



**Home Office**

**PARTIAL REGULATORY IMPACT  
ASSESSMENT**

**1 August 2007**

**REGULATIONS TO IMPLEMENT  
THE PRIVATE SECURITY INDUSTRY ACT 2001  
IN RESPECT OF  
PRIVATE INVESTIGATION AND  
PRECOGNITION AGENTS**

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## **1. Executive Summary**

1.1. The Private Security Industry Act 2001 sets out under Schedule 2, Part 1, that the Security Industry Authority (SIA), has the remit to consider the licensing of Private Investigation (section 4) and Precognition Agents (section 4A). This partial Regulatory Impact Assessment (RIA) sets out a series of options, for consultation, on the potential approaches to regulation of the Private Investigation and Precognition Agent sectors.

### **Precognition Agents**

1.2. The interviewing of witnesses (in both civil and criminal proceedings) is often delegated by Advocates/ Lawyers in Scotland to precognition agents, although they may be undertaken by Solicitors themselves. Sometimes, precognition agents also operate as private investigators; this is due to the similarities in some of the activities undertaken. As a result of this similarity we are developing licensing proposals for both sectors in parallel. It is proposed in this RIA that should competency requirements for licensing be implemented in both sectors, those applying for a licence as a precognition agent will only need to complete a subset of the proposed private investigation competency requirements. In this way, the SIA's licence integration approach would be that a private investigator would also be licensed to conduct the activities of a precognition agent (although not the other way round). By licensing both sectors separately, individuals engaged in precognition agent activity will not need to meet the broader requirements of the private investigation licence. The SIA is aware that changes in the law<sup>1</sup> have resulted in a reduction in the volume of work available for precognition agents; and therefore the number of precognition agents operating has significantly reduced. We are still consulting on licensing options within this RIA; including a cost assessment, due to the overlap set out above and the fact that the activity continues to exist (although on a smaller scale). However, this RIA includes questions relating to the perceived volume of individuals operating within the sector, and the need for licensing; given anecdotal information suggesting the size of the sector will continue to decrease.

### **Overview of paper**

1.3. This partial RIA has been produced on the basis of extensive research across; and consultation with, the private investigation sector. More limited research has been conducted with precognition agents due to the low sector numbers and lack of representative associations or institutions. However, discussions were held with a sample of precognition agents operating in Scotland to review the activity undertaken, and the Law Society of Scotland. Comments are particularly welcomed from individuals or companies operating within the

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<sup>1</sup> Police witness statements are now available to the defence, and therefore a precognition interview is not routinely required to access this information.

private investigation or precognition agent sector as part of this consultation process. The SIA recognises the quality and integrity of the individuals operating within both sectors, and has valued the input and contribution they have made to this development and consultation process. This RIA considers the private investigation and precognition agent sectors together, and singly, as appropriate.

### **Development of licensing for private investigators in 2006**

1.4. The development of licensing in the private investigation sector was suspended in early 2006. The majority of pre RIA consultation was undertaken with the private investigation sector during late 2005 and early 2006. In early 2007, the SIA met with representatives from various associations and institutions<sup>2</sup> from within the private investigation sector to update and review proposals on the development of licensing. Consultation commenced with the precognition agent sector in 2007.

### **Outline of options**

1.5. This paper sets out a series of options for licensing the private investigation and precognition agent sectors as follows: 1 Do Nothing, 2 Alternatives to regulation, 3 Licensing with no competence criteria and 4 Licensing with competence criteria. It assesses the potential harms and justification for regulation, and the benefits and costs associated with each option. This document also considers the potential impact of licensing on the private investigation and precognition agent markets.

### **Proposed Implementation dates**

1.6. Subject to the outcome of the partial RIA; if licensing of the private investigation and precognition agent sectors is determined to be the most appropriate approach, the SIA does not envisage licensing to commence until at least Summer 2008 (depending on the approach chosen). Further details would be set out within the full Impact Assessment when published.

## **2. Title of proposal**

### **Background**

2.1. The Private Security Industry Act 2001<sup>3</sup>; hereafter referred to as "the Act", created the Security Industry Authority (SIA) as a Non-Departmental Public Body

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<sup>2</sup>Association of British Investigators (ABI [Investigators] to distinguish it from the Association British Insurers (ABI [Insurers]) within this RIA), Institute of Professional Investigators (IPI), World Association of Professional Investigators (WAPI) and Scottish Investigators Forum (SIF).

<sup>3</sup>As amended by the Serious Organised Crime and Police Act (SOCPA) 2005 which widened the scope of the SIA to include licensing the private security industry in Scotland.

(NDPB), with the responsibility to licence individuals to work within designated sectors of the private security industry and, to approve suppliers of such services. The Act provides a framework of controls, including the licensing of all individuals engaging within the following licensable activities: Manned Guarding (Cash and Valuables in Transit, Close Protection, Door Supervision, Public Space Surveillance [CCTV], and Security Guard); Immobilisation, restriction and removal of vehicles, and Key Holding<sup>4</sup>.

2.2. An initial regulatory impact assessment on regulation of the private security industry overall was included in the White Paper (CM4254) which preceded the Act. At this stage consultation with the industry, including small businesses indicated that the proposals for regulation were welcomed. The White Paper predominately focused on the security guarding sector.

### **Legislative Responsibility**

2.3. The Act sets out under schedule 2 (4) and (4A) that the SIA has the remit to consider the licensing of private investigation and precognition agents respectively. This paper sets out a series of options on the approach and need for regulation of one or both sectors. A decision will be taken on whether to commence the provisions of the Act relating to either sector following the results of this RIA.

## **3. Purpose and intended effect of regulation**

### **Strategic Vision**

3.1. The SIA mission is to help protect society by collaboratively developing and achieving high standards in the private security industry. The SIA envisages becoming internationally recognised as a major contributor to the quality and effectiveness of the private security industry thus helping to reduce crime, disorder and the fear of crime. In doing this, the SIA is informing and updating the buyers and suppliers of security services, the police service and the public to achieve the following aims:

- 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.
- Businesses in the private security industry improving their standards through the creation of a framework for developing, promoting and spreading best practice.

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<sup>4</sup> Licensing has not yet been developed for the following sectors: private investigation or precognition agents (which form the basis of this partial RIA), and security consultants.

- Contribution to the Home Office extended police family policy by encouraging and supporting further engagement of the private security industry.
- Recognition, by all our stakeholders, of the SIA as a model of good practice.

## Objective

3.2. The introduction of regulation of the private investigation and precognition agent sectors would require all individuals engaged in licensable activity to hold a licence issued by the SIA. The issuing of this licence would depend on key licensing criteria. As a minimum, this would involve payment of a fee and checks to determine whether an individual is 'fit and proper'<sup>5</sup> to conduct this activity. In addition, for front line staff, this could include a competency based requirement linked to the activities conducted by private investigators or precognition agents. This partial RIA considers these options within the proposals. Once the offence date passed, it would be a criminal offence to engage in licensable activity without a valid licence. Managers, Supervisors and Employers (including Directors [both executive and non-executive directors, shadow directors, parent company directors and corporate entities holding a directorship]) who supply unlicensed operatives would also be committing a criminal offence. Please refer to section 9 for full details.

3.3. The proposed benefits of introducing licensing across the private investigation sector include:

- Removing from the private security industry those who seek to use their position to pursue criminal activities.
- Raising standards of competence and professionalism in the industry.
- Increase public confidence in the private investigation sector (private clients, public or corporate bodies or subjects of investigation),

And through the availability of the Approved Contractor Scheme (ACS) to companies;

- Recognition for companies who do operate to high standards and who have invested in training and selective recruitment (through the ACS).

The proposed benefits of introducing licensing across the precognition agent sector include the areas set out above, and specifically:

- Removing from the private security industry those individuals engaged in precognition activity who may use unlawful methods when taking precognitions from witnesses (particularly vulnerable witnesses such as children).

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<sup>5</sup>The SIA's 'fit and proper person' check involves assessment against key criteria including criminality, mental health and identity. Refer to Annex C for proposed approach.

3.4. The purpose of this partial RIA is to analyse potential harms caused by unethical and unlawful individuals operating within either sector, and whether the impact or scale of these harms is sufficient enough to justify regulatory intervention through licensing. However, this analysis should not undermine those individuals and companies who continue to operate within the private investigation and precognition agent sectors to high and exacting standards of professionalism.

### **Coverage**

3.5. The options for the licensing of private investigation and precognition agents would cover England, Wales and Scotland. Precognition agents (although only acting in relation to Scottish proceedings) could undertake the precognition anywhere in the United Kingdom. The extension of the SIA's remit to Northern Ireland has been agreed following a consultation on proposals during August - October 2006. However, the timeline for regulation of the private security industry in Northern Ireland (including private investigation and precognition agents) has not yet been announced. We welcome comments from individuals operating within the private investigation and precognition agent sectors and other interested stakeholders based in England, Scotland, Wales and Northern Ireland on the options set out within this paper.

### **Proposed scope of licensing for the private investigation sector**

3.6. Section 3 of the Act sets out, generally, the definition of licensable roles. The Act applies:

- If you are undertaking designated licensable activities for the purposes of or in connection with any contract to a consumer (note: in-house precognition agents are licensable).
- If you manage, supervise and/or employ individuals who engage in designated licensable activities for the purposes of or in connection with any contract to a consumer (note: in-house precognition agents are licensable)<sup>6</sup>.

3.7. The contract for the supply of services does not have to be a contract purely for the supply of security activities. For example, the contract may be for the supply of legal services but, if security activities are (or may be) carried out "in connection" with the supply of legal services (rather than merely incidental to it) a licence would be required.

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<sup>6</sup>If the Manager, Supervisor or Employer (including Directors [both executive and non-executive directors, shadow directors, parent company directors and corporate entities holding a directorship]) is not themselves conducting licensable activity, an SIA non-front line licence will be acceptable for this purpose.



3.8. Schedule 2, Part 1, section 4 (1), of the Act sets out private investigation activities as any surveillance<sup>7</sup>, inquiries or investigations that are carried out for the purpose of:

- a) Obtaining information about a particular person or about the activities or whereabouts of a particular person<sup>8</sup>; or
- b) Obtaining information about the circumstances in which or means by which property has been lost and damaged.

Further definitions and clarifications on the proposed scope of licensing are set out in Annex A of this paper.

### **Exclusions from the scope of licensing for the private investigation sector**

3.9. The following activities and people are currently excluded from licensing under the Act:

- Activities exclusively ‘in-house’, i.e. not in connection to any contract for services.
- Crown servants including members of the police or armed forces or HM Government intelligence services<sup>9</sup>.
- Activities exclusively for the purposes of market research (see Annex A for definition).
- Activities exclusively for the purpose of determining whether a particular person is credit-worthy.
- 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).
- Accountants who are members of bodies set out in Annex A, 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).
- Activities relating to obtaining information exclusively with a view to its publication.
- 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).
  - Published work.
- Activities carried out with the knowledge or consent of:

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<sup>7</sup> “Surveillance” includes covertly listening to or recording conversations or other sounds and any method of covertly obtaining information.

<sup>8</sup>A “particular person” may be construed as an individual or a body corporate or incorporate.

<sup>9</sup>Public servants, for example, local authority staff are not excluded.

- The person about whom, or about whose activities or whereabouts, information is sought; or
- Every person whose interest in any property has been affected by the loss or damage about which information is sought.
- 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, and will need to be considered on a case by case basis.

### **Proposed scope of licensing for the precognition agent sector**

3.10. In addition to the general scope of licensing set out in paragraph 3.6 - 3.8 of this RIA, Schedule 2, Part 1, section 4A, of the Act sets out the activities of a precognition agent as to the taking, other than on behalf of the Crown, of a precognition for the purposes of, or in anticipation of:

- a) Criminal or civil proceeding in Scotland; or
- b) Proceedings on an application under section 65(7) or (9) of the Children (Scotland) Act 1995.

Precognition Agent activities undertaken both in-house or in relation to any contract to a consumer are licensable under the Act.

### **Exclusions from the scope of licensing for the precognition agent sector**

3.11. The following activities and people are currently excluded from licensing under the Act:

- Activities of a person who is an Advocate or Solicitor in Scotland<sup>10</sup>.

### **Background**

3.12. There is currently no direct regulation of private investigation or precognition agents under law. Currently some of the activities undertaken by private investigators may be indirectly regulated through other means, for example via the Financial Services Authority (FSA) governance requirements. A small number<sup>11</sup> of the activities that Chartered Loss Adjusters carry out may also fall within the scope of licensable activity if conducted 'without the knowledge or consent' of everyone involved in the investigation. However, the vast majority of Loss Adjuster work is conducted with the consent and knowledge of the claimant.

3.13. The activities excluded from the Act listed in para. 3.9. were agreed by Parliament for one or more of the following reasons:

- Little or no evidence of harm to the consumer or public posed (for

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<sup>10</sup>First year "trainee" Solicitors in Scotland are not regarded as fully qualified Solicitors and would potentially be licensable if they undertook precognitions during this period.

<sup>11</sup> Information provided by the Chartered Institute of Loss Adjusters [www.cila.co.uk](http://www.cila.co.uk)

- example, the information is already in the public domain); or
- Necessary regulation is already in place.

In terms of precognition agents, this is a specific activity in relation to Scottish proceedings. The exclusion in paragraph 3.11 is the only relevant exclusion for this sector.

3.14. It is the SIA's intention that the scope of any regulation of private investigation or precognition agents is focused on the core activities which may potentially harm the public. Where 'suitable alternative arrangements' are already in place which effectively provide assurance against the harm then an exemption from licensing may be granted under s4 of the Act. Regulation of precognition agents (if supported following this RIA) is more limited in scope as it targets a specific activity in relation to Scottish proceedings. Further information about the SIA's exemption strategy can be found in Annex B.

### **Existing representative bodies and associations across both sectors**

3.15. In the absence of regulation, there are a number of associations and institutions representing the views and interests of private investigators<sup>12</sup>. There are no known precognition agent representative groups, although some private investigators engaged in the activity of precognition are members of private investigator representative groups. Over time, these organisations have strived to ensure that the work of private investigators (and precognition agents as a related sector) is professional and have continued to encourage the raising of standards. These organisations range from small niche groups, to more large scale bodies with 100 or more members. The membership criteria set ranges from payment of a member's fee, to an individual having to provide evidence of competence.

### **Private investigation training and qualifications**

3.16. National Vocational Qualifications (NVQs) did until recently exist for investigation at levels 3 and 4 of the National Qualifications Framework. However, take up of these NVQs has been relatively low with a total of 148 candidates undertaking either the level 3 or level 4 as of January 2007. There are no such equivalents in Scotland. NVQs are competence-based qualifications, and achievement of them, relies on the candidate demonstrating competent performance in the workplace. In addition to generic training organisations, a number of private investigator professional bodies and institutions now offer bespoke training courses to their members. Some of these organisations may in time work with suitable Awarding Bodies with a view to ensuring that their learning products cover the requirements of the licence-linked qualification and provide suitable preparation for the assessment. We also envisage a situation where professional bodies could work with Awarding Bodies to develop a structure of qualifications that provide coverage of the SIA competency

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<sup>12</sup>See footnote 2 for examples.

requirements, but also extend to more comprehensive treatment of the fuller professional duties of private investigators, over and above the core licensable activities. A framework of qualifications such as this would encourage continued professional development in the sector. In addition, some medium to large companies provide investigation services as part of their overall business and deliver in-house training to investigations staff. They too need a more structured framework of qualifications that reflect professional development in the sector. The need for a structured and consolidated system of learning and qualifications for the sector is highlighted by the patterns of employment, particularly in terms of those entering the sector. Individuals entering the private investigation profession tend to do so as a second career. These individuals may have already acquired relevant skills whilst working for the Police, the Army, relevant Government departments or other regulators such as trading standards. However, this learning is likely to be uncertificated and unrecorded. SIA research conducted in late 2005 indicated support for accredited qualifications and a supporting structure of training that would provide a more defined career entry route.

