

The Private Security Authority

Affect of previous convictions on obtaining a PSA Licence.

Introduction

The Private Security Authority will consider suitability of applicants to work in the private security industry on the basis of competence, criminality and general suitability. Our objective is to ensure that only those who are suitably qualified under these three headings work in the industry. This initial suitability checking by the Authority does not replace the ongoing obligations of employers to implement appropriate screening and supervisory measures to protect the public, service users, employees and the company in its day to day activities.

When submitting an application for a licence to the Private Security Authority applicants are required to declare details of all convictions and/or cases where proceedings are pending to the Authority. The Authority will also request information from the Commissioner of An Garda Síochána regarding any criminal records held in the applicant's name as provided for in section 34 of the Private Services Act 2004. The information provided will be treated in strict confidence and will only be used for the purpose of assisting the Authority in determining whether the applicant is a fit and proper person to hold a licence (section 22 of the Act).

Failure by an applicant to disclose details of a conviction(s) is an offence under section 36 of the Act.

The Authority's policy regarding applications from persons with convictions will apply retrospectively, i.e. convictions that occurred prior to the commencement of the Private Services Act 2004 will be taken into consideration by the Authority.

Applicants for a licence who have spent 6 months or more in another country are required to provide a criminal record certificate from that jurisdiction in addition to completing a Garda vetting form.

Criminal records checking currently applies to

- Employees
- Sole Traders
- All Partners in a Partnership
- All Directors of a Company
- Shareholders who hold over 20% of a company

And in the future will apply to all managers, secretaries and other officers of a licensed contractor.

General Policy

The Authority will exercise its discretion when deciding whether to issue a licence to a person who has a criminal record. Each application will be decided according to the Authority's guidelines and a person with conviction(s) will not always be prohibited from holding a licence.

In deciding whether to grant a licence the Authority will take the following into account:

- nature and seriousness of the offence(s) involved
- the length of time since completion of sentence
- overall interests of the public good
- relationship of the crime to the purpose of requiring a licence
- age of person when offence was committed
- conduct of person before and after offence
- evidence of rehabilitation

The following guidelines are used by the Authority when deciding whether to grant a licence to a person with a relevant conviction(s). The Authority is not bound by these guidelines and may, where it deems the conviction(s) renders an applicant unsuitable to hold a licence, refuse an application for an indefinite period.

Cases awaiting Trial

Where there are charge(s) pending for relevant offence(s) against an applicant for a licence the Authority will exercise its discretion in deciding whether to grant a licence and may decide to await the outcome of the courts. In exercising its discretion, the Authority will consider the seriousness of the offence(s), threat to the public interest and the trial date. If the Authority decides to issue a licence prior to the outcome of the case being known, the Authority will review their decision when the outcome is announced. The Guidelines relating to relevant offences will apply in these cases

Fine

Where an applicant for a licence is convicted of a relevant offence and receives a fine, the Authority will refer to the following guidelines when deciding whether to grant a licence:

- If fine was imposed over 2 years ago the Authority will issue a licence
- If fine was imposed within last 2 years and is equal to or less than €1,000 the Authority will issue a licence.
- If the fine was imposed within last 2 years and is greater than €1,000 then the Authority will not issue a licence for up to a minimum period of 6 months from the date application received or the date of the conviction, whichever is later.
- The Authority may, where it deems the conviction renders an applicant unsuitable to hold a licence, not issue a licence for a longer period.

Where an applicant receives a custodial sentence and a fine the longer prohibition period will apply.

Where an applicant has been convicted of a number of relevant offences over a period of time and has received a fine in each case, the Authority will consider the pattern of offences, the fines imposed and duration since the last offence. In such cases, the Authority may prohibit the person from holding a licence for a minimum period of up to 12 months from the date the application is received or the date of the last conviction, whichever is later.

Probation

Where an applicant for a licence has been convicted of a relevant offence and receives probation the Authority will consider the nature of the offence before deciding to grant a licence.

Suspended Sentence

Where an applicant for a licence has been convicted of a relevant offence and has received a suspended sentence the Authority will prohibit that person from holding a licence during the period of the suspension.

Where an applicant receives a suspended sentence and a fine the longer prohibition period will apply.

Guidelines on Convictions with Custodial Sentence

Where an applicant for a licence has been convicted of a relevant offence the Authority will prohibit that person from holding a licence for a minimum period equal to the length of the sentence received and may prohibit up to a maximum period of the prescribed statutory sentence.

