

2013 No. 43

POLICE

**The Police Service of Scotland (Special Constables)
Regulations 2013**

Made - - - - - *6th February 2013*

Laid before the Scottish Parliament *8th February 2013*

Coming into force - - - *1st April 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012(a) and all other powers enabling them to do so.

In accordance with section 54(1) of that Act, they have shared a draft of the Regulations with the Police Negotiating Board for the United Kingdom and have considered any representations made.

In accordance with section 54(2) of that Act, they have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) and have considered any representations made.

PART 1

COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Police Service of Scotland (Special Constables) Regulations 2013 and come into force on 1st April 2013.

Interpretation

2.—(1) In these Regulations—

“the 2012 Act” means the Police and Fire Reform (Scotland) Act 2012;

“the deputy chief constable” means the deputy chief constable designated under regulation 4 of the Police Service of Scotland (Conduct) Regulations 2013(b);

“inquiry officer” means a constable who is selected under regulation 14;

“misconduct” is construed in accordance with regulation 11;

(a) 2012 asp 8.
(b) S.S.I. 2013/XXX.

“misconduct officer” means a constable who is selected under regulation 16;

“nominated officer” means a constable who is selected under regulation 13;

“police force” means, except in relation to Schedule 3—

- (a) a police force maintained under section 2(1) of the Police Act 1996(a);
- (b) a police force maintained before 1st April 2013 under the Police (Scotland) Act 1967(b);
- (c) the metropolitan police force;
- (d) the City of London police force;
- (e) the Police Service of Northern Ireland;
- (f) the British Transport Police Force;
- (g) the Ministry of Defence Police, that is to say the force established by section 1 of the Ministry of Defence Police Act 1987(c) or, before the coming into force of that Act, comprising constables appointed under section 3 of the Special Constables Act 1923(d) on the nomination of the Defence Council;
- (h) the Port of Tilbury Constabulary or before the coming into force of the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992(e), the Port of London Authority’s police force, that is to say the force of constables appointed under section 154 of the Port of London Act 1968(f);
- (i) an aerodrome constabulary within the meaning given by section 31(1) of the Aviation Security Act 1982(g);
- (j) the States of Jersey Police Force;
- (k) the salaried police force of the Island of Guernsey; and
- (l) the Isle of Man Constabulary;

“seaman” has the same meaning as in section 313 of the Merchant Shipping Act 1995(h); and

“special constable” means an individual appointed under section 9 of the 2012 Act.

(2) Nothing in these Regulations is to be construed as retrospectively reducing any allowance payable to or in respect of any special constable.

PART 2 GOVERNMENT

Restrictions on the private life of special constables

3.—(1) Schedule 1 has effect.

(2) No other restrictions, except those designed to secure the proper exercise of the functions of a special constable, may be imposed by the chief constable on the private life of a special constable.

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- (a) 1996 c.16; section 2 was amended by the Police Reform and Social Responsibility Act 2011 (c.13), section 99 and Schedule 16, paragraph 4.
 - (b) 1967 c.77.
 - (c) 1987 c.4. Section 1 has been amended by the Police Act 1996 (c.16), Schedule 7, paragraph 41; the Police (Northern Ireland) Act 1998 (c.32), section 74 and Schedule 4, paragraph 16; and the Police Reform Act 2002 (c.30), section 79.
 - (d) 1923 c.11.
 - (e) S.I. 1992/284.
 - (f) 1968 c.xxxii.
 - (g) 1982 c.36. Section 31 has been amended by the Greater London Authority Act 1999 (c.29), sections 325 and 423, Schedule 27, paragraph 46 and Schedule 34, Part VII; the Police (Northern Ireland) Act 2000 (c.32), section 78 and Schedule 6, paragraph 8; the Police and Justice Act 2006 (c.48), Schedule 14, paragraph 8; and the Policing and Crime Act 2009 (c.26), Schedule 6, paragraph 12 and Schedule 8, Part 7.
 - (h) 1995 c.21; there are no relevant amendments.

Business interests

4.—(1) A special constable must not have a business interest without the consent of the chief constable.

(2) If a special constable is likely to acquire a business interest that special constable must forthwith give written notice of that interest to the chief constable, unless that special constable has previously disclosed that interest to the chief constable.

(3) An individual applying for appointment as a special constable must give written notice to the chief constable of any business interest which that individual has or is likely to acquire after appointment.

