
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 61

POLICE

**The Scottish Crime and Drug Enforcement
Agency (Scotland) Regulations 2011**

Made - - - - *1st February 2011*
Laid before the Scottish
Parliament - - - - *3rd February 2011*
Coming into force - - *30th March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers in section 26(1) of the Police (Scotland) Act 1967⁽¹⁾ and section 23(1), (3), (4) and (6) of the Police, Public Order and Criminal Justice (Scotland) Act 2006⁽²⁾ and all other powers enabling them to do so.

In accordance with section 26(9) of the Police (Scotland) Act 1967 and section 23(10) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 the Scottish Ministers have submitted a draft of this instrument to the Police Advisory Board for Scotland and have considered representations made by that Board as to the draft.

In accordance with section 62(1A) of the Police Act 1996⁽³⁾, the Scottish Ministers have submitted a draft of this instrument to the Police Negotiating Board for the United Kingdom and have considered recommendations made by that Board as to the draft.

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- (1) 1967 c.77. Section 26 has been amended by the Police and Criminal Evidence Act 1984 (c.60), section 111 and Schedule 6; the Police and Magistrates' Courts Act 1994 (c.29), sections 47, 52 and 53 and Schedule 9; the Local Government, etc. (Scotland) Act 1994 (c.39), Schedule 13; the Police Act 1996 (c.16), Schedule 7 and the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), schedule 6. The functions conferred on the Secretary of State under section 26 of the Police (Scotland) Act 1967 insofar as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (2) 2006 asp 10.
- (3) 1996 c.16. Section 62 has been amended by the Police Act 1997 (c.50), section 143 and Schedules 9 and 10; the Police (Northern Ireland) Act 1998 (c.32), section 34; the Criminal Justice and Police Act 2001 (c.16), section 128 and Schedule 6; the Police Reform Act 2002 (c.30), sections 90 and 91 and Schedules 7 and 8; the Serious Organised Crime and Police Act 2005 (c.15), Schedules 4 and 17; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), schedule 6; the Police and Justice Act 2006 (c.48), Schedule 1; and S.I. 1999/1820 article 4 and Schedule 2.

PART 1

COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Scottish Crime and Drug Enforcement Agency (Scotland) Regulations 2011 and come into force on 30th March 2011.

Interpretation

2. In these Regulations—

“the 1967 Act” means the Police (Scotland) Act 1967;

“the 2004 Regulations” means the Police (Scotland) Regulations 2004(4);

“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006;

“the Agency” means the Scottish Crime and Drug Enforcement Agency;

“the Authority” means the Scottish Police Services Authority;

“the Director General” means the Director General of the Agency appointed by virtue of paragraph 1 of schedule 2 to the 2006 Act;

“the Deputy Director General” means the Deputy Director General of the Agency appointed by virtue of paragraph 2 of schedule 2 to the 2006 Act;

“police member” means a police member of the Agency appointed by virtue of paragraph 7(2)(c) of schedule 2 to the 2006 Act;

“representative bodies” means the Police Federation for Scotland and all bodies for the time being recognised by the Scottish Ministers for the purposes of section 64 of the Police Act 1996(5); and

“university scholar” means a police member on a course of university study nominated by the Scottish Ministers or by the Authority following arrangements approved by the Scottish Ministers.

Transfers

3.—(1) A reference in these Regulations to a person transferring from a police force to the Agency is to be construed as a reference to that person leaving a police force voluntarily for the purpose of taking up an appointment as a police member under paragraph 7(2)(c) of schedule 2 to the 2006 Act where no break occurs between service with that police force and service with the Agency.

(2) A reference in these Regulations to a person transferring from the Agency to a police force is to be construed as a reference to that person leaving the Agency voluntarily for the purpose of becoming a constable of that police force where no break occurs between service with the Agency and service with the police force.

(3) In this regulation, “police force” means—

(a) a police force maintained under section 1 of the 1967 Act(6);

(b) a police force maintained under section 2 of the Police Act 1996;

(4) S.S.I. 2004/257.

(5) Section 64 has been amended by the Police Act 1997 (c.50), section 134 and Schedule 9, paragraph 84; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 4, paragraph 79 and Schedule 17, Part 2; the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 69; S.I. 2001/3649, article. 349; and S.I. 2007/1098, Schedule 1, paragraph 3.

(6) Section 1 has been amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 71(2).

- (c) the metropolitan police force or the City of London Police Force;
- (d) the Police Service of Northern Ireland;
- (e) the Ministry of Defence Police;
- (f) the British Transport Police Force;
- (g) the Civil Nuclear Constabulary;
- (h) the States of Jersey Police Force;
- (i) the salaried police force of the Island of Guernsey; or
- (j) the Isle of Man Constabulary.

PART 2

GOVERNMENT

Ranks

4. The ranks which may be held in the Agency by police members are—
- (a) Chief Superintendent;
 - (b) Superintendent;
 - (c) Chief Inspector;
 - (d) Inspector;
 - (e) Sergeant;
 - (f) Constable.

Part-time appointments

5.—(1) The Director General may, after consultation with the representative bodies, authorise police members to perform part-time service in any rank.

(2) In these Regulations “part-time service” includes any arrangement by which a police member shares a job with another police member.

(3) A police member appointed to perform part-time service may not be required to serve as a full-time police member without that member’s consent.

(4) A police member appointed to perform part-time service immediately after serving as a full-time member may apply in writing to the Authority to be re-appointed as a full-time member and will be so appointed—

- (a) where the Authority has a suitable vacancy, within 1 month from the date of receipt by the Authority of the application; or
- (b) in any other case, no later than 3 months from the date of receipt by the Authority of the application.

