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GENERAL NOTICE

NOTICE 548 OF 2010

NOTICE CALLING FOR PUBLIC COMMENTS

The South African Police Service is consulting on regulations under section 24(1)(eeA) of the South African Police Service Act, 1995, (Act No. 68 of 1995), with a view to submitting draft regulations to the Minister of Police for consideration.

The attached draft Regulations have been drafted for consultation purposes. An invitation is hereby extended to any person, or private or public institution that may have an interest to comment on the draft regulations, within 30 days from the date of publication of this Gazette.

Comments must be in writing and directed to:

Postal Address:

Major General PC Jacobs
Legal Division
South African Police Service
Private Bag X94
PRETORIA
0001

Street Address:

Room No. 340
3rd Floor
Presidia Building
255 Pretorius Street
Cnr. Paul Kruger and Pretorius Street
PRETORIA
0001
E-Mail: jacobspc@saps.org.za

GOVERNMENT NOTICE
DEPARTMENT OF POLICE

No. R

2010

SOUTH AFRICAN POLICE SERVICE ACT, 1995

**SOUTH AFRICAN POLICE SERVICE REGULATIONS FOR THE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

The Minister of Police has, under section 24(1)(eeA) of the South African Police Service Act, 1995 (Act No. 68 of 1995), made the regulations in the Schedule.

SCHEDULE

1. Definitions

In these Regulations any word or expression bears the same meaning which has been assigned to it in the South African Police Service Act, 1995 (Act No. 68 of 1995), hereinafter referred to as "the Act" and the Public Service Act, 1994 (Proclamation 103 of 1994):

"Directorate" shall mean the Directorate for Priority Crime Investigation established by section 17C of the Act;

"member" shall mean a member of the Service, who has been appointed in the Directorate; and

"relevant member" shall mean a member who is subjected to an integrity test in terms of these Regulations.

2. Disclosure of financial and other interests

- (1) For purposes of section 17E(7)(a) of the Act and Regulations 11 to 16 of the South African Police Service Employment Regulations, 2008, every member shall be regarded as a designated employee.
- (2) A member shall, not later than 30 April of every year disclose to the Minister on the form determined by the Public Service Commission for the disclosure of interests by Senior Management Service personnel, particulars of all-
 - (a) his or her registrable interests; and
 - (b) also the registrable interests of his or her immediate family members, in respect of the period 1 April of the preceding year to 31 March of the current year.
- (3) Regulations 11 to 16 of the South African Police Service Employment Regulations, 2008, shall apply to a member in respect of registrable interests of that member as well as to registrable interests, of which the member is aware, of any immediate family member of such member.

3. Measures for integrity testing

- (1) The Head of the Directorate may conduct, or authorise any member or any other person to conduct an integrity testing program to test the integrity of any particular member of the Directorate.
- (2) An integrity testing program may involve-
 - (a) an act or omission (by a person who is conducting the integrity testing) that offers a member whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the Service's Code of Conduct, Disciplinary Regulations or in contravention of any law;
 - (b) testing a member for the abuse of alcohol or drugs; or
 - (c) using the polygraph or a similar instrument.
- (4) An integrity testing program referred to in subregulation (3)(a) involving the offering of an opportunity to commit any unlawful conduct, may only be

performed subject to the approval of, and in consonance with such guidelines as may be laid down by the National Director of Public Prosecutions or the Director of Public Prosecutions having jurisdiction in the area where the integrity testing will take place, or by his or her delegate, in terms of section 252A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

- (5) The Head of the Directorate may authorise in writing a member to require any other member of the Directorate to submit to an alcohol test.
- (6) If a relevant member is required to submit to an alcohol test the authorised member may require the relevant member to provide a specimen of breath for the test, to the satisfaction of the Head or authorised member.
- (7) The relevant member must comply with a requirement under sub-regulation (5).
- (8) The Head of the Directorate or the authorised member must perform the test using equipment prescribed in Regulation 332 of the Regulations made under the National Road Traffic Act, 1996 (Act No. 93 of 1996).
- (9) A relevant member who, without good reason fails to provide a specimen of breath as required may be charged with misconduct, and if found guilty, be subject to the penalty for disobeying a lawful order, command or instruction in terms of the South African Police Service Disciplinary Regulations.
- (10) Any specimen of breath of a relevant member of the Directorate-
 - (a) when reporting for duty;
 - (b) while on duty; or
 - (c) while on call for duty,may not have any evidence of alcohol when such member is tested under sub-regulations (7) and (8).
- (11) A member must not have in his or her urine at any time evidence of a drug defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992),
 - (a) which the relevant member may not lawfully take;
 - (b) which the relevant member has taken in a way contrary to the direction of a doctor or the recommendation of the manufacturer of the substance.

