
STATUTORY INSTRUMENTS

2008 No. 2862

The Police (Performance) Regulations 2008

PART 5

Third stage

Assessment following second stage meeting

26.—(1) Where a police officer has received a final written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 21(6)(c) ends—

- (a) the line manager shall assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
- (b) the line manager shall notify the officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, he shall, at the same time as he gives notification under paragraph (1)(b), also notify the officer concerned in writing that he is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider his performance or attendance.

(3) Where—

- (a) the officer concerned has not been required to attend a third stage meeting under paragraph (2), or
- (b) the officer concerned has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a third stage meeting under paragraph (4).

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c), he shall notify the officer concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that he is of the view mentioned in paragraph (4); and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider his performance or attendance.

(6) Subject to regulation 28, any third stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

Arrangement of a third stage meeting

27.—(1) Where the line manager requires the officer concerned to attend a third stage meeting, the senior manager shall as soon as reasonably practicable give a notice in writing to the officer concerned—

- (a) referring to the requirement on the officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
- (b) informing him of the procedures for determining the date and time of the meeting under regulation 34;
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing him of the possible outcomes of the meeting;
- (e) informing him that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing him that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) where the officer concerned is a special constable, informing him that a special constable shall attend the meeting to advise the panel;
- (h) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (i) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association; and
- (j) informing him that he may be accompanied and represented at the meeting by a police friend.

(2) Such notice shall be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in regulation 26(2) or (4), as the case may be.

(3) A third stage meeting under this regulation shall not take place unless the officer concerned has been notified of his right to representation under paragraph (1)(j).

Circumstances in which a third stage meeting may be required without a prior first or second stage meeting

28.—(1) This regulation applies where the appropriate authority considers that the performance of a police officer constitutes gross incompetence.

(2) Where this regulation applies, the appropriate authority may inform the officer concerned in writing that he is required to attend a meeting to consider his performance.

(3) Such meeting shall be referred to in these Regulations as a third stage meeting, notwithstanding that the officer concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

Arrangement of a third stage meeting without a prior first or second stage meeting

29.—(1) Where the appropriate authority has informed the officer concerned under regulation 28(2) that he is required to attend a third stage meeting, the appropriate authority shall as soon as reasonably practicable give to the officer concerned a notice in writing—

- (a) referring to the requirement on the officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;

- (b) informing him of the procedures for determining the date and time of the meeting under regulation 34;
- (c) summarising the reasons why his performance is considered to constitute gross incompetence;
- (d) informing him of the possible outcomes of the meeting;
- (e) informing him that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing him that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) where the officer concerned is a special constable, informing him that a special constable shall attend the meeting to act as an advisor to the panel;
- (h) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (i) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association;
- (j) informing him of the effect of regulation 6; and
- (k) informing him that he may be accompanied at the meeting by a police friend.

(2) Such notice shall be accompanied by a copy of any document relied upon by the appropriate authority when it formed the view referred to in regulation 28(1).

Appointment of panel members

30.—(1) The third stage meeting shall be conducted by a panel, which shall comprise a panel chair and two other members.

(2) The panel shall be appointed by the appropriate authority.

(3) The panel chair shall be a senior officer or a senior human resources professional.

(4) One panel member shall be either a police officer or a human resources professional of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent.

(5) The other panel member shall be either a police officer or a police staff member of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent.

(6) At least one panel member shall be a police officer.

(7) At least one panel member shall be a human resources professional.

(8) Each panel member shall be of at least the same rank as or (in the opinion of the appropriate authority) equivalent of the officer concerned.

(9) No panel member shall be an interested party.

(10) As soon as reasonably practicable after the panel members have been appointed, the appropriate authority shall notify in writing the officer concerned of their names.

(11) As soon as the appropriate authority has appointed the panel members, the appropriate authority shall arrange for a copy of any document—

- (a) which was available to the line manager in relation to any first stage meeting;
- (b) which was available to the second line manager in relation to any second stage meeting; or
- (c) which was prepared or submitted under regulation 15, 18, 22, 25, 26, 27, 28 or 29 as the case may be,

to be made available to each panel member; and a copy of any such document shall be given to the officer concerned.