(5) A police member appointed to perform full-time service may not be required to perform part-time service without that member’s consent.

(6) In this regulation, “full-time service” means any work pattern other than a work pattern authorised under this regulation.

(7) In relation to police members appointed under this regulation to perform part-time service regulation 18 has effect as if—

- (a) for paragraph (3) there is substituted—

“(3) In these regulations, “overtime” means time spent on duty in excess of such period as the Scottish Ministers may determine.”; and

(b) paragraph (4) is omitted.

Restrictions on the private life of police members

6.—(1) The restrictions on the private life of police members contained in Schedule 1 (restrictions on the private life of police members) apply.

(2) Subject to regulation 7 no additional restrictions on the private life of police members, except those designed to secure the proper exercise of the functions of a constable, may be imposed by the Authority or the Director General.

Business interests

7.—(1) A police member is not permitted to have a business interest without the consent of—

- (a) the Director General; or
- (b) in circumstances where the Director General has an interest otherwise than in his capacity as such, the Authority.

(2) If a police member—

- (a) acquires or is likely to acquire a business interest; and
- (b) has not previously disclosed that interest to the Director General or (as the case may be) the Authority,

that member must immediately give written notice of that interest to the Director General or (as the case may be) the Authority.

(3) A person applying for appointment as a police member must give written notice to the Authority of any business interest.

(4) A person will be regarded as having a business interest if—

- (a) that person carries on any business or holds any office or employment for hire or gain (otherwise than as a police member);
- (b) that person resides at any premises where any member of that person’s family runs a shop or any similar business;
- (c) that person, or any member of that person’s family living with that person, holds, in relation to any local authority area in Scotland, any licence, certificate or permit relating to liquor licensing or betting and gaming or regulating places of public entertainment or has any pecuniary interest in such a licence, certificate or permit; or
- (d) that person’s spouse, civil partner or cohabitant (in each case, not being separated from that person) runs a shop or any similar business anywhere in Scotland.

(5) For the purposes of this regulation—

“member of that person’s family” includes a person’s parent, son, daughter, brother, sister and, provided they are not separated from that person, spouse, civil partner or cohabitant; and

“cohabitant” means a member of a couple consisting of—

- (i) a man and a woman who are living together as if they are husband and wife; or
- (ii) two people of the same sex who are living together as if they are civil partners.

Qualifications for appointment

8.—(1) The Scottish Crime and Drug Enforcement Agency (Appointment of Police Members) Regulations 2007(7) are amended as follows.

(2) After regulation 3(1)(h) insert—

“(i) must have completed the relevant period of probation prior to appointment;

(2) In this regulation the relevant period of probation means—

(i) probationary service in the rank of constable under regulation 12 of the Police (Scotland) Regulations 2004; or

(ii) an equivalent period of probation with a police force mentioned in paragraph 10(4)(a) to (i) of schedule 1 to the Police, Public Order and Criminal Justice (Scotland) Act 2006.”.

Retirement

9.—(1) Police members may retire in such circumstances as the Scottish Ministers determine.

(2) Where a determination under paragraph (1) sets a requirement for giving notice to the Authority of intention to retire, the Authority may nonetheless accept a shorter period of notice.

Content of personal records

10.—(1) The Director General must cause a personal record to be kept for each police member.

(2) That record must contain—

(a) the home address of the member;

(b) a photograph not more than 10 years old of the member taken in accordance with the directions of the Director General and at the expense of the Authority;

(c) a personal description of the member;

(d) particulars of the member’s place and date of birth;

(e) particulars of the member’s current marriage or civil partnership (if any) and children (if any);

(f) a record of the member’s service (if any) in any branch of Her Majesty’s forces or the civil service;

(g) a record of the member’s service in any police force and transfers (if any) from one police force to another;

(h) a record of whether the member passed or failed to pass a qualifying examination at which the member was a candidate; and

(i) a record of the member’s service in the Agency, including particulars of all promotions, changes of pay, postings, transfers, removals, injuries received, periods of illness, attendances at training courses, commendations, rewards, punishments, disposals other than cautions, and the date of the member ceasing to be a police member with the reason, cause or manner thereof.

(3) A police member is entitled, on request, to inspect that member’s personal record.

Transfer of personal records

11.—(1) Where a police member transfers from the Agency to a police force the Director General must transfer that member’s personal record to that police force.

(2) For regulation 16 of the 2004 Regulations substitute—

“Transfer of personal records

16.—(1) Where a member of a police force transfers to another police force that member’s personal record must be transferred to the chief constable of that other police force.

(2) Where a member of a police force transfers to the Scottish Crime and Drug Enforcement Agency the chief constable of that force must transfer that member’s personal record to the Director General of the Agency.

(3) In this regulation, the reference to a member of a police force transferring to the Scottish Crime and Drug Enforcement Agency is a reference to that member leaving that police force voluntarily for the purpose of taking up an appointment as a police member of the Agency under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 where no break occurs between service with the police force and service with the Agency.”

Personal record of police member leaving the Agency

12.—(1) Where a person ceases to be a police member and does not transfer to a police force that person must be given a certificate setting out that person’s—

- (a) rank; and
- (b) period of service in the Agency and in any police force.

(2) The Director General may append to the certificate any recommendation which the Director General considers justified in making, for example that the member’s conduct was—

- (a) exemplary;
- (b) very good; or
- (c) good.

