



An Roinn Dlí agus Cirt agus Comhionannais
Department of Justice and Equality

**Working Group on
The regulation and licensing of security personnel assisting
personnel in enforcing court orders by the Private Security Authority**

Report of March 2019

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Introduction

A Working Group was convened at the request of the Minister for Justice and Equality to examine the administrative, legislative, resources, security and any other matters necessary with a view to bringing the regulation and licensing of security personnel assisting those enforcing court orders within the remit of the Private Security Authority (PSA). The Group was requested to report by January 2019.

The Group was convened, following on from the removal of persons trespassing and illegally occupying a private property on North Frederick Street on Tuesday, 11th September, 2018 (arising from the enforcement of a High Court injunction). The persons were removed by a private security firm. The Minister advised in response to a topical interest debate in the Dáil on Wednesday, 19th September 2018 that -

"the persons involved in the execution of the High Court order are not licensable by the Private Security Authority at present. I must advise the House, however, that my officials are currently examining the law governing this area and I am giving the matter further consideration".

The persons who attended at the property in North Fredrick Street on behalf of the private security firm are not currently subject to regulation or licensing by the PSA, under the Private Security Services Act 2004(as amended). A 'security service' is defined under the Act as a service provided by a private security employer or by any one of the following persons in the course of an employment or as an independent contractor: door supervisor, installer of security equipment, private investigator, security consultant, security guard, provider of protected forms of transport, locksmith and supplier or installer of safes. Accordingly, a requirement to display PSA identification did not apply to these individuals.

The Working Group considered what would be required to confer on the PSA, the regulation and licencing of private security firms assisting in the enforcement of court orders. This would involve two amendments to section 2(1) of the Private Security Services Act 2004 (as amended), to

provide for the inclusion of the definition of 'enforcement guard' and to add the category of enforcement guard in the list of security service licensable by the Private Security Authority. The definition is set out at page 9 of this report.

In amending section 2(1) of the 2004 Act the functions of the PSA will not change. A further category of security services will fall under the remit of the Authority.

It is also proposed to amend section 33(3) of the 2004 Act to make the PSA Register of licensed persons available for inspection free of charge by members of the public. Further technical amendments will be made to section 33 arising from this amendment. It will also be necessary to amend section 3(1) to insert further exemptions from the requirement to be licensed by the PSA for those engaged in the enforced collection of Revenue liabilities by a Sheriff.

It is proposed that section 2 of the Enforcement of Law (Occasional Powers) Act 1924 is amended to make it a requirement that when an Under-Sheriff is employing security staff, it would be necessary for those security staff to hold a PSA licence.

It is also proposed to seek to repeal section 4(4) of the Enforcement of Court Orders Act 1926, which provides for court offices to display the Courts Messengers' names and places of residence.

Secondary legislation will also be necessary to make it an offence to engage security personnel who are not licensed by the PSA. This legislation will be drafted when all necessary primary legislation has been finalised.

The PSA will also need to develop standards and training for the licensing of the enforcement guard sector. An additional Inspector and further additional costs of €75,000 per annum will be necessary to enforce compliance.

A small number of submissions were made to the group in relation to issues which are outside the remit of this Working Group. They include issues such as State provision for the execution of court orders and regulation of receivers. These submissions will be forwarded to the appropriate authorities for consideration.

Membership of the Working Group

Department of Justice and Equality represented by:

Marion Walsh, Executive Director, Crime and Security Division - Chair of the Group

Debby McAdams, Assistant Principal, Firearms, Explosives and Private Security Policy Division

Yvonne Walsh, Assistant Principal, Courts Policy Division

Martin Mulrennan, Higher Executive Officer, Firearms, Explosives and Private Security Policy Division

An Garda Síochána (AGS) represented by:

Chief Superintendent Peter Duff

The Private Security Authority represented by:

Paul Scallan, CEO

Colin Murphy, Assistant Principal

The Courts Service represented by:

Marianne Cassidy, Eastern Regional Manager

The County Registrars Association represented by:

Fintan Murphy, County Registrar, Mayo, Castlebar

Revenue Commissioners represented by:

Leonard Burke, Principal, Collector General's Division

Department of Housing, Planning and Local Government represented by:

Derek Rafferty, Principal Officer

Meetings of the Working Group

The Working Group met on the 7th and 28th November, 2018, the 10th and 18th December, 2018 and communicated in relation to the review on an ongoing basis in the intervening period.

