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Employment of Members of Police Forces by Fire and Rescue Authorities

Issued by:

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Fire and Rescue Service Development Division

Addressed to:

**The Chair of the Fire and Rescue Authority
The Chief Executive of the County Council
The Clerk to the Fire and Rescue Authority
London Fire Commissioner
The Chief Fire Officer**

Please forward to:

**Heads of Human Resources
Heads of Recruitment**

Summary

Fire and Rescue Services have sought clarification on whether Special Constables and Police Community Support Officers can be employed as Retained Duty System Firefighters. This Circular provides advice.

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Employment of Members of Police Forces by Fire and Rescue Authorities

1.0 Introduction

- 1.1 Communities and Local Government has recently been asked by Fire and Rescue Services to provide advice on whether Special Constables and Police Community Support Officers can be employed as Retained Duty System (RDS) firefighters, and vice versa.
- 1.2 Section 37 of the Fire and Rescue Services Act 2004 prohibits the employment by a Fire and Rescue Authority of a member of a Police Force. The Act states *"No member of a police force may be employed by a fire and rescue authority for the purpose of discharging any of the authority's functions under this Act."*
- 1.3 A "member of a police force" is not defined in the Fire and Rescue Services Act, although in effect it relates to members of a police force employed as Police Constables. The term is, however, defined in Section 101(1) of the Police Act 1996 as meaning a member of "a force maintained by a police authority". The definition in the Police Act 1996 applies to Section 37 of the Fire and Rescue Services 2004 Act, by virtue of Section 5 and Schedule 1 of the Interpretation Act 1978.

2.0 Special Constables Employed as Firefighters

- 2.1 Guidance previously issued by the Office of the Deputy Prime Minister (Fire and Rescue Service Circular 38/2004, page 12) stated *"Section 37 of the [Fire and Rescue Services] Act maintains the longstanding prohibition on the employment by a Fire and Rescue Authority of a member of the police force. However, this prohibition applies only to warranted officers (e.g. Constables) and therefore does not extend to special constables, community support officers or other support staff."*
- 2.2 However, Communities and Local Government has received advice from the National Policing Improvement Agency (which leads on policy for Special Constables) that Special Constables are deemed to be warranted and attested officers. As such, they possess full policing powers, including the power of arrest, which can be exercised in any police force in England and Wales. But Special Constables are not deemed to be members of the 'police force', and are not covered by the definition in Section 101 of the Police Act 1996.
- 2.3 Therefore, provided there is local agreement between the Chief Fire Officer and the Chief Constable of the Police Force, a Special Constable can be permitted to serve as a Retained or Wholetime Duty System Firefighter.

3.0 Firefighters Employed as Special Constables

- 3.1 There is no restriction in the Police Act 1996 which prohibits firefighters from becoming Special Constables. Firefighters employed on either the Retained or Wholetime Duty Systems who seek to also work as Special Constables are eligible to do so, provided there is local agreement between the Chief Fire Officer and the Chief Constable.

- 3.2 This eligibility is affirmed by the National Policing Improvement Agency in their Special Eligibility Guidance which states:

“Section 37 of the Fire and Rescue Services Act 2004 prohibits the employment of members of a police force by a fire and rescue authority for the purpose of discharging any of the authority’s functions under the Act.” This is because off duty police constables are expected to assume police duties in the event of witnessing the commission of a crime or a threat to public order and, therefore, there always remains a risk of conflict between the two roles of police constable and retained firefighters being appointed as special constables.”

*“If Chief Officers are satisfied that employees of fire and rescue authorities could make a positive contribution despite their obligations to the fire and rescue service, there is no reason why either regular (whole or part-time) or retained firefighters should not join the Special Constabulary. This is a matter, which needs to be agreed locally between the Chief Constable and the Chief Fire Officer. **Fire and Rescue Service personnel are eligible to be appointed as special constables.**”*

- 3.3 A copy of the NPIA circular “Special Constables: Eligibility for Recruitment” is attached.