(3) Where a person ceases to be a police member and is not appointed as a constable of a police force, that person’s personal record is to be kept for such period of time as the Director General thinks fit and is then to be destroyed.

(4) Regulation 17 of the 2004 Regulations is amended as follows—

- (a) in paragraph (1)—
 - (i) after the words “police force” where they third appear, insert “, or is appointed as a police member of the Scottish Crime and Drug Enforcement Agency (“the Agency”) under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006,” and
 - (ii) delete the words from “that police force” where they second appear to the end of the paragraph and substitute—
 - “(a) that police force;
 - (b) any other police force; and
 - (c) the Agency.”; and
- (b) in paragraph (3), after the words “police force” where they third appear insert “, or is appointed as a police member of the Agency under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006,”

Fingerprints and samples

13.—(1) All police members must have—

- (a) their fingerprints; and
- (b) a sample,

taken in accordance with the directions of the Director General.

(2) Fingerprints of police members taken in accordance with paragraph (1)(a) must be kept separate from the fingerprints of any person whose fingerprints have been taken otherwise than in accordance with that paragraph.

(3) Samples, or the information derived from samples, of police members taken in accordance with paragraph (1)(b) must be kept separate from the samples, or the information derived from samples, taken in accordance with sections 18(8), 19(9), 19A(10) and 19AA(11) of the Criminal Procedure (Scotland) Act 1995, section 56 of the Criminal Justice (Scotland) Act 2003(12), section 87(5A)(c) of the Sexual Offences Act 2003(13) or otherwise lawfully taken and held by or on behalf of any police force or the Agency, or in connection with or as a result of an investigation of an offence.

(4) The fingerprints and samples taken in accordance with paragraph (1) may be used only for the purpose of a comparison against any other fingerprint or sample, or information derived from that sample, taken by or on behalf of any police force, or by the Agency, or in connection with or as a result of the investigation of an offence.

(5) Subject to paragraph (6)—

- (a) the fingerprints of a police member taken in accordance with paragraph (1)(a), and all copies and records of those fingerprints; and
- (b) the samples, or information derived from the samples, taken in accordance with paragraph (1)(b), and all copies and records of those samples,

must be destroyed as soon as practicable after that person ceases to be a police member.

(6) Where a police member transfers to a police force, that person's fingerprints and samples (and information derived from the samples) must be transferred to the chief constable of that force.

(7) In regulation 18(3) of the 2004 Regulations, after the words “another force,” insert “, or is appointed as a police member of the Scottish Crime and Drug Enforcement Agency under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006,”.

(8) In regulation 19(4) of the 2004 Regulations(14), after the words “another force,” insert “, or is appointed as a police member of the Scottish Crime and Drug Enforcement Agency under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006,”.

(9) In this regulation “sample” means—

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- (8) 1995 c.46. 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; and the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 83 and Schedule 6, paragraph 4.
 - (9) 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; and the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77.
 - (10) 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; and S.S.I. 2005/465, Schedule 1, paragraph 27.
 - (11) Section 19AA was added by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 77.
 - (12) 2003 asp 7.
 - (13) 2003 c.42. Section 87 has been amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), sections 77 and 78.
 - (14) Regulation 19 has been amended by S.S.I. 2007/134, regulation 8.

- (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 to carry out lawful orders

14. Every police member must carry out all lawful orders and at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of that member's office as a constable of the Agency.

Duty

15.—(1) Subject to section 23(5) of the 2006 Act, the Scottish Ministers must determine—

- (a) the normal periods of duty of a police member;
- (b) the periods allowed for refreshment;
- (c) the variable shift arrangements which may be brought into force by the Director General;
- (d) the manner and timing of the publication of duty rosters and the matters to be contained therein; and
- (e) the circumstances in which travelling time may be treated as duty.

(2) In making a determination under paragraph (1)(a) the Scottish Ministers may confer on the Director General discretion to fix the time at which a period commences for the purposes of the determination and may determine the conditions subject to which that discretion is to be exercised.

(3) In making a determination under paragraph (1)(e) the Scottish Ministers may—

- (a) confer on the Director General discretion to fix a limit on the travelling time which is to be treated as duty;
- (b) confer on the Authority discretion to fix a limit on the amount of the expenses which may be reimbursed in respect of such travelling time.

(4) In this regulation—

“tour of duty” in relation to a police member for whom variable shift arrangements are in operation under this regulation means a rostered shift; and

“travelling time” means time spent by a police member travelling to and from that member's home—

- (a) where that member is required to perform that member's normal period of duty in more than one tour of duty, between two tours; or
- (b) where that member is recalled to duty between two tours of duty, in consequence of that member's recall.

Meetings of Scottish Police Federation treated as police duty

16.—(1) The attendance of a police member at a meeting of the Scottish Police Federation mentioned in paragraph (3) is to be treated as police duty.

(2) But—

- (a) attendance at a meeting mentioned in paragraph (3)(f) and (g) is only to be treated as police duty where attendance is approved by the Director General; and
 - (b) attendance at a meeting mentioned in paragraph (3)(h) is only to be treated as police duty where attendance is approved by the Scottish Ministers.
- (3) The meetings of the Scottish Police Federation are—
- (a) a quarterly meeting of a branch board;
 - (b) an ordinary meeting of a central committee;
 - (c) a meeting of the conferences arrangements committee;
 - (d) the annual meeting of the joint central committee with the joint central committee of the Police Federation for England and Wales and the central committee of the Police Federation for Northern Ireland;
 - (e) the annual meeting of a central conference;
 - (f) an additional meeting of a branch board;
 - (g) a meeting of a committee of a branch board; and
 - (h) any other meeting of the Scottish Police Federation not mentioned in sub-paragraphs (a) to (g).
- (4) In this regulation “branch board” means the branch board mentioned in regulation 7(1) of the Police Federation (Scotland) Regulations 1985(15).