(12) For the purposes of this regulation, a “senior human resources professional” means a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to be a panel chair.

Right of officer concerned to object to panel members

31.—(1) The officer concerned may object to the appointment of any of the panel members.

(2) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after receipt of the notification referred to in regulation 30(10) and must set out the grounds of objection of the officer concerned.

(3) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to any panel member.

(4) If the appropriate authority upholds an objection, the appropriate authority shall remove that member from the panel and shall appoint a new member to the panel.

(5) If the appropriate authority appoints a new panel member under paragraph (4), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(6) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member.

(7) The officer concerned may object to the appointment of a panel member appointed under paragraph (4).

(8) Any such objection must be made in accordance with paragraph (2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (6); and the appropriate authority shall comply with paragraphs (3) to (6) in relation to the objection, but paragraph (7) shall not apply.

Procedure on receipt of notice of third stage meeting

32.—(1) Before the end of—

- (a) 14 working days beginning with the first working day after the date on which a notice has been given to the officer concerned under regulation 27 or 29; or
- (b) where that period is extended by the panel chair for exceptional circumstances, such extended period,

the officer concerned shall comply with paragraphs (2) and (3).

(2) The officer concerned shall provide to the appropriate authority—

- (a) written notice of whether or not he accepts that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, as the case may be;
- (b) where he accepts that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, any written submission he wishes to make in mitigation;
- (c) where he does not accept that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, or where he disputes all or part of the matters referred to in the notice given under regulation 27 or 29, written notice of—
 - (i) the matters he disputes and his account of the relevant events; and
 - (ii) any arguments on points of law he wishes to be considered by the panel.

(3) The officer concerned shall provide the appropriate authority and the panel with a copy of any document he intends to rely on at the third stage meeting.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the senior manager and the officer concerned

shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce and their address.

(5) Where there are proposed witnesses, the officer concerned shall, if reasonably practicable, agree a list of proposed witnesses with the senior manager.

(6) Where no list of proposed witnesses is agreed under paragraph (4), the officer concerned shall supply to the appropriate authority his list of proposed witnesses.

Witnesses

33.—(1) As soon as reasonably practicable after any list of proposed witnesses has been—

- (a) agreed under regulation 32(5); or
- (b) supplied under regulation 32(6),

the appropriate authority shall supply that list to the panel chair together, in the latter case, with a list of its proposed witnesses.

(2) The panel chair shall—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.

(3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.

(4) No witness shall give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case he shall—

- (a) where the witness is a police officer, cause that person to be ordered to attend the third stage meeting; and
- (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the meeting.

Timing and notice of third stage meeting

34.—(1) Subject to paragraphs (2) and (6) and regulation 35, the third stage meeting shall take place before the end of 30 working days beginning with the first working day after the day on which a notice has been given to the officer concerned under regulation 27 or 29.

(2) The panel chair may extend the time period specified in paragraph (1) where he considers that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), he shall provide written notification of his reasons for so doing to the appropriate authority and the officer concerned.

(4) The panel chair shall, if reasonably practicable, agree a date and time for the third stage meeting with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the panel chair shall specify a date and time for the third stage meeting.

(6) Where a date and time is specified under paragraph (5) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies subsection (7),

the third stage meeting shall be postponed to the time proposed by the officer concerned.

(7) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the panel chair.

(8) The panel chair shall give to the officer concerned a notice in writing of the date and time of the third stage meeting determined in accordance with this regulation and of the place of the meeting.

(9) Where the officer concerned informs the panel chair in advance that he is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the officer concerned to participate in the meeting by video link or other means.

Postponement and adjournment of a third stage meeting

35.—(1) If the panel chair considers it necessary or expedient, he may direct that the third stage meeting take place at a different time to that specified in the notice given under regulation 34.

(2) Such direction may specify a time which falls after the period of 30 working days referred to in regulation 34(1).

(3) Where the panel chair makes a direction under paragraph (1) he shall notify in writing the officer concerned, the other panel members and the appropriate authority of his reasons and the revised time and place for the meeting.

Procedure at a third stage meeting

36.—(1) Subject to the provisions of this regulation, the procedure at the third stage meeting shall be such as the panel chair may determine.