### **Precognition agent training and qualifications**

3.17. There are no known qualifications (accredited on the Scottish Credit and Qualifications Framework) relating specifically to precognition agent activity and relevant training and qualifications available commonly cover the wider remit of legal training. As a result the training of precognition agents is predominantly informal. Commonly, they will have a background in the Police, the law or a related profession and employment opportunities are built on professional experience and reputation. However, research conducted with a sample of precognition agents in 1999 identified that there was support for precognition specific training<sup>13</sup>.

### **National Occupational Standards for both sectors**

3.18. Skills for Security the sector skills body for the security industry, are responsible for developing National Occupational Standards (NOS). NOS are statements of the skills, knowledge and understanding needed in employment and clearly define the outcomes of competent performance. They are developed by representatives of employment sectors on a UK-wide basis and inform the content of vocational qualifications. They can also be used to develop learning programmes, as the basis of an appraisal system, and as a recruitment tool. In the longer term, NOS enable the transferability of skills across sectors. The NOS for investigators have now been approved and are available on the NOS directory<sup>14</sup>.

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<sup>13</sup>The Work of Precognition Agents in Criminal Cases, David J Christie and Susan R Moody, Scottish Executive Central Research Unit, University of Abertay, 1999.

<sup>14</sup>[www.ukstandards.org/Find\\_Occupational\\_Standards.aspx?NosFindID=3&OrganisationID=69](http://www.ukstandards.org/Find_Occupational_Standards.aspx?NosFindID=3&OrganisationID=69)

3.19. NOS for precognition agents are currently being considered by Skills for Security. Early work indicates that some of the core functions specified in the NOS for investigators are likely to replicate some of the functions carried out by precognition agents; specifically in terms of conducting investigations and interviewing skills. There is also likely to be an overlap in terms of knowledge of the law, particularly where a private investigator operates under Scottish Law. This supports the rationale for proposing that the precognition agent competency requirements form a subset of the private investigation competency requirements (and the licence integration approach set out in para. 1.2.).

3.20. The SIA is not seeking to capture and specify all aspects of private investigation or precognition agent competence. This is the responsibility of the sector skills body, Skills for Security, who develop the NOS. As a regulator, the SIA's remit is to consider the core requirements, if any, that an individual operating within the private investigation or precognition agent sector should meet to undertake this activity, in order to protect the needs of the public. In other sectors this has been achieved by setting qualifications based on stipulated competency requirements as a pre-cursor to attaining a licence.

### **Private Investigator and Precognition Agent support for regulation**

3.21. Individual practitioners and representative organisations have, on the whole, advocated regulation of private investigation since the introduction of the Act<sup>15</sup>. They see it as a way to ensure the professionalism, and preserve the integrity, of individuals and companies operating in this sector. The SIA has consulted with a range of practitioners and stakeholders since July 2005<sup>16</sup>. This has been through workshops, one to one meetings and attendance at conferences. Specifically, during November and December 2005, the SIA consulted on the potential competence requirements for licensing. This consultation also captured feedback on the wider issues and concerns with regard to licensing the private investigation sector. For full details of consultation activity, please refer to section 4.

3.22. Independent research conducted with a sample of precognition agents by the Scottish Executive Central Research Unit in 1999 identified that there was support for precognition specific training on how to interview and handle witnesses, and the legal framework that underpins this process. Further, this research identified that witnesses were potentially at risk of harm as a result of there being no mandatory criminality check for individuals engaged in this activity<sup>17</sup>. This view was echoed by the precognition agents whom the SIA engaged with in January 2007.

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<sup>15</sup>The Investigator Sector Group's website ([www.psiact.org.uk/art04.htm](http://www.psiact.org.uk/art04.htm)) contains historical information that illustrates a supportive debate around the need for regulation since the 1960s.

<sup>16</sup>Refer to paragraph 1.4. for information regarding the suspension of the development of licensing in 2006.

<sup>17</sup>Refer to footnote 13.

## **Rationale for regulation of the Private Investigation and Precognition Agent sectors**

### **Current status of sectors**

3.23. Currently, any individual (regardless of skills, experience or criminality) can operate within the private investigation or precognition agent sectors. Consultation and research with representative bodies and individual practitioners illustrate that a large number of private investigators have previously worked either in trading standards, the police, the armed forces or in organisations such as HM Revenue and Customs (HMRC). Skills acquired through a combination of job based training and specialist activities such as Criminal Investigations Department (CID) and fraud investigations, have provided these individuals with relevant knowledge and skills to transfer into private investigation or precognition as a second career.

3.24. The only current mitigation against the potential harm caused by unlawful and unethical individuals or companies operating within the private investigation or precognition agent sector is the deterrent effect of being reported to the Police, for unlawful or criminal activity, or to the Information Commissioner's Office (ICO) specifically in relation to data protection offences committed by private investigators. Both avenues are a method of reporting harm caused once an offence has been committed. Neither prevents an individual from operating within either sector to begin with. Arguably, the success of these deterrent measures also relies on the 'subject' being aware that their rights have been violated, understanding what their individual rights are, and being confident enough to report any harm caused to the relevant authority.

### **Potential harm caused in relation to the activities of unethical or unlawful Private Investigators or Precognition Agents**

3.25. The persons affected by private investigation are the customers and the subject(s) under investigation. The persons affected by precognition agents (refer to para 1.2. for information on the reduced need for this role) are witnesses subject to the precognition, and the legal service providers who contract for the precognition work to be undertaken. Table 1 illustrates the common categories of supplier/customer arrangements; the potential harms and the impact of these harms and Table 2 illustrates the types of subject(s), the potential harms and the impact of these harms. The full scale of any potential harm caused by individuals or companies operating unlawfully or unethically within the private investigation or precognition agent sector is not known (quantitative evidence from the ICO has been included where relevant). This is because, currently, the activities of private investigation and precognition operate outside of any specific control or regulation. Arguably, the lack of quantitative information could be because individuals (and to a lesser extent companies) are not fully aware of their rights in terms of personal information and data protection; intimidation may leave a

vulnerable subject unable to report any offence, and given the activity is often covert, subjects may not know that they have been the victim of any unlawful activity or surveillance. We welcome comments or evidence on the incidences and nature of harm caused by any unlawful and unethical practices in either sector as part of this RIA process.

**Table 1 Common categories of customer/ supplier arrangements; potential harm and impact of harm**

*Harms and impact of harms for both sectors have been grouped as; on the whole, they are common to all customers (exceptions to this are noted). Evidence on frequency has been grouped as there is little quantitative information available, as neither sector is currently subject to any regulation, outside of recourse to criminal sanctions.*

<b>Customer</b>
<ol style="list-style-type: none"> <li>1. Legal services</li> <li>2. Insurance companies</li> <li>3. Security/ investigation companies sub contracting investigation services.</li> <li>4. Debt collection agencies.</li> <li>5. Individual customer (not relevant to precognition agent sector) e.g. divorce proceedings, locating estranged partner.</li> </ol>
<b>Harm</b>
<ul style="list-style-type: none"> <li>• Unethical private investigators try to access data through unlawful means.</li> <li>• Unethical private investigators/ precognition agents use intimidating, threatening or unlawful behaviour as part of their investigation/ surveillance/ precognition.</li> <li>• Private investigator/ precognition agent not competent to conduct investigation/ surveillance/ precognition (no knowledge of law or core skills required).</li> <li>• Clients instruct private investigator for unlawful or immoral reasons. Subject(s), or their personal information/data, under investigation/ surveillance is then potentially put at risk.</li> </ul> <p>In relation to individual purchasers:</p> <ul style="list-style-type: none"> <li>• Cash is paid upfront; however no service is then delivered and the supplier is untraceable.</li> </ul>
<b>Impact of harm</b>
<ul style="list-style-type: none"> <li>• Customer provided with evidence/ information that is inappropriate, misleading, or which has been improperly/ unlawfully obtained making it inadmissible (if used in relation to any formal proceedings).</li> </ul>

<ul style="list-style-type: none"> <li>• Reputational harm to competent and lawful private investigation/ precognition agent sector.</li> <li>• Reputational harm to companies who unknowingly contract unlawful/ incompetent private investigators/ precognition agents to conduct work for them.</li> </ul> <p>In relation to individual customers:</p> <ul style="list-style-type: none"> <li>• Financial loss/ stress as a consequence of non delivery of work.</li> </ul>
<b>Frequency</b>
<ul style="list-style-type: none"> <li>• Qualitative evidence indicates strong support for licensing due to a perceived need to ensure that investigators operate lawfully and competently; particularly from insurance companies<sup>18</sup> as a method of managing the integrity and quality of investigation contractors<sup>19</sup>.</li> <li>• The principles behind the insurance sectors support for licensing are likely to be replicated across other industries that utilise these services (legal services, security companies who contract investigation services<sup>20</sup> etc).</li> <li>• There is no ready source of quantitative information on the impact or frequency of harm caused to individual purchasers.</li> </ul>

**Table 2 Common subject(s) of investigations or precognition; potential harm and impact of harm**

<b>(a) Third Parties</b>
<p>6. Subject of investigation (without knowledge or consent).</p> <p>7. Subject of precognition.</p>
<b>Harm</b>
<ul style="list-style-type: none"> <li>• Unethical private investigators try to access data through unlawful means.</li> <li>• Unethical private investigators/ precognition agents use intimidating, threatening or unlawful behaviour as part of their investigation/ surveillance/ precognition.</li> </ul>
<b>Impact of harm</b>
<ul style="list-style-type: none"> <li>• Subject of investigation/ surveillance/ interview suffers emotional stress or</li> </ul>

<sup>18</sup> ABI (Insurers) support licensing in principle in terms of preventing rogue practices and incompetence from investigators contracted to undertake insurance investigation work. They are also keen that adequate probity and competency checks form part of any licensing requirements introduced, March 2007 (ABI [Insurers] have approximately 400 member companies).

<sup>19</sup> Allianz Cornhill strongly advocate the need to remove any rogue element from the private investigation sector and see licensing as a way of managing the quality and integrity of investigation subcontractors, March 2007.

<sup>20</sup> For example some medium to large companies can contract with 100 private investigators on a case-by-case basis, over a year.



<p>physical harm.</p> <ul style="list-style-type: none"> <li>• Subject of investigation has their personal or company information used for unlawful means.</li> </ul>
<b>Frequency</b>
<ul style="list-style-type: none"> <li>• It is not possible to quantify incidences of emotional/physical harm caused as both sectors are unregulated, and there is no ready source of quantitative information (there is also potential for this type of harm to go unreported).</li> <li>• In terms of precognition agents, research conducted in 1999<sup>21</sup> indicated that there was no consistent approach to making special arrangements to support vulnerable witnesses, and (in relation to the sample reviewed) witnesses subjective perceptions of the precognition agents and process were negative overall.</li> </ul>

<b>(b) Third Parties</b>
8. Data Controllers
<b>Harm</b>
<ul style="list-style-type: none"> <li>• Unethical private investigators try to access data through unlawful means.</li> </ul>
<b>Impact of harm</b>
<ul style="list-style-type: none"> <li>• Subject of investigation has their personal or company information used for unlawful means.</li> </ul>
<b>Frequency</b>
<ul style="list-style-type: none"> <li>• ICO indicates that the majority of complaints they deal with originate from data controllers whose data is being attacked by tracing agents or private investigators<sup>22</sup>.</li> <li>• Specifically, as at 1 March 2007, 23 private investigators are being investigated by the ICO, of which: <ul style="list-style-type: none"> <li>○ 4 are being considered for prosecutions</li> <li>○ 6 considered for cautions</li> <li>○ 6 for undertakings<sup>23</sup></li> </ul> </li> </ul>

<sup>21</sup> Refer to footnote 13.

<sup>22</sup> Information provided on request to the SIA, March 2007. Further information on general issues and support for regulation contained in the report 'What Price Privacy', ICO, May 2006 and 'What Price Privacy now', December 2006.

<sup>23</sup> Legal undertaking to comply with the Principles of the DPA in the future (i.e. in terms of data handling).

- 7 are being actively investigated.
- Formal action taken by the ICO under the DPA 1998 against private investigators:
  - 14 prosecutions
  - 1 caution
  - 4 undertakings

3.26. Table 1 illustrates that, in the main, the potential harms and impact of these harms are generic to unlawful and unethical individuals/ companies operating within both the private investigation or precognition agent sectors. Potentially, larger companies and regular purchasers of private investigation or precognition services will be less vulnerable parties, as they are more likely to have corporate safeguards in place or will be familiar with the level of service they should expect.

### **Specific harms relevant to private investigation activities**

3.27. A specific example of the risk posed to consumers and the public, by private investigators, relates to s55<sup>24</sup> Data Protection offences (unlawfully obtaining personal data). On average, these offences represent a quarter of the total cases being managed by the ICO yet they take up about 60% of their total investigative time as they are complicated, involve many offences and are committed by people who know the criminal justice system relatively well.

3.28 In their report: 'What price privacy', the ICO sets out that whilst the 'buyers' of information can be journalists, insurance companies, credit service companies (engaged by local authorities), and individual consumers (see Table 1 above) the 'suppliers' are predominantly individuals or companies operating within the private investigation sector<sup>25</sup>. Often investigators will work in loose chains that may include several intermediaries between the ultimate customer and the person who actually obtains the information. The use of intermediaries has increased recently as unethical private investigators try to distance themselves from any unlawful activity and the risk of prosecution. Common methods used to access information unlawfully are corruption or deception (i.e. 'blagging' which involves individuals pretending to be someone they are not in order to access information). There is also concern regarding unregulated surveillance activity and how unlawful or disproportionate surveillance activity can result in unnecessary intrusions into individual's lives or security breaches<sup>26</sup>. The financial gain from these types of unlawful activity is highly lucrative.

<sup>24</sup>s. 55 Data Protection Act 1998.

<sup>25</sup>Summarised at a headline level here, there are detailed examples of private investigators accessing information or data unlawfully within the report 'What price privacy', ICO, May 2006 and 'What price privacy now', ICO, December 2006.

<sup>26</sup> [www.ico.gov.uk/global/search\\_results.aspx?search=surveillance](http://www.ico.gov.uk/global/search_results.aspx?search=surveillance)

3.29. Part of the role of the ICO is to ensure compliance with the Data Protection Act (DPA) 1998, and investigate instances of non compliance, enforcing appropriate sanctions where it is reasonable to do so. In this way, when a private investigator does behave unlawfully in relation to a data protection offence (which currently appears to be the most common reported offence in this sector) the ICO does have a public protection role in addressing this. However, in this respect the function of the ICO is limited to non compliance with the DPA, and they can only address problems if they are reported and, most importantly, once the 'harm' has already been done. In light of these limitations, the ICO is highly supportive of the additional need for specific regulation (through licensing) of the private investigation sector. Richard Thomas (Information Commissioner) stated "*The Information Commissioner's Office prosecutes where specific data protection offences can be proved, but has no power to regulate on-going business practices. Licensing is essential, not only to raise standards, but to give the public on-going protection from those involved in the illegal trade in personal information*" (April 2007). The SIA would have a preventative and deterrent function, through mandatory probity checks, if licensing were introduced. They would also have a broader reach in terms of taking action to prevent, or mitigate against, the number of individuals operating within the sector unlawfully or unethically.

#### **Specific harms relevant to precognition agent activities**

3.30. There is little evidence (quantitative or qualitative) on the nature or frequency of any harm caused to witnesses who are subject to interview by unethical precognition agents<sup>27</sup>. Given recent changes in the law (see para 1.2.) potentially precognition services will, increasingly, be offered through private investigators. However, this should be considered against the overall potential for, and impact of, harm given the possible circumstances of the subject of the precognition. As an extreme example, currently there is scope for an individual with a relevant criminal record to interview children, vulnerable adults, or individuals who may be under stress following the witnessing of the incident.

