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The *Private Security Industry Bill* [HL]

Bill 67 of 2000-01

The *Private Security Industry Bill* introduces a licensing system for guards (including door supervisors or bouncers), wheelclampers, private investigators, security consultants and keyholders. A new non-departmental public body, the Security Industry Authority, will administer and enforce the system. This includes a national register of approvals of individuals. There is also provision for providers of security services to apply for approved status, under a scheme that will, at least initially, be voluntary.

The Bill extends to England and Wales.

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Summary of main points

Difficult to define, the private security industry nevertheless impinges increasingly on our everyday lives. Even a narrow definition leads to estimates of private security operatives well in excess of police force numbers. It thus represents a sizeable sector of UK industry, and has an estimated turnover in excess of £2 billion.

Some specific sectors are subject to regulation (such as private prisoner custody officers, under section 86 of the *Criminal Justice Act 1991*); however, the private security industry sector is largely subject to no or little specific regulation.

The perceived powers of security operatives, the opportunities for abuse, and evidence of criminality among a minority have led to calls for statutory regulation. A Home Affairs Select Committee report recommended, in 1995, a licensing system be applied, in the first instance to the manned guarding sector.

On 26 March 1999, the Home Office published *The Government's Proposals for Regulation of the Private Security Industry in England and Wales* (Cm 4254). These included the establishment of a licensing system covering a wide range of security operatives.

The *Private Security Industry Bill*, introduced in the House of Lords, seeks to implement many of the measures in the White Paper. It creates a new non-departmental public body, the Security Industry Authority, to administer a compulsory licensing scheme for the following categories of private security operatives: guards and door supervisors; wheelclampers; private investigators; security consultants; and keyholders.

In the case of door supervisors and wheelclampers, in-house as well as contract staff will also be captured by the Bill's provisions. There is provision for subjecting the former to enhanced criminal record checks, that will be available from the newly created Criminal Records Bureau.

The Security Industry Authority would maintain a national register of licensed individuals and companies which have approved provider status. The latter refers to a scheme which would, at least initially, be voluntary.

Though the Bill enjoys a large measure of cross-party and industry support, there are concerns over its restricted scope, both in terms of those who will be subject to licensing and the scope and detail of the criteria needed to achieve licensed status.

This paper provides an overview of the Bill, discusses specific clauses, and provides a case study on wheelclamping – one activity which has been a source of much comment with regard to "cowboy" clampers.

CONTENTS

I Private security

In his book on the private security sector, *Policing for Profit* (1989), Nigel South remarks:

> The only consistent and reliable statement that is continually made about the size and scope of the private security industry today is that it is hard to obtain consistent and reliable information about it.[1]

Bruce George MP and Mark Button have attempted to reach a definition of private security in their book on the subject:

> The term 'private security industry' is a generic term used to describe an amalgam of distinct industries and professions bound together by a number of functions, including crime prevention, order maintenance, loss reduction and protection; but these functions are neither common nor exclusive to all the activities of the private security industry, though the more that apply to a particular activity the more clearly it can be considered as private security.[2]

Some indication of the industry's scope might be found in the following "taxonomy" offered in George and Button: manned security services (static guarding, cash-in-transit, door supervisors/stewards, close protection); detention services; security storage/ shredding; professional security services (security consultants, professional investigators); security products (intruder alarms, CCTV, access control, EAS equipment,[3] detection equipment, locks, safes/ vaults/ security storage, barriers/ shutters, fences, security glass/ windows, armoured vehicles).

Another important question, particularly in the light of international human rights obligations, is the boundary between private and public sector: this can become blurred not least as practice varies from country to country. To cite one (relatively unambiguous) example quoted by George and Button: the security officers employed by the Metropolitan Police to guard the Palace of Westminster serve a private interest (guarding the palace) and have no special statutory powers. "Hence they can be described as a form of private security."[4]

The difficulty in defining the private security industry, not to mention its eponymous privacy, inhibits the collection of accurate statistics. When the Government published their proposals for the regulation of the industry in March 1999, the following were offered:

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1 Nigel South, *Policing for Profit: The Private Security Sector*, 1989, p 23

2 Bruce George and Mark Button, *Private Security*, 2000, p 15

3 Electronic Article Surveillance equipment, such as the retail tags which trigger an alarm if goods are taken from a shop.

4 Bruce George and Mark Button, *Private Security*, 2000, p 14

> 1.6 Accurate statistics on the size of the private security industry have always been difficult to obtain. The 1971 census estimated that there were 80,000 people employed as "security guards, patrolmen, night-watchmen, gate-keepers and other relevant types of guards and related workers". By 1991 the census estimated that this figure had grown to over 100,000 in England alone. These figures exclude large parts of the industry, for example, those employed in the alarms sector. In 1994, research by the Policy Studies Institute suggested that there were more than 162,000 people in Britain employed as security guards or related occupations, other security functions, and/or in the alarms and signalling equipment industry. This research also suggested that there were over 8,000 companies operating in the private security industry based on the British Telecom Business Database. This means that the number employed in the private security industry is probably higher than the number of police officers - currently around 140,000.
>
> 1.7 Turnover in the industry was estimated at between £130 million and £140 million in 1979. An estimate of £2.1 billion was made for 1992.[5]

In a study of the industry's size, Jones and Newburn concluded that "The best efforts of social scientists to measure the private security industry are likely to be thwarted, however, until such time as statutory regulation is introduced."[6]

II Regulation and government policy[7]

Within the UK the security industry is currently only subject to statutory regulation in Northern Ireland. The Northern Ireland minister Adam Ingram made the following comments about the regulation of the security industry in Northern Ireland in a written answer to a question from William Ross on 10 April 2000:

> **Mr. William Ross:** To ask the Secretary of State for Northern Ireland what statutory provisions govern the private security industry in Northern Ireland, including nightclub doormen; and who is responsible for their enforcement.
>
> **Mr. Ingram:** In Northern Ireland, any individual or employer who wishes to offer security services for reward must hold a certificate issued under Part V of the Northern Ireland (Emergency Provisions) Act 1996 [now schedule 13, *Terrorism Act 2000*]. Responsibility for the enforcement of these statutory provisions rests with the Security Policy and Operations Division of the Northern Ireland Office and the Royal Ulster Constabulary.

