EXPLANATORY MEMORANDUM TO

THE PRIVATE SECURITY INDUSTRY ACT 2001 (EXEMPTION) (AVIATION SECURITY) REGULATIONS 2010

2010 No. 3018

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

2. Purpose of the instrument

2.1 The Private Security Industry Act 2001 (Exemption) (Aviation Security) Regulations 2010 revoke and replace the Private Security Industry Act 2001 (Exemption) (Aviation Security) Regulations 2006 (the "2006 regulations"). They exempt certain persons from the licensing requirements of the Private Security Industry Act 2001 (the "2001 Act") on the basis that suitable alternative regulation is already in place. The Regulations set out the circumstances in which it would not be an offence under the 2001 Act for a person to work without a Security Industry Authority ("SIA") licence whilst performing aviation security functions in security restricted areas of airports.

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

3.1 None.

4. Legislative Context

4.1 This instrument is being made to continue an exemption from the requirement to have an SIA licence for certain persons who work in the aviation security industry who are covered by alternative arrangements.

4.2 The 2001 Act empowers the Secretary of State to make regulations that define circumstances where individuals will be exempt from licensing requirements when carrying out licensable activities, on the condition that she is satisfied "suitable alternative arrangements" are in place which "as a consequence" make it unnecessary for those individuals to be licensed. Suitable alternative arrangements are defined in section 4(3) of the PSIA as "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."

4.3 The 2006 regulations exempted some airside security operatives from SIA licensing if they worked in specific areas of airports at specific times of day. This was on the grounds that there are suitable alternative arrangements for the vetting and training of airport security workers to those required by the SIA licensing regime. The conditions encompass vetting and training for those who are responsible for implementation of screening, access control or other security controls within a prescribed area (the Security Restricted Area) of an airport. Under these

circumstances and in these areas, security operatives fall under the regulation of the Department for Transport (DfT).

4.4 New EU aviation security regulations made under Regulation (EC) No. 300/2008 on common rules in the field of aviation security, including the more detailed measures set out in Regulation (EU) 185/2010, came into force on 29 April 2010. The Single Consolidated Direction (Aviation) 2010 repealed and replaced various previous DfT aviation security directions which related to the vetting and training of airport security workers. As a result of those changes, the 2006 regulations, which refer to the previous DfT directions, need to be revoked and replaced with new regulations that refer to the new European regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The 2001 Act was introduced to regulate the private security industry in the UK. Its objectives are to protect the public by preventing unsuitable people from working in the industry, and to improve standards within the industry.

7.2 These regulations revoke the Private Security Industry Act 2001 (Exemption) (Aviation Security) Regulations 2006 that exempt some airside security operatives from SIA licensing, and replace them with new regulations. The previous DfT directives which are referred to in the 2006 regulations have been revoked. The SIA have compared the previous vetting and training requirements with the new requirements, and have confirmed that the new requirements, falling under EU regulations that we are required to adopt, continue to provide suitable alternative arrangements for all intents and purposes for the protection of the public. It is therefore necessary for the Home Office to make new regulations which will need to refer to the correct and updated legal source of the alternative system of regulation which underpins the exemption. This is a technical change to ensure the previously agreed exemption can be rolled forward to cover the same airside operatives that are currently covered by that exemption.

7.3 There are an estimated 8,300 airport security workers per annum who are affected by these regulations. The nature of the problem being addressed is to ensure that there is no unnecessary duplication of vetting and training requirements for airside security staff. There has been no public interest or media attention about this issue to date. It is legally important to make this instrument, as there is no other way to ensure that the previously agreed exemption under the 2006 regulations is rolled forward to cover the same airside operatives.

- ***Consolidation***

7.4 No consolidation is planned. The SI revokes the earlier 2006 Regulations and replaces them. It also revokes the Private Security Industry Act 2001 (Exemption) (Aviation Security) Regulations 2006 (Amendment) Regulations 2009 and regulation 2 of the Private Security Industry Act 2001 Regulations (Amendment) Regulations 2007.

8. Consultation outcome

8.1 No formal 12 week consultation has been undertaken. This is because these regulations only make a technical change to ensure that the previously agreed exemption from 2006 is rolled forward to cover the same airside security operatives as the 2006 regulations. There is therefore no change in policy. We have consulted with Scottish Ministers, the Department of Justice Northern Ireland, the SIA and Department for Transport over the past four months.

9. Guidance

9.1 The DfT will write to all UK airports to make clear which of their security staff are included in the exemption, and which are not and thus need to be licensed by the SIA.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. This is because there is no change in policy.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the exemption applies equally to all staff who carry out licensable activity in a security restricted area of an airport who have been recruited and trained in accordance with EU 185/2010, regardless of the size of business that they work for. Therefore there is no need for any employees of small businesses who are covered by the exemption to obtain a SIA licence.

11.3 As explained in 8.1, no consultation has been conducted with small businesses. This is because these regulations only make a technical change to ensure that the previously agreed exemption from 2006 is rolled forward to cover the same airside security operatives as the 2006 regulations. There is therefore no change in policy.

12. Monitoring & review

12.1 The success criteria and intended outcome for this instrument is that the previously agreed exemption from 2006 is rolled forward and that it will cover all of the airside security operatives who were exempted by the 2006 regulations.

12.2 The DfT will inform the Home Office if there are any future changes to Regulation (EU) 185/2010 which require further amendments to this instrument. The SIA Board reports annually to the Secretary of State on the operation of the legislation and the performance of the Authority in meeting its aims, and the report will be published.

13. Contact

John Cairncross at the Home Office Tel: 020 7035 0227 or email: john.cairncross@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.