

## **POLICY NOTE**

### **THE POLICE SERVICE OF SCOTLAND (PERFORMANCE) REGULATIONS 2013**

#### **SSI 2013/61**

1. The above instrument was made in exercise of the powers conferred by sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to negative procedure.

#### **Policy Objectives**

2. The 2012 Act, which received Royal Assent on 7 August 2012, changes the policing landscape in Scotland. It brings together the current eight forces, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency into a single Police Service of Scotland (“the Police Service”) from 1 April 2013. The main policy objective of these Regulations is to maintain in the Police Service existing procedures established by the Police (Efficiency) (Scotland) Regulations 1996) for the handling of unsatisfactory performance of constables below the rank of assistant chief constable (ACC) who have completed their probation period, and to require the Scottish Police Authority to establish procedures for the handling of unsatisfactory performance of constables of the rank of assistant chief constable and above.

3. So far as it applies to constables below the rank of ACC, this instrument is a technical update of the current regulations (Police (Efficiency) (Scotland) Regulations 1996(a)) in order to reflect the establishment and role of the new Police Service. It is envisaged that new performance procedures for all officers, which are currently being developed by a stakeholder working group, will be implemented in the Police Service. However, following a request from ACPOS and with support from other key stakeholders it was decided that it was not feasible for the necessary development work and training to be undertaken within the police service by 1 April. New regulations will be introduced in due course following agreement with stakeholders; in the meantime the procedures implemented by these Regulations continue to be fit for purpose.

4. These regulations set out the process and procedure for dealing with a constable below ACC whose performance is considered to be unsatisfactory. Part 6 of these regulations also provides for the Scottish Police Authority to establish and maintain procedures for the handling of performance issues relating to constables of the rank of ACC and above.

5. The key procedures established by these regulations are described below:

6. When a constable’s reporting officer considers his or her performance to be unsatisfactory, Part 2 sets out the process for arrangement of a first interview and procedure to be followed before, during and after that interview, including the constable’s right to be accompanied by another constable of their choice and to make representations. Regulation 7(3) provides for an interviewing officer to issue a

warning if they are satisfied that the constable's performance has been unsatisfactory together with information as to the specific action required to achieve an improvement in performance. A period must be specified within which the constable's performance is to improve.

7. Part 3 establishes the process for a second interview with a senior manager where the reporting officer considers that the performance of constable who has been warned following a first interview has not improved. Again a warning can be given as to future performance and a period set for that performance to improve.

8. Part 4 provides for the arrangement of an inefficiency hearing if the constable's countersigning and reporting officers are satisfied that there has not been sufficient improvement in the constable's performance during the period set following the second interview. The Deputy Chief Constable must appoint a constable of at least the rank of superintendent to act as a chairing constable at the hearing. At the conclusion of that hearing, the chairing constable will determine whether the constable's performance continues to be unsatisfactory. Regulation 18 provides for the chairing constable to require a constable whose performance continues to be unsatisfactory to resign, be demoted in rank or be issued a warning requiring an improved performance within a set timeframe.

9. Part 5 provides for a right for the constable to appeal to the Chief Constable against a decision of the chairing constable at an inefficiency hearing. Regulation 21 sets out the procedures for an appeal hearing and regulation 22 allows for the Chief Constable to reverse or vary the chairing constable's determination or to dismiss the appeal.

10. Part 6 deals with performance procedures for senior officer ranks. Regulation 23 requires the SPA to set standards of performance for senior officer ranks (of ACC and above) and to maintain procedures for measuring the performance of those officers against those standards.

11. Including this duty in the regulations ensures Ministers comply with their duty under section 52(3) of the Act to place responsibility for performance procedures on the SPA and enables the SPA to carry forward existing practice until new statutory performance procedures are implemented.

### **Transitionals and Savings**

12. Regulation 3 of the Schedule saves the Police (Efficiency) (Scotland) Regulations 1996 to deal with any unsatisfactory performance proceedings under those Regulations which are not concluded prior to 1 April 2013. The Schedule also makes transitional provision to ensure that any proceedings commenced and decision made under the 1996 Regulations may continue to have effect and that any persons appointed to carry out functions under the 1996 Regulations are able to continue carrying out those functions after they transfer to the Service. It also ensures that any requirement to resign made before 1 April under the 1996 Regulations is to be treated as a requirement to resign from the Police Service of Scotland.

## **Consultation**

13. To comply with the requirements of section 54(2) of the 2012 Act, the Scottish Ministers have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) of that Act and have considered the representations made in response.

14. A public consultation took place from 14 December 2012 to 11 January 2013 and key police stakeholders have been involved in a 'reference group' to discuss any significant policy changes to the regulations.

## **Impact Assessments**

15. A Business Regulatory Impact Assessment (BRIA) was carried out for the Police and Fire Reform (Scotland) Bill, which became the Act. No BRIA is therefore required for these regulations. An Equality Impact Assessment was carried out for the suite of workforce regulations.

Scottish Government  
Safer Communities Directorate  
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