

2012 No. 1960

POLICE, ENGLAND AND WALES

The Police (Amendment No. 3) Regulations 2012

Made - - - - - *24th July 2012*

Laid before Parliament *27th July 2012*

Coming into force - - - *20th August 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 50 of the Police Act 1996(a).

In accordance with section 63(3) of that Act(b), the Secretary of State has supplied a draft of these Regulations to the Police Advisory Board for England and Wales and taken into consideration their representations.

Citation and commencement

1. These Regulations may be cited as the Police (Amendment No. 3) Regulations 2012 and shall come into force on 20th August 2012.

Amendment of the Police Regulations 2003

2. The Police Regulations 2003(c) are amended as follows.

3. For regulations 7 (business interests incompatible with membership of a police force), 8 (business interests: supplementary) and 9 (business interests precluding appointment to a police force) substitute—

“Business interests of members of police forces: general

7.—(1) Where, in the case of a member of a police force—

- (a) a business interest has been held by the appropriate officer to be incompatible with continued membership of the force under regulation 8; and
- (b) either—
 - (i) no appeal has been made under regulation 9, or

(a) 1996 c.16. Section 50 is amended by paragraph 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4), section 3 of the Policing and Crime Act 2009 (c. 26) and section 82(12) of, and paragraph 32 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13).

(b) Section 63(3) was amended by paragraph 78 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraph 68 of Schedule 7 to the Police and Justice Act 2006 (c. 48), paragraph 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and section 10 of the Policing and Crime Act 2009 (c. 26).

(c) S.I. 2003/527, as amended by S.I. 2011/3026 and S.I. 2012/680; there are other amendments but none is relevant.

- (ii) such an appeal has been made and the chief officer has upheld the decision of the appropriate officer,

the decision of the appropriate officer shall be regarded as a lawful order for the purposes of the standards of professional behaviour set out in the Schedule to the Police (Conduct) Regulations 2008^(a) and, in the event of any failure to abide by the decision, those Regulations shall apply as though the appropriate authority had determined under regulation 19(4) of those Regulations that the member had a case to answer in respect of gross misconduct.

(2) For the purposes of this regulation and regulations 8 and 9 a person has a business interest if—

- (a) being a member of a police force, the person holds any office or employment for hire or gain (otherwise than as a member of the force) or carries on any business; or
- (b) being a member of a police force or a relative of a member, the person holds or possesses a pecuniary interest in a licence or permit granted in pursuance of the law relating to alcohol licensing, refreshment houses or betting and gaming or regulating places of entertainment in the area of the police force in question.

(3) Functions of the chief officer under this regulation and regulations 8 and 9 may be exercised only—

- (a) by the chief officer personally; or
- (b) by an acting chief officer.

(4) A member of a police force may choose—

- (a) another member of a police force;
- (b) a police staff member, or
- (c) a person nominated by the member's staff association,

who is not otherwise involved in the matter to act as the member's police friend in relation to the procedures set out in regulations 8 and 9.

(5) A police friend may—

- (a) advise the member concerned throughout the procedures set out in regulations 8 and 9;
- (b) accompany the member concerned to any meeting held under regulation 8 or 9; and
- (c) make representations on the member's behalf at any such meeting,

and a chief officer shall permit a police friend who is under the chief officer's direction and control to use a reasonable amount of duty time for these purposes.

(6) In this regulation and regulations 8 and 9—

“acting chief officer” means—

- (a) a person exercising or performing functions of a chief constable in accordance with section 41 of the Police Reform and Social Responsibility Act 2011^(b),
- (b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 or 45(4) of that Act, or
- (c) a person exercising duties of the Commissioner of Police for the City of London in accordance with section 25 of the City of London Police Act 1839^(c);

(a) S.I. 2008/2864 as amended by S.I. 2011/3027.

(b) 2011 c. 13.

(c) 2 & 3 Vict. x xciv.