- (12) A member who is lawfully taking a drug referred to in subregulation (11), must not perform duties in or involving operational capacity if the substance impairs the member's capacity to perform the duties without danger to the member or someone else.
- (13) The Head of the Directorate or a member, authorised in writing by the Head of the Directorate may require any other member to submit to a drug test.
- (14) The Head of the Directorate or the authorised member may require the relevant member to provide a specimen of urine to a registered medical practitioner or registered nurse for a drug test at a place and time specified by the Head or the authorised member.
- (15) The registered medical practitioner or the registered nurse may give reasonable necessary directions to the relevant member about how the specimen is to be provided and providing sufficient specimen for the test.
- (16) Subject to subregulation (17), the relevant member must provide the specimen in accordance with the directions of a registered medical practitioner or registered nurse.
- (17) A relevant member who fails to provide a specimen of urine shall, unless the relevant member-
- (a) acted upon the directions referred to in subregulation (16); and
 - (b) have a reasonable excuse because of a medical condition, for being unable to provide a specimen of urine,
- may be charged with misconduct and if found guilty, be subject to the penalty provided for disobeying a lawful order, instruction or command in terms of the South African Police Service Disciplinary Regulations.
- (18) The Head of the Directorate or a member authorised by him, or her may require any other member to submit to a polygraph or similar test, and the relevant member shall submit to such test.
- (19) If a test is conducted in terms of subregulations (5) to (17) and the test of the relevant member -
- (a) has evidence of alcohol in his or her breath;
 - (b) has evidence of a drug in his or her urine,
- the Head of the Directorate may do any one or more of the following-

- (i) suspend the relevant member from duty until the member is no longer over the relevant alcohol limit or no longer has evidence of a drug in his or her urine;
 - (ii) require the relevant member to undergo counselling or rehabilitation approved by the Head of the Directorate;
 - (iii) refer the relevant member to a registered medical practitioner of the said Head's choice for a medical examination and report of the member's fitness to continue to perform the member's current duties;
 - (iv) after considering a report referred to in paragraph (iii), direct the relevant member to perform other duties for such time as the Head of the Directorate considers necessary; or
 - (v) if appropriate in the circumstances, take disciplinary or other action against the relevant member under this Act, including transfer within the Service or dismissal of the member.
- (20) If the relevant member refuses to undergo a polygraph or similar test, or if the polygraph or similar test is indicative of possible deception, the Head of the Directorate may instruct the relevant member to subject himself or herself to a security screening referred to in section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), and the relevant member is obliged to comply with such instruction.
- (21) The measures in this Regulation may only be applied with due regard to decency and a member's rights to dignity and privacy, and only for the purposes provided for in these Regulations.

4. Measures to protect confidentiality of information

No person may disclose any information which he or she obtained in the application of the measures for integrity testing as set out in Regulation 3, except -

- (a) if such information is disclosed to any other person who of necessity requires it for the performance of his or her functions in terms of these Regulations;
- (b) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of these Regulations; or

- 7
- (c) if the information is required in terms of any law or as evidence in any court of law or formal disciplinary process.

5. Form and manner of complaints made to retired judge

- (1) A complaint in terms of section 17L of the Act shall be made in writing in the form set out in Annexure 1.
- (2) A complaint made in terms of section 17L of the Act may be lodged by e-mail, fax or post or be delivered at the office of the retired judge.
- (3) Annexure 1 and information setting out the manner in which a complaint must be lodged, the name and all relevant contact particulars of the retired judge appointed in terms of section 17L of the Act, shall be made available to all police stations and be placed on the website of the South African Police Service.
- (4) Complaints may also be lodged at any office of the Independent Complaints Directorate, which shall ensure that the complaint is submitted to the retired judge without any delay.
- (5) A Category 1 complaint shall be a complaint by any member of the public in terms of section 17L(4)(a) who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation of the Directorate.
- (6) A Category 2 complaint shall be a complaint in terms of section 17L(4)(b) of the Act by any member of the Directorate who can provide evidence of any improper influence or interference whether of a political or other nature, exerted upon him or her regarding the conducting of an investigation.
- (7) The retired judge may require from any complainant to submit any allegations made to him or her in the form of an affidavit.
- (8) A person, who wishes to lodge a complaint at an office of the Independent Complaints Directorate, shall be assisted by personnel of the Independent Complaints Directorate to complete the prescribed form, if so requested.

