

Bill Digest

Private Security Services (Amendment) Bill 2021

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Abstract

The Bill will introduce an obligation on a new category of private security operators called enforcement guards, who are involved in evictions and repossessions, to obtain a licence from the Private Security Authority (PSA) in order for them to be act legally. This means that the enforcement guards will be subject to the training standards and licensing regime operated by the PSA.

It makes it possible for the public to view the register of licences on the Internet and at the offices of the PSA, free of charge; and introduces an offence of impersonating an inspector of the PSA

The Bill also introduces some but not all of other changes recommended by the [Working Group](#) on the regulation and licensing of security personnel assisting personnel in enforcing court orders by the Private Security Authority.



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Background

The [Private Security Services \(Amendment\) Bill 2021](#) was listed on the Government's [Legislation Programme: Spring Session 2021](#). The Bill, together with the accompanying [Explanatory Memorandum](#), was published on 19 April 2021.

The [Explanatory Memorandum](#) states that the main purpose of the Bill is to include an additional category and a definition of 'enforcement guard' in the list of security services covered by the [Private Security Services Act 2004](#) (2004 Act).

As noted in the [Press Release](#) accompanying the publication of the Bill, the Bill would require enforcement guards involved in evictions and repossessions to obtain a licence from the Private Security Authority (PSA) to operate legally, ensuring that they would be subject to the training standards and licensing regime operated by the PSA.

The Bill also aims to:

- provide for a further exemption from licensing for those engaged in the enforced collection of Revenue liabilities by a Sheriff or County Registrar;
- allow the PSA to refuse to renew a licence, or suspend or revoke a licence, of a body corporate for the actions of its members;
- make it possible for the public to view the register of licences on the Internet and at the offices of the PSA, free of charge; and
- introduce an offence of impersonating an inspector of the PSA.

In welcoming the publication of the Bill, the Minister for Justice, Helen McEntee T.D. [stated](#):

“Private security staff occupy a position of trust, engaging in regular interactions with members of the public. I strongly believe that those providing security should operate to the highest standards.”

Pre-legislative Scrutiny

The Bill has not undergone any pre-legislative scrutiny. Although, the Heads of the Bill were approved on 26 November 2020, they were not published. According to the Government's [Legislation Programme: Spring Session 2021](#) the Committee on Justice agreed to waive pre-legislative scrutiny of the Bill.

Table of Provisions

Section	Title	Effect
1	Definition	The term 'Principal Act' as used in the Bill would mean the Private Security Services Act 2004 (2004 Act).
2	Amendment of section 2 of Principal Act	<p>This section would insert a number of definitions into section 2(1) of the 2004 Act and amend the definition of 'security service' in that section.</p> <p>The amendments would provide that the terms:</p> <ul style="list-style-type: none"> • 'county registrar' would mean a person appointed as such under section 35 of the Court Officers Act 1926; • 'court messenger' would mean a person appointed as such under section 4 of the Enforcement of Court Orders Act 1926; and • 'sheriff' would mean a sheriff appointed by the Government under the Court Officers Act 1945. <p>The definition of 'security service' would be amended to include an 'enforcement guard', which would be defined as a person other than a sheriff, county registrar or court messenger who for remuneration, as part of his or her duties, is authorised to perform any of the following functions:</p> <ul style="list-style-type: none"> ➤ removing one or more persons from any premises or any other place in order to take possession of the premises or place, ➤ controlling, supervising or restricting entry by one or more persons to any premises or any other place in order to take possession of the premises or place, or ➤ seizing goods or other property in lieu of an outstanding debt. <p>The authorisation of an enforcement guard would need to be in accordance with the law, for example, it may be conferred by legislation, a court order, or in accordance with a contractual agreement or a consent.</p>
3	Amendment of section 3 of Principal Act	This section would amend section 3(1) of the 2004 Act to exempt from the provisions of the 2004 Act all persons appointed by a county registrar or sheriff for the execution of a certificate under section 960L of the

