



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

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Your ref:

Mr Cairncross
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By email: Consult.PI-PA@homeoffice.gsi.gov.uk

Dear Mr Cairncross

**PROPOSALS FOR THE LICENSING OF PRIVATE INVESTIGATORS
AND PRECOGNITION AGENTS**

The Institute of Chartered Accountants in England and Wales ('the Institute') is pleased to respond to your request for comments on '*Proposals for the Licensing of Private Investigators and Precognition Agents*'.

Please contact me should you wish to discuss further any of the points raised in the attached response.

Yours sincerely

Felicity Banks.

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ICAEW Representation

ICAEW REP 107/07

PROPOSALS FOR THE LICENSING OF PRIVATE INVESTIGATORS AND PRECOGNITION AGENTS

Memorandum of comment submitted in October 2007 by the Institute of Chartered Accountants in England and Wales, in response to the Home Office Partial Regulatory Impact assessment published in August 2007

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the Home Office Partial Regulatory Impact Assessment ("the PRIA") of August 2007 *"Regulations to Implement the Private Security Industry Act 2001 in Respect of Private Investigation And Precognition Agents"*. The Institute's main expertise in these matters relates to the situation in England and Wales, so our comments are mainly directed at private investigation, though we expect the general principles of the response to also apply to precognition agents operating in Scotland.
2. We look forward to working further with the Home Office and the Security Industry Authority, as these proposals are developed. The Private Security Industry Act provides the statutory framework within which the proposals have been drawn up, but particularly with the development of the Government's better regulation framework since the passage of the Act, there will be some flexibility in how the licensing requirements of private investigators are framed. We look forward to being further consulted, as the proposals are developed.

WHO WE ARE

3. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute reviews the work of all its members who are in practice, and will also have direct supervisory oversight of their compliance with the Money Laundering Regulations. It also has disciplinary oversight of all its members wherever they are employed, whether working in public practice or in business.
4. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. We define the practice of accountancy to include forensic accountancy, which is therefore a recognised specialism of our members. The ICAEW ensures these skills are constantly developed, recognised and valued.

MAJOR POINTS

General

5. The Institute has been a leading contributor in the policy debate over the fight against financial and economic crime over the last decade or longer. As a professional body for accountants, we are particularly aware of the damaging social and economic effects that are caused by crime in general and in particular by economic crime. With the continued efforts of Government and Law Enforcement Authorities necessarily focussed on organised crime, terrorism and crimes of disorder, the victims of economic crime frequently find that their best recourse is to revert to the private sector for assistance. The Institute supports not only the provision of more appropriate public resourcing for the fight against economic crime, but also more and better partnership working between the public and private sector. However, this is unlikely to provide optimal resourcing given

scarce public funding. It is therefore important that the reform of the market in private investigation is carefully handled, to support rather than unnecessarily restrict the growth, flexibility, and range of skills of this sector. Without a strong and flexible private investigation industry, the fight against economic crime would lose one of its most positive and helpful aspects.

6. The Institute supports the licensing of private investigation to help control the potential abuses in the sector. However, the conditions for licensing and the ways in which they are imposed and enforced should be kept as flexible and as little onerous as possible. In particular, the operation of licensing conditions should not restrict the availability to clients of access to the services of specialists who would not normally operate within the remit of licensed activities. These might include, for example, such specialists as quantity surveyors, where physical supplies had been lost or misappropriated, overseas nationals, where investigations were conducted across borders, or many other individuals with specialist knowledge needed in some but not all types of investigation.
7. Unnecessary costs will also be experienced if investigators are not able to use the services of trainee investigators, acting under their supervision. Not only will this deny investigators a valid and useful resource but will deny potential investigators the opportunity to develop their skills in a practical environment. This would act to the detriment in the long term of the sector, its clients and the general commercial and economic environment of the country.
8. We suggest that one means by which the costs of the loss of unlicensed specialists, trainee investigators or other supervised operatives, could be minimised would be through the development of the Approved Contractor Scheme, with no licensing requirement being imposed on any individual working within an approved organisation. Nor should licensing be required for specialists contracted by Approved Contractors, for the supply of specialist skills on an occasional basis, and where the contractor takes responsibility for the appropriate behaviour of the specialist.
9. We also suggest that investigators who are contracted only by informed purchasers, such as lawyers, chartered accountants and larger businesses should not require licensing.