(4) For the purposes of this regulation—

- (a) an individual or special constable is regarded as having a business interest if—
 - (i) that individual or special constable, or any member of that individual's or special constable's family living with that individual or special constable, holds any licence, certificate or permit granted in pursuance of the laws relating to liquor licensing, betting and gaming or regulating places of entertainment in Scotland or has any pecuniary interest in such licence, certificate or permit;
 - (ii) that individual or special constable is employed in any occupation or holds any appointment;
- (b) "member of that individual's or special constable's family" includes a parent, son, daughter, dependant, brother, sister, spouse (not being separated from that individual or special constable), civil partner (not being separated from that individual or special constable) or cohabitant (not being separated from that individual or special constable); and
- (c) "cohabitant" means a member of a couple consisting of—
 - (i) a man and a woman who are living together as if they were husband and wife; or
 - (ii) two individuals of the same sex who are living together as if they were civil partners.

Qualifications for appointment as a special constable

5.—(1) A candidate for appointment as a special constable must—

- (a) produce satisfactory references as to character, and, if that candidate has served in any police force, in the armed forces, in the civil service of the State or as a seaman, produce satisfactory proof of good conduct while so serving;
- (b) have attained the age of 18 years;
- (c) be certified by a registered medical practitioner approved by the Authority to be fitted both physically and mentally to perform the duties on which that candidate will be employed after appointment;
- (d) meet the standard of eyesight determined by the Scottish Ministers;
- (e) if the Scottish Ministers have determined a standard, meet the standard of hearing so determined;
- (f) satisfy the chief constable that he or she is sufficiently educated, including being sufficiently competent in written and spoken English and sufficiently numerate, by passing an assessment to a standard approved by the chief constable and the Scottish Ministers after consultation with those persons mentioned in section 54(2)(a)(i) to (vi) of the 2012 Act;
- (g) give to the chief constable such information as to his or her current employment, previous history of employment or any other matter relating to his or her appointment as may be required.

(2) A candidate for appointment as a special constable must be given a notice in terms approved by the Scottish Ministers drawing attention to the terms and conditions of service.

(3) An individual who is appointed as a special constable must not be appointed for a fixed term.

(4) In this regulation “armed forces” means the naval, military or air forces of the Crown including any women’s service administered by the Defence Council.

Retirement

6.—(1) A special constable who wishes to retire voluntarily must give such written notice of intention to retire to the chief constable as may be specified in a determination made by the Scottish Ministers or such shorter notice as may have been accepted by the chief constable.

(2) Subject to paragraph (3), a special constable must retire at the age of 60 years.

(3) The chief constable may postpone the time at which a special constable must retire under paragraph (2).

Personal records

7.—(1) The chief constable must maintain a personal record for each special constable.

(2) The personal record must contain—

- (a) the home address of, and contact telephone number (if any) for, the special constable;
- (b) a photograph not more than 10 years old of the special constable taken in accordance with the directions of the chief constable and at the expense of the Authority;
- (c) a personal description of the special constable;
- (d) particulars of the special constable’s place and date of birth;
- (e) particulars of the special constable’s marriage or civil partnership (if any) and children and other dependants (if any) or, where none, particulars of the special constable’s next of kin;
- (f) a record of the special constable’s service (if any) in any branch of Her Majesty’s naval, military or air forces or in the civil service or as a seaman;
- (g) a record of the special constable’s service (if any) in any other police force including previous service with the Police Service (if any);
- (h) a record of whether the special constable passed or failed to pass any qualifying examination at which the special constable was a candidate; and
- (i) a record of the special constable’s service in the Police Service, including postings, transfers, removals, injuries received, periods of illness, attendances at training courses, commendations, rewards, punishments, disposals and the date of the special constable ceasing to be a special constable with the reason, cause or manner thereof.

(3) The chief constable must expunge from the personal record of a special constable—

- (a) any record of any disposal made by the misconduct officer under regulation 17(2)(e) after 3 years from the relevant date; and
- (b) any record of any other final disposals made under regulation 17 or 18, after 3 consecutive years free, from the relevant date, of any such disposal being imposed on that special constable in relation to another matter.

(4) Where any such record as is mentioned in paragraph (3) is expunged from a special constable’s record, so much of that personal record as relates to any such expunged record must be destroyed and a new part made out so as not to disclose that the expunged record existed.

(5) A special constable is entitled to inspect his or her personal record.

(6) Where a special constable ceases to be a special constable, that special constable’s personal record must be kept for such time as the chief constable thinks fit and must then be destroyed.

(7) In this regulation “relevant date” means—

- (a) if the chief constable was not requested to review the matter in accordance with regulation 18, the date on which the disposal was, or disposals were, imposed on the special constable concerned by the misconduct officer; or
- (b) if the chief constable is requested to review the matter in accordance with regulation 18, the date on which the disposal was, or disposals were, imposed on the special constable concerned by the chief constable.

Personal record of special constable leaving the Police Service

8.—(1) When a special constable ceases to be a special constable that special constable must be given a certificate setting out the period of that special constable’s service as a special constable in—

- (a) the Police Service; and
- (b) any police force.