“appropriate officer” means a person serving in the part of the police force responsible for the maintenance of standards of professional behaviour who has been authorised by the chief officer to exercise functions under regulation 8;

“police staff member” means—

- (a) a member of the civilian staff of a police force (within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011); or
- (b) an employee of the Common Council of the City of London who is under the direction and control of the Commissioner of the City of London Police;

“relative”, in relation to a member of a police force, means—

- (a) a spouse or civil partner who is not separated from the member;
- (b) a person living with the member as if they were the member’s spouse or civil partner; or
- (c) a parent, son, daughter, brother or sister of the member, who is included in the member’s family;

“staff association” means—

- (a) in relation to a member of a police force of the rank of chief inspector or below, the Police Federation of England and Wales;
- (b) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents’ Association of England and Wales; and
- (c) in relation to a member of a police force who is a senior officer, the Chief Police Officers’ Staff Association.

(7) In its application to a chief officer, this regulation and regulations 8 and 9 have effect with the following modifications—

- (a) paragraph (3) of this regulation has effect as if it read—

“(3) Functions of the local policing body under this regulation and regulations 8 and 9 may be exercised, where that body is an elected local policing body, only by the body personally or by a deputy appointed under section 18(1)(a) or 19(1)(a) of the Police Reform and Social Responsibility Act 2011.”;

- (b) in paragraph (6) of this regulation—

- (i) the definition of “acting chief officer” is omitted;

- (ii) the definition of “appropriate officer” has effect as if it read—

- ““appropriate officer” means a member of the staff of the local policing body who is not under the direction and control of the chief officer and who has been authorised by the body to exercise functions under regulation 8;”;

- (iii) every other reference to the chief officer has effect as a reference to the local policing body.

Business interests of members of police forces: notification and determination

8.—(1) If a member of a police force—

- (a) has or proposes to have a business interest which has not previously been disclosed; or
- (b) is or becomes aware that a relative has or proposes to have a business interest which, in the opinion of the member, interferes or could be seen as interfering with the impartial discharge of the member’s duties and has not previously been disclosed,

the member shall immediately give written notice of that business interest to the chief officer.

(2) On receipt of a notice given under paragraph (1), the chief officer shall direct the appropriate officer to decide whether or not the business interest is compatible with the member concerned remaining a member of the police force.

(3) In deciding whether the business interest is compatible with the member concerned remaining a member of the police force, the appropriate officer shall have regard to whether, as a result of the business interest, the member's conduct fails or would fail to meet the standards of professional behaviour set out in the Schedule to the Police (Conduct) Regulations 2008.

(4) Where the appropriate officer is minded to decide that the business interest is not compatible with the member concerned remaining a member of the police force, or is not so compatible unless conditions are imposed, the officer shall—

- (a) notify the member in writing of this preliminary view and the reasons for it;
- (b) give the member the opportunity to make representations in writing, at a meeting, or both, at the discretion of the member; and
- (c) take any such representations into account.

(5) Whether or not notification is given under paragraph (4), the appropriate officer shall, within 28 days of receipt of the notice given under paragraph (1), notify the member concerned in writing of the officer's decision in relation to the business interest.

(6) Where the decision is that the business interest is compatible with the member concerned remaining a member of the police force, the notification under paragraph (5) may include a requirement for the member to furnish particulars of changes in the business interest, as respects its nature, extent or otherwise.

(7) Where the decision is that the business interest is not compatible with the member concerned remaining a member of the police force, or is not so compatible unless conditions are imposed, the notification under paragraph (5) shall—

- (a) include a statement of the reasons for the decision;
- (b) be accompanied by copies of any document on which the officer relies in support of the decision, and
- (c) inform the member of the existence of the right of appeal under regulation 9.

(7) Where a member of a police force is required to furnish particulars of changes in a business interest under paragraph (6), then in the event of any such change being proposed or occurring this regulation shall have effect as though the changed business interest were a newly proposed or newly acquired business interest.