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5 *The Government's Proposals for Regulation of the Private Security Industry in England and Wales*, Cm 4254, March 1999 http://www.official-documents.co.uk/document/cm42/4254/4254.htm

6 Trevor Jones and Tim Newburn, *How big is the private security industry?*, Policy Studies Institute 1994

7 Adapted from Mary Baber, *Statutory regulation of the security industry*, House of Commons Library standard note, 13 April 2000

> There are no statutory provisions covering the regulation of security staff employed to guard premises owned or occupied by their employer although some local authorities require such persons to be registered with them.[8]

Previous Governments have not generally been convinced by the arguments put forward in support of statutory regulation of the private security industry, though some seventeen Private Members' Bills on the subject have been introduced since 1969.[9] In theory at least, private security organisations enjoy no additional powers, and are subject to the same constraints, as the wider citizenry. For example, a security guard is entitled to perform a citizen's arrest but has no powers of search, with one possible exception relating to workplace employees who may have agreed to this, by virtue of their employment contract.[10] Door supervisors ("bouncers") can, and do, use reasonable force to eject malcontents from night clubs and other such premises. They nevertheless are in a position to go beyond their strict legal remit, and there is evidence that a minority are involved directly or otherwise in drug dealing.[11] As South comments,

> Private security guards are *not* the 'general public', who after all do not as a rule guard pay-rolls, safe-deposits, night clubs or computer facilities; rather, they are a very specific case. Even if the preferable option of specific legislation pertaining to the powers, authority, uniform and accoutrements of private security is viewed as too complex, potentially cumbersome and anyway unnecessary by the Home Office, there is no excuse for not maintaining a publicly accessible, *specific* watching brief overseeing the activities of and developments in the private security sector.[12]

In a report published in May 1995 the Home Affairs Select Committee recommended that a licensing system which would apply, in the first instance, to people working as guards in the manned guarding sector of the industry, be introduced. The Committee concluded that standards, particularly standards of training, in much of the private security industry were unsatisfactory and below the standard the public needed and had a right to expect. It noted that it was in the manned guarding sector of the industry that most of the worst examples were to be found. The Committee was particularly concerned about evidence of a growing problem of totally unregulated private patrolling operations, often preying on the fears of vulnerable people, and concluded that this should be dealt with firmly.[13]

The Home Office subsequently took steps aimed at improving standards and training in the sector of the security industry which provides door supervisors or "bouncers" for night-clubs and other places of public entertainment. A Home Office circular issued in December 1995 set out best practice guidance to local authorities and police forces around the country who

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8 HC Deb 10 April 2000 c 60W
9 Bruce George MP and Mark Button, *Private Security*, 2000 pp 178-9
10 Nigel South, *Policing for Profit: The Private Security Sector*, 1989, p 53
11 Home Office Police Research Group Briefing Note, *Clubs, Drugs and Doormen*, March 1999
12 Nigel South, *Policing for Profit: The Private Security Sector*, 1989, p 126
13 *The Private Security Industry* Home Affairs Committee First Report Session 1994-95, HC 17 10 May 1995

wished to set up local registration schemes for door staff working at night-clubs and other establishments with licences for public music and dancing.[14] These door staff registration schemes have been described in the following terms:

> These schemes are run on a voluntary basis in several parts of the country, and are compulsory in parts of London. To control entry to the premises and to keep order within them, pubs and clubs agree to employ only door staff registered and approved by the local police. The police can, for example, refuse to register individuals with criminal records for serious violence or involving drugs. Door staff are normally expected to attend training courses to ensure they have a proper understanding of the law, their responsibilities and powers, and what the police expect of them. These schemes are important for crime prevention and counter drugs penetration of premises popular with young people.[15]

The previous Government published its observations on the Home Affairs Committee's report in October 1996. It said that it shared concern about the claims of unacceptable levels of criminality in the contract guarding sector and had considered very carefully what changes might provide an effective solution without placing an undue burden on businesses in general and small companies in particular. It proposed to consult the industry and police to assess the likely costs to the industry of proposals for a statutory scheme of regulation for this sector alone, and to weigh the costs against the potential benefits. It envisaged that such arrangements might be based on criminal record checks of those who wanted to work as guards, with new offences of employing or working as a security guard without the necessary clearance. It took the view that any such scheme would need to be self-financing.[16] A consultation paper on *Regulation of the Contract Guarding Sector of the Private Security Industry* was subsequently published in December 1996.[17]

Concern has often been expressed about claims that many people working in the security industry have criminal records. Part V of the *Police Act 1997* is designed to enable anyone seeking employment to provide his prospective employer with a "criminal conviction certificate" showing convictions other than those which are "spent" under the *Rehabilitation of Offenders Act 1974*. The provisions in Part V are not yet in force, but the present Government has said that it will begin bringing them into force later this year.[18]

On 26 March 1999 the Home Office published a White Paper on *The Government's Proposals for Regulation of the Private Security Industry in England and Wales*.[19] A

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14 *Registration Schemes for Door Supervisors* Home Office Circular 60/1995

15 *Time for reform: proposals for the modernisation of our licensing laws*, Cm 4696, April 2000

16 *Government Observations on the First Report from the Home Affairs Committee Session 1994-95: The Private Security Industry* Second Special Report HC 744 Session 1995-96 16 October 1996 pp 2-3

17 Home Office, *Regulation of the contract guarding sector of the private security industry: a consultation paper*, December 1996

18 HC Deb 20 December 2000 c 221W

19 *The Government's Proposals for Regulation of the Private Security Industry in England and Wales*, Cm 4254, March 1999

Home Office press notice announcing the publication of the White Paper summarised its proposals as follows:

> - a self-financing Private Security Industry Authority should be set up to license all individuals working in the private security industry, including managers and directors of companies, and to maintain and improve standards within the industry;
>
> - employing unlicensed security operatives, offering security services or operating as a security operative without a license will become a new criminal offence;
>
> - an Inspectorate would be set up to carry out spot checks on businesses to ensure that the new requirements were being complied with;
>
> - a voluntary inspected companies scheme will allow reputable firms to be easily recognised.[20]

The White Paper argued for a widened coverage of regulation, considering that "the recommendations of the Home Affairs Select Committee and the previous Government's proposals to regulate only the contract manned guarding sector did not go far enough."[21] In his foreword, the Home Secretary (Jack Straw) wrote of the "overwhelming support for regulation of the whole private security industry, not just the manned guarding sector."