PART 4

PAY

Pay

- 17.—(1) The pay of police members is to be determined by the Scottish Ministers and in making a determination under this regulation they may—
- (a) specify that the pay of a police member is payable subject to certain conditions; and
 - (b) in relation to the pay of a police member of the rank of chief inspector or below, confer functions in relation to those conditions on—
 - (i) the Director General;
 - (ii) the Deputy Director General;
 - (iii) a police member above the rank of chief inspector; or
 - (iv) a person appointed by the Authority under paragraph 10 of schedule 1 to the 2006 Act.
- (2) Subject to regulation 32, in reckoning the service of a police member in any rank for the purposes of pay—
- (a) account is to be taken of all that member’s service in that rank (including service in that rank in a police force which was reckonable for the purposes of pay); and
 - (b) any service in a higher rank (whether on temporary promotion or otherwise) is to be treated as if it had been service in that higher rank.

(3) But in the case of a police member of a rank higher than that of chief inspector, paragraph (2) has effect subject to any contrary agreement between the Authority and the police member relating to the reckoning of previous service with the Agency or a police force.

(4) In reckoning a police member's service in a particular rank for the purposes of pay—

- (a) that service is to be treated as unbroken by and including any period of service in Her Majesty's forces which the member is entitled to reckon as pensionable service;
- (b) unless the Authority, with the approval of Scottish Ministers, determines otherwise in any particular case—
 - (i) no account is to be taken of any previous service in that rank which terminated in that member's reduction in rank as a punishment;
 - (ii) but any previous service in a higher rank which terminated in that member's reduction in rank as a punishment is to be treated as if it had been service in the rank to which that member was reduced;
- (c) no account is to be taken of any period of duty in that rank in respect of which a temporary salary is payable under regulation 20;
- (d) no account is to be taken of any period of unpaid leave;
- (e) part-time service is to be taken into account as though it were full-time service;
- (f) in the case of a female police member who has taken one or more periods of maternity leave, in respect of each period of such leave—
 - (i) account is to be taken of any period spent on maternity leave up to a maximum of 26 weeks beginning with the week in which the child is born; and
 - (ii) where she has, at the beginning of the 14th week before the expected date of birth of her child, as notified in accordance with a determination under regulation 26(8), served continuously as a police member or as a member of a police force for a period of not less than 26 weeks, account is to be taken of any period (not being a period of which account has been taken under paragraph (i)) spent on maternity leave during the period of 29 weeks beginning with the week in which the child was born;
- (g) account is to be taken of any period of maternity support leave, parental leave and adoption support leave taken in accordance with a determination under regulation 26; and
- (h) account is to be taken of the first 27 weeks of adoption leave taken in accordance with a determination under regulation 26(9)(c).

(5) A determination under paragraph (1) has effect in relation to a university scholar subject to the provisions of any determination for the time being in force under regulation 25.

Overtime

18.—(1) The Scottish Ministers must determine the circumstances and manner in which a police member is to be compensated for overtime.

(2) In making a determination under paragraph (1), the Scottish Ministers may confer on the Director General discretion—

- (a) to fix the day on which a period commences for the purposes of the determination;
 - (b) to fix the period within which time off in compensation for overtime is to be granted; and
 - (c) to allow time in addition to that specified in the determination to be taken into account in computing any period of overtime.
- (3) In these regulations, “overtime” means time—
- (a) for which a police member remains on duty after that member's tour of duty ends;

- (b) for which a police member is recalled between tours of duty; or
 - (c) which forms part of a tour of duty which a police member is required to begin earlier than the rostered time without due notice and on a day when that member has already completed that member's normal daily period of duty.
- (4) In this regulation—
- “due notice” means notice given at least 8 hours before the revised starting time of the rostered tour of duty in question;
 - “normal daily period of duty” is to be construed in accordance with regulation 15;
 - “recall” does not include a warning to be ready for duty if required; and
 - “tour of duty”, in relation to a police member for whom variable shift arrangements are in operation, has the meaning given by regulation 15(4).

Public holidays and rest days

19.—(1) The Scottish Ministers must determine the circumstances and manner in which a police member is to be granted leave or otherwise compensated in respect of time spent on duty on—

- (a) public holidays; or
- (b) rostered rest days.

(2) In making a determination under paragraph (1) the Scottish Ministers may confer on the Director General discretion to fix—

- (a) the time at which, or the day on which, a period commences for the purposes of that determination;
- (b) the period within which time off in compensation for time spent on duty as mentioned in that paragraph is to be granted; and
- (c) a limit on the length of time spent travelling to and from a police member's place of duty which is to be included in the period of duty for the purposes of the determination.

(3) In this regulation—

“public holiday” means Christmas Day, New Year's Day and each of 6 other days, being as far as practicable local public holidays and in any year where Christmas Day, 26th December or New Year's Day falls on a Saturday or Sunday the 6 other days are to be increased by 1 for each day on which Christmas Day, 26th December or New Year's Day falls on a Saturday or Sunday; and

“rostered rest day” means a day which according to the duty roster was, immediately before a police member was required to do duty, to have been a rest day for that member.

Temporary salary and temporary promotion

20. The Scottish Ministers must determine—

- (a) the circumstances in which police members are entitled to receive a temporary salary and the rate of that salary; and
- (b) the rate of salary of police members while temporarily promoted.

