



# **An tÚdarás Slándála Príobháidí** **The Private Security Authority**

## **Granting a Licence - Suitability Criteria Guidelines**

### **FIT & PROPER ASSESMENT**

**Guidelines Used By The PSA In Assessing Fit And Proper**

**March 2012**

These Guidelines are issued to assist the Authority in reaching a determination on licence applications. They have been published by the Authority for the information of applicants and licence holders. It should be noted that these are guidelines only and the Authority is not bound by them.

## **FIT & PROPER ASSESMENT**

### **Granting a Licence - Suitability Criteria Guidelines**

**These guidelines replace the Criminality Guidelines previously issued by the Authority and come into effect on the 19th March 2012. They shall apply to all applicants who lodge an application on or after that date. Applicants should read the guidelines carefully and consider the impact, if any, on their application. Once an application has been refused the Authority will not issue a refund of the fee paid.**

**The guidelines also apply to licence holders. They will be used in reaching determinations on cases where a licence has issued and an offence occurs post licensing, where new information comes to the attention of the Authority after the licence issued or when a licence is being renewed. Where the guidelines refer to an applicant for a licence or an application the same guidelines will apply to a licence holder. Where the term refusal is used in these guidelines revocation or suspension of licence shall apply to licence holders.**

**Applicants and licence holders should note that these are guidelines only and the Authority is not bound by them.**

## 1. 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. In the case of contractor licences this also includes financial competence, compliance with tax and other statutory obligations of being a business together with compliance with the standards required for licensing. Our objective is to ensure that only those who are suitably qualified under these headings and who display propriety in their affairs 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.

The Authority is also responsible for the ongoing monitoring of the security industry and licence holders will be subject to these guidelines in respect of any information which comes to light during the duration of the licence.

Section 22(3)(a)(i) of the Private Security Services Acts 2004 and 2011 (hereinafter referred to as “the Act”) allows the Authority to refuse to grant a licence if satisfied that the applicant is not a fit and proper person to provide a security service. For the purpose of this provision an applicant can be an individual or in the case of a body corporate any director, manager, secretary or other similar officer of the body corporate or any person acting in that capacity, or purporting to act in that capacity, and a person who is the beneficial owner of more than 5 per cent of the share capital of the company.

Section 26(1)(b)(iii) of the Act allows the Authority to suspend or revoke a licence where it is satisfied that the licensee is no longer a fit and proper person. The Act does not specify what is meant by "a fit and proper person".

## 2. Fit and Proper Rule

The Authority has set out the following headings under which the Fit and Proper Rule will be considered:

- criminal convictions and cases pending a court hearing,
- person subject to an investigation by An Garda Síochána, Health Service Executive, Criminal Assets Bureau or any other Government Body or Agency with the authority to carry out investigations,
- person subject to an investigation by a relevant authority in another Member State of the European Union in circumstances where the person seeks to provide a security in the State in accordance with Part 7 of the Act,
- compliance with the various Companies Acts and any other statutory provisions of being a body corporate,
- compliance with Revenue and Social Welfare provisions,
- compliance with Employment Legislation and any other statutory provisions on employment which may apply,
- compliance with the Private Security Services Acts, licensing regulations and any standards or qualifications relating to licensing,
- any previous Private Security Services Licence held, applications made for a licence or investigations conducted by the Authority's Enforcement Division,
- any actions, suspensions or revocations issued by the Authority,
- compliance with the provisions of any Regulatory Body or subject to a current investigation by such a body,
- any matter where in the view of the Authority the issuing of a licence would pose a risk to the safety and welfare of the public,
- any other such matter which the Authority deems relevant to the issuance of a licence.

The Fit and Proper Rule is applied to any person applying for an individual licence or any person who is a sole trader, partner in a partnership, director or shareholder in a body corporate or any person acting as an officer or in a management position within

a business, or purporting to act as such, which is applying for a licence. The provision is also applied to any other business or previous business which such a person may have been involved with, irrespective of whether such a business operates or operated in the security sector.