Commenting on the proposals, Mark Button wrote:

> The Labour government has finally embraced a system of regulation that previous governments of all political persuasions have rejected over the last 30 years. The proposals will have a significant impact upon who can work in the regulated sectors. If, however, they are to seriously impact upon performance of the industry, compulsory minimum standards must also be embraced and greater resources should also be given to the inspectorate to enforce the system.[22]

III The Bill

A. Introduction and general comment

The *Private Security Industry Bill* [HL], Bill 4 2000-01 was published on 8 December, following its First Reading in the House of Lords. A Home Office news release provided the following overview:

> The Bill would create a Security Industry Authority which would:

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[20] Home Office News Release 105/99, *Clamping down on cowboy security guards*, 26 March 1999

[21] Cm 4254, para 5.1

[22] "Improving the performance of the private security industry", *Criminal Justice Matters*, no. 40 Summer 2000 pp 27-8

- license individuals working under contract in designated sectors of the industry (manned guarding - including door supervisors and wheelclampers - security consultants, private investigators and keyholders);

- license bouncers and wheelclampers who work in-house as well as under contract;

- license the supervisors, managers and directors of security and wheelclamping companies;

- run a voluntary 'Inspected Companies Scheme' for all companies working in the industry and award a 'quality mark' - a voluntary accreditation scheme for companies who meet specified standards; and

- set and raise professional standards in the industry - for example by ensuring that wheelclamping companies follow a detailed code of practice.

The Authority would maintain a national register of licensed individuals and approved companies.[23]

The Government estimates that the Authority would license between 100,000 and 130,000 individuals annually, its activities being financed through the levying of fees. Evidence by the Association of Chief Police Officers to the Home Affairs Committee, in 1995, indicated that around 2,600 offences are committed each year by private security staff. During the second reading debate of the *Private Security Industry Bill* in the House of Lords, some peers made the point that, with the exception of Greece, all other EU member states regulate their analogous industries.[24]

The sectors designated by the Bill (schedule 2) for regulation are: manned guarding (including door supervisors), immobilisation of vehicles (wheelclamping), private investigations, security consultants, and keyholders. On the advice of the Security Industry Authority, the Secretary of State would be able to remove or add sectors. Within these sectors, the Authority would issue licences, according to criteria it would determine, and have concomitant enforcement powers in relation to the following categories of people:

- security contractors, directors and partners of security companies;

- employees of security companies;

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23 Home Office News Release 400/2000, *New controls on private security staff - clampdown on cowboy bouncers and wheelclampers*, 8 December 2000

24 HL Deb 18 December 2000 c 585; HL Deb 18 December 2000 c 590

- agency employees, i.e. directors or partners or employees of the agency or individuals who work for the agency on a contract basis;

- employees who manage or supervise security operatives supplied under contract by a security contractor, a security company or by an agency;

- agency-supplied managers or supervisors of security operatives supplied under contract;

- directors of security companies and partners of security firms who do not themselves carry out designated activities;

- in-house door supervisors and wheelclampers and their employers, managers and supervisors;

- others who wheelclamp vehicles on private land against a release fee.

The Authority would also be responsible for the administration of an approved contractor scheme, participation in which would be voluntary, at least initially. Providers of designated security services would be able to apply for approved status, which would come with conditions attached. Under the provisions of the Bill it would become a criminal offence to:

- provide a designated security service without a licence

- employ an unlicensed person in an activity for which a licence would be required

- contravene licence conditions

- claim falsely approved status where no such approval exists or to misrepresent the terms of the approval

- violate the terms of the approved scheme if the scheme were to become compulsory

- obstruct a person with powers of entry authorised by the Authority or fail to comply with a requirement imposed by the authorised person

- make an unauthorised disclosure of information obtained when working under the authority of the Security industry Authority

- make false statements to the Authority.

A page on the Home Office website contains links to information on the Bill's provisions, a set of frequently asked questions, and debates in parliament.[25]

The Bill has reportedly received a broad welcome from private security industry associations concerned over infiltration by criminals.[26] The British Security Industry Association welcomed the Bill, describing it as "a major achievement", adding that it was in the best interests of the industry "to assist the Bill through Parliament in order for it to become law before an election is called."[27] At the same time, the BSIA member companies had a number of concerns, largely arising from the Bill being less comprehensive than the white paper that presaged it.

> Three main issues have been raised by BSIA members. Firstly, the absence of licensing for in-house security officers. It is felt that this could encourage a move away from contractors and have a negative impact on the quality of personnel working in-house. Secondly, although Charles Clarke MP has since indicated that contract CCTV control room operators will be licensed, there is no clear definition of this in the Bill and the area needs to be looked at more closely.
>
> Thirdly, BSIA member companies have raised concerns that the only mandatory requirement in the Bill is for security personnel to carry a licence, which will indicate that they do not have a criminal record that excludes them from working in the industry. In turn, this is the only element of the Bill that will be subject to mandatory inspections. Initial feedback from BSIA members has suggested that they feel licensing should be more broad-ranging, also covering: wider vetting standards, minimum training standards, and operating in accordance with relevant British Standards. It would then be desirable to have a robust inspection scheme covering these areas, which could be carried out in conjunction with the inspection of security personnel's licences.[28]

On the first of the above points, the White Paper had stated, in relation to the whole category of manned guarding, "The Government believes that to exclude in-house security personnel from the scope of licensing would create an unacceptable loophole and reduce confidence in the system."[29] During the second reading debate in the House of Lords, the Parliamentary Under-Secretary of State (Lord Bassam of Brighton) explained the Government's rationale for its present position:

> The Bill proposes that individuals in the manned guarding sector should be licensed if they are providing services under contract to a client. We do not propose to require them to have licences if they are employed in-house by

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25 http://www.homeoffice.gov.uk/psib/index.htm

26 "New rules for security workers", *Times*, 9 December 2000

27 BSIA News Round-up December 2000, *Private Security Industry Bill*, 20 December 2000 http://www.bsia.co.uk/

28 ibid.

