

POLICY NOTE

THE POLICE SERVICE OF SCOTLAND (TEMPORARY SERVICE) REGULATIONS 2013

SSI 2013/76

The above instrument was made in exercise of the powers conferred by section 15(3) of the Police and Fire Reform (Scotland) Act 2012. The instrument is subject to negative procedure.

Policy Objectives

1. Section 15 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) allows the chief constable of the Police Service of Scotland to make arrangements, or give consent, for constables to be engaged on temporary service outwith the Police Service. Constables on temporary service continue to hold the office of constable and are entitled to revert to the Police Service of Scotland at the end of their temporary service at their previous rank. The time on temporary service is treated as service within the Police Service of Scotland for the purposes of pay and promotion.

2. Except where contrary provision is made, constables on temporary service continue to have all the functions, powers and privileges of a constable of the Police Service of Scotland and are under the direction and control of the chief constable in the performance of policing functions. Scottish Ministers may make regulations prescribing types of temporary service where those default conditions do not apply. They may also prescribe types of temporary service which are not permitted, or which require the consent of the Scottish Police Authority or Scottish Ministers, and make other provision about temporary service, including provision about liability for unlawful conduct of a constable while on temporary service. Section 24 of the 2012 Act provides that the chief constable is liable in respect of any unlawful conduct on the part of any constable under the chief constable’s direction and control.

3. Constables may go on temporary service to a wide range of organisations. In many of these their role is essentially administrative or advisory, for example working for staff associations or advising Scottish Ministers or partners such as local authorities. In these circumstances there is no conflict with them retaining their police powers, but if they need to use them they should do so under the direction and control of the chief constable. The default provision in section 15 of the 2012 Act therefore applies in these cases. In other cases constables go to serve with other police forces or in roles that have their own enforcement powers, and provision needs to be made to avoid any conflict of powers or confusion over direction and control of that individual.

4. Regulation 2(1) provides that the consent of Scottish Ministers is required for a constable to go on temporary service outwith the United Kingdom, either in connection with the provision of goods and services by the police service under section 87 of the 2012 Act, or where assistance is arranged by the UK Government under the International Development Act 2002. This is in line with current provisions (in section 12A of the Police (Scotland) Act 1967) and ensures Ministers are aware of the number of police officers on service overseas and the circumstances in which they are engaged.

5. Regulation 2(2) sets out types of temporary service in which a constable does not have the functions, powers or privileges of a constable. These are:

- (a) service as a member of staff of the Scottish Police Authority;
- (b) service as an assistant inspector of constabulary or staff officer of HM inspectors of constabulary;
- (c) service with the British Transport Police Force;
- (d) service with the Civil Nuclear Constabulary;
- (e) service with the Ministry of Defence Police;
- (f) service with SOCA;
- (g) service as an officer of Revenue and Customs;
- (h) service as an immigration officer;
- (i) service as a general customs official;
- (j) service as a customs revenue official

((h), (i) and (j) are posts within the UK Border Agency.)

6. Regulation 2(3) provides that a constable is not under the direction and control of the chief constable when on temporary service under (c) to (j) above, or with Scottish Ministers in connection with functions under the Proceeds of Crime Act 2002.

7. In (c) to (j) above, constables will acquire the functions, powers and privileges of the organisation or office in which they are serving, and will exercise them under the direction and control of the relevant chief constable or head of that organisation. All of these organisations operate in Scotland. No provision is made for temporary service with police forces in England and Wales or with the Police Service of Northern Ireland, because constables of the Police Service of Scotland have very limited powers outwith Scotland, so there is unlikely to be any conflict.

8. The 2012 Act provides that constables serving with the Scottish Police Authority or HM inspectors of constabulary are under the direction and control of the Authority (paragraph 7 of schedule 1) or the inspectors (sections 72 and 73) respectively. Constables serving with Scottish Ministers in connection with the Proceeds of Crime Act 2002 need to retain their police powers, but exercise them under the direction and control of Scottish Ministers. If constables serving in these ways are recalled to the Police Service to provide support for specific operations, this will be treated as a suspension of the temporary service arrangement and for the duration of that operation they will revert to being a normal constable of the Police Service.

Consultation

9. A draft of these Regulations was circulated for comment to the Scottish Police Authority, Police Service of Scotland, police staff associations, HMIC and all the government departments responsible for the organisations affected.

Impact Assessments

10. No Equality Impact Assessment has been carried out. This Order has no effect on any equality issues.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate

26 February 2013