Where an applicant has been convicted of a number of offences over a period of time the Authority will consider the pattern of offences, the sentences imposed and duration since the last offence. In such cases, the Authority may prohibit the person from holding a licence for a maximum period of the combined prescribed statutory sentences for each offence.

Applications from persons convicted of a relevant offence(s) which carries a maximum prescribed statutory sentence of more than ten years will be considered on a case by case basis.

In general the Authority will adhere to the following guidelines when dealing with custodial sentences:

1. Where the maximum prescribed sentence is 10 years or less and the sentence received was less than the maximum sentence the person will be prohibited for a minimum period equal to the length of the sentence and may be prohibited



for a period equal to the maximum prescribed sentence from when the sentence finished.

Example: Person receives a 3 year sentence on 1st August 2001 where the maximum prescribed sentence is 5 years. Minimum prohibition is for 3 years and the maximum prohibition is 5 years. Both prohibitions commencing on 1st August 2004.

2. Where a number of convictions have been recorded over a period of time the person will be prohibited for a minimum period equal to the combined length of all sentences and may be prohibited for a period equal to the combined length of all the prescribed maximum prescribed sentences from when the last sentence finished.

Example: Person receives a 6 month sentence in 1992 where the maximum sentence is 12 months, receives a 12 month sentence in 1997 where the maximum sentence is 3 years, receives a 6 month sentence on 1st May 2002 where the maximum sentence is 2 years. The person may be prohibited up to a maximum of 6 years from the 1st November 2002.

3. Where the maximum prescribed sentence is greater than 10 years the Authority will consider each application in this category on a case by case basis.

Juvenile Offences

Offence(s) committed as a juvenile must also be disclosed to the Authority when applying for a licence. The Authority will take into account the provisions of Section 258 of the Children Act 2001 (see Appendix 2) when considering an application in this category. In general the Authority will adhere to the following guidelines when dealing with juvenile offences:

1. Irish Nationals will be required to complete a Garda Vetting Form disclosing details of all convictions including juvenile offences. The provisions of Section 258 will apply to any conviction which took place before the applicant's 18th birthday.
2. Irish Nationals who have spent more than 6 months outside the state before their 15th birthday will not be required to supply a criminal record certificate for the period up to their 15th birthday.
3. Foreign Nationals will no longer be required to supply a criminal record certificate for any period outside of Ireland before their 15th birthday. However, details of all domiciles from their date of birth will continue to be required on the Garda Vetting Form (This is a requirement of An Garda Síochána).

Informing you of the Authority's Decision

Before an application for a licence is refused on the grounds that an applicant is not a fit or proper person, the Authority will write to the applicant allowing him an opportunity to submit any evidence which might influence its decision. This may include character references or evidence of rehabilitation since your conviction.