29 *The Government's Proposals for Regulation of the Private Security Industry in England and Wales*, Cm 4254, March 1999 para 5.4

> companies. These companies will already have satisfied themselves about their employees, and the Government do not wish to foist onto them an additional layer of checking where it is not necessary. An important sub-set of the manned guarding sector regulated by the Bill is door supervisors--more commonly called "bouncers"--who are required to screen people entering pubs and clubs. There are professional and reputable companies and operatives providing door supervisor services. But the fact that door supervisors operate most often at pubs and clubs, particularly at venues where young people are likely to gather, has unfortunately meant that, on too many occasions, disreputable and sometimes criminal elements have infiltrated the sector.
>
> We know of door supervisors who have turned a blind eye to drug dealing on the premises they are meant to be protecting. Worse still, we know of door supervisors who have used their positions to deal in drugs themselves. There is an unhappy record of bouncers committing physical assaults against the public. The Bill therefore requires all door supervisors to be licensed, whether they provide their services under contract to a client or are employed in-house by a pub or club.[30]

While welcoming the Bill, Lord Thomas of Gresford (Liberal Democrat) commented on its narrower scope, when compared with the white paper:

> However, the Government have drawn in their horns a little in a number of respects since the White Paper was published. For example, the White Paper encompassed regulation of alarm installers. In paragraph 5.12 it stated that,
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> "although reputable companies do exist [at the lower end of the domestic market] it is likely to be those that are most vulnerable who will be most at risk from unscrupulous operators. Concerns also exist about the probity of those running companies ... and those who install alarms in people's homes. It is particularly important in terms of public safety that those who install alarms in private homes, where there may often be only a sole occupant, should be of good character. Those who install or maintain alarms and CCTV systems have a unique opportunity to gain inside knowledge of the systems which could be used to facilitate or commit crimes".
>
> That is what the White Paper says, but the Bill says nothing about alarm installers. They are not to be regulated. One wonders what has happened. Was there, or is there, a problem about alarm installers? Are there any statistics on the amount of criminality that is derived from the installation of alarms, as set out in the White Paper? Why has this change of policy taken place?[31]

Acknowledging a government "rethink" on this issue, Lord Bassam of Brighton argued that the alarm installation sector was already well regulated, having "to meet high police

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30 HL Deb 18 December 2000 cc 576-7

31 HL Deb 18 December 2000 c 586

and insurance standards and purposes".[32] He was concerned about the impact of "over-regulation" on the many small businesses that comprised the sector.

Another point which could have been made, in a wider context, is the low pay of some workers in the private security industry;[33] a licensing scheme might thus add disproportionately to the employers' costs or provide a substantial overhead to an individual seeking a licence. The Home Office currently estimates that the cost of an individual licence would come to £36, though this will depend on the detailed criteria attached to a licence and the cost of criminal record checks. Cost may be an inhibiting factor for the introduction of a broader ranging licensing system favoured by BSIA members. Accounting for over 70% of UK security products and services, they are already required to adhere to "rigorous quality procedures" and are subject to an inspection scheme operated by the National Security Inspectorate, formed from a recent merger of the manned security inspectorate ISI and the systems inspectorate NACOSS.[34] In December 2000, David Cowden, BSIA chairman, stated:

> Regulation holds no fears for professional security companies. The real importance of regulation is in isolating the less responsible elements of the industry and making them accountable for any breaches of the new laws. If security officers are going to assist limited Police resources by moving into areas with more public contact and greater responsibility, it is important that they have the trust and respect of the public - that is why regulation is so crucial.[35]

This situation was acknowledged in the following comments, during Second Reading, by the Conservative peer, Lord Cope of Berkeley:

> At present, the industry has in place a measure of self regulation covering at least the major firms. Furthermore, some local authorities have been running registration schemes covering part of the scope of the Bill. The Bill itself follows the lines of a command paper--it was not a White Paper--of March 1999. We accept the judgment of the Government that it is time to legislate. But we are always cautious about placing new regulatory burdens on industry, even when companies and trade associations ask for them.[36]

Other sources of comment on the Bill have included the editor of *Licensing Review*:

> It has already been conceded that the Bill requires a number of improvements during its passage through Parliament. For example, in terms of licensing requirements it fails to mention the Local Government (Miscellaneous

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32 HL Deb 18 December 2000 c 600

33 Bruce George MP and Mark Button, *Comments on the Private Security Industry Bill and collection of documents on private security industry*, December 2000

34 BSIA News Detail, *Private Security Industry Regulation Welcomed By BSIA*, 6 December 2000

35 ibid.

36 HL Deb 18 December 2000 c 581

> Provisions) Act 1982 [which includes provision for public entertainment licensing] at all, and there appears to be no provision for appeal against the decisions of local authorities in respect of door staff licences. In general, the drafting shows no improvement from the style we endured in the latter years of the last century and in spite of the observation in the White Paper on at [sic] Licensing Reform [Cm 4696, April 2000] that the phrase "fit and proper person" was vague and outdated, it has still been included in the new Bill as a criterion for approved contractors. However, given the case law that is available, this should not be seen as a problem.[37]

While the specific points on appeals and local government were subsequently addressed in successful Lords amendments, there may remain doubts as to whether it is fit and proper to proceed quickly with the Bill in the House of Commons. While, as Viscount Goschen observed, "this may not be a party politically controversial Bill … it deals with some extraordinarily sensitive issues involving the potential confiscation by wheelclampers of one's property and the means of personal travel, and the restraint of private individuals by private sector employees."[38]

In December 2000, Bruce George MP and Mark Button[39] issued their *Comments on the Private Security Industry Bill*, which broadly welcomed the measure, but identified potential improvements. Potential flaws in the concept and practice of a voluntary approved contractors scheme were highlighted, and an argument was advanced in favour of a mandatory scheme which went beyond contracting out inspection and standard setting to existing bodies. George and Button concluded:

> This legislation is to be welcomed as going a long way towards achieving what the industry needs and deserves. However, if it is to meet the objective of raising the standards of the industry it needs to be further refined to extend the scope of the legislation to the wider private security industry, establish compulsory minimum standards and apply to firms as well as employees. There is much international experience of regulation to draw upon and it is essential we learn from this. We look forward to working with the Government to strengthen this bill - in order to make the private security industry more efficient, effective and accountable.[40]

B. Private Security Industry Bill [HL], Bill 67 2000-01

The process of amending the Bill began in the House of Lords, resulting in HL Bill 14 (after Committee) and HL Bill 34 (after Report). The latter was sent to the Commons on 15 March, and there introduced as HC Bill 67. Unless otherwise stated, this section will

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37 "New security licensing system", *Licensing Review*, January 2001, pp 15-7

38 HL Deb 18 December 2000 c 592

39 Senior Lecturer, Institute of Criminal Justice Studies, University of Portsmouth

40 Bruce George MP and Mark Button, *Comments on the Private Security Industry Bill and collection of documents on private security industry*, December 2000

refer to this latter Bill, for which the Home Office has published a new set of explanatory notes as *Bill 67–EN*.

1. Clauses 1–2, Schedule 1: the Security Industry Authority

Clause 1 of the Bill establishes a new non-departmental public body, the Security Industry Authority, whose constitution is detailed in schedule 1. The Authority must comply with directions from the Secretary of State, and provide him with any requested information on its activities [clause 2]. The Authority's functions include licensing, inspection, setting or approving standards, and keeping under review the operation of the Act. "The Authority may do anything that it considers is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions" [clause 1(3)]. Appointment of the members and chairman of the Authority will rest with the Secretary of State; otherwise, the schedule is silent as to their numbers, background and qualifications. Parliament can provide for payments to the Authority, which will also be able to "impose such charges as it considers appropriate in connection with the carrying out of its functions" [schedule 1, para 15(1)]. A copy of the Authority's annual report will be laid before each House.

2. Clauses 3–6, Schedule 2: licensing requirements

Clause 3 makes it an offence for a person to engage in licensable conduct without a licence. In conjunction with schedule 2 the clause also describes licensable conduct; this includes the case of a person who, in the course of his employment carries out any designated activities for the purposes of, or in connection with, any *contract* for the supply of services [clause 3(2)(b)]. An amendment first tabled during the Lords Committee Stage,[41] and subsequently during Report,[42] attempted to add in-house security operatives, though this was subsequently withdrawn on both occasions. As a result the following categories of people would need a licence:

- security contractors, directors of security companies and partners of security firms;
- employees of security contractors, security companies and security firms;
- agency operatives, whether they are directors or partners of the agency, employees of the agency or individuals who work for the agency on a contract basis;
- employees who manage or supervise security operatives supplied under contract by a security contractor, a security company or a security firm or by an agency;

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41 HL Deb 30 January 2001 cc 593-8
42 HL Deb 5 March 2001 cc 13-5

- agency-supplied managers or supervisors of security operatives supplied under contract;

- directors of security companies and partners of security firms who do not themselves carry out designated activities;

- in-house door supervisors and wheelclampers and their employers, managers and supervisors;

- others who wheelclamp vehicles on private land against a release fee.

Schedule 2 provides details of the "activities of security operatives" liable to control under the Bill, once designated by an order made by the Secretary of State [clause 3(3)]. This would allow for phased implementation. Furthermore, the Secretary of State could make additions, or deletions, to the list of controllable activities. Those covered in the Bill, defined in the schedule, and discussed in the explanatory notes are: manned guarding; immobilisation of vehicles; private investigations; security consultants; keyholders. Part 2 of the schedule provides for additional controls in relation to door supervisors and wheelclampers. The latter are the subject of a particular case study later in this paper.

A government amendment, at Report Stage, was introduced to indicate that persons employed in companies using security services under contract are not themselves subject to regulation [clause 3(4)], even though they may assume management or supervisory responsibilities. Representations had been received from the Cinema Exhibitors Association, concerned that cinema managers might otherwise have to be licensed as they occasionally used the services of security operatives on special occasions.[43]

Clause 4 allows the Secretary of State to make regulations exempting people from the requirement to have a licence in certain circumstances, in particular when they are already subject to equivalent vetting arrangements. The explanatory notes comment that the Authority will be able to have delegated to it the power to decide whether employers will adequately vet their employees [clause 4(2)].

> Subsection (4) establishes that no offence under Clause 3 (which defines those security activities for which a personal licence will be required) is committed by someone who has a pending application for a licence to operate as a director, partner or employee in the security industry if the company of which he is a director, the firm of which he is a partner or his employer has been registered under Clause 14 as an approved supplier of security services and is authorised by

[43] HL Deb 5 March 2001 cc 15-6

> the Authority temporarily to engage someone in such circumstances. Subsection (5) extends this facility to agency staff.[44]

Clause 5 creates an offence of employing an unlicensed security operative, other than one exempted under clause 4. Defences include taking "all reasonable steps" to ensure that the operative would not engage in unlicensed activities. The maximum possible penalty for an offence under this clause, if convicted on indictment, is five years imprisonment and an unlimited fine. Summary convictions would attract a penalty of up to six months imprisonment and a fine of £5,000.

A government amendment, tabled at Report, inserted clause 6 which makes it an offence for an occupier of land to permit unlicensed wheelclamping. Offences under this clause attract the same range of penalties as clause 5.

3. Clauses 7–13: licensing functions of the Authority

Clause 7 of the Bill deals with the role of the proposed Security Industry Authority in setting licensing criteria for security operatives including door supervisors (bouncers). These criteria "shall include such criteria as the Authority considers appropriate for securing that the persons who engage in licensable conduct are fit and proper persons to engage in such conduct" [clause 7(3)(a)]. In other words, the definition of "fit and proper" will lie with the new Authority, though the Secretary of State will be able to prescribe conditions that must be attached to the licence [clause 8(5)], including the training the licensee must undergo [clause 9(1)]. This will clearly also have a bearing on the practical operation of the term fit and proper.

