

## 2007 No. 134

### POLICE

#### The Police (Scotland) Amendment Regulations 2007

*Made* - - - - - *27th February 2007*

*Laid before the Scottish Parliament* *1st March 2007*

*Coming into force* - - - *1st April 2007*

The Scottish Ministers, in exercise of the powers conferred by sections 26, 27 and 48(1) of the Police (Scotland) Act 1967(a) 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 that Act, 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(1A) of the Police Act 1996(b), hereby make the following Regulations:

#### Citation and commencement

1. These Regulations may be cited as the Police (Scotland) Amendment Regulations 2007 and shall come into force on 1st April 2007.

#### Amendment of Police (Scotland) Regulations 2004

2. The Police (Scotland) Regulations 2004(c) are amended in accordance with regulations 3 to 14.

3. In regulation 4 (interpretation) after paragraph (2) insert—

“(3) These Regulations do not apply to special constables(d).”.

4. In regulation 6(7) (part-time appointments) omit sub-paragraph (a).

5. In regulation 8 (business interests)—

(a) in paragraph (5)—

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(a) 1967 c.77; section 26(1) was amended by the Police and Magistrates' Court Act 1994 (c.29) (“the 1994 Act”), section 53(1); section 26(1A) and (10) was inserted by the Police and Criminal Evidence Act 1984 (c.60) (“the 1984 Act”), section 111; section 26(2) was amended by the 1994 Act, sections 47(5), 52(2) and Schedule 9 and by the Police Act 1996 (c.16) (“the 1996 Act”), Schedule 7, paragraph 14(2); section 26(2A) and (2B) were inserted by the 1994 Act, section 52(3); section 26(2C) was repealed by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (“the 2006 Act”) schedule 6, paragraph 1(3); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9; section 26(9) was amended by the Police Negotiating Board Act 1980 (c.10), section 2(4) and by the 1996 Act, Schedule 7, paragraph 14(3); section 27(3) was amended by the 1984 Act, section 111(2) and by the Police Act 1997 (c.50), Schedule 9, paragraph 9. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1996 c.16, section 62(1A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order S.I. 1999/1820, article 4 and Schedule 2, paragraph 124(b).

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

(d) A definition of a special constable is contained in section 3(2) of the Police (Scotland) Act 1967 (c.77). Section 3(2) was amended by the 2006 Act, section 48.

- (i) in sub-paragraph (a) for “of employment” substitute “or employment”;
  - (ii) in sub-paragraph (c) after “constable ” insert “or”;
  - (iii) in sub-paragraph (d) after “spouse (not being separated from that person)” insert “, civil partner (not being separated from that person) or cohabitant (not being separated from that person)”;
- (b) in paragraph (6)–  
for “sister or spouse (not being separated from that person)” substitute “sister, spouse (not being separated from that person), civil partner (not being separated from that person) or cohabitant (not being separated from that person)”; and
- (c) after paragraph (6) insert–  
“(7) For the purpose of this regulation, “cohabitant”(a) means a member of a couple consisting of–  
(i) a man and a woman who are living together as if they were husband and wife; or  
(ii) two persons of the same sex who are living together as if they were civil partners.”.
- 6.** After regulation 9(2) (qualifications for appointment to a police force) insert–  
“(2A) A person who holds, or is appointed to, a police force to a rank which is lower than superintendent, shall not be appointed for a fixed term.”.
- 7.** In regulation 15 (contents of personal records)–  
(a) in paragraph (2)(b) for “10 years older” substitute “10 years old”; and  
(b) in paragraph (2)(e) after “member’s marriage” insert “or civil partnership”.
- 8.** In regulation 19(2) (samples)–  
(a) for “sections 18, 19 and 19A” substitute “sections 18, 19, 19A and 19AA(b)”;  
(b) after “Criminal Procedure (Scotland) Act 1995” omit “or”; and  
(c) after “section 56 of the Criminal Justice (Scotland) Act 2003” insert “, section 87(5A)(c) of the Sexual Offences Act 2003(c)”.
- 9.** In regulation 21(3) (limitations on duties to be assigned to members statutorily transferred) for “section 38(3)” substitute “section 38A(3)”.
- 10.** In regulation 22(1) (duty) at the beginning insert “Subject to section 26(5) of the 1967 Act,”.
- 11.** In regulation 24(3)(f) and (g) (pay) for “regulation 33(4)” substitute “regulation 33(7)”.
- 12.** After regulation 33(12) (leave) insert–  
“(13) The Scottish Ministers shall determine the circumstances and manner in which a member of a police force shall be entitled to take a career break and return to duty after taking such a career break.  
(14) In making a determination under paragraph (13), the Scottish Ministers may confer functions on the–  
(a) police authority in relation to a member of a police force who holds the rank of chief superintendent or a higher rank, who takes a career break;  
(b) chief constable in relation to a member of a police force who holds the rank of chief superintendent or a lower rank, who takes a career break.  
(15) A chief constable may authorise that any of the functions which are conferred on that chief constable under a determination made under paragraph (13) in relation to career