ANNEXURE 1

COMPLAINT REPORTING FORM IN TERMS OF SECTION 24(1)(eeA)(iv) OF THE SOUTH AFRICAN POLICE SERVICE ACT, 1995 (ACT NO. 68 OF 1995)

COMPLAINT REPORTING FORM TO THE JUDGE APPOINTED TO RECEIVE COMPLAINTS IN RESPECT OF THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

<p>NOTE: If additional space is required to provide information, use a Continuation Sheet and refer to item number which is being supplemented.</p> <p>Please complete all items to the extent possible to enable the Office of the Judge to locate persons who are important to the investigation of this complaint.</p>	<p>1 Date/Time of Complaint</p> <p>3 Method of Receipt <input type="checkbox"/> In Person <input type="checkbox"/> Written <input type="checkbox"/> E-Mail <input type="checkbox"/> Fax</p>	<p>2 Complaint No.</p> <p>4 <input type="checkbox"/> SAPS CAS/CR No. _____</p>
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<p>5 Complainant's Legal Name (First Name) (Surname)</p>	<p>6 Complainant's Address</p>	
<p>7 Complainant's Telephone Number</p>	<p>8 Complainant's ID No.</p>	<p>9 City/Town/Province (Postal Code)</p>
<p>11 Complainant's Occupation</p>	<p>10 Directions to Complainant's Home</p>	
<p>12 Work Telephone Number</p>	<p>13 Complainant's Work Address</p>	
<p>14 Complainant's Date of Birth</p>	<p>15 Name of Closest Living Relative (Surname) (First Name)</p>	
<p>16 Relative's Telephone Number</p>	<p>17 Relative's Street Address</p>	
<p>18 City/Town/Province (Postal Code)</p>	<p>19 Name of Nearest Neighbour (Surname) (First Name)</p>	
<p>20 Neighbour's Telephone Number</p>	<p>21 Neighbour's Street Address</p>	
<p>22 City/Town/Province</p>	<p>23 Nature of investigation of the Directorate for Priority Crime Investigation</p>	

(Postal Code)			
<p>24 Category 1 Complaint by member of the public: Give full details of serious and unlawful infringement of your rights caused by the investigation of the Directorate for Priority Crime Investigation. Category 2 Complaint by a member of the Directorate for Priority Crime Investigation: Give full details of improper influence or interference whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation. NOTE: In respect of both categories of complaints the nature and availability of evidence to support the complaint are required.</p>			
25 Name(s) and details of possible witnesses to support complaint	1.		
	2.		
	3.		

26 Witness 1 Street Address	27 Witness 1 Other Name
28 City/Town/Province	29 Witness 1 Telephone Number
30 Witness 2 Street Address	31 Witness 2 Other Name
32 City/Town/Province	33 Witness 2 Telephone Number
34 Witness 3 Street Address	35 Witness 3 Other Name
36 City/Town/Province	37 Witness 3 Telephone Number
38 Witness 4 Street Address	39 Witness 4 Other Name
40 City/Town/Province	41 Witness 4 Telephone Number

COMPLAINT CERTIFICATION			
<p>I have been advised that the filing of a false report may constitute defeating the ends of justice, or in appropriate cases perjury, which are criminal offences, and I hereby certify that all of the information contained in this Complaint Reporting Form as well as any supporting Complaint Continuation Sheets is true and correct to the best of my knowledge and belief.</p>			
Date		Signature/Mark of Complainant	
Date		Signature of Witness	
42 Printed Name of Report Taker	43 Signature of Report Taker	44 Number of Continuation Sheets Completed and Attached	

FOR USE OF PERSONNEL OF JUDGE'S OFFICE ONLY

45 Preliminary Classification: <input type="checkbox"/> Category I <input type="checkbox"/> Category II	46 Other observations	
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TEAR OR CUT ALONG THIS LINE

IMPORTANT - DO NOT LOSE THIS RECEIPT!

This is a receipt for the complaint you have just filed. It bears a Complaint Number in the lower right hand box which identifies the complaint. Please make sure that the numbers are the same as in box no. 2 on the form, before you accept this Receipt. Any future communication concerning this matter should refer to the Complaint Number. If you have additional information or questions, you may call the Office of the Judge at Tel No. _____ during the hours of 0800 to 1600. You will be contacted during the processing of this matter and at the time a decision is reached concerning a final disposition. Thank you for your assistance!

The Office of the Judge: Complaints Mechanism for the Directorate for Priority Crime Investigation

Street Address:.....

Postal address:

E mail:

Printed Name of Report Taker	Signature of Report Taker	Number of Continuation Sheets Completed and Attached	Complaint Number
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