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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 117**

**POLICE**

**The Police (Special Constables) (Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>13th March 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>17th March 2008</i>
<i>Coming into force</i>	- -	<i>12th May 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 3(4), 7(1), 16, 26 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 all other powers enabling them to do so.

In accordance with section 26(9) of the 1967 Act, they have submitted a draft of the Regulations to the Police Advisory Board for Scotland and have taken into consideration representations made on the draft by that Board.

**PART 1**

**COMMENCEMENT AND INTERPRETATION**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Police (Special Constables) (Scotland) Regulations 2008.

(2) These Regulations come into force on 12th May 2008 but regulation 26(2) and (6) shall have effect from 1st September 2006<sup>(3)</sup>.

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(1) 1967 c. 77; section 3(4) was inserted by the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#) (“the 2006 Act”), section 48 and commenced on 1st September 2006 by S.S.I. 2006/432; section 16 was amended by the District Courts (Scotland) Act 1975, Schedule 1, paragraph 29; section 26(1) was amended by the Police and Magistrates’ Courts Act 1994 (c. 29) (“the 1994 Act”), section 53(1); section 26(1A) and (10) were inserted by the Police and Criminal Evidence Act 1984 (c. 60), 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Schedule 7, paragraph 14(2); section 26(2A) and (2B) were inserted by the 1994 Act, section 52(3); section 26(2C) was repealed by the 2006 Act, schedule 6, paragraph 1(3); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9; section 26(9) was amended by the Police Negotiating Board Act 1980 (c. 10), section 2(4) and by the 1996 Act,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). 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).

(2) 2002 c. 30; section 82(4) was amended by the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 4, paragraph 185.

(3) Section 26(3) of the Police (Scotland) Act 1967 (c. 77) provides that regulations made under section 26 of that Act may regulate allowances which are paid to special constables with retrospective effect.

## Interpretation

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

“the 1966 Regulations” means the Police (Special Constables) (Scotland) Regulations 1966<sup>(4)</sup>;

“the 1967 Act” means the Police (Scotland) Act 1967<sup>(5)</sup>;

“inquiry officer” means a constable who is selected under regulation 20;

“misconduct” shall be construed in accordance with regulation 16;

“misconduct officer” means a constable who is selected under regulation 21;

“nominated officer” means a constable who is selected under regulation 18; and

“special constable” has the same meaning as in section 3 of the 1967 Act<sup>(6)</sup>.

(2) Unless otherwise stated, for the purpose of these Regulations a reference to—

(a) “the chief constable” means, the chief constable of the police force to which the special constable belongs or belonged, or as the case may be, the chief constable of the police force to which the person applies to for appointment to the office of special constable; and

(b) “the deputy chief constable” means the deputy chief constable of the police force to which the special constable belongs.

(3) Nothing in these Regulations shall be construed as authorising allowances payable to a special constable to be reduced retrospectively.

## References to transfers

3. Except where the context otherwise requires, a reference in these Regulations to a special constable transferring from one police force to another shall be construed as a reference to that special constable being voluntarily so transferred.

## PART 2

### GOVERNMENT

#### Restrictions on the private life of special constables

4.—(1) The restrictions on private life contained in Schedule 1 shall apply to all special constables.

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

#### Business interests

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

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

(3) A person applying for appointment to the office of special constable must give written notice to the chief constable of any business interest.

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<sup>(4)</sup> S.I. 1966/97, amended by S.I. 1994/3309 and S.S.I. 2003/21.

<sup>(5)</sup> 1967 c. 77.

<sup>(6)</sup> Section 3 was amended by the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), section 48.

- (4) A person shall be regarded as having a business interest for the purpose of this regulation if—
- (a) that person, 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, betting and gaming or regulating places of public entertainment in the police area of the force to which that person is applying for appointment to the office of special constable or has any pecuniary interest in such licence, certificate or permit; or
  - (b) that person is employed in any occupation or holds any appointment which, in the opinion of the chief constable, may cause a conflict of interest with that person’s appointment to the office of special constable.
- (5) For the purpose of this regulation, the expression “member of that person’s family” shall include a parent, son, daughter, brother, sister, spouse (not being separated from that person), civil partner (not being separated from that person) or a cohabitant (not being separated from that person).
- (6) For the purpose of this regulation “cohabitant” means a member of a couple consisting of—
- (a) a man and a woman who are living together as if they were husband and wife; or
  - (b) two persons of the same sex who are living together as if they were civil partners.