During the second reading debate in the Lords,[45] Lord Thomas of Gresford termed fit and proper a "chestnut of a definition"; further elucidation of which might be found in the body of case law on the subject. Liquor licensing provides an appropriate example,[46] particularly as some door supervisors will inevitably interact with pub staff. Section 3(1) of the *Licensing Act 1964* states:

> Licensing justices may grant a justices' licence to any such person, not disqualified under this or any other Act for holding a justices' licence, as they think fit and proper.

A detailed commentary on relevant practice, with extensive case law references, appears in *Paterson's Licensing Acts 1999*.[47] The criteria adopted by the licensing justices need by no means be confined to considerations of character: health, temper and disposition

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44 *Bill 67–EN*

45 HL Deb 18 December 2000 cc 574-602

46 "The meaning of 'fit and proper'", *Licensing Review*, October 1995 p 9

47 Leslie Green, Simon Mehigan, Jeremy Phillips and Lawrence Stevens, *Paterson's Licensing Acts 1999*, pp190-3

can all be taken into account. Committees of magistrates may also take account of an applicant's status[48] and intentions, in addition to his or her terms of employment to manage premises and the provisions of any lease or tenancy agreement. Previous convictions are not necessarily a bar, and in some locales may actually be thought of as advantageous for dealing with more difficult customers.[49] The pattern that emerges is one of considerable local discretion in the interpretation of "fit and proper".

Clause 9 also creates an offence of contravening licence conditions:

> (4) Any person who contravenes the conditions of any licence granted to him shall be guilty of an offence and liable, on summary conviction, to a term of imprisonment not exceeding six months or to a fine not exceeding level 5 [£5,000] on the standard scale, or to both.
>
> (5) In proceedings against any person for an offence under subsection (4) it shall be a defence for that person to show that he exercised all due diligence to avoid a contravention of the conditions of the licence.

Clause 10 provides for the modification, revocation or suspension of a licence by the Authority. The mechanism for appealing against such decisions was originally, as Lord Bassam of Brighton acknowledged, "drafted permissively";[50] he later tabled an amendment[51] which replaced the original clause with (the more prescriptive) clause 11:

> 43. *Subsection (1)* provides an avenue of appeal to the appropriate magistrates' court against a decision of the Authority to refuse to grant a licence, a decision to modify or revoke a licence or a decision to impose conditions upon the grant of a licence. Either the Authority or the original appellant may bring a further appeal to the Crown Court against the decision of the magistrates' court *(subsection (4)*). The appropriate magistrates' court in which any appeal is to be launched is, by virtue of *subsection (3)*, the court for the petty sessions area for the address in respect of which the appellant is or would be recorded in the register of licence holders created by Clause 12. Appeals must be brought within 21 days of notification of the Authority's decision *(subsection (2)*), and the courts must (by virtue of *subsection (5)*) decide the appeal on the basis of the criteria applied by virtue of Clause 7. *Subsection (6)* provides that, where a licence renewal is refused or a licence is revoked, the licence shall nonetheless remain in force for specified periods of time relating to the lodging, deciding and effect of the appeals processes.[52]

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48 for example, seniority in the company owning the pub
49 Jeremy Phillips, *Licensing Law Guide*, 1998 p 61
50 HL Deb 18 December 2000 c 579
51 HL Deb 5 March 2001 cc 38-41
52 *Bill 67–EN*

Allowing aggrieved doormen to appeal locally, rather than to a national tribunal (as originally implied by HL Bill 4) will presumably receive some welcome.[53] This appeals procedure will also apply to licensing functions delegated, by the Secretary of State, to Local Authorities [clause 13(4)]; a likely context being door supervision for which many (diverse) licensing schemes are in current operation.

Clause 12 requires the Security Industry Authority to maintain a register of licences, available for public inspection, for which a fee may be charged.

4. Clauses 14–18: approved contractors

Clause 14 requires the Security Industry Authority to establish and maintain a register of approved providers of security industry services. Information on approved companies, and those whose approval has been revoked, will be publicly available or promulgated as appropriate. There is provision for a reasonable fee to be charged for access to this information, and there is nothing to rule out placing it on the world wide web.

The Authority would have a duty to ensure the necessary arrangements are in place for granting approvals of this kind [clause 15]. In particular, the scheme would ensure that:

- Approval can be granted for some or all of the services offered by the supplier;
- Approval is granted only if the conditions of subsection (3) have been met;
- Approval can be granted on certain conditions;
- An individual can refuse approval if it is different from the terms sought;
- There is a system for handling complaints which the approved contractor's own complaints procedures do not dispose of;
- Approval will cease after three years or after such a period as the Secretary of State may have specified by order;
- The approval can be modified or withdrawn.[54]

The term "fit and proper" also appears in the context of those operatives seeking approved provider status, as do "technical and other requirements" [clause 15(3)]. Clause 16 allows the Authority to approve the ways in which contractors can advertise their approved status, and makes it an offence to falsely claim, or misrepresent the terms of, approval. Clause 17 empowers the Secretary of State to make regulations requiring that only approved contractors could offer prescribed security industry services; in other words, the

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53 "New security licensing system", *Licensing Review*, January 2001

54 *Bill 67–EN*

voluntary scheme alluded to above would become compulsory for specified activities. That the scheme is not being made mandatory from the outset may reflect a cautious "wait and see" approach by the Government, mindful also of the workload on the Authority during the transition period during which the Bill's measures are brought into effect. During the second reading debate, Lord Bassam of Brighton said:

> The Government are aware that some bodies in the industry favour making this a compulsory scheme, but we have decided against this, at least for the present. We do not believe that the case is made out for imposing this additional burden across the board on the industry. We believe that the majority of reputable companies will want to seek approval under the voluntary system. Providers of security services will be able to apply to the authority for approval against a set of published criteria. If the standards are met, the company in question will able to display in advertising the fact of its approval under the scheme. [55]

Persons guilty of offences under clauses 16-17 would be liable

(a) on summary conviction, to a fine not exceeding the statutory maximum [£5,000];

(b) on conviction on indictment, to a [unlimited] fine.

Clause 18 establishes an appeals procedure in respect of approved provider status, along similar lines to that introduced for licensing [clause 11].

