection Act 2018, GDPR provisions do not prevent disclosure where the disclosure is required by law, such as where Section 19 of the PSIA 2001 requires the supply of the information.

If a recipient of an SIA request for information has difficulty meeting any part of the requirement for information, they may contact the SIA Investigations Officers or the individual with written authority to explain why, and make alternative arrangements for the provision of the information.

SIA Investigations Officers are entitled to seek information by questioning any person appearing to be a regulated person under section 19(8) of the PSIA 2001; however they do not have the power to detain people.

What can I expect from other agencies?

Powers of inspection have been granted to relevant partner agencies, such as local authorities, who support SIA enforcement activities.

The authority to inspect a licence is:

- Granted in writing
- Signed by an authorised signatory from the SIA
- Granted for a fixed period of time.

Whilst undertaking enquiries or investigations, the SIA will work with other agencies that may have an interest in the compliance of your activities with legislation or regulation other than the PSIA 2001. This is most likely to mean, although not exclusively, that the SIA will disclose information relevant to your compliance with other legislation or regulation where the law permits.

At the end of SIA enquiries

Notification of any further action will be made as soon as possible once an enquiry has been concluded.

What are my rights?

You are entitled to legal advice at any time. The Citizen's Advice Bureau will be able to help you decide who to contact.

In England and Wales, along with the police and anyone with a duty of investigating criminal offences or charging offenders, the SIA is required to follow the relevant provisions of the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice. Code C which deals with detention, treatment and questioning of persons is the code most relevant to the activities of the SIA. In addition to Code C and where you are subject to formal investigation by the SIA, the following Codes may also be applicable:

E – Code of practice on audio recording interviews with suspects

F – Code of practice on visual recording with sound of interviews with suspects
G – Code of practice for the statutory power of arrest by police officers.

The PACE Codes of practice regulate procedures in the investigation of crime and set down safeguards and protections for members of the public.

Equivalent provision is made for Northern Ireland by the Police and Criminal Evidence (Northern Ireland) Order 1989.

In Scotland, the way criminal offences are investigated is mainly governed through a combination of the Criminal Procedure (Scotland) Act 1995 and common law.

How do I appeal against an enforcement decision?

Licence revocation – If we judge it necessary to revoke your licence, we will write to you, providing the basis for our decision and we will invite you to supply further information. You will then have 21 days from the date on our decision letter to provide a response. Your response may address any factual errors in our assessment (for example, an

error in respect of identity, or an error in assessing your competence or criminal history) and we may also invite you to provide mitigating information.

If we do not receive a response from you within the 21 days, we will write again to confirm that the licence has been revoked. Once revocation takes effect you will have 21 days in which to exercise your right of appeal to a Magistrates' Court or Sheriff Court.

If you do send in a response, we would give it due consideration, and we will write to you to inform you of our final decision.

If we decide it is still necessary to revoke your licence, you will then have 21 days from the date of this second decision letter in which to exercise your right of appeal to a Magistrates' Court or Sheriff Court.

Licence suspension – If we judge it necessary to suspend a licence, we will write to inform you of this, providing the basis for our decision. The licence holder will then have 21 days in which to exercise a right of appeal to a Magistrates' Court or Sheriff Court. At the same time they may also wish to tell us of any factual errors in our assessment – for example an error in respect of their identity, or an error in assessing their competence or criminal history.

ACS sanctions – You may ask the SIA to review any decision relating to your approved contractor status. Any such request should be made within 21 days of notification of the sanction, including your reasons for requesting a review. We will respond to you in writing with the outcome of our review.

If, following any review as outlined above, we make a final decision to withdraw your approval, you may appeal to the Magistrates' Court or Sheriff Court. You must lodge any such appeal directly with the court within 21 days of notification of our decision.

Enforcement action – If you wish to appeal against our decision, the appeal containing all relevant details should be sent to:

Deputy Director Partnerships and Interventions
Security Industry Authority
PO Box
74957
London E14
1UG.

Prosecution

Appeals in relation to criminal proceedings are dealt with by the appropriate courts in England, Wales, Scotland and Northern Ireland. You are strongly advised to seek

independent legal advice on such matters, especially if you have not already done so during the time you have been subject to formal investigation by the SIA.

How do I complain?

Complaints about how SIA Investigations Officers or those with written authority have employed or exercised their powers can be made through the 'Contact us' link on our website or from your SIA online account. Please state that you are making a formal complaint in your message to make sure that it reaches our complaints team promptly.

Complaints can also be submitted by post to:

Complaints Team
Security Industry Authority
PO Box 74957
London
E14 1UG

We will acknowledge complaints within 3 working days of receipt and aim to respond to all complaints within 20 working days from our initial acknowledgement. If you are not satisfied with the way we handle your complaint, you can ask for your complaint to be reviewed by a senior member of SIA staff. If you remain dissatisfied following an internal review, you can ask for your complaint to be escalated to the Parliamentary and Health Services Ombudsman (PHSO) by speaking to your local MP.

Our full Complaint Handling Policy and procedure can be found on our website www.sia.homeoffice.gov.uk. Click on 'Contact Us' at the top of the page and select 'How to register a complaint'.

Independent legal advice can be sought at any time. The Citizens Advice Bureau will be able to help you decide who to contact. Check online for details of your local bureau.

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Printed on paper containing minimum 75% recycled fibre content

GEN/18-19/20