#### **Employer's role in terms of protecting suppliers/ customers or subject(s) of investigations**

3.31. The Better Regulation Task Force<sup>28</sup> recommended that, to an extent, employers should also be accountable for fit and proper person checks except where there are strong arguments for statutory intervention. SIA research<sup>29</sup>

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<sup>27</sup>The Scottish Executive Centre for Research's (see footnote 13) work in this area was limited in scope, although it recognised the potential risks in this respect.

<sup>28</sup>Recommendation 14, Better Regulation Task Force Fit Person Criteria Review (1999).

<sup>29</sup>Source, SIA web consultation, December 2005. Approximately 2000 private investigators were represented by the final responses received. This was through a combination of individual submissions (125) and submissions from 8 associations and institutions representing their members' interests.

demonstrates that the employment status of individuals operating within the private investigation sector, under the remit of the Act, is likely to be as follows:

- a) Self employed investigators offering services under contract<sup>30</sup>.
- b) Small companies, employing sub-contractors as necessary.
- c) Public authority investigators (note; only when they conduct licensable activities in connection to a contract for services).
- d) Investigators employed by larger/corporate companies offering investigation services under contract.

3.32. Much work conducted by groups (a) and (b) is obtained through informal networks, particularly by word of mouth and email groups (precognition agents are likely to fall within group [a]). It is not known whether companies would routinely vet contract investigators<sup>31</sup> before engaging in a contract. Members of certain representative associations and institutions may have had to pass certain probity and competency checks as part of their membership and this provides some safeguards<sup>32</sup>. It is assumed that public authorities would have basic background checks and/or security clearance of their employees in place. However, there is no evidence of a uniform or consistent approach by employers to vetting (either in terms of competence or probity) private investigators or precognition agents before their being deployed under contract. This is most likely due to the informal manner in which work is awarded.

### **EU/International practice**

3.33. Many other countries already regulate the private investigation sector. Regulation may enable investigators and Government to work more closely with our EU/International partners. The EU Directive on recognition of professional services is considered in more detail in section 6.

## **4. Consultation**

4.1. The SIA has consulted extensively with stakeholders to date, both on an informal and formal basis. They will continue to do so throughout the RIA process. There has also been a significant volume of consultation with the sector regarding the content for a competency specification, which has been developed

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<sup>30</sup>95% of respondents consulted (see footnote 29) indicated that they were small or micro companies. Anecdotal evidence supports that the majority (approx. 80%) of these will be self employed, sole practitioners.

<sup>31</sup>Note, licensing provisions in the Act would only apply to individuals who are conducting licensable activities in connection with any contract for services (also Managers and Directors of such companies see para. 3.6-3.8).

<sup>32</sup>Additionally, there are examples of associations and institutions developing codes of conduct and professional guides for their members; 'Data Protection: A best practice guide for Professional Investigators', R.J. Newman, 2003, ABI (Investigators).

in the event of this option for regulation being implemented. Studies<sup>33</sup> were commissioned by the SIA when regulation of the private security sector was first introduced. As already discussed within this RIA, the SIA also consulted<sup>34</sup> with individuals and organisations operating within the private investigation sector, specifically looking at the potential effects of licensing and potential competency criteria. More limited research was conducted with the precognition agent sector. Research and consultation with stakeholders has fed into the development of the options for regulation of both sectors; notably whether there is a need to licence either sector and, if so, how this should be achieved. The options identified are (see **section 5** for full details):

- 1 Do Nothing
- 2 Alternatives to regulation
- 3 Licensing with no competence criteria
- 4 Licensing with competence criteria.

### **Consultation with private investigation stakeholders**

4.2. During July 2005, the SIA convened a series of workshops with individuals operating within the private investigation sector to discuss the activities of a private investigator and the impact and issues associated with licensing the sector. A workshop was held in England, covering practitioners from England and Wales, and a workshop was held in Scotland. Attending were sole practitioners, micro and small businesses, as well as representatives from associations and institutions, and medium to large companies. Attendees were identified through existing contacts known to the SIA (e.g. medium to large companies who had already been impacted upon by the need for licensing through the other private security services they provided), and through sector associations and institutions. These workshops provided the basis for the SIA to explore approaches to licensing, and associated issues, with a wider cross section from the private investigator sector<sup>35</sup>.

4.3. During November 2005, the SIA attended 'The Investigator's Sector Group' conference to discuss the findings of research to date and get feedback from practitioners on issues and concerns regarding licensing. This event was attended by over 100 private investigators and was an opportunity to discuss the areas identified to date in an open forum. The majority of those attending indicated, when asked, that licensing would benefit their sector. The main concerns identified at the conference were with regard to the implementation approach the SIA used.

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<sup>33</sup>'The Impact of Licensing and other changes upon the Security Sector' - Professor Martin Gill and Dr Tony Burns-Howell, June 2003.

<sup>34</sup>During mid 2005 – early 2006; and updated in March 2007.

<sup>35</sup>The outputs from these workshops were available on the SIA website from September 2005 – February 2007. They were archived recently to ensure that stakeholders were only presented with up to date information on the SIA's work in this sector.

4.4. Building on the potential competence components identified and key areas of concern, the SIA released a questionnaire during November and December 2005. This questionnaire was sent directly to a number of organisations and individuals who had expressed an interest in the development of the licensing process. In addition, it was sent to over 40 representative institutions and associations and a range of education and training bodies. The questionnaire was also available on the internet during this time. At the conclusion of the survey period, the SIA had 125 responses from private investigator practitioners and 8 responses from associations and institutions<sup>36</sup>. The results of this research demonstrated support for a formal training route into the sector.

4.5. Although the development of licensing was suspended in 2006, work has been taken forward by the sector skills body, Skills for Security, in the meantime. Specifically, they led a sector consultation group for private investigators looking at potential qualification pathways (in the absence of regulation). This more recent work (conducted in late 2006) confirmed the SIA's early understanding of the need for potential core competency requirements for the sector. Notably, there is a desire for professionalism within the sector; there are core requirements that any individual conducting private investigation activity would need to meet, and there are specialist areas of skill (i.e. Fraud investigations) which are over and above the core skills for licensing, but which could be recognised through a structured qualifications framework. Skills for Security's input has also assisted in the streamlining work undertaken by the SIA in early 2007<sup>37</sup>, to ensure that any potential core competence requirements focused on the key skills required in order to operate within the profession. This rationalisation of approach also recognised the need to manage the potential time and cost burden associated with any qualification requirements (which is key given the business profile of those operating within the sector).

#### **Consultation with precognition agent stakeholders**

4.6. As set out within this RIA, research with the precognition agent sector has been more limited. This is because of the small volume of individuals operating within the sector and the lack of any specific representative associations or institutions. Meetings and discussions were held with a small sample of individuals operating within this sector and the Law Society Scotland. The SIA was also able to draw on the Scottish Executive Centre for Research's work<sup>38</sup> in this regard. Recent changes in the law have provided mixed views over the need

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<sup>36</sup> Approximately 2000 individuals were represented by the responses received.

<sup>37</sup> Following the suspension of the development of licensing in early 2006, the SIA shared its best practice guide for private investigators on the website ([www.the-sia.org.uk/home/licensing/private\\_investigation/training\\_pi.htm](http://www.the-sia.org.uk/home/licensing/private_investigation/training_pi.htm)). Skills for Security reviewed this best practice approach in consultation with their sector group during 2006, and worked with the SIA to identify a more focused range of potential core competency requirements for licensing. The SIA's network of endorsed awarding bodies and sector representatives were also involved in this review.

<sup>38</sup> See footnote 13.

to regulate this sector, given those who continue to operate are likely to do this as part of a wider private investigation service (in which case they would potentially be covered by that licence).

### **Consultation with other Public Bodies**

4.7. Consultation has taken place, both informally and formally, with the Home Office; the Scottish Executive; the Small Business Service (SBS) of the Department for Trade and Industry (DTI); the Treasury Solicitors; the Information Commissioner's Office (ICO) and the Office of the Immigration Services Commissioner (OISC). In addition, a number of public bodies who may use private investigation services, in-house or contracted, were sent a copy of the questionnaire looking at potential competency requirements and any issues with regard to licensing, for comment, in November 2005. The SIA will continue to liaise with interested and relevant public bodies throughout the RIA process.

### **RIA Consultation process**

4.8. The SIA is publishing the options for regulating the private investigation and precognition agent sector through this partial RIA. As set out in 2.2., consultation on regulation in the private security sector, in general, and the SIA's regulatory approach has already been conducted. This partial RIA focuses on looking at whether, and how, SIA regulation should be extended to those individuals working within the private investigation or precognition agent sectors. Following conclusion of the 12-week consultation period for the partial RIA, responses will be reviewed and a full RIA will be published outlining the chosen approach and next steps (if appropriate).

### **Ongoing Programmes of Consultation (if licensing were implemented in either sector)**

#### **SIA's Research Strategy**

4.9. The SIA has now commenced sector based research looking at the impact of licensing in practice. The results of this research<sup>39</sup> are a key part of the SIA's ability to assess its performance as a regulator, and ensure that licensing is meeting the strategic aims and objectives set out<sup>40</sup>. Should licensing be introduced in either the private investigation or precognition agent sector, the SIA would consult with these sectors at the appropriate time to review and assess the impact licensing has had in terms of meeting the SIA's strategic aims and objectives.

#### **SIA and Better Regulation**

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<sup>39</sup> Results of the research with the Door Supervision and Security Guarding sector are available, by request, from the SIA.

<sup>40</sup> See Para. 3.1.

4.10. The SIA is committed to the principles of good regulation<sup>41</sup>. We aim to be proportionate by only intervening with regulation where justified; accountable by reaching decisions in a logical and open manner; consistent by working with partners in the delivery of shared initiatives and policies; transparent by consulting on our policies, services and strategies and by ensuring people know what to expect from us, and targeted by focussing our resources on tackling issues and problems solving. Notably, during 2006 we invited the Better Regulation Executive (BRE<sup>42</sup>) to visit some of our licence holders, and developed a better regulation action plan following this. As a result of this work, William Sargent (Executive Chair, BRE) stated *"This encouraging work demonstrates that the SIA is committed to responding effectively and constructively to suggestions from stakeholders"* (February 2007). Building on this commitment; if licensing were introduced in either the private investigation or precognition agent sector, the SIA would welcome proposals for reducing any burdens, where reasonable and proportionate to do so, as part of its ongoing simplification planning process<sup>43</sup>. The SIA will consider; as part of producing the final impact assessment, the impact on its administrative burden of extending its licensing remit to include private investigation and precognition agents (subject to the outcome of this RIA).

4.11. The SIA is currently developing its licence application process to simplify it for all users. These simplification measures have been identified through consultation with licence holders, private security industry companies and the BRE. These measures will be introduced during late 2007, and into 2008, and will significantly reduce the SIA's administrative burden.

## 5. Options for licensing

5.1. This partial RIA sets out four options for regulating the private investigation and precognition agent sectors. The options have been created based on consultation with both sectors, and in consideration of the SIA's existing strategic approach to regulating the private security industry. The options considered are:

1. Do Nothing
2. Alternatives to regulation
3. Licensing with no competence criteria
4. Licensing with competence criteria

Presentationally, both sectors have been considered together in the options presented (except in relation to the economic impact assessment) due to the overlap in the activities, and potential harms, identified in this RIA. However, we welcome comments from stakeholders in terms of specific options relating to

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<sup>41</sup>Visit website for full details ([www.the-sia.org.uk/home/about\\_sia/good\\_reg.htm](http://www.the-sia.org.uk/home/about_sia/good_reg.htm))

<sup>42</sup>[www.cabinetoffice.gov.uk/regulation](http://www.cabinetoffice.gov.uk/regulation)

<sup>43</sup>Simplification proposals can be submitted in relation to any licensed sector regulated by the SIA, at the following address: [simplificationproposal@the-sia.org.uk](mailto:simplificationproposal@the-sia.org.uk)



their sector, and whether respondents feel only one of the sectors should be licensed<sup>44</sup>, particularly in relation to the need to licence precognition agents given recent changes in the law (see para. 1.2.)

5.2. For each option the following is set out: a description; how the option addresses the potential harms identified (see para. 5.3.); harms which are not addressed by the option; compliance and enforcement approach; and a summary analysis. These options apply to private investigation activities as proposed in para. 3.6-3.8. and Annex A, and precognition agent activities as proposed in para. 3.10. and Annex A. An economic impact assessment of each option is provided in section 6.

5.3. This RIA identifies five potential harms as a result of non regulation of either sector (see section 3, tables 1 and 2 for full details):

1. Unethical private investigators try to access data through unlawful means.
2. Unethical private investigators/ precognition agents use intimidating, threatening or unlawful behaviour as part of their investigation/ surveillance/ precognition.
3. Private investigator/ precognition agent not competent to conduct investigation/ surveillance/ precognition (no knowledge of law or core skills required).
4. Clients instruct private investigator for unlawful or immoral reasons. Subject(s), or their personal information/data, under investigation/ surveillance is then potentially put at risk.

And in relation to individual purchasers of private investigation services:

5. Cash is paid upfront; however no service is then delivered and the supplier is untraceable.

The following options are analysed in terms of how effectively each one of them addresses the harms set out above.

### **Option 1: The ‘Do Nothing’ Option**

#### **Description**

5.4. The SIA does not commence the legislation to license those individuals operating within the private investigation or precognition agent sector. Neither sector would be subject to regulation under the Act and the industry would continue to self regulate without SIA regulation.

<b><i>1. How the option addresses the harms identified (i.e. Benefits)</i></b>	<b><i>2. Harms which are not addressed by the option</i></b>	<b><i>3. Other benefits from the option (economic/ social or otherwise)</i></b>
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<sup>44</sup>Questions relating to this have been included within section 10.

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<ul style="list-style-type: none"> <li>• This option would not address any of the harms identified as the SIA would not intervene in how either sector operates.</li> <li>• The harms identified would continue to exist, and be managed through existing channels, such as sector associations and institutions, reputation recommendations, or recourse to the ICO or the Police in relation to any relevant unlawful activity. Skills for Security would continue to manage the skills agenda for these Security Business Sectors.</li> </ul>	<ul style="list-style-type: none"> <li>• See column 1.</li> </ul>	<ul style="list-style-type: none"> <li>• There would be no regulatory or cost burden imposed on either sector.</li> <li>• There would be no impact on market forces or business (generally) within either sector.</li> <li>• Perceived vote of confidence in both sectors from government.</li> </ul>

### **Compliance and Enforcement**

5.5. There would be no compliance or enforcement approach as we would not regulate either sector.

### **Summary Analysis of Option 1**

5.6. This option maintains the 'status quo' in both sectors. It does not address any of the potential harms identified in this RIA. It would be inequitable with our approach to regulation across other sectors given this RIA demonstrates that there is a potential harm to the public caused by unlawful and unethical individuals operating within either sector, through a present lack of regulation. Consultation with both sectors also indicates that this option does not reflect sector needs or opinion. Additionally, existing relevant legislative powers relate to investigating or convicting an individual once an offence has been committed. Although these are a deterrent, there are no preventative legislative measures in place to mitigate the risk of a 'criminal element' from entering and working in this sector to begin with.

## Option 2: Alternatives to Regulation

### Description

5.7. The SIA does not commence the legislation to license private investigators or precognition agents, and supports the development of alternative measures to act as a substitute for regulation of either sector<sup>45</sup>. Implementation of this option would suggest that sufficient legislative controls are already in place that protect members of the public, including the Data Protection Act (enforced by the ICO) and other criminal offences. However, both sectors and the public would benefit from more information on how to minimise any potential for harm.