The Impact on the Accountancy Profession

10. We are pleased to see that the SIA does not consider that there is any need for it to require members of this Institute or other major accountancy professional bodies to acquire licences to continue their professional activities. However, the structure of the profession, and the way that the exemption for accountants has been framed in the legislation, mean that the way in which the requirements are imposed could undermine the intentions of the SIA in this area and result in unnecessary dual regulation. If necessary, this should be avoided through the operation of appropriate deregulatory initiatives.
11. Chartered Accountants typically work in practices which include members of more than one accountancy qualification, or none. The regulatory and disciplinary remit of the Institute extends to all members in varying degrees, with practice assurance requirements applying to all members in practice and member firms. More information about these and other regulatory and professional requirements of the Institute are available from our members handbook, a copy of which is available from www.icaew.com/membershandbook. Partners in member firms

who are not themselves individual members of the Institute are required to take on affiliate membership of the Institute, and to subject themselves to our ethical and disciplinary requirements. These include requirements for competency as well as for integrity. External licensing or regulatory requirements for non-chartered accountants working in accountancy practices which are member bodies of this Institute or other appropriate professional bodies, would therefore be unnecessary and inappropriately onerous.

12. Individual members of the Institute also frequently work in business, including being employed in specialist private investigatory firms. Nevertheless, they still remain subject to the professional ethical and disciplinary remit of the Institute, including requirements for Continuing Professional Development. Again, any additional licensing requirements for these individuals would be unnecessary and inappropriately onerous.
13. If there is any concern that individual accountants could fall between regulatory stools, and thus escape appropriate regulatory action, this should be resolved through appropriate cooperation between regulators and professional bodies, rather than by imposing unnecessary and duplicative licensing requirements.

OTHER MATTERS

Register of Licences

14. We note that it is a responsibility of the SIA to establish and maintain a register of persons licensed under Section 12 of the Act, with information including the name and an address of the licence holder, and that this register may be open to inspection by the general public as considered appropriate by the SIA. Where investigators are conducting enquiries into assets which have been stolen, especially where organised crime might be involved, public knowledge of their identity could not only inhibit the effectiveness of their enquiries but also bring them into actual physical danger (thus increasing the likelihood of violent crime). We therefore strongly urge that the SIA allows and promotes the use of trade names for registration purposes and accommodation addresses especially for sole practitioners and other persons operating out of residential premises. The registering of personal information could also be avoided by the use by sole practitioners as well as larger entities of a trade name under the Approved Contractor Scheme.

Appropriate Qualifications

15. Elsewhere in this response, we recommend that there should not be specific competency requirements for licensing, partly because of the very wide range of skills which can be usefully employed in one aspect or another of private investigation. However, this does not mean that we do not think that the SIA should encourage and promote the development, use and recognition of appropriate qualifications. One way in which the use of appropriate qualifications could be encouraged would be through the identification of the qualifications of individuals employed by recognised contractors, in the Register of Private Investigators (albeit without the identities of those individuals needing to be revealed).

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Specific Consultation Questions

Section 1: About you

Q 1-5 Our structure, constitution, and areas of operation

The Institute is a professional body of about 127,000 members. Acting under a Royal Charter, the Institute carries out public as well as private functions. A number of our members manage, direct or work in the field of forensic accountancy, which comes within the overall definitions of both accountancy practice and private investigation.

The Institute is mainly based in England and Wales, but also has a considerable number of members working in other jurisdictions, including Scotland.

It is not clear to us whether or not the current proposals would require our members to obtain a licence to carry out private investigation work in a number of circumstances, for example when they are acting as an employee in an organisation outside accountancy practice. We are there not able to respond to a query as to how many of them would require a licence. Nor do we have any general information on the total number of private investigators there are.

Section 2: About your response

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

Our response relates primarily to private investigation, but we expect the responses to also relate equally to precognition agents.

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)?

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)?

We recognise that the harms caused by unethically conducted private investigation can be considerable, and are likely to be in the areas identified in Tables 1 and 2. However, we do not consider that these harms should be considered in isolation from the benefits that most private investigations present – which on balance we believe to be positive.

Tables 1 and 2 appear to be incomplete, in that they fail to recognise the activity of the investigation of the whereabouts, or the circumstances of the loss of, money or other valuable assets, through error, misappropriation or other crime. Corporate victims of such crimes tend to avoid making their losses public, or the fact that they have commissioned investigations into them, for fear that reputational damage will follow the physical or monetary damage already experienced. Such customers may therefore be relatively difficult to identify or consult. However, that does not absolve the Home Office and SIA from the need

to take their needs, costs and benefits into account. We trust that the SIA have included in their informal consultations business representatives, including the CBI and the Federation of Small Businesses.