		Taxes Consolidation Act 1997 , while acting in that capacity.
4	Amendment of section 26 of Principal Act	<p>This provision would amend section 26(1) of the 2004 Act to allow the PSA to suspend, revoke or refuse to renew a private security services licence where it is satisfied on reasonable grounds that the licensee (whether an individual, a partnership or a body corporate) has:</p> <ul style="list-style-type: none"> • supplied information to the PSA relating to an application or a licence that was false or misleading in a material particular; • contravened the relevant legislation (irrespective of whether the matter has been dealt with by a court); or • not paid the prescribed fee, <p>or if the PSA would not have granted the licence or renewed it, if it were it fully informed at the relevant time.</p> <p>Where the licensee is an individual or a partnership, the PSA will also have the power to suspend, revoke or refuse to renew the licence where it is satisfied on reasonable grounds that the individual or a partner is no longer a fit and proper person to provide a security service. The same powers apply when dealing with a licence held by a body corporate where any director, relevant shareholder, manager, secretary or other similar officer of the body corporate, or any person purporting to act in that capacity, is considered not to be a fit and proper person to hold such a position in a body corporate providing a security service.</p>
5	Amendment of section 33 of Principal Act	<p>This would amend section 33(3) of the 2004 Act.</p> <p>The proposed amendment would not affect the right of the general public to inspect the Register for free at the offices of the PSA during normal working hours. Rather, it would create an additional requirement for the PSA to make the Register readily and publicly accessible, free of charge via the PSA's website.</p>
6	Amendment of section 48 of Principal Act	<p>The proposed section would amend section 48(1) of the 2004 Act to add to the list of offences in the section a new offence covering a person who falsely represents him or herself to be a PSA inspector.</p>

7	Repeals	<p>This section would repeal section 4(4) of the <i>Enforcement of Court Orders Act 1926</i> to remove the requirement for an under-sheriff to keep a list of names and residential addresses of court messengers.</p> <p>The section would also repeal section 33(6) and 33(7) of the 2004 Act, requiring the register of licence holders to be published on an annual basis and to furnish a copy of the register to every Garda station, for public inspection.</p>
8	Short title, collective citation and commencement	<p>This Act may be cited as the <i>Private Security Services (Amendment) Act 2021</i> and cited together with the <i>Private Security Services Acts 2004 and 2011</i> as the <i>Private Security Services Acts 2004 to 2021</i>.</p> <p>The Act or any part(s) of the Act may be commenced at different times by the Minister for Justice.</p>

Policy Context

On 9 April 2019, the then Minister for Justice and Equality, Charles Flanagan T.D., [announced](#) plans to regulate private security personnel employed to assist in enforcing court orders. The proposals were a direct response to a key recommendation of an [Interdepartmental Working Group review](#) into the regulation and licensing of some security personnel to determine if those who enforced court orders were satisfactorily regulated. The proposal was approved by Cabinet on the day of the announcement and the draft Bill was approved in November 2019.

At the announcement, the Minister said:

“I strongly believe that those providing security should operate to appropriate standards. Bringing security personnel enforcing court orders within the remit of the Private Security Authority will mean that enforcement guards will require a license to operate in this area and ensure that they are subject to the training standards and licensing regime operated by the PSA.”

The Minister went on to explain that proposed changes to the primary and secondary legislation regulating the private security industry would create a new category of security service (enforcement guards) under the [Private Security Services Act 2004](#) (2004 Act). After the necessary amendments to legislation have been made, it will be an offence to operate as an enforcement guard without a PSA licence. It will also be an offence to represent oneself as an enforcement guard by advertisement or by displaying any object purporting to indicate that the holder is a licensed enforcement guard. For both offences a person would be liable for a Class A fine (up to €5,000) or imprisonment for up to 12 months, or both, on summary conviction. A conviction on indictment could lead to imprisonment up to five years or imposition of a fine.

The [Interdepartmental Working Group review](#) recommended that ‘enforcement guard’ should be added to the definition of ‘security service’ in [section 2\(1\) of the 2004 Act](#) and the term ‘enforcement guard’ should be defined to include a person who, for remuneration, performs any of the following duties:

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

The [report of the Interdepartmental Working Group](#) made a number of other recommendations, including that the 2004 Act be amended by:

- inserting a further exemption to the PSA licensing regime into [section 3 of the 2004 Act](#), for those engaged in the enforced collection of Revenue liabilities by a Sheriff (that is, 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); and
- inserting a new requirement into [subsection 33\(3\) of the 2004 Act](#) for the PSA to make the Private Security Register available for inspection free of charge by members of the public.

