

2012 No. 1961

POLICE, ENGLAND AND WALES

The Special Constables (Amendment) 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 sections 50(7) and 51 of the Police Act 1996(a).

Citation and commencement

1. These Regulations may be cited as the Special Constables (Amendment) Regulations 2012 and shall come into force on 20th August 2012.

Amendment of the Special Constables Regulations 1965

2. The Special Constables Regulations 1965(b) are amended as follows.

3. In regulation 1 (qualifications for appointment), at the end insert—

“(f) must (unless he is applying to transfer to the police area from another police area) on being so required by the chief officer give a sample of hair, oral fluid or urine to be tested, in accordance with procedures determined by the Secretary of State, for evidence of such controlled drugs as the Secretary of State may determine.”.

4. After regulation 1 insert—

“Taking of fingerprints and samples prior to appointment

1ZA.—(1) Where a candidate for appointment as a special constable is offered an appointment, the offer shall, unless the candidate is applying to transfer to the police area from 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.

(a) 1996 c. 16. Section 51 was amended by section 128 of the Police Act 1997 (c. 50), section 35 of the Police Reform Act 2002 (c. 30), paragraph 4 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 1 and 33 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

(b) S.I. 1965/536, as amended by S.I. 1992/1526, S.I. 1992/1641, S.I. 2002/3180, S.I. 2004/645, S.I. 2006/2278 and S.I. 2007/1162.

(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 special constable, upon appointment—

- (a) any fingerprints taken under paragraph (1) shall be treated as if they had been taken under regulation 1A(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 1B(1).

(4) In this regulation—

“sample” has the same meaning as in regulation 1B(5);

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

Business interests precluding appointment

1ZB.—(1) A candidate is not eligible for appointment as a special constable 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.

(2) For the purposes of this regulation—

- (a) a person has a business interest if—
 - (i) being a candidate for appointment as a special constable, the person holds any office or employment for hire or gain or carries on any business, or
 - (ii) being a candidate for appointment as a special constable 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 as a special constable, 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.

Business interests of special constables: general

1ZC.—(1) Where, in the case of a special constable—

- (a) a business interest has been held by the appropriate officer to be incompatible with continued service as a special constable under regulation 1ZD; and
- (b) either—
 - (i) no appeal has been made under regulation 1ZE, or

(a) 1984 c. 60. 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).

- (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 special constable had a case to answer in respect of gross misconduct.

(2) For the purposes of this regulation and regulations 1ZD and 1ZE a person has a business interest if—

- (a) being a special constable, the person holds any office or employment for hire or gain (otherwise than as a special constable) or carries on any business; or
- (b) being a special constable or a relative of a special constable, 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 police area in question.

(3) Functions of the chief officer under this regulation and regulations 1ZD and 1ZE may be exercised only—

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

(4) A special constable may choose—

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

who is not otherwise involved in the matter to act as the special constable's police friend in relation to the procedures set out in regulations 1ZD and 1ZE.

(5) A police friend may—

- (a) advise the special constable concerned throughout the procedures set out in regulations 1ZD and 1ZE;
- (b) accompany the special constable concerned to any meeting held under regulation 1ZD or 1ZE; and
- (c) make representations on the special constable'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 1ZD and 1ZE—

“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 1ZD;

“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 special constable, means—

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

who is included in the special constable’s family.

Business interests of special constables: notification and determination

1ZD.—(1) If a special constable—

- (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 special constable, interferes or could be seen as interfering with the impartial discharge of the special constable’s duties and has not previously been disclosed,

the special constable 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 special constable concerned remaining a special constable.

(3) In deciding whether the business interest is compatible with the special constable concerned remaining a special constable, the appropriate officer shall have regard to whether, as a result of the business interest, the special constable’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 special constable concerned remaining a special constable, or is not so compatible unless conditions are imposed, the appropriate officer shall—

- (a) notify the special constable in writing of this preliminary view and the reasons for it;
- (b) give the special constable the opportunity to make representations in writing, at a meeting, or both, at the discretion of the special constable; 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 special constable concerned in writing of the appropriate officer’s decision in relation to the business interest.