### **3 Criminal Record Checks**

All applicants for a licence will be vetted by the Authority with An Garda Síochána. In addition, the Authority may request a licence holder to be vetted at any stage during the term of the licence.

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 Act. On occasions the Authority may seek additional information on an applicant. All 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.

Failure by an applicant to disclose details of a conviction(s) is an offence under section 36 of the Act and will be deemed by the Authority as grounds for refusing an application. Applicants should disclose all convictions no matter what sentence was received or when the conviction took place. There are currently no time limits on convictions considered by the Authority.

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 Security 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.

### **3.1 General Policy on Convictions**

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 these guidelines and against such other criteria as the Authority deems relevant to an application. 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:

- category and seriousness of the offence(s) involved
- the conduct constituting the offence(s)
- the sentence(s) imposed
- the length of time since completion of sentence
- disclosure of the offence(s) by the person
- overall interests of the public good
- relationship of the crime to the purpose of requiring a licence
- age of person when offence(s) was committed
- record of re-offending
- 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 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.

### **3.2 Cases awaiting Trial**

Where there are charge(s) pending for offence(s) against an applicant for a licence and where a conviction for same would render the applicant unlikely to obtain a licence the Authority shall reject the application and advise the applicant to lodge a new application when the case has concluded.

Where there are charge(s) pending for offence(s) against a licence holder the Authority may suspend the licence until the outcome of the court case is known.

### **3.3 Probation and Community Service Orders**

Where an applicant for a licence has been subject to the conditions of the Probation Act or receives a Community Service Order, the Authority will consider the category of the offence before deciding whether to grant a licence.

### **3.4 All Other Sentences Including Custodial, Suspended and Fines**

In addition to the criteria set out under 3.1 above the following conditions shall apply to custodial sentences, suspended sentences and fines. Where an applicant for a licence has been convicted of an offence and receives a custodial sentence, suspended sentence or fine, the Authority will consider the sentence against the Fit and Proper Matrix set out on the following page.

**Fit And Proper Matrix**

CATEGORY OF CONVICTION	PERIOD SINCE COURT OUTCOME EXPIRED				
	0-2 Years	2-5 Years	5-8 Years	8-11 Years	11+ Years
Offences of Sexual, Physical or Emotional Abuse Against Children or Child Pornography	Unlikely	Unlikely	Unlikely	Unlikely	Unlikely
Murder	Unlikely	Unlikely	Unlikely	Unlikely	Consider
Sexual Offences Against or Involving Adults	Unlikely	Unlikely	Unlikely	Unlikely	Consider
Offences Against The State	Unlikely	Unlikely	Unlikely	Unlikely	Consider
Treason	Unlikely	Unlikely	Unlikely	Unlikely	Consider
Drug (Trafficking/Supply)	Unlikely	Unlikely	Unlikely	Unlikely	Consider
Manslaughter	Unlikely	Unlikely	Unlikely	Consider	Consider
Drug (Misuse)	Unlikely	Unlikely	Consider	Consider	Consider
Non Fatal Offences Against a Person or Persons	Unlikely	Unlikely	Consider	Consider	Consider
Offences Involving Offensive Weapon Possession	Unlikely	Unlikely	Consider	Consider	Likely
Road Traffic Offences (Use of Vehicle In Commission Of A Crime)	Unlikely	Unlikely	Consider	Likely	Likely
Offences Under The Defence Act(s)	Unlikely	Consider	Consider	Consider	Consider
Offences Involving Fraud	Unlikely	Consider	Consider	Likely	Likely
Offences Involving Damage To Property	Unlikely	Consider	Consider	Likely	Likely
Offences Involving Theft	Unlikely	Consider	Consider	Likely	Likely
Road Traffic Offences (Hit and Run Offences)	Unlikely	Consider	Consider	Likely	Likely
Road Traffic Offences (Outcome: Other)	Consider	Consider	Consider	Likely	Likely
Public Order and Anti-Social Behaviour Offences	Consider	Consider	Likely	Likely	Likely
Road Traffic Offences (Outcome: Fine Only)	Consider	Likely	Likely	Likely	Likely
Offences Not Falling In To The Above Categories (Outcome: Fine Only)	Consider	Consider	Likely	Likely	Likely
Offences Not Falling In To The Above Categories (Outcome: Other)	Consider	Consider	Consider	Likely	Likely