The timeframe for completion of the review was 2 months from the date of the first meeting which took place on 7th November, 2018.

Work of the Group

The Group discussed the legislative measures, resource and administrative requirements necessary to provide for regulation by the PSA, as well as security and policing issues.

Key issues addressed

The role of Sheriffs and County Registrars in Enforcement Proceedings

The post of Sheriff is a statutory one under the provisions of section 12 of the Court Officers Act 1945 and the Government makes an appointment.

Sheriffs (or County Registrars acting as Sheriffs) are officers of the court and are independent in the exercise of their functions and duties under statute and rules of court. They are responsible to the court for the enforcement of Court Orders and the law and procedures governing the execution of Court Orders is contained in the Enforcement of Court Orders Acts 1926 to 1940 and the Rules of Court made thereunder.

The County Registrars act as Under-Sheriffs within their Counties as provided in the Courts Officers Act 1926. The Sheriffs Act (Ireland) 1920 conferred Under-Sheriffs all the same powers and functions of a Sheriff.

There are 17 County Registrars, 15 of whom also carry out the role of Under-Sheriffs as the County Registrars in Cork and Dublin do not carry out Sheriff or Under-Sheriff functions. They do not execute Court Orders or

warrants. The Under-Sheriff executes all civil orders in the County or Counties to which they are appointed.

The Courts Service provides administrative support (in the form of a Court Messenger¹ and back-office support) to County Registrars acting as Under-Sheriffs but do not have any role in the Dublin and Cork Offices or any of the 16 Revenue Sheriffs. When performing their functions, County Registrars make ongoing risk assessments and when necessary, request from banks, financial/credit institutions and debtors that the institutions and debtors appoint a security company to assist in executing any orders and accompany the County Registrar and/or Courts Service Court messengers.

A list of County Registrars is set out at Appendix 1.

Role of Sheriffs in enforcement proceedings on behalf of Revenue

In addition to the Under-Sheriff/County Registrars, as outlined above, there are 16 Sheriffs appointed by Government to carry out debt collection for Revenue. The execution of Revenue certificates is specifically provided for in section 960L of the Taxes Consolidation Act 1997. Four of these, in Dublin City and Dublin County, Cork City and Cork County also execute all civil orders in the city/county to which they are appointed in addition to Revenue certificates.

The appointed Sheriffs enforce tax debts owed to the Revenue Commissioners. Sheriffs employ their own staff and the staff may also, be appointed as Bailiffs and/or Court Messengers. Sheriffs generally, do not engage private security firms, however when this needs arises they appoint these as Bailiffs. A Bailiff is a person appointed by a Sheriff or Under-Sheriff to assist the Sheriff in completing the execution of a court order. The Bailiff is usually appointed by the Sheriff/Under-Sheriff on a particular day to carry out a particular duty on behalf of the Sheriff/Under-Sheriff.

¹ Under section 4(1) of the Enforcement of Court Orders Act, 1926, Sheriffs may appoint their own court messengers subject to the approval of the Minister for Justice and Equality.

The 16 Sheriffs have in place a Code of Practice, available from any Sheriff or the Office of the Revenue Commissioners' website, which sets out how they engage with taxpayers. The Code of Practice also sets out the process whereby a taxpayer may make a complaint and how it will be handled.

The Sheriffs' Code of Practice, introduced on 1 November 2005, provides the necessary oversight to facilitate early consideration and resolution of complaints. It provides an opportunity for taxpayers to resolve disputes without the necessity for a complainant to initiate court proceedings. Such reviews are undertaken by means of an examination of all relevant documentation and correspondence relating to a taxpayer's complaint and the response by both Revenue and the Sheriff.

Where a taxpayer remains dissatisfied with the response to his/her complaint, the Code provides for a further review to be undertaken by Revenue and the Sherriff's Association under the independent stewardship of a representative of the Department of Justice and Equality.

Sheriffs operate under S.I. 644/2005, where their fees and costs are set out thereunder.

A list of Sheriffs who execute Revenue certificates is set out at Appendix 2.

Current Security Service Arrangements

The Courts Service advised that there does not appear to be a standard, regulations or any protocol regarding how banks, financial/credit institutions and debtors identify the private security companies used and their roles in enforcement proceedings.