As explained in a 2019 article in the [Law Society Gazette](#), the Courts Service currently provides administrative support (in the form of a court messenger and back-office support) to County Registrars acting as under-sheriffs (but not for 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 – to minimise risks to the health and safety of county registrars and court messengers.

Associated recommendations made by the Working Group report include:

- the repeal of [section 4\(4\) of the Enforcement of Court Orders Act 1926](#) (provides for court offices to display the court's messengers' names and places of residence); and
- the amendment of [section 2 of the Enforcement of Law \(Occasional Powers\) Act 1924](#) to make it a requirement that when the Under-Sheriff engages security staff, he or she must ensure that the staff have a PSA licence.

Finally, it was recommended that secondary legislation be introduced to make it an offence to engage security personnel assisting in the enforcement of court orders who are not licensed by the PSA.

The *Law Society Gazette* [reports](#) that the Courts Service is in favour of the proposed legislation.

The Regulation of Private Security Firms Bill 2019 [PMB]

The [Regulation of Private Security Firms Bill 2019](#) is a private member's bill, first [introduced](#) into the Dáil by Deputy Donnchadh Ó Laoghaire on 31 January 2019. The Bill lapsed on the dissolution of the 32nd Dáil on 14 January 2020 but was [reinstated](#) to the Order Paper on 17 September 2020.

During the [first stage debate](#) on the Bill, Deputy Ó Laoghaire cited the events involving the eviction of housing activists from premises located at 34 North Fredrick Street, Dublin 1.

Jack Power of *The Irish Times* had [reported](#) that on 28 August 2018, the owner of 34 North Fredrick Street had secured a High Court injunction requiring the occupying activists to leave the building. On 11 September 2018, several men “in black balaclavas”, working for a private firm and reportedly acting on behalf of the owner, forced entry into the property and physically removed four activists. While the building was being secured, protesters sought to demonstrate on the road in front of the building. The protesters and gardaí from the public order unit clashed as gardaí sought to keep the demonstrators off the road. Six arrests were made on public order offences.

In the Dáil debate, Deputy Ó Laoghaire noted that he had contacted the PSA to complain about the conduct of those involved in the North Fredrick Street eviction. The PSA had responded that the individuals involved did not fall under the PSA's remit and that enforcement guards were not specifically covered by the 2004 Act.

Deputy Ó Laoghaire stated that his Bill was introduced in response to “use of unregulated and unaccountable security firms by banks and other organisations to enforce court orders”, saying:

“[My Bill] would ensure that anyone involved in an eviction would be subject to standards, oversight, licensing and would carry identification. They could also be the subject of complaints.”

Principal provisions of the Bill

This section of the Bill Digest will not treat every section of the Bill, it will only examine the principal provisions.

Section 2

Among other things, this section extends the provisions of the [2004 Act](#) to enforcement guards.

An 'enforcement guard' is defined as a person other than a sheriff, county registrar or court messenger, who for remuneration, as part of his or her duties, is authorised (to perform any of the following functions:

- removing one or more persons from any premises or any other place in order to take possession of the premises or place,
- controlling, supervising or restricting entry by one or more persons to any premises or any other place in order to take possession of the premises or place, or
- seizing goods or other property in lieu of an outstanding debt.

The authorisation of an enforcement guard would need to be in accordance with the law, for example, it may be conferred by legislation, a court order, or in accordance with a contractual agreement or a consent.

This amendment follows directly from the Recommendations 1 and 2 of the [Interdepartmental Working Group's report](#).

It follows that, following commencement of the provision, any person (other than a sheriff, county registrar, court messenger or a person exempted under [section 3\(1\) of the 2004 Act](#)) who is authorised to evict one or more person(s) from a place, to restrict entry to a place or to seize goods or property would need to comply with the licensing provisions of [Part 3 of the 2004 Act](#), and will be subject to the regulatory oversight of the PSA. The regulatory regime would cover legal persons who are employed or self-employed to perform one of the specified acts, and it includes anyone who is authorised to perform a specified act as part of their duties.

As authorisation may derive from legislation, a court order, through contractual agreement or consent, the new provision would extend the licensing provisions of the 2004 Act to those people engaged to execute or enforce orders for repossession on behalf of a landlord, a lending institution, an agency or any other employer.