(2) The chief constable may append to the certificate any recommendation which the chief constable feels justified in giving in respect of that special constable’s service with the Police Service.

Fingerprints and samples

9.—(1) All special constables must on appointment and in accordance with the directions of the chief constable have their fingerprints and a sample taken.

(2) Fingerprints, samples or the information derived from samples of members of the Police Service taken in accordance with this regulation must be kept separate from the fingerprints, samples or the information derived from samples—

- (a) taken in accordance with—
 - (i) sections 18(a), 19(b), 19A(c) and 19AA(d) of the Criminal Procedure (Scotland) Act 1995;
 - (ii) section 56 of the Criminal Justice (Scotland) Act 2003(e);
 - (iii) in the case of fingerprints, section 87(5A)(b) of the Sexual Offences Act 2003(f);
 - (iv) in the case of samples or the information derived from samples, section 87(5A)(c) of the Sexual Offences Act 2003; or
- (b) otherwise lawfully taken and held by or on behalf of the Police Service or in connection with or as a result of an investigation of an offence.

(a) Section 18 has been amended by the Crime and Punishment (Scotland) Act 1997 (c.48), sections 47 and 62 and Schedule 3; the Crime and Disorder Act 1998 (c.37), section 119 and Schedule 8, paragraph 117; the Terrorism Act 2000 (c.11), section 41 and Schedule 8, paragraph 20; the Criminal Justice (Scotland) Act 2003 (asp 7), section 55; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 83 and schedule 6, paragraph 4; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 77(2); and the Police and Fire Reform (Scotland) Act 2012 (asp 8), section 128(1) and schedule 7, paragraph 12(3).

(b) Section 19 has been amended by the Crime and Punishment (Scotland) Act 1997 (c.48), sections 47, 48 and 62 and the Criminal Justice (Scotland) Act 2003 (asp 7), section 55; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 203 and schedule 7, paragraph 31; and the Police and Fire Reform (Scotland) Act 2012 (asp 8), section 128(1) and schedule 7, paragraph 12(7).

(c) Section 19A was added by section 48 of the Crime and Punishment (Scotland) Act 1997 (c.48) and has been amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 55; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77 and schedule 6, paragraph 4; the Sexual Offences (Scotland) Act 2009 (asp 9), schedule 5, paragraph 2; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 81, section 203 and schedule 7, paragraph 32; and S.S.I. 2005/465, Schedule 1, paragraph 27.

(d) Section 19AA was added by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77.

(e) 2003 asp 7.

(f) Section 87(5A) was added by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77.

(3) Fingerprints and samples may only be taken for the purpose of enabling a check to be carried out against any other fingerprint, sample or information derived from a sample taken by or on behalf of the Police Service or in connection with or as a result of an investigation of an offence.

(4) The fingerprints, samples or information derived from samples of a special constable taken in accordance with paragraph (1), and all copies and records thereof must be destroyed on that special constable ceasing to be a special constable of the Police Service.

(5) In this regulation “sample” means—

- (a) a sample of hair, other than pubic hair, complete with roots;
- (b) saliva; or
- (c) a swab taken from the mouth.

PART 3

DUTY

Duty

10.—(1) The Scottish Ministers must determine—

- (a) the normal periods of duty of a special constable;
- (b) the periods allowed for refreshment; and
- (c) the circumstances in which travelling time may be treated as duty.

(2) In making a determination under this regulation the Scottish Ministers may confer—

- (a) such functions on the chief constable as they think fit; and
- (b) a discretion on the chief constable to fix a limit on the travelling time which is to be treated as duty.

(3) In this regulation “travelling time” means time spent by a special constable in travelling to and from that special constable’s home or place of employment to any place where that special constable is required to attend for the purpose of, or in connection with, carrying out his or her duties.

PART 4

MISCONDUCT

Misconduct

11. For the purposes of these Regulations, an act or omission of a special constable amounts to misconduct if it is conduct of a type mentioned in Schedule 2.

Preliminary procedures

12.—(1) The deputy chief constable must prepare and maintain procedures for the consideration and handling of any report, complaint or allegation from which it may reasonably be inferred that an act, omission or an alleged act or omission of a special constable amounts, or may amount, to misconduct.

(2) Where a report, complaint or allegation of the type specified in paragraph (1) has been received, the deputy chief constable may—

- (a) consider that report, complaint or allegation in the first instance and, unless regulation 20 applies, decide whether an inquiry into the matter should take place; or

- (b) select a nominated officer to consider the report, complaint or allegation in the first instance who will, unless regulation 20 applies, decide whether an inquiry into the matter should take place.