5. Clauses 19–22: Authority's powers of entry and inspection

The Lords Report Stage introduced further safeguards in relation to the powers of entry and inspection of agents of the Security Industry Authority.[56] In particular, the Authority's agents would be expressly denied powers of entry to premises occupied exclusively for residential purposes as a private dwelling [clause 19(1)]. Furthermore, when requiring entry into the premises of a "regulated person" (including those that should be licensed, but are not), the agents should choose a "reasonable hour". This places the Authority under greater constraints than, say, health and safety inspectors who, if the circumstances are thought to demand it, can enter relevant premises at any time.

Clause 19 prevents the Authority from disclosing information gleaned by entry and inspection for purposes other than their functions under the Bill, or for the purposes of any criminal proceedings.

Clause 20 (guidance as to exercise of power of entry) was introduced as a government amendment at Report Stage.[57]

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55 HL Deb 18 December 2000 c 5780
56 HL Deb 5 March 2001 cc 43-50
57 HL Deb 5 March 2001 c 50

> 64. *Subsection (1)* requires the Authority to prepare and publish guidance about the manner in which persons authorised with the power of entry and inspection under Clause 19 should exercise it and the manner in which they should conduct themselves. *Subsections (2) and (3)* allow the Authority to revise the guidance from time to time, and require it to publish both the initial guidance and any revisions to it in a way which will bring it to the attention of those affected by it.[58]

Clause 21 amends the *Police Act 1997* to permit the Authority to obtain an "enhanced criminal record certificate" for anyone applying to be licensed as a door supervisor. This enhanced certificate will contain information on "spent" and "unspent" convictions and cautions held at national level. In addition, it will include information from local police records including relevant non-conviction information, which will not be included in the certificate but will be disclosed to the "registered person" (in this case the Authority).[59]

Clause 22 makes it an offence to knowingly or recklessly supply false information to the Authority, on pain of up to six months imprisonment and/or a £5,000 fine.

6. Clauses 23–26: supplemental

Clause 23 relates to criminal liability of directors and similar officers of bodies corporate:

> 67. This provides a standard "director's liability" clause, by which, if a body corporate is convicted of an offence, a director or senior officer, or anyone purporting to act in such a role, who is shown to have consented to, connived in, or been negligent in preventing that offence, is also liable to prosecution.[60]

Clause 24 stipulates the procedures whereby orders and regulations, giving effect to prescriptions in the Bill, are to be made. These will be statutory instruments subject, by and large, to the negative resolution procedure. Exceptions will be any regulations which have the effect of extending the scope of compulsory licensing of in-house security operatives beyond wheelclampers and door supervisors, or which amend the scope of the licensable activities detailed in schedule 2: in these cases, the affirmative resolution procedure will be followed. Any regulations made under the Bill can include "such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit" [clause 24(5)].

Clauses 25 and 26 concern interpretation, commencement and extent. Commencement orders would bring the *Private Security Industry Act 2001* into force, in a phased fashion. The Security Industry Authority would, the Government anticipate, be set up "within 12

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58 *Bill 67–EN*

59 Mary Baber, *Charging for Criminal Record Checks*, House of Commons Library Standard Note, 9 February 2001

60 *Bill 67–EN*

to 18 months of the passing of the legislation."[61] Apart from some consequential amendments to existing legislation, the Bill would extend only to England and Wales.

IV Case study: wheelclamping

As has already been stated, the private security industry includes those concerned with immobilising vehicles or wheelclamping as it is more popularly known.

Wheelclamping on private land has been a major problem for some years. The legality of wheel clamping on *public* land is clearly set out in legislation but on *private* land, including car parks, it is not expressly provided for in law. As a result there has been considerable controversy about the behaviour of private wheelclamping companies and even about the legality of clamping vehicles on private land. The Government's view is that owners of land must be able to take action against those who park without permission and that wheelclamping may be an effective way of dealing with such situations, but that any action must be carried out in a reasonable manner.[62]

The Government decided that wheelclampers should be included as part of the private security industry and covered by similar licensing provisions. In *The Government's proposals for regulating the private security industry in England and Wales* published in March 1999, it proposed to establish a new self financing security industry authority to license all individuals working in the industry.[63] This was to include wheelclampers. As a result wheelclampers are explicitly included in clauses 3(2)(j) and 6, and schedule 2 (paragraph 3) of this Bill. Under clause 3 it will be an offence to wheelclamp without a licence and under clause 6 it will be an offence to allow an unlicensed wheelclamper to clamp on private land. The schedule lists the activities of a security operative that will be regulated under the licensing system. They include all wheelclamping done as part of a business, as part of one's employment or for a release fee (whether the clamper is paid or not).

A. Present law

Clampers are probably subject to the criminal law if it can be shown they have inflicted criminal damage to a vehicle or demanded money with menaces. However, most cases are dealt with in the civil courts. Parking on private land without permission is trespass but a landowner who intends to clamp must display a notice stating that he intends to do so. A significant case in the Appeal Court in 1995, *Arthur and another v Anker,* had found in

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61 HL Deb 18 December 2000 c 601

62 *Private Security Bill 2000-01*, second reading debate, HL Deb 18 December 2000, c 577

63 Home Office *The Government's proposals for regulating the private security industry in England and Wales*, March 1999 Cm 4254, paras 5.10-5.11

favour of the clamper; it allows owners the right to clamp and impose a fee for the release of the clamp but only in circumstances similar to those in the court case.

In 1992 Mr Arthur parked his car in a private business car park in Truro. A sign warned wheelclamping was in operation and a £40 fee would be charged for unclamping. Thomas Anker wheelclamped the car. The Arthurs sued him for malicious damage and for interference with their car. He counter claimed for the wheel clamps and padlocks and damages for an assault by Mrs. Arthur. Truro county court rejected the Arthurs' claim for damages and awarded Mr. Anker £660. Upholding the decision Sir Thomas Bingham, Master of the Rolls, said the ruling was based on the principle of "no wrong is done to one who consents." Motorists who are put on notice that their cars may be clamped and park anyway are deemed to have consented and cannot complain. It was accepted that the notices had been seen and the £40 release fee was reasonable. Lord Justice Hirst said wheel clampers could claim their expenses plus "an appropriate profit element."

