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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 61**

**The Police Service of Scotland (Performance) Regulations 2013**

**PART 4**

**Inefficiency hearing**

**Assessment of performance following second interview**

**13.—**(1) Not later than 14 days after the end of the period specified in pursuance of regulation 11(4)(d)—

- (a) the reporting officer and the countersigning officer must assess the constable's performance during that specified period;
- (b) the constable must be informed in writing as to whether the reporting officer and the countersigning officer are of the opinion that there has been a sufficient improvement in the constable's performance during that period; and
- (c) where the reporting officer and the countersigning officer are of the opinion that there has been an insufficient improvement in the constable's performance, the constable must be notified of the requirement to attend, at a date and time to be specified, an inefficiency hearing to consider the constable's performance.

(2) A notification given in pursuance of paragraph (1)(c) must inform the constable that the inefficiency hearing will take place not less than 21 days and not more than 42 days from the date of the notification.

**Arrangement of inefficiency hearing**

**14.** Not less than 21 days before the date fixed for an inefficiency hearing, a written notice must be sent by the countersigning officer to the constable—

- (a) requiring the constable to attend the inefficiency hearing at a specified date, time and place;
- (b) stating the reasons why the hearing is required;
- (c) informing the constable that the constable may be represented—
  - (i) either by an advocate or a solicitor; or
  - (ii) by another constable selected by the constable; and
- (d) informing the constable of the disposals available to the chairing constable of the inefficiency hearing by virtue of regulation 18.

**Procedure at inefficiency hearing**

**15.—**(1) The deputy chief constable must appoint a constable of at least the rank of superintendent to act as the chairing constable at the inefficiency hearing.

(2) The chairing constable must be a person who has neither attended nor otherwise been involved with the first interview or the second interview.

(3) The charring constable may appoint to assist the charring constable at the inefficiency hearing—

- (a) up to two other constables as assessors; and
- (b) an advocate or a solicitor as a legal assessor.

(4) As soon as reasonably practicable after the appointment of the charring constable, the deputy chief constable must arrange to be made available to the charring constable any document which was—

- (a) available to the interviewing officer in relation to the first interview;
- (b) available to the senior manager in relation to the second interview; and
- (c) prepared or submitted under regulations 12, 13 or 14.

(5) Subject to the following provisions of this regulation, the procedure at the inefficiency hearing is to be determined by the charring constable.

(6) The inefficiency hearing is to be held in private.

(7) The charring constable must give the constable the opportunity to make representations in relation to the matters mentioned in the notice sent under regulation 14.

(8) The charring constable must prepare a written note summarising the proceedings at the inefficiency hearing.

(9) Subject to regulation 16, if the constable fails to attend the inefficiency hearing—

- (a) where the charring constable considers it just and appropriate to do so, the hearing may be proceeded with and concluded in the constable's absence; and
- (b) any part of the procedure described in these Regulations which cannot be complied with in the constable's absence may be treated as if it had been complied with.

### **Postponement or adjournment of inefficiency hearing**

**16.**—(1) Paragraph (2) applies where the constable—

- (a) intimates to the charring constable that the constable will be unable to attend the inefficiency hearing; or
- (b) in the absence of such intimation, fails to attend the inefficiency hearing.

(2) Where this paragraph applies, the charring constable may, if satisfied that there is a good reason for the non-attendance of the constable—

- (a) postpone the hearing in the circumstances mentioned in paragraph (1)(a); or
- (b) adjourn the hearing in the circumstances mentioned in paragraph (1)(b).

(3) The charring constable may adjourn the inefficiency hearing if, having considered any representations made by the constable, the charring constable considers it appropriate to allow a further period for the assessment of the constable's performance.

(4) Where an adjournment is made for the purpose mentioned in paragraph (3), the charring constable must—

- (a) specify a period, not exceeding 3 months, during which the reporting officer and the countersigning officer are to further assess the constable's performance;
- (b) fix a date on which the inefficiency hearing will continue; and
- (c) require the constable to attend on that date at a specified time and place.