(3) Where it is decided that an inquiry into the report, complaint or allegation should not take place, the deputy chief constable or, if paragraph (2)(b) is applicable, the nominated officer may conclude the matter in accordance with any procedures set down by the deputy chief constable under paragraph (1).

(4) Where it is decided that an inquiry into the report, complaint or allegation should take place, the deputy chief constable or, if paragraph (2)(b) is applicable, the nominated officer must select an inquiry officer to carry out an inquiry into the matter.

The nominated officer

13.—(1) The nominated officer must be selected by the deputy chief constable.

(2) The nominated officer must be a constable—

- (a) other than a special constable; and
- (b) holding such rank as the deputy chief constable considers to be appropriate.

(3) The nominated officer must not be—

- (a) the chief constable;
- (b) a deputy chief constable;
- (c) any constable who the deputy chief constable considers is or appears to be a material witness to the complaint, report or allegation which has been received; or
- (d) any other constable who the deputy chief constable considers is or appears to be an interested party.

The inquiry officer

14.—(1) The inquiry officer must be selected by the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer.

(2) The inquiry officer must be a constable of at least the rank of inspector.

(3) The inquiry officer must not be—

- (a) the chief constable;
- (b) a deputy chief constable;
- (c) the misconduct officer;
- (d) any constable who the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer considers is or appears to be a material witness to the report, complaint or allegation which has been received; or
- (e) any other constable who the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer considers is or appears to be an interested party.

Inquiry procedure

15.—(1) Subject to regulation 20, and unless it would be prejudicial to the carrying out of an inquiry, the inquiry officer must as soon as reasonably practicable after his or her selection give oral or written notice to the special constable concerned—

- (a) of the nature of the report, complaint or allegation;
- (b) that there is to be an inquiry into the report, complaint or allegation;
- (c) of that special constable's right to make written or oral comments on the report, complaint or allegation but that any comments which are made may be used in evidence in relation to any misconduct matter considered in accordance with these Regulations; and

- (d) of that special constable's right to be accompanied by a representative whom he or she may select, who must not be an interested party, to any meeting, interview or hearing with the inquiry officer.

(2) The inquiry officer must give notice of the information specified in paragraph (1) to the special constable concerned before submitting a written report to the misconduct officer in accordance with paragraph (3).

(3) After completing the inquiry into the report, complaint or allegation, the inquiry officer must submit a written report to the misconduct officer in relation to the matter.

The misconduct officer

16.—(1) The misconduct officer must be selected by the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer.

(2) The misconduct officer must be a constable of at least the rank of superintendent.

(3) The misconduct officer shall not be—

- (a) the chief constable;
- (b) a deputy chief constable;
- (c) the inquiry officer;
- (d) any constable who the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer considers is or appears to be a material witness to the report, complaint or allegation which has been received; or
- (e) any other constable who the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer considers is or appears to be an interested party.

Procedure on receipt of inquiry officer's report

17.—(1) After considering the report submitted by the inquiry officer, the misconduct officer may—

- (a) take no further action; or
- (b) record a finding of misconduct and impose any of the disposals in paragraph (2).

(2) The disposals are—

- (a) dismissal from the Police Service;
- (b) requirement to resign from the Police Service, either forthwith or at such date as is specified in the decision, as an alternative to dismissal;
- (c) warning;
- (d) requirement to attend any counselling which the misconduct officer considers to be necessary; or
- (e) requirement to attend any training which the misconduct officer considers to be necessary,

and separate disposals may be made in relation to separate findings.

(3) The special constable concerned must be notified in writing of—

- (a) the finding of the misconduct officer;
- (b) any disposal which has been imposed by the misconduct officer; and
- (c) the reasons why the misconduct officer has made such a finding and imposed any such disposal,

within 7 days of such a decision being made.

(4) The misconduct officer must not make a finding of misconduct and impose a disposal specified in paragraph (2) unless the special constable concerned has—

- (a) been given the opportunity of being heard at a meeting before the misconduct officer;

- (b) been provided with at least 21 days written notice of—
 - (i) the date, place and time of such a meeting;
 - (ii) the nature of the report, complaint or allegation; and
 - (iii) the disposals which are available to the misconduct officer under paragraph (2); and
 - (c) been informed of his or her right to be accompanied by a representative whom he or she may select, who must not be an interested party, to any meeting with the misconduct officer.
- (5) Where the special constable concerned—
- (a) has been given written notice of a meeting with the misconduct officer in accordance with paragraph (4)(b); and
 - (b) does not attend that meeting with the misconduct officer,

the misconduct officer may make a finding of misconduct and impose a disposal under paragraph (2) without having heard from the special constable, if it appears to the misconduct officer just and proper to do so.