#### **Qualifications for appointment as a special constable**

- 6.—(1) A candidate for appointment to the office of special constable—
- (a) must, if not a national of an EEA State, 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;
  - (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 satisfy the chief constable that he or she is sufficiently educated, including being sufficiently competent in written and spoken English and sufficiently numerate, by passing an examination of a standard approved by the chief constable and the Scottish Ministers after consultation with the Police Advisory Board of Scotland; and
  - (g) must give to the chief constable such information as to his or her current employment, previous history of employment or any other matter relating to his or her appointment as may be required.
- (2) A candidate for appointment to the office of special constable must be given a notice in terms approved by the Scottish Ministers drawing attention to the terms and conditions of service.
- (3) A person who is appointed to the office of special constable must not be appointed for a fixed term.
- (4) In 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 section 313 of the Merchant Shipping Act 1995(7).

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(7) 1995 c. 21.

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

7. The terms of the declaration to be made under section 16 of the 1967 Act(8) by a person appointed to the office of special constable 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.”.

### **Retirement**

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

(2) Subject to regulation 30(2) and (3)(b), a special constable must retire at the age of 60 years.

### **Contents of personal records**

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

(2) The personal record must contain—

- (a) the home address of the special constable;
- (b) a photograph of the special constable taken in accordance with the directions of the chief constable and at the expense of the police authority, provided that such photograph shall not be more than 10 years old;
- (c) a personal description of the special constable;
- (d) particulars of the special constable’s place and date of birth;
- (e) particulars of the special constable’s marriage or civil partnership (if any) and children (if any);
- (f) a record of the special constable’s service (if any) in any branch of Her Majesty’s naval, military or air forces or in the civil service;
- (g) a record of the special constable’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 special constable passed or failed to pass any qualifying examination at which the special constable was a candidate; and
- (i) a record of the special constable’s service in the police force, including postings, transfers, removals, injuries received, periods of illness, attendances at training courses, commendations, rewards, punishments, disposals and the date of the special constable ceasing to be a special constable with the reason, cause or manner thereof.

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

- (a) any record of any disposal made by the misconduct officer under regulation 22(2)(e) after 3 years from the relevant date; and
- (b) any record of any other final disposals made under regulation 22 or 23, after 3 consecutive years free, from the relevant date, of any such disposal being imposed on that special constable in relation to another matter.

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

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

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(8) 1967 c. 77.

- (6) In this regulation “relevant date” means—
- (a) if the chief constable was not requested to review the matter in accordance with regulation 23, the date on which the disposal was, or disposals were, imposed on the special constable concerned by the misconduct officer; or
  - (b) if the chief constable is requested to review the matter in accordance with regulation 23, the date on which the disposal was, or disposals were, imposed on the special constable concerned by the chief constable.

### **Transfer of personal records**

10. Where a special constable transfers to another police force that special constable’s personal record must be transferred to the chief constable of that other police force.

### **Personal record of special constable leaving force**

11.—(1) When a person ceases to be a special constable of a police force, otherwise than by transferring to another police force, that person must be given a certificate setting out the period of his or her service as a special constable 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—

- (a) the special constable’s conduct was exemplary;
- (b) the special constable’s conduct was very good; or
- (c) the special constable’s conduct was good.

(3) Where a person ceases to be a special constable of that police force, otherwise than by transferring to another police force, that person’s special constable personal record must be kept for such time as the chief constable thinks fit and must then be destroyed.

### **Fingerprints**

12.—(1) All special constables, except those who are appointed following their transfer from another police force, must on appointment and in accordance with the directions of the chief constable have their fingerprints taken.

(2) Fingerprints of special constables taken in accordance with this regulation must be kept separate from the fingerprints taken in accordance with sections 18, 19, 19A and 19AA of the Criminal Procedure (Scotland) Act 1995(9), section 56 of the Criminal Justice (Scotland) Act 2003(10), section 87(5A)(c) of the Sexual Offences Act 2003(11) 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 fingerprints shall be taken for the purpose of enabling a check to be carried out against any other fingerprint taken by or on behalf of any police force or in connection with or as a result of an investigation of an offence.