The companies currently retained are not regulated by the PSA. Some of these companies do not appear to offer security services in any of the regulated markets, hence their personnel are not vetted or licensed. This is a matter of concern. The Courts Service therefore, welcomes the proposed regulation.

The responsibility for securing security personnel, contracting and paying for such services rests with the plaintiff/creditor.

Legislative provisions

The Private Security Services Act 2004(as amended), is the Principal Act in relation to the regulation of the private security industry in the State. Amendments to primary legislation as well as further secondary legislation will be necessary to provide for the proposed regulation of security personnel assisting in the enforcement of court orders.

Primary legislation

The key sections from the Private Security Services Act 2004 (as amended), considered in the context of this Review are set out below.

The proposed amendment involves the insertion of an additional category of 'enforcement guard' to the list of security services regulated by the Private Security Authority. It will also be necessary to define 'enforcement guard'. The relevant amendments are set out in italics below.

Section 2(1) definition of security service

2.-(1)

"security service" means a service provided by a private security employer or by any one of the following persons in the course of an employment or as an independent contractor (but, except in the case of a door supervisor or security guard, does not include a service provided by a person whose principal function is to provide it only for the person's employer):

- (a) door supervisor,
- (b) installer of security equipment,
- (c) private investigator,
- (d) security consultant,
- (e) security guard,
- (f) provider of protected forms of transport,
- (g) locksmith,
- (h) supplier or installer of safes,
- (i) *enforcement guard*.

"enforcement guard" means a person who for remuneration, as part of his or her duties, performs any of the following functions:

- (a) removing persons from a premises or place in order to take legal possession of the premises or place,*
- (b) controlling, supervising, regulating or restricting entry to a premises or place in order to take legal possession of the premises or place,*
- (c) seizing property or goods in lieu of an outstanding debt.*

Section 3(1) - Exemptions

It is also proposed to amend section 3(1) to insert a further exemption from licensing by the PSA of those engaged in the enforced collection of Revenue liabilities by a Sheriff. It is proposed that the following addition be made to the categories of persons exempt from licensing by the PSA:-

"3.—(1) Without prejudice to sections 43 and 52, this Act does not apply to relevant persons or to—

...

(e) an officer or employee of a Government department or State agency."

"(g) a person appointed by a Sheriff for the execution of Revenue certificates provided for in section 960L of the Taxes Consolidation Act 1997, as amended."

It should be noted that Court Messengers are appointed to assist Sheriffs and County Registrars to carry out the duties of Court Messenger in enforcement proceedings under S.4 (1) of the Enforcement of Court Orders Act 1926 and are therefore exempt from licensing by the PSA under section 3(e) of the Private Security Services Act 2004 (as amended), which provides that:

"3.—(1) Without prejudice to sections 43 and 52, this Act does not apply to relevant persons or to—

...

(e) an officer or employee of a Government department or State agency."

Section 33 (3) Register of Licensees

Section 33 provides that the Private Security Authority must establish and maintain a register of licensees to be known as the Private Security Register and which is referred to in the Act as "the Register".

Section 33 provides:

"33.—(1) The Authority shall, as soon as may be after the commencement of this section, establish and maintain for the purposes of this Act a register of licensees to be known as the Private Security Register and which is referred to in this Act as "the Register".

(2) The Register shall be in such form, and contain such entries and additions, as may be prescribed from time to time.

(3) The Register shall be kept at the offices of the Authority and be made available for inspection by any person free of charge during office hours.

(4) A copy of an entry in the Register shall, on request, be issued by the Authority on payment of such fee (if any), not exceeding the reasonable cost of making the copy, as may be prescribed.

(5) In any proceedings a document purporting to be a copy of such an entry and to be certified by an officer of the Authority to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify the document or that he or she was such an officer, be received in evidence and shall, unless the contrary is shown, be deemed to be a true copy of the entry and to be evidence of the matters stated in it.

(6) The Authority shall cause the Register to be printed and published within one month after the establishment of the Register and annually thereafter.

(7) The Authority shall, when and as often as the Register is published, cause a copy of it to be furnished to every Garda station as soon as may be, and the copy shall be available for inspection at those stations by any person during normal business hours."