Section 3

This section would exempt from the provisions of the [2004 Act](#) persons appointed by a county registrar or sheriff for the execution of a certificate under [section 960L of the Taxes Consolidation Act 1997](#), while acting in that capacity. The amendment follows from Recommendation 3 of the [Interdepartmental Working Group's report](#).

Currently, under section 3(1) of the 2004 Act, the following categories are exempt from the provisions of the Act:

1. a member of the Garda Síochána,

2. a member of the Defence Forces,
3. a member of a company's harbour police within the meaning of [section 54 of the Harbours Act 1996](#),
4. an authorised officer, or authorised person, within the meaning of the [Air Navigation and Transport Act 1936](#) (as amended),
5. an officer or employee of a Government department or State agency, or
6. a person employed as apprentice by a person providing a security service.

In the [Interdepartmental Working Group's report](#) it was noted that court messengers, appointed under [section 4\(1\) of the Enforcement of Court Orders Act 1926](#) to assist a county register or sheriff in the execution of orders made under that Act, fall under the 5th exempted category, 'an officer or employee of a Government department or State agency'. The same could not be said for court messengers appointed to assist a county registrar or sheriff in the execution of Revenue certificates under [section 960L of the Taxes Consolidation Act 1997](#), as that provision does not expressly allow for the appointment of court messengers for that purpose. The proposed amendment in section 3 of the Bill would extend the same exemption to those court messengers.

The same object could have been achieved through amendment of [section 960L of the Taxes Consolidation Act 1997](#), by expressly allowing a county register or sheriff to appoint court messengers for the purpose of executing orders under the section. This would have the consequential effect of placing appointed court messengers within the 'an officer or employee of a Government department or State agency' exemption.

Section 4

This section would extend the provisions of [section 26 of the 2004 Act](#) to allow the PSA to consider the actions of directors, shareholders, managers, company secretaries or other similar officers of a body corporate, or any other person purporting to act in such a capacity, when deciding whether or not to renew a licence, or to suspend or revoke a licence. The section also adds another reason for refusing the renewal of a licence, or suspending or revoking a licence, that is, a failure to pay the prescribed fee.

This amendment did not follow from a specific recommendation of the [Interdepartmental Working Group review](#).

Section 5

This section would make the register of licensed persons available for inspection free of charge by members of the public both at the principal office of the PSA and online. This would implement Recommendation 4 in the [Interdepartmental Working Group review's report](#).

Section 6

This section would amend [section 48 of the 2004 Act](#) to create an additional offence for a person who falsely represents him or herself to be a PSA inspector. Any person found guilty of this offence on summary conviction would be liable to a fine not exceeding €3,000 and/or imprisonment for a term not exceeding 12 months.

This amendment did not follow from a specific recommendation of the [Interdepartmental Working Group review](#).

Section 7

This section would repeal [section 4\(4\) of the Enforcement of Court Orders Act 1926](#) to remove the requirement for an under-sheriff to keep a list of names and residential addresses of court messengers. This follows from Recommendation 5 of the [Interdepartmental Working Group review](#), which explained that the display of the names and residential addresses of court messengers poses a risk to the health and safety of court messengers carrying out their duties.

The section also looks to repeal [section 33\(6\) and 33\(7\) of the 2004 Act](#), requiring the Register to be published on an annual basis and furnish a copy of the Register to every Garda station, for public inspection. These requirements would be redundant upon commencement of section 5 of the Bill, when the register of licensed persons would be made available for inspection free of charge by members of the public both at the principal office of the PSA and online.

Matters not included in the Bill

The [report of the Interdepartmental Working Group review](#) included a recommendation for the amendment of [section 2 of the Enforcement of Law \(Occasional Powers\) Act 1924](#), by the insertion of a new subsection (6) which restrict an under-sheriff, by only allowing him or her to only employ PSA-licensed persons as enforcement guards to assist in the execution of writs, decrees or orders of civil courts. It is not apparent from commentary on the Bill why Recommendation 6 was not implemented.

The [Interdepartmental Working Group review](#) also recommended that secondary legislation 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. It is questionable whether this would be necessary, as [section 38 of the 2004 Act](#) already prohibits a person from employing a person, or engaging an independent contractor, to provide a security service if that person or contractor is required to, but does not, hold a licence to provide the service.

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