5.8. The SIA could:

- Continue to promote its best practice guide for the private investigation sector.
- Develop and promote a best practice guide for the precognition agent sector.
- Launch an information campaign for the public (including customers/ subject[s] of private investigation or precognition agent services). This would aim to raise awareness of the best practice documents, the existing associations and institutions, and the roles of the ICO and Police; if they wish to report unlawful activity.
- Support work by Skills for Security to manage the skills agenda for these Security Business Sectors

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<ul style="list-style-type: none"> <li>• The SIA could promote the need for private investigators to comply with relevant legislation in terms of accessing data or information, and legal requirements when investigating, undertaking surveillance or taking a precognition.</li> <li>• The SIA could promote</li> </ul>	<ul style="list-style-type: none"> <li>• The SIA could only promote best practice as a method of mitigating the potential for harm, in the areas sets out. They would have no regulatory authority and, consequently, no compliance and enforcement role.</li> <li>• The harms identified</li> </ul>	<ul style="list-style-type: none"> <li>• There would be no regulatory or cost burden imposed on either sector.</li> <li>• There could be a potential impact on market forces within either sector. Increased information may lead to customers being 'better informed' when they contract for these activities to be undertaken. Overtime this could result in customers</li> </ul>

<sup>45</sup>This has been done, to some extent, with the publication of the SIA's Private Investigation 'Best Practice' document. This also includes suggested standards of behaviour for the private investigation sector ([www.the-sia.org.uk/home/licensing/private\\_investigation/training\\_pi.htm](http://www.the-sia.org.uk/home/licensing/private_investigation/training_pi.htm)). This best practice document was shared with the industry when the development of licensing was suspended in early 2006.

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<p>(through Skills for Security) the recommended competency skills for both sectors, and encourage individuals to attain qualifications demonstrating that they meet the proposed standards.</p> <ul style="list-style-type: none"> <li>• The SIA could promote the need for individuals operating within both sectors to operate in an ethical manner when conducting their activity.</li> <li>• The SIA could provide information to potential customers/ subject(s) around ethical and lawful practices, and what they should look for as an indication of competence (e.g. qualifications, membership of association's and institutions etc.)</li> </ul>	<p>would continue to exist, and be managed through existing channels, such as sector associations and institutions, reputation recommendations, or recourse to the ICO or the Police in relation to any relevant unlawful activity. Skills for Security would continue to manage the skills agenda for these Security Business Sectors.</p>	<p>requesting that individuals demonstrate that they meet the best practice standards, or that they are members of specific associations or institutions prior to receiving work. Likewise, individuals within either sector may be incentivised to engage in formal training and qualifications.</p> <ul style="list-style-type: none"> <li>• Perceived vote of confidence in both sectors from government.</li> </ul>

### **Compliance and Enforcement**

5.9. There would be no compliance or enforcement approach as we would not regulate these sectors.

### **Summary Analysis of Option 2**

5.10. This option maintains the 'status quo' in terms of there being no regulation for either sector. In this way, the analysis is the same as Option 1 (para. 5.6.). However, the harms identified may be mitigated to a small extent through the development and promotion of best practice, and increasing the customers (and potentially subject[s]) of private investigation or precognition agent services awareness of this best practice, and their rights.

## **Option 3: Licensing with no competency criteria**

### **Description**

5.11. The SIA would commence licensing of the private investigation and/ or precognition agent sectors. The scope of licensable private investigation activities would be as proposed in para. 3.6-3.8. and Annex A, and precognition agent activities as proposed in para. 3.10. and Annex A. The licensing criteria would be structured around the SIA's existing approach to licensing. This would include payment of the licence fee; currently £245 per licence<sup>46</sup> and assessment against key licence criteria.

### **Fit and Proper Person Requirements**

#### **🔗 Probity**

5.12. Applicants would be required to meet 'Fit and Proper person' criteria. This would include a Criminal Records Bureau (CRB) check against a list of published offences (see Annex C for proposed headline approach for each sector). This check would determine if the individual applicant was of fit and proper character to be conducting private investigation or precognition agent activity. The check may also include the use of non-conviction information. In relation to the activities of private investigators, and the potential harm to the public posed, the SIA would consider seeking ministerial approval to update the published list of offences to include consideration of offences against the Data Protection Act 1998.

#### **🔗 Mental Health and Identity**

5.13. Applicants would be required to meet Mental Health and identity criteria. Mental fitness is a key principle in the determination of whether someone is fit and proper to obtain a licence; an individual's mental fitness to do a job is just as relevant as someone's criminal record. The current policy (agreed with the support of the mental health unit in the Home Office) reflects legal advice received on the fit and proper test in relation to other sectors. When evidence exists that someone is unfit for a licence in either sector, the SIA would obtain further information about the applicant. Where relevant, the SIA may seek information to confirm that an applicant has the right to remain and to work in this country.

### **Licence Conditions**

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<sup>46</sup>The licence fee has been set at this level for all licensable sectors on the basis of the amount required to administer the scheme and the application process including Criminal Records Bureau (CRB) checks. This fee is set for the period to the end of the financial year 2008-2009, after which it may be reviewed on an annual basis.

5.14. The SIA would also require adherence to prescribed licence conditions (see Annex D for proposed headline approach for each sector) setting out what private investigators and precognition agents could need to do as part of their ongoing compliance. As with all other licensable sectors (apart from vehicle immobilisers who must display the licence at all times when engaging in any licensable conduct) private investigators and precognition agents would not need to wear their licence where they could demonstrate that the nature of their conduct on that occasion required them to not be immediately identifiable as someone engaging in private investigation or precognition agent activity. However, private investigators and precognition agents would still need to carry the licence on their person and be able to produce it on request.

5.15. There would be no check of individual competence to conduct private investigation or precognition agent activity. However, the SIA could:

- Continue to promote its best practice guide for the private investigation sector.
- Develop and promote a best practice guide for the precognition agent sector.
- Launch an information campaign for the public (including customers/ subject[s] of private investigation or precognition agent services). This would aim to raise awareness of the best practice documents.
- Support work by Skills for Security to manage the skills agenda for these Security Business Sectors

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<p>☒ The SIA would have the regulatory remit to ensure that private investigators and precognition agents met relevant fit and proper person criteria prior to operating within either sector.</p> <p>☒ Specifically, the SIA could check that an individual had not breached any relevant</p>	<p>☒ Licensing would not absolutely mitigate against unlawful or unethical practices by rogue elements within the private investigation or precognition agent sector. However, compliance<sup>47</sup> with licensing would greatly reduce the likelihood of harm occurring through</p>	<p>☒ Minimal regulatory or cost burden on both sectors (initial, and renewal, application only).</p> <p>☒ There could be a potential impact on market forces within either sector. Increased information may lead to customers being 'better informed' when they contract for these activities to be undertaken. Overtime this could result in customers</p>

<sup>47</sup>The SIA currently estimates 95% compliance across all licensable sectors (through National Intelligence Model [NIM] profiling). This demonstrates the potential level of assurance that could be replicated across the private investigation or precognition agent sectors if licensing were introduced (the compliance level is likely to be slightly less for these sectors due to the high volume of sole practitioners[see section 6 for details]).

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<p>legislation in terms of accessing data or information, and legal requirements when investigating or taking a precognition. This would be established through the CRB check on application and as part of licence renewal. The SIA would also consider any information on an individual's updated offences received during the three year licence cycle, and could then suspend or revoke a licence.</p> <p>☒ The SIA could promote (through Skills for Security) the recommended competency skills for both sectors, and encourage individuals to attain qualifications demonstrating that they meet the proposed standards.</p> <p>☒ The SIA would have a regulatory remit to ensure that customers/ subject(s) were adequately informed about licensing and the SIA's regulatory functions.</p> <p>☒ The SIA could promote the need for individuals operating within both sectors to operate in an ethical manner when conducting their activity.</p>	<p>unlawful behaviour by those operating within either sector, and deter individuals from operating within either sector, where they are unable to meet the licence criteria.</p> <p>☒ The option would not allow the SIA to ensure that only those holding licences were competent to do so. As in Option 2 the SIA could only promote best practice in terms of the levels of competence necessary to operate within each sector.</p>	<p>requesting that individuals demonstrate that they meet the best practice standards, or that they are members of specific associations or institutions prior to receiving work. Likewise, individuals within either sector may be incentivised to engage in formal training and qualifications.</p> <p>☒ Perceived vote of confidence in the competence of both sectors from government.</p> <p>☒ Increased public confidence (including customers and subject[s]) in both sectors.</p> <p>☒ Potential increase in the availability of work following exclusion of those individuals who are unable to meet the required probity criteria.</p>

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<p>☞ The SIA could provide information to potential customers/ subject(s) on what they should look for as an indication of competence (e.g. qualifications, membership of association's and institutions etc.)</p>		

### Summary Analysis of Option 3

5.16. This option does not fully address the potential harms identified in this RIA to the extent possible through licensing. It does provide assurances in terms of whether an individual is 'fit and proper' to operate within either sector. Licensing itself provides a mechanism of preventing unlawful or unethical individuals from entering either sector to begin with; this then decreases the potential of them supplying services. Licensing would also provide safeguards for the public and other suppliers within both sectors. The SIA works with strategic partners to share information; has an online reporting mechanism; links with 'crimestoppers' and will take appropriate action against individuals who do not comply with the licensing requirements.

5.17. However, this option would be inequitable with our approach to regulation across other sectors given this RIA demonstrates that there is a potential harm to the public caused by incompetent individuals operating within either sector. The only sector where the SIA has not prescribed competency requirements is in key holding; where there is no security response. This is not the case for private investigators or precognition agents. Consultation with stakeholders to date also suggests some support for competence requirements within the licensing criteria as it will improve and maintain the quality of the sector. Associations and institutions have a variety of membership schemes and approaches from no standards being set to competence driven measures. There is no guarantee that private investigators or precognition agents will join an association or institution with a competence component to their membership criteria.

### Compliance and Enforcement

5.18. Licence holders would not be subject to any routine audit cycle. Instead the SIA monitors compliance with licensing by reviewing intelligence provided from partners, such as the Police, and reports from other stakeholders, including



members of the public. The SIA then uses the National Intelligence Model (NIM) to prioritise and target any compliance activity (refer to section 9 for more details).

#### **Option 4: Licensing with competency criteria**

##### **Description**

5.19. The SIA would commence licensing of the private investigation and/ or precognition agent sectors as set out in Option 3, para. 5.11 – 5.14.

##### **Core Competency Requirements**

5.20. In addition to the above criteria, the SIA would include a core competence component within the licence criteria for both private investigators and precognition agents (see Annex E for headline approach). Due to the similarities in activities conducted by both sectors, and therefore in the core competency requirements for each, it is envisaged that the precognition agent core competency requirements would form a subset of the private investigation core competency requirements. In this way, the SIA's licence integration approach would be that a private investigator would also be licensed to conduct the activities of precognition agent (although not the other way round). The competence criteria would be developed on the basis of the consultation conducted with the sector to date (refer to sections 3 and 4 for details and background).

5.21. Training and assessment for the associated qualifications would follow approaches similar to those available to other licensable sectors. It is envisaged that there would be a requirement for assessment, but the nature of the sector requires an approach that includes flexible learning opportunities rather than formal contact time stipulated by the SIA. Flexible learning would allow those operatives sufficiently confident in their abilities to rely to a greater extent on self-directed learning. It will also allow operatives to do their learning for the qualification in a way that fits in with their working lives and minimises loss of income. The SIA recommendation will also lead to use of 'blended learning', which may include distance learning programmes alongside conventional face-to-face training. This would allow for a model that would include refresher training for individuals with lots of experience who only want to update their knowledge for the purposes of assessment for the licence-linked qualification. The assessment method on offer is a decision for awarding bodies to make although the SIA has recommended that a single, written (or online taken in controlled conditions at a training provider assessment centre) knowledge-based assessment would be suitable. See Annex E for details.

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<ul style="list-style-type: none"> <li>• The SIA would have the regulatory remit to ensure that private investigators and precognition agents met relevant fit and proper person criteria prior to operating within either sector.</li> <li>• Specifically, the SIA could check that an individual had not breached any relevant legislation in terms of accessing data or information, and legal requirements when investigating or taking a precognition. This would be established through the CRB check on application and as part of licence renewal. The SIA would also consider any information on an individual's updated offences received during the three year licence cycle, and could then suspend or revoke a licence.</li> <li>• The SIA could check that licence applicants had demonstrated the core competency required to operate within either sector</li> </ul>	<ul style="list-style-type: none"> <li>• Licensing and core competency requirements would not absolutely mitigate against unlawful or unethical practices by rogue elements within the private investigation or precognition agent sector. However, compliance<sup>48</sup> with licensing and the requirement for individuals to meet competency requirements would significantly reduce the likelihood of harm occurring through unlawful or incompetent behaviour by those operating within either sector<sup>49</sup>, and deter individuals from operating within either sector, where they are unable to meet the licence criteria.</li> </ul>	<ul style="list-style-type: none"> <li>• Professionalism of both sectors increased through introducing regulation which covers both probity and competency.</li> <li>• Equitable to regulatory approach in place for other licensable sectors where there is a security response.</li> <li>• Provides uniformity in the required competency standards to operate within either sector.</li> <li>• Provides a career entry route for new entrants to either sector (arguably this may also be a barrier to new entrants; although this is unlikely as one of the reasons cited for the lack of new entrants to the profession is the lack of a defined career route<sup>50</sup>).</li> <li>• Increased public confidence (including customers and subject[s]) in both sectors.</li> <li>• Potential increase in the availability of work following exclusion of those individuals who are unable to meet the required probity and competency criteria.</li> </ul>

<sup>48</sup> See footnote 47.

<sup>49</sup>SIA research conducted with the Door Supervision sector to look at the impact of licensing demonstrates that most Door Supervisors feel they now have a wider and better range of skills as a result of the licensing requirements, and that public confidence and trust has increased in their sector (January 2007).

<sup>50</sup>Skills for Security, January 2007.

<b>1. How the option addresses the harms identified (i.e. Benefits)</b>	<b>2. Harms which are not addressed by the option</b>	<b>3. Other benefits from the option (economic/ social or otherwise)</b>
<p>(through attainment of a relevant qualification) prior to approving an individual's licence application. There is also scope for competency renewal requirements for future renewal applications.</p> <ul style="list-style-type: none"> <li>• The SIA would have a regulatory remit to ensure that customers/ subject(s) were adequately informed about licensing and the SIA's regulatory functions.</li> <li>• The SIA could promote the need for individuals operating within both sectors to operate in an ethical manner when conducting their activity.</li> </ul>		

#### **Summary Analysis of Option 4**

5.22. This option addresses the harms set out within this RIA to the extent possible through licensing. In setting regulatory requirements in terms of an individual being both fit and proper, and competent, it significantly mitigates against the potential harms identified within this RIA. Whilst the SIA will be able to drive high levels of compliance (as has been achieved with other sectors<sup>51</sup>) it will not be possible to assure 100% compliance with licensing, and there will always be elements of unlawful or unethical practices within either sector. However, as set out in the analysis of Option 3, licensing itself provides a mechanism of preventing such individuals from entering either sector to begin with, and competency requirements reduce that risk further still.

5.23. The key constraint in implementing this option is the financial impact on both sectors which are predominantly made up of sole practitioners or small businesses. This is considered further in section 6.

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<sup>51</sup>See footnote 47.

## **Compliance and Enforcement**

5.24. The compliance and enforcement approach would be as set out for Option 3 (please refer to section 9 for more details). In addition, there may be competency renewal requirements as part of the 3 yearly licence renewal process<sup>52</sup>.