4.0 Police Community Support Officers

- 4.1 Police Community Support Officers are police authority support staff (they are not defined as regular members of a 'police force') and their terms and conditions are set locally by each police authority. There is nothing to prohibit a Community Support Officer from joining the Retained Duty System, or vice versa, provided there is local agreement between the Chief Fire Officer and the Chief Constable.

5.0 Enquiries

- 5.1 If you have any queries about this Circular please contact either Mona Shah on 0303 44 42950 or John Dackombe on 0303 44 42945.

NPIA(WSU)(SC)(07)1

This circular is about:	Special Constables: Eligibility for Recruitment
From:	Workforce Strategy
Date for implementation:	This cancels HOC: 12/2000
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This circular is addressed to:	Chief Officers of Police
Copies are being sent to:	Clerks to Police Authorities, Special Constabulary Chief Officers Special Constabulary Coordinators, H R Directors

Dear Chief Officer

SPECIAL CONSTABLES: ELIGIBILITY FOR RECRUITMENT

This Circular contains guidance on:

- **Qualifications for appointment (paragraphs 3 to 10);**
- **Eligibility for appointment (paragraphs 11 to 15 and Annexes);**
- **Other activities (paragraphs 16 to 20).**

Introduction

1. This Circular updates and supersedes the guidance contained in Home Office Circular 12/2000, which is now cancelled. Other than those occupations where there are specific legal or employer related considerations debarring appointment (see Annex A), it is intended as guidance. It does not preclude forces from appointing persons to the Special Constabulary who might individually be suitable. The decision to appoint individual special constables remains at the discretion of the Chief Officer of the Force concerned.

2. The common Home Office and ACPO objective on the Special Constabulary recruitment is to encourage men and women from all backgrounds with the necessary attributes and motivation to join. We wish wherever possible and without any lowering of standards, to remove barriers to recruitment and ensure that the Special Constabulary is representative of the communities it serves.

(A) Qualifications for appointment

3. The Special Constables (Amendment) Regulations 2002 made a number of amendments to The Special Constables Regulations 1965 in respect of qualifying for appointment. The position as it now stands as a result of those amendments is set out below.

4. In terms of the general recruitment process, forces should ensure that any recruitment literature they produce is clear and that they establish an appropriate assessment model to test the basic ability of candidates. The Home Office and ACPO have jointly developed some good practice guidance on recruitment, which can be found on the Special Constables page of the NPIA Website. It is recommended that forces familiarise themselves with this and the case studies described in examining their own processes.

(a) Nationality

5. A candidate for appointment as a special constable who is not a member of the European Economic Area (EEA) must have permission to enter or leave to remain in the United Kingdom for an indefinite period. That is to say that such applicants must be resident in the United Kingdom free of restrictions or have an entitlement to do so.

(b) Competency in English and numeracy

6. All candidates for appointment as a special constable must satisfy the Chief Officer of police that they are sufficiently competent in written and spoken English, and sufficiently numerate, by passing such assessment in written and spoken English, and numeracy, as may be determined by the Chief Officer of police.

(c) Age

All candidates for appointment as a special constable must have attained the age of 18 years. The recruitment age for special constables was amended to 18 years of age by the Police (Minimum age for Appointment) Regulations 2006 (SI2006/2278).

<http://www.opsi.gov.uk/si/si2006/20062278.htm>

7. There is no upper age limit for appointment, but candidates must be in good health and able to satisfy the force's fitness and eyesight standards (see paragraph 10). The Special Constable Regulations 1965 (SI1965/536) states at Paragraph 3(2)

"(2) The chief constable may require a special constable to retire on such date as he may specify—

(a) on account of age;

(b) on the grounds that he is disabled to perform the ordinary duties of a special constable and the disablement is likely to be permanent, or

(c) as an alternative to dismissal, where he has been remiss or negligent in the discharge of his duty or otherwise unfit for the same."