Business interests of members of police forces: appeal

9.—(1) Within 10 days of being notified of an appropriate officer's decision under regulation 8(5), or within such longer period as the chief officer may in all the circumstances allow, a member of a police force may appeal against that decision by sending written notice to the chief officer.

(2) On receiving notice of appeal under paragraph (1) the chief officer shall—

- (a) give the member the opportunity to make representations in writing, at a meeting, or both, at the discretion of the member; and
- (b) take any such representations into account.

(3) The chief officer shall decide the appeal unless it appears to the chief officer that—

- (a) the member has adduced substantive reasons why the member should be permitted to have the business interest, or why conditions should not be imposed, which were not considered by the appropriate officer; or
- (b) the appropriate officer failed to apply fair procedures,

in which case the chief officer may direct the appropriate officer to decide the matter again under regulation 8.

(4) Subject to paragraph (5), the chief officer shall, within 28 days of receipt of the notice of appeal under paragraph (1), notify the member concerned in writing of the outcome of the appeal and provide a statement of the reasons for the decision.

(5) The chief officer may extend the period specified in paragraph (4), where the chief officer considers that it would be in the interests of justice to do so.

(6) Where the chief officer decides to extend the period under paragraph (5), the chief officer shall provide written notification of the reasons for that decision to the member concerned.

Business interest precluding appointment to a police force

9A.—(1) A candidate is not eligible for appointment to a police force if the candidate or a relative of the candidate has a business interest which is to be retained after appointment, unless the business interest is approved by the chief officer or, in the case of a candidate for appointment as chief officer, by the local policing body.

(2) For the purposes of this regulation—

(a) a person has a business interest if—

(i) being a candidate for appointment to a police force, the person holds any office or employment for hire or gain or carries on any business, or

(ii) being a candidate for appointment to a police force or a relative of a candidate, the person holds or possesses a pecuniary interest in a licence or permit granted in pursuance of the law relating to alcohol licensing, refreshment houses or betting and gaming or regulating places of entertainment in the area of the police force in question; and

(b) “relative”, in relation to a candidate for appointment to a police force, means—

(i) a spouse or civil partner who is not separated from the candidate,

(ii) a person living with the candidate as if they were the candidate’s spouse or civil partner, or

(iii) a parent, son, daughter, brother or sister of the candidate, who is included in the candidate’s family.”.

4. After regulation 10 (qualifications for appointment to a police force) insert—

“Taking of fingerprints and samples prior to appointment to a police force

10A.—(1) Where a candidate for appointment to a police force is to be offered an appointment, the offer shall (unless the candidate is applying to transfer to the force from another police force or is a special constable for that or another police area) be subject to the following conditions—

(a) the candidate is required to have fingerprints and a sample taken;

(b) the candidate must consent to the fingerprints and sample taken being the subject of a speculative search; and

(c) the chief officer must be satisfied that the candidate is suitable for appointment following the results of the speculative search.

(2) In a case to which paragraph (1) applies, the candidate shall notify the chief officer in writing whether the candidate consents—

(a) to the taking of fingerprints and a sample; and

(b) to such fingerprints and sample being the subject of a speculative search.

(3) Where a candidate is appointed as a member of a police force, upon appointment—

(a) any fingerprints taken under paragraph (1) shall be treated as if they had been taken under regulation 18(1); and

(b) any sample and any information derived from a sample taken under paragraph (1) shall be treated as if the sample had been taken under regulation 19(1).

(4) In this regulation—

“sample” has the same meaning as in regulation 19(4);

“speculative search” has the same meaning as in Part V of the Police and Criminal Evidence Act 1984(a).”.

5.—(1) In regulation 18(1) (fingerprints) at the beginning insert “Subject to paragraph (4),”.

(2) After regulation 18(3) insert—

“(4) A member of a police force who was required to have fingerprints taken under regulation 10A(1) shall not also be required to have his fingerprints taken under paragraph (1).”.

6.—(1) In regulation 19(1) (samples) at the beginning insert “Subject to paragraph (5),”.

