

DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 753

24 JUNE 2016

PRIVATE SECURITY INDUSTRY REGULATION ACT NO. 56 OF 2001

AMENDMENT TO THE REGULATIONS MADE UNDER THE PRIVATE SECURITY INDUSTRY
REGULATION ACT, 2001 (ACT NO. 56 OF 2001)

I, Nkosinathi Phiwayinkosi Thamsanqa Nhleko, Minister of Police, acting under section 35 of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001), read with section 32(1) of the Security Officers Act, 1987 (Act 92 of 1987) and after consultation with the Council for the Private Security Industry Regulatory Authority, hereby make amendments to the Improper Conduct Regulations in the Schedule hereto.

SCHEDULE

AMENDMENT OF THE IMPROPER CONDUCT REGULATIONS MADE UNDER THE PRIVATE SECURITY
INDUSTRY REGULATION ACT, 2001 (ACT 56 OF 2001)

Definitions

1. In this Schedule-

- (a) "Authority" means the Private Security Industry Regulatory Authority established in terms of section 2(1) of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001) and has the same meaning as the "Board" as defined in section 1 of the Security Officers Act, 1987 (Act 92 of 1987); and
- (b) "the Improper Conduct Regulations" means the Improper Conduct Enquiries Regulations, 2003 published under Government Notice No. 306 in *Government Gazette* 24971 of 28 February 2003.

Commencement

The amendments to the Improper Conduct Regulations contained in this Schedule will come into effect on [09 July 2016]

Substitution of regulation 3(4) of the Improper Conduct Regulations

3. The following regulation is hereby substituted for regulation 3(4) of the Improper Conduct Regulations:

"(4) If the director is satisfied that the requirements contemplated in sub-regulations (2) and (3) have been met, he or she may direct a prosecutor in writing to—

(a) cause:

- (i) a copy of the charge as contained in a charge sheet;
- (ii) a summons under the signature of the director to appear at an enquiry, at a date, time and place referred to in the summons, and to produce at the enquiry any document so referred to which may be relevant to the enquiry, and which is, or presumably is, in possession of the respondent; and
- (iii) all the other notices and documentation contemplated in this sub-regulation,

to be served on the respondent;

(b) ...

(c) request the respondent in writing to give written notice to the director within the period stated in the request of whether the respondent intends to plead guilty or not guilty to the charge as contained in the charge sheet;

(d) notify the respondent in writing that if the respondent intends to plead not guilty to the charge, the respondent may make substantiated submissions to the director within the stated period, indicating the basis of the defence in such a manner and with such detail that it will enable the director to make a decision on whether the enquiry should proceed on the basis set out in the summons, should proceed in respect of certain charges only, or which may shorten the proceedings at an enquiry;

(e) notify the respondent in writing that if the respondent intends to plead guilty to the charge, the respondent must submit an affidavit to that effect within the stated period to the director and may also submit substantiated representations in connection with the imposition of an appropriate penalty;

(eA) notify the respondent in writing that the respondent may, within the stated period, contact the prosecutor with a view to agreeing the terms and conditions of a settlement in respect of the alleged improper conduct with the prosecutor;

(f) notify the respondent in writing that the affidavit contemplated in paragraph (e), submitted on behalf of a respondent which is a security business, must be accompanied by a certified resolution

or other adequate proof that the person acting on behalf of the respondent is authorised to plead guilty and submit representations in connection with the imposition of a penalty;

(g) inform the respondent in writing of the respondent's rights as contemplated in sub-regulation (6);

(h) request the respondent in writing to give written notice to the director within the period mentioned in the request of whether the respondent intends to be present at the enquiry or not, and whether the respondent will be represented by a legal practitioner or assisted by a person appointed by him or her; and

(i) notify the respondent in writing of the possible penalties provided for in the Code of Conduct if the respondent is found guilty of improper conduct."

Insertion of new regulations 3(5A) and 3(5B) in the Improper Conduct Regulations

4. The following regulations are inserted in the Improper Conduct Regulations as regulations 3(5A) and 3(5B):

"(5A) A summons referred to in sub-regulation (4) (a) (ii) is in the form that the director determines from time to time, and may be amended, substituted or withdrawn at any time by service of a notice to that effect under the signature of the director on the respondent.

(5B) The date for the enquiry contemplated in sub-regulation (4) (a) (ii) may not be less than 20 days from the date of the serving of the summons, unless the respondent agrees to an earlier date."

Substitution of regulation 4(1) of the Improper Conduct Regulations

5. The following regulation is hereby substituted for regulation 4(1) of the Improper Conduct Regulations:

"4. Conviction on plea of guilty without enquiry.—(1) Where an affidavit referred to in regulation 3 (4) (e) is submitted to the director, the director may—

- (a) if it appears from the affidavit that the respondent intends to plead guilty to the charge, find the respondent guilty of the charge in question and cause the summons referred to in sub-regulation (4) (a) (ii) to be withdrawn by notice in writing to the respondent; or
- (b) if there is a sound reason therefor—

(i) require supplementary relevant information from the respondent or any other person in order to again consider the matter in terms of paragraph (a) and, to the extent appropriate in the circumstances, postpone the enquiry referred to in sub-regulation (4) (a) (ii) by notice in writing to the respondent; or

(ii) decide to proceed with the enquiry referred to in sub-regulation (4) (a) (ii)."

Repeal of regulation 7 of the Improper Conduct Regulations

6. Regulation 7 (Summons to respondent to attend enquiry) of the Improper Conduct Regulations is hereby repealed in its entirety.

Substitution of regulation 10(1) of the Improper Conduct Regulations

7. The following regulation is hereby substituted for regulation 10(1) of the Improper Conduct Regulations:

"10. Tendering of plea and related procedures.—(1) At the commencement of an enquiry the prosecutor must:

- (a) put the charge to the respondent and request the respondent to plead to the charge; or
- (b) put a settlement agreement referred to in regulation 3 (4) (eA) to the presiding officer."

Insertion of new regulation 10(5) in the Improper Conduct Regulations

8. The following regulation is inserted in the Improper Conduct Regulations as regulation 10(5):

"(5) If the presiding officer is satisfied that a settlement agreement referred to in sub-regulation (1) (b) is appropriate having regard to all relevant circumstances, the presiding officer may make the settlement agreement an order of the enquiry."

Substitution of regulation 18(1) of the Improper Conduct Regulations

9. The following regulation is hereby substituted for regulation 18(1) of the Improper Conduct Regulations:

“18. Confirmation, review and substitution of findings, penalties and other orders.—(1) After the conclusion of an enquiry, the presiding officer must submit the record of the proceedings to the director, whereupon the director may—

- (a) where the respondent has been found guilty, confirm the conviction or set it aside;
- (b) where the conviction is so confirmed, confirm the penalty imposed, or replace it with any lesser penalty contemplated in the Code of Conduct;
- (c) where the conviction is so confirmed, replace the penalty imposed with any other appropriate penalty contemplated in the Code of Conduct, after the applicable rules of administrative justice have been complied with;
- (cA) confirm or set aside any settlement agreement which was made an order by the presiding officer, and where the settlement agreement is so confirmed, any amount payable in terms of the settlement agreement shall with immediate effect be a debt which is due and payable to the Authority;
- (d) confirm or set aside any order relating to costs or any other order made by the presiding officer; and
- (e) give any other order which is fair and just in the circumstances.”