The Employment Equality (Age) Regulations 2006 set a default retirement age of 65. However this provision applies to police staff, and not to police officers. The compulsory retirement age set out in Home Office Circular 30/2006 is 60 years for Federated officers with effect from 1 October 2006. Whilst this circular refers to the Police Pension scheme, which obviously does not apply to Special constables, it gives an indication of the age of retirement which could be applied.

(d) Character

9. All candidates for appointment as a special constable must be of good character. Suitability as regards to character for appointment should be assessed in line with the guidance for regular police officers contained in HOC 54/2003 (National Recruitment Standards – Eligibility Criteria for Police Recruitment and Consistent Recruitment Practices). This includes the criteria for applying the policy on criminal convictions, financial vetting checks, references, etc.

(e) Health

10. All candidates for appointment as a special constable must be in good health. As outlined in the Good Practice Guidance, forces should benchmark their existing processes and establish formal criteria to assess the fitness and eyesight of a candidate to undertake the role of special constable. While these standards should ideally be the same as those for regular officers, the Chief Officer is free to use discretion in individual cases where an individual's ill health would not interfere with their undertaking the role of special constable or any specific duties they are given.

(B) Eligibility for appointment

(i) Occupations where staff are ineligible to be appointed as special constables (Annex A)

11. Persons in some occupations are ineligible due to sector specific legislation or because employers have clearly stated that it would be inappropriate for their employees to become special constables.

12. Such persons are not eligible to be appointed as special constables.

(ii) Occupations where staff are eligible to be appointed as special constables subject to agreement of their employer and at the discretion of the Chief Officer (Annex B)

13. Persons in some occupations may potentially find themselves in a position or be pressed to abuse their powers and privileges as a special constable, either on or off duty. It is important to minimise the risk of this happening and forces should take this into account when assessing individual candidates. Persons in other occupations may be eligible to be appointed as special constables provided that employers' specific concerns/requirements are addressed/taken into account.

14. Accordingly, forces should consider carefully on an individual basis whether it would be appropriate to appoint a candidate as a special constable if it would potentially:

- enhance their employed function by going beyond the bounds of their job description, or beyond the restricted law enforcement powers considered suitable by Parliament for their profession (e.g. PCSOs – see below); or
- enable them to gain a business advantage over competitors by using Special Constabulary status;
- mean a significant chance that this would lead to conflicts of interest, for themselves or for others, between their obligations as a constable and their effectiveness in their professional life or another volunteering role;
- conflict with employers' specific concerns/requirements.

(iii) Other occupations where staff are eligible to be appointed as special constables at the discretion of the Chief Officer (Annex C)

15. While some candidates will be in occupations where their employers do not have specific concerns/requirements which need to be addressed/taken into account, some may be employed in occupations subject to other factors described in paragraph 14 above. Some occupations (and there may be others) that fall into this category are listed below. In such cases, individual applications will need to be assessed at the discretion of the Chief Officer. Many other occupations will not pose such potential difficulties. The final decision on all applications to join the Special Constabulary rests with the Chief Officer of the force concerned.

(C) Other activities

(i) Activity likely to interfere with the impartial discharge of duty

16. Special Constables should abstain from any activity which is likely to interfere with the impartial discharge of their duties or which is likely to give rise to the impression amongst members of the public that it may so interfere. In particular, special constables may not belong to the BNP, National Front or Combat 18 or any organisation whose constitution, aims, objectives or pronouncements are incompatible with the duty imposed by section 71 of the Race Relations Act 1976 on certain persons, in carrying out their functions, to have due regard to the need to:

- i) eliminate unlawful racial discrimination; and
- ii) promote equality of opportunity and good relations between persons of different racial groups.

ii) Seasonal or temporary work

17. At present, a special who is offered seasonal or temporary work in an occupation considered incompatible with police service has little option but to resign. The special constable concerned would have to formally resign and lose his or her constabulary status, but would be confident that re-attestation without loss of seniority or status would be allowed if he or she returns within an agreed limited period.

