



TB 27

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Private Security Industry Act 2001 - Update

The above Act is on the Statute Books and the implementation of this legislation is now in the hands of the Security Industry Authority (SIA).

The Act has wide application to such activities as wheel clamping, door security and personal protection but critically for Loss Adjusting it also extends to the activities of Private Investigators.

At this stage you may care to consider the wording of Clause 4 of the Act which outlines some of the activities liable to control under the Act:

“This paragraph applies (subject to the following provisions of this paragraph) to any surveillance, inquiries or investigations that are carried out for the purposes of –

- (a) obtaining information about a particular person or about the activities or whereabouts of a particular person; or
- (b) obtaining information about the circumstances in which or means by which property has been lost or damaged.”

There are certain exclusions, but save for exclusions 8 & 9 none appear immediately helpful. Exclusion 8 says:

“This paragraph does not apply to activities carried out with the knowledge or consent of-

- (a) the person about whom, or about whose activities or whereabouts, information is sought; or



(b) every person whose interest in any property has been affected by the loss or damage about which information is sought.”

Exclusion 9 says:

“This paragraph does not apply to the activities of any person who carries out any enquiries or investigations merely incidental to the carrying out of any activities which (disregarding this sub-paragraph) are not the activities of a security operative.”

One may be drawn to the conclusion that the majority of a Loss Adjusters activities are specifically excluded, and that the remainder might be deemed incidental. Indeed the advice from the Honorary Solicitor suggests that the Act would not apply to Loss Adjusters. However, initial indications from SIA did not support this view.

The impact of the Act, if it applies to Loss Adjusting is significant and, in particular, it would mean:

- (i) All Loss Adjusters would have to be authorised as individuals by SIA. The cost would be £170 every three years for each individual
- (ii) Loss Adjusting, which is regulated (albeit indirectly via Insurers) by FSA, would also be subject to direct regulation by SIA, and would therefore be required to evidence compliance with a further raft of standards many of which would have been drafted with very different activities (such as those described above) in mind.

It is against this background that CIL A has been working hard to influence thought and hence the way in which the legislation will be implemented. We are accordingly working closely with SIA and have been taking part in the consultation process, with further activity in this regard tabled for the forthcoming months.

In addition we have raised the matter with John Greenway MP who leads the All-Party Parliamentary Group on Insurance and Financial Services. Mr Greenway has been very helpful and has offered to research for us the detail of the debate and answers given during the various stages of the Bill. It is suggested that these “obiter” comments can be quite persuasive in the way in which those charged with the implementation of the legislation construe matters.

We have now written to the SIA putting forward the views of CIL A upon the applicability of the Act to our profession. The SIA have responded by confirming that at



this stage they are not able to say definitively whether the legislation will be deemed to apply to the whole profession or whether it may only apply to specialised areas for instance those engaged predominantly in Special Investigation. The SIA acknowledge that it is difficult for our members to register under the Act when they are unsure as to whether or not the Act will apply. The SIA have deferred the date by which it was suggested they intended to confirm the scope of the Act and those to whom it is applicable. There is tacit agreement that until we are able to obtain some clarification from the SIA it would be inappropriate to expect registration from members of CIL A.

The Institute will continue to work with the SIA to clarify issues and we shall issue a further advice when developments permit. In the meantime views are sought from members as to whether they believe there is merit in those involved in the investigation of potentially fraudulent claims seeking SIA authorisation. This issue is on the agenda of the CIL A Anti Fraud Group (Mike Boon, John Baldock, Colin Farley, John Freeman, Harry Roberts and Robin Wintrip), one of the Institute's Special Interest Groups. Your views can be sent to Tony Clack at info@cila.co.uk who is secretary to the AFG.