Review by the chief constable

18.—(1) Where a finding of misconduct has been recorded and a disposal has been imposed on a special constable under regulation 17(2)(a), (b) or (c), the special constable concerned is entitled to request the chief constable to review that finding or that disposal or both.

(2) A request for a review must be made in writing to the chief constable within 28 days of the special constable concerned receiving written notification from the misconduct officer of the matters specified in regulation 17(3).

(3) The request for a review must state the grounds on which the review is requested.

(4) A review which is requested by a special constable in accordance with this regulation must not be carried out by the chief constable unless that special constable has—

- (a) been given the opportunity of being heard before the chief constable; and
- (b) been informed in writing of his or her right to be accompanied by a representative whom he or she may select, who must not be an interested party, to any meeting or interview with the chief constable.

(5) The chief constable may—

- (a) confirm or overturn the finding of the misconduct officer;
- (b) decide to overturn a disposal which has been imposed by the misconduct officer because he or she considers that it is not necessary to take any action in relation to the finding;
- (c) impose a different disposal which is specified in regulation 17(2) but may not impose a sanction which is greater than that imposed by the misconduct officer,

and separate disposals may be made in relation to separate findings.

(6) The special constable concerned must be notified in writing of the decision of the chief constable under paragraph (5) and must be provided with a written statement of the reasons made for making such a decision, within 7 days of the decision being made.

(7) The decision of the chief constable under paragraph (5) takes effect by substituting the decision or, as the case may be, part of the decision of the misconduct officer from the date on which that decision was made.

(8) Where a special constable decides to request a review of the finding made or the disposal imposed by the misconduct officer, the decision of the chief constable following such a review is final.

Suspension

19.—(1) Where a report, complaint or allegation is received from which it may reasonably be inferred that an act, omission or an alleged act or omission of a special constable concerned—

- (a) may amount to misconduct; or
- (b) may constitute a criminal offence,

the special constable concerned may be suspended from duty by the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer.

(2) The deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer—

- (a) may terminate a suspension imposed on the special constable under paragraph (1), with effect from the date of the suspension or any subsequent date;
- (b) must terminate a suspension imposed on the special constable concerned under paragraph (1) when—
 - (i) it is decided, in accordance with regulation 12(2)(b), that there will not be an inquiry into the report, complaint or allegation, unless the special constable concerned has submitted his or her resignation; or
 - (ii) misconduct proceedings have been completed but have not resulted in a disposal of dismissal from the Police Service or a requirement to resign from the Police Service as an alternative to dismissal, unless the special constable concerned submitted his or her resignation before misconduct proceedings were concluded.

(3) Where the deputy chief constable or the nominated officer have terminated the suspension of the special constable concerned, that special constable may not be suspended again in respect of the report, complaint or allegation which led to the initial suspension, unless further information comes to light and the deputy chief constable or the nominated officer, after considering that information, determine that it would be in the best interests of the Police Service to suspend that special constable for a further period.

(4) Subject to the provisions of this regulation, these Regulations apply to a special constable who has been suspended from duty.

Alleged criminal offence

20.—(1) Despite anything in regulations 11 to 19, where a report, complaint or allegation is received from which it may reasonably be inferred that a special constable may have committed a criminal offence, the deputy chief constable must, as soon as possible, refer the matter to the procurator fiscal.

(2) If the matter is referred to the procurator fiscal, the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer, may decide—

- (a) not to select an inquiry officer, in accordance with regulation 14, for the purpose of inquiring into the matter; or
- (b) where an inquiry officer has been selected in accordance with regulation 14, to instruct that officer not to give written notice to the special constable concerned of the matters specified in regulation 15(1) and not to carry out an inquiry into any matter arising out of or referred to in that report, complaint or allegation, in so far as it might be the subject of criminal proceedings,

until the procurator fiscal has intimated either that criminal proceedings are not to be brought in respect of any matter arising out of or referred to in that report, complaint or allegation or, if he or she has intimated that criminal proceedings are to be brought, those proceedings are completed.

(3) If the deputy chief constable or, if regulation 12(2)(b) is applicable, the nominated officer decides to exercise the power conferred by paragraph (2), he or she must ensure that the special constable concerned is informed in writing that misconduct proceedings may be taken, irrespective of whether or not criminal proceedings are brought against him or her or of the disposal of any such proceedings.

(4) Where the criminal offence referred to in paragraph (1) may have been committed in any part of the United Kingdom (other than Scotland) or in any of the Channel Islands or the Isle of Man, the references to “procurator fiscal” are to be construed as references to the person who either has responsibility for considering whether to institute criminal proceedings in relation to the matter or has instituted such proceedings.

PART 5

ALLOWANCES, PERIODIC PAYMENTS AND EXPENSES

Allowances and periodic payments

21.—(1) The Scottish Ministers must determine the entitlement of special constables to any allowances and periodic payments.