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<sup>52</sup>Details of the strategy for competency renewal are on the SIA's website - [www.the-sia.org.uk/home/training/renewal.htm](http://www.the-sia.org.uk/home/training/renewal.htm)

## **6. Cost and Impact Assessment of Options**

### **Sectors and groups affected by proposals**

6.1. The following sectors and groups have been identified on the basis of research<sup>53</sup> conducted to date. Below is an outline of those sectors and groups that will be directly, or indirectly, affected by the proposals.

#### **Practitioners**

6.2. Regulation of private investigators and precognition agents would improve standards and professionalism across both sectors. Depending on the licensing approach chosen there could be associated licence fee, training and qualification costs. Were licensing introduced, there could be a six-month application period during which individuals affected by regulation would need to apply for a licence. During this time, individuals would be granted or refused licences on the basis of standardised criteria. Following the offence date, it would then become illegal for individuals to operate within the private investigation or precognition agent sectors without a licence. Creation of minimum criteria whether it is probity driven or includes a competence component, would serve to reduce the number of individuals supplying services in either sector who are engaged in unlawful or unethical activity. It would also create a clearly defined career entry process for new entrants into either sector and increase the credibility and status of either sector across the security industry<sup>54</sup>.

#### **Managers/, Supervisors or Employers of private investigation or precognition agent services**

6.3. Managers and directors of front line staff delivering private investigation or precognition agent services would need to have a non front line licence from the SIA<sup>55</sup>. It is not known how many managers and directors would fall under this definition. However, research indicates that this is likely to be a small number (with the majority of both sectors being sole practitioners, and small and micro businesses). A small firm's impact assessment has been conducted and the findings are set out in section 7.

#### **Customers**

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<sup>53</sup>Combination of workshops, conferences, questionnaires and desk based research. Refer to section 4 for full details.

<sup>54</sup>SIA research conducted with the Door Supervision sector to look at the impact of licensing demonstrates that most Door Supervisors feel they have seen a wide range of improvements to their work since licensing was introduced including availability of work career opportunities and the treatment they receive from related stakeholders such as the Police (January 2007)

<sup>55</sup>The non front line license is generic to all sectors. An individual need only hold one non front line licence for all sectors in which they act as a Manager, Supervisor or Employer (including Directors [both executive and non-executive directors, shadow directors, parent company directors and corporate entities holding a directorship]) of licensable activities.

6.4. Private investigators are employed by a range of customers to supply a variety of services (please refer to section 3, tables 1 and 2 for examples). Precognition agents will only ever be contracted to perform their specific role. Customers may be affected by any licensing arrangements as there may be a small increase in the fees charged to customers to absorb costs associated with any licence fee and related training or qualification requirements. There may also be an impact on customers' insurance or corporate governance arrangements if they continue to contract with unlicensed private investigators or precognition agents once the offence date passed in either sector.

### **Representative associations and institutions**

6.5. Representative associations and institutions for either sector would continue to represent their members' interests to the SIA. However, these groups would need to ensure that it was clear to their members that they must, as a minimum, be licensed by the SIA in order to operate.

### **Education and training bodies**

6.6. If there is a competency component within the final licensing criteria, education and training providers will become involved in the licensing process. The SIA will need to engage with these organisations to ensure development and delivery of suitable, sufficient qualifications and training programmes, to enable applicants to demonstrate competence for licensing.

### **Sectors indirectly affected**

#### **Public Sector**

6.7. If the SIA licensed private investigation and precognition agents this would impact upon other regulators and public bodies with an interest in ensuring the integrity of both sectors, risk management of these services, and protecting the needs of the public (and customers/ subject[s] as part of this). Specific examples include the Scottish Executive, the ICO, the DTI, the Home Office and the Police.

#### **Subject(s) of investigation or precognitions**

6.8. The subject(s) of investigations or precognitions will also be impacted upon by any licensing requirements. Ensuring that individuals are fit and proper, and potentially competent, will increase the professionalism and integrity of those operating within the sector. This will help minimise the risk of subject(s) being harmed by unlawful or unethical private investigation or precognition conduct.

### **Equity, Fairness and Race Equality**

6.9. An initial equalities screening has been conducted to determine whether there is likely to be any adverse impact, on any particular groups, as a result of licensing the private investigation or precognition agent sector. The effect of the implementation of licensing in other sectors has also been considered as part of this screening. At this stage, it is not envisaged that the introduction of licensing will have any adverse impact on any particular groups, whether by geographical region, age, race, religion, disability, sexual orientation or gender. However, this will be kept under review throughout the consultation period and the SIA would welcome comments from any stakeholders who feel they will be adversely impacted in this way.

## **Anticipated Costs of Each Option**

### **Sector Volumes**

6.10. The private investigation and precognition agent sectors are disparate and wide ranging. As there is no current regulation of either sector and no single representative body it is not possible to provide definitive data on the number of individuals carrying out this activity, at this time. The SIA has identified that approximately 10,000 private investigators and 200 precognition agents (although this number is declining [see para 1.2.]) would be affected by regulation if it were introduced. This is on the basis of membership numbers in existing associations and institutions, and discussions with the sector and related stakeholders. During the partial RIA consultation process, the SIA will endeavour to define more precise numbers for this sector. However, for the purposes of this partial RIA, cost impacts have been set out on the basis of the above figures.

6.11. Both volume assumptions are indicative only, and we will use the partial RIA process to gather more information on the actual licensable population for both sectors. The SIA's licence fee is not set by sector and is based on the total licensable population against the costs of running the SIA. The implementation of licensing in these sectors is subject to the outcome of this RIA, and consequently assumptions on projected volumes have not been included in the current Business Plan. Once the outcome of the RIA is determined, the SIA will review the information gathered through this partial RIA on sector volumes and will business plan on this basis. The business plan and the licence fee are subject to review on an annual basis. However, as the anticipated sector volumes are relatively small compared to the licensable private security industry as a whole, variations in compliance levels and sector volumes are not likely to have a material impact on the licence fee set.

6.12. The potential cost impact of licensing, and any training costs, (i.e. Options 3 and 4) are shown for a typical sole practitioner and a typical medium to large company, below. An analysis of the estimated cost impacts of the four options on the private investigation and precognition agent sectors are shown, separately. Approximate initial (I) and ongoing (O) costs are illustrated. If an individual pays

their own application fee they can claim tax relief against their taxable income. For example, if they pay tax at the basic rate of 22% they can reclaim £53.90. If the fees are paid by the company and not recovered from the employee the company can claim the cost against their corporation tax liability.

## **Cost Impact**

### **Private Investigation**

- **Likely impact on an average medium to large company, and a sole practitioner over six years (i.e. initial application and first licence renewal)**

6.13. The examples below show the potential impact of licensing on an 'average' medium to large company, and an 'average' sole practitioner. This example also illustrates the likely contractual links between these two types of supplier.

6.14. The SIA recognises that the range of salaries on offer is very wide, depending on expertise, length of service and in companies, bonuses and whether an individual has any supervisory responsibility. There is also potential for it to vary geographically. The SIA acknowledges that Investigations Managers employed by some companies to lead fraud investigations under contract, can earn upwards of £40k per annum<sup>56</sup>, and that some sole practitioners could earn twice this in one year if they have a large case. A further consideration is the fluctuation in sole practitioner salaries, year on year. If the volume of work for one year is low, then a low salary will be drawn from the individual's profits; conversely, a larger salary will be drawn when profits are high. This also happens within some companies who employ investigators on a lower salary, and then supplement this with variable bonuses each year, depending on performance. Additionally, a number of private investigators work part time, having retired from the police force or an associated sector.

6.15. For the purposes of the cost assessment in this RIA we have used an average annual salary likely to be earned by a full time investigator over six years (before tax and including any bonuses) and considered the impact on a company and a sole practitioner<sup>57</sup>. It may be that these salaries are at the lower end of the scale. However, arguably, this is where licensing will have the biggest impact.

### **Training and Assessment Costs**

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<sup>56</sup> [www.bluelinejobs.co.uk](http://www.bluelinejobs.co.uk); this does not include any performance related bonuses likely to be available.

<sup>57</sup> Sole practitioners work on variable hourly rates, and the number of hours they work per day, and days per year, will vary significantly. However, an average salary has been used here (with input from stakeholders) to enable a cost assessment to take place.



6.16. For the purposes of the RIA, and on the basis of initial development work undertaken in relation to potential core competences for licensing, we have estimated costs of any learning route and assessment as follows<sup>58</sup>:

- Full typical learning route for private investigation (included distance learning materials, assessment and certification) – £900 (includes 3 days contact time at £250 per day [training provider delivery costs] and distance learning package, interim assessment and final assessment and certification at £150)<sup>59</sup>.
- Refresher Training<sup>60</sup> assessment for private investigation - £320 (includes 1<sup>61</sup> day contact time at £250 per day [training provider delivery costs] and final assessment and certification)<sup>62</sup>.

The SIA have developed the competency specification in order that it can be achieved by flexible learning. For example, an industry practitioner with many years experience may feel that they need less contact time with a trainer. This will have the effect of lowering the training and assessment cost further. It will also minimise the impact on loss of earnings. This flexibility has been developed by the SIA with sector representatives, Skills for Security and Awarding Bodies. All of these parties gave us advice that flexibility was required for those applicants who have worked within the sector for a number of years and have obtained experience and training which, although likely to be unrecorded and uncertificated, will have supported their competency to date.

- **Sample Medium to large company**<sup>63</sup>

6.17. Company profile:

1. 10 full time investigators – contracted out to deliver fraud or financial investigations, each earning on average £30 000 per annum.
2. 100 contract investigators (on average, per annum) who are contracted in on a case-by-case basis, each earning on average £25 000 per annum.

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<sup>58</sup> It is likely that these costs are at the higher end of the scale.

<sup>59</sup> Sample costs provided by Edexcel, July 2007.

<sup>60</sup> Refresher training is available in the close protection sector for individuals who want to update their knowledge for the purposes of the competency for licensing assessment. This has been used as an example of a potential training and assessment route for the purposes of this RIA, as sector consultation has indicated that as much as 70% of potential licence applicants believe they have acquired sufficient knowledge through operating within their profession (for five years or more) and therefore may not wish to undertake the full typical learning route. Instead, they may prefer 'refresher training' with reduced trainer contact time.

<sup>61</sup> 1 day has been estimated on the basis that the close protection qualification has a 3 day 'refresher course' for a recommended 150 guided learning hour training course, and the fact that an element of distance learning would feature in any private investigation refresher training route.

<sup>62</sup> Sample costs per day provided by Edexcel, July 2007.

<sup>63</sup> Information to support this assessment was drawn from sample salaries contained on [www.bluelinejobs.co.uk](http://www.bluelinejobs.co.uk) and through anecdotal feedback from a range of sources, March 2007. Full compliance with licensing has been assumed with this sample company.

As set out within this RIA, the company would cover the cost of the licence fee and any training costs for their 10 full time employed investigators. The 100 contract workers (i.e. sole practitioners) would need to cover their own costs. In this way licensing may have an additional impact on the medium to large company, as there may be a marginal increase in the rates that the contract investigators charge (in order to reflect the costs of licensing).

**Table 3 Private Investigation - Impact of licensing on a medium to large company**

**Assumptions for this cost impact assessment**

**Initial**

- 10 staff requiring licences to operate.
- 10 staff undertake full typical learning approach (FT)<sup>64</sup>.

**Ongoing**

- 10 staff requiring licence renewal.
- 7 staff undertake refresher training (RT)<sup>65</sup>
- 3 staff undertake full typical learning approach (FT).

**Loss of earnings (l.o.e)<sup>66</sup>**

- £115 per day (based on a salary of £30 000 per annum before tax, incl. bonuses with paid leave).

Type of Cost	Initial	Ongoing
<b>Option 3: Licensing, no competency.</b>		
<b>Fee<sup>67</sup></b>	£2 450	£2 450
<b>Option 3: Total cost per annum (over six years)</b>	£817 for 10 staff	
<b>Option 4: Licence, with competency.</b>		
<b>Training and Assessment</b>	FT: £9 000	FT: £2 700.
		RT: £2 240
<b>Loss of earnings (l.o.e.)</b>	FT: £3 450	FT: £1 035
		RT: £805
<b>Total cost licensing (fee and training)</b>	£11 450	£7 390

<sup>64</sup> For the purposes of this cost assessment we have assumed all licence holders will opt for the full typical learning approach initially (i.e. at the introduction of regulation). However, it is likely that these costs are at the higher end as contact time and use of distance learning could vary depending on an individual's prior experience.

<sup>65</sup> For the purposes of this assessment we have assumed that 70% of licence holders will opt for a refresher training route on renewal. The remaining 30% represent new entrants, churn and those individuals who want to access more training provider contact time on renewal.

<sup>66</sup> Loss of earnings has been considered on the basis of a company paying a salary without any work being delivered. It is not known how much potential income could be 'lost', in addition to the salary being paid, whilst an individual was not working. Equally, we do not know the extent to which an individual would recoup lost earnings through working weekends or increasing their rates.

<sup>67</sup> Licence fee is currently £245. This fee is set for the period to the end of the financial year 2008-2009, after which it may be reviewed on an annual basis.

<b>Total loss of earnings</b>	£3 450	£1 840
<b>Total cost</b>	£14 900	£9 230
<b>Option 4: Total cost per annum (over six years)</b>	£4 021 (£402 per head)	

- **Sample sole practitioner**

**Table 4 Private Investigation - Sole practitioner<sup>68</sup>**

**Assumptions for this cost impact assessment**

**Initial**

- 1 applicant requiring licence to operate
- 1 applicant undertakes full typical learning approach (FT), OR
- 1 applicant undertakes refresher training (RT)

**Ongoing**

- 1 applicant requiring licence to operate
- 1 applicant undertakes refresher training (RT)

**Loss of earnings (l.o.e)<sup>69</sup>**

- £100 per day (based on a salary of £25 000 per annum before tax with 2 weeks unpaid leave per year).

<b>Type of Cost</b>	<b>Initial</b>	<b>Ongoing</b>
<b>Option 3: Licensing, no competency.</b>		
<b>Fee</b>	£245	£245
<b>Option 3: Total cost per annum (over six years)</b>	£82	
<b>Option 4: Licence, with competency.</b>		
<b>Training and Assessment</b>	FT: £900	£320 <sup>70</sup>
	RT: £320	
<b>Loss of earnings (l.o.e.)</b>	FT: £300	£100
	RT: £100	
<b>Total cost licensing (fee and training)</b>		
	FT: £1 145	£565
	RT: £565	
<b>Total cost</b>		
	FT: £1 445	£665
	RT: £665	
<b>Option 4: Total cost per annum (over six years)</b>	FT (initial) then RT (ongoing) : £352	
	RT (initial and ongoing): £222	

**Precognition Agents**

<sup>68</sup> The example salaries were sourced through viewing websites such as [www.bluelinejobs.co.uk](http://www.bluelinejobs.co.uk) and in consultation with various stakeholders, March 2007.

<sup>69</sup> Loss of earnings has been considered on the basis of a sole practitioner not earning any income (i.e. to supplement their lost earnings) whilst on the training course.

<sup>70</sup> The majority of sole practitioners are likely to have maintained their knowledge through operating within the sector (as indicated by ABI [Investigators] and IPI), which would make refresher training their preferred option in this example.

6.18. For the purposes of the cost assessment in this RIA we have used an average hourly rate likely to be earned by a precognition agent and considered the impact. Precognition agents are likely to undertake this role part time supplementing their income through other means. We have considered the impact of a precognition agent working 3 hours per day, 3 days per week<sup>71</sup>. We have assumed an hourly rate of £35 for a civil precognition<sup>72</sup>.

### **Training and Assessment Costs**

6.19. We have estimated costs of any training and assessment as follows:

- Full typical learning route for precognition agents (included distance learning materials, assessment and certification) – £420 (includes 1 day contact time at £250 per day [training provider delivery costs] and distance learning package, interim assessment and final assessment and certification at £170)<sup>73</sup>.
- Refresher Training assessment for precognition agents - £320 (includes 1 day contact time at £250 per day [training provider delivery costs] and final assessment and certification).