It is proposed to replace S. 33(3) with the following text regarding access to inspection of the Register by members of the public:

“(3) The Authority shall make the Register available for inspection free of charge by members of the public—

- (a) at its principal office during normal working hours, and*
- (b) on its internet website in such a manner that the section of that website which contains the Register is readily accessible by members of the public.”*

In the light of these amendments, it is proposed to delete sections 33(6) and 33(7).

Enforcement of Court Orders Act 1926

Under section 4(4) of the Enforcement of Court Orders Act 1926, court offices are obliged to display Courts Messengers' names and place of residence. This provision has posed a risk to the health and safety of County Registrars and Court Messengers carrying out their duties. It is therefore, proposed to repeal section 4(4) of the 1926 Act.

Courts Legislation

It is proposed to amend section 2 of the Enforcement of Law (Occasional Powers) Act 1924 to make it a requirement that when engaging security staff it would be a requirement for those security staff to have a PSA licence. It is proposed to include at subsection (6) the following text: -

“That any person providing a security service as an enforcement guard within the meaning of section 2(1) of the Private Security Services Act 2004, and employed under this section by an Under-Sheriff to assist him in the execution of a particular writ or decree or order, shall be the holder of a licence required under that Act to provide such a service.”

Secondary legislation

It will be necessary to draft regulations governing licensing of the enforcement guard sector and a commencement order providing for an offence to engage persons who are not licensed by the PSA, following the enactment of primary legislation, before the PSA can commence licensing of the sector proposed.

Organisational Issues

Resource requirements for organisations

The PSA

There will be some resource implications attached to the decision to extend the licensing remit of the PSA. It will be necessary for the PSA to develop additional standards and training with relevant stakeholders, as well as inspection arrangements to ensure compliance. There will also need to be a requirement for assistance where appropriate by An Garda Síochána.

The PSA's resource requirements are based on the number of firms used to assist with enforcing court orders and the geographical spread of such personnel.

The Courts Service and Courts Policy Division of the Department of Justice and Equality supplied data on the number of forcible evictions and house repossessions over a period of 24 months.

The PSA estimate that an additional Inspector will be required to carry out the compliance/enforcement role of the Authority and further additional costs of €75,000 per annum will be necessary. Standards and training will be developed by the PSA from within existing resources.

If the proposed addition of "Enforcement Guard" is added to the list of security services licensable by the PSA, it will be an offence from the date specified in a commencement order for personnel enforcing court orders to engage security personnel not licensed by the PSA.

The PSA submitted a draft Standard for the Licensing of Enforcement Guard Contractors to the Working Group. Engagement with relevant stakeholders will take place in due course, following enactment of the relevant primary legislation, which will form the initial basis for development of the standard.

The Courts Service

The statutory responsibility of identifying the need for and number of personnel concerned should rest with the County Registrar who liaises with Plaintiffs directly regarding the appointment of same.

The Courts Service is the employer of Courts Messengers who support County Registrars in executing orders. As employers, they are responsible for their health and safety. The Courts Service satisfies themselves that the level of risks in difficult situations is sufficiently assessed and mitigated. The regulation of security personnel accompanying Courts Service staff will offer further assurance in this regard.

Security and policing issues

An Garda Síochána

An Garda Síochána may accompany enforcing bodies as necessary, to prevent a breach of the peace.

PSA inspectors liaise with the relevant local Garda Superintendent where there are concerns for their safety.

Identification of personnel regulated (as well as officers of the court) could be effected by means of digital numbering, as happens in other jurisdictions.

An Garda Síochána welcome the proposed regulation. Making it an offence for security firms to operate in this area without a PSA license will enhance their ability to assist, investigate and prosecute issues arising.

The Courts Service

Security companies are appointed by the Creditor Bank at the request of the County Registrar. The named personnel from the security company are appointed as Bailiffs by the County Registrars under the Civil Bills procedure Amendment Act 1864 and the Court Officers Act 1926 for the particular

date when the execution is carried out. County Registrars are appointed by Government. Court messengers are appointed by the Courts Service to support County Registrars in their functions.

Court Messengers, as directed by County Registrars, attend at venues where evictions and repossessions are being effected, with personnel from security firms when County Registrars deem it necessary. This work is carried out under the current legislative framework and is for the most part dealt with under the Civil Bills procedure Amendment Act 1864 and the Court Officers Act 1926. The Courts Service favours the proposed regulation.

Legal Advices

Advices from the Attorney General's Office (AG's) were requested on some of the issues covered by the report. These advices have been taken into account in preparing the report. The proposed legislative amendments will need to be examined in detail by the Office of the Attorney General.

