EXPLANATORY MEMORANDUM TO

THE POLICE (AMENDMENT No. 3) REGULATIONS 2012

2012 No. 1960

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty

2. Purpose of the instrument

2.1 This instrument amends the Police Regulations 2003 ("the 2003 Regulations") to make changes to allow a candidate's DNA and fingerprints to be checked against the unmatched crime scene marks database to establish whether they are suspected of involvement in any unsolved crimes. It also makes changes to the regulations relating to business interests, and the processes for determining whether they are compatible with the integrity and impartiality demanded from members of the police service.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The 2003 Regulations make provision for various matters concerning the government, administration and conditions of service of police forces in England and Wales. Regulations 7 to 9 make provision in relation to business interests of members of police forces and their relatives. They require a serving police officer to notify the chief officer of police of any new business interest, so that the chief officer can assess whether the interest is compatible with continued membership of the police force. In relation to candidates for appointment to a police force, they prevent an appointment being made unless the chief officer has approved any business interest already held. "Business interest" is defined so as to include any employment or office held for gain or any business, but also a pecuniary interest in an alcohol licence.

4.2 Regulations 10, 18, 19 and 19A of the 2003 Regulations make provision in relation to the taking of samples and fingerprints from candidates for appointment and serving police officers. Samples may be taken from candidates and serving officers in order to test for the presence of controlled drugs. Fingerprints and samples may also be taken from serving officers to be retained for elimination purposes – in other words, for checking against fingerprints and DNA retrieved from crime scenes, so that any trace left by a police officer in the course of investigating the crime can be discounted.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 This instrument amends 2003 Regulations for two separate purposes. The first is to simplify the procedure for the consideration of business interests of serving police officers. The current system by which an initial decision is taken in the name of the chief officer of police, with a right of appeal to the police authority and then to the Home Secretary, is replaced by a process by which the initial decision is taken by an officer in the force Professional Standards Department, with a right of appeal to the chief officer.

7.2 In light of the removal of the external right of appeal, additional safeguards are introduced to ensure fairness. A police officer putting forward a business interest is to be notified of any provisional decision to reject a business interest and given the opportunity to make further representations, the right to make oral as well as written representations is secured, the officer may be represented by a "police friend" throughout the process, and the power to determine an appeal must be exercised by the chief officer personally, or by another senior officer standing in for the chief officer in a limited range of circumstances set out in statute. Further, a failure by the police officer to abide by a rejection of a proposed business interest is to be the subject of disciplinary proceedings, rather than providing immediate grounds for dismissal.

7.3 These changes are implemented by the replacement of the existing regulation 7 to 9 of the 2003 Regulations. A new regulation 9A is inserted, containing the existing provisions on approval of business interests of candidates for appointment to a police force. An effort has been made to make the new provisions simpler and more accessible than the old. The changes have been made in response to the HMIC report of December 2011, *Without Fear or Favour*, which examined police relationships, and recommendations in Part 1 of the Independent Review of Police Officer and Staff Remuneration and Conditions, and are made after detailed consideration by the Police Advisory Board for England and Wales ("the PABEW").

7.4 The second purpose behind the instrument is to provide for the taking of fingerprints and DNA samples from a candidate for appointment to police forces, and the checking of the fingerprints and samples against the unmatched crime scene marks database to establish whether the candidate is suspected of involvement in any unsolved crime. Any offer of appointment to the police force is conditional upon satisfactory completion of this procedure. This is achieved by the insertion of a new regulation 10A in the 2003 Regulations. Consequential changes are made to the existing regulations on the taking of fingerprints and samples for other purposes. This change implements a recommendation of the PABEW.

- ***Consolidation***

7.5 These Regulations make only limited amendments to the 2003 Regulations. Accordingly this is not regarded as a suitable opportunity to consolidate these and other amendments that have been made to the 2003 Regulations.

8. Consultation outcome

8.1 A draft of these Regulations were supplied to the PABEW, as is required by section 63(3) of the Police Act 1996, and the PABEW's comments have been taken into consideration.

9. Guidance

9.1 The Regulations are intended to be self-explanatory to the lay reader.

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector of the new provisions about fingerprints and samples is negligible as the tests will be carried out only for candidates who are to be offered appointment to a police force – fingerprints and samples are already taken from officers after appointment. The new business interest regulations will result in reduced bureaucracy and therefore a lessening of the burden on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The 2003 Regulations make extensive provision about the terms and conditions of service of police officers in England and Wales, and the effective operation of the Regulations is the subject of ongoing attention by the Home Office.

13. Contact

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