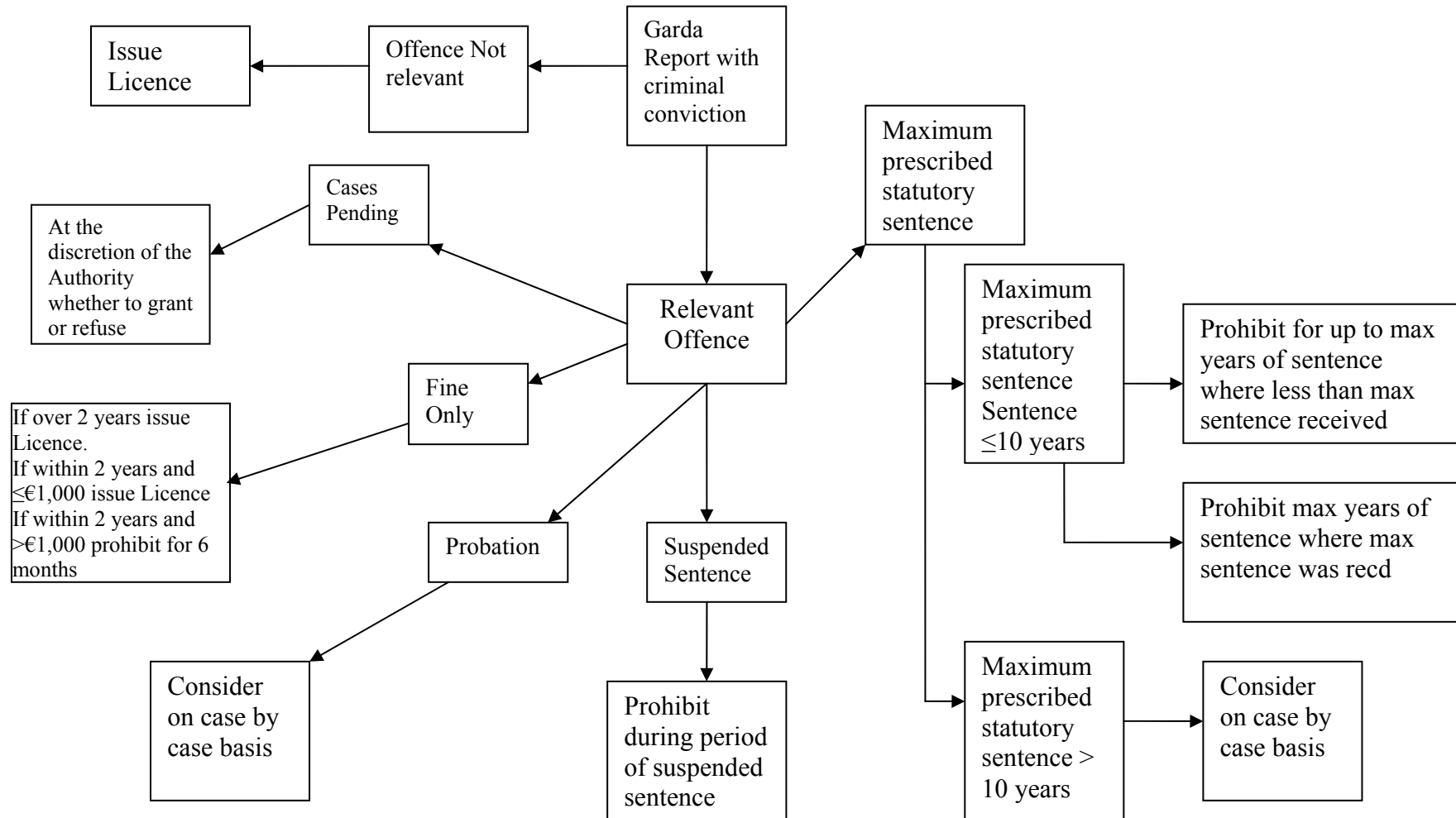
These guidelines are used by the Authority as an aid in reaching decisions. The Authority is not bound by them.

Failure by an applicant to disclose details of a conviction which is subsequently reported by An Garda Síochána will be noted against the applicant when considering any further information.

If the Authority refuses a licence application, an applicant may appeal directly to the Private Security Appeal Board which operates independently of the Authority.

Appendix 1

Criminal Records Decision Making



APPENDIX 2

CHILDREN ACT, 2001

Non-disclosure of certain findings of guilt of **258.** —(1) Where a person has been found guilty of an offence whether before or after the commencement of this section, and—

- (a) the offence was committed before the person attained the age of 18 years,
 - (b) the offence is not an offence required to be tried by the Central Criminal Court,
 - (c) a period of not less than 3 years has elapsed since the finding of guilt, and
 - (d) the person has not been dealt with for an offence in that 3-year period,
- then, after the end of the 3-year period or, where the period ended before the commencement of this section, after the commencement of this section, the provisions of *subsection (4)* shall apply to the finding of guilt.

(2) This section shall not apply to a person who is found guilty of an offence unless he or she has served a period of detention or otherwise complied with any court order imposed on him or her in respect of the finding of guilt.

(3) *Subsection (2)* shall not prevent the application of this section to a person who—

- (a) failed to pay a fine or other sum adjudged to be paid by, or imposed on, the person on a finding of guilt or breach of a condition of a recognisance to keep the peace or to be of good behaviour, or
- (b) breached any condition or requirement applicable in relation to an order of a court which renders a person to whom it applies liable to be dealt with for the offence in respect of which the order was made.

(4) (a) A person to whom this section applies shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or found guilty of or dealt with for the offence or offences which were the subject of the finding of guilt; and, notwithstanding any other statutory provision or rule of law to the contrary but, subject as aforesaid—

- (i) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed or been charged with or prosecuted for or found guilty of or dealt with for any offence which was the subject of that finding, and
- (ii) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to a finding or

findings to which this section refers or any circumstances ancillary thereto.