18. It is recommended that Chief Officers should allow special constables who resign, for the purposes of taking up incompatible employment to have a "return ticket" for a limited period. This should be included within forces' leave of absence policy as described in the HO/ACPO Good Practice Guidance, which can be found on the Special Constables page of the NPIA Website.

iii) Change of Employment

19. It is inevitable that some special constables will change their occupation during their time serving as a special. It is recommended that forces include in the appointment literature, if not already existing, a stipulation that recruits must notify the force of any change in employment, including giving their force details of the number of hours they will be working (so as to ensure compliance with the Working Time Regulations 1998). When any change occurs, Chief Officers will need to consider whether the change of employment means that the individual concerned remains eligible to serve as a special constable.

(iv). Change of address to different police force area

20. It is essential that forces retain the services of valued officers who change address and move to another force area. The good practice guidance recommends that forces establish a clear transfer policy in line with the requirements of HOC 6/99.

ANNEX A TO NIPA (WSU)(SC)(07)1

Occupations where staff are ineligible to be appointed as special constables

(i) The armed forces

The Ministry of Defence have confirmed that aside from armed forces personnel being held to be on a 24-hour-a-day basis requiring them to be available for essential duties at short, or no, notice; the undesirability of them entering into an agreement with the local police force if their availability cannot be guaranteed; unease about the possibility of them being in confrontation with the public or, possibly, with their service colleagues; and concern about the risk of injury to trained personnel; any serviceman attempting to join the Special Constabulary would be in direct contravention of Queen's Regulations. See Annex B (i) re: armed forces reserve

- **Armed forces personnel are ineligible to be appointed as special constables.**

(ii) Traffic wardens, school crossing patrols and parking attendants

Section 95(6) of the Road Traffic Regulation Act 1984 provides that "a police authority shall not employ as a traffic warden any person who is a constable". Section 26 of the Road Traffic Regulation Act 1984, prohibits constables from being school crossing patrols.

In addition, it is recognised that traffic wardens (and school crossing patrols) have been given specific duties by Parliament and that if attestation as constables were allowed, their law enforcement powers during their hours of duty in their paid work would thereby be greater than Parliament had intended.

Increasingly, some of the duties of traffic wardens are being performed by private contractors under local authority contracts. There is nothing in law to prevent traffic wardens, employed by private companies under contract to the local authority being eligible to serve as special constables. They do not have the same powers as police authority traffic wardens, being mainly concerned with reporting breaches of local by-laws.

- **Traffic wardens and school crossing patrols and parking attendants employed by police authorities are ineligible to be appointed as special constables**

(iii) Neighbourhood and street wardens and other uniformed patrol wardens

Part of their role is that of security, crime prevention and dealing with minor offences. A neighbourhood warden does not have constabulary powers and being a special constable would give a person an unfair business advantage over those who are not.

- **Neighbourhood and street wardens and other uniformed patrol wardens are ineligible to be appointed as special constables**

(iv) Highways Agency Traffic Officers

Highways Agency Traffic Officers wear uniform, used marked patrol cars and have powers relating to traffic management on Britain's motorways laid down in the Road Traffic Management Act 2004. They do not have constabulary powers and if attestation as constables were allowed, their law enforcement powers during their hours of duty in their paid work would thereby be greater than Parliament had intended.

- **Highways Agency Traffic Officers are ineligible to be appointed as special constables.**

(v) Police Community Support Officers (PCSOs)

PCSOs complement the work of police officers, including special constables. They focus on low level crime, anti-social and nuisance behaviour, help ensure high levels of visible police and strengthen links with the local community to increase public reassurance. However, they do not have full constabulary powers or power of arrest under section 24 PACE. A PCSO appointed as a special would therefore have their employed function enhanced and gain an unfair business advantage over those who are not.

