
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 61

The Police Service of Scotland (Performance) Regulations 2013

PART 5

Appeal to the chief constable

Appeal to the chief constable

20.—(1) Where a determination has been made by the chairing constable that the constable's performance has been unsatisfactory, the constable may appeal to the chief constable against—

- (a) that determination and the disposal ordered; or
- (b) the disposal only.

(2) Where the constable has been required to resign under regulation 19(3)(b)(i), the constable may appeal to the chief constable against that requirement.

(3) An appeal under paragraph (1) or (2) is to be made by the appellant submitting to the chief constable, not later than 28 days after the date on which a determination was sent to the constable in pursuance of regulation 17(4) or, as the case may be, 19(4), a written notice of appeal specifying—

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date of the determination and disposal or, in the case of an appeal under paragraph (2), the date of the requirement to resign; and
- (d) the grounds upon which the appeal is made.

(4) The appellant must sign the notice of appeal and send with it a copy of the written determination against which the appeal is made.

(5) A notice of appeal may be submitted late and such a notice may include—

- (a) a request for the notice to be accepted late; and
- (b) a statement of the reasons why it was not submitted on time.

(6) The chief constable may accept a late notice of appeal if satisfied that there are special circumstances which justify the appeal being submitted late.

Appeal procedure

21.—(1) Where the chief constable considers it necessary for the purpose of determining the appeal, the chief constable may fix an appeal hearing for the purpose of affording the opportunity of making oral representations to—

- (a) the appellant; and
- (b) the chairing constable.

(2) Where the chief constable fixes an appeal hearing, the chief constable must give reasonable notice of the date, time and place at which that hearing is to take place.

- (3) The chief constable may appoint to assist the chief constable at the appeal meeting—
 - (a) up to two other constables as assessors; and
 - (b) an advocate or a solicitor as a legal assessor.
- (4) At an appeal hearing—
 - (a) each of the appellant and the chairing constable may be represented by—
 - (i) another constable;
 - (ii) an advocate; or
 - (iii) a solicitor; and
 - (b) the chief constable (or any individual representing the chief constable) may put questions to the appellant and the chairing constable (or to any individual representing them).
- (5) The chief constable may, where it appears necessary or expedient to the chief constable to do so, adjourn the appeal hearing and request the chairing constable to—
 - (a) provide further information relating to any matter arising from the chief constable’s consideration of the papers; or
 - (b) hold a further hearing in relation to those matters.
- (6) Where the chief constable requests the chairing constable to hold a further hearing under paragraph (5)(b), the provisions of regulation 14 (except paragraph (d)), 15 (except paragraphs (1), (2) and (4)) and 16(1) and (2) apply to the hearing as they apply to an inefficiency hearing.
- (7) The chief constable must not have regard to any information obtained by virtue of paragraph (5) unless—
 - (a) that information was available to the constable at the time of the inefficiency hearing; or
 - (b) the constable has been given an opportunity to make representations in relation to that information.

Determination of appeal

- 22.—(1) The chief constable must determine the appeal on the basis of—
 - (a) the written record of the chairing constable’s determination made in pursuance of regulation 17(3) and any papers referred to in that determination;
 - (b) in the case of an appeal under regulation 20(2)—
 - (i) the report prepared under regulation 19(2)(b);
 - (ii) any comments on that report submitted by the constable (or any person representing the constable); and
 - (iii) the written record of the chairing constable’s determination made in pursuance of regulation 19(4);
 - (c) the notice of appeal;
 - (d) any representations made by the constable at the appeal hearing; and
 - (e) any further information obtained following an adjournment of that hearing under regulation 21(5).
- (2) The chief constable must—
 - (a) where it is reasonably practicable to do so, determine the appeal not later than—
 - (i) where no appeal hearing has been arranged, 7 days after the date on which the chief constable receives the notice of appeal; or
 - (ii) where an appeal hearing has been held, 7 days after the date of that hearing; or

- (b) where it is not reasonably practicable to determine the appeal in accordance with sub-paragraph (a), determine the appeal not later than—
 - (i) 28 days after the date on which the notice of appeal was sent; or
 - (ii) where the chairing constable has held a further hearing in pursuance of regulation 21(5), 7 days after the completion of that hearing.
- (3) In determining an appeal under regulation 20(1), the chief constable may—
 - (a) if the appeal was made under sub-paragraph (a)—
 - (i) reverse the chairing constable’s determination that the constable’s performance has been unsatisfactory; or
 - (ii) vary the disposal;
 - (b) if the appeal was made under sub-paragraph (b), vary the disposal; or
 - (c) in either case, dismiss the appeal.
- (4) Any variation by the chief constable of a disposal ordered by the chairing constable must not have the effect of ordering a disposal which is more severe than that ordered by the chairing constable.
- (5) In determining an appeal under regulation 20(2), the chief constable must—
 - (a) confirm or quash the requirement to resign; and
 - (b) where the requirement to resign is quashed, substitute a disposal mentioned in regulation 18(1)(b) or (c).
- (6) The chief constable’s determination is to be recorded in a notice—
 - (a) specifying the terms of the chief constable’s determination, including any variation of a disposal ordered by the chairing constable;
 - (b) giving reasons for that determination; and
 - (c) signed and dated by the chief constable.
- (7) The chief constable must send a copy of the notice mentioned in paragraph (6) to—
 - (a) the appellant;
 - (b) the appellant’s representative (if any); and
 - (c) the chairing constable.