(5) Not later than 14 days from the date on which the period for further assessment specified under paragraph (4)(a) ends—

- (a) the reporting officer and countersigning officer must prepare a report containing their assessment of the constable's performance during that period; and
  - (b) the countersigning officer must—
    - (i) send that report to the charring constable; and
    - (ii) send a copy of that report to the constable.
- (6) At the continuation of the inefficiency hearing the charring constable must give the constable the opportunity to make representations in relation to the report mentioned in paragraph (5).
- (7) Paragraphs (8) and (9) apply if, at the time the report mentioned in paragraph (5) is sent to the charring constable—
- (a) that constable is absent, incapacitated or suspended from duty; and
  - (b) it is likely that such absence, incapacity or suspension will continue for a period of more than 28 days from the date report is sent.
- (8) Where this paragraph applies, the deputy chief constable must appoint another constable to act as the charring constable at the continued inefficiency hearing (and the references in paragraph (6) and regulations 17 to 22 are to be read as including any constable so appointed).
- (9) A constable appointed under paragraph (8) must be a constable who would have been eligible for appointment as charring constable of the inefficiency hearing by virtue of regulation 15(1) and (2).

### **Determination**

- 17.—(1) At the conclusion of the inefficiency hearing, the charring constable must determine whether the constable's performance has been satisfactory—
- (a) during the period specified under regulation 11(4)(d); or
  - (b) where the hearing was adjourned under regulation 16(3), during the period comprising—
    - (i) the period specified under regulation 11(4)(d); and
    - (ii) the period specified under regulation 16(4)(a).
- (2) Where it is considered necessary to do so, the charring constable may defer the determination under paragraph (1) to a later time or date.
- (3) The charring constable's determination must be recorded in writing and must, in a case where the constable's performance has been determined to be unsatisfactory, state—
- (a) the reasons for that determination; and
  - (b) any disposal ordered in accordance with regulation 18.
- (4) The charring constable's written determination must, as soon as reasonably practicable, be sent to—
- (a) the constable;
  - (b) the deputy chief constable; and
  - (c) a personnel officer.

### **Disposals**

- 18.—(1) Where the charring constable determines that the constable's performance has been unsatisfactory during the period mentioned in regulation 17(1)(a) or, as the case may be, (b), the charring constable may—
- (a) require the constable to resign at a specified date;

- (b) order the constable's demotion in rank; or
- (c) issue a written warning to the constable stating that—
  - (i) the constable's performance is required to improve within a specified period; and
  - (ii) if, after consideration of the constable's performance during that specified period in accordance with regulation 19, it is found that the constable's performance has not improved sufficiently, the chairing constable may require the constable to resign.

(2) Where a disposal under paragraph (1)(a) is ordered and the constable fails to resign by the specified date, the constable is to be treated as having been dismissed from that date.

### **Assessment of performance following inefficiency hearing**

**19.**—(1) This regulation applies where the constable has been given a written warning under regulation 18(1)(c).

(2) Not later than 14 days after the end of the period specified in the warning, the reporting officer and the countersigning officer must—

- (a) assess the constable's performance during that period;
- (b) prepare a report on the constable's performance;
- (c) submit that report to the chairing constable;
- (d) send a copy of that report to the constable; and
- (e) inform the constable that written comments on the report may be submitted to the chairing constable not later than 7 days after the date on which the copy of that report was sent to the constable.

(3) The chairing constable must—

- (a) consider the report and any written comments made by or on behalf of the constable; and
- (b) if satisfied—
  - (i) that there has been an insufficient improvement in the constable's performance, require the constable to resign within the period of 1 month beginning with the date on which notification of that requirement is made; or
  - (ii) that there has been a sufficient improvement in the constable's performance, record that decision and direct that no further proceedings are to be taken under these Regulations.

(4) The chairing constable must record in writing the determination made under this regulation (including the reasons for that determination) and, as soon as is reasonably practicable, send a copy to—

- (a) the constable;
- (b) the deputy chief constable;
- (c) a personnel officer;
- (d) the countersigning officer; and
- (e) the reporting officer.

(5) Where the chairing constable requires the constable to resign under paragraph (3)(b)(i) and the constable has not resigned by the end of the period of 1 month beginning with the date of the notification of that requirement, the constable is to be treated as having been dismissed with effect from the day after the end of that period.

(6) Paragraphs (7) and (8) apply if, at the time the report is sent to the chairing constable in pursuance of paragraph (2)(c)—

- (a) that constable is absent, incapacitated or suspended from duty; and
- (b) it is likely that such absence, incapacity or suspension will continue for a period of more than 28 days from the date the report is sent.

(7) Where this paragraph applies, the deputy chief constable must appoint another constable to act as the chairing constable under this regulation (and the references in regulations 20 to 22 to “the chairing constable” are to be read as including any constable so appointed).

(8) A constable appointed under paragraph (7) must be a constable who would have been eligible for appointment as chairing constable of the inefficiency hearing by virtue of regulation 15(1) and (2).