Many experienced practitioners may feel that they need less contact time with a trainer. This will have the effect of lowering the training and assessment cost further. As for private investigators the SIA has worked with sector representatives, Skills for Security and Awarding Bodies to develop a system of flexible learning as a route to achieving the qualification for precognition agents. Again relevant parties gave us advice that flexibility was required for those precognition agents who have worked within the sector for a number of years and have obtained experience which was not formally logged.

### **Table 5 Cost impact on precognition agent – sole practitioner<sup>74</sup>**

#### **Assumptions for this cost impact assessment**

##### **Initial**

- 1 applicant requiring licence to operate
- 1 applicant undertakes full typical learning approach (FT), OR
- 1 applicant undertakes refresher training (RT)

##### **Ongoing**

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<sup>71</sup> Please refer to para 1.2. for more information on the recent changes impacting on this sector. The cost assessment undertaken here is likely to be improbable, as increasingly precognition services are more likely to be offered as part of a range of private investigation services (in which case the assessment in table 4 is more relevant).

<sup>72</sup> Sample hourly rate provided by [www.pegasus-investigations.co.uk](http://www.pegasus-investigations.co.uk). Criminal precognitions are in decline following recent changes in the law (see para. 1.2.)

<sup>73</sup> Sample costs provided by Edexcel, July 2007.

<sup>74</sup> No impact assessment has been done for an average company, as any companies would probably be providing precognition agent services as part of a wider private investigation service, and would fall under the assessment in table 3.

- 1 applicant requiring licence to operate
  - 1 applicant undertakes refresher training (RT)
- Loss of earnings (l.o.e)**<sup>75</sup>
- £105 per day (precognition agent working 3 hours per day, 3 days per week, on an hourly rate of £35 for a civil precognition).

Type of Cost	Initial	Ongoing
<b>Option 3: Licensing, no competency.</b>		
Fee	£245	£245
<b>Option 3: Total cost per annum (over six years)</b>	£82	
<b>Option 4: Licence, with competency.</b>		
Training and Assessment	FT: £420	RT: £320
	RT: £320	
Loss of earnings (l.o.e.)	FT: £105	RT: £105
	RT: £105	
<b>Total cost licensing (fee and training)</b>		
	FT: £665	£565
	RT: £565	
<b>Total cost</b>		
	FT: £770	£670
	RT: £670	
<b>Option 4: Total cost per annum (over six years)</b>		
	FT (initial) then RT (ongoing) : £240	
	RT (initial and ongoing): £223	

#### Value for money of Option 3 and Option 4

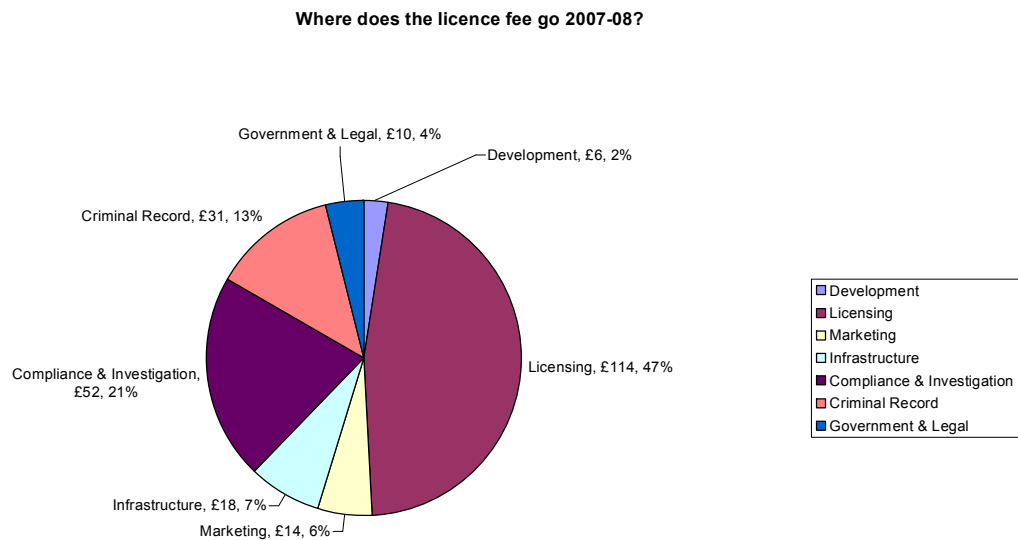
6.20. Option 3 (as described in 5.11 – 5.18) represents the minimal regulatory burden on individuals falling within the scope of licensing, for both the private investigation and precognition agent sectors. Through this option, an individual would only have to pay the licence fee in order to operate. However, as discussed in para. 5.15, this would not represent the best value for money as it does not fully address the range of harms identified, and provides no legacy in terms of developing and professionalising private investigators or precognition agents as part of the private security industry. It would also result in private investigators and precognition agents being licensed, but without having to meet or demonstrate any competency requirements. This would lead to the standards for operating within these sectors being inconsistent with other licensable sectors where there is a security response. Investment in Option 4 would result in a higher outlay for individuals and companies. However, this would address, to the extent possible through regulation, the harms identified in para. 5.15.

<sup>75</sup> The loss of earnings here have been calculated on the basis of an individual not earning income from precognition on the same days as they would undertake training. It also does not consider any supplemental income likely to be available. In practise, there would probably be more flexibility in how a precognition was taken, and there would not be a direct impact in this way.

## Cost assessment of options

6.21. This cost assessment considers the impact of the different options for regulation of the private investigation and precognition agent sectors as set out within this RIA. The cost assessment is considered over six years, in that 'initial' costs relate to the first licence applications made, and 'ongoing' costs relate to the first renewal applications made. Further work is required to develop the precise mechanism for renewals, but it is likely that the costs illustrated are at the higher end.

6.22. The SIA operates, in line with Treasury Fees and Charges guidelines, on a cost recovery basis. The fee varies on the basis of the total licensable population, churn rates and our running costs. In this way, the SIA is required to be self-funding by charging for the regulatory services it provides, and can only use the licence fee to cover the costs of operating. Any costs linked to the options, over and above running costs covered by the licence fee, would need to be covered by the Home Office. The licence fee payable to the SIA is apportioned as follows (based on 2007/ 08 assumptions):



## Estimated compliance level for the Private Investigation/ Precognition Agent sector

6.23. The SIA's estimated compliance level is currently 95% for all other licensable sectors. Given that the majority of the Private Investigation (10 000) and Precognition Agent (200) sectors are believed to be sole practitioners, the compliance level has been taken as being 80% over 6 years for the purposes of

this cost assessment; i.e. 8000 private investigators and 160 precognition agents. We will aim to achieve a compliance level of 95% over time. However, compliance is likely to be more challenging in this sector due to the high volume of sole practitioners. Manned guarding sectors are predominantly made up of large businesses. Levering compliance to 95% has been more achievable for manned guarding sectors as the SIA has been able to target businesses employing large volumes of staff who need licences, and purchasers of these services.

**Table 6 Cost assessment of options for licensing private investigation<sup>76</sup>**

**Assumptions for this cost assessment of options (see tables 3 and 4 for assumptions on sector profile and costs)**

**Initial**

- Licence Fee £245 x 8000 (80% compliance of 10 000).
- FT = 900 x 8 000 (100% of complying population)

**Ongoing**

- Licence Fee £245 x 8000 (80% compliance of 10 000).
- FT = £900 x 2 400 (30% of complying population)
- RT = £320 x 5 600 (70% of complying population)

Options	Administrative Costs (fees)		Preparation Costs (training and qualification)				Total Cost (£ over six years)
	Initial	Ongoing	Initial		Ongoing		
	£	£	£	£	£	£	
1	0	0	0	0	0	0	0
2	Costs not specified <sup>77</sup>		0	0	0	0	£unknown <sup>78</sup>
3	1 960 000	1 960 000	0	0	0	0	3 920 000 (653 333 per annum)
4	1 960 000	1 960 000	FT	7 200 000	FT	2 160 000	15 072 000 (2 512 000)

<sup>76</sup> Key: 1: Do Nothing, 2: Alternatives to Regulation, 3: Licensing, no competency, 4: Licensing with competency, RT: Refresher Training, FT: Full Training.

<sup>77</sup> Costs for this option would need to be set and met by the Home Office as the SIA operates on a full cost recovery basis – Initial costs would include the costs of setting up a marketing strategy; consulting on the approach with sector; companies and purchasers, and implementation. Ongoing costs would involve updating the approach and flagging new areas of 'best practice' as they arise.

<sup>78</sup> See footnote 77.

					RT	1 792 000	per annum)
			Total: 7 200 000		Total: 3 952 000		

**Table 7 Cost assessment of options for licensing precognition agents<sup>79</sup>**

6.24. For the purposes of this assessment we have used the same assumptions as set out in table 6, in relation to the likely volume of applicants who will have evidence of sufficient acquired knowledge and therefore will opt to do ‘refresher training’ only, and the volume who will undertake the full course; both initially and on an ongoing basis.

**Assumptions for this cost assessment of options (see table 5 for assumptions on sector profile and costs)**

**Initial**

- Licence Fee £245 x 160 (80% compliance of 200).
- FT = £420 x 160 (100% of complying population)

**Ongoing**

- Licence Fee £245 x 160 (80% compliance of 200).
- FT = £400 x 48 (30% of complying population)
- RT = £320 x 112 (70% of complying population)

Options	Administrative Costs (fees)		Preparation Costs (training and qualification)				Total Cost (£ over six years)
	Initial	Ongoing	Initial		Ongoing		
	£	£	£	£	£	£	
1	0	0	0	0	0	0	0
2	Costs not specified <sup>80</sup>		0	0	0	0	£unknown <sup>81</sup>
3	39 200	39 200	0	0	0	0	78 400 (13 066 per annum)
4	39 200	39 200	FT	67 200	FT	19 200	200 640 (33 440 per annum)

<sup>79</sup> See footnote 76.

<sup>80</sup> See footnote 77.

<sup>81</sup> See footnote 77.



					RT	35 840	annum)
			Total: 67 200		Total: 55 040		

6.25. The cost assessment in tables 6 and 7 is built on assumptions in terms of how the sector will respond to any training requirements and compliance with licensing. These assumptions are derived from consultation with the sector (see section 4) and our experiences with compliance across other licensable sectors. If more applicants undertake the full training associated with Option 4, the costs and impact of the regulation could increase significantly (depending on the volume). However, as set out, the training costs shown do not fully consider the variety of learning routes that may be undertaken by candidates in preparation for the qualification assessment. In this way, the overall training costs may be lower than set out.

### European Issues

6.26. If option 3 or 4 were adopted then the SIA will be required to comply with European legislation with regard to the provision of services and movement of people around the European Economic Area (EEA). A particular requirement of European law is that there are no nationality or residency requirements and none of the options impose these criteria. Currently forms and advice would only be supplied in English and all applicants with qualifications from overseas have to do the minimum of the knowledge assessment to ensure they are up to date with UK law.

6.27. With regard to options 3 and 4, the SIA can require evidence from a migrant regarding their lack of criminal convictions. This may include prior criminal records checks already carried out to obtain a private investigator licence in another EU member state. As long as the criminal record check was up to date and there is an equivalent in all of the SIA's relevant offences, an individual can be eligible to apply for an SIA licence subject to competency requirements where relevant.

6.28. If option 4 was adopted the SIA would comply with the EU Directive (2005/36/EC) on Recognition of Professional Qualifications<sup>82</sup> which will come in force on 20 October 2007. Directive 2005/36/EC establishes two distinct regimes, one for professionals who wish to provide services in another member state on a temporary and occasional basis as distinguished from those seeking to establish themselves in another member state on a more settled or permanent basis. A private investigator established and practicing legally within an EU member state is entitled to provide services in the UK without being subject to any prior check

<sup>82</sup> For more information: <http://europa.eu/scadplus/leg/en/cha/c11065.htm>

of their qualification. They will however be subject to the SIA's relevant offences linked to the professional qualifications when providing the service. Accordingly, such persons would not need to be subject to the competency requirement that option 4 envisages. In all cases the criminal record of the applicant will be checked.

6.29. The impact of options 3 and 4 on individuals established in another member state and supplying services in the UK would be the same as UK residents but with the following additions:

- potentially higher costs of postage, phone calls and translation of identity documents
- cost of obtaining overseas criminal record certificate
- time taken to obtain recognition of qualifications obtained in another Member State
- potential for costs of extra training to obtain necessary knowledge and skills in English law
- possible delay in ability to conduct business in the UK, through necessity to obtain licence

## **7. Small Firms Impact Test**

### **Consultation with small businesses**

7.1. The private investigation and precognition agent sectors are predominantly made up of sole practitioners and small or micro businesses. Consultation with the sectors has been undertaken as set out under section 4. Under the categorisations recommended by the European Commission<sup>83</sup>, the majority attending or contributing to these soundings and questionnaires<sup>84</sup> were small or micro businesses. There are some medium to large companies operating in the private investigation sector and representatives from these organisations were involved in the consultation during 2005 – 2006.

### **Small business purchasers**

7.2. It has not been possible to identify small businesses or individual purchasers of private investigation services and consult with them on the potential impact of licensing. The types of investigation services employed by individuals or small businesses are likely to be more discreet than those utilised by corporate purchasers. The SIA would be particularly interested in comments from this type of purchaser, on the impact of the options set out. This is less relevant to precognition agents as they are purchased by legal service providers or are employed on behalf of the crown.

### **Impact of regulation on sole practitioners and small businesses**

7.3. Regulation will have a significant impact on sole practitioners or small businesses as the majority of practitioners operating in either sector are micro or small businesses. In this way, there will be no differential impact on small businesses in terms of any licensing costs introduced as they form the majority of each sector.

7.4. Responses from those sole practitioners and small businesses consulted to date suggest support for licensing as it will raise levels of probity and minimise levels of bad practice; ensuring that available work goes to good practitioners. Their main concerns relate to how the licensing scheme is introduced. The majority of private investigators or precognition agents enter these sectors as a second career and are concerned about the extent to which training and assessment would be required in order to continue to operate. There may also be concerns that inclusion of a competence component would discourage new entrants from this career path. However, on this latter point, it is equally likely that

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<sup>83</sup>Micro businesses – fewer than 10 FTE, Small businesses – fewer than 50 FTE, Medium businesses – fewer than 250 FTE, Large businesses – 250 FTE or more.

<sup>84</sup>125 practitioners responded to the online questionnaires on the potential competency criteria for the licensing scheme (December 2005), 95% of these responses were from micro and small businesses.

licensing will help establish a defined career entry route, as one does not currently exist for either sector.

### **Impact on private investigators – sole practitioners and small businesses**

7.5. There are some medium to large businesses delivering investigation services and for these businesses payment of the licence fee<sup>85</sup> is likely to have less impact overall than on sole practitioners or small businesses. Inclusion of a competence component in the licensing criteria is also likely to have a bigger impact on sole practitioners or small businesses in this sector, as training and qualification costs will have to be met by the individual or small business rather than being absorbed by a medium to large business who may choose to purchase training for a number of investigator staff<sup>86</sup>.

### **Impact on precognition agents – sole practitioners and small businesses**

7.6. Precognition agents are almost exclusively sole practitioners or small businesses, and there are no known medium to large businesses operating in this sector (except where precognition services are offered as part of a package of wider private investigation services<sup>87</sup>). In this way, precognition agents are likely to be impacted upon significantly through the introduction of licensing. However, the precognition agent sector itself is small<sup>88</sup>. Taking precognitions, once a key method for the defence or Crown to access information from witnesses in relation to Scottish proceedings prior to going to trial is now reducing as a profession. Changes in the law mean that interview statements made by police witnesses are now available to the defence and the precognition process is no longer routine in relation to criminal proceedings. The need for licensing in this sector, at all, is the subject of consultation in this RIA.