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?

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.

We would support the option of the licensing of private investigators without competency requirements, as opposed to the alternatives of doing nothing, or taking non-regulatory actions only. Applied appropriately, we believe that that policy would have a positive benefit, in reducing the harms caused by unethical operations, while supporting the development of ethical investigation.

We would not support the mandation of extensive or formal competency requirements, since we believe that competency is better left to market mechanisms.

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?

We agree that the SIA should assess fitness and propriety taking into account the criminal record of licensees, and that the crimes taken into account should particularly emphasise those relevant to private investigation. As well as data protection, fraud and communications offences, these should include other offences associated with economic crime, including corruption, money laundering and market abuse.

However, the SIA should also take into account misconduct which does not amount to criminality. For example, civil or disciplinary action taken by a professional body or regulator, or by the Information Commissioner, should also be taken into account in assessing whether a potential or existing licence holder is fit and proper.

In investigating fitness and propriety, the SIA should not limit itself to the information sources outlined in Annex C, but should also use any of the information which might be available to it, under the approach outlined in Section 9 of the PRIA, on Enforcement, Sanctions and Monitoring.

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

The proposed licence conditions appear to be aimed primarily at security guards and vehicle immobilisers, rather than private investigators. For private investigators, the emphasis should not be given to the possession and availability of a physical copy of the licence, but rather emphasis should be given to compliance with appropriate behavioural requirements, under which the licence is granted.

We do not believe it to be necessary for licence holders to be required to carry a copy of their licence, and produce it when requested – indeed, to require such could, in circumstances where the persons under investigation are criminals, bring the investigators into unnecessary danger. Rather, investigators could be required to produce evidence of their identity, to official and authorised enquirers only, followed up by production of the licence, or reference to an SIA Register, within an appropriate period and at a police station or other appropriate location.

We would strongly support the production an appropriate Code of Conduct by the industry, in consultation with the SIA and others. The SIA should also have powers to withdraw licences from those who persistently fail to adhere to the Code of Conduct.

We would also strongly support the availability to the SIA of a range of disciplinary action, such as fining or public censure, to enable proportionate enforcement action to be taken.

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

No. We do not think that the SIA should be limiting the availability of licences to the holders of a short and selective list of qualifications, but should leave it to those using the services of private investigators to choose the competencies required. If any general competencies are required, they should be limited to knowledge of the law in the UK, as it applies to private investigation, together with any aspects of the Code of Practice (which we recommend under Q12 above) that applies to the exact nature of the work being done.

Though the core competencies identified in Annex E are necessary for some types of investigation, they are not necessary for them all. For example, knowledge of conducting interviews or surveillance are not necessary to an operator specialising in the investigation of evidence contained in computers and other electronic sources. It would therefore be pointless and quite unnecessarily burdensome to require an electronic forensic expert to acquire competencies in these functions, when he is neither able to, nor wishes to, carry out such functions.

There are a wide range of types of experience or qualifications which are relevant to some or several aspects of private investigation. For example, qualified financial investigators who retire from the police could be ideally positioned to practice as private investigators without further qualifications. The availability of appropriate investigators should not be limited by the imposition of unnecessary and restrictive barriers to entry.

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).

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).

We believe that in the shorter term, the implementing of licensing requirements on private investigators will have significant costs, which will necessarily need to

be passed on to clients. However, we also believe that if the licensing is carried out at an appropriate level and on an appropriate basis, the costs will be outweighed by the benefits to the clients of investigators and the general public, and for the reputation of the sector.

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

We agree that the most difficult aspect of the proposals for small businesses would be the imposition of mandatory, structured and onerous competency requirements. As explained elsewhere in this response, we do not believe that the SIA should be setting competency requirements for private investigators, except perhaps in legal and behavioural requirements as they apply to the actual work being carried out by the licence holder.

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

If applied inflexibly and inappropriately, the licensing requirements could reduce diversity in the sector, by reducing opportunities for those returning to the job market after a break, or those undertaking a second career. Such people tend to be biased towards women and older people.

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

Licensing could have a positive or negative impact on the supply of investigation services, depending on the conditions, skill and sensitivity with which the licensing conditions are applied.