Sick pay

21.—(1) The Scottish Ministers must determine the entitlement of police members to pay during periods of sick leave taken in accordance with a determination under regulation 26.

(2) In making a determination under paragraph (1) the Scottish Ministers may confer on the Director General discretion to allow a police member to receive more pay than that specified in the determination.

Maternity pay, maternity support leave pay, adoption pay and adoption support leave pay

22. The Scottish Ministers must determine the entitlement of police members to pay during periods of—

- (a) maternity leave;
- (b) maternity support leave;
- (c) adoption leave; and
- (d) adoption support leave.

Fixing of pay day and calculation of monthly, weekly and daily pay

23.—(1) The intervals at which police members are to be paid are to be fixed by the Authority in accordance with such rules as the Scottish Ministers may determine.

(2) The Scottish Ministers must determine the manner of calculating monthly, weekly and daily pay of police members.

Deductions from pay of social security benefits and statutory sick pay

24.—(1) There is to be deducted from the pay of a police member who is in receipt of full pay—

- (a) any statutory sick pay to which that member is entitled under the Social Security Contributions and Benefits Act 1992⁽¹⁶⁾; and
- (b) any contributory employment and support allowance to which that member is entitled under the Welfare Reform Act 2007⁽¹⁷⁾.

(2) For the purposes of paragraph (1)(a), any increase for adult and child dependents is to be treated as forming part of the benefit or allowance to which it relates.

(3) For the purposes of this regulation, a female police member who as a married woman or widow has elected to pay contributions under section 19 of the Social Security Contributions and Benefits Act 1992⁽¹⁸⁾ at the reduced rate is to be deemed entitled to any social security benefits mentioned in paragraph (1) to which she would have been entitled had she not elected to contribute at the reduced rate.

(4) In this regulation, “full pay” means pay at the rate ascertained from regulation 17 and the determination made thereunder.

University scholars

25.—(1) The Scottish Ministers must determine how Part 3 and this Part of these Regulations and any determination made under these Regulations are to have effect in relation to a university scholar.

(2) In making such a determination the Scottish Ministers may confer on the Authority discretion to determine whether or not the conditions subject to which a university scholar is entitled to any payment under this Part are met.

⁽¹⁶⁾ 1992 c.4.

⁽¹⁷⁾ 2007 c.5.

⁽¹⁸⁾ Section 19 has been amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), section 2 and Schedule 3, paragraph 19 and by the National Insurance Contributions Act 2008 (c.19), Schedule 1, paragraph 5.

PART 5

LEAVE

Leave

26.—(1) Every police member is, so far as the exigencies of duty permit, to be granted in each annual leave year such annual leave as may be determined by the Scottish Ministers.

(2) In this regulation “leave year” means a period of 12 months beginning on such date as may from time to time be determined by the Authority.

(3) A determination made by the Scottish Ministers under paragraph (1) may confer on the Director General discretion—

- (a) to grant additional days of annual leave in any leave year in such circumstances and subject to such conditions as the Scottish Ministers may determine; and
- (b) subject to such conditions as the Scottish Ministers may determine, to allow days of annual leave granted under this regulation to be taken as a single period, or as single days, or in periods of more than one day or as half days.

(4) A determination made by the Scottish Ministers under paragraph (1) must contain provision for the compensation of a police member for being recalled to duty during a period of annual leave granted under this regulation.

(5) Annual leave granted under this regulation is additional to the days on which a police member is not required to perform police duties in accordance with any determination under regulation 19.

(6) The Scottish Ministers—

- (a) must determine the circumstances in which a police member may be absent from duty on account of injury or illness; and
- (b) in making such a determination may confer on the Authority a power to appoint, or approve the appointment of, a medical practitioner for the purposes of any function to be carried out under that determination.

(7) A female police member who is pregnant has, in such circumstances as the Scottish Ministers determine, the right not to be unreasonably refused special leave from duty to enable her to keep an appointment for the purpose of receiving antenatal care.

(8) A female police member qualifies for maternity leave in such circumstances as the Scottish Ministers determine.

(9) So far as the exigencies of duty permit, and in such circumstances as the Scottish Ministers determine, a police member is to be granted—

- (a) maternity support leave;
- (b) parental leave;
- (c) adoption leave; and
- (d) adoption support leave.

(10) So far as the exigencies of duty permit, and subject to any conditions or limitations the Scottish Ministers determine, a police member may during periods of duty take reasonable dependant support leave.

(11) The Scottish Ministers may determine that any period of leave or other time off taken in accordance with a determination under paragraph (1), (7), (9) or (10) is to be treated as a period of duty.

(12) Paragraph (6) (and any determination under that paragraph) applies to a member who is in quarantine as it applies to a member who is ill.

(13) The Scottish Ministers must determine the circumstances and manner in which—

- (a) a police member is entitled to take a career break; and
- (b) that member may return to duty after taking that career break.

(14) In making a determination under paragraph (13), the Scottish Ministers may confer functions on the Director General.

(15) The Director General may authorise that any of the functions conferred on the Director General under a determination made under paragraph (13) may be carried out by—

- (a) the Deputy Director General; or
- (b) a police member of the rank of chief superintendent.

(16) In this regulation—

“dependant support leave” means leave for such purposes relating to a police member’s dependant as Scottish Ministers determine (and Scottish Ministers may determine the meaning of dependant for that purpose);

“maternity support leave” means leave to enable support to be given to an expectant mother at or around the time of birth; and

“adoption support leave” means leave to enable support to be given to an adoptive parent at or around the time of adoption.