(2) The third stage meeting shall be held in private.

(3) A human resources professional and a police officer may attend the meeting to advise the panel on the proceedings.

(4) A relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting.

(5) Where the officer concerned is a special constable, the appropriate authority shall appoint a special constable with sufficient seniority and experience to act as an adviser to the panel, who shall attend the meeting.

(6) Any other person specified in the notice referred to in regulation 27(1) or 29(1) may attend the meeting if the officer concerned consents to such attendance.

(7) Where the officer concerned is required to attend a third stage meeting under regulation 26, the panel chair shall—

- (a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 27;
- (b) provide his police friend (if he has one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(8) Where the officer concerned is required to attend a third stage meeting under regulation 28, the panel chair shall—

- (a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 29;
- (b) provide the person representing the officer with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(9) The panel chair may adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

(10) A verbatim record of the meeting shall be taken; and the officer concerned shall, on request, be supplied with a copy of such record.

Finding

37.—(1) Following the third stage meeting, the panel shall make a finding whether—

- (a) in a case falling within regulation 26(2), the performance or attendance of the officer concerned during the period specified in accordance with regulation 21(6)(c) has been satisfactory or not;
- (b) in a case falling within regulation 26(4), the performance or attendance of the officer concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c) has been satisfactory or not; or
- (c) in a case falling within regulation 28, the performance of the officer concerned constitutes gross incompetence, unsatisfactory performance or neither.

(2) The panel shall prepare (or shall cause to be prepared) their decision in writing which shall state the finding and, where they have found—

- (a) in a case falling within regulation 26(2) or (4), that the performance or attendance of the officer concerned has been unsatisfactory; or
- (b) in a case falling within regulation 28, that his performance constitutes gross incompetence or unsatisfactory performance,

their reasons as well as any outcome which they order under regulation 38.

(3) As soon as reasonably practicable after the conclusion of the meeting, the panel chair shall give a written copy of the decision to—

- (a) the officer concerned; and
- (b) the line manager,

but in any event, the officer concerned shall be given written notice of the finding before the end of three working days beginning with the first working day after the conclusion of the meeting.

(4) Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence, the copy of the decision given to the officer concerned shall be accompanied by a notice in writing setting out the circumstances in which and the timeframe within which a police officer may appeal to a police appeals tribunal under the Police Appeals Tribunals Rules 2008(1).

(5) Any finding or decision of the panel under this regulation or regulation 38 shall be based on a simple majority but shall not indicate whether it was taken unanimously or by a majority.

Outcomes

38.—(1) If the panel make a finding that, in a case falling within regulation 26(2) or (4), the performance or attendance of the officer concerned has been unsatisfactory they may, subject to paragraph (4), order—

- (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f); or
- (b) where the panel are satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel make a finding that, in a case falling within regulation 28, the performance of the officer concerned constitutes gross incompetence, they may order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes mentioned in this paragraph are:

- (a) dismissal of the officer concerned with notice, the period of such notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the officer concerned with immediate effect;
- (c) reduction in rank of the officer concerned with immediate effect;
- (d) an extension of the final written improvement notice;
- (e) the issue of a final written improvement notice;
- (f) redeployment to alternative duties (which may involve a reduction of rank) within the police force concerned.

(4) The panel may not order the outcome mentioned in paragraph (3)(c) where—

- (a) the officer concerned is a special constable; or
- (b) the third stage meeting relates to the attendance of the officer concerned.

(5) If the panel make a finding, in a case falling within regulation 28, of unsatisfactory performance, they shall order the issue of a written improvement notice.

(6) A written improvement notice or a final written improvement notice issued under this regulation shall—

- (a) state in what respect the performance or attendance of the officer concerned (as the case may be) is considered unsatisfactory or grossly incompetent;
- (b) state the improvement that is required in his performance or attendance;
- (c) state that, if a sufficient improvement is not made within such reasonable period as the panel shall specify (being a period not greater than 12 months), the officer concerned may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice) and state the date on which this period ends;
- (d) state that it shall be valid for a period of twelve months from the date of the notice (the “validity period”);
- (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice); and
- (f) be signed and dated by the panel chair.