(4) The fingerprints of a special constable taken in accordance with this regulation and all copies and records must be destroyed upon that person ceasing to be a special constable of a police force,

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(9) 1995 c. 46; section 19A was inserted by the Crime and Punishment Act 1997 (c. 48) (“the 1997 Act”), section 48(2); section 19AA was inserted by the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#) (“the 2006 Act”), section 77(2); section 18 was amended by the 1997 Act, section 47 and Schedule 3, the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) (“the 2003 Act”), section 55, the 2006 Act, section 83(1) and schedule 6, paragraph 4; section 19 was amended by the 1997 Act, sections 47 and 48, the 2003 Act, section 55 and the 2006 Act, section 77(3); section 19A was amended by the 2006 Act, section 77(4) and schedule 6, paragraph 4.

(10) 2003 asp 7.

(11) 2003 c. 42; section 87(5A) was inserted by the 2006 Act, section 77(7).

except that, where that person becomes a special constable of another police force, that person's fingerprints and all copies and records must be transferred to the chief constable of that other police force.

### **Samples**

**13.**—(1) All special constables, except those who are appointed following their transfer from another police force, must 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 special constables taken in accordance with this regulation must be kept separate from the samples or the information derived from samples taken in accordance with sections 18, 19, 19A and 19AA of the Criminal Procedure (Scotland) Act 1995<sup>(12)</sup>, section 56 of the Criminal Justice (Scotland) Act 2003<sup>(13)</sup>, section 87(5A)(c) of the Sexual Offences Act 2003<sup>(14)</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 an investigation of an offence.

(4) The samples or the information derived from samples of a special constable taken in accordance with this regulation, and all copies and records, must be destroyed upon that person ceasing to be a special constable of that police force, except that, where that person becomes a special constable of another police force, that person's samples or information and all copies and records must be transferred to the chief constable of that other police 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**

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

#### **Duty**

**15.**—(1) Subject to section 26(5) of the 1967 Act<sup>(15)</sup>, the Scottish Ministers shall determine—

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

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(12) 1995 c. 46.

(13) 2003 asp 7.

(14) 2003 c. 42.

(15) 1967 c. 77.

- (2) In making a determination under this regulation the Scottish Ministers may confer—
- (a) such functions on the chief constable as they think fit; and
  - (b) a discretion on the chief constable to fix a limit on the travelling time which is to be treated as duty.

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

## PART 4

### MISCONDUCT

#### **Misconduct**

**16.** For the purpose of these Regulations, an act or omission of a special constable shall amount to misconduct on the part of that special constable if it falls within any of the types of conduct described in Schedule 2.

#### **Preliminary Procedures**

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

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

- (a) consider that report, complaint or allegation in the first instance and, unless regulation 25 applies, decide whether an inquiry into the matter should take place; or
- (b) select a nominated officer to consider the report, complaint or allegation in the first instance who will, unless regulation 25 applies, decide whether an inquiry into the matter should take place.

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

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

#### **The nominated officer**

**18.—**(1) The nominated officer shall be selected by the deputy chief constable.

(2) The nominated officer shall be—

- (a) a constable of the police force concerned or, if the chief constable of another police force is requested by the deputy chief constable and agrees to provide a nominated officer, a constable of that other police force; and
- (b) a constable of a rank which the deputy chief constable considers to be appropriate.

(3) The nominated officer shall not be—

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

### **The inquiry officer**

**19.**—(1) The inquiry officer shall be selected by the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer.

(2) The inquiry officer shall be—

- (a) a constable of the police force concerned or, if the chief constable of another police force is requested by the deputy chief constable and agrees to provide an inquiry officer, a constable of that other police force; and
- (b) a constable of at least the rank of inspector.

(3) The inquiry officer shall not be—

- (a) a chief constable;
- (b) a deputy chief constable;
- (c) the misconduct officer;
- (d) any constable who the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer considers is or appears to be a material witness to the complaint, report or allegation which has been received; and
- (e) any other constable who the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer considers is or appears to be an interested party.