## **Options for licensing**

7.7. The options put forward in this document cater for a range of approaches and we have aimed to address some of the concerns expressed by consultees to date. Through Options 1 and 2, in relation to both the private investigation and precognition agent sectors, there would be no cost or regulatory impact.

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<sup>85</sup>Currently set at £245 per licence for all sectors, to cover administration costs of managing the licensing scheme.

<sup>86</sup>For example some medium to large companies who employ full time investigator staff (working in insurance fraud or financial investigations, under contract) would cover the cost of any training and licensing for this staff. Contract investigators, who they employ on a case-by-case basis, would cover their own licensing and training costs.

<sup>87</sup>For example, this company (based in Scotland) offer precognition services as part of a range of investigation services [www.pegasus-investigations.co.uk/statements\\_and\\_precognitions.html](http://www.pegasus-investigations.co.uk/statements_and_precognitions.html).

<sup>88</sup>Estimated 200 precognition agents currently in operation, although this is a rapidly decreasing number (refer to para 1.2.).

However, this would not effectively address the risk posed to the public, or the needs of the sector, set out in para. 3.22 – 3.31. Option 3 proposes licensing but, without any competence component and this would have the least regulatory impact on sole practitioners and small businesses. Option 4 proposes licensing and inclusion of a competence component in the licensing criteria. This would have the biggest regulatory impact on sole practitioners and small businesses. However, as set out in the harm and benefits assessment for Option 4, there is a risk that licensing without a competency element implies that all ‘licensed’ private investigators or precognition agents are competent.

7.8. The SIA continues to liaise with representatives from both sectors and invites further comments from sole practitioners, small businesses and representative organisations if they think they are likely to be adversely affected by any of the options set out.

### **Impact of Approved Contractor Scheme (ACS) on sole practitioners and small businesses**

7.9. The ACS is a voluntary accreditation scheme; no businesses employing licensable staff are obliged to join or to incur the costs of joining. There is a structure in place which ensures that the ACS fees are tailored to the size of the business, and the ACS standard was developed for all sizes of business (please refer to the SIA website for more information - [www.the-sia.org.uk/home/acs](http://www.the-sia.org.uk/home/acs)). Notably, some sole practitioners (within the close protection and security guarding sectors) have now achieved the ACS standard (due to their desire to differentiate their businesses as being amongst the best providers of private security services in England, Wales and Scotland). The SIA is working to develop guidance to support more sole practitioners and small businesses in achieving this standard. We welcome comments on the type of guidance or support that it would be helpful to provide to support sole practitioners, micro or small businesses in the achievement of the standard, as part of this RIA.

## **8. Competition Assessment**

### **Market structure**

8.1. This section considers whether regulation will have a significant impact upon the market structure of private investigation services, or precognition agents. This does not consider the impact of recent changes in the law which has reduced the volume of precognition agents operating within the sector, as this is an external factor outside the RIA process. This section should be considered in conjunction with the economic impact assessment set out in section 6. The workshops held to date illustrate that the nature of the work undertaken by individuals operating within the private investigation sector differs depending on the size of the company. Sole practitioners and small businesses are more likely to be involved in litigation support and tracing services, while medium to large businesses focus on large scale fraud and forgery investigations. Equally, medium to large companies are more likely to contract in investigation services on a case-by-case basis rather than undertake that work themselves. There is unlikely to be competition between sole practitioners and medium or large businesses for the same client<sup>89</sup>.

8.2. The Competition Assessment used for the purposes of this RIA is the new assessment model, currently out for consultation by the Office of Fair Trading. The assessment results are illustrated, below, under the four proposed areas of assessment.

#### **Will the proposal limit the number or range of suppliers?**

8.3. The introduction of regulation into both sectors may limit the number of suppliers. However, it is unlikely that this would impact upon the range of services on offer, which would probably be adequately met through any reduced supply. Regulation may result in some private investigators or precognition agents (companies or sole practitioners) leaving the sector as they will not be able to meet the licensing requirements. If Option 3 is implemented for both sectors, anyone unable to meet the probity (i.e. criminality, mental health etc.) requirements for licensing will be prohibited from operating within either sector. If Option 4 is chosen, there is a risk that some private investigators or precognition agents leave or are deterred from joining<sup>90</sup> the sectors as they may feel financially unable to meet the training requirements. However, the benefit of regulation, as a minimum, is to remove or prevent any criminal element from operating within either sector. Further, competency requirements would have the added benefit of mitigating against the risk of criminal behaviour in the future, though compulsory assessment on knowledge of relevant laws and standards

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<sup>89</sup> Discussions with ABI (Investigators) and IPI confirmed this was likely to be the case in the majority of circumstances, March 2007.

<sup>90</sup> Refer to para. 7.5 – 7.6.

and ensuring that those individuals offering these services are competent to do so.

8.4. Businesses and sole practitioners may be able to pass the costs of regulation onto customers through increased rates. Additionally, across other licensable sectors, 7,448 licenses have been refused as of 27 June 2007; the majority of refusals are on the grounds of criminality. In this way, there is potential for the amount of work available to increase due to individuals and businesses leaving the sector where they are unable to meet the requirements for licensing.

#### **Will the proposal indirectly limit the number or range of suppliers?**

8.5. If regulation of either sector is introduced, there would be, as a minimum, licensing costs and, as a maximum, licensing *and* qualification costs. In this way regulation will result in an increase to the costs of operating within either sector. However, there will be no indirect limitation on the number or range of suppliers operating in either the private investigation or precognition agent sectors as a result of regulation. All individuals who are operating within these sectors, either those entering the sectors or existing suppliers, will have to meet any licensing requirements as defined following this RIA, equally. As discussed in the small firms impact assessment, sole practitioners and small businesses within the private investigation sector may be impacted upon more so than medium to large companies<sup>91</sup>. However, as set out in this RIA, the type of business undertaken by sole practitioners and small businesses differs to that undertaken by medium to large businesses. Consequently, there is unlikely to be much direct competition for providing similar services to the same clients. In this way, the market will continue to sustain different sizes of business.

#### **Will the proposal limit the ability of suppliers to compete?**

8.6. It is not believed that regulation will significantly limit the ability of suppliers to compete. Regulation of both sectors would result in associated licensing and *potentially* qualification costs. However, these costs will apply equally across all individuals. There may be some impact on the prices charged by sole practitioners and small businesses operating within the private investigation sector as opposed to medium to large businesses; the latter being potentially better placed to absorb any licensing costs or pass these costs onto purchasers. However, as set out in para 8.1 and 8.4 feedback from the private investigation sector indicates that different size companies are likely to service and compete for different business.

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<sup>91</sup> There will be no perceived differential impact on businesses operating within the precognition agent sector as they are almost exclusively sole practitioners or small businesses (unless the precognition service is offered as part of a wider private investigation service).

**Will the proposal reduce the supplier's incentive to compete vigorously?**

8.7. There is no evidence to suggest that the proposal would impact upon a supplier's incentive to compete vigorously.



## **9. Enforcement, Sanctions and Monitoring**

9.1. Details of the compliance and enforcement approach associated with each option are set out in section 6. Below are details of the SIA's strategic compliance approach and strategy underpinning those sectors currently regulated. This approach to compliance would be tailored to meet the needs of the private investigation or precognition agent sector, if regulation were introduced.

### **SIA Compliance Strategy**

9.2. Compliance with the Act is essential to enable the SIA to be the catalyst for improving industry standards. The SIA has a compliance and investigation strategy built around four key elements:

- Intelligence-led operations
- Engaging partners
- Designing in compliance
- Selective, consistent and proportional enforcement

9.3. The SIA uses the National Intelligence Model (NIM) to produce strategic and tactical assessments, to prioritise and inform targeted compliance activity and the identification of potential criminality. In this way, the SIA is able to focus its compliance activity on unlawful activity and target those individuals and companies who are not complying with regulatory requirements. Using the NIM tools provides a common platform for sharing intelligence with Police and other partnership agencies such as local authorities, HM Customs & Excise, Inland Revenue, Department of Work & Pensions, etc. The SIA will encourage and enable industry involvement – reports of unlicensed operatives will be strongly encouraged. The SIA would look to establish new partnerships with relevant stakeholders (such as the Information Commissioner's Office in relation to offences under the Data Protection Act committed by private investigators) should regulation of the private investigation or precognition agent sector be implemented.

9.4. The SIA works closely with national and local partners with which they have mutual and overlapping objectives. Through this, the SIA is able to exploit the strengths and specific focus of themselves, and each partner, to enable delivery of goals. The partners are likely to be those with which the SIA would share intelligence. The SIA's compliance and investigation team is coordinated nationally but regionally deployed to ensure good liaison with compliance partners and the private security industry.

9.5. Designing in compliance is about making it more attractive in business terms for the security industry, and its purchasers, to comply. This includes encouraging insurers to make compliance a condition of insurance. The SIA also aims to coordinate legislation. For example, the Licensing Act 2003 covering

liquor and public entertainment makes it a requirement that any door supervisors used must be SIA licensed. This means that non-compliance jeopardises a venue's liquor and/or entertainment licence, arguably much more powerful than the threat to an individual security operative.

## Enforcement and Sanctions

9.6. The SIA recognises that prosecuting offenders can be expensive and not always the most effective way of gaining compliance. They will however, prosecute when they think the circumstances demand it. They also have a range of other sanctions available including written warnings and improvement notices. Such measures can be effective in encouraging compliance and the individual's or organisation's response to these measures can be used to determine future SIA targeting and licence decisions. The SIA's partners may also choose to prosecute offenders where it assists them in achieving their own objectives e.g. safer entertainment venues.

9.7. The Act contains a number of criminal offences (listed below) in relation to aspects of the legislation. Individuals operating without a licence, or supplying unlicensed investigators, may face prosecution under the Act<sup>92</sup>. It is also a criminal offence to breach any conditions of an SIA licence. Any such conviction would be considered relevant to the SIA's 'fit and proper' criteria and may lead to the individual being precluded from obtaining a licence in the future.

Offence	Max Penalty
<b>Offence of using unlicensed operative (supply)</b> <u>s5 – Private Security Industry Act 2001</u>	Indictment: 5 years imprisonment or a fine (unlimited) or both  Summary: 6 months imprisonment or a fine not exceeding statutory maximum (£5000) or both.
<b>Conduct prohibited without a licence</b> <u>s3 – Private Security Industry Act 2001</u>	Summary: 6 months imprisonment or a fine not exceeding £5000 or both
<b>Licence Conditions (Contravention of)</b> <u>s9 – Private Security Industry Act 2001</u>	Summary: 6 months imprisonment or fine not exceeding £5000 or both
<b>Powers of Entry and Inspections</b> <u>s19 – Private Security Industry Act 2001</u>	Summary: 6 months imprisonment or fine not exceeding £5000 or both
<b>False Information</b> <u>s22 – Private Security Industry Act</u>	Summary: 6 months imprisonment or a fine not exceeding level 5 on

<sup>92</sup>The SIA publishes details of major compliance operations and prosecutions as a deterrent measure ([www.the-sia.org.uk/home/about\\_sia/news](http://www.the-sia.org.uk/home/about_sia/news)).

9.8. In addition, the SIA can revoke (withdraw) or suspend a licence. Revocation (withdrawal) of a licence would usually happen if a licence holder committed a relevant offence (listed in the licence criteria) or if the holder broke the conditions of their licence. The SIA might suspend a licence with immediate effect where it is felt there is an immediate risk to public safety. Revocation and suspensions may be appealed by licence holders at a magistrate's court.

9.9. We estimate that the compliance level for all other licensable sectors is currently at 95%. We will aim to achieve a compliance level of 95% for the private investigation and precognition agent sectors over time. However, due to the size and make up of these sectors there are likely to be challenges in reaching this compliance level in the first few years of licensing. The cost assessment in section 6 assumes that, initially, we will be able to achieve a compliance level of 80% of a total licensable population of 10 000 private investigators and 200 precognition agents. We will then aim to increase the compliance level towards 95%. As set out in para. 6.11, the anticipated sector volumes are relatively small compared to the licensable private security industry as a whole and variations in compliance levels and sector volumes are not likely to have a material impact on the licence fee set.

9.10. The SIA has several mechanisms for individuals who wish to report unlicensed operatives. This includes '[Crimestoppers](#)'; an independent registered charity that operates across the UK to help identify, prevent and reduce crime, an online reporting tool through the SIA website and through the call centre. The SIA also has a range of enforcement and intelligence partnerships (such as those included in para. 9.3) enabling it to 'punch above its weight' in terms of its reach as a regulator. If licensing were introduced, it is envisaged that individuals may join some of the more established representative associations and institutions as a way of representing their views to the SIA. It is also anticipated that licensing of both sectors could result in an increased awareness of the rights of subjects of investigation, potentially resulting in more reports of unlawful behaviour to one of the SIA's partners or directly to the regulator.

### **Monitoring implementation of regulation**

9.11. The SIA continues to work with the private security industry and other regulatory bodies to monitor the effects of regulation in those sectors already licensed. There is already evidence of more cooperation and joint working between the police and the private security industry<sup>93</sup>. In addition, the SIA has refused a number of applications for licences on the basis of an individual's

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<sup>93</sup>See website for examples of joint operations undertaken ([www.the-sia.org.uk/home/about\\_sia/news](http://www.the-sia.org.uk/home/about_sia/news)).

criminal record<sup>94</sup>. Exclusion of these applicants serves to strengthen the quality and integrity of professionals operating within this industry.

9.12. If regulation were introduced across the private investigation or precognition agent sector the SIA would work with partners to identify cross regulatory benefits in terms of compliance. The SIA would also work with existing associations, institutions and practitioners to encourage compliance, and identify instances of non compliance, across the sector. Throughout implementation the SIA would monitor instances of licences being refused to identify the level of criminality being excluded from the sector. The SIA would also monitor instances and reasons for non compliance.

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<sup>94</sup> 7,448 licenses have been refused as of 27 June 2007; the majority of refusals are on the grounds of criminality.