(6) Where the decision is that the business interest is compatible with the special constable concerned remaining a special constable, the notification under paragraph (5) may include a requirement for the special constable 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 special constable concerned remaining a special constable, 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 appropriate officer relies in support of the decision, and
- (c) inform the special constable of the existence of the right of appeal under regulation 1ZE.

(8) Where a special constable 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 special constables: appeal

1ZE.—(1) Within 10 days of being notified of an appropriate officer’s decision under regulation 1ZD(5), or within such longer period as the chief officer may in all the circumstances allow, a special constable 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 special constable the opportunity to make representations in writing, at a meeting, or both, at the discretion of the special constable; 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 special constable has adduced substantive reasons why he 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 1ZD.

(4) Subject to paragraph (5), the chief officer shall, within 28 days of receipt of the notice of appeal under paragraph (1), notify the special constable 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 special constable concerned.”

5.—(1) In regulation 1A(1) (fingerprints) at the beginning insert “subject to paragraph (4)”.

(2) After regulation 1A(3) insert—

“(4) A special constable who was required to have fingerprints taken under regulation 1ZA(1) shall not also be required to have his fingerprints taken under paragraph (1).”.

6. After regulation 1A insert—

“Samples

1B.—(1) Subject to paragraph (4), every special constable (except a special constable appointed following a transfer from another police area) shall, on appointment and in accordance with the directions of the chief officer, have a sample taken.

(2) Samples or the information derived from samples of special constables taken in accordance with this regulation shall be kept separate from the samples or the information derived from samples taken in accordance with section 63 of the Police and Criminal Evidence Act 1984.

(3) The samples or information derived from samples of a special constable taken in accordance with this regulation, and all copies and records thereof, shall be destroyed on the special constable ceasing to be a special constable for the police area, except that—

- (a) if, on ceasing to be a special constable, the person becomes a member of the police force maintained for that area, the samples or information derived from samples shall be kept in accordance with regulation 19(2) of the Police Regulations 2003(a); and
- (b) if, on ceasing to be a special constable for that police area, the person is appointed as a special constable for another police area or is appointed as a member of a police force maintained for another police area, the samples or information derived from samples shall be transferred to the chief officer in that other police area and kept in accordance with paragraph (2) or regulation 19(2) of the Police Regulations 2003, as the case may be.

(4) A special constable who was required to have a sample taken under regulation 1ZA(1) shall not also be required to have a sample taken under paragraph (1).

(5) In this regulation “sample” means—

- (a) a sample of hair, other than pubic hair, complete with roots;
- (b) oral fluid; or
- (c) a swab taken from the mouth,

and for these purposes “oral fluid” includes saliva.

Testing for substance misuse

1C.—(1) The chief officer of police may require any special constable who—

- (a) gives the chief officer reasonable cause to suspect that he has used a controlled drug;
- (b) has been identified by the chief officer as being vulnerable because of a specific responsibility for dealing with drugs; or
- (c) is selected in accordance with a regime of routine random testing;

to give a sample of oral fluid or urine to be tested for evidence of controlled drugs in accordance with procedures determined by the Secretary of State.

(2) The chief officer may require a special constable who falls within paragraph (1)(c) to give a sample of breath to be tested for evidence of alcohol in accordance with procedures determined by the Secretary of State.

(3) A special constable who—

- (a) on giving a sample under paragraph (1) is found to have taken a controlled drug specified in a determination of the Secretary of State; or
- (b) on giving a sample under paragraph (2), is found to have more than 13 microgrammes of alcohol in 100 millilitres of breath,

shall face such consequences as are specified in that determination.”.

Home Office
24th July 2012

Nick Herbert
Minister of State

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Special Constables Regulations 1965 by inserting provisions about the biometric vetting of candidates for appointment as special constables, about the testing of special constables, and candidates for substance misuse, and about the notification and approval of business interests held by special constables, candidates and their relatives. The inserted provisions are effectively identical to those applicable to regular police officers by virtue of the Police Regulations 2003. The relevant provisions of the Police Regulations 2003 are regulations 7 to 10, 19 and 19A.

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