- **PCSOs employed by police authorities (and therefore with powers) are ineligible to be appointed as special constables.**

(vi) Employers' police forces and private constabularies

Similar considerations to those for traffic wardens and parking attendants apply to members of what are referred to as non-Home Office constabularies or private police forces (for instance, parks police, police forces maintained by government departments, and other bodies with constabulary powers not maintained under the Police Act 1996). The powers of such individuals are prescribed by law and relate to the particular duties they are asked to perform on behalf of their employers. Special Constabulary status would enable them to go beyond the confines of existing legislation in respect of their normal employment; and there might be problems in ascertaining accountability if they were involved in a policing incident during their normal employment.

- **Members of employers' police forces and private constabularies are ineligible to be appointed as special constables.**

(vii) Those involved in the administration of the law

It is the strongly held view of the Ministry of Justice that, because of the potential for conflict of interest, members of police authorities, magistrates, clerks to justices, and clerks to courts should be ineligible for membership of the Special Constabulary.

- **Members of police authorities, magistrates, clerks to justices, and clerks to courts are ineligible to be appointed as special constables.**

ANNEX B TO NPIA (WSU)(SC)(07)1

Occupations where staff are eligible to be appointed as special constables subject to agreement of their employer and at the discretion of the Chief Officer

(i) Armed forces reserves

Those whose reserve liability is derived from former service in the regular forces are unlikely to be called out in peacetime. Members of the volunteer reserve forces, namely the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army and the Royal Auxiliary Air Force have a statutory obligation to train on a regular basis in peacetime as well as having call-out liabilities. The Ministry of Defence has no objection to members of the reserves joining the Special Constabulary on the understanding that the Chief Officer is aware that reserve commitments take precedence.

- **Members of the armed forces reserves are eligible to be appointed as special constables, subject to their reserve commitments taking precedence over their Special Constabulary duty.**

(ii) The fire service

“Section 37 of the Fire and Rescue Services Act 2004 prohibits the employment of members of a police force by a fire and rescue authority for the purpose of discharging any of the authority’s functions under the Act”. This is because off duty police constables are expected to assume police duties in the event of witnessing the commission of a crime or a threat to public order and, therefore, there always remains a risk of conflict between the two roles of police constable and retained firefighters being appointed as special constables.

If Chief Officers are satisfied that employees of fire and rescue authorities could make a positive contribution despite their obligations to the fire service and rescue service, there is no reason why either regular (whole or part-time) or retained firefighters should not join the Special Constabulary. This is a matter, which needs to be agreed locally between the Chief Constable and the Chief Fire Officer.

- **Fire service personnel are eligible to be appointed as special constables.**

(iii) Occupations with client privilege

There are professions whose practitioners have a code of ethics or an assumption of client privilege which might cause conflict of interest to a special constable. Forces’ recruitment personnel should discuss and assess with individual applicants the risks of unacceptable conflicts of loyalty in these circumstances. It is for Chief Officers to decide whether such a conflict is sufficient to exclude an applicant. If not, applicants should nevertheless be advised of any possible conflict of interest identified and, if considered necessary, they should be asked to provide evidence that their employers have no objection to their appointment as a special constable.

- **Persons where employment bestows client privilege are eligible to be appointed as special constables at the discretion of the Chief Officer and, where considered necessary, subject to the approval of the employer.**

(iv) Members of the medical and health professions

The relationship between patient and health practitioner could be inhibited by the practitioner holding the office of constable in terms of information given or received within this relationship. This might be a particular concern in a small community with little choice of medical services. Not all members of these professions are in a position in which such conflicts of interest are likely to occur and the Department of Health has previously agreed that such persons may apply to join the Special Constabulary providing their local NHS Trust or Health Authority confirm that there is no objection to their becoming a special constable.