## 10. Consultation Questions

### Section 1: About you

Q1. Please indicate whether you (tick as many responses as apply):

- Carry out private investigation activities as referred to in this document, and you are a:
  - Sole practitioner; or
  - Work for a company providing these services.
- Carry out precognition agent activities as referred to in this document, and you are a:
  - Sole practitioner; or
  - Work for a company providing these services.
- Manage or direct private investigation services as referred to in this document;
  - If you manage or direct private investigation services, how many individuals conducting licensable private investigation activity are employed in your company?: \_\_\_\_\_(please provide number)
- Manage or direct precognition agent services as referred to in this document;
  - If you manage or direct precognition agent services, how many individuals conducting licensable precognition agent activity are employed in your company?: \_\_\_\_\_  
\_\_\_\_(please provide number)
- Contract or intend to contract for private investigation services as referred to in this document;
- Contract or intend to contract for precognition agent services as referred to in this document;
- Represent a public body (please provide details such as name, size, location); \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Represent a private body (please provide details such as name, size, location); \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You do not fall within the above categories (please provide the reasons of your interest in this consultation) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q2. Please indicate where you work geographically (for the majority of the time):

- England
- Wales
- Scotland
- Northern Ireland
- Europe
- International/Overseas

Q3. How many individuals in total do you perceive will require licences under the scope of private investigation as set out within this partial RIA (see para. 3.6. – 3.9.)? \_\_\_\_\_ (please provide number)

Q4. How many individuals in total, do you perceive will require licences under the scope of precognition agents as set out within this partial RIA (see para. 3.10. – 3.11.)? \_\_\_\_\_ (please provide number)

Q5. How many individuals in total do you perceive will require licences in both private investigation and as precognition agents under the scope as set out within this partial RIA (see para. 3.6 – 3.11)? \_\_\_\_\_ (please provide number)

## **Section 2: About your response**

Q6. Please indicate which activities your responses to the consultation will refer to:

- Private Investigation
- Precognition Agent
- Both

Q7 Do you believe that the activities of private investigators/ precognition agents/ both present a risk in terms of the harms identified in Tables 1 and 2 (please provide any evidence to support your claims)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q8 How much do you believe each of the harms identified in Tables 1 & 2 cost per annum (e.g. in terms of damage or loss) and who does this cost impact upon (e.g. suppliers, purchasers, public, other)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q9. Which of the proposed 4 options do you feel would be the most appropriate way for the Security Industry Authority to fulfil its responsibilities under the Private Security Industry Act 2001 in relation to the specified activities? )?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q10. Please provide the reasons for your choice, or provide the details of any other option you may have that is not listed in this document?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

**Section 3: About the SIA's approach to licensing private investigation and/or precognition agents**

Q11. Do you agree with the current criminality approach set out at Annex C? )?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q12. Do you agree with the current licence conditions approach set out at Annex D? )?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q13. Do you agree with the proposed competency approach set out in Annex E?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 4: About the impact of options 3 and 4**

Q14. What financial and commercial impacts do you think that the licensing of private investigation and/or precognition agents may have on suppliers of these services? Please provide details (e.g. costs). ?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q15. What financial and commercial impacts do you think that the licensing of private investigation and/or precognition agents may have on purchasers of these services? Please provide details (e.g. costs).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q16. Do you agree with the small firms' impact assessment (see section 7); if not, what else should be considered?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q17. What impact on equality and diversity do you think the introduction of licensing may have? Please provide details.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).

Q18. What impact would licensing have on the supply of investigation services across Europe (please select)?

- Positive (please provide details)
- Negative (please provide details, and whether SIA can mitigate any negative impact)
- No impact

Additional comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (please attach additional sheets).



## **Responses: Confidentiality & Disclaimer**

Responses should be returned no later than **24 October 2007** to:

Private Investigation and Precognition Agent Consultation  
Home Office  
Crime Reduction and Community Safety Group  
Security Industry Section  
Peel Building 4<sup>th</sup> floor  
2 Marsham Street  
London  
SW1P 4DF

Or emailed to: [Consult.PI-PA@homeoffice.gsi.gov.uk](mailto:Consult.PI-PA@homeoffice.gsi.gov.uk)

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### **Alternative Formats**

You should also contact the Crime Reduction and Community Safety Group, at the above address or by email, should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

### **Post consultation information**

A final impact assessment, outlining the responses to this consultation and chosen option for implementation, will be published within 3 months of the closing date for this consultation, and will be made available on our website.

## **11. Code of Practice on Consultation**

This consultation follows the Cabinet Office Code of Practice on Consultation - the criteria for which are set below.

### **The Six Consultation Criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:

[www.cabinet-office.gov.uk/regulation/Consultation](http://www.cabinet-office.gov.uk/regulation/Consultation)

### **Consultation Coordinator**

If you have a complaint or comment about the Home Office's approach to consultation you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence.

**Please DO NOT send your response to this consultation to Nigel Lawrence.**

The Co-ordinator works to promote best practice standards set by the Cabinet Office, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at: [Nigel.Lawrence@homeoffice.gsi.gov.uk](mailto:Nigel.Lawrence@homeoffice.gsi.gov.uk) or written to at:

Nigel Lawrence, Consultation Co-ordinator  
Home Office  
Performance and Delivery Unit

3<sup>rd</sup> Floor Seacole  
2 Marsham Street  
London  
SW1P 4DF

## **12. Annexes**

### **Annex A: Definitions and Clarifications on Proposed Scope of licensing**

#### **“Lost” Property**

Property which is lost includes property which is stolen

#### **Market Research**

Market research includes discovering whether someone is a potential customer for any goods or services. It may also include discovering the extent of a person's satisfaction with goods or services supplied to him and obtaining information for the purpose of analysing public opinion on any matter.

#### **List of Accountancy Bodies**

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants in Scotland;
- (c) the Institute of Chartered Accountants in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Chartered Institute of Management Accountants;
- (f) the Chartered Institute of Public Finance and Accountants.

#### **Exclusion of activities relating to material for publication**

The exclusion under Schedule 2 (4)(6) relates to activities carried out for the purpose of obtaining information exclusively with a view to its use, or of the information to which it relates, for the purposes of or in connection with the publication to the public or to a section of the public of any journalistic, literary or artistic material or of any work of reference.

#### **Incidental Activity**

You do not need a licence if you carry out any inquiries or investigations which are incidental to any non-security job.

## **Annex B: SIA Exemption Strategy**

The SIA is committed to the principles of the Government's Better Regulation agenda and therefore does not intend the scope of the PSIA to include elements of the private security industry where suitable alternative arrangements already apply thereby securing the safety of the public.

### **Exemption for licensable activities**

Section 4 (1) of the Act provides for the Secretary of State to make regulations to prescribe circumstances in which persons will be exempt from the requirement to have a licence to undertake licensable conduct. He can only do this where he is satisfied that there are circumstances in which activities of licensable conduct are undertaken by people to whom "suitable alternative arrangements" will apply **and** he is satisfied that "as a consequence" it is unnecessary for people undertaking those activities to be required to be licensed by the SIA.

The Secretary of State and his Ministers have approved the use of the SIA Exemption Strategy as a framework for defining such 'prescribed circumstances'. The SIA will use this framework and the following tests in its consideration of all exemption requests and recommendations to the Home Office Minister responsible.

The phrase "suitable alternative arrangements" in section 4 is defined in section 4(3) as arrangements that the Secretary of State or, as the case may be, the SIA are satisfied are "equivalent, for all practical purposes so far as the protection of the public is concerned, to those applying to persons applying for and granted licences".

There are two key points arising from this test. Firstly, that the test is on equivalence, and not on whether the arrangements are identical. Secondly, the equivalence has to be judged by reference to one particular consideration – 'the protection of the public'.

The test of equivalence involves an element of comparison. In discussions about a framework for exemptions the Minister and Home Office have confirmed they consider that the alternative arrangements have to be compared with the arrangements that are in use by the SIA for those applying for licences. That requires an examination of the arrangements applicable to those who are the nearest comparators to the group in question.

For full details of the SIA Exemption Strategy please visit the SIA website: [www.the-sia.org.uk](http://www.the-sia.org.uk).

## **Annex C: Proposed Fit and Proper Person Approach**

### **SIA 'fit and proper' criteria for licensing**

Section 7 of the PSIA 2001 states that *'it shall be the duty of the Authority, before granting any licences, to prepare and publish a document setting out the criteria which it proposes to apply in determining whether or not to grant a licence. The criteria set out by the Authority under this section shall include such criteria as the Authority considers appropriate for securing that the persons who engage in licensable conduct are fit and proper persons to engage in such conduct.'*

### **Criminal history**

The 'Get Licensed' booklet (June 07) states the current policy on considering the criminal history of applicants for licences:

You will not get a licence unless you have been free of the sentence restrictions for a conviction, caution or warning for at least two years before your licence application or for at least five years where we consider the offence to be serious (subject to the limited exceptions listed relating to Cautions or Warnings [refer to page 37 of the 'Get Licensed' booklet for more information]). Relevant offences include those involving violence, offensive weapons, drugs, sexual offences, serious criminal damage, theft and dishonesty. We also consider any offences under the PSIA 2001 to be serious.

By 'free of sentence restrictions for a conviction, caution or warning' we mean that we will start counting the time elapsed from the end of the caution or warning, or from the end of the sentence or penalty as appropriate - not from the date when you were sentenced or when the offence or offences were committed.

The Act allows the SIA to review and amend the criminality criteria.

### **Proposed Approach for Private Investigators and Precognition Agents**

The proposed fit and proper person criteria for private investigators and precognition agents is to maintain the same framework adopted for other licensable sectors (visit [http://www.the-sia.org.uk/home/licensing/close\\_protection/wizard/convictions.htm](http://www.the-sia.org.uk/home/licensing/close_protection/wizard/convictions.htm) for details), but review the offences list to reflect the specific risks and activities of the private investigator and precognition agent sector. Under this approach we would continue with the minimum exclusion period that currently exists with the criminality criteria. We would then, consider offences relevant to the activities and harms of a private investigator or precognition agent. We would under this approach undertake three exercises to determine the classification of offences:

- a) determine which offences are relevant for private investigation or precognition agent activity.
- b) determine the classification of offences as either significant (minimum two year exclusion period) or serious (minimum five year exclusion period).
- c) Once we have a list of offences, we would then incorporate these within the SIA's offences list.

There is support within the sector that certain offences should be given a higher classification. Offences such as data protection offences, fraud and communications offences are considered as more relevant to this sector of the private security industry than the security guarding sectors. The SIA will conduct more research on activities and risks during the RIA process. It is our intention that data protection offences will be considered as relevant to any decision making process.

### **Other information**

The current policy for other SIA regulated sectors is that the SIA does not normally seek out information about applicants that may be held by other organisations - such as the police and local authorities - which has not been tested in the courts. However, if such information is offered it is considered. In existing licensable sectors, 'information' normally means compelling evidence of relevant criminal activity, anti-social behaviour or criminal association. For the private investigation sector, this is more likely to relate to information from, for example, the Information Commissioner's Office.

The SIA will take into account any recent mental health problems where you have had to be detained in the five years prior to your application. We may also seek information to confirm that you have the right to remain and to work in this country (see 5.13).

If licences are refused then an applicant may appeal via the magistrate's court. If a licence is not granted on the basis of non-conviction information then the applicant is told and can challenge the decision and the information on which it was based.

The SIA welcomes comments on this proposed approach as part of the consultation process.



## **Annex D: Proposed Licence Conditions Approach**

Sections 9(1) and (2) of the Act, gives the Secretary of State the power to prescribe conditions on which a licence must be granted. In addition, the SIA has the power to prescribe and impose additional conditions. It is a criminal offence (s 9 PSIA) to break licence conditions. A licence may also be revoked if the conditions are breached.

The following conditions are currently enforced for all sectors where licensing is now compulsory.

### **i) All licence holders must:**

- Tell the SIA and police as soon as practical if their licence is lost or stolen.
- Tell the SIA as soon as practicable of any convictions, cautions and warnings or charges for relevant offences whether committed in the UK or abroad.
- Tell the SIA as soon as practicable of any change of name or address.
- Produce the letter (non front line licence holders), or licence for inspection (front line holders) to any constable, member or employee of the SIA or any authorised personnel when asked to do so.
- Return the licence to the SIA as soon as practical if they are asked to do so.
- Tell the SIA as soon as practicable of any change to your right to remain or work in the UK.

### **ii) In addition front line staff must:**

- Wear the licence where it can be clearly seen whenever they are working.
- Not deface or alter the licence in any way.
- Not wear a defaced or altered licence.

### **iii) Non front line staff must:**

- Not deface or alter the letter in any way that prevents all parts of it being seen.

And for relevant applicants only:

- If your application was based on a valid, existing non-UK licence or qualification which you hold, then you must tell us of any changes in the validity or in any conditions attached to either of them. You must also inform us of any disciplinary action taken or proposed to be taken against you in connection with that licence.

### **iv) In the Vehicle Immobilisation sector there are additional conditions:**

- A vehicle must not be clamped / blocked / towed if:
  - a valid disabled badge is displayed on the vehicle.
  - it is a marked emergency service vehicle which is in use as such.
- Any licence holder who collects a release fee must provide a receipt, which must include the following:
  - the location where the vehicle was clamped, blocked or towed.
  - their own name and signature
  - their licence number.
  - the date.

As with all other licensable sectors (apart from vehicle immobilisers who must display the licence at all times when engaging in any licensable conduct) private investigators and precognition agents would not need to wear their licence where they could demonstrate that the nature of their conduct on that occasion required them not to be immediately identifiable as someone engaging in private investigation or precognition agent activity. However, private investigators and precognition agents would still need to carry the licence on their person and be able to produce it on request.

Specific conditions will be developed only in order for us to conduct our statutory function, seek compliance to licensing and to protect the consumer or third party as necessary.

The SIA would also continue to promote a voluntary approach to best practice as has been done for other sectors, for example, through continuing to promote standards of behavior for the sector.

The SIA welcomes comments on this proposed approach as part of the consultation process.

## **Annex E: Private Investigation and Precognition Agent Proposed Core Competency Requirements**

Individuals operating within the private investigation and precognition agent sectors would, if Option 4 were implemented in both sectors, have to prove that they meet the required standards of competency in relevant core areas. The proposed criteria for licensing have been developed through extensive consultation with the private investigation sector and, to a more limited extent, the precognition agent sector<sup>95</sup>.

As discussed in this RIA, due to the similarities in activities conducted by both sectors, and therefore in the core competency requirements for each, it is envisaged that the precognition agent core competency requirements would form a subset of the private investigation core competency requirements as follows (shaded box denotes competency requirement):

<b>Unit</b>	<b>Core Competency</b>	<b>Private Investigation</b>	<b>Precognition Agent</b>
<b>1</b>	Conduct investigations		
<b>2</b>	Conduct interview		
<b>3</b>	Search for information and preserve evidence		
<b>4</b>	Conduct Surveillance		
<b>5</b>	Understanding and working to relevant Laws and Standards		

In this way, the SIA's licence integration approach would be that a private investigator would also be licensed to conduct the activities of a precognition agent (although not the other way round).

The above list represents the "core" of what individuals operating within the private investigation or precognition agent sector actually do, regardless of the part or parts of the sector in which they work. This core framework is supported by the results of various consultation exercises on potential competency requirements.

It is envisaged that formal recognition of competence in the above areas would be through certification from a HEA<sup>96</sup>/QCA<sup>97</sup>/ACCAC<sup>98</sup>/QAA<sup>99</sup>/SQA<sup>100</sup> recognised

<sup>95</sup>Refer to section 4.

<sup>96</sup>Higher Education Authority

awarding body. Training and assessment for the associated qualifications would follow approaches similar to those available to other licensable sectors. It is envisaged that there would be a requirement for assessment, but the nature of the sector requires an approach that includes flexible learning opportunities rather than formal contact time stipulated by the SIA. Flexible learning would allow those operatives sufficiently confident in their abilities to rely to a greater extent on self-directed learning. It will also allow operatives to do their learning for the qualification in a way that fits in with their working lives and minimises loss of income. The SIA recommendation will also lead to use of 'blended learning', which may include distance learning programmes alongside conventional face-to-face training. This would allow for a model that would include refresher training for individuals with lots of experience who only want to update their knowledge for the purposes of assessment for the licence-linked qualification.

The assessment method on offer is a decision for awarding bodies to make although the SIA has recommended that a single, written (or online taken in a controlled training provider assessment centre) knowledge-based assessment would be suitable.

The SIA has a process in place for exempting qualifications where they meet the core competency requirements. In addition, we will make recommendations for exemptions for holders of qualifications such as the relevant NVQ. The SIA encourages associations, institutions and training providers offering bespoke learning and qualifications for private investigation and precognition agents to work with accredited awarding bodies. By working through an accredited awarding body, an award they offer could be considered as contributing to licensing where it is a match to SIA specifications. Any bespoke course and qualification would need to be offered via a Part A Accredited Awarding Body, with the Award itself being accredited to the National Qualifications Framework or the Scottish Credit and Qualifications Framework. More information on this would be provided should a competency requirement for licensing be introduced.

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<sup>97</sup>Qualifications Curriculum Authority

<sup>98</sup>Qualifications Curriculum and Assessment Authority for Wales

<sup>99</sup>Quality Assurance Agency

<sup>100</sup>Scottish Qualifications Authority