This matrix should be considered as a guide only and the Authority is not bound by the matrix in reaching a determination though it will form a factor under which the fit and proper condition is applied.



The “Period Since Court Outcome Expired” is determined as follows:

- In the cases of a custodial sentence the day when the full sentence has expired (not the date of release).
- In the case of a suspended sentence the day when the period of suspension expires.
- In the case of a non custodial sentence the day the sentence was imposed.

In the case of multiple convictions, the period since court outcome expired is extended by

- a minimum of 1 year for 3 or less convictions,
- a minimum of 2 years for more than 4-6 convictions,
- a minimum of 3 years for more than 7-10 convictions,
- a minimum of 4 years for more than 10 convictions,

#### **Multiple Convictions Matrix**

	PERIOD SINCE COURT OUTCOME EXPIRED				
	0-3 Years	3-6 Years	6-9 Years	9-12 Years	12+ Years
Multiple Convictions (3 or less)	0-4 Years	4-7 Years	7-10 Years	10-13 Years	13+ Years
Multiple Convictions (4-6)	0-5 Years	5-8 Years	8-11 Years	11-14 Years	14+ Years
Multiple Convictions (7-10)	0-6 Years	6-9 Years	9-12 Years	12-15 Years	15+ Years

### **3.5 Juvenile Offences**

The Authority will not take in to account convictions which took place prior to an applicants 18<sup>th</sup> birthday provided that any sentence imposed has been exhausted on or before the applicants 18<sup>th</sup> birthday.

### **3.6 Good Friday Agreement and Release of Prisoners**

The Authority will consider applications from persons who have been convicted of offences connected with the conflict in Northern Ireland. The following conditions will apply to such applications:

- The applicant must have been released either,
  - (1) prior to the Good Friday Agreement or
  - (2) under the provisions of the Criminal Justice (Release of Prisoners) Act 1998 or
  - (3) under the provisions of the Northern Ireland Sentences Act 1998.
- The offence for which the applicant was released must clearly be related to the conflict in Northern Ireland
- The applicant must not have been convicted of an offence since release

**4. Reports by the Health Service Executive**

Where the Health Service Executive informs the Authority that it has concerns regarding the suitability of an applicant to hold a licence the Authority will inform the applicant of the concerns and invite them to make representations on the matter before a determination is reached.

**5. Investigations by An Garda Síochána, Health Service Executive or other State Agency**

Where an applicant for a licence is the subject of an investigation being undertaken by An Garda Síochána, Health Service Executive, Criminal Assets Bureau or any other Government Body or Agency with the authority to carry out investigations, the Authority will not issue a licence until such investigation is completed and any actions resulting from the investigation have been concluded. In such circumstances, the Authority shall reject the application and advise the applicant to lodge a new application when the investigation and any actions have concluded.

Where an applicant for a licence has been the subject of an action as a result of an investigation, whether or not such person has been convicted of an offence in a court of law, the Authority will consider the reason for the action, the action imposed and any other relevant information before deciding whether to grant a licence.

Where an applicant has been convicted of an offence as a result of an investigation the same prohibitions which apply to Section 3 will apply to these convictions.

**6. Companies Acts and other provisions of running a Company or Business**

The Authority will take into consideration any previous company or business where the applicant has acted as a director or principal or any current involvement in a company or business before deciding whether to grant a licence.

