EXPLANATORY MEMORANDUM TO

THE PRIVATE SECURITY INDUSTRY (LICENCE FEES) ORDER 2020

2020 No. 387

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument specifies a matter for the Secretary of State to take into account when setting the fee to be paid on application for a Security Industry Authority (SIA) for an individual licence. This matter is any deficit incurred in carrying out the SIA's functions relating to the grant of licences under section 8 of the Private Security Industry Act 2001 (the Act).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The powers under section 102 of the Finance (No.2) Act 1987, under which this instrument is made, are available where the relevant fee or charge "*is payable to the Minister or to any other person who is required to pay the fee or charge into the Consolidated Fund (whether the obligation is so expressed or is expressed as a requirement to make the payment into the Exchequer)*". In respect of this instrument, the relevant fee is payable to the SIA under section 8(7) of the Act. The SIA is required to pay such fees to the Secretary of State unless the Secretary of State directs otherwise (and no such direction is in place) and the Secretary of State is required to pay all such sums into the Consolidated Fund (paragraph 15 of Schedule 1 to the Act).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Safeguarding and Vulnerability (Victoria Atkins) has made the following statement regarding Human Rights:

"In my view the provisions of the Private Security Industry (Licence Fees) Order 2020 are compatible with the Convention rights".

6. Legislative Context

6.1 The Act created the Security Industry Authority (SIA) as the regulator of the private security industry in England and Wales. The Act was extended to cover Scotland in 2007 and Northern Ireland in 2009. The Act permits the Secretary of State to set fees for a licence.

6.2 Section 8(7) of the Act requires the prescribed fee to be paid to the SIA on the making of an application for a licence. The SIA is required to pay such fees to the Secretary of State unless the Secretary of State directs otherwise (and no such direction is in place) and the Secretary of State is required to pay all such sums into the Consolidated Fund.

6.3 The Secretary of State has the power to set the fee under section 24(1). This fee is set with reference to the cost of the functions performed by the SIA under section 1 of the Act.

6.4 Section 102(4) of the Finance (No. 2) Act 1987 allows the Secretary of State to specify matters to be taken into account when setting a fee. Those matters are set out in this Order. This Order allows the Secretary of State to take into account any previous deficits or current costs when setting the fees to be paid to the SIA under section 8(7) of the Act.

7. Policy background

What is being done and why?

7.1 In order to adhere to the principles set out in the HM Treasury publication, "Managing Public Money" SIA fees should meet the full costs of the service while neither producing a loss nor a surplus.

7.2 The SIA operates on a full cost recovery basis and its individual application licence fee is set on a three-year cycle.

7.3 Section 102 of the Finance (No.2) Act 1987, enables the Secretary of State to take into account other matters when setting a fee for a licence. The other matters specified in this Order are the deficits incurred by the SIA when carrying out its licensing functions in some financial years. This Order will allow the deficits to be recovered in subsequent years by setting a fee across the period that takes into account this deficit. This will prevent an annual variation in licence fee costs and mean that licence holders will all pay the same fee regardless of when they apply. It allows the SIA to set a fee that considers the need to recover a deficit year when setting fees for two following surplus years, thereby enabling the SIA to break-even over its three-year fee cycle.

7.4 The Order under section 102 of the Finance (No.2) Act 1987 is an accounting mechanism, (an administrative measure) required to adhere to the principles of Managing Public Money that will enable the SIA to make a deficit in one year over its three-year fee cycle.

7.5 The Order needs to be in place before the SIA plans for its next surplus year (which is expected to arise in 2020/21) and before or by 1 April 2020 when the fee year commences. This order will then reflect that the SIA's licencing period as set down in legislation until such time as the matters specified no longer need to be taken into account when setting the fee for a licence.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is planned.

10. Consultation outcome

10.1 No consultation is required. The Order under section 102 of the Finance (No.2) Act 1987 is a follow-up to the SI which was laid in July for the reduction of the SIA's application licence fee from £220 to £210 when the Devolved Administrations (Scottish and Northern Ireland) were consulted and informed that the SI for the fee reduction will be followed by an affirmative order to ensure a deficit incurred in one year can be off-set against a surplus generated in another year.

11. Guidance

11.1 It is not considered necessary to issue specific guidance in connection with this Order.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as it concerns a financial administrative requirement to allow the Secretary of State to consider the matters set out in the Order when setting the fees in the future.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be carried out by the Department.

15. Contact

15.1 Trevor Birchall at the Home Office Sponsorship Unit. Telephone: 020 7035 1702 or email: Trevor.Birchall4@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tony Grimshaw, Finance Director, Strategy Directorate at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, the Minister for Safeguarding and Vulnerability at the Home Office can confirm that this Explanatory Memorandum meets the required standard.