This case was felt to be helpful in clarifying the situation. It provided useful guidelines in courts faced with similar cases, but only in the broadest terms. It did not define a general standard for notices or define what a "reasonable" release fee might be.

It is clear, however, that unscrupulous operators prey on the motorist and cause a nuisance to the public. The Conservative Government circulated a consultation paper in 1993[64] but no clear consensus emerged on how to ensure that any measure, introduced to prevent or deter irresponsible or heavy-handed wheel clamping on private land, would not also prevent sensible measures being taken to control genuine parking problems. As a result no action was taken. In an exchange in the House of Lords in 1995, Baroness Blatch said of the consultative paper:[65]

> **Baroness Blatch:** My Lords, I can tell my noble friend that it was inconclusive. I am afraid that there was no consensus. There was a good deal of useful information but I am afraid there is no real consensus on this issue. There is a landowning interest; there is a proper business and commercial interest; and there is the interest, as I have already said, of schools and hospitals. However, there is also the interest of getting rid of the tiresome business of cowboy operators in the field. What we are looking for is a solution that will work and will do something about that.

A year later Baroness Blatch reiterated that she did not know when the conclusions would be published but also admitted that the issue was not being given the urgent attention it had been in the past as the situation was not thought now to be as urgent. She again commented

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64 Home Office *Wheel clamping on private land: a consultative paper by the Home Office*, February 1993 Deposited paper 8910

65 PQ HL Deb 20 June 1995, cc 152-4

that although there were problems associated with some "cowboy" clampers, wheel clamping was also an effective solution to prevent people parking illegally on private land.[66]

In July 1997 the new Home Office minister, Alun Michael, again invited comments from anyone who had experienced the situation.[67] In the transport white paper published in July 1998, it was reported that there was overwhelming support for the regulation of wheel clamping on private land and that regulation would be introduced as part of the general regulation of the security industry:[68]

> 4.190 The law on the use of wheel clamping on private land is clear, but largely unenforced. In England and Wales wheel clamping on private land is legal providing there are warning notes and the release fee is reasonable. Unscrupulous wheel clamping operators are preying on motorists and cause nuisance to the public. In response to our recent consultation, there was overwhelming support for regulation of wheel clamping on private land.
>
> 4. 191 We wish to introduce regulation of wheel clamping in the context of the introduction of statutory measures to regulate the private security industry as a whole. We intend to bring forward firm proposals for regulating the industry later this year.

Details were contained in *The Government's proposals for regulating the private security industry in England and Wales* published in March 1999.[69]

The British Parking Association, in consultation with the Government, published a code of conduct for wheelclampers in July 2000. The main objective of the code of practice was to ensure that where it was necessary to clamp vehicles on private land or private car parks, it was undertaken in a responsible, effective and efficient manner. It was also intended to ensure that the owners of vehicles that were clamped in these circumstances would not be penalised through excessive charges, low quality service, poor response times or excessive periods of immobilisation. The scope of the code is wide, ranging from signs, charges, methods of payment and approved types of clamp to the education and proper training of operatives, registration and monitoring and a system of performance bonds administered by the BPA.

B. The Bill in the House of Lords

During the Committee Stage in the House of Lords, Lord Cope for the Conservatives introduced (and later withdrew) an amendment to schedule 2. He proposed that in certain circumstances people should be allowed to clamp without going through the licensing

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66 PQ HL Deb 27 March 1996, cc 1701-2

67 PQ HC Deb 7 July 1997, cc 595-7

68 DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950, para 4.190-1

69 Home Office *The Government's proposals for regulating the private security industry in England and Wales*, March 1999 Cm 4254

system. The Secretary of State would issue regulations and only those who wished to go beyond the circumstances set out in those regulations, would require a licence.[70] Lord Cope introduced a new clause to the same effect at Report Stage (also withdrawn).[71]

In response, the Minister explained that there were three reasons why wheelclampers were being regulated:

- To ensure that by applying criminal sanctions to unlicensed operatives, any wheelclamper will have to apply for a licence;

- All would-be clampers will have their records checked for criminal convictions, particularly offences involving violence; and

- A licence will only be granted on condition that the licensee adheres to a code of practice published or adopted by the authority.

He felt it was particularly important that no one with a criminal record for violence should be able to set up as a wheelclamper.

The Government introduced an amendment at Report Stage to clarify that anyone demanding a release fee would be covered by the legislation, whether he was acting on his own behalf or another's.[72] It also introduced a new clause (now clause 6) to make it an offence for the owner of any land to use an unlicensed wheelclamper.[73]

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70 *Private Security Bill 2000-01*, Committee Stage HL Deb 30 January 2001, c 668
71 *Private Security Bill 2000-01*, Report Stage HL Deb 5 March 2001, c 17
72 Ibid, c 11
73 Ibid, c 20

Appendix 1: Lords stages

First Reading	HL Deb 7 December 2000 c 32
Second Reading	HL Deb 18 December 2000 cc 574-602
Committee Stage	HL Deb 30 January 2001 cc 562-682
Report Stage	HL Deb 1 March 2001 cc 1354-70 HL Deb 5 March 2001 cc 11-61
Third Reading	HL Deb 15 March 2001 cc 1005-024

Appendix 2: Further reading

Nigel South, *Policing for Profit: The Private Security Sector*, 1989

Trevor Jones and Tim Newburn, *Private Security and Public Policing*, 1998

Bruce George MP and Mark Button, *Private Security*, 2000

The Government's Proposals for Regulation of the Private Security Industry in England and Wales, Cm 4254, March 1999

Bruce George MP and Mark Button, *Comments on the Private Security Industry Bill and collection of documents on private security industry*, December 2000 (available for reference in the House of Commons Library, Home Affairs Section)

Sheridan Morris, *Clubs, Drugs and Doormen*, Police Research Group: Crime Detection and Prevention Series Paper 86, 1998

Adjournment debate on wheelclamping introduced by Phil Willis, HC Deb 4 February 2000, cc 1401-5

British Parking Association, *Code of conduct for clamping vehicles on private land*, August 2000

http://www.homeoffice.gov.uk/psib/index.htm Home Office website containing the text of the Bill, explanatory notes, parliamentary debates, and frequently asked questions.