Where an applicant for a licence is/was a director/principal of a business the Authority will consider the history of any current or previous business in relation to its statutory obligations before deciding whether to grant a licence.

Where an applicant for a licence has been restricted from being a director of a body corporate the Authority will prohibit that person from holding a licence for the duration of the restriction.

Where an applicant for a licence has been the director/principal of a business which has ceased trading the Authority will consider the reasons why the business ceased trading and the history of the business in relation to its statutory obligations before deciding whether to grant a licence.

Where an applicant has been convicted of an offence as a result of their being a director/principal of a business the same prohibitions which apply to Section 3 will apply to these convictions.

#### **7. Compliance with Tax and Social Welfare Provisions**

The Authority will consider an applicant's compliance with Tax and Social Welfare matters, personally and/or as a director of a company or former company, before deciding whether to grant a licence. Where an applicant has been convicted of an offence relating to Tax or Social Welfare matters the same prohibitions which apply to Section 3 will apply to these convictions.

#### **8. Compliance with Employment Legislation and other provisions of being an Employer**

The Authority will consider compliance with Employment Legislation and other Employment Regulations and Provisions before deciding whether to grant a licence. Where an applicant has been convicted of a breach of legislation or regulations the same prohibitions which apply to Section 3 will apply to these convictions.

**9. Compliance with the Private Security Services Acts and other issues relating to the Private Security Authority**

The Authority will take into consideration an applicant's compliance with the provisions of the Private Security Services Acts and the compliance of any person with a connection to the applicant's business before deciding whether to grant a licence.

Where an applicant for a licence has provided a security service without a licence, whether or not such person has been convicted of an offence in a court of law, the Authority may refuse the application.

Where an applicant for a licence has contravened the provisions of the Private Security Services Acts, the regulations thereunder or other requirements of licensing the Authority may refuse the application or may issue the licence together with one of the following actions:

- ▶ reprimand,
- ▶ warning,
- ▶ caution,
- ▶ advice.

Where an applicant for a licence has previously held a licence and that licence has expired, been revoked or otherwise cancelled, the Authority will consider the conduct of the applicant during the course of that licence and the period thereafter before deciding whether to grant a licence.

**10. Compliance with the provisions of any Regulatory Body and related matters.**

Where an applicant for a licence has breached the regulations of a Regulatory Body, whether or not the person has been convicted of such a breach, the Authority will consider the circumstances leading to breach of regulations before deciding whether to grant a licence

Where an applicant for a licence is the subject of an investigation being undertaken by a Regulatory Body, the Authority will not issue a licence until such investigation is completed and any actions resulting from the investigation have been concluded. In such circumstances, the Authority shall reject the application and advise the applicant to lodge a new application when the investigations and any actions have concluded.

Where an applicant for a licence has been the subject of an action as a result of an investigation, whether or not such person has been convicted of an offence in a court of law, the Authority will consider the reason for the action, the action imposed and any other relevant information before deciding whether to grant a licence.

Where an applicant has been convicted of an offence as a result of an investigation the same prohibitions which apply to Section 3 will apply to these convictions.

#### **11. Other matters which the Authority deem relevant**

The Authority may consider any such other matters which it deems relevant to the issuing of a licence. Such matters may include but are not limited to:

- suspension or dismissal from work,
- withdrawal of a professional certification,
- risk to the safety and welfare of the public.

#### **12. 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 a conviction. In certain circumstances where the Authority deems there is a risk to the health or safety of any person or persons the Authority may revoke or suspend a licence without offering an opportunity to submit such evidence.

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

### Private Security Services Acts 2004 and 2011

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 there under,

(iv) has not paid the prescribed fee,

(b) if the applicant is a body corporate:

(i) that any director, shareholder to whom *section 21(3)(ab)* refers, manager, secretary or other similar officer of the body corporate 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 in 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.



## Appendix 2

### Private Security Services Acts 2004 and 2011

- 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 3****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.

**ENDS**