### **Inquiry procedure**

**20.**—(1) Subject to regulation 25, and unless it would be prejudicial to the carrying out of an inquiry, the inquiry officer must as soon as reasonably practicable after his or her selection give oral or written notice to the special constable concerned—

- (a) of the nature of the report, complaint or allegation;
- (b) that there is to be an inquiry into the report, complaint or allegation;
- (c) of that special constable's right to make written or oral comments on the report, complaint or allegation but that any comments which are made may be used in evidence in relation to any misconduct matter considered in accordance with these Regulations; and
- (d) of that special constable's right to be accompanied by a representative whom he or she may select, who shall not be an interested party, to any meeting, interview or hearing with the inquiry officer.

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

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

### **The misconduct officer**

**21.**—(1) The misconduct officer shall be selected by the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer.

(2) The misconduct officer shall be—

- (a) a constable of the police force concerned or, if the chief constable of another police force is requested by the deputy chief constable and agrees to provide an investigating officer, a constable of that other police force; and
- (b) a constable of at least the rank of superintendent.

(3) The misconduct officer shall not be—

- (a) a chief constable;
- (b) a deputy chief constable;
- (c) the inquiry officer;
- (d) any constable who the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer considers is or appears to be a material witness to the complaint, report or allegation which has been received; and
- (e) any other constable who the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer considers is or appears to be an interested party.

### **Procedure on receipt of inquiry officer's report**

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

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

(2) Those disposals are—

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

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

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

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

within 7 days of such a decision being made.

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

- (a) been given the opportunity of being heard at a meeting before the misconduct officer;
- (b) been provided with at least 21 days written notice of—

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

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

### **Review by chief constable**

**23.**—(1) Where a finding of misconduct has been recorded and a disposal has been imposed on a special constable under regulation 22(2)(a), (b) or (c), the special constable concerned shall be entitled to request the chief constable to review that finding or that disposal or both the finding and the disposal.

(2) A request for a review must be made in writing to the chief constable within 28 days of the special constable concerned receiving written notification from the misconduct officer of the matters specified in regulation 22(3).

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

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

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

(5) The chief constable may—

- (a) confirm or overturn the finding of the misconduct officer;
- (b) decide to overturn a disposal which has been imposed by the misconduct officer because he or she considers that it is not necessary to take any action in relation to the finding;
- (c) impose a different disposal which is specified in regulation 22(2) but may not impose a sanction which is greater than that imposed by the misconduct officer,

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

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

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

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

## **Suspension**

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

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

the special constable concerned may be suspended from duty by the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer.

(2) The deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer—

- (a) may terminate a suspension imposed on the special constable concerned under paragraph (1), with effect from the date of the suspension or any subsequent date;
- (b) must terminate a suspension imposed on the special constable concerned under paragraph (1) when—
  - (i) it is decided, in accordance with regulation 17(2), that there will not be an inquiry into the report, unless the special constable concerned has submitted his or her resignation; or
  - (ii) misconduct proceedings have been completed but have not resulted in a disposal of dismissal from the force or a requirement to resign from the force as an alternative from dismissal, unless the special constable concerned submitted his or her resignation before misconduct proceedings were concluded.

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

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

## **Alleged criminal offence**

**25.**—(1) Notwithstanding anything in regulations 16 to 24, where a report, allegation or complaint is received from which it may reasonably be inferred that a special constable may have committed a criminal offence, the deputy chief constable must, as soon as possible, refer the matter to the procurator fiscal.

(2) If the matter is referred to the procurator fiscal, the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer, may decide—

- (i) not to select an inquiry officer, in accordance with regulation 19, for the purpose of inquiring into the matter; or
- (ii) where an inquiry officer has been selected in accordance with regulation 19, to instruct that officer not to give written notice to the special constable concerned of the matters specified in regulation 20(1) and not to carry out an inquiry into any matter arising out of or referred to in that report, allegation or complaint, insofar as it might be the subject of criminal proceedings,

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

(3) If the deputy chief constable or, if regulation 17(2)(b) is applicable, the nominated officer decides to exercise the power conferred by paragraph (2), he or she shall ensure that the special

constable concerned is informed in writing that misconduct proceedings may be taken, irrespective of whether or not criminal proceedings are brought against him or of the disposal of any such proceedings.

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

## PART 5

### ALLOWANCES AND EXPENSES

#### Allowances

**26.**—(1) The Scottish Ministers shall determine the entitlement of special constables to any allowance.

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

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

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

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

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

(5) Nothing in this regulation shall apply to the reimbursement of expenses incurred by a special constable in the execution of that special constable’s duty which have been authorised either generally or specifically by the chief constable where no allowance is payable under these Regulations and no determination has been made under regulation 27.

(6) In this regulation, “periodic payment allowance” means an allowance as specified in section 3(4) of the 1967 Act<sup>(16)</sup>.

#### Expenses

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

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

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(16) 1967 c. 77; section 3(4) was inserted by the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), section 48.

## PART 6

### UNIFORM AND EQUIPMENT

#### Issue of uniform and equipment

**28.**—(1) Special constables shall be entitled to receive the uniform and equipment that they need as determined by the police authority free of charge and in a clean and serviceable condition from the police authority.

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

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

## PART 7

### DETERMINATIONS AND AMENDMENT OF OTHER REGULATIONS

#### Determinations

**29.**—(1) Before making a determination under any provision of these Regulations, 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.

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

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

#### Revocations and savings provisions

**30.**—(1) Subject to paragraphs (2) to (4), the Regulations specified in Schedule 3 are, to the extent that they have not previously been revoked, hereby revoked.

(2) Notwithstanding the revocation of the 1966 Regulations by paragraph (1), regulations 2(1), 7 and 10(a) of those Regulations shall continue to have effect on and after 12th May 2008 but only for the purposes specified in paragraphs (3) and (4).

(3) The purposes are to—

(a) enable any special constable who holds the rank of Special Sergeant or above to continue to hold that rank (but not to be promoted to a higher rank) until such time as that special constable ceases to be a special constable; and

(b) require any special constable who on 12th May 2008—

(i) holds the rank of Special Superintendent or above, as specified in regulation 2(1) of the 1966 Regulations; and

(ii) has attained the age of 60,

to retire upon attaining the age of 65.

(4) Regulation 7 of the 1966 Regulations shall continue to have effect on and after 12th May 2008 for the purpose of enabling the chief constable, in accordance with that regulation, to consider and dispose of a matter which is received before that date, where it is alleged that a special constable,

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when executing his or her duty, has acted in a disorderly manner or a manner which is prejudicial to discipline or likely to bring discredit on the reputation of the force or the police service.

St Andrew's House, Edinburgh  
13th March 2008

*KENNY MACASKILL*  
A member of the Scottish Executive

## SCHEDULE 1

Regulation 4

### RESTRICTIONS ON THE PRIVATE LIFE OF SPECIAL CONSTABLES

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

## SCHEDULE 2

Regulation 16

### CONDUCT CONSTITUTING MISCONDUCT

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

## SCHEDULE 3

Regulation 30

## REVOCATIONS

<i>Column 1</i> <i>Regulations revoked</i>	<i>Column 2</i> <i>References</i>
The 1966 Regulations	S.I.1966/97
The Police (Special Constables) (Scotland) Amendment Regulations 1994	S.I. 1994/3039
The Police (Special Constables) (Scotland) Amendment Regulations 2003	S.S.I.2003/21

**EXPLANATORY NOTE**

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

These Regulations revoke and replace the Police (Special Constables) (Scotland) Regulations 1966 (“the 1966 Regulations”).

Regulation 4 and Schedule 1 set out the restrictions which are imposed on the private life of a special constable.

Regulation 5 provides that a special constable must not have a business interest without the consent of the chief constable. A special constable, or a person applying to become a special constable must give written notice of any business interests to the chief constable. Paragraph (4) sets out what constitutes a business interest.

Regulation 6 specifies the criteria which a person must fulfil in order to be appointed as a special constable. In accordance with section 26(5A) of the Police (Scotland) Act 1967, a special constable cannot be appointed for a fixed term.

Regulation 7 sets out the declaration that a person must make upon being appointed as a special constable.

Regulation 8 makes provision in relation to the voluntary retirement or resignation of special constables and provides that a special constable must retire upon reaching the age of 60.

Regulations 9, 10 and 11 make provision in relation to the personal record of a special constable.

Regulation 12 provides that special constables must have their fingerprints taken upon their appointment (other than in cases of transfer between forces). The fingerprints of special constables must be kept separate from the fingerprints which are taken by the police from any person under the Criminal Procedure (Scotland) Act 1995, the Sexual Offences Act 2003, the Criminal Justice (Scotland) Act 2003, or otherwise. The fingerprints are taken for the purpose of enabling a check to be carried out against other samples taken in connection with, or as the result of an investigation of a criminal offence. These fingerprints must be destroyed if the person who has provided the fingerprints ceases to be a special constable (but not if that special constable transfers to another force).

Regulation 13 requires special constables 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 samples and information will be stored separately from samples and information provided in accordance with the Criminal Procedure (Scotland) Act 1995, the Sexual Offences Act 2003 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 an investigation of a criminal offence. Samples, and information derived from them will be destroyed when the person who has provided the sample ceases to be a special constable (but not if that special constable transfers to another force).

Regulation 14 requires special constables to carry out lawful orders issued to them.

Regulation 15 provides that the Scottish Ministers can determine certain matters in relation to the periods of duty carried out by special constables.

Regulations 16 to 25 and Schedule 2 set out the misconduct procedures that will be applicable to special constables.

Regulation 16 sets out the preliminary procedures to be followed where a report, complaint or allegation of misconduct is made against a special constable. The deputy chief constable (or if the deputy chief constable appoints a nominated officer, the nominated officer) will consider the report, complaint or allegation and decide whether it contains a criminal allegation. If there are any allegations of criminality, the procedures set out in regulation 25 must be followed. If it appears that there are no allegations of a criminal nature, the deputy chief constable or the nominated officer (if one is selected) may decide whether there should be an inquiry into the matter and select an investigating officer to conduct an inquiry. If an inquiry is not considered to be necessary, no further action will be taken in relation to the report, complaint or allegation.

Regulation 18 specifies who the deputy chief constable may select as the nominated officer.

Regulation 19 specifies who the deputy chief constable or the nominated officer (if one is selected) may select as the inquiry officer.

Regulation 20 sets out the procedures which the inquiry officer must carry out as part of their inquiry into the complaint, report or allegation which is received.

Regulation 21 specifies who the deputy chief constable, or the nominated officer (if one is selected) may select as the misconduct officer.

Regulation 22 specifies the action that can be taken by the misconduct officer in disposing of the matter, if there has been a finding of misconduct.

Regulation 23 makes provision for the special constable concerned to request the chief constable to review the finding of misconduct and the disposal imposed by the misconduct officer. If a review takes place, the chief constable's decision will be final. Any finding or decision which is made by the chief constable which is different from that of the misconduct officer will take effect from the date on which the misconduct officer made their decision.

Regulation 24 makes provision with respect to the suspension of a special constable.

Regulation 25 provides that if it appears that a criminal offence may have been committed by a special constable, the deputy chief constable must notify the relevant procurator fiscal of this fact immediately. This regulation enables the deputy chief constable or nominated officer (if one is selected) to delay an inquiry into a report, complaint, or allegation where the matter is the subject of a criminal investigation. If the deputy chief constable or the nominated officer decides to delay an inquiry until it is clear what is happening in relation to the criminal investigation, he or she must inform the special constable that the misconduct procedures may still be invoked.

Regulation 26 provides that the Scottish Ministers can determine the allowances which are paid to special constables. An allowance can only be paid to a special constable, and under certain conditions, if it has been authorised under these Regulations or approved by the Scottish Ministers.

Regulation 27 provides that the Scottish Ministers can determine the expenses for which special constables are to be reimbursed.

Regulation 28 makes provision in relation to the uniform and equipment which special constables need in order to execute their duties. Special constables can only use any uniform and equipment which is issued to them for carrying out their duty.

Regulation 29 requires that a draft of any determination issued under regulation 6(e), 8, 26, 27 or 28 of these Regulations must be consulted on. A determination made under regulation 26 and 27 of these Regulations can make retrospective provision by virtue of section 26(3) of the Police (Scotland) Act 1967.

Regulation 30 revokes the 1966 Regulations but saves regulations 2(1) and 10(a) for certain purposes. These provisions are saved so that a special constable who holds the rank of Special Sergeant or above can continue to hold that rank until he or she ceases to be a special constable. These savings also mean that a special constable who holds the rank of Special Superintendent or above and who is over the age of 60 on the date these Regulations come into force must retire at the age of 65. This regulation also provides that the procedures specified in regulation 7 of the 1966 Regulations will apply to reports, allegations and complaints about the conduct of special constables which are received before these Regulations come into force.