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(a) A similar definition of “cohabitant” is found in section 25(1) of the Family Law (Scotland) Act 2006 (asp 2).  
(b) Section 19AA of the Criminal Procedure (Scotland) Act 1995 (c.46) was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (“the 2006 Act”), section 77(2).  
(c) 2003 c.42. Section 87(5A) of the Sexual Offences Act 2003 was inserted by the 2006 Act, section 77(7).

breaks may be carried out by a member of a police force who holds the rank of chief superintendent or a higher rank.

(16) Any determination made under paragraph (13) shall be without prejudice to any arrangements in place under which a member is taking a career break at the time that paragraph comes into force.”.

**13.** After regulation 35(2) (expenses) insert–

“(3) The expenses that may be reimbursed under a determination made under paragraph (1) include tax paid by the chief constable in connection with removal or relocation expenses associated with a member’s appointment to a police force.”.

**14.** In regulation 46(3) (determinations) omit “, but nothing in this paragraph shall be construed as authorising the pay or allowances payable to any person to be reduced retrospectively”.

St Andrew’s House,  
Edinburgh  
27th February 2007

*CATHY JAMIESON*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations amend the Police (Scotland) Regulations 2004 (“the principal Regulations”).

Regulation 3 amends regulation 4 of the principal Regulations to make it clear that the principal Regulations do not apply to special constables.

Regulation 4 revokes regulation 6(7)(a) of the principal Regulations which means that a part time member of a police force in Scotland who has completed the required probationary period will not have to complete a further period of probation upon transferring to another police force in Scotland.

Regulation 5 amends regulation 8(5) of the principal Regulations to provide that a constable will be regarded as having a business interest if that member’s spouse, civil partner or cohabitant keeps a shop or runs a business which is similar to keeping a shop. Regulation 8(6) is also amended to include cohabitants and civil partners within the definition of a “member of that person’s family”.

Regulation 6 amends regulation 9 of the principal Regulations to make it clear that no person below the rank of superintendent can be appointed for a fixed term, in order to be consistent with section 26(5A) of the Police (Scotland) Act 1967 (“the 1967 Act”). This makes it clear that, subject to the regulation 11 of the principal Regulations, it is only a person who holds, or is appointed to, the rank of superintendent or a higher rank who may be appointed on a fixed term contract.

Regulation 7 amends regulation 15 of the principal Regulations to correct a typographical error and also to provide that the personal record of each member of a police force shall contain particulars of that member’s civil partnership (if any).

Regulation 8 amends regulation 19 of the principal Regulations in consequence of provisions on samples which have been inserted into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) and the Sexual Offences Act 2003 (“the 2003 Act”) by sections 77 and 83 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. It ensures that samples taken from a member of a police force will be kept separate from samples taken under the 1995 Act and the 2003 Act.

Regulations 9 and 11 amend regulations 21 and 24 of the principal Regulations to correct typographical errors.

Regulation 10 amends regulation 22 of the principal Regulations to make it clear that the power of the Scottish Ministers to make a determination under regulation 22 of the principal Regulations is subject to section 26(5) of the 1967 Act. Section 26(5) provides that constables are entitled to at least 52 days a year when they are not required to be on duty and that 1 day in 7 should be allocated as a rest day, except in the event of an emergency.

Regulation 12 amends regulation 33 of the principal Regulations to give Scottish Ministers the power to determine the circumstances in which a member of a police force can take a career break. A chief constable may authorise a member of a police force who holds the rank of chief superintendent or above to carry out any functions which are conferred on that chief constable under a determination made under regulation 33(13). A chief constable may delegate functions which are conferred on that chief constable in relation to the leave of a member of a police force by virtue of section 26(2B) of the 1967 Act.

Regulation 13 amends regulation 35 of the principal Regulations to clarify that the Scottish Ministers have the power to make a determination which enables chief constables to be reimbursed for the tax which is payable in relation to removal expenses of constables.

Regulation 14 amends regulation 46 of the principal Regulations to remove unnecessary provision from paragraph (3) as similar provision is found at regulation 4(2) of the principal Regulations.





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