(2) Without prejudice to the generality of paragraph (1), in making a determination under that paragraph, the Scottish Ministers must determine—

- (a) the total amount of periods of duty which a special constable must serve within a given period, in order to receive a periodic payment;
- (b) the amount of a periodic payment; and
- (c) any conditions which may be placed on the payment of a periodic payment.

(3) With exception to paragraph (2), in making a determination under this regulation, the Scottish Ministers may confer such functions on the chief constable as they think fit in relation to—

- (a) the calculation of any allowance; and
- (b) any conditions which may be placed on the payment of an allowance which is specified in the determination.

(4) A special constable must not be paid an allowance or periodic payment except as provided by or under these Regulations or approved by the Scottish Ministers and the amounts and conditions of payment of such allowances or period payments must be as so provided or approved.

(5) Nothing in this regulation applies to the reimbursement of expenses incurred by a special constable in the execution of that special constable’s duty which have been authorised either generally or specifically by the chief constable where no allowance or periodic payment is payable under these Regulations and no determination has been made under regulation 22.

(6) In this regulation “periodic payment” has the meaning given by section 9(b) of the 2012 Act.

Expenses

22.—(1) The Scottish Ministers must determine the entitlement of a special constable to reimbursement of any expenses incurred by that special constable in, or in connection with, the execution of that special constable’s duty.

(2) In making a determination under this regulation, the Scottish Ministers may confer such functions on the chief constable as they think fit in relation to any conditions which may be placed on the payment of an allowance which is specified in the determination.

PART 6

UNIFORM AND EQUIPMENT

Issue of uniform and equipment

23.—(1) Special constables are entitled to receive from the Authority such uniform and equipment that the Authority determines they need free of charge and in a clean and serviceable condition.

(2) Uniform and equipment issued to a special constable must only be used for the purpose of carrying out that individual's duties as a special constable.

(3) Unless the Authority and special constable agree, such uniform and equipment remains the property of the Authority and must be returned when the special constable leaves the Police Service.

PART 7

DETERMINATIONS

Determinations

24.—(1) Before making a determination under any provision of these Regulations the Scottish Ministers must consult and share a draft of the determination with the persons mentioned in section 54(2)(a)(i) to (vi) of the 2012 Act and consider any representations made by those persons.

(2) A determination under any provision of these Regulations may—

- (a) in relation to allowances, be made with retrospective effect to any date specified in the determination but must not retrospectively reduce any allowance payable to or in respect of any special constable;
- (b) make different provision for different cases and circumstances;
- (c) vary or revoke earlier determinations under these Regulations.

PART 8

TRANSITIONALS, SAVINGS AND REVOCATIONS

Transitionals, savings and revocations

25. Schedule 3 has effect.

KENNY MACASKILL
A member of the Scottish Government

St Andrew's House,
Edinburgh
6th February 2013

SCHEDULE 1

Regulation 3(1)

RESTRICTIONS ON THE PRIVATE LIFE OF SPECIAL CONSTABLES

1. A special constable must at all times abstain from any activity which is likely to interfere with the impartial discharge of that special constable's duties or which is likely to give rise to the impression among members of the public that it may so interfere.
2. A special constable must not take any active part in politics.
3. A special constable must not wilfully refuse or neglect to discharge any lawful debt.

SCHEDULE 2

Regulation 11

CONDUCT CONSTITUTING MISCONDUCT

- 1.** Conduct likely to bring discredit on the police, including—
 - (a) insubordination or incivility;
 - (b) corrupt practice;
 - (c) breach of confidence;
 - (d) drinking any intoxicating liquor while on duty or being unfit for duty through such liquor;
 - (e) suppression of complaints;
 - (f) wilful or careless damage to, or loss of, property belonging to the Police Service, the Authority, the chief constable or within the care of the Police Service;
 - (g) disorderly conduct; or
 - (h) acting towards, or treating, any person in an oppressive or improper manner.
- 2.** Failure to comply, without good and sufficient cause, with a lawful order.
- 3.** Failure to report any matter which it is the special constable's duty to report or to account for any act or omission occurring in the ordinary course of duty which he or she has a duty to account for.
- 4.** Neglect of duty.
- 5.** Wilful or careless falsehood.
- 6.** Malingering.
- 7.** Being absent from duty, or late for duty, without leave.
- 8.** Contravention of regulation 4 or Schedule 1.
- 9.** Having been found guilty of a criminal offence in a criminal court in any part of the United Kingdom or in any of the Channel Islands or the Isle of Man.

TRANSITIONALS, SAVINGS AND REVOCATIONS

Interpretation**1.** In this Schedule—

“police force” means a police force maintained under the Police (Scotland) Act 1967(a);

“the 2008 Regulations” means the Police (Special Constables) (Scotland) Regulations 2008(b); and

“transferred special constable” means a special constable of a police force who is transferred to the Police Service under schedule 5 to the 2012 Act.