- **Members of the medical and health professions are eligible to be appointed as special constables subject to confirmation that their local NHS Trust or Health Authority would not object to their becoming a special constable.**

ANNEX C TO NPIA (WSU)(SC)(07)1

Occupations where eligibility to be appointed as special constables should be carefully scrutinised by the Chief Officer

(i) General points

1. In the case of all other occupations, it is recommended that Chief Officers use their discretion to make decisions on an individual basis having considered all relevant information that may reflect on the persons ability to perform the role of special constable with impartiality (e.g.) duties, background, age, experience, position in the community etc.

2. It is advisable that Chief Officers take into account concerns over certain specific occupations that are listed below. Chief Officers should use all information available to make his/her decision in each individual application, according appropriate weight to each point.

3. The government wants specials and the wider voluntary sector to work more closely with police forces. We are therefore looking to widen the recruitment strategy for special constables, for example to see whether there are specific sectors of industry whose employees might have skills particularly suited to the role, and to look at increasing deployment within specials roles (e.g. fraud investigation, security etc).

(ii) Holder (and their partners) of liquor licenses, managers of licensed houses, licensees of betting/gaming premises

A regular police officer is required by the Police Regulations 2003 to notify his Chief Officer of any business interest held by himself or a member of his immediate family relating to liquor licensing or betting or gaming establishment. It is then for the Chief Officer to decide whether that business interest is compatible with the officer remaining a member of a police force. Guidance for appointment to the Special Constabulary follows this line.

Holders of these occupations might be tempted to use police uniform or the police organisation to advance their personal business interests – presumably, either because they would have constabulary powers and police training, or because they would have access to information as police officers that would be denied to them as civilians. This potential enhancement to an employed function could be seen as unfair and/or unmanageable.

(iii) Probation officers and youth and social workers involved in the administration of criminal law

The roles of probation officers, youth and social workers involved in the administration of criminal law may mean that their responsibilities within the Criminal Justice System would be likely to bring them into conflict with those of a constable.

(iv) Bailiffs, warrant officers, private detectives and inquiry agents

Holders of these occupations might be tempted to use police uniform or the police organisation to advance their personal business interests; presumably, either because they would have constabulary powers and police training, or because they would have access to information as police officers that would be denied to them as civilians. This potential enhancement to an employed function could be considered unfair and/or unmanageable.

(v) Employees of security organisations and security personnel, guards and doormen

Under previous guidance anyone employed as a “private security organisation” was ineligible to serve as a special constable. This has become an umbrella term, which covers all members of private security organisations, whether directors, partners or employees, and includes employees of private contractors paid to undertake court services and prisoner escort duties. It is for Chief Officers’ discretion whether to accept applications from those involved in the private security industry. But normally, such persons should not be eligible to become a special constable if their job involves such activities as would make them open to the temptation to use their position in the police for their own or for a business advantage (such as the patrolling and guarding of buildings, the transit of cash and valuables, wearing uniforms, and contact with the public).

(vi) Civilian staff employed by police authorities

A number of civilian staff employed by police authorities have roles which bring them into direct contact with the public and suspects, yet they do not have constabulary powers. In considering applications to become a special constable from this category of employee the Chief Officer should consider each case on its merits. For example, where staff work under close supervision and there is a clear separation between their main occupation and their role as a special then it should be up to the Chief Officers discretion. Such staff might include detention officers who work under the supervision of a custody officer always on police premises where it is clear that they can only use those powers available to them as detention officers; front office staff would also come under this category.

(vii) Prison Officers and prisons administrative staff

The Prison Service as an employer has concerns around the appointment of prison officers as special constables. These concerns centre around staff safety, conflict of interest and the possible use of police powers in a prison setting. For example, prison officers might have to deal on a day to day basis in custody with offenders they have arrested or given evidence against in court. It would be difficult in such circumstances for prison officers to interact with and build the trust of such prisoners. Moreover, any published awareness drive known to prisoners will generally undermine trust. There are also issues around possible conflicts of the use of police powers with the exercise of prison rules. The agreement of the prison governor is necessary before an application from a prison officer can be considered.

There is no objection to administrative staff in prisons and in headquarters from joining, provided they are otherwise eligible.