

EXECUTIVE NOTE

The Police (Special Constables) (Scotland) Regulations 2008 SSI/2008/117

1. The Police (Special Constables) (Scotland) Regulations 2008 (“the 2008 Regulations”) are made in exercise of the powers conferred by sections, 3(4), 7(1), 16, 26, and 48(1) of the Police (Scotland) Act 1967 and section 82(4) of the Police Reform Act 2002. The Instrument is subject to the negative resolution procedure.

Policy Objectives

2. The purpose of this instrument is to revoke the Police (Special Constables) (Scotland) Regulations 1966 which came into force on 12 February 1966, herein referred to as the ‘1966 Regulations’. The 2008 Regulations are being brought in to set out the conditions of service which are applicable to a modern day Special Constabulary in Scotland.

3. The 1966 Regulations remained largely unaltered since its inception. They were drawn up on the basis of no remuneration except for out-of-pocket expenses and certain allowances. Given the passage of time that has elapsed since these Regulations were made it was decided that the opportunity should be taken to consider modernising the Regulations in full.

4. Many of the new provisions in these Regulations replicate those which are currently in place for regular constables in the Police (Scotland) Regulations 2004. However, the 2008 Regulations also take into account the voluntary nature of the Special Constabulary.

5. **Regulation 4 and Schedule 1** require a special constable to abstain from any activity which is likely to interfere, or give rise to the impression amongst members of the public that it may so interfere, with the impartial discharge of their duty. This brings special constables in line with that of regular constables and will ensure that, although special constables are volunteers, they should not take part in any activity that would undermine the integrity of and confidence in the police service.

6. **Regulation 5** introduces a section on ‘Business interests’ that brings special constables in line with their regular counterparts. It requires a special constable to have the consent of the chief constable before having a business interest and also outlines what will be considered a business interest. This allows the chief constable to consider whether a business interest of a special constable or their family could interfere, or be seen to interfere, with the impartiality of that special constable. The 1966 Regulations specified disqualifications for appointment as a special constable that are now felt to be inflexible in their application. It is considered to be more fair and practical for each candidate, as well as existing special constables, to be considered on a case by case basis.

7. **Regulation 6.** This provision sets out certain conditions which those seeking appointment as a special constable are required to meet before they are appointed which brings them in line with the position for regular constables. The special constabulary is providing members of the public with an opportunity to police and generally take responsibility for their own communities. They are expected to be able to carry out the same range of duties as regular constables while on duty, therefore it is reasonable for them to meet the same criteria for appointment which a regular constable must meet. The standards are required to ensure that recruits have the basic fitness, eyesight and educational standards to

enable them to undertake the office of constable. They must also prove that they have the right to remain in the country and provide character references to show they have no criminal convictions or connections. This maintains the integrity of the Scottish police service and ensures that those recruited to the special constabulary meet the required standards that will enable them to carry out their duties and that there are no convictions, protecting police force assets and reducing the risk of compromise. There is also a responsibility on the chief constable to draw a special constable's attention to their terms and conditions, which are set out in the 2008 Regulations.

8. **Regulation 7** replicates Regulation 5 of the 1966 Regulations and provides the terms of the declaration to be made by a person appointed to the office of special constable of a police force in Scotland.

9. **Regulation 8** of the 2008 Regulations replaces regulation 8 and 9 of the 1966 Regulations on 'resignation'. This allows a special constable to retire from his or her appointment voluntarily, provided the notice of intention to retire has been given to the chief constable. This regulation also sets out the retirement age of special constables as 60 years which is in line with the compulsory retirement age of regular constables and is set out in the Police Pension (Scotland) Regulations 2007. This age is deemed equitable as the Chief Constable must ensure public confidence and that officers are not exposed to unnecessary health and safety risks which may increase with age. The retirement age takes into account the duties of Special Constables which are generally in community based policing, where the constantly changing crime pattern requires physical exertion and a risk of facing confrontational situations. The 1966 Regulations enable special constables who hold the rank of Special Superintendent or above to retire when they reach the age of 65. Therefore, there is a savings provision at regulation 30 of the 2008 Regulations, which allows a special constable who is aged 60 or over and who holds such a rank to retire at the age of 65 years.

10. **Regulation 9** requires the chief constable to maintain a personal record of each special constable, and specifies what that record should contain and what information should be expunged. It also allows a special constable to inspect his personal record on request.