Transitional: business interests

2.—(1) Any consent given by a chief constable of a police force under regulation 5(1) of the 2008 Regulations before 1st April 2013 is, on and after that date, to be treated as if it had been given by the chief constable of the Police Service under regulation 4(1) of these Regulations.

(2) Any written notice given to a chief constable of a police force under regulation 5 of the 2008 Regulations before 1st April 2013 is to be treated, on and after that date, as if it had been given to the chief constable of the Police Service under regulation 4 of these Regulations.

Transitional: retirement

3.—(1) This paragraph applies in respect of any transferred special constable who, before 1st April 2013, gave notice of intention to retire, or had such shorter notice accepted, in accordance with regulation 8(1) of the 2008 Regulations.

(2) Any notice of intention to retire given or accepted under regulation 8(1) of the 2008 Regulations is to be treated as if it had been given or accepted in accordance with regulation 6(1) of these Regulations and the transferred special constable is to retire on the same date as if the 2008 Regulations had continued in force.

Transitional and saving: personal records

4.—(1) This paragraph applies in respect of any transferred special constable.

(2) For the purposes of regulation 7(2)(i) of these Regulations, the personal record maintained in respect of a special constable must contain a record of any disposal made after 1st April 2013 under the 2008 Regulations (as saved and modified by paragraphs 6 and 7).

(3) Notwithstanding the revocation of regulation 9 of the 2008 Regulations by paragraph 9, any record of any disposal in relation to a transferred special constable which would otherwise have been expunged in accordance with regulation 9(3) and (4) of those Regulations is to be expunged from the personal record maintained under regulation 7 of these Regulations as if regulation 9(3), (4) and (6) were still in force and applied to the personal record of the special constable maintained under these Regulations.

(a) 1967 c.77.

(b) S.S.I. 2008/117; amended by S.S.I. 2009/372.

Transitional: fingerprints and samples

5.—(1) Regulation 9(1) of these Regulations does not apply to any transferred special constable whose fingerprints, samples or the information derived from samples have been transferred to the chief constable of the Police Service, unless the chief constable so requires in a particular case.

(2) Any fingerprints, samples or the information derived from samples taken in accordance with regulations 12 or 13 of the 2008 Regulations and transferred to the chief constable of the Police Service are to be treated as having been taken in accordance with regulation 9 of these Regulations and are to be retained, used and destroyed in accordance with regulation 9.

Transitional and saving: misconduct

6.—(1) For the purpose of these Regulations, references to an act or omission of a special constable include references to an act or omission of a transferred special constable occurring before 1st April 2013.

(2) Notwithstanding paragraph 9, the 2008 Regulations continue to have effect (as they had effect immediately before the coming into force of paragraph 9) so far as they relate to misconduct, subject to the modifications in paragraph 7, where—

- (a) any report, complaint or allegation was received by a police force before 1st April 2013 from which it could reasonably be inferred that an act or omission of a special constable of that force amounted, or may have amounted, to misconduct under those Regulations;
- (b) any proceedings under those Regulations in relation to that report, complaint or allegation have not been concluded before 1st April 2013; and
- (c) the individual in respect of whom that report, complaint or allegation was made is a transferred special constable.

(3) For the purpose of paragraph (2)(b), proceedings are concluded—

- (a) in accordance with regulation 17(3) of the 2008 Regulations, on the date on which it is decided no inquiry is to take place; or
- (b) where a finding of misconduct is recorded and a disposal imposed under regulation 22 of the 2008 Regulations, on the date—
 - (i) on which the period for requesting a review under regulation 23 of those Regulations has expired; or
 - (ii) where a request for review is made under regulation 23 of those Regulations, on which the chief constable of the police force makes a decision on that review.

Misconduct: modifications of the 2008 Regulations

7.—(1) The 2008 Regulations are modified as follows.

(2) In regulation 2(1)—

- (a) in the appropriate places insert—
 - ““constable” means a constable of the Police Service;”;
 - ““Police Service” means the Police Service of Scotland;”;
 - ““transferred special constable” means a special constable of the Police Service who transferred to the Police Service under schedule 5 to the Police and Fire Reform (Scotland) Act 2012;”;
- (b) for the definition of “special constable” substitute—
 - ““special constable” means a transferred special constable.”.