(7) Where the panel orders an extension of the final written improvement notice—

- (a) the notice shall be amended—
 - (i) to state that if the officer concerned does not make a sufficient improvement within such reasonable period as the panel shall specify (being a period not greater than 12 months) he may be required to attend another third stage meeting; and
 - (ii) to state the date on which this period ends;
- (b) the panel may vary any of the other matters recorded in the notice;
- (c) the notice shall be valid for a further period of twelve months from the date of the extension (the “validity period”) and shall state the date on which it expires.

Assessment of performance or attendance following third stage meeting

39.—(1) This regulation applies where a written improvement notice has been issued under regulation 38.

(2) Where this regulation applies, the performance of the officer concerned shall be assessed under regulation 19 as if he had received a written improvement notice under regulation 15.

(3) Where, as a result of such assessment, the officer concerned is required to attend a second stage meeting, these Regulations shall have effect as if he had been required to attend that meeting under regulation 19; and—

- (a) references to the period specified in accordance with regulation 14(6)(c) shall be construed as references to the period specified under regulation 38(6)(c); and
- (b) references to the validity period of the written improvement notice shall be construed as references to the validity period of the written improvement notice issued under regulation 38.

(4) Where a police officer is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the written improvement notice.

40.—(1) This regulation applies where a final written improvement notice has been issued or extended under regulation 38.

(2) Where this regulation applies, as soon as reasonably practicable after the reasonable period specified by the panel under regulation 38(6)(c) or (7)(a) ends—

- (a) the panel shall assess the performance or attendance of the officer concerned (as the case may be) during that period; and
- (b) the panel chair shall notify the officer concerned in writing whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.

(3) If the panel considers that there has not been a sufficient improvement, the panel chair shall, at the same time as he gives notification under paragraph (2)(b), also notify the officer concerned in writing that he is required to attend another third stage meeting to consider his performance or attendance.

(4) Where—

- (a) the officer concerned has not been required to attend a third stage meeting under paragraph (3), or
- (b) the officer concerned has been required to attend a third stage meeting under paragraph (3) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a third stage meeting under paragraph (5).

(5) If the panel considers that the officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 38(6)(c) or (7)(a), the panel chair shall notify the officer concerned in writing of the matters set out in paragraph (6).

(6) Those matters are—

- (a) that the panel is of the view mentioned in paragraph (5); and
- (b) that the officer concerned is required to attend another third stage meeting to consider his performance or attendance.

(7) In a case falling within paragraph (3) or (5), the appropriate authority shall give the officer concerned the notice referred to in regulation 27.

(8) Where the officer concerned is required to attend a third stage meeting under this regulation, these Regulations shall have effect as if the case fell within regulation 26(2) or (4) as the case may be and—

- (a) references to the period specified in accordance with regulation 21(6)(c) shall be construed as references to the period specified under regulation 38(6)(c) or (7)(a), as the case may be; and
- (b) references to the validity period of the final written improvement notice shall be construed as references to the validity period mentioned in regulation 38(6)(c) or (7)(c), as the case may be.

(9) Any third stage meeting which a police officer is required to attend under this regulation must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued or extended under regulation 38.

(10) References in this regulation to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).

(11) Where any of the panel members are not able to continue to act as such, the appropriate authority shall remove that member from the panel and shall appoint a new member to the panel.

(12) If the appropriate authority appoints a new panel member under paragraph (11), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(13) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member.

(14) The officer concerned may object to the appointment of a panel member appointed under paragraph (11).

(15) Any such objection must be made in accordance with regulation 31(2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (13); and the appropriate authority shall comply with regulation 31(3) to (6) in relation to the objection but paragraph (7) of that regulation shall not apply.

41.—(1) Where an officer is required to attend another third stage meeting under regulation 40—

- (a) that meeting shall be conducted by the same panel as conducted the initial third stage meeting (subject to any change in that panel under regulation 40);
- (b) the officer concerned shall not have the right to object to panel members under regulation 31, except in accordance with regulation 40;
- (c) subject to paragraph (2), regulations 32 to 38 shall apply to, or in relation to, that meeting.

(2) Following that third stage meeting, the panel may not order the outcome mentioned in regulation 38(3)(d).