Recommendations

The Working Group recommends that

1. Section 2(1) of the Private Security Services, Act 2004 (as amended), is further amended by the insertion of the definition of "*Enforcement Guard*" as follows: -

"Enforcement Guard" means a person who for remuneration, as part of his or her duties, performs any of the following functions:

- (a) removing persons from a premises or place in order to take legal possession of the premises or place,*
- (b) controlling, supervising, regulating or restricting entry to a premises or place in order to take legal possession of the premises or place,*
- (c) seizing property or goods in lieu of an outstanding debt.*

2. Section 2(1) of the Private Security Services, Act 2004 (as amended), is further amended by the insertion of "*(i) enforcement guard*" to the definition of security service, which brings these personnel with the licensing remit of the Private Security Authority.
3. Section 3(1) of the Private Security Services Act 2004 (as amended), is further amended by inserting a further exemption for licensing by the PSA, for those engaged in the enforced collection of Revenue liabilities by a Sheriff.

"(g) a person appointed by a Sheriff for the execution of Revenue certificates provided for in section 960L of the Taxes Consolidation Act 1997, as amended."

4. Section 33(3) of the Private Security Services Act 2004 (as amended), is replaced by the insertion of the following text in relation to access for the public to the Private Security Register with a list of licensed personnel: -

"The Authority shall make the Register available for inspection free of charge by members of the public—

- (a) at its principal office during normal working hours, and*
- (b) on its Internet website in such a manner that the section of that website which contains the Register is readily accessible by members of the public."*

Sections 33(6) and 33(7) of the Act as a result are deleted.

5. Section 4(4) of *the Enforcement of Court Orders Act 1926* is repealed.
6. Section 2 of the *Enforcement of Law (Occasional Powers) Act 1924* is amended to make it a requirement that when the Under-Sheriff is engaging security staff it would be a requirement for the security staff to have a PSA licence. It is proposed to include at subsection (6) the following text: -

"That any person providing a security service as an enforcement guard within the meaning of section 2(1) of the Private Security Services Act 2004, and employed under this section by an Under-Sheriff to assist him in the execution of a particular writ or decree or order, shall be the holder of a licence required under that Act to provide such a service."
7. Secondary legislation to be introduced following enactment of primary legislative amendments to make it an offence to engage security personnel assisting in the enforcement of court orders who are not licensed by the PSA.
8. The PSA to develop standards and training for the licensing of this sector, following the enactment of enabling legislation.
9. An additional Inspector and further additional costs of €75,000 per annum be made available to the PSA to enforce compliance.
10. Further consultation with the Office of the Attorney General on the proposals in the report and in particular on the proposed legislative amendments.

Appendix 1 List of County Registrars

County	Registrar
Cavan	Joseph Smith
Clare	Patrick Wallace
Cork	Deirdre O'Mahony
Donegal	Geraldine O'Connor
Dublin	Rita Considine
Galway	Marian Chambers Higgins
Kerry	Pádraig A. Burke
Kildare	Eithne Coughlan
Longford	Imelda Branigan
Louth	Mairead Ahern
Mayo	Fintan J. Murphy
Meath, Westmeath	Bridin Concannon
Offaly	Paul Fetherstonhaugh
Tipperary	James Seymour
Waterford	Niall Rooney
Wexford	Marie Garahy
Wicklow	Mary Delahanty

*The County Registrars are listed in terms of the County they were originally appointed to however, County Registrars often cover more than one County.

Appendix 2 List of Sheriffs who execute Revenue Certificates

Sheriff	County
Fred Binchy	Laois
	Offaly
	Tipperary
Mark Dillon	Louth
	Meath
	Westmeath
Fergus Gallagher	Dublin County
Padraic Brennan	Galway
Martin Harvey	Cork City
Plunkett Hayes	Clare
	Limerick
Liam Coghlan	Kerry
John O' Malley	Mayo
David Kelly	Roscommon
	Sligo
Alice Lanigan	Carlow
	Kildare
Seamus Mallon	Cavan
	Leitrim
	Longford
	Monaghan
Thomas Murran	Kilkenny
	Waterford
Sinead McNamara	Cork County
William Rutledge	Wexford
	Wicklow
Brendan Twomey	Donegal
Joseph Burke	Dublin City