

Subsidiary Legislation made under s.79.

Police (Testing for Substance Abuse) Regulations 2018

LN.2018/206

Commencement

1.12.2018

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SCHEDULE 1 TESTING FOR SUBSTANCE MISUSE

2006-20

Police

2018/206 Police (Testing for Substance Abuse) Regulations 2018

In exercise of the powers conferred upon him under section 79 of the Police Act 2006, and of all other powers enabling him in that behalf, the Commissioner of Police hereby makes the following Regulations with the approval of the Government—

Title and Commencement.

1.(1) These Regulations may be cited as the Police (Testing for Substance Abuse) Regulations 2018.

(2) These Regulations shall come into force on the 1st day of December 2018.

Interpretation.

2. In these Regulations –

"Act" means the Police Act 2006;

"the Authority" means the Gibraltar Police Authority established under the Act;

"Commissioner" shall have the same meaning as in the Act;

"Force" shall have the same meaning as in the Act;

"Fingerprints" shall have the same meaning as in section 77 of the Criminal Procedure and Evidence Act 2011;

"Members of the Force" and "candidates for appointment" shall include any civilian staff employed under Part XI of the Act or transferred into the Force as the case may be;

"Oral fluid" includes saliva;

"safety critical tasks" means tasks which involve providing a service which is critical to, or could endanger, public safety or which involve the command and control of the Force;

"Speculative search" shall have the same meaning as in section 77 of the Criminal Procedure and Evidence Act 2011;

Samples.

3.(1) Every member of the Force must provide a sample when directed to do so by the Commissioner and in accordance with any such direction.

(2) Samples, or the information derived from samples of members of the Force taken in accordance with this regulation, shall be kept separate from samples taken in accordance with section 89 of the Criminal Procedure and Evidence Act 2011.

(3) Samples, or the information derived from samples of members of the Force in accordance with this regulation, may be checked against samples of the information derived from samples taken in accordance with the Criminal Procedure and Evidence Act 2011 or recovered from the scenes of crime.

(4) Samples of a member of the Force taken in accordance with this regulation shall be destroyed before the end of the period of six months beginning with the date on which they were taken.

(5) The information derived from samples of a member of the Force taken in accordance with this regulation, and all copies and records thereof, shall be destroyed within 12 months of that member ceasing to be a member of the Force.

(6) In this regulation any reference to "sample" means -

- (a) oral fluid; or
- (b) a swab taken from the mouth.

Fingerprints.

4.(1) Subject to subregulation (4), every member of the Force shall in accordance with the directions of the Commissioner have his or her fingerprints taken.

(2) Fingerprints of members of the Force taken in accordance with subregulation (1) shall be kept separate from the fingerprints of persons whose fingerprints have been taken otherwise than in accordance with that subregulation.

(3) The fingerprints of a member of the Force taken in accordance with subregulation (1), and all copies and records of those fingerprints, shall be destroyed within 12 months of that member ceasing to be a member of the Force.

(4) A member of the force who was required to have fingerprints taken under regulation 5 shall not also be required to have his fingerprints taken under subregulation (1).

Fingerprints and samples prior to appointment to the Force.

5.(1) Where a candidate for appointment to the Force is to be offered an appointment, the offer shall 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 Commissioner must be satisfied that the candidate is suitable for appointment following the results of the speculative search.

(2) In a case to which subregulation (1) applies, the candidate shall notify the Commissioner 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) A candidate for appointment to the force must, on being so required by the Commissioner, give a sample of oral fluid or urine to be tested in accordance with the procedures at Schedule 1 for evidence of such controlled drugs as set out therein.

(4) Where a candidate is appointed as a member of the Force, upon appointment—

- (a) any fingerprints taken under subregulation (1) shall be treated as if they had been taken under regulation 4 above; and
- (b) any sample and any information derived from a sample taken under subregulation (1) shall be treated as if the sample had been taken under regulation 3 above.

(5) Save where otherwise stated in this regulation "sample" has the same meaning as in regulation 3(6).

Testing for substance misuse.

6.(1) The Commissioner may require any member of the Force who:

- (a) gives the Commissioner reasonable grounds for believing that he has used a controlled drug; or
- (b) is on a period of probation under regulation 5 of the Police Regulations 1961; or

- (c) has been identified by the Commissioner as being vulnerable because of a specific responsibility for dealing with drugs; or
- (d) has been identified by the Commissioner as carrying out safety critical tasks; or
- (e) 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 the procedures contained at Schedule 1.

(2) The Commissioner may require a member of the Force who falls within subregulation (1)(e), or gives the Commissioner reasonable grounds for believing that he is under the influence of alcohol, to give a sample of breath to be tested for evidence of alcohol in accordance with the procedures contained at Schedule 1.

(3) A member of the Force who—

- (a) on giving a sample under subregulation (1) is found to have taken a controlled drug specified in Schedule 1; or
- (b) falls within subregulation (2), and is found to have more than 13 microgrammes of alcohol in 100 millilitres of breath

may face such consequences as specified in Schedule 1.

(4) In this regulation, a maximum of 3 samples may be required over a maximum period of 90 days calculated from the date on which the first sample was obtained and excluding any days taken as sick leave.

Delegation.

7. The Commissioner may delegate any obligation or right within these regulations to any member of the Force provided that said member is not below the rank of Superintendent.

Policy.

8.(1) The Commissioner may issue policies on the matters contained in these regulations with the approval of the Authority.

(2) Any policies issued under subregulation (1) may be updated from time-to-time by the Commissioner with the approval of the Authority.

SCHEDULE 1

Regulations 5 & 6

TESTING FOR SUBSTANCE MISUSE

1. Subject to paragraph (2), for the purposes of regulations 5(3) and 6(1)(b)(c) (d) and (e), the controlled drugs that testing shall cover are:

- i. Amphetamines (including ecstasy);
- ii. Cannabis;
- iii. Cocaine;
- iv. Non prescribed steroids;
- v. Opiates (e.g. morphine and heroin); and
- vi. Benzodiazepines.

2. Where testing is carried out in accordance with 6(1)(a), because the Commissioner has reasonable grounds for believing, on the basis of intelligence, that the officer has used a controlled drug, the testing may cover one other controlled drug or drug group, in addition to the controlled drugs listed in paragraph (1), provided that the officer is informed prior to testing of the drug(s) or drug group(s) for which he or she is to be tested.

Testing procedures

3. For the purposes of regulations 5(3) and 6(1), the following procedures shall apply in relation to testing for controlled drugs.

4. Testing shall be carried out without advance notice.

5. On-site testing using portable testing kits may be used to screen out members of the Force and candidates for appointment at an early stage of these procedures. Any test that is relied upon in criminal or disciplinary proceedings shall be conducted through laboratory analysis.

6. Collection of samples and initial on-site screening may be undertaken by the Gibraltar Health Authority, another independent agency or by suitably trained police staff. There shall be a secure chain of custody through collection, analysis and medical review. Laboratory analysis shall be undertaken by an independent agency.

7. Split samples shall be used in all cases that progress to laboratory analysis. A member of the Force shall have a right to have one sample tested independently to challenge the result of a test on the other sample.

8. The following procedures shall apply in relation to the testing for alcohol. Testing for alcohol shall be carried out without advance notice and using breath testing equipment capable of taking measurements at the 13 microgrammes per 100 millilitres of breath.
9. A member of the Force who is off duty shall not be recalled to duty for the purposes of testing controlled drugs or alcohol.

Consequences of testing positive

10. Positive results may lead to criminal charges, formal disciplinary proceedings or both.