(3) In regulation 2(2)—

- (a) in sub-paragraph (a), from “means,” to the end substitute “means the chief constable of the Police Service; and”;

- (b) in sub-paragraph (b) from “means” to the end substitute “means the deputy chief constable of the Police Service designated under regulation 4 of the Police Service of Scotland (Conduct) Regulations 2013.”.
- (4) Omit regulations 18(2)(a), 19(2)(a) and 21(2)(a).
- (5) In regulations 18(3)(a) and (b), 19(3)(a) and (b) and 21(3)(a) and (b) for “a” where it occurs substitute “the”.
- (6) In regulation 22(2)(a) and (b) for “police force” substitute “Police Service”.
- (7) In regulation 23(4)(a) for “that” substitute “the”.
- (8) The terms used in paragraph 1(f) of Schedule 2 have the same meaning as they had under the Police (Scotland) Act 1967.

Transitional: uniform and equipment

8. Any uniform and equipment which a transferred special constable was issued under regulation 28 of the 2008 Regulations is to be treated as if it were issued under regulation 23 of these Regulations.

Revocations

- 9.** The following are revoked, so far as not already revoked—
- (a) The Police (Special Constables) (Scotland) Regulations 1966(**a**);
 - (b) The Police (Special Constables) (Scotland) Regulations 2008(**b**);
 - (c) Regulation 3 of the Police (Scotland) Amendment Regulations 2009(**c**).

(a) S.I. 1966/97; revoked with savings by S.S.I. 2008/117.
(b) S.S.I. 2008/117; amended by S.S.I. 2009/372.
(c) S.S.I. 2009/372.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of special constables of the Police Service of Scotland.

Part 2 and Schedule 1 make provision about governance. Regulation 3 and Schedule 1 set out the restrictions which are imposed on the private life of a special constable. Regulation 4 provides that a special constable must not have a business interest without the consent of the chief constable. A special constable, or a person applying to become a special constable, must give written notice of any business interests to the chief constable. Paragraph (4) sets out what constitutes a business interest. Regulation 5 specifies the qualifications for appointment as a special constable. Regulation 6 makes provision about the retirement of a special constable from office and provides that a special constable must retire upon reaching the age of 60 years, though the chief constable may postpone that. Regulations 7 and 8 make provision about the personal record of a special constable. Regulation 9 provides that a special constable must have fingerprints and a sample taken on appointment. Those fingerprints and samples are to be kept separate from those taken by the Police Service using the powers mentioned in regulation 9(2) and they are to be used only for the purpose of checking against other fingerprints or samples in connection with the investigation of an offence. They must be destroyed on the special constable leaving the Police Service.

Part 3 requires the Scottish Ministers to determine the normal periods of duty of a special constable.

Part 4 and Schedule 2 make provision about misconduct in relation to special constables. Schedule 2 sets out the conduct which constitutes misconduct on the part of a special constable. Where a report, complaint or allegation is made against a special constable, the deputy chief constable (or if the deputy chief constable appoints a nominated officer, that nominated officer) considers the report, complaint or allegation and decides whether it contains a criminal allegation. If there are any allegations of criminality then the procedure in regulation 20 must be followed. If it appears there are no allegations of a criminal nature then the deputy chief constable or nominated officer, as the case may be, decides whether there should be an inquiry into the matter and, if so, selects an investigating officer to conduct the inquiry. If an inquiry is not considered necessary, no further action will be taken. Regulations 13, 14 and 16 set out who may be a nominated, inquiry or misconduct officer. Regulation 15 sets out the procedure for an inquiry and regulation 17 makes provision for actions after an inquiry, including disposals. A special constable may request a review by the chief constable under regulation 18. Regulation 20 requires the deputy chief constable or nominated officer to inform the procurator fiscal of the allegation if it is criminal and enables the misconduct investigation to be delayed until it is clear what is happening in relation to the criminal allegation.

Part 5 deals with allowances, periodic payments and expenses. The Scottish Ministers must determine the entitlement of special constables to such monies.

Part 6 makes provision about uniform and equipment. A special constable is entitled to be provided with such uniform and equipment as the Scottish Police Authority determines they need free of charge. Unless agreement is reached to the contrary, the uniform and equipment remain the property of the Authority.

Part 7 makes provision in relation to determinations which are made under these Regulations. Determinations are subject to consultation requirements.

Part 8 and Schedule 3 make transitional provision in respect of special constables who were previously special constables of police forces maintained under the Police (Scotland) Act 1967 and who have been transferred to become special constables of the Police Service of Scotland. It includes provision so that notice of retirement continues to run as if the reorganisation of the police had not taken place and any notice given under the previous law is valid for the purposes of the new law in these Regulations. Where a special constable was subject to ongoing misconduct proceedings under the Police (Scotland) Act 1967 then that process continues under the old law, subject to modifications of that law so that it may continue to operate. Where a special constable

subject to such proceedings has a finding made against that special constable then it will be recorded on the personal record maintained by the chief constable of the Police Service.

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