(2) After regulation 19(4) insert—

“(5) A member of a police force who was required to have a sample taken under regulation 10A(1) shall not also be required to have a sample taken under paragraph (1).”.

Home Office
24th July 2012

Nick Herbert
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police Regulations 2003 (“the 2003 Regulations”) by replacing the provisions about business interests held by police officers, candidates for appointment to police forces, and their relatives, and by inserting new provisions about biometric vetting of candidates.

New regulation 7 of the 2003 Regulations, substituted by these Regulations, defines key terms such as “business interest” and “relative”. These carry the same meaning as under the existing provisions. New regulation 7 also sets out the consequences if a police officer’s business interest is held to be incompatible with the officer’s continued membership of the force. In the event of a failure by the officer to abide by such a decision, the officer is treated as though a finding had been made that he had a case to answer in respect of gross misconduct under the Regulations dealing with police conduct, and proceedings may be taken against him under those Regulations accordingly. This is a change from the current position, whereby the chief officer of police has the power to dismiss the officer in the event of a failure to abide by a decision, with the approval of the police authority but without undertaking disciplinary proceedings.

New regulation 7 further requires the functions of the chief officer under the business interest provisions to be performed by the chief officer personally, or by a senior officer standing in for the chief officer under specific statutory provisions that permit this. Delegation of the chief officer’s functions is prohibited.

(a) 1984 c. 60. Section 63 was amended by section 55 of, and paragraph 58 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 1 and 2 of the Criminal Evidence (Amendment) Act 1997 (c.17), paragraph 5 of Schedule 15 to the Terrorism Act 2000 (c. 11), section 80 of the Criminal Justice and Police Act 2001 (c.16), paragraph 9 of Schedule 7 to the Police Reform Act 2002 (c. 30), section 169 of the Extradition Act 2003 (c. 41), section 10 of the Criminal Justice Act 2003 (c. 44), section 10 of the Counter-Terrorism Act 2008 (c. 28), section 112 of the Policing and Crime Act 2009 (c. 26), sections 2, 3 and 4 of the Crime and Security Act 2010 (c. 17) and paragraph 3 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9).

Finally, new regulation 7 allows a police officer to be supported, during the process of consideration of a business interest, by a police friend. This accords with the position for proceedings under the Regulations dealing with police conduct and performance.

New regulation 8 of the 2003 Regulations sets out the process for notification of a business interest by a police officer, and for consideration by an authorised officer within the force's professional standards department (the "appropriate officer") of whether the business interest is compatible with membership of the force. The regulation provides for the police officer concerned to be able to make representations orally, in writing or both, and to receive written notice of the decision of the appropriate officer.

New regulation 9 of the 2003 Regulations provides a right of appeal to the chief officer, in the event that the appropriate officer finds that the business interest is incompatible with membership of the force, or is only compatible if conditions are imposed. This replaces the rights of appeal to the police authority and the Secretary of State under the current Regulations. Again, the regulation provides for the police officer concerned to make oral or written representations, or both. On an appeal the chief officer may uphold or reverse the decision of the appropriate officer or, in defined circumstances, may remit the matter to the appropriate officer for reconsideration.

New regulation 9A of the 2003 Regulations replicates the existing provisions of regulation 9 about approval of a business interest of a candidate for appointment to a police force, or a candidate's relative.

These Regulations also insert a new regulation 10A in the 2003 Regulations so as to make an offer of appointment to a police force (other than on transfer from another force or the special constabulary) conditional on the candidate consenting to his fingerprints and a sample being taken, in order that a speculative search can be made against databases of other fingerprints, samples or information derived from samples held by law enforcement agencies in connection with or as a result of the investigation of offences.

These Regulations further amend the 2003 Regulations so as to ensure that a member of a police force who has provided fingerprints and samples in accordance with the new regulation 10A does not have to provide them again under other provisions of the 2003 Regulations. The amendments also ensure that fingerprints and samples taken under the new regulation 10A are treated in the same way as those taken under those other provisions.

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