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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
Police, Department of / Polisie, Departement van			
3987	South African Police Service Act, 1995 (68/1995): South African Police Service Employment Amendment Regulations, 2023	49543	3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF POLICE

NO. 3987

23 October 2023

1/4/1

**INFORMATION NOTE****To: The Minister of Police**

AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964 (AS AMENDED) AND REGULATION 39 OF THE SOUTH AFRICAN POLICE SERVICE EMPLOYMENT REGULATIONS, 2018

1. PURPOSE AND BACKGROUND

- 1.1 The purpose of this Information Note emanates from the request from the Divisional Commissioner: Human Resource Management dated 2022-11-10 to effect amendments to Regulation 11 of the Regulations for the South African Police, 1964 (the Regulation).
- 1.2 This office is requested to consider the requirements for applicants as entry level police trainees (constables) in the SAPS, since certain sub-regulations of the Regulation are causing concern to organised labour.
- 1.3 The applicable sub-regulations relate to the applicant's permanent residency (citizenship), age limit and the tattoo marks.
- 1.4 Meetings were held with organised labour (SAPU and POPCRU) before the amendments could be tabled at the SSSBC for consultation.

2. DISCUSSION

- 2.1 The sub-regulations that need amendment currently read as follows:

"APPLICATION FOR EMPLOYMENT

11 (1) (a) *A person who applies to be appointed as a member must-*

...

- (ii) *have permanent residence in the Republic of South Africa of which documentary proof must be furnished:*

AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964

(iii) *be at least eighteen (18) and under thirty (30) years of age of which documentary proof must be furnished;*

...

(xi) *not have any tattoo marks of which will be visible and irreconcilable with the objectives of the Service;*

..."

2.2 Citizenship vs permanent residency

2.2.1 In terms of section 10(1)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), a person may only be appointed in the public service if he or she is a South African citizen.

2.2.2 During 1998, departments were advised by the Department of Public Service and Administration not to apply section 10(1)(a) of Public Service Act, 1994, when considering candidatures of non-citizens vis-à-vis South African citizens for purposes of permanent appointment.

2.2.3 This emanates from the Constitutional Court judgment in *Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another* (CCT2/97) [1997] ZACC 16; 1997 (12) BCLR 1655; 1998 (1) SA 745 (26 November 1997) where the Court held that regulation 2(2) constitutes unfair discrimination against permanent residents, because they are excluded from employment opportunities even though they have been permitted to enter the country permanently.

2.2.4 The SAPS believes reintroducing the requirement that a person may only be appointed in the SAPS if he or she is a South African citizen can be justified due to the uniqueness of the SAPS.

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AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964**2.3 Age**

- 2.3.1 With regard to the age limit, it is imperative to note that the Constitution lists a number of grounds on which the state is precluded from discriminating unfairly against anyone. And those grounds include age.
- 2.3.2 The Regulation requires that to become a member of the SAPS, the applicant must be above 18 years of age and not over 30 years.
- 2.3.3 In terms of Policy 2 of 2019 (South African Police Service Youth Policy) "SAPS Youth" means employees of SAPS appointed both in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995) and the Public Service Act, 1994 (Proclamation No. 103 of 1994) not older than 35 years. The National Youth Development Agency Act, 2008 (Act No. 54 of 2008) defines "youth" as persons between the ages of 14 and 35.
- 2.3.4 It would be justified to align the recruitment age with that as set out in the definition of youth to wit, not older than 35 years.

2.4 Tattoos

- 2.4.1 One of the requirements, as set out in the Regulation, is that a candidate to be appointed in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995) must not have any tattoo marks of which will be visible and irreconcilable with the objectives of the Service.
- 2.4.2 The first requirement is that a tattoo must not be visible when a member wears or is dressed in uniform.
- 2.4.3 The second requirement is that even if the tattoo is not visible when wearing uniform, such tattoo must not be irreconcilable with the objectives of the Service. For instance if the person takes off his or her shirt and has a tattoo, it must not be irreconcilable with the objectives of the Service.



AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964

- 2.4.4 The same rule is applicable to reservists. Regulation 3(1)(r) of the South African Reserve Police Regulations, 2002, provides that when a reservist is enrolled he or she must not have a tattoo which will be visible if the person wears a uniform.
- 2.4.5 In respect of the limitation or restrictions applied to tattoos, the SAPS relies on section 36 of the Constitution of the Republic of South Africa, 1996, which reads as follows:
- (1) *The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—*
- (a) *the nature of the right;*
 - (b) *the importance of the purpose of the limitation;*
 - (c) *the nature and extent of the limitation;*
 - (d) *the relation between the limitation and its purpose; and*
 - (e) *less restrictive means to achieve the purpose.*
- (2) *Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."*
- 2.4.6 Visible tattoos may negatively affect the perception and neutrality of members as viewed by the community. It may also be necessary to consider that rules of this nature do not only relate to the fact that an individual may choose to have a tattoo, but also to the fact that the presence of tattoos influence the perception of members by communities that we are required to serve and may, in turn, affect the ability of members to perform their duties.
- 2.4.7 Tattoos are historically associated with specific, often negatively connected with marginalized groups and backgrounds (for example, former prisoners, gangsters and motorcyclists). The Service cannot afford the risk that

D

AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964

communities view members as associating themselves with any specific group, to the perceived detriment of others, who do not belong or associate with such groups.

- 2.4.8 According to the Code of Conduct, which must be signed by every member, a member undertakes to *inter alia* with integrity, render a responsible and effective service of high quality **which is accessible to every person** and continuously strive towards improving this service. Consideration is therefore also given to the appearance of a member and how he or she may be perceived by the community that we serve.

2.5 Concerns of Organised labour

- 2.5.1 Meetings were held with representatives of SAPU and POPCRU, it was agreed that the following will be removed from the proposed Amendment Regulations or amended:

2.5.1.1 Removed: "undertake not to wear any religious or cultural adornment or symbol with any uniform of the Service and to conform to the dress orders of the Service" (in the view of Organised Labour it is unconstitutional); and

2.5.1.2 Amended: "not have been dismissed for any form of misconduct from the employ of a previous employer nor have any pending disciplinary case against him or her" to "not have been dismissed for misconduct from the employ of a previous employer, where such dismissal relates to dishonesty or violence".

- 2.5.2 Agreement could not be reached regarding tattoos, Organised Labour believes that tattoos should only be disallowed if it is visible and irreconcilable with the objectives of the SAPS.

- 2.5.3 POPCRU proposed that the age limit for enlistment be increased to 39 years and that a driving licence should not be a requirement.

2.6 Conclusion

- 2.6.1 Regulation 11(1)(a)(iii) and (ix) should be amended to clarify any misunderstanding that exist in the interpretation of the sub-regulations.



AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964

2.6.2 Conditions of employment recruitment and conditions for appointment appears both in the Regulations for the South African Police, 1964, and the South African Police Service Employment Regulations, 2018. In order to consolidate this it is necessary to repeal regulation 11 of the Regulations for the South African Police, 1964, and include conditions for appointment of police trainees in regulation 39 of the South African Police Service Employment Regulations, 2018.

2.6.3 The amendment Regulations also clarifies issues relating to previous convictions, pending criminal cases, dismissal for misconduct from the employ of a previous employer and pending disciplinary cases.

3. RECOMMENDATION

The Amendment Regulations are attached hereto for the signature of the Minister of Police, should he approve.

JKL

Sw Chamane

LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: LEGAL SERVICES
SW CHAMANE

Major-General D Boukes

Date: 2023/06/01

Recommended / ~~not recommended~~
Comments:

PP Dimpane

LIEUTENANT GENERAL
ACTING DEPUTY NATIONAL COMMISSIONER: SUPPORT SERVICES
PP DIMPANE

Date: 2023-06-02

AMENDMENT OF REGULATION 11 OF THE SOUTH AFRICAN POLICE REGULATIONS, 1964

Recommended/not recommended

Comments:

AS PER ATTACHED LETTER.

**ACTING SECRETARY OF POLICE: CIVILIAN SECRETARIAT FOR THE POLICE SERVICE
B OMAR**

Date:

Recommended/~~not recommended~~

Comments:

Review support. Its long overdue.



.....Lieutenant General
T. C. Mosikili

GENERAL

**NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
SF MASEMOLA (SOEG)**

Date: 2023 -09- 19

Approved/~~not approved~~:

Comments:


**GENERAL BH CELE (MP)
MINISTER OF POLICE**

Date: 17/10/2023

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