PART 6

ALLOWANCES AND EXPENSES

Allowances

27.—(1) The Scottish Ministers must determine the entitlement of police members to any allowance and in making such a determination the Scottish Ministers may confer on the Authority or the Director General such functions as they think fit—

- (a) in relation to the calculation of an allowance; and
- (b) where the payment of an allowance is subject to such conditions as may be specified in the determination, in relation to those conditions.

(2) No allowances are to be paid to a police member other than in accordance with—

- (a) these Regulations; or
- (b) any determination made by Scottish Ministers under this regulation.

(3) This regulation does not apply to the reimbursement of any expenses incurred by a police member in the execution of that member’s duty which—

- (a) have been authorised generally or specifically by the Authority;
- (b) in respect of which no allowance is payable under these Regulations; and
- (c) in respect of which no determination has been made under regulation 28.

Expenses

28.—(1) The Scottish Ministers must determine the entitlement of a police member to reimbursement of any expenses incurred by that member in or in connection with the performance of that member’s duties.

(2) In any determination under paragraph (1) the Scottish Ministers may specify conditions subject to which expenses are to be reimbursed and in doing so may confer on the Authority or the Director General such functions in relation to those conditions as they think fit.

Continuance of allowances when member ill

- 29.**—(1) This regulation applies where conditions 1, 2 and 3 are satisfied.
- (2) Condition 1 is that a police member is regularly in receipt of an allowance to meet an expense.
- (3) Condition 2 is that the expense ceases to arise when that member is absent from duty.
- (4) Condition 3 is that the member is—
- (a) placed on the sick list; or
 - (b) on maternity leave.
- (5) Where this regulation applies, the allowance mentioned in paragraph (2)—
- (a) must be paid during the member’s absence from duty for a period not exceeding 1 month; and
 - (b) may then, during the remainder of the member’s absence from duty, be suspended at the discretion of the Director General.

Replacement allowance

- 30.** Schedule 2 (replacement allowance) has effect.

Restriction on payments for private employment of SCDEA

31. Without prejudice to the generality of regulation 27, a police member who is engaged on duty at the request of any person who has agreed to pay the Authority for that member’s services is not entitled to any payment for those services except as provided by or under these Regulations.

PART 7

RECKONING OF SERVICE

Reckoning of service in a specified police force

32.—(1) A person who becomes a police member having transferred from a specified police force for that purpose is, for the purposes of regulation 17, to be treated as though that person’s service in any rank in such a force were service in the corresponding rank in the Agency.

(2) But paragraph (1) applies to a police member of a rank higher than that of chief inspector subject to any contrary agreement between the Authority and that police member.

- (3) In this regulation—
- (a) the reference to a rank corresponding to a rank in the Agency is a reference to a rank in the specified police force designated by the Scottish Ministers for the purposes of this regulation as the rank corresponding to a rank in the Agency; and
 - (b) “specified police force” means—
 - (i) a police force maintained under section 1 of the 1967 Act;
 - (ii) a police force maintained under section 2 of the Police Act 1996;
 - (iii) the metropolitan police force or the City of London police force;

- (iv) the Police Service of Northern Ireland;
- (v) the Ministry of Defence Police, that is to say the force established by section 1 of the Ministry of Defence Police Act 1987⁽¹⁹⁾ or, before the coming into force of that Act, comprising constables appointed under section 3 of the Special Constables Act 1923 on the nomination of the Defence Council;
- (vi) the British Transport Police Force;
- (vii) the Civil Nuclear Constabulary;
- (viii) the States of Jersey Police Force;
- (ix) the salaried police force of the Island of Guernsey;
- (x) the Isle of Man Constabulary;
- (xi) the Port of Tilbury Constabulary or, before the coming into force of the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992⁽²⁰⁾, 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⁽²¹⁾; and
- (xii) an aerodrome constabulary within the meaning given by section 31(1) of the Aviation Security Act 1982⁽²²⁾.

Reckoning of service in the Agency

33. After regulation 43 of the 2004 Regulations, insert—

“Reckoning of service in the Scottish Crime and Drug Enforcement Agency

43A.—(1) Where a member of a police force joined or rejoined that force having left service as a police member of the Scottish Crime and Drug Enforcement Agency (“the Agency”) for that purpose then, for the purposes of regulation 24, that member’s service in any rank in the Agency is to be treated as if it were service in the corresponding rank in the police force that member joined or rejoined:

Provided that in the case of a member of a police force of a rank higher than that of chief inspector this paragraph shall have effect subject to any contrary agreement.

(2) In this regulation—

- (a) any reference to a rank corresponding to a rank in a police force is a reference to a rank in the Agency designated by the Scottish Ministers for the purposes of this regulation as the rank corresponding to the rank in question; and
- (b) the reference to “service as a police member of the Scottish Crime and Drug Enforcement Agency” is to service following appointment as a police member under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006.”.

(19) 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.

(20) S.I. 1992/284.

(21) 1968 c.32.

(22) 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.

PART 8

UNIFORM AND EQUIPMENT

Issue of uniform and equipment

34.—(1) Police members of the rank of superintendent and below are entitled to receive from the Authority such uniform and equipment as the Authority deems necessary—

- (a) free of charge; and
- (b) in a clean and serviceable condition.

(2) The Authority may issue uniform and equipment as required to police members above the rank of superintendent.

(3) Unless the Authority and a police member otherwise agree, uniform and equipment issued under this regulation remain the property of the Authority and must be returned when the member leaves the Agency.

PART 9

DETERMINATIONS

Determinations

35.—(1) Before making a determination under any provision of these Regulations relating to the matters mentioned in section 61(1)(**23**) of the Police Act 1996, the Scottish Ministers must—

- (a) supply the Police Negotiating Board with a draft of the determination; and
- (b) take into consideration any recommendation made by that Board,

and section 62(2)(**24**) of the Police Act 1996 applies in relation to a recommendation to be made for the purposes of this paragraph as it applies in relation to a recommendation to be made for the purposes of subsection (1A) of that section.

(2) Before making a determination under any provision of these Regulations relating to any other matter, the Scottish Ministers must—

- (a) supply the Police Advisory Board for Scotland with a draft of the determination; and
- (b) take into consideration any representations made by that Board.

(3) A determination under any provision of these Regulations for regulating pay and allowances may be made with retrospective effect to any date specified in the determination.

(4) A determination under any provision of these Regulations may make different provision for different cases and circumstances.

(23) Section 61 has been amended by the Police Act 1997 (c.50), section 134 and Schedule 9, paragraph 81; the Police (Northern Ireland) Act 2000 (c.32), section 78 and Schedule 6, paragraph 12; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 4, paragraph 76 and Schedule 17, Part 2; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), schedule 6, paragraph 5; the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 66; and S.I. 1999/1747, article 3 and schedule 21, paragraph 2.

(24) Section 62 has been amended by the Police Act 1997 (c.50), section 134, Schedule 9, paragraph 82 and Schedule 10; the Police (Northern Ireland) Act 1998 (c.32), section 34; the Criminal Justice and Police Act 2001 (c.16), section 128 and Schedule 6, paragraph 77; the Police Reform Act 2002 (c.30), sections 90 and 91 and Schedule 7, paragraph 16 and Schedule 8; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 4, paragraph 77 and Schedule 17, Part 2; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), schedule 6, paragraph 5; the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 67; and S.I. 1999/1820, article 4 and Schedule 12.

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St Andrew's House,
Edinburgh
1st February 2011

KENNY MACASKILL
A member of the Scottish Executive

SCHEDULE 1

Regulation 6(1)

RESTRICTIONS ON THE PRIVATE LIFE OF POLICE MEMBERS

1. A police member must at all times abstain from—
 - (a) any activity likely to interfere, or likely to give the impression of interference, with the impartial discharge of that member's duties; and
 - (b) taking any active part in politics.
2. A police member must not wilfully refuse or neglect to discharge any lawful debt.
3. A police member in receipt of a replacement allowance must not, unless that member has previously given written notice to the Director General, receive a lodger in a house in which that member resides.

SCHEDULE 2

Regulation 30

REPLACEMENT ALLOWANCE

Replacement allowance

1. Paragraph 2 applies to a police member who, immediately before transferring to the Agency, was entitled by virtue of the operation of Schedule 3 to the 2004 Regulations to—
 - (a) a replacement allowance; or
 - (b) occupy a house or quarters provided free of rent.
2. A person to whom this paragraph applies is entitled to receive from the Authority a replacement allowance under this Schedule.
3. The replacement allowance under this Schedule is—
 - (a) in the case of a police member who, immediately prior to transferring to the Agency, received a replacement allowance under Schedule 3 to the 2004 Regulations, an allowance equal to the rate of that allowance; and
 - (b) in the case of a police member who, immediately prior to transferring to the Agency, was entitled to occupy a house or quarters with which that member was provided free of rent, an allowance at a rate equal to the rate of replacement allowance which would have been payable to that person under paragraph 2 or paragraph 4 (as the case may be) of Schedule 3 to the 2004 Regulations if that person had, while a member of a police force, ceased to occupy a house or quarters with which that member was provided free of rent.

Amendment of the 2004 Regulations

4. After paragraph 1(6)(c) of Schedule 3 to the 2004 Regulations, insert—

“or

 - (d) a period of service as a police member of the Scottish Crime and Drug Enforcement Agency appointed under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006.”.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the governance and administration of the Scottish Crime and Drug Enforcement Agency (“the Agency”) in relation to police members of that Agency appointed under paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”). They also make provision about certain of the terms and conditions of service of such police members.

Part 2 of the Regulations deal with certain issues relating to the governance and administration of the Agency.

Regulation 4 sets out the ranks which may be held by police members.

Regulation 5 provides the Director General of the Agency with the power to authorise police members in any rank to perform part-time service and describes what part-time service means in that context.

Regulations 6 and 7 and Schedule 1 lay down certain restrictions on the external interests of police members, including prohibitions against conduct which conflicts with a police member’s duties and holding certain business interests without the permission of either the Agency or the Scottish Police Services Authority (“the Authority”).

Regulation 8 modifies the qualifications for appointment currently set out in the Scottish Crime and Drug Enforcement Agency (Appointment of Police Members) Regulations 2007 (S.S.I. 2007/90), adding the condition that a prospective applicant must have completed a relevant period of probationary service as a constable prior to appointment.

Regulation 9 gives Scottish Ministers the power to determine the circumstances in which a police member may retire.

Regulations 10 to 12 make provision about the keeping, content, transfer and disposal of personal records for police members. They include duties on the Director General of the Agency to keep such records and to transfer them to any police force to which a police member may transfer. A police member who leaves the Agency without transferring to a police force is entitled to a certificate setting out his or her rank and period of service with the Agency.

Regulation 13 provides that police members must have fingerprints and samples taken and kept for the purposes of comparison against other fingerprints and samples taken by or on behalf of a police force or in connection with or as a result of the investigation of an offence.

Part 3 makes provision about duty in the Agency.

Regulation 14 places a requirement on police members to carry out all lawful orders.

Regulation 15 gives Scottish Ministers the power to determine the periods of duty of police members and how those are to be calculated. This is subject to section 23(5) of the 2006 Act which provides that police members must be allowed at least 52 days in a year on which they are not required to perform police duty. Regulation 16 lists the meetings of the Scottish Police Federation attendance at which is to be treated as police duty.

Part 4 deals with issues related to pay.

Regulation 17 provides Scottish Ministers with the power to determine the pay of police members. Regulation 17 also makes general provision as to the calculation of pay based on service in a rank in the Agency and special provision about how the calculation of pay is to be affected by service

in Her Majesty's forces, reduction in rank as punishment, periods of duty which have attracted a temporary salary, periods of unpaid leave, part time service and time spent on maternity, maternity support, parental or adoption leave.

Regulations 18 and 19 require Scottish Ministers to determine how and in what circumstances police members are to be compensated for overtime, public holidays and rest days. Determinations made under these regulations may confer on the Director General discretion in relation to the calculation of payments for overtime, public holidays and rest days.

Regulations 20 to 22 require Scottish Ministers to determine rates of temporary salary (and the circumstances in which they are to be paid), sick pay and pay entitlement during periods of maternity leave, maternity support leave, adoption leave and adoption support leave. Fixing the intervals at which police members are to be paid is a matter for the Authority, while the manner of calculating monthly, weekly and daily pay is to be determined by Scottish Ministers (regulation 23).

Regulation 24 provides that certain statutory benefits are deductible from the pay of a police member while he or she is in receipt of full pay.

Regulation 25 requires Scottish Ministers to determine how Parts 3 and 4 of the Regulations (duty and pay) are to apply to university scholars (as defined by regulation 2).

Part 5 makes provision in relation to leave.

Regulation 26(1) provides that the Scottish Ministers are to determine the annual leave entitlement of police members which is additional to rest days and public holidays. In making such a determination, Ministers may confer on the Director General discretion to grant additional days of annual leave and to determine how leave is to be calculated (regulation 26(3)).

By virtue of regulation 26(4) a determination made under regulation 26(1) must contain provision for the compensation of police members recalled to duty before the end of a period of annual leave.

Regulation 26(6) requires Scottish Ministers to determine the circumstances in which police members are permitted to be absent from duty due to injury or illness.

Regulation 26(7) to (11) gives Scottish Ministers the power to determine the circumstances in which special leave is to be granted to pregnant police members and to determine the circumstances in which a police member qualifies for maternity leave, maternity support leave, parental leave, adoption leave, adoption support leave and dependant support leave.

Regulation 26(15) requires Scottish Ministers to determine the circumstances and manner in which a police member may take a career break and return to duty at the end of such a break.

Part 6 makes provision about the allowances and expenses of police members.

Regulation 27 places an obligation on Scottish Ministers to determine the entitlement of police members to allowances and in making that determination Ministers may confer functions on the Authority or the Director General in relation to the calculation of an allowance and any conditions attaching to the payment of an allowance.

Regulation 28 requires Scottish Ministers to determine the entitlement of police members to reimbursement of expenses incurred in connection with the performance of their duties. Scottish Ministers may specify conditions subject to which these expenses are to be reimbursed and may confer on the Authority or the Director General functions in relation to those conditions.

Regulation 29 provides for the continuity of allowances for 1 month when a police member is absent due to illness or maternity leave and grants the Director General discretion to suspend an allowance thereafter for the remainder of the police member's absence from duty.

Regulation 30 and Schedule 2 provide that police members who have transferred from Scottish police forces and who were entitled to free housing or a replacement allowance by virtue of the operation of Schedule 3 to the Police (Scotland) Regulations 2004 are to be paid an equivalent replacement allowance by the Authority while serving as police members.

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Regulation 31 provides that a police member who is engaged on duty as a result of a private agreement between the Authority and a third party is not entitled to any additional remuneration for that duty.

Part 7 makes provision about the reckoning of service.

Regulation 32(1) provides that for the purpose of calculating pay a police member who has transferred from one of the specified police forces is to be treated as though service in that force were service in a corresponding rank in the Agency (subject to any agreement to the contrary in the case of a police member of a rank higher than chief inspector – regulation 32(2)).

Regulation 33 amends the Police (Scotland) Regulations 2004 to ensure that where a police member transfers to a Scottish police force to serve as a member of that force, that person's service in any rank in the Agency is to be treated as if it were service in the corresponding rank in the police force.

Part 8 makes provision about uniforms and equipment.

Regulation 34 provides that police members of the rank of superintendent and below are entitled to receive any necessary uniform and equipment from the Authority free of charge. The Authority also has a discretion to issue uniform and equipment to police members above the rank of superintendent.

Part 9 makes provision about determinations.

Regulation 35(1) requires Scottish Ministers, before making a determination under these Regulations relating to hours of duty, leave, pay and allowances or the issue, use and return of police clothing and personal equipment, to supply the Police Negotiating Board with a draft of the determination and to take into consideration any recommendations made by that Board.

Regulation 35(2) requires Scottish Ministers, before making a determination under these Regulations relating to any other matter, to supply the Police Advisory Board for Scotland with a draft of the determination and to take into account any representations made by that Board.

Regulation 35(3) provides that any determination relating to pay and allowances may be made with retrospective effect to any date specified in that determination.