# EXECUTIVE NOTE

## THE POLICE (SCOTLAND) AMENDMENT REGULATIONS 2007 (SSI 2007/134)

1. The Police (Scotland) Amendment Regulations 2007 ("the Amendment Regulations") are made in exercise of the powers conferred by sections 26, 27 and 48(1) of the Police (Scotland) Act 1967. The instrument is subject to negative resolution procedure.

**Policy Objectives**

2. The purpose of the instrument is to amend the Police (Scotland) Regulations 2004 (SSI 2004/257) which came into force on 25th June 2004, herein referred to as "the 2004 Regulations." The Amendment Regulations are primarily being brought forward to take account of recent legislative changes and policy decisions. The Amendment Regulations also take account of a number of comments made by the SLC on the 2004 Regulations on 15th June 2004.

3. Regulation 3 amends the 2004 regulations to clarify that these do not apply to special constables. It was decided to make this expressly clear given that provision which regulates special constables is found in the Police (Special Constables) Regulations 1966.

4. In light of comments, made by the SLC on regulation 6(7)(a) of the 2004 Regulations, the Executive considers there is merit in revoking this provision to eliminate any possible risk of unfavourable treatment of part time workers from full time workers. Regulation 4 revokes regulation 6(7)(a) of the 2004 Regulations to ensure 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.

5. Regulations 5 and 7(b) are brought forward in consequence of the Civil Partnerships Act 2004. It was necessary to make these amendments to the 2004 Regulations to take account of the fact that a police officer may have a civil partner. It is also recognised that a member of police force may have a cohabitant, as opposed to a spouse or civil partner.

6 Regulations 5 (a)(i) and (ii), 7(a), 9 and 11 of the Amendment Regulations respectively amend regulations 8, 15, 21 and 24 of the 2004 Regulations to correct typographical errors.

7. Regulation 6 amends regulation 9 of the 2004 Regulations in order to make it clear that no person below the rank of superintendent may be appointed for a fixed term. Whilst the Executive consider that the 2004 Regulations do not enable members of a police force who held a rank lower than Superintendent to be appointed on a fixed term, it was decided that in light of the comments made on this matter by the SLC, this opportunity should be taken to put the matter beyond doubt.

8. Regulation 19 of the 2004 Regulation provides that any samples (or any information derived from those samples) taken from a member of a police force must be kept separate from samples (and information) which the police take from persons under the Criminal Procedure (Scotland) Act 1995 and the Criminal Justice (Scotland) Act 2003. Further provisions, which empower the police to take samples, were inserted into the Criminal Procedure (Scotland) Act 1995 and the Sexual Offences Act 2003 by sections 77 and 83 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. Regulation 8 of the Amendment Regulations is brought forward in consequence of these changes to ensure that samples taken from a member of a police force will also be kept separate from samples taken under the new provision inserted into the 1995 and 2003 Acts.

9. The SLC considered that regulation 22 of the 2004 Regulations should have contained an express provision to ensure the restrictions on the hours of duty that a member of a police force should be required to serve, as set out in section 26(5) of the 1967 Act, were complied with. Whilst the Executive consider that provision, to ensure compliance with the statutory obligations on the hours of duty in section 26(5) of the 1967 Act, is contained in the Determination made under regulation 22, it has been decided to take this opportunity to make such express provision in the 2004 Regulations by virtue of regulation 10 of the Amendment Regulations..

10. Regulation 12 amends regulation 33 of the 2004 regulations and inserts a new policy whereby Scottish ministers now have the authority to determine the circumstances and manner in which a member of a police force can take a career break. This follows provision being outlined within the Police Negotiating Board and similar provision being outlined within the Police (Amendment) (No 2) Regulations 2006. Provision was also made to allow Chief Constables the ability to delegate their authority to officers of Chief Superintendent and above. This is required in light of workload of Chief Constables and growing applications for career breaks. 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 Police (Scotland) Act 1967.

11. Regulation 13 amends regulation 35 of the 2004 regulations to give the Scottish Ministers the power to make a determination that would give police authorities the discretion to reimburse chief constable for the tax which is payable by them in relation to removal or relocation expenses associated with a person being appointed as a member of their police force. A similar change was also made in the Police Amendment (No 2) Regulations 2006 for England and Wales.

12. In light of comments re possible duplication made by the SLC on regulation 46(3) of the 2004 Regulations, the Executive have decided to take this opportunity to remove this provision by virtue of regulation 14 of the Amendment Regulations. Regulation 4(2) of the 2004 Regulations will remain to ensure it is not possible to authorise pay or allowances payable to any person to be reduced retrospectively.

**Consultation**

13. The draft Regulations were published for public consultation through the Scottish Executive consultation web site and issued to members of the Police Advisory Board for Scotland. Respondents were in favour of the proposed amendments.

**Financial Effects**

14. The instrument has no financial effects on the Scottish Executive's program expenditure.

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