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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 117**

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

**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

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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.