- (b) Subject to any order made under *paragraph (d)*, where a question seeking information with respect to a person's previous finding of guilt, offences, conduct or circumstances is put to him or her or to any other person otherwise than in proceedings before a judicial authority—
- (i) the question shall be treated as not relating to findings to which this section applies or to any circumstances ancillary to such findings, and the answer thereto may be framed accordingly, and
 - (ii) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose any such findings or any circumstances ancillary to the findings in his or her answer to the question.
- (c) Subject to any order made under *paragraph (d)*—
- (i) any obligation imposed on any person by any rule of law or by any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him or her to disclose a finding to which this section applies or any circumstances ancillary to the finding (whether the finding is his her own or another's), and
 - (ii) a finding to which this section applies, or any circumstances ancillary thereto or any failure to acknowledge or disclose a finding to which this section applies or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any way in any occupation or employment.
- (d) The Minister may by order make such provision as in his or her opinion is appropriate—
- (i) for excluding or modifying the application of either or both of *subparagraphs (i) and (ii) of paragraph (b)* in relation to questions put in such circumstances as may be specified in the order, or
 - (ii) for exceptions from the provisions of *paragraph (c)* in relation to such cases, and findings of such a description, as may be so specified.

(5) An order under *subsection (4)(d)* may be amended or revoked by the Minister, including an order under this subsection.

(6) A draft of any order proposed to be made under this section shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(7) For the purposes of this section any of the following circumstances are circumstances ancillary to a finding, that is to say:

- (a) the offence or offences which were the subject of the finding,

- (b) the conduct constituting that offence or those offences,
- (c) any process or proceedings preliminary to the finding,
- (d) any penalty imposed in respect of it,
- (e) any proceedings (whether by way of appeal or otherwise) for reviewing any such finding or penalty,
- (f) anything done in pursuance of or undergone in compliance with any such penalty.

(8) For the purposes of this section “proceedings before a judicial authority” includes, in addition to proceedings before a court, proceedings before any tribunal, body or person having power—

- (a) by virtue of any statutory provision, law, custom or practice,
- (b) under the rules governing any association, institution, profession, occupation or employment, or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder,

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

Appendix 3

Section 26 of Private Security Services Act 2004

- Refusal to renew, suspension, etc, licence.
- 26.—**(1) Subject to *section 27*, the Authority may—
- (a) refuse to renew a licence, or
 - (b) at any time suspend a licence for a specified period or of revoke it,
- if it is satisfied on reasonable grounds that the licensee—
- (i) has supplied information in or in connection with the application for the licence or its renewal that was false or misleading in a material particular,
 - (ii) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention), or
 - (iii) is no longer a fit and proper person to provide a security service,
- or if the Authority would not have granted the licence or renewed it if information obtained subsequent to the date of its grant or renewal had been available at that date.
- (2) (a) The Authority shall—
- (i) refuse to renew a licence, or at any time suspend a licence for a specified period or revoke it, if it is satisfied on reasonable grounds that the safety or welfare of any person or persons is or may be at risk from the continuance in force of the licence, and
 - (ii) notify the licensee of its decision.
- (b) *Section 27* does not apply in relation to a decision under this subsection.
- (3) Without prejudice to *subsection (1)*, if the Authority is satisfied on reasonable grounds that the licensee—
- (a) has been guilty of misconduct in the course of providing a security service, or

(b) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention),

it may take whichever of the following actions in relation to the licence or licensee is in its opinion appropriate in the circumstances of the case:

- (i) revocation of the licence,
- (ii) suspension of the licence for a specified period,
- (iii) reprimand,
- (iv) warning,
- (v) caution,
- (vi) advice.

(4) A licence which is suspended shall not be in force during the period of its suspension.

(5) A person whose licence has been suspended or revoked shall comply with any directions of the Authority in relation to delivering up to it the person's licence and identity card.

Appendix 4

Private Security Services Act 2004

Grant or refusal of licence. **22.**—(1) Subject to *subsection (3)* and *sections 24* and *25*, the Authority may grant a licence to a person to provide a security service.

(2) When deciding whether to grant a licence the Authority shall take into account any information supplied to it under *sections 21, 34* and *36*

(3) The Authority shall refuse to grant a licence if satisfied —

(a) if the applicant is an individual, that he or she:

(i) is not a fit and proper person to provide a security service,

(ii) is under 18

(iii) does not comply with any requirement of this Act or regulations thereunder,

(iv) has not paid the paid the prescribed fee,

(b) if the applicant is a body corporate:

(i) that any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in that capacity is not a fit and proper person to hold such a position on a body corporate which is providing a security service,

(ii) that *subparagraph (iii)* or *(iv)* of *paragraph (a)* applies in respect of the body corporate,

and

(c) if the applicant is a partnership, that one or more than one of *subparagraphs (i)* to *(iv)* of *paragraph (a)* applies or apply in respect of any of the partners.

Note: Section 24 refers to Tax Clearance and Section 25 refers to documents to accompany applications.

Section 21 refers to a Licence Application, Section 34 to An Garda Síochána and Section 36 to notifying the Authority of a conviction.

ENDS