11. **Regulation 10** is a new provision providing for the transfer of a special constable's personal record from one force to another.

12. **Regulation 11** requires those leaving a police force, other than on transfer to another force, to be provided with a certificate showing details of the members rank and service together with any appropriate recommendation relating to good, very good or exemplary conduct of the said member. The personal record is kept for as long as the chief constable sees fit and is then destroyed.

13. **Regulation 12 and 13** of the 2008 Regulations require a special constable to provide samples and fingerprints. These will be kept separate from samples and fingerprints, taken from the general public in connection with an investigation and will mean that the fingerprints and samples are stored correctly and will not be available for general searches into enquires not directly relating to the officer. It also provides for these samples and fingerprints to be destroyed on that special constable ceasing to be a member of the force and provides for the transfer of such records to another force should an officer transfer.

14. **Regulation 14** requires every special constable to carry out all lawful orders, to perform all appointed duties punctually and promptly and attend to all matters within the scope of that person's office as a special constable.

15. **Regulation 15** is a new provision that specifies the normal periods of duty of special constables including periods allowed for refreshment and circumstances in which travelling time may be treated as duty, arrangements for rostering and variable shifts with a new power for Scottish Ministers to determine these matters. The determination also enables Scottish Ministers to confer discretion on the chief constable to determine certain matters.

16. **Regulation 16 – regulation 25** of the 2008 Regulations have replaced regulation 7 of the 1966 Regulations. This allows for a more efficient misconduct process for dealing with any complaints or reports about misconduct by special constables. The new system follows similar lines to the conduct proceedings of regular officers. An inquiry officer may be appointed to conduct an investigation into the complaint. The inquiry officer will send a report into the matter to the misconduct officer (who must be the rank of superintendent or above), for their consideration at a hearing with the special constable. It allows a special constable to be heard at various stages throughout the misconduct process prior to any decision being made on what disposal should be imposed. It also provides the special constable the right to request that the chief constable conduct a review against the misconduct disposals which have been imposed on him or her. The right to be heard and to an appeal makes the misconduct process fairer and more equitable.

17. **Regulation 26** confers a power on Scottish Ministers to determine the entitlement of members of the Special Constabulary to receive any allowance. This provision allows for a reward scheme to operate for special constables, which pays a bonus of £1,000 to those officers who opt in to the scheme and who are prepared to carry out a certain amount of duties as a special constable. This Scheme acts as an incentive for individuals to become a special constable as well as increasing their commitment in terms of hours of duty. This commitment gives the police forces a dedicated volunteer force to enhance frontline community policing.

18. **Regulation 27** confers a power on Scottish Ministers to determine the entitlement of members of the Special Constabulary to a reimbursement of any expense incurred in or in connection with their duty as a special constable. Similar provision for the reimbursement of out of pocket expenses was contained in the 1966 Regulations.

19. **Regulation 28** makes provision for the entitlement of uniform and equipment to special constables for the extent of the entitlement to be as determined by the police authority. Such uniform and equipment shall only be used for the purposes of that person's duty as a special constable. Provision already exists in the 1966 Regulations for the provision of uniform and equipment.

Determinations

20. **Regulation 29** provides that, before making a determination under the 2008 Regulations Scottish Ministers shall supply the Police Advisory Board for Scotland with a draft of the determination and take into account any representations made by the Board.

Revocations and Savings

21. **Regulation 30**, this regulation gives effect to Schedule 3 of the Regulations and revokes the 1966 Regulations and all subsequent amending Regulations. There is also a saving provision which allows a special constable who holds the rank of special sergeant or above to continue in that rank until that person ceases to be a special constable, or reaches the retirement age for that rank. Although there will no longer be a rank structure in the Special Constabulary, this provision has been put in the 2008 Regulations in order to save the rank status of any person who holds the rank of special sergeant or above.

Consultation

22. The draft 2008 Regulations were published for public consultation through the Scottish Government consultation web site and issued to members of the Police Advisory Board for Scotland. There was a wide range of views on the proposed Regulations and the Scottish Government has taken these into account when drafting the final Regulations. A report on the consultation process is available on the Scottish Government web site.

Financial Effects

23. The instrument has no financial effects on the Scottish Government's program expenditure.

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Scottish Government
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