EXPLANATORY MEMORANDUM TO

THE PRIVATE SECURITY INDUSTRY ACT 2001 (AMENDMENTS TO SCHEDULE 2) ORDER 2007

2007 No.

1. 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Description

2.1 The Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2007 amends the list of activities subject to licensable control in Schedule 2 to the Private Security Industry Act 2001 (the "2001 Act") to make provision for Scotland and some other minor and technical amendments.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 With the exception of article 5(4) (and supporting provision), this Order comes into force on the Common Commencement Date of 1 October 2007.

3.2 Article 5(4) amends paragraph 8(3) of Schedule 2 to the 2001 Act to ensure that casinos and bingo halls licensed under the Gambling Act 2005, like those licensed under its predecessor the Gaming Act 1968, do not fall under the door supervision requirements of the Act. The Gambling Act 2005 (in paragraph 17 of Schedule 16) made a similar substitution but made a technical error by inserting the amendment in the incorrect place. Article 5(4) is commenced on 1 September so that it comes into force on the same day as the relevant provisions of the Gambling Act 2005.

3.3 We consider that business will not be adversely affected by this amendment being commenced on 1 September rather than on 1 October. Business is already aware of the policy, enshrined in paragraph 17 of Schedule 16 to the Gambling Act 2005, and this substitution simply corrects a technical error. (Article 1 and (so far as relating to article 5(4)) article 5(1) are also commenced on 1 September but have no additional effect on business.)

4. Legislative Background

4.1 The 2001 Act received Royal Assent on 11 May 2001. The 2001 Act included powers for the creation of the SIA as the regulator of the private security industry in England and Wales. The Serious Organised Crime and Police Act 2005 amended the 2001 Act to extend it to Scotland and Scottish

Commencement Orders brought those amendments into force in June and July 2006 and April 2007.

4.2 Section 3 of the 2001 Act requires persons to be licensed by the SIA when undertaking certain types of conduct. That conduct involves activities listed in Schedule 2 to the Act which are designated under section 3(3) of the Act. The activities of manned guarding, door supervision, vehicle immobilisation, restriction and removal and keyholding have been designated in England and Wales. Licensing under the 2001 Act will become compulsory in Scotland from 1 November 2007 when certain activities will be designated under section 3(3) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and Scotland.

6. European Convention on Human Rights

6.1 The Home Office Parliamentary Under-Secretary of State, Vernon Coaker, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2007 are compatible with the Convention rights.

7. Policy Background

7.1 The 2001 Act was intended to increase standards and remove criminality within the private security industry by introducing a regulatory regime that was proportionate to the risks posed to the public. The amendments this Order makes to Schedule 2 to the 2001 Act ensure that the licensing regime is appropriate and proportionate both in England and Wales and in Scotland.

7.2 Article 2 amends paragraph 2 of Schedule 2 to the Private Security Industry Act 2001 to ensure that the definition of the manned guarding activities of a security operative does not catch certain prison and police-related activities carried out in Scotland, in line with earlier amendments in respect of similar functions in England and Wales.

7.3 Article 3 makes a minor and technical amendment to paragraphs 3 and 3A of Schedule 2.

7.4 Article 4 provides that the activities of persons who restrict and remove vehicles with subsequent charging of a release fee do not apply to Scotland, in line with the position regarding vehicle immobilisation under paragraph 3 of Schedule 2.

7.5 Article 5(2) and (5) amend paragraph 8 of Schedule 2 to the 2001 Act to bring the position in Scotland in line with that in England and Wales for door supervision activities in licensed premises. It specifies the times at which activities are caught (when alcohol and entertainment are being provided) and specifies certain premises which are not caught (certain cinemas and theatres).

7.6 Article 5(3) amends paragraph 8(1C) to put beyond doubt that licensable security activity in respect of Cash and Valuables in Transit and Close Protection are not caught under the requirements for door supervision (to date the view has been taken that these activities do not fall within the scope of paragraph 8 since they are never undertaken "in relation to licensed premises" but only in relation to property and persons (respectively)).

7.7 Article 5(4) ensures that casinos and bingo halls licensed under the Gambling Act 2005 do not fall under the door supervision requirements of the 2001 Act.

8. Impact

8.1 A formal consultation exercise was conducted by Scottish Ministers in 2001 which sought stakeholders' comments on proposals for a Scottish Private Security Industry regulatory regime. The option of using the SIA was widely supported. Additionally, a Regulatory Impact Assessment was published with the passage of the Serious Organised Crime and Police Act 2005 through Parliament. This set out the manner in which regulation would be introduced in Scotland. The legislation was also subject to a Legislative Consent Motion in the Scottish Parliament which was debated on 2 February 2005.

9. Contact

9.1 Iain Ross at the Scottish Executive, Telephone 01131 244 3988 or e-mail: Iain.Ross@scotland.gsi.gov.uk can answer any queries regarding these instruments, relating to Scotland.

9.2 John Cairncross at the Home Office Telephone: 020 7035 0227 or e-mail: john.cairncross@homeoffice.gsi.gov.uk can answer any queries regarding these instruments, relating to England and Wales.