EXPLANATORY MEMORANDUM TO

THE PRIVATE SECURITY INDUSTRY ACT 2001 (DESIGNATED ACTIVITIES) (AMENDMENT) ORDER 2006

2006 No. 824

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 The Private Security Industry Act 2001 (Designated Activities) (Amendment) Order 2006 amends the Private Security Industry Act 2001 (Designated Activities) Order 2006 ("the 2006 Order"). The 2006 Order, laid on 27 February and coming into force on 20 March, designated manned guarding activities for the purpose of requiring them to be licensed under the Private Security Industry Act ("the 2001 Act"). This made it a criminal offence to undertake licensable conduct involving manned guarding activities without a Security Industry Authority (SIA) licence from the 20th March 2006.

2.2 This Order removes from the requirement to be licensed several groups of persons who work under contract for the prison service, immigration service and the police.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Home Office regrets and apologises for the failure to lay this instrument 21 days before it comes into force. The instrument was laid 3 days before it comes into force. The instrument needs to come into force on 20th March 2006, to take effect at the same time as the one it amends.

3.2 Home Office officials had been working on alternative mechanisms to remove these groups from the scope of the Act: an Order under Schedule 2 to the Act and an exemption under section 4 of the Act. The Order under Schedule 2 is subject to the draft affirmative procedure. Work began on this Order earlier this year, but it took more time than expected to identify all the relevant persons to be included in that Order. By the time all the groups had been identified it was not possible to guarantee that the Order would have been debated in both Houses and brought into force by 20th March 2006. The exemption route, which is achieved by a negative statutory instrument, was

then considered but it became apparent that it would not be appropriate for all persons in question.

3.3 It would have created very considerable difficulties for the private security industry had the 2006 Order been revoked. A great many persons in that industry already hold manned guarding licences in anticipation of 20th March 2006, which take effect from the day on which they are issued by virtue of section 8(8) of the 2001 Act.

3.4 The alternative route of amending the 2006 Order was identified to resolve the immediate problem. Section 24(5) of the Act allows a designation order to make different provision for different cases. The amendment to the designation order specifies those cases in which the manned guarding activities are not designated. Because of the need to ensure that these groups are not working illegally from 20th March 2006, it was decided to pursue the route of amending the 2006 Order, notwithstanding the fact that this involves a breach of the 21 day rule.

3.5 This is the first occasion on which section 3(3) is being used in conjunction with section 24(5) of the 2001 Act.

3.6 Because this order is being made to narrow the scope of the 2006 Order before that order comes into force, this order is being issued free of charge to all known recipients of the 2006 Order.

3.7 The Home Office considers that the decision to remove these persons from the licensing requirement is a decision that would benefit from scrutiny by both Houses and for that reason will lay an affirmative order under paragraph 1(2) of Schedule 2 to the 2001 Act to remove the activities of these persons from the scope of the 2001 Act as soon as possible.

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.

4.2 The sectors (licensable activities) within the private security industry that are or will be subject to regulation by the SIA are door supervisors, vehicle immobilisers (including the removal and restriction of vehicles), manned guards, keyholders, security consultants and private investigators.

4.3 The SIA commenced the regulation of door supervisors on a geographical basis from March 2004, and this was completed by April 2005. The requirement to hold an SIA licence to undertake vehicle immobiliser activities commenced in May 2005. The manned guarding sector (which comprises the categories of security guards, cash and valuables in transit, close protection and public space surveillance CCTV operators) and the keyholder sector, will be required to hold a licence from 20th March 2006 by virtue of the Private Security Industry Act 2001 (Designated Activities) Order 2006. The

smaller groups of private investigators and security consultants are not yet required to be licensed.

4.4 The groups covered by this order are acting in a highly secure environment and all have undergone criminal records bureau or criminal records office checks before they are able to work. Many are trained to requirements approved by the Secretary of State. There is in practice no material difference between the screening and running of staff in private prisons and those which are publicly run.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 2001 Act was brought in to regulate the private security industry in England and Wales. The industry has grown substantially in recent years and its work has changed from a largely passive role into one with far greater and more active contact with the public. Previously there had been little or no self-regulation and standards across all sectors of the industry varied widely. The 2001 Act was passed to protect and reassure the public by excluding criminal elements, creating a voluntary accreditation scheme for firms, and raising standards in the industry.

7.2 This instrument is necessary to amend the designation order that made manned guarding activities licensable and made it a criminal offence to work without an SIA licence from 20 March, to ensure the groups listed in 2.2 above are not required to be licensed.

8. Impact

8.1 A Regulatory Impact Assessment was attached to the Explanatory Memorandum for the Private Security Industry Act 2001 (Designated Activities) Order 2006. No separate Regulatory Impact Assessment has been carried out for this instrument.

8.2 The impact on the public and private sector is minimal. So far as we are aware none of those affected by this amending order have acquired licences.

9. Contact

John Cairncross at the Home Office Tel: [0207 035 0227 or e-mail: john.cairncross@homeoffice.gsi.gov.uk] can answer any queries regarding this Order.