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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 257**

**POLICE**

**The Police (Scotland) Regulations 2004**

<i>Made</i>	- - - - -	<i>2nd June 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - - -	<i>3rd June 2004</i>
<i>Coming into force</i>	- -	<i>25th June 2004</i>

The Scottish Ministers, in exercise of the powers conferred by sections 7(1), 16, 26, 27 and 48(1) of the Police (Scotland) Act 1967<sup>(1)</sup>, section 82(4) of the Police Reform Act 2002<sup>(2)</sup> and of all other powers enabling them in that behalf, after taking into consideration any representations made by the Police Advisory Board for Scotland following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, and after taking into consideration any recommendations made by the Police Negotiating Board for the United Kingdom and supplying the said Board with a draft of the Regulations in accordance with section 62(1ZA) of the Police Act 1996<sup>(3)</sup>, hereby make the following Regulations:

**PART 1**

**COMMENCEMENT AND INTERPRETATION**

**Citation and commencement**

- 1.—(1) These Regulations may be cited as the Police (Scotland) Regulations 2004.
- (2) These Regulations shall come into force on 25th June 2004 but—
  - (a) regulation 6(2) to (4) shall have effect from 1st September 1998;
  - (b) regulation 24(3)(f) shall have effect from 1st December 1999 to 5th April 2003;

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(1) 1967 c. 77; section 7(1) was amended by the Police and Criminal Evidence Act 1984 (c. 60) (“the 1984 Act”), Schedule 6, paragraph 31 and by the Police and Magistrates’ Courts Act 1994 (c. 29) (“the 1994 Act”), Schedule 9, Part I; section 16 was amended by the District Courts (Scotland) Act 1975, Schedule 1, paragraph 29; section 26(9) was amended by the Police Negotiating Board Act 1980 (c. 10), section 2(4) and by the Police Act 1996 (c. 16) (“the 1996 Act”), Schedule 7, paragraph 14(3); section 26(1A) and (10) was inserted by the 1984 Act, section 111; section 26(1) was amended by the 1994 Act, section 53(1); section 26(1A) was inserted by the 1984 Act, section 111(1)(a); section 26(2) was amended by the 1994 Act, sections 47(5) and 52(2) and Schedule 9 and by the 1996 Act, Schedule 7, paragraph 14(2); section 26(2A) to (2C) was inserted by the 1994 Act, section 52(3); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9; section 27(3) was amended by the 1984 Act, section 111(2) and by the Police Act 1997 (c. 50), Schedule 9, paragraph 9. See section 51(1) which has a relevant definition of “prescribed”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) 2002 c. 30.

(3) 1996 c. 16.

- (c) regulation 24(3)(g), (h) (so far it relates to maternity support leave and adoption support leave), (i) and 33(8)(d) shall have effect from 6th April 2003;
- (d) regulation 42 shall have effect from 1st September 2002 so far as relating to the Port of Tilbury Constabulary.

### References to transfers

2.—(1) Except where the context otherwise requires, a reference in these Regulations to a member of a police force voluntarily transferring from one force to another shall be construed as a reference to such a member leaving a force for the purpose of joining another force and joining that other force, where that member left the force first mentioned in this regulation on or after 1st January 1963 for the purposes aforesaid with, in the case of the chief constable, the consent of the police authority.

(2) Except where the context otherwise requires, a reference in these Regulations to a member of a police force being statutorily transferred from one force to another shall be construed as a reference to such a member being transferred by or under the Police Scotland Act 1967 as amended both by the Local Government (Scotland) Act 1973(4) and the Local Government (Scotland) Act 1994(5).

(3) Except where the context otherwise requires, a reference in these Regulations to a member of a police force transferring from one force to another shall be construed as a reference to his either voluntarily so transferring or being statutorily so transferred.

### References to provisions of these Regulations

3. In these Regulations, unless the context otherwise requires, a reference to a regulation shall be construed as a reference to a regulation contained in these Regulations, a reference to a Schedule shall be construed as a reference to a Schedule to these Regulations, a reference to a paragraph shall be construed as a reference to a paragraph in the same regulation or, as the case may be, the same Part of the same Schedule and a reference to a sub-paragraph shall be construed as a reference to a sub-paragraph contained in the same paragraph.

### Interpretation

4.—(1) In these Regulations, unless the context otherwise requires—

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

“British Transport Police Force” means the force of constables appointed under section 53 of the British Transport Commission Act 1949(6);

“chief constable” means the person who is appointed to the office of chief constable of a police force;

“Conduct Regulations” means the Police (Conduct) (Scotland) Regulations 1996(7), and the Police (Senior Officers) (Scotland) Regulations 1999(8);

“maternity leave” means leave taken in accordance with the provisions of a determination under regulation 33 by a qualified member of a police force during the maternity period;

“member of a police force” means a constable of a police force (including the chief constable of a police force) and includes such a member who is suspended under the Conduct Regulations;

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(4) 1973 c. 65.

(5) 1994 c. 39.

(6) 1949 c.xxiv.

(7) S.I. 1996/1642 amended by S.S.I. 1999/1072.

(8) S.I. 1999/1074.

“pensionable service” has the same meaning as in the Police Pensions Regulations 1987(9);

“the 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;

“senior officer” means a member who is a chief constable a deputy chief constable or an assistant chief constable;

“university scholar” means a member of a police force on a course of university study nominated by the Scottish Ministers or by the police authority maintaining the police force of which that member is a member following arrangements approved by the Scottish Ministers;

“week” means a period of seven days beginning with Sunday.

(2) Nothing in these Regulations shall be construed as authorising pay or allowances payable to any person to be reduced retrospectively.

## PART 2

### GOVERNMENT

#### Ranks

5. The ranks which may be held by members of a police force shall be known by the following designations—

Chief Constable;

Deputy Chief Constable;

Assistant Chief Constable;

Chief Superintendent;

Superintendent;

Chief Inspector;

Inspector;

Sergeant;

Constable.

#### Part-time appointments

6.—(1) A chief constable may, after consultation with local representatives of the representative bodies, appoint persons to perform part-time service in any rank.

(2) In these Regulations a person appointed to perform part-time service includes a person appointed to share a job with another person.

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

(4) A person appointed to perform part-time service immediately after serving as a full-time member may give notice in writing of that person’s intention to be re-appointed as a full-time member and shall be so appointed—

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(9) S.I. 1987/257, amended by S.I. 1987/2215, 1988/1339, 1989/733, 1990/805, 1992/1343, 1992/2349, 1994/641, 1996/867 and 1997/1429.

- (a) within one month of the date the notice is received by the police authority, where the authority has a suitable vacancy; or
  - (b) except where sub-paragraph (a) applies, when 3 months have elapsed since the day the notice was received, or from an earlier date if reasonably practicable.
- (5) A person serving as a full-time member of a police force may not be appointed to perform part-time service without that person's consent.
- (6) In this regulation "full-time member" means a member appointed otherwise than under this regulation.
- (7) In relation to persons appointed under this regulation to perform part-time service—
- (a) regulation 12(1) has effect as if the words "other than such a person who transferred to the force having completed the required period of probation therein" were omitted; and
  - (b) regulation 25 has effect as if—
    - (i) in paragraph (1) for all the words after "compensated in respect of time" there were substituted "spent on duty in excess of such period as the Scottish Ministers may determine"; and
    - (ii) paragraph (2) were omitted.

### **Restrictions on the private life of members**

- 7.—(1) The restrictions on private life contained in Schedule 1 shall apply to all members of a police force.
- (2) No other restrictions except those designed to secure the proper exercise of the functions of a constable shall be imposed by the police authority or the chief constable on the private life of members of a police force.

### **Business Interests**

- 8.—(1) A constable shall not have a business interest without the consent of—
- (a) the police authority in the case of a senior officer;
  - (b) the chief constable in the case of any such other constable, provided that, in the case of any such other constable in whose case the chief constable has an interest in otherwise than as chief constable, the constable shall if either the constable or the chief constable so elect, obtain the consent of the chief constable of such other police force as may be determined.
- (2) If a constable acquires or is likely to acquire, or in the case of a constable appointed to the office of chief constable or promoted to the rank of deputy chief constable or assistant chief constable has, a business interest he shall forthwith give written notice of that interest to the chief constable, or, as the case may be, the police authority unless that constable has previously disclosed that interest to that authority.
- (3) A person applying for appointment to a police force, other than a person referred to in paragraph (4), shall give written notice to the chief constable of any business interest.
- (4) A person applying for appointment to the office of chief constable, deputy chief constable, or assistant chief constable in a police force shall give written notice to the police authority responsible for the appointment of any business interest which that constable has or is likely to acquire after appointment.
- (5) A person shall be regarded as having a business interest if—
- (a) that person carries on any business or holds any office of employment for hire or gain (otherwise than as a constable); or

- (b) that person resides at any premises where any member of that person's family keeps a shop or carries on any like business; or
  - (c) that person holds, or any member of that person's family living with that person holds, any licence, certificate or permit granted in pursuance of the laws relating to liquor licensing or betting and gaming or regulating places of public entertainment in the police area of the force of which that person is a constable to which that person is applying for appointment or has any pecuniary interest in such licence, certificate of permit; or
  - (d) that person's spouse (not being separated from that person) keeps a shop or carries on any like business in the police area of the force of which that person is a constable or to which that person is applying for appointment.
- (6) For the purposes of this regulation, the expression "member of that person's family" shall include parent, son, daughter, brother, sister or spouse (not being separated from that person).

### **Qualifications for appointment to a police force**

- 9.—(1) A candidate for appointment to a police force—
- (a) must, if not a national of an EEA State<sup>(10)</sup> have leave to enter or remain in the United Kingdom for an indefinite period;
  - (b) must produce satisfactory references as to character, and, if that candidate has served in any police force, in the armed forces, in the civil service or as a seaman, produce satisfactory proof of good conduct while so serving;
  - (c) must have attained the age of 18 years 6 months;
  - (d) must be certified by a registered medical practitioner approved by the police authority to be fitted both physically and mentally to perform the duties on which that candidate will be employed after appointment;
  - (e) must meet the standard of eyesight determined by the Scottish Ministers;
  - (f) must, if a candidate for appointment in the rank of constable, satisfy the chief constable that that candidate is sufficiently educated, including being sufficiently competent in written and spoken English and sufficiently numerate, by passing an examination of a standard approved by the chief constable and the Scottish Ministers after consultation with the Police Advisory Board of Scotland;
  - (g) must, if a candidate for appointment in the rank of sergeant, or inspector, be qualified for promotion to such rank in accordance with the provisions of the Police (Promotion) (Scotland) Regulations 1996<sup>(11)</sup>;
  - (h) must give such information as may be required as to his previous history or employment or any other matter relating to his appointment to the police force.
- (2) A candidate for appointment to a police force shall be given a notice in terms approved by the Scottish Ministers drawing attention to the terms and conditions of service.
- (3) For the purposes of this regulation—
- (a) "armed forces" means the naval, military or air forces of the Crown including any women's service administered by the Defence Council; and
  - (b) "seaman" has the same meaning as in the Merchant Shipping Act 1995<sup>(12)</sup>.

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<sup>(10)</sup> EEA State means a Member State, Norway, Iceland or Liechtenstein.

<sup>(11)</sup> 1996/221.

<sup>(12)</sup> 1995 c. 21.

### **Declaration to be made on appointment**

10. The terms of the declaration to be made under section 16 of the 1967 Act by a person appointed to the office of constable of a police force shall be as follows—

“I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable.”

### **Appointment of senior officers**

11.—(1) Subject to section 4(1) of the 1967 Act and regulation 9, no person shall be appointed as chief constable or qualified as appointment as a deputy chief constable or assistant chief constable of a police force unless that person holds or has held such rank and for such period as the Scottish Ministers shall determine in respect of such appointments.

(2) The Scottish Ministers may determine any other requirements that must be satisfied in respect of such appointments. The police authority may determine any additional requirements that must be satisfied in respect of any particular appointment.

(3) An appointment to a senior officer rank in a police force maintained under section 2 of the 1967 Act shall be for a fixed term. The Scottish Ministers shall determine the range within which a fixed term must fall and the circumstances in which a fixed term appointment may be extended.

(4) Paragraph (3) is without prejudice to any provision whereby a term of appointment comes to an end on promotion, dismissal, the conclusion of disciplinary proceedings or transfer to another police force and regulation 14.

(5) The Scottish Ministers shall determine the circumstances in which a vacancy in a senior officer rank shall be advertised; if a vacancy is to be advertised, the advertisement shall contain such detail and be published in such manner as the Scottish Ministers may determine. The Scottish Ministers may determine that no appointment shall be made until after a date to be specified in the advertisement.

### **Probationary service in the rank of constable**

12.—(1) Subject to paragraphs (2) and (3), a member of a police force appointed in the rank of constable, other than such a person who transferred to the force from another police force having completed the required period of probation therein, shall be on probation for such period as the Scottish Ministers shall determine in respect of such appointments.

(2) In making a determination under paragraph (1), the Scottish Ministers may, subject to paragraph (3), confer on the chief constable discretion to determine the required period of probation in a particular case.

(3) For the purposes of a determination under paragraph (1), the periods to be counted or disregarded in reckoning service shall be such as may be determined by the Scottish Ministers.

### **Discharge of probationer**

13.—(1) Subject to the provisions of this regulation, during a constable's period of probation in the force the services of that constable may be dispensed with at any time by written notice given by the chief constable if the chief constable considers that that constable is not fitted, physically or mentally, to perform the duties of office of constable, or that that constable is not likely to become an efficient or well conducted constable.

(2) A constable whose services are dispensed with under this regulation shall be—

- (a) informed in writing of the provisions of paragraph (3); and
- (b) entitled to receive a month's notice or a month's pay in lieu thereof.

(3) A constable's services shall not be dispensed with in accordance with this regulation and any notice given for the purposes thereof shall cease to have effect if that constable gives written notice to the police authority of that constable's intention to retire and retires in pursuance of the said notice on or before the date on which that constable's services would otherwise be dispensed with; and such a notice taking effect on that date shall be accepted by the police authority notwithstanding that less than a month's notice is given.

(4) Where a constable has received a notice under this regulation that the services of the constable are to be dispensed with and that constable gives written notice of intention to retire and retires under paragraph (3), that constable shall nevertheless be entitled to receive pay up to and until the date on which the month's notice that constable has received would have expired or where that constable has received or is due to receive a month's pay in lieu of notice that constable shall remain entitled to that pay notwithstanding the notice that constable has given under paragraph (3).

### **Retirement**

**14.** Members of a police force may retire in such circumstances as shall be determined by the Scottish Ministers, and in making such a determination the Scottish Ministers may require such notice of intention to retire as may be specified in the determination, or such shorter notice as may have been accepted by the police authority, to be given to that authority.

### **Contents of personal records**

**15.—(1)** The chief constable shall cause a personal record of each member of the police force to be kept.

(2) The personal record shall contain—

- (a) the home address of the member;
- (b) a photograph not more than 10 years older of the member taken in accordance with the directions of the chief constable and at the expense of the police 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 marriage (if any) and children (if any);
- (f) a record of the member's service (if any) in any branch of Her Majesty's naval, military or air forces or in the civil service;
- (g) a record of the member's service (if any) in any other police force and transfers (if any) from one police force to another;
- (h) a record of whether the member passed or failed to pass any qualifying examination at which the member was a candidate; and
- (i) a record of the member's service in the police force, 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 member of the police force with the reason, cause or manner thereof.

(3) The chief constable shall cause to be expunged from the personal record—

- (a) any record of punishment made in terms of the Police (Scotland) (Discipline) Regulations 1967(**13**) after 3 years free from punishment other than a caution;

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**(13)** S.I. 1967/1021 amended by S.I. 1971/843, 1975/843, 1975/1544, 1976/1073, 1982/902, 1987/2226 and 1995/647. The Regulations were repealed by S.I. 1996/1642 but continue to have effect for existing cases by virtue of regulation 25 of S.I. 1996/1642 and S.I. 1996/1648. An existing case is defined in regulation 1(2) of S.I. 1996/1646.

- (b) any record of a disposal made in terms of the Police (Conduct) (Scotland) Regulations 1996 after 3 years free from any disposal other than a caution; and
- (c) in the case of any proceedings taken against the member under the Police (Efficiency) (Scotland) Regulations 1996(14), any record of proceedings (including any disposal made under those Regulations) after 2 years have elapsed since the date of the last event to take place in terms of those Regulations in relation to any proceedings taken against the member.

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

(5) A member of a police force shall, if that member so requests, be entitled to inspect that member's personal record.

### **Transfer of personal records**

16. Where a member of a police force transfers to another police force that member's personal record shall be transferred to the chief constable of that other police force.

### **Personal record of member leaving force**

17.—(1) Where a member of a police force ceases to be a member of that police force the member shall, unless that member transfers to another police force, be given a certificate showing that member's rank and setting out the period of that member's service in that police force and in any other police force.

(2) The chief constable may append to the certificate any recommendation which the chief constable feels justified in giving, such as that—

- the member's conduct was exemplary;
- the member's conduct was very good;
- the member's conduct was good.

(3) Where a member of a police force ceases to be a member of that police force, otherwise than by transferring to another police force, that member's personal record shall be kept for such time as the chief constable may think fit and shall then be destroyed.

### **Fingerprints**

18.—(1) All members of a police force shall in accordance with the directions of the chief constable have their fingerprints taken.

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

(3) The fingerprints of a member of a police force taken in accordance with paragraph (1) and all copies and records thereof shall be destroyed on that member ceasing to be a member of that force, except that, where that member becomes a member of another force, that member's fingerprints and all copies and records thereof shall be transferred to the chief constable of that other police force.

## Samples

**19.**—(1) All members of a police force, except those members appointed following their transfer from another police force, shall on appointment and in accordance with the directions of the chief constable have a sample taken.

(2) Samples or the information derived from samples of members of a police force taken in accordance with this regulation shall be kept separate from the samples or the information derived from samples taken in accordance with sections 18, 19 and 19A of the Criminal Procedure (Scotland) Act 1995<sup>(15)</sup> or section 56 of the Criminal Justice (Scotland) Act 2003<sup>(16)</sup> or otherwise lawfully taken and held by or on behalf of any police force or in connection with or as a result of an investigation of an offence.

(3) The samples shall be taken for the purpose of enabling a check to be carried out against any other sample or information derived from a sample taken by or on behalf of any police force or in connection with or as a result of the investigation of a criminal offence.

(4) The samples or information derived from samples of a member of a police force taken in accordance with paragraph (1), and all copies and records thereof shall be destroyed on that member ceasing to be a member of that force except that where that member becomes a member of another force, that member's samples or information and all copies and records thereof shall be transferred to the chief constable of that other force.

(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 to carry out lawful orders

**20.** Every member of a police force shall carry out all lawful orders and shall 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.

#### Limitations on duties to be assigned to members statutorily transferred

**21.**—(1) Where a member of a police force has previously served in a police force for an area comprised in whole or in part in the area for which that member's present force is maintained and that member ceased to be a member of the former force and became a member of the present force by reason only of being statutorily transferred from that force to another then, subject to paragraph (2), that member shall not be assigned to duties which, in the opinion of the Scottish Ministers, make it necessary for that member to move home to a place which is outside the area for which that member's former force was maintained.

(2) Paragraph (1) shall not apply to a person by reason of that person's previous service in a particular police force if—

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(15) 1995 c. 46. Section 19A of the Criminal Procedure (Scotland) Act 1995 was inserted by section 48(2) of the Crime and Punishment (Scotland) Act 1997 c. 48. Sections 18, 19 and 19A were amended by section 55 of the Criminal Justice (Scotland) Act 2003 (asp 7).

(16) 2003 asp 7.

- (a) since that person became a member of that police force that person has been a chief constable; or
- (b) after that person was statutorily transferred from that police force that person has given written notice to the chief constable of the police force of which that person was at the time a member that the protection accorded by paragraph (1) should cease to apply to that person,

without prejudice, however, to the application of paragraph (1) to that person by reason of service in another police force after that person's statutory transfer from the force first mentioned in this paragraph and before that person's statutory transfer to that person's present force.

(3) Paragraph (1) shall apply in the case of a member of a police force who ceased to be such and became a serviceman, or engaged on relevant service within the meaning of section 38A(1) (b) to (bb) and (e) and (f) of the 1967(17) Act who enjoys a right of reversion under section 38(3) of the 1967 Act or—

- (a) where on ceasing to be such, that person resumed service in, or, as the case may be, exercised that person's right of reversion to, that person's former force, as if that person had not ceased to be a member of that force; or
- (b) where on ceasing to be such, that person resumed service in, or, as the case may be, exercised that person's right of reversion to some other force to which members of that person's former force had been transferred as mentioned in paragraph (1), as if that person had been so transferred from that person's former force to that other force.

(4) In this regulation "present force" and "former force" mean, respectively, the force first mentioned and that secondly mentioned in paragraph (1).

## **Duty**

**22.**—(1) The Scottish Ministers shall determine—

- (a) the normal periods of duty of a member of a police force;
- (b) the periods allowed for refreshment;
- (c) the variable shift arrangements which may be brought into operation by a chief constable;
- (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 chief constable 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 chief constable discretion to fix a limit on the travelling time which is to be treated as duty;
- (b) confer on the police 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 "travelling time" means time spent by a member of a police force in travelling to and from that member's home—

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

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(17) Section 38A(1) was inserted by section 60 of the Police and Magistrates Courts Act 1994 (c. 29) and amended by the Police Act 1997 (c. 50).

- (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**

**23.**—(1) The attendance of a member of a police force at one of the following meetings of the Scottish Police Federation, that is to say, a quarterly meeting of a branch board, an ordinary meeting of a central committee, a meeting of the conferences arrangements committee, 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 or the annual meeting of a central conference shall be treated as an occasion of police duty.

(2) Subject to the approval of the chief constable, the attendance of a member of a police force at an additional meeting of a branch board of the Scottish Police Federation or at a meeting of a committee of a branch board shall be treated as an occasion of police duty.

(3) Subject to the approval of the Scottish Ministers, the attendance of a member of a police force at a meeting of the Scottish Police Federation, other than such a meeting as is mentioned in paragraph (1) or (2), shall be treated as an occasion of police duty.

(4) In this regulation "branch board" means the branch board mentioned in regulation 7(1) of the Police Federation (Scotland) Regulations 1985(18).

## **PART 4**

### **PAY**

#### **Pay**

**24.**—(1) Subject to the following provisions of this Part, the pay of members of police forces shall be determined by the Scottish Ministers, and in making such a determination the Scottish Ministers may—

- (a) confer such functions in relation to the pay of members of a police force above the rank of chief superintendent on the police authority;
- (b) where the pay of a member of a police force of the rank of chief inspector or below is payable subject to such conditions as may be specified in the determination, confer on a member of a police force senior in rank to that member, or a person employed by the police authority under section 9 of the 1967 Act, such functions in relation to those conditions,

as they think fit.

(2) Subject to regulations 42 to 44 and sections 38 and 38A of the 1967 Act in reckoning the service of a member of a police force in any rank for the purposes of pay, account shall be taken of all that member's service in that rank, whether in that or another police force, and service in a higher rank, on temporary promotion thereto or otherwise, shall be treated as if it had been service in that rank.

(3) For the purposes of this regulation in reckoning a member's service in any rank—

- (a) that service shall 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) except where the police authority in the circumstances of a particular case otherwise determine with the approval of the Scottish Ministers, no account shall be taken of any previous service in that rank which terminated in that member's reduction in rank as a

punishment but any previous service in a higher rank which so terminated shall be treated as if it had been service in the rank to which that member was reduced;

- (c) no account shall be taken of any performance of the duties of that rank in respect of which a temporary salary is payable under regulation 27;
- (d) any period of unpaid leave shall be disregarded;
- (e) any part-time service shall be taken into account as though it were full-time service;
- (f) in the case of a female member who has taken one or more periods of maternity leave—
  - (i) where that leave has been for eighteen weeks or more, account shall be taken of the first eighteen weeks whilst on maternity leave;
  - (ii) where that leave has been for less than eighteen weeks, account shall be taken of any period spent on maternity leave;

and where that member has, at the beginning of the eleventh week before the expected date of birth of the member's child, as given in accordance with a determination under regulation 33(4), served continuously as a member of a police force for a period of not less than a year, account shall be taken of any period (not being a period of which account has been taken under paragraph (i) or (ii)) spent on maternity leave during the period of 29 weeks beginning with the week in which the child is born;

- (g) in the case of a female member who has taken one or more periods of maternity leave—
  - (i) where that leave has been for twenty six weeks or more, account shall be taken of the first twenty six weeks whilst on maternity leave;
  - (ii) where that leave has been for less than twenty six weeks, account shall be taken of any period spent on maternity leave;

and where that member has, at the beginning of the fourteenth week before the expected date of birth of the member's child, as given in accordance with a determination under regulation 33(4), served continuously as a member of a police force for a period of not less than a twenty six weeks, account shall be taken of any period (not being a period of which account has been taken under paragraph (i) or (ii)) spent on maternity leave during the period of 29 weeks beginning with the week in which the child is born;

- (h) account shall be taken of any period of maternity support leave, parental leave and adoption support leave taken in accordance with a determination under regulation 33(8)(a), (b) and (d);
- (i) account shall be taken of the first twenty seven weeks of adoption leave taken in accordance with a determination under regulation 33(8)(c),

and, in the case of a member of a police force of a rank higher than that of chief inspector, paragraph (2) shall have effect subject to any contrary agreement so far as it relates to the reckoning of previous service in that or another force, not being a force from which that member was statutorily transferred to that member's present force.

(4) Noting in this regulation shall affect the operation of any provisions of the Conduct Regulations and, in relation to a member of a police force suspended or fined thereunder the provisions of paragraphs 1 and 3 of Schedule 2 or of paragraph 4 thereof shall have effect.

(5) A determination under paragraph (1) shall have effect in relation to a university scholar subject to the provisions of any determination for the time being in force under regulation 32.

## **Overtime**

**25.—**(1) Subject to the provisions of this regulation, the Scottish Ministers shall determine the circumstances and manner in which a member of a police force shall be compensated in respect of time—

- (a) for which that member remains on duty after that member's tour of duty ends; or
- (b) for which that member is recalled between two tours of duty; or
- (c) which forms part of a tour of duty which that 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,

and such time is referred to in these Regulations as "overtime".

(2) For the purposes of 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" shall be construed in accordance with regulation 22;

"recall" does not include a warning to be in readiness for duty if required; and

"tour of duty", in relation to a member of a police force for whom variable shift arrangements are in operation under regulation 22 (1)(c), means rostered shift.

(3) In making a determination under paragraph (1), the Scottish Ministers may confer on the chief constable 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;
- (c) to allow time in addition to that specified in the determination to be taken into account in computing any period of overtime.

### **Public holidays and rest days**

**26.—**(1) The Scottish Ministers shall determine the circumstances and manner in which a member of a police force shall be granted leave or otherwise compensated in respect of time spent on duty on—

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

and in this regulation "rostered rest day", in relation to a member of a police force who is required to do duty on that day, means a day which according to the duty roster was, immediately before that member was so required to do duty, to have been a rest day for that member.

(2) In making a determination under paragraph (1) the Scottish Ministers may confer on the chief constable discretion—

- (a) to fix the time at which, or 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 time spent on duty as mentioned in that paragraph is to be granted;
- (c) to fix a limit on the time occupied by a member of a police force in travelling to and from that member's place of duty which is to be included in a 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 shall be increased by 1 for each day on which Christmas Day, 26th December or New Year's Day falls on a Saturday or Sunday.

### **Temporary salary and temporary promotion**

27. The Scottish Ministers shall determine—

- (a) the circumstances in which a member of a police force is entitled to receive a temporary salary and the rate of that salary; and
- (b) the rate of that member's salary while temporarily promoted.

### **Sick pay**

28. The Scottish Ministers shall determine the entitlement of members of police forces to pay during periods of sick leave taken in accordance with a determination under regulation 33(5), and in making such a determination the Scottish Ministers may confer on the chief constable discretion to allow a member of a police force to receive more pay than that specified in the determination.

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

29.—(1) The Scottish Ministers shall determine the entitlement of members of police forces to pay during periods of maternity and maternity support leave.

(2) The Scottish Ministers shall determine the entitlement of members of police forces to pay during periods of adoption and adoption support leave.

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

30.—(1) The intervals at which members of a police force are to be paid shall be fixed by the police authority in accordance with such rules as the Scottish Ministers may determine.

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

### **Deductions from pay of social security benefits and statutory sick pay**

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

- (a) the amount of any short-term or long-term incapacity benefit to which he is entitled under the Social Security (Incapacity for Work) Act 1994<sup>(19)</sup>; and
- (b) any statutory sick pay to which he is entitled under the Social Security Contributions and Benefits Act 1992<sup>(20)</sup>,

and for the purposes of sub-paragraph (a) any increase for adult and child dependants shall be treated as forming part of the benefit or allowance to which it relates.

(2) For the purposes of this regulation, a female member of a police force, who as a married woman or widow has elected to pay contributions under section 19 of the Social Security Contributions and Benefits Act 1992 at the reduced rate, shall be deemed to be 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.

(3) In this regulation, “full pay” means pay at the rate ascertained from regulation 24 and the determination made thereunder.

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<sup>(19)</sup> 1994 c. 18.

<sup>(20)</sup> 1992 c. 4.

## University scholars

32. The Scottish Ministers shall determine how Part 3 and this Part of these Regulations and any determination made thereunder shall have effect in relation to a university scholar, and in making such a determination the Scottish Ministers may confer on the police 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.

## PART 5

### LEAVE

#### Leave

33.—(1) Every member of a police force shall, so far as the exigencies of duty permit, be granted in each leave year such annual leave as may be determined by the Scottish Ministers, and in this regulation “leave year” means that period of 12 months beginning on such date as may from time to time be determined by the police authority.

(2) In making a determination under paragraph (1) the Scottish Ministers may confer on the chief constable discretion—

- (a) to grant such 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.

(3) In a determination under paragraph (1) the Scottish Ministers shall make provision for the compensation of a member of a police force for being recalled to duty during a period of annual leave granted under this regulation.

(4) Annual leave granted under this regulation shall be additional to the days on which the member is not required to perform police duties in accordance with a determination under regulation 26.

(5) A member of a police force shall not be entitled to be absent from duty on account of injury or illness otherwise than in such circumstances as shall be determined by the Scottish Ministers, and in making such a determination the Scottish Ministers may confer on the police authority power to appoint, or approve the appointment of, a medical practitioner for the purposes of any function to be carried out under the determination.

(6) A female member of a police force who is pregnant shall, in such circumstances as shall be determined by the Scottish Ministers, have 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.

(7) A female member of a police force qualifies for maternity leave in such circumstances as shall be determined by the Scottish Ministers.

(8) A member of a police force shall, so far as the exigencies of duty permit, be granted such—

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

in such circumstances, as the Scottish Ministers shall determine.

(9) In this regulation “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.

(10) A member of a police force shall, so far as the exigencies of duty permit, be entitled to be permitted to take a reasonable amount of time off during periods of duty in order to take such action, and for such purposes, in respect of a dependant of that member, and subject to such conditions, as shall be determined by the Scottish Ministers; and for this purpose the Scottish Ministers may determine the meaning of “dependant” in relation to members of a police force.

(11) The Scottish Ministers may determine that any period of leave or time off taken in accordance with a determination under paragraph (1), (6), (8) or (10) shall be treated as a period of duty.

(12) Paragraph (5) and any determination thereunder shall apply to a member who is in quarantine as it applies to a member who is ill subject, in the case of such a determination, to such modifications as may be determined by the Scottish Ministers.

## PART 6

### ALLOWANCES AND EXPENSES

#### Allowances

**34.**—(1) Subject to regulation 38, the Scottish Ministers shall determine the entitlement of members of a police force to any allowance, and in making such a determination the Scottish Ministers may confer on—

- (a) the police authority;
- (b) the chief constable,

such functions—

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

as they think fit.

(2) No allowances shall be paid to a member of a police force except as provided by or under these Regulations or approved by the Scottish Ministers, and the amounts and conditions of payment of such allowances shall be as so provided or approved.

(3) Nothing in this regulation shall apply to the reimbursement of expenses incurred by a member of a police force in the execution of that member’s duty, being expenses authorised either generally or specifically by the police authority in respect of which no allowance is payable under these Regulations and no determination has been made under regulation 35.

#### Expenses

**35.**—(1) The Scottish Ministers shall determine the entitlement of a member of a police force to reimbursement of any expenses incurred by that member in or in connection with the execution of that member’s duty.

(2) Where, in making a determination under paragraph (1), the Scottish Ministers specify conditions subject to which expenses are to be reimbursed, they may in that determination confer on—

- (a) the police authority;
- (b) the chief constable,

such functions in relation to those conditions as they think fit.

#### **Continuance of allowances when member ill**

**36.** If a member of a police force who is regularly in receipt of an allowance to meet an expense which ceases during that member's absence from duty is placed upon the sick list or is on maternity leave, the allowance shall be payable during that member's absence from duty up to a period of a month, but thereafter, during the remainder of that member's absence from duty, payment may be suspended at the discretion of the chief constable.

#### **Allowances in respect of periods of suspension**

**37.** This Part of these Regulations shall have effect in relation to a member of a police force suspended under the Conduct Regulations, subject to the provisions of paragraphs 2 and 3 of Schedule 2.

#### **Replacement Allowance**

**38.** Schedule 3 shall have effect.

#### **Restriction on payments for private employment of police**

**39.** Without prejudice to the generality of regulation 34(2), a member of a police force who is engaged on duty at the request of any person who has agreed to pay the police authority for the member's services shall not be entitled to any payment for those services except as provided by or under these Regulations; and any payments made in pursuance of that agreement shall be made by that person to the police authority.

## **PART 7**

### **RECKONING OF SERVICE**

#### **Reckoning of service in the Police Service of Northern Ireland**

**40.—(1)** Where a member of a police force joined or rejoined that force having left the Police Service of Northern Ireland, on or after 17th December 1969, for that purpose or on exercising the right of reversion conferred prior to 1st April 1995 by section 2(1) of the Police Act 1969<sup>(21)</sup> and on or after that date by section 38A of the 1967 Act<sup>(22)</sup> then, for the purposes of regulation 24, that member's service in any rank in the Police Service of Northern Ireland shall be treated as if it were service in the corresponding rank in the police force that member joined or rejoined as aforesaid:

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) A member of a police force of the rank of constable shall be entitled to reckon, for the purposes of pay for that rank, any period of service in the Police Service of Northern Ireland not reckonable under paragraph (1).

(3) In this regulation, any reference to a rank corresponding to a rank in a police force is a reference to a rank in the Police Service of Northern Ireland designated by the Scottish Ministers for the purposes hereof as the rank corresponding to the rank in question.

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(21) 1969 c. 63.

(22) Section 38A was inserted by section 60 of the Police and Magistrates' Courts Act 1994 (c. 29).

### **Reckoning of service in the British Transport Police Force**

**41.**—(1) Where a member of a police force joined or rejoined that force having left the British Transport Police Force, on or after 1st September 1994 then, for the purposes of regulation 24, that member's service in any rank in the British Transport Police Force shall be treated as if it were service in the corresponding rank in the police force that that member joined or rejoined as aforesaid:

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) A member of a police force of the rank of constable shall be entitled to reckon, for the purposes of pay for that rank, any period of service in the British Transport Police Force not reckonable under paragraph (1).

(3) In this regulation, any reference to a rank corresponding to a rank in a police force is a reference to a rank in the British Transport Police Force designated by the Scottish Ministers for the purposes hereof as the rank corresponding to the rank in question.

### **Reckoning by constables of service in certain constabularies**

**42.**—(1) A member of a police force of the rank of constable shall be entitled to reckon for the purposes of pay for that rank any period of service in a constabulary mentioned in paragraph (2).

(2) The constabularies referred to in paragraph (1) are—

- (a) the Ministry of Defence Police, that is to say the force established by section 1 of the Ministry of Defence of Police Act 1987<sup>(23)</sup> or, before the coming into force of that Act, comprising constables appointed under section 3 of the Special Constables Act 1923<sup>(24)</sup> on the nomination of the Defence Council or, before 1st April 1964, of the Admiralty, Army Council or Air Council;
- (b) the Port of Tilbury Constabulary or, before the coming into force of the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992<sup>(25)</sup> 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<sup>(26)</sup>.

### **Reckoning of service in an airport constabulary**

**43.**—(1) Where a member of an aerodrome constabulary has been transferred to a police force by an order under section 30 of the Aviation Security Act 1982<sup>(27)</sup> then, for the purposes of regulation 24, that member's service in any rank in that constabulary shall be treated as if it were service in the corresponding rank in a police force.

(2) In this regulation "an aerodrome constabulary" is a reference to such a constabulary within the meaning of the Aviation Security Act 1982<sup>(28)</sup> and a reference to a rank in such a constabulary corresponding to a rank in a police force is a reference to a rank in that constabulary designated for the purposes hereof by the Scottish Ministers as the rank corresponding to the rank in question.

### **Reckoning by constables of overseas police service**

**44.**—(1) A member of a police force of the rank of constable shall be entitled to reckon for the purposes of pay for that rank the following periods of service, that is to say, any period of—

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(23) 1987 c. 4.

(24) 1923 c. 11.

(25) S.I. 1992/284.

(26) 1968 c.xxxii.

(27) 1982 c. 36; section 30 was amended by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 67.

(28) 1982 c. 36.

- (a) certified overseas police service such as is mentioned in paragraph (2);
- (b) certified service in the British South Africa Police such as is mentioned in paragraph (3);
- (c) such service in a police force in the Channel Islands or the Isle of Man as is mentioned in paragraph (4),

notwithstanding that such service is not service in the rank of constable in a police force in Great Britain.

- (2) The reference in paragraph (1) to certified overseas police service is a reference to—
- (a) continuous service as a member of a police force in any territory or country outside the United Kingdom, being a colony, protectorate or protected state within the meaning of the British Nationality Act 1948(29), a dependent territory within the meaning of the British Nationality Act 1981(30) or, where appropriate, the territory or country wherein the colony, protectorate or protected state or dependent territory was incorporated after the inception of the service, subject to it having been certified by or on behalf of the Secretary of State that—
    - (i) the service was, at its inception, pensionable; and
    - (ii) in his opinion the person concerned ceased so to serve for reasons connected with constitutional developments in the territory or country in question; or
  - (b) continuous service for 6 years or more as a member of a police force outside the United Kingdom, subject to it having been certified by or on behalf of the Secretary of State that—
    - (i) the person concerned so served under a contract of service;
    - (ii) immediately before the person ceased so to serve, the person concerned was, for the purposes of section 12 of the Overseas Development and Co-operation Act 1980(31), a person designated in accordance with such an agreement as is therein mentioned; and
    - (iii) in his opinion the person concerned ceased so to serve for reasons connected with constitutional developments in the territory or country in question,
- except that the said reference in paragraph (1) does not include a reference to service relevant under section 3AA(1)(e) or (f) of the 1967 Act where that member has a right of reversion under section 38A(3).

(3) The reference in paragraph (1) to certified service in the British South Africa Police is a reference to continuous service as a member thereof, for a period which included 11th November 1965, up to such time, or after that date, as the person concerned ceased to perform duties therein, subject to his having ceased to perform those duties before 2nd March 1970 and subject to it having been certified by or on behalf of the Scottish Ministers that he approves the application of this regulation in the case of the person concerned.

- (4) The reference in paragraph (1) to service in a police force in the Channel Islands or the Isle of Man is a reference to service in—
- (a) the Island police force maintained under the Police Force (Guernsey) Law 1986;
  - (b) the States of Jersey police force maintained under the Jersey Laws entitled the Police Force (Jersey) Law 1974; or
  - (c) the Isle of Man Constabulary maintained under the Police Act 1993 (an Act of Tynwald).
- (5) A certificate given by or on behalf of—

(29) 1948 c. 56.

(30) 1981 c. 61.

(31) 1980 c. 63. Section 12 was repealed by Schedule 4 to the International Development Act 2002 (c. 1) but, by virtue of paragraph 4 of Schedule 5 to that Act the repeal does not prevent any agreement entered into under section 12 from continuing to have effect.

- (a) the Secretary for Technical Co-operation before 27th November 1964; or
- (b) the Minister of Overseas Development on or after that date but before 12th November 1970,

shall be treated for the purposes of paragraph (2) as if it had been given by or on behalf of the Secretary of State.

## PART 8

### UNIFORM AND EQUIPMENT

#### **Issue of uniform and equipment**

**45.**—(1) Constables of the rank of superintendent and below shall be entitled to receive the uniform and equipment that they need free of charge and in a clean and serviceable condition from the police authority. The police authority shall determine the extent of this need.

(2) Uniform and equipment may, if the police authority so determine, be issued as required to a constable above the rank of superintendent.

(3) Unless the police authority and member otherwise agree, such uniform and equipment remains the property of the police authority and shall be returned when the member leaves the force.

## PART 9

### DETERMINATIONS

#### **Determinations**

**46.**—(1) Before making a determination under any provision of these Regulations relating to the matters mentioned in section 61(1) of the Police Act 1996<sup>(32)</sup>, the Scottish Ministers shall take into consideration any recommendation made by the Police Negotiating Board and shall supply the Board with a draft of the determination; and subsection (2) of section 62 of the said Police Act 1996 Act shall apply 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 (1) of that section.

(2) Before making a determination under any provision of these Regulations relating to any other matter, the Scottish Ministers shall supply the Police Advisory Board for Scotland with a draft of the determination, and 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, but nothing in this paragraph shall be construed as authorising the pay or allowances payable to any person to be reduced retrospectively.

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

## PART 10

### AMENDMENT OF OTHER REGULATIONS

#### **The Police (Conduct) (Senior Officers) (Scotland) Regulations 1999**

47.—(1) The Police (Conduct) (Senior Officers) (Scotland) Regulations 1999<sup>(33)</sup> are amended as follows.

(2) In the definition of “senior officer” in regulation 3(1) (interpretation) after “a chief constable,” there is inserted “, a deputy chief constable”.

(3) For paragraph 8 of the Schedule substitute “Contravention of regulation 8 of, or Schedule 1 to, the Police (Scotland) Regulations 2004.”.

#### **The Police (Conduct) (Scotland) Regulations 1996**

48.—(1) The Police (Conduct) (Scotland) Regulations 1996<sup>(34)</sup> are amended as follows—

(2) In regulation 22—

(a) paragraphs (4) to (6) are omitted;

(b) in paragraph (7) for “1976” there is substituted “2004”.

(3) For paragraph 8 of Schedule 1 substitute “Contravention of regulation 8 of, or Schedule 1 to, the Police (Scotland) Regulations 2004.”.

#### **The Police (Promotion) (Scotland) Regulations 1996**

49. In the definition of “service” in regulation 1(2) of the Police (Promotion) (Scotland) Regulations 1996<sup>(35)</sup>, for “within the meaning of the Police (Scotland) Regulations 1976” substitute “by virtue of a determination under regulation 29 of the Police (Scotland) Regulations 2004”.

## PART 11

### REVOCATIONS

#### **Revocations**

50. The Regulations specified in Schedule 4 are, to the extent that they have not previously been revoked, hereby revoked.

St Andrew’s House, Edinburgh  
2nd June 2004

*CATHY JAMIESON*  
A member of the Scottish Executive

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<sup>(33)</sup> S.I. 1999/1074.

<sup>(34)</sup> 1996/1642.

<sup>(35)</sup> 1996/221.

## SCHEDULE 1

Regulation 7

## RESTRICTIONS ON THE PRIVATE LIFE OF MEMBERS OF POLICE FORCES

1. A member of a police force shall at all times abstain from any activity which is likely to interfere with the impartial discharge of that member's duties or which is likely to give rise to the impression amongst members of the public that it may so interfere; and in particular a member of a police force shall not take any active part in politics.

2. A member of a police force shall not, unless that member has previously given written notice to the chief constable, receive a lodger in a house in which that member resides and in respect of which that member receives an allowance under a housing allowance or a transitional rent allowance or sub-let any part of such a house.

3. A member of a police force shall not wilfully refuse or neglect to discharge any lawful debt.

## SCHEDULE 2

Regulations 24 and 37

## EFFECT OF DISCIPLINARY ACTION ON PAY AND ALLOWANCES

1.—(1) Subject to paragraph 3, a member of a police force suspended under the Conduct Regulations who—

- (a) is detained in pursuance of a sentence of a court in a prison or other institution to which the Prisons (Scotland) Act 1989(36) applies, or is in custody (whether in prison or elsewhere) between conviction by a court and sentence; or
- (b) has absented himself or herself from duty and whose whereabouts are unknown to the chief constable (or deputy chief constable or assistant chief constable acting as chief constable),

shall not, by virtue of regulation 24, be entitled to pay in respect of his period in detention or custody or, as the case may be, in respect of the period during which that member's whereabouts are unknown as aforesaid.

(2) Where the member suspended is a senior officer sub-paragraph (1)(b) shall have effect as if for the words after "unknown" there were substituted "to the police authority".

2. Subject to paragraph 3, a member of a police force suspended under the Conduct Regulations shall not, by virtue of Part 6 of these Regulations, be entitled to any allowance, in respect of the period of suspension, other than—

- (a) an allowance under Schedule 3; or
- (b) in the case of a member to whom paragraph 3(c) does not apply, such allowance as the Scottish Ministers may determine.

3. Where a member of a police force returns to duty when the period of suspension comes to an end and—

- (a) it has been decided that that member shall not be charged with a disciplinary offence; or
- (b) that member has been so charged and all the charges have been dismissed; or
- (c) that member has been so charged and has been punished by a reduction in that member's rate of pay, fine, reprimand or caution,

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(36) 1989 c. 45.

that member shall receive, as from the date of that member's suspension, the pay to which, but for paragraph 1, and the allowances to which, but for paragraph 2, that member would have been entitled by virtue of these Regulations.

4. Where a member of a police force is fined under the Conduct Regulations the fine shall, without prejudice to any other method of recovery, be recoverable by way of deductions from the member's pay during the period of 13 weeks following the imposition of the fine so, however, that the aggregate sum which may be deducted in pursuance of this paragraph in respect of any one week (whether on account of one or more fines) shall not exceed a seventh of the member's weekly pay:

Provided that in the event of the member leaving the police force, the whole amount of any fine unpaid may be deducted from any pay then due.

### SCHEDULE 3

Regulation 38

#### REPLACEMENT ALLOWANCE

##### Interpretation

1.—(1) This paragraph has effect for defining expressions used in paragraphs 2 to 7.

(2) "Qualifying member" means a member of a police force who—

- (a) immediately before 1st September 1994 was a member of that or another police force;
- (b) was not then on unpaid leave;
- (c) has at all times after 31st August 1994 been a constable; and
- (d) has not after that date been on unpaid leave.

(3) Where a member of a police force in England and Wales or Northern Ireland in receipt of a replacement allowance under a corresponding regulation which has effect there transfers to a police force in Scotland that member shall be treated from the date of transfer as if that member were a qualifying member.

(4) Where a member of the British Transport Police Force in receipt of a housing allowance transfers on or after 1st September 1994 to a police force in Scotland that member shall be treated from the date of transfer as if that member were a qualifying member.

(5) "Re-joining member" means a member who by reason only of a relevant absence is not a qualifying member.

(6) "Relevant absence" means—

- (a) a period of central service or overseas service; or
- (b) a period of relevant service within the meaning of section 38A(1)(ba) or (bb) of the 1967 Act<sup>(37)</sup> or any corresponding provision for the time being in force in England and Wales or Northern Ireland; or
- (c) a period of unpaid leave,

ending after 31st August 1994.

(7) "Housing emoluments" means any one or more of the following kinds of payments under the provisions of the 1976 Regulations as they had effect before 1st September 1994—

- (a) a housing allowance under regulation 42;
- (b) a transitional rent allowance under regulation 42B;

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<sup>(37)</sup> Sections 38A(1)(ba) and (bb) were inserted by the Police Act 1997 c. 50.

- (c) a supplementary housing allowance under regulation 43; and
- (d) a compensatory grant under regulation 45,

and in relation to a re-joining member includes a rent allowance under regulation 42 of the 1976 Regulations as it had effect before 1st April 1990; and “housing allowance” and “transitional rent allowance” mean respectively the allowances mentioned in (a) and (b) above.

- (8) “The 1976 Regulations” means the Police (Scotland) Regulations 1976~~(38)~~.

#### **Qualifying member provided with accommodation**

2.—(1) A qualifying member who ceases to occupy a house or quarters with which that member was provided free of rent becomes entitled to a replacement allowance.

(2) The replacement allowance is, subject to paragraph 7, an allowance at a rate equal to the total of—

- (a) the rate at which housing allowance, or as the case may be transitional rent allowance, was payable, or would have been payable if that member had not been occupying the house or quarters, immediately before 1st September 1994; and
- (b) the rate at which any allowance under regulation 42(11) or 43(3) was or would have been then payable.

#### **Qualifying member with housing emoluments**

3.—(1) A qualifying member who immediately before 1st September 1994 was in receipt of housing emoluments is entitled to a replacement allowance unless that member is provided with a house or quarters free of rent.

(2) The replacement allowance is, subject to paragraph 7, an allowance at the rate at which the housing emoluments were payable immediately before 1st September 1994.

#### **Re-joining member previously provided with accommodation**

4.—(1) A re-joining member who immediately before the relevant absence began was occupying a house or quarters with which that member was provided free of rent becomes entitled to a replacement allowance unless that member is again provided with a house or quarters free of rent.

(2) The replacement allowance is, subject to paragraph 7, an allowance at the rate at which, if that member had not been occupying the house or quarters, housing allowance, or as the case may be transitional rent allowance, would have been payable—

- (a) where the relevant absence began before 1st September 1994, immediately before it began; and
- (b) in any other case, immediately before 1st September 1994.

#### **Re-joining member previously in receipt of housing payments**

5.—(1) A re-joining member who immediately before the relevant absence began was in receipt—

- (a) of housing emoluments; or
- (b) of a replacement allowance under paragraph 2 or 3,

becomes entitled to a replacement allowance unless that member is provided with a house or quarters free of rent.

(2) The replacement allowance is, subject to paragraph 7, an allowance—

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(38) S.I. 1976/1073. Regulations 42, 42B, 43 and 45 were revoked by S.I. 1994/2231.

- (a) where sub-paragraph (1)(a) applies, at the rate at which the housing emoluments were payable; and
  - (b) where sub-paragraph (1)(b) applies, at the rate at which the previous replacement allowance was payable,
- immediately before the relevant absence began.

#### **Members provided with house or quarters**

6. A qualifying member or a re-joining member who—
- (a) is provided with a house or quarters free of rent; and
  - (b) if the relevant provisions of the 1976 Regulations had continued in force would have been entitled to an allowance under regulation 42(11) or 43(3),
- is, subject to paragraph 7, entitled to an equivalent replacement allowance.

#### **Variation and termination of replacement allowances**

- 7.—(1) Subject to sub-paragraph (2), in circumstances in which—
- (a) a housing allowance or transitional rent allowance payable as mentioned in paragraph 2(2) or 4(2); or
  - (b) any of the housing emoluments mentioned in paragraphs 3(1), 5(1)(a) and 6,
- would, if the relevant provision of the 1976 Regulations had continued in force, have fallen to be reduced or discontinued, the replacement allowance in question is reduced accordingly or, if the effect of discontinuance would have been that no housing emoluments remained payable, terminated.
- (2) For the purposes of sub-paragraph (1) it is to be assumed that a housing allowance or transitional rent allowance would not have fallen to be reduced by reason of the member's being married to or sharing accommodation with another member appointed after 31st August 1994.
- (3) In circumstances in which any allowance or housing emoluments mentioned in sub-paragraph (1) would, if the revoked provisions had continued in force, have fallen to be increased otherwise than under regulation 42A of the 1976 Regulations (which provided for biennial adjustment of housing allowances), or in which any new housing emoluments would in that case have become payable, the replacement allowance in question is increased accordingly.

### SCHEDULE 4

Regulation 50

#### REVOCATIONS

<i>Column 1</i> <i>Regulations revoked</i>	<i>Column 2</i> <i>References</i>
The Police (Scotland) Regulations 1976	S.I. <a href="#">1976/1073</a>
The Police (Scotland) Amendment (No. 3) Regulations 1976	S.I. <a href="#">1976/1433</a>
The Police (Scotland) Amendment Regulations 1977	S.I. <a href="#">1977/1016</a>
The Police (Scotland) Amendment (No. 2) Regulations 1977	S.I. <a href="#">1977/2008</a>

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<i>Column 1</i> <i>Regulations revoked</i>	<i>Column 2</i> <i>References</i>
The Police (Scotland) Amendment Regulations 1978	S.I. <a href="#">1978/528</a>
The Police (Scotland) Amendment (No. 2) Regulations 1978	S.I. <a href="#">1978/1170</a>
The Police (Scotland) Amendment (No. 3) Regulations 1978	S.I. <a href="#">1978/1510</a>
The Police (Scotland) Amendment Regulations 1979	S.I. <a href="#">1979/767</a>
The Police (Scotland) Amendment (No. 2) Regulations 1979	S.I. <a href="#">1979/1263</a>
The Police (Scotland) Amendment Regulations 1980	S.I. <a href="#">1980/1050</a>
The Police (Scotland) Amendment Regulations 1981	S.I. <a href="#">1981/67</a>
The Police (Scotland) Amendment (No. 2) Regulations 1981	S.I. <a href="#">1981/1679</a>
The Police (Scotland) Amendment Regulations 1982	S.I. <a href="#">1982/681</a>
The Police (Scotland) Amendment (No. 2) Regulations 1982	S.I. <a href="#">1982/1113</a>
The Police (Scotland) Amendment (No. 3) Regulations 1982	S.I. <a href="#">1982/1628</a>
The Police (Scotland) Amendment Regulations 1983	S.I. <a href="#">1983/317</a>
The Police (Scotland) Amendment (No. 2) Regulations 1983	S.I. <a href="#">1983/1354</a>
The Police (Scotland) Amendment (No. 3) Regulations 1983	S.I. <a href="#">1983/1850</a>
The Police (Scotland) Amendment Regulations 1984	S.I. <a href="#">1984/1651</a>
The Police (Scotland) Amendment Regulations 1985	S.I. <a href="#">1985/111</a>
The Police (Scotland) Amendment (No. 2) Regulations 1985	S.I. <a href="#">1985/1325</a>
The Police (Scotland) Amendment (No. 3) Regulations 1985	S.I. <a href="#">1985/1733</a>
The Police (Scotland) Amendment Regulations 1986	S.I. <a href="#">1986/576</a>
The Police (Scotland) Amendment Regulations 1987	S.I. <a href="#">1987/423</a>

<i>Column 1</i> <i>Regulations revoked</i>	<i>Column 2</i> <i>References</i>
The Police (Scotland) Amendment (No. 2) Regulations 1987	S.I. <a href="#">1987/1914</a>
The Police (Scotland) Amendment Regulations 1988	S.I. <a href="#">1988/1501</a>
The Police (Scotland) Amendment (No. 2) Regulations 1988	S.I. <a href="#">1988/2287</a>
The Police (Scotland) Amendment Regulations 1989	S.I. <a href="#">1989/2222</a>
The Police (Scotland) Amendment Regulations 1990	S.I. <a href="#">1990/469</a>
The Police (Scotland) Amendment (No. 2) Regulations 1990	S.I. <a href="#">1990/1312</a>
The Police (Scotland) Amendment Regulations 1992	S.I. <a href="#">1992/1432</a>
The Police (Scotland) Amendment (No. 2) Regulations 1992	S.I. <a href="#">1992/3170</a>
The Police (Scotland) Amendment Regulations 1993	S.I. <a href="#">1993/3081</a>
The Police (Scotland) Amendment Regulations 1994	S.I. <a href="#">1994/2095</a>
The Police (Scotland) Amendment (No. 2) Regulations 1994	S.I. <a href="#">1994/2231</a>
The Police (Scotland) Amendment Regulations 1995	S.I. <a href="#">1995/137</a>
The Police (Scotland) Amendment (No. 2) Regulations 1995	S.I. <a href="#">1995/596</a>
The Police (Scotland) Amendment (No. 3) Regulations 1995	S.I. <a href="#">1995/2131</a>
The Police (Scotland) Amendment (No. 4) Regulations 1995	S.I. <a href="#">1995/3003</a>
The Police (Scotland) Amendment Regulations 1996	S.I. <a href="#">1996/3232</a>
Regulation 2 of the Police and Police (Special Constables) (Scotland) Amendment Regulations 2003	S.S.I. <a href="#">2003/21</a>
The Police (Scotland) Amendment (No. 2) Regulations 2003	S.S.I. <a href="#">2003/220</a>
The Police (Scotland) Amendment Regulations 2004	S.S.I. <a href="#">2004/121</a>

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations replace the Police (Scotland) Regulations 1976 as amended by the regulations specified in Schedule 4 (“the 1976 Regulations”). The amendments other than drafting amendments, made by these Regulations are as follows. Regulations 11 (appointment of senior officers), 12 (probationary service), 14 (retirement), 23 (duty), 24 (pay), 25 (overtime), 26 (public holidays and rest days), 27 (temporary salary and temporary promotion), 28 (sick pay), 29 (maternity pay), 30 (fixing of pay day and calculation of pay), 32 (university scholars), 33 (leave) and 35 (expenses) provide for the determination by the Scottish Ministers of certain matters that were prescribed by the 1976 Regulations. Such determinations are subject to the provisions of regulation 46 which include requirements for consultation.

2. Regulation 5 prescribes the ranks which may be held by members of a police force and now includes the ranks of deputy chief constable and chief superintendent reintroduced by section 75 of the Criminal Justice (Scotland) Act 2003 which comes into force on 25th June 2004 by virtue of [S.S.I./240](#).

3. Regulation 19 requires members of a police force to provide a sample of hair or saliva upon appointment (other than in cases of transfer between forces) from which a DNA profile can be derived. The sample and information derived from the sample will be stored separately from samples and information derived from samples provided in accordance with the Criminal Procedure (Scotland) Act 1995 or the Criminal Justice (Scotland) Act 2003. The samples and information are provided for the purposes of enabling a check to be carried out against other samples taken in connection with or as the result of the investigation of a criminal offence. Samples and information derived from them will be destroyed when the officer providing the sample ceases to be a member of a police force.

4. Regulation 41 allows a member of a police force who on or after 1st September 1994, joined or rejoined that force from the British Transport Police Force to reckon his service with the British Transport Police Force as service for the purpose of regulation 24 (rate of pay). If the member of the police force is of the rank of chief inspector or higher then a contrary agreement can be reached. A related amendment is made in Schedule 3, paragraph 1(4) to provide for the payment of a replacement allowance to a member of a police force who has transferred to that force on or after 1st September 1994 from the British Transport Police and who was in receipt of a housing allowance prior to the transfer.

5. Regulation 24(3)(f) and (g) make provision to increase the periods of maternity leave that can be reckoned for the purposes of pay. Regulation 24((3)(h) and (i) makes provision to allow maternity support leave, adoption support leave and 27 weeks of adoption leave to be reckoned for the purposes of pay. The provisions about pay in regulation 24 have also been amended to make it clear that any period of service in a higher rank counts as a period that can be reckoned for the purposes of pay at the lower rank.

6. Regulation 33 makes new provision for parental and adoption leave and for time off for dependants and replaces provision in the 1976 Regulations for paternity leave with provision for maternity support leave. Regulation 33 also makes new provision for adoption support leave.

7. The regulations come into force on 25th June 2004 except as otherwise provided in regulation 1(2). Retrospection